



**CITY COMMISSION
WEDNESDAY, JUNE 4, 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 June as Pride Month

Accepted by: Citizens of Emporia

Proclamation Recognizing June as Zoo Month

Accepted by: John Kretsinger, Duane Henrikson, EFOZ Board Members, and Liz Brannan, Skylar Nicholas, Phillip Marsh, Anthony Fast, Zach Holub, Jayla Gore, Kelli Proehl, Kristi Smith, Lori Heavener, City of Emporia Parks & Zoo Department

Proclamation in Support of 2025 Summer Reading Program

Accepted by: Pauline Stacchini, Emporia Public Library Executive Director

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) Development Agreement with Stormont Vail Healthcare, Inc.

Presented by: Trey Cocking, City Manager

Recommended Action: Approve the Development Agreement between the City of Emporia and Stormont Vail Healthcare, Inc., including the six-year prohibition on operation of an ambulatory surgical center, and authorize the Mayor to sign the agreement

2) Architectural Services Agreement-Fire Station No. 2 Remodel and Addition

Presented by: Trey Cocking, City Manager

Recommended Action: Approve the agreement with TESSERE, Inc. for architectural services for Fire Station No. 2 in the amount of \$397,000 plus up to \$11,500 in reimbursable expenses, and authorize the City Manager to execute the agreement

3) Concept Design Services for William L. White Auditorium

Presented by: Trey Cocking, City Manager

Recommended Action: Authorize the City Manager to approve the proposal from TESSERE, Inc. in the amount of \$48,500 for architectural concept design services for the William L. White Auditorium

4) Ordinance 25-18 Establishing a Stormwater Utility

Presented by: Jim Ubert, City Engineer

Recommended Action: Approve Ordinance 25-18 Establishing a Stormwater Utility

5) Agreement with the Archdiocese of Kansas City, KS, and Sacred Heart Church for City Easement and Waterline

Presented by: Jim Ubert, City Engineer

Recommended Action: Approve the Agreement with the Archdiocese of Kansas City, KS, and Sacred Heart Church for said abandonment of the City's easement on Cottonwood Street and transfer of ownership of the existing 8-inch water main, and authorize the mayor to sign the Agreement

6) Ordinance No. 25-16 Vacating a Utility Easement for the Archdiocese of Kansas City, KS, and Sacred Heart Catholic Church

Presented by: Justin Givens, Planning & Zoning Administrator

Recommended Action: Adopt Ordinance No. 25-16 Vacating a Utility Easement for the Archdiocese of Kansas City, KS, and Sacred Heart Catholic Church

7) Ordinance 25-17 Pertaining to Animals and Fowl

Presented by: Christina Montgomery, City Attorney

Recommended Action: Approve Ordinance 25-17 Pertaining to Animals and Fowl

COMMUNICATIONS

Presented by Trey Cocking, City Manager.

- 1) Public Notice - June 11, 2025, at Noon, Zoo Education Center, 75 Sodens Road, City Commission Lunch with Emporia Friends of the Zoo

CONSENT AGENDA

Presented by Trey Cocking, City Manager.

- 1) Commission Meeting Minutes for May 21, 2025
- 2) Overlander Road Right of Way, City Project No. PV2304, KDOT Economic Development Project No. 56 KA-7312-01
- 3) 618 Mechanic Street Roof Replacement

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

- 1) Executive Session for 15 minutes inviting pertinent city staff to discuss confidential data of a third party relating to economic development. The justification for the executive session is provided by K.S.A. 75-4319(b)(4) to protect financial affairs and trade secrets of third parties. The open meeting will resume in this room at approximately __:____ a.m./p.m.

RECESS

Recess to Conference Room 1AB for Study Session

STUDY SESSION AGENDA ITEMS

- 1) White Park Art Installation
- 2) Budget Overview

ADJOURNMENT



PROCLAMATION

WHEREAS, the City of Emporia is a welcoming community and an exceptional place to live, work, play, and raise a family; and

WHEREAS, Emporia has a diverse Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ+) community and is committed to supporting visibility, dignity, and equity for all its residents; and

WHEREAS, many of the residents and business owners within the City of Emporia who contribute to the enrichment of our city are a part of the LGBTQ+ community; and

WHEREAS, Emporia is strengthened by the diversity of ethnic, cultural, racial, gender, and sexual identities of its residents and business community members, all of which contribute to our city's character, talent, economy, and leadership; and

WHEREAS, while critical steps have been made toward full LGBTQ+ equity and equality, members of our national, state, and local community still face discrimination, exclusion, and prejudice simply for being who they are and for whom they love; and

WHEREAS, discrimination against people from the LGBTQ+ community around the world makes it imperative for cities like Emporia to stand up and show support for our LGBTQ+ residents; and

WHEREAS, we respect and celebrate the richness and variety of cultures, values, traditions, and uniqueness as they contribute to the tapestry of our community; and

WHEREAS, each of us can and should promote inclusiveness, celebrate diversity, support all fellow community members, prevent the spread of misinformation, and reject hate and bias in all forms, which will make Emporia a stronger and healthier community; and

WHEREAS, June was chosen as National Pride Month to commemorate the 1969 protests and demonstrations in response to raids at the Stonewall Inn in New York's Greenwich Village; and

WHEREAS, June has become a symbolic month in which the LGBTQ+ community and allies come together in various celebrations of pride; and

NOW THEREFORE BE IT RESOLVED that, I, Erren Harter, Mayor of the City of Emporia, do hereby proclaim the month of June as

LGBTQ+ PRIDE MONTH

and encourage all residents to actively promote, support, and help build a culture of inclusiveness and acceptance.

On this 4th Day of June 2025

ATTEST:

Erren Harter, Mayor

Kerry Sull, City Clerk



PROCLAMATION

WHEREAS, Zoological Parks and Aquariums of North America serve the needs of both humans and wildlife by bringing them together in a unique setting; and

WHEREAS, they help build awareness, understanding, concern, and a sense of stewardship for wildlife and the environment; and

WHEREAS, they provide a vital link to global conservation efforts; and

WHEREAS, their commitment to education fosters and enriches the appreciation of wildlife in over 20 million school children each year; and

WHEREAS, they actively conduct scientific studies to better care for and preserve the diverse wildlife of the earth; and

WHEREAS, they provide important cultural, recreational, and educational experiences for over 175 million people annually.

THEREFORE, BE IT KNOWN that I, Erren Harter, Mayor of the City of Emporia, Kansas, do hereby designate the month of June as

"ZOO MONTH"

and urge all citizens to visit the David Traylor Zoo of Emporia to experience firsthand the wonders of nature and our environment offered by the Zoo.

On this 4th day of June 2025

ATTEST:

Erren Harter, Mayor

Kerry Sull, City Clerk



PROCLAMATION

WHEREAS, the Emporia Public Library keeps our minds sharp, our imaginations vivid, and our community connected—all year long; and

WHEREAS, we believe in the power of stories to bring folks together, light up imaginations, and make long summer days a little brighter; and

WHEREAS, the Emporia Public Library is opening its doors—and its books—for another season of fun with the 2025 Summer Reading Program, themed “Color Our World”; and

WHEREAS, reading is more than just a good way to pass the time—it helps kids learn, helps adults grow, and adds a splash of joy to everyday life; and

WHEREAS, library staff and volunteers work hard to make sure there's something for everyone—from puppet shows and worm races to story times and crafts—all free and open to the whole community; and

WHEREAS, the Library’s Summer Reading Program offers a rainbow of free, family-friendly programs that help kids keep learning while school’s out and give everyone a reason to turn the page;

NOW, THEREFORE, I, Erren Harter, Mayor of the City of Emporia, Kansas, do hereby proclaim the City Commission’s full support of the 2025 Summer Reading Program:

“Color Our World”

and encourage all residents to read, explore, and celebrate with the Emporia Public Library. Let’s read together and color our world!

On this 4th Day of June 2025

ATTEST:

Erren Harter, Mayor

Kerry Sull, City Clerk



Commission Action Report

Development Agreement with Stormont Vail Healthcare, Inc.

Title: Development Agreement with Stormont Vail Healthcare, Inc.

Agenda Date: June 4, 2025

Presented By: Trey Cocking, City Manager and Christina Montgomery, City Attorney

Background:

The City of Emporia has negotiated a Development Agreement with Stormont Vail Healthcare, Inc. for the construction and operation of a new healthcare facility at 18th Avenue and Road G. The agreement formalizes the project, outlines development standards, and establishes long-term mutual responsibilities.

As part of the Agreement, Stormont Vail has agreed to a contractual provision prohibiting the operation of an ambulatory surgical center (ASC) on the property for a period of six years. The Agreement does not authorize or restrict ASC use beyond that term; any future proposal will remain subject to applicable building codes, zoning regulations, and state licensing requirements. The six-year prohibition on the operation of an ASC provides clarity on the facility's intended scope of operations and aligns with the City's long-term objectives for coordinated, community-focused development.

Key Points

- Project Scope: Construction of a healthcare facility intended for use as medical offices and medical labs.
- Six-Year Prohibition: No ambulatory surgical center may be operated on the property for six years from the date of the Agreement.
- Stormont Vail Commitments:
 - Construct a medical office facility.
 - Fund and construct all on-site infrastructure improvements.
 - Conduct a traffic impact study.
 - Construct a new city street and storm water improvements along the eastern boundary of the project site, adjacent to Debaugé Soccer Complex.
 - Contribute \$250,000 towards cost of future street and storm water upgrades to 18th Avenue and Road G.
- City Commitments:
 - Review and process development applications in good faith and consistent with adopted policies.
 - Collaborate on public infrastructure planning as needed.

Discussion:

This Development Agreement represents a balanced approach to supporting private healthcare investment while safeguarding the long-term viability of Newman Regional Health and other existing medical providers. The six-year prohibition on ASC operations reflects significant community input and was negotiated to reduce potential service duplication and support strategic healthcare growth. The Agreement provides predictability for all parties, encourages infrastructure investment, and expands healthcare access within clearly defined parameters. After an extensive review, City Staff has reached



Commission Action Report

Development Agreement with Stormont Vail Healthcare, Inc.

the conclusion that cities in Kansas currently do not have the authority to limit the services health care entities provide. We would urge the Kansas legislature to take up this issue and either consider a statewide certificate of need program or empower local communities to make these decisions.

Financial Considerations:

There is no direct financial obligation imposed on the City. Stormont Vail is responsible for funding all on-site improvements and contributing toward off-site infrastructure enhancements.

Recommended Action:

Approve the Development Agreement between the City of Emporia and Stormont Vail Healthcare, Inc., including the six-year prohibition on operation of an ambulatory surgical center, and authorize the Mayor to sign the agreement.

Attachments:

Stormont Vail Development Agreement

DEVELOPMENT AGREEMENT

between the

CITY OF EMPORIA, KANSAS,

and

STORMONT-VAIL HEALTHCARE, INC.

Dated as of June 4, 2025

DEVELOPMENT AGREEMENT

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Exhibit A	Legal Description of Project Site
Exhibit B	Map of Project Site

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”), is made and entered into as of [Dated Date] (the “**Effective Date**”), by and between the **CITY OF EMPORIA, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”) and **STORMONT-VAIL HEALTHCARE, INC.**, a Kansas nonprofit corporation (the “**Developer**”) (the Developer and the City are collectively referred to as the “**Parties**” and each a “**Party**”).

RECITALS

A. The Developer owns certain property within the City generally located southeast of the intersection of 18th Street and Road G. and legally described on ***Exhibit A*** and depicted on ***Exhibit B*** and desires to develop the Project Site through the construction of a healthcare facility intended for use as medical offices and medical labs.

B. Development of the Project will require the City to make certain infrastructure improvements.

C. The City and the Developer desire to enter into this Agreement to address matters related to development of the Project and the financing of the infrastructure improvements.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions of Words and Terms. Capitalized words used in this Agreement have the meanings set forth in the Recitals to this Agreement or they have the following meanings:

“**Agreement**” means this Development Agreement, as amended from time to time.

“**Benefit District Act**” means K.S.A. 12-6a01 *et seq.*, as amended.

“**City**” means the City of Emporia, Kansas.

“**City Event of Default**” means any event or occurrence defined in ***Section 10.02*** of this Agreement.

“**City Manager**” means the City Manager of the City, or in the absence of the City Manager any duly appointed Deputy, Assistant or Acting City Manager.

“**City Representative**” means the Mayor or City Manager of the City, and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement.

“**Construction Plans**” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Project, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with this Agreement.

“Developer” means Stormont-Vail HealthCare, Inc., a Kansas nonprofit corporation, and any successors and assigns approved pursuant to this Agreement.

“Developer Event of Default” means any event or occurrence defined in *Section 10.01* of this Agreement.

“Developer Improvements” means the improvements described and further defined in *Section 3.01* of this Agreement.

“Event of Default” means any City Event of Default or Developer Event of Default, as applicable.

“Excusable Delays” means any delay beyond the reasonable control of the Party affected, caused by the COVID-19 pandemic, or other pandemics and large scale medical emergencies, damage or destruction by fire or other casualty, power failure, strike, shortage of materials, unavailability of labor, delays in the receipt of Governmental Approvals as a result of unreasonable delay on the part of the applicable Governmental Authorities, adverse weather conditions such as, by way of illustration and not limitation, rain storms or freezing temperatures that prevent construction progress, tornadoes, and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of all or any portion of the Project in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

“Governing Body” means the City Commission of the City.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, Site Plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Project and consistent with this Agreement.

“Governmental Authorities” means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

“Permitted Subsequent Approvals” means the building permits and other Governmental Approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

“Plans” means Site Plans, Designs, Drawings, and Construction Plans necessary to construct the Project in accordance with City’s building code and zoning code, applicable laws of Governmental Authorities and this Agreement.

“Project” means acquiring, constructing, furnishing, and equipping a healthcare facility intended for use as medical offices and medical labs on the Project Site, including associated public and private infrastructure; site work; utilities; storm water and drainage; landscaping; and parking facilities.

“Project Site” means all of the real property described in *Exhibit A* and depicted on *Exhibit B* and by this reference made a part hereof.

“Site Plan” means the final site plan for the Project Site submitted by the Developer to the City and approved by the City pursuant to applicable City ordinances, regulations and City’s building and zoning code provisions.

“State” means the State of Kansas.

“Traffic Study” means a final report commissioned by Developer and issued by a third-party consultant agreed upon by the City and Developer setting forth recommendations for improvements and traffic volumes triggering those improvements based upon the collection of traffic counts at 18th Street and Americus Road, traffic analysis of existing conditions, trip generation of the site, evaluation of existing traffic and proposed phases, including but not limited to all currently existing non-farm properties, and anticipated traffic from a proposed residential development to the North of 18th Street, and the City owned soccer fields.

Section 1.02. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

- (a) The terms defined in this Article include the plural as well as the singular.
- (b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.
- (c) All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
- (d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- (e) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.
- (f) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.
- (g) The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations of the Developer. The Developer makes the following representations and warranties, which are true and correct on the date hereof, to the best of the Developer’s knowledge:

- (a) **Corporate Organization.** Stormont-Vail HealthCare, Inc. is a nonprofit corporation duly organized and existing under the laws of the State of Kansas. Throughout the

term of this Agreement, Developer agrees to maintain its status as a nonprofit corporation, in good standing and authorized to do business in the State of Kansas.

(b) ***Due Authority.*** The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

(c) ***No Defaults or Violation of Law.*** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(d) ***No Litigation.*** No litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Project, the Developer or any officer, director, member or shareholder of the Developer. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

(e) ***No Material Change.*** (1) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (2) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could materially adversely affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in the financial information provided by the Developer to the City prior to the execution of this Agreement.

(f) ***Governmental or Corporate Consents.*** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement, other than Permitted Subsequent Approvals.

(g) ***No Default.*** No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an Event of Default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

(h) ***Approvals.*** Except for Permitted Subsequent Approvals, the Developer has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as heretofore conducted by it and to own or lease and operate its properties as now owned or leased by it. Except for Permitted Subsequent Approvals, the Developer has obtained all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to

acquire, construct, equip, operate and maintain the Project. The Developer reasonably believes that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will be obtained in due course.

(i) **Construction Permits.** Except for Permitted Subsequent Approvals, all governmental permits and licenses required by applicable law to construct, occupy and operate the Project have been issued and are in full force and effect or, if the present stage of development does not allow such issuance, the Developer reasonably believes, after due inquiry of the appropriate governmental officials, that such permits and licenses will be issued in a timely manner in order to permit the Project to be constructed.

(j) **Compliance with Laws.** The Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

(k) **Other Disclosures.** The information furnished to the City by the Developer (including through any of Developer's representatives) in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

(l) **Project.** The Developer represents and warrants that the Project Site is sufficient to construct the Project as contemplated in this Agreement.

Section 2.02. Conditions to the Effectiveness of this Agreement. As a precondition to the effectiveness of this Agreement, to the extent they have not already done so, the Developer will submit the following documents to the City:

(a) A tax clearance certificate for the Developer issued by the Kansas Department of Revenue within the preceding 90 days.

ARTICLE III

DEVELOPMENT OF THE PROJECT

Section 3.01. Project Improvements. The Developer will complete or cause to be completed the following improvements to the Project Site (collectively, the "**Developer Improvements**") in accordance with the Plans:

(a) Site grading;

(b) Construct and obtain a certificate of occupancy for the Project; and

(c) Related infrastructure improvements, including, but not limited to: extension of water, sanitary and storm sewer, street, curbing, sidewalk, parking facilities, utilities, pedestrian and shared-use path improvements, and any other public infrastructure improvements necessary within the Project Site.

Section 3.02. Project Schedule. Subject to Excusable Delays, once the Developer begins mobilization for the construction of the Developer Improvements, Developer will not permit cessation of work on the Developer Improvements for a period in excess of 45 consecutive working days or 90 days in the aggregate (but excluding weekends and holidays and weather delays) without prior written consent of the City Manager. Developer will diligently complete the Developer Improvements, subject to delays caused by force majeure and delays caused by the City.

Section 3.03. Project Design; Governmental Approvals.

(a) Before commencement of construction or development of any buildings, structures or other work or improvements, the Developer will, at its own expense, secure or cause to be secured any and all permits and approvals (including but not limited approvals related to the site plan, zoning, planning and platting approvals) which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work. The City will cooperate with and provide all usual assistance to the Developer in securing these permits and approvals, and will diligently process, review and consider all such permits and approvals as may be required by law; except provided that the City will not be required to issue any such permits or approval for any portion of the Project not in conformance with this Agreement.

(b) Before commencement of construction or development of any public improvements necessary to serve the Project Site, the Developer will, at its own expense, provide, or cause to be provided, to the City engineered drawings for the proposed sanitary sewer, water, storm sewer, street, curbing, sidewalk, and any other public infrastructure improvements necessary within the Project Site and the extension of sanitary sewer and water improvements to serve the Project Site. The submitted drawings will be approved by the City prior to the commencement of any work and will be in accordance with City standards for similar improvements and any applicable State and Federal Regulations. All public improvements will be located in the public right of way or properly recorded easements.

(c) Nothing in this Agreement constitutes a waiver of the City's right to consider and approve or deny Governmental Approvals pursuant to the City's regulatory authority as provided by City's building and zoning codes and applicable state law. The Developer acknowledges that satisfaction of certain conditions contained in this Agreement requires the reasonable exercise of the City's discretionary zoning authority by the City's planning commission and Governing Body in accordance with City's building and zoning code and applicable state law.

Section 3.04. Rights of Access. Representatives of the City will have the right of access to the Project, without charges or fees, at normal construction hours during the period of construction, for the purpose of ensuring compliance with this Agreement, including, but not limited to, the inspection of the work being performed in constructing, improving, equipping, repairing and installing the Project, so long as they comply with all safety rules. Except in case of emergency, prior to any such access, such representatives of the City will check in with the on-site manager. Such representatives of the City will carry proper identification, will insure their own safety, assuming the risk of injury, and will not interfere with the construction activity.

Section 3.05. Project Use. At all times while this Agreement is in effect, the Project will be utilized only as a healthcare facility, including but not limited to medical offices and labs, consistent with all applicable provisions of the City's zoning regulations governing commercial property. No prohibited uses as set forth in the City's zoning code will be allowed within the Project or the Project Site.

Section 3.06. Prohibited Medical Activities. For a six (6) year period beginning on the date this Development Agreement is signed, no part of the Project or the Project Site will be utilized as an ambulatory surgical center (as ambulatory surgical center is defined in K.S.A. 65-425). Any proposed change in use of the Project or the Project Site shall remain subject to all applicable City zoning regulations.

Section 3.07. Overflow Parking.

(a) During the Project's normal business hours, the Developer may restrict use of the Project's parking facilities to Project occupants, employees and guests by any security and restriction programs selected by the Developer.

(b) Outside of the Project's normal business hours, Developer will allow the Project's parking facilities to be utilized by the general public as overflow parking for events held at the Debaug Family Sports Complex. Notwithstanding the foregoing, the City will have no obligation or liability for the use, maintenance, operation, security, or any other costs or expenses related to the Project's parking facilities. The City further acknowledges and agrees the Developer shall have no liability for any theft, loss, injury or damage to property in relation to the use of the Project by the general public for parking, and Developer may appropriately post the area with signage to notify the general public of the same.

(c) The Parties agree that access, including use of the Project's parking facilities, may be closed by Developer during construction of the Project.

Section 3.08. Ongoing Performance Standards. The Project must achieve the following ongoing performance standards:

(a) **Continuous Operation.** The Project following completion of construction may not suffer an interruption in its operations longer than 30 consecutive days or 60 days in any calendar year in the aggregate, subject to force majeure or other Excusable Delays.

(b) **Maintenance.** Developer will maintain the Project, public access drives (other than those dedicated and accepted as public streets), the parking areas, landscape areas, and open space areas within the Project Site to the reasonable satisfaction of the City. Developer will repair any and all damage to such areas in a timely manner in accordance with all applicable codes and property maintenance standards required by the City.

(c) **Operations.** The Project will comply with all applicable building and zoning, health, environmental and safety codes and laws and all other applicable laws, rules and regulations. The Developer will, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Project, including but not limited to obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses.

Section 3.09. Taxes, Assessments, Encumbrances and Liens.

(a) **Taxes and Assessments.** So long as the Developer owns the Project Site, the Developer will pay when due all real estate taxes and assessments on such property required of a nonprofit corporation, and the City agrees not to unreasonably object to or prohibit tax exempt status commonly allowed for such property owned by nonprofit organizations conducting similar operations. Nothing herein will be deemed to prohibit the Developer from contesting the validity

or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto. The Developer and any other owners of the Project Site will promptly notify the City in writing of any protest of real estate taxes or valuation of any portion of the Project Site.

(b) ***Liens and Encumbrances.*** Subject to ***Section 3.10***, Developer agrees that no mechanics' or other liens will be established or remain against the Project, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer will not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The Developer hereby agrees and covenants to indemnify and hold harmless the City in the event any liens are filed against the Project as a result of acts of the Developer, its agents or independent contractors.

Section 3.10. Financing During Construction.

(a) ***No Encumbrances Except Mortgages during Construction.*** Notwithstanding any other provision of this Agreement, mortgages are permitted for the acquisition, construction, renovation, improvement, equipping, repair and installation of the Project and to secure permanent financing thereafter. However, nothing contained in this paragraph is intended to permit or require the subordination of general property taxes, special assessments or any other statutorily authorized governmental lien to be subordinate in the priority of payment to such mortgages.

(b) ***Holder Not Obligated to Construct Improvements.*** The holder of any mortgage authorized by this Agreement will not be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion. Nothing in this Agreement will be deemed to construe, permit or authorize any such holder to devote the Project to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

(c) ***Construction Period.*** The restrictions on Developer financing in this Section are intended to and will apply only to financing during the construction period of the Project and any financing obtained in connection therewith. Nothing in this Agreement is intended or will be construed to prevent the Developer from obtaining any financing for the Project or any aspect thereof.

ARTICLE IV

BENEFIT DISTRICT IMPROVEMENTS

Section 4.01. Benefit District Costs. The City may create an improvement district encompassing the Project Site and other properties in the vicinity pursuant to the Benefit District Act to impose special assessments upon the Benefit District. Regardless of whether or not the City creates a Benefit District, Developer will remit payment stated in subsection 4.01(a) below to finance Developer's portion of the costs of improvements that may be within the Benefit District (the "**Benefit District Costs**");

(a) Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) toward the costs of storm water and street improvements to 18th Avenue and Road G that are determined to be

required by the Traffic Study related to the Project. Nothing in this Agreement is intended to nor shall require Developer to pay more than \$250,000.00 toward any improvements related to the Benefit District, including any bonds secured by the City in relation to the Benefit District, and the City agrees to use all of the \$250,000.00 paid by Developer pursuant to this paragraph only for costs of storm water and street improvements to 18th Avenue and Road G and generally to the intersection of these two roadways; and

(b) Developer shall construct and pay 100% of the costs of storm water and street construction pursuant to City street construction requirements bordering the Debaugé Family Sports Complex located along the east edge of the Project Site (the “**Boundary Road**”), which Boundary Road will be deeded to the City by Developer upon completion of the Project construction. The Parties agree that following the deeding of the Boundary Road to the City the Developer shall retain the right to clear the Boundary Road of snow to accommodate Developer’s business operations in the Project, but this is not intended to and does not alter the City’s clearing of the Boundary Road consistent with the City’s normal snow removal and street conditioning operations for all other City streets.

Section 4.02. Benefit District Bonds. The City may finance the Benefit District Costs through the issuance of Benefit District Bonds. The City agrees the Developer shall not be liable or responsible for payment of any Benefit District Bonds or other costs or special assessments other than those set out in Section 4.01(a) above, and the City shall hold Developer harmless in relation to any City bonds.

ARTICLE V

ASSIGNMENT; TRANSFER

Section 5.01. Transfer of Obligations.

(a) ***City Consent Required.*** The rights, duties and obligations hereunder of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval of the Governing Body, such approval not to be unreasonably withheld, conditioned, or delayed, by resolution following verification by the City Attorney that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City Manager, necessary and adequate to fulfill the obligations of the Developer. Any proposed assignee will, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject. The Developer will not be relieved from any obligations set forth herein unless and until the City specifically agrees to release the Developer. Notwithstanding the foregoing, Developer may assign its rights, duties and obligations hereunder without consent to an entity controlled by or under common control of Developer, a subsidiary of Developer or an affiliate of Developer.

(b) ***Successors and Assigns.*** The Parties’ obligations pursuant to this Agreement, unless earlier satisfied, will inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective Parties as if they were in every case specifically named and will be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this

Agreement. Notwithstanding the foregoing, no tenant of any part of the Project will be bound by any obligation of the Developer solely by virtue of being a tenant.

(c) **Security Interests.** The foregoing restrictions on assignment, transfer and conveyance shall not apply to any security interest granted to secure indebtedness to any construction or permanent lender.

Section 5.02. Corporate Reorganization. Nothing herein will prohibit (or require City approval to allow) Developer from forming additional development or ownership entities to replace or joint venture with Developer for the purpose of business and/or income tax planning; provided that Developer, or an entity controlled by Developer, owns not less than 75% of any new or restructured company.

ARTICLE VI

GENERAL COVENANTS

Section 6.01. Indemnification of City.

(a) Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the “City Indemnified Parties”) harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorney’s fees, resulting from, or arising out of:

(1) The Developer’s actions and undertaking in implementation of the construction of the Project or this Agreement; and

(2) The negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment, and construction of the Project.

(3) Any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor.

This section will not apply to willful misconduct or negligence of the City or its officers, employees or agents. The Parties further agree that this section will not apply to any claims, demands, or suits of any kind brought against the City by a third-party related to the City’s interpretation or application of the City’s ordinances or the City’s decision to enter into this Agreement. This section does include, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act (“RCRA”; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer’s activities under this Agreement. The foregoing indemnity is intended to operate as an agreement

pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify the City and the City Indemnified Parties from liability.

(b) In the event any suit, action, investigation, claim or proceeding (collectively, an “Action”) is begun or made as a result of which the Developer may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties will give prompt notice to the Developer of the occurrence of such event.

(c) The right to indemnification set forth in this Agreement will survive the termination of this Agreement.

Section 6.02. Insurance. Developer will maintain or cause to be maintained insurance with respect to the Project covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar properties and engaged in similar operations (including but not limited to property and casualty, worker’s compensation and general liability) and in such amounts as, in the reasonable judgment of Developer, are adequate to protect the Developer and the Project. Throughout the term of this Agreement, Developer agrees to provide the City upon request evidence of property insurance and a certificate of liability insurance demonstrating compliance with this **Section 6.02**.

Section 6.03. Obligation to Restore.

(a) **Restoration of Project by Developer.** The Developer hereby agrees that if any portion of the Project owned by Developer is damaged or destroyed, in whole or in part, by fire or other casualty, the Developer will, within a reasonable time under the circumstances, restore, replace or rebuild the same, or will cause the same to be restored, replaced or rebuilt, to as nearly as possible the value, quality and condition it was in immediately prior to such fire or other casualty, with such alterations or changes as may be approved in writing by the City, which approval will not be unreasonably withheld. In the event of damage or destruction by fire or other casualty to any of the Project owned by Developer, irrespective of the amount of such damage or destruction, Developer will make the property safe and in compliance with all applicable laws as provided herein. This obligation will be a covenant running with the land and will be enforceable against all businesses operating in the Project and will terminate upon the payment of bonds associated with the Benefit District, if any.

(b) **Restoration of Project by Third Parties.** If any portion of the Project controlled by an owner, lessee or sublessee other than Developer is damaged or destroyed, in whole or in part, by fire or other casualty, such owner, lessee or sublessee will promptly restore, replace or rebuild the same (or will promptly cause the same to be restored, replaced or rebuilt) to as nearly as possible the value, quality and condition it was in immediately prior to such fire or other casualty, with such alterations or changes as may be approved in writing by the Developer and the City, which approval will not be unreasonably withheld. This obligation will be a covenant running with the land and will be enforceable against all businesses operating in the Project and will terminate upon the payment of bonds associated with the Benefit District, if any. Every owner, lessee, sublessee or occupant in the Project acknowledges, by accepting a deed, lease, sublease or other occupancy right in the Project, that the City is an intended third-party beneficiary of such provisions and has a separate and independent right to enforce such provisions directly against such owner, lessee, sublessee or occupant.

(c) **Enforcement.** The restrictions set forth in this Section are for the benefit of the City and may be enforced by the City by a suit for specific performance or for damages, or both.

Section 6.04. Non-liability of Officials, Employees, and Agents of the City. Except for fraudulent or criminal acts, no recourse will be had for any claim or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Developer Event of Default. A “Developer Event of Default” means a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement and continuance of such default or breach for a period of 30 days after City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and Developer is diligently attempting to remedy such default or breach, such default or breach will not constitute a Developer Event of Default if Developer promptly upon receipt of such notice diligently attempts to remedy such default or breach and thereafter prosecutes and completes the same with due diligence and dispatch.

Section 7.02. City Event of Default. A “City Event of Default” means a default in the performance of any obligation or breach of any covenant or agreement of the City in this Agreement and continuance of such default or breach for a period of 30 days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach will not constitute a City Event of Default if the City immediately upon receipt of such notice diligently attempts to remedy such default or breach and thereafter prosecutes and completes the same with due diligence and dispatch.

Section 7.03. Remedies Upon a Developer Event of Default.

(a) Upon the occurrence and continuance of a Developer Event of Default, the City will have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

(1) The City will have the right to terminate this Agreement or terminate Developers’ rights under this Agreement.

(2) The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default.

(b) If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any

reason, or has been determined adversely to the City, then and in every case the City and the Developer will, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City will continue as though no such proceeding had been instituted.

(c) The exercise by the City of any one remedy will not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City will apply to obligations beyond those expressly waived.

(d) Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section will not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer will be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 7.04. Limited Damages. Notwithstanding any other provision of this Agreement to the contrary, in no event will the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise. For the purposes of this **Section 7.04**, consequential damages include, but are not limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred by any non-defaulting Party.

Section 7.05. Excusable Delays. Neither the City nor the Developer will be deemed to be in default of this Agreement because of an Excusable Delay.

Section 7.06. Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Lyon County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01. Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

Section 8.02. Effect of Violation of the Terms and Provisions of this Agreement; No Partnership. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement will run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Project or the Project Site. The City will have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. Nothing contained herein will be construed as creating a partnership between the Developer and the City.

Section 8.03. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 8.04. Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 8.05. Agreement Controls. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

Section 8.06. Conflicts of Interest.

(a) No member of the City's Governing Body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings will participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest will immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, will not participate in any actions or discussions relating to the activities herein proscribed.

(b) The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its best knowledge and belief, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 8.07. Term. Unless earlier terminated as provided herein, this Agreement will remain in full force and effect until the payments described herein have been paid in full by Developer and for a period of ten (10) years following execution of this Agreement.

Section 8.08. Validity and Severability. It is the intention of the parties that the provisions of this Agreement will be enforced to the fullest extent permissible under the laws and public policies of State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement will be deemed invalid or unenforceable in whole or in part, this Agreement will be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 8.09. Required Disclosures. The Developer will immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 8.10. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 8.11. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request will be given for the City, unless otherwise provided herein, by the City Representative and for the Developer by any officer of Developer so authorized; and any person will be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party will have any complaint against the other as a result of any such action taken. The City Representative may seek the advice, consent or approval of the Governing Body before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section.

Section 8.12. Notice. All notices and requests required pursuant to this Agreement will be sent as follows:

To the City:

City Hall
Attn: City Manager
518 Mechanic Street
Emporia, Kansas 66801

with a copy to:

City Hall
Attn: City Attorney
518 Mechanic Street
Emporia, Kansas 66801

To the Developer

Stormont-Vail HealthCare, Inc.
Attn: Chief Financial Officer
1500 SW 10th Avenue
Topeka, Kansas 66604

with a copy to:

Stormont-Vail Healthcare, Inc.
Attn: General Counsel
1500 SW 10th Avenue
Topeka, Kansas 66604

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices will be deemed effective on the third day after mailing; all other notices will be effective when delivered.

Section 8.13. Kansas Law. This Agreement will be governed by and construed in accordance with the laws of the State of Kansas.

Section 8.14. Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same agreement.

Section 8.15. Recordation of Agreement. The Parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Lyon County, Kansas. This Agreement will be promptly recorded by the City at Developer's cost after execution, and proof of recording will be provided to the Developer.

Section 8.16. Consent or Approval. Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance will not be unreasonably withheld, conditioned or unduly delayed.

Section 8.17. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 8.18. Cash Basis and Budget Laws. The Parties acknowledge and agree that the ability of the City to enter into and perform certain financial obligations pursuant to this Agreement are subject to the K.S.A. 10-1101 *et seq.* and K.S.A. 79-2935 *et seq.*

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF EMPORIA, KANSAS

By: _____
Mayor

ATTEST:

City Clerk

STATE OF KANSAS)
) ss.
COUNTY OF LYON)

On this ____ day of _____, 202__, before me personally appeared Erren Harter, personally known, who being by me duly sworn did say that he is the Mayor of the City of Emporia, Kansas, and that said instrument was signed and delivered on behalf of said municipal corporation and acknowledged to me that he executed the same as the free act and deed of said municipal corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

[SEAL]

STORMONT-VAIL HEALTHCARE, INC.

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2025, before me personally appeared _____, to me personally known, who being by me duly sworn did say that he is the _____ of Stormont-Vail Healthcare, Inc., and that said instrument was signed and delivered on behalf of said corporation and acknowledged to me that he executed the same as the authorized free act and deed of Stormont-Vail Healthcare, Inc.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

[SEAL]

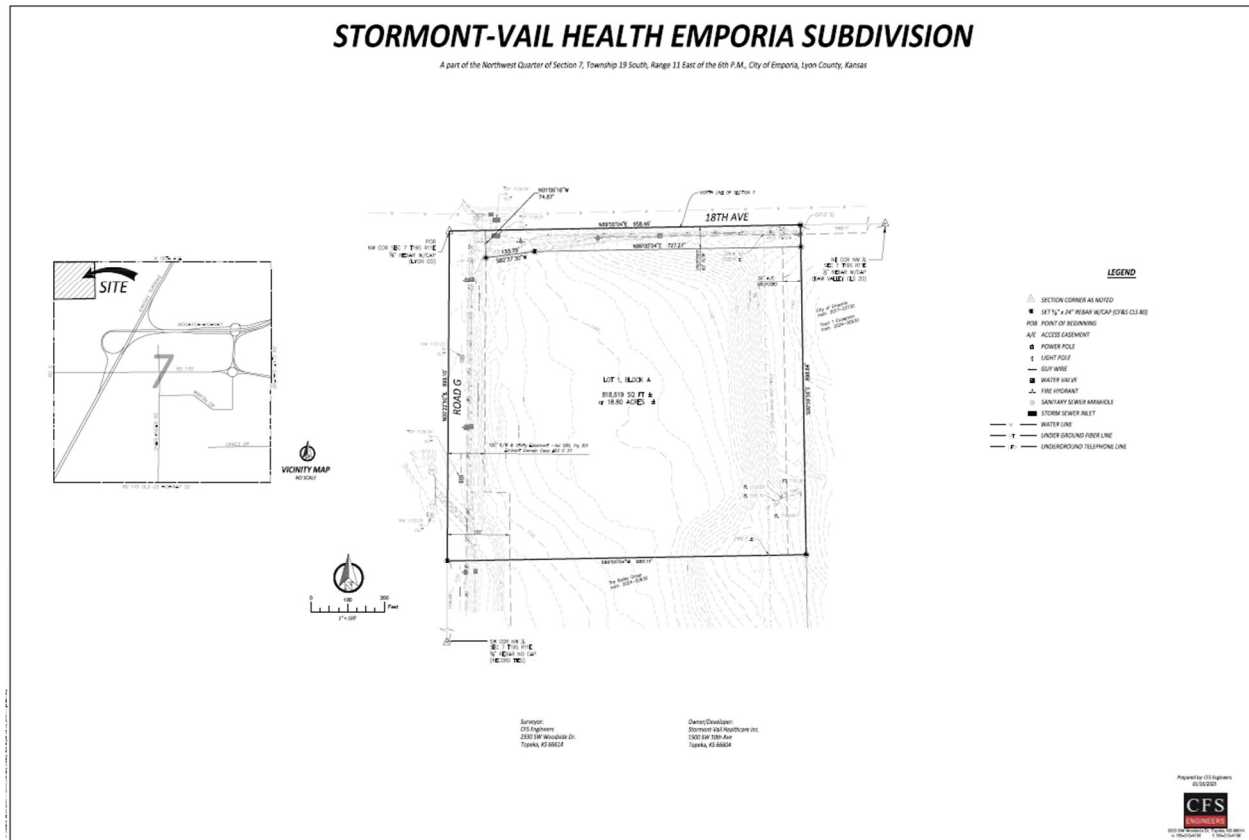
EXHIBIT A

LEGAL DESCRIPTION OF PROJECT SITE

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.

EXHIBIT B

MAP OF PROJECT SITE





Commission Action Report

Architectural Services Agreement-Fire Station No. 2 Remodel and Addition

Title: Architectural Services Agreement-Fire Station No. 2 Remodel and Addition

Agenda Date: June 4, 2025

Presented By: Trey Cocking, City Manager

Background:

The City of Emporia is moving to the next phase of the remodel and expansion of Fire Station No. 2 at 1427 Industrial Road. City Staff is recommending that the city entered into an agreement with TESSERE, Inc., based in Wichita, Kansas.

Key Points

- The contract is with TESSERE, Inc. for full architectural services, including design, documentation, and construction administration.
- The project delivery model is the same as Station #1 with a Construction Manager as Constructor (CM).
- Total cost of the project is currently estimated at \$5,679,400.
- Crossland Construction Company, Inc. is the Construction Manager for the project.

Discussion:

TESSERE, Inc. brings public safety facility experience and familiarity with Emporia to this project. The contract defines roles clearly between the architect and CM, ensuring that the City retains project oversight and design control.

Financial Considerations:

The architectural agreement includes:

Stipulated Sum: \$397,000

Estimated Reimbursable Expenses: \$11,500

Total Estimated Compensation: \$408,500

This project will be funded through the City's Bond and Interest Fund

Recommended Action:

Approve the agreement with TESSERE, Inc. for architectural services for Fire Station No. 2 in the amount of \$397,000 plus up to \$11,500 in reimbursable expenses, and authorize the City Manager to execute the agreement.

Attachments:

AIA B133-2019 Agreement

AIA® Document B133® – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the Fourteenth day of April in the year Two Thousand Twenty-Five
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

City of Emporia, Kansas
104 E. 5th Avenue
Emporia, KS 66801

and the Architect:
(Name, legal status, address, and other information)

TESSERE, Inc.
1525 E. Douglas Avenue
Wichita, KS 67211

Architect's Project 22110R25001

for the following Project:
(Name, location, and detailed description)

Fire Station 2 Remodel and Addition
1427 Industrial Road
Emporia, KS 66801

The Construction Manager (if known):
(Name, legal status, address, and other information)

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

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

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2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The Owner's program was identified in the Facility Assessment as Part A Services. See attached Exhibit A-2 for Conceptual Floor Plan.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The Project locations are as identified herein. Survey and geotechnical will be delivered by the Owner.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Currently estimated to be Five Million Six Hundred Seventy-Nine Thousand Four Hundred Dollars (\$5,679,400)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

To be determined (TBD)

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

Not applicable (N/A)

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

[X] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

To be determined with the Owner and Construction Manager during the design phase.

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Brandon Beck, Fire Chief/Service Director
Emporia Fire Department
120 E. 5th Avenue
Emporia, KS 66801
620-343-4235
bbeck@emporiafire.gov

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

N/A

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

.2 Other consultants and contractors:
(List any other consultants and contractors retained by the Owner.)

Alerting, Data/Telecom, Audio/Visual and Furnishings: Exact vendors to be determined.

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

Kyle Wilkerson | AIA | Project Architect
TESSERE, Inc.
1525 E. Douglas Avenue
Wichita, KS 67211
316-265-9367
kyle.wilkerson@tessere.com

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1, 1.1.12.2, 1.1.12.3, 1.1.12.4, and 1.1.12.5:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained by the Architect:

.1 Structural Engineer:

MKEC Engineering, Inc
411 N. Webb Road
Wichita, KS 67206
316-684-9600

.2 Mechanical Engineer:

Integrated Consulting Engineers, Inc.
349 S. Hydraulic Street
Wichita, KS 67211-1908
316-264-3588

.3 Electrical Engineer:

Integrated Consulting Engineers, Inc.
349 S. Hydraulic Street
Wichita, KS 67211-1908
316-264-3588

.4 Civil Engineer:

TESSERE, Inc.
1525 E. Douglas Avenue
Wichita, KS 67211
316-265-9367

.5 Landscape Architect:

TESSERE, Inc.
1525 E. Douglas Avenue
Wichita, KS 67211
316-265-9367

§ 1.1.13 Other Initial Information on which the Agreement is based:

Refer to Architect's Proposal, attached as Exhibit A-1.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate.

§ 2.6.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or

the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Owner and Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of review comments and the Construction Manager's cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's

approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Owner and Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Owner and Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for

Construction. If the Owner and Construction Manager modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement. The term “Contractor” as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect’s responsibility to provide Construction Phase Services commences upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the

Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's

approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Assistance with Selection of Construction Manager	Not Provided
§ 4.1.1.2 Programming	Completed Under Separate Agreement
§ 4.1.1.3 Multiple Preliminary Designs	Completed Under Separate Agreement
§ 4.1.1.4 Measured drawings	Owner
§ 4.1.1.5 Existing facilities surveys	Completed Under Separate Agreement
§ 4.1.1.6 Site evaluation and planning	Not Provided
§ 4.1.1.7 Building Information Model management responsibilities	Architect

§ 4.1.1.8	Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9	Civil engineering	Architect
§ 4.1.1.10	Landscape design	Architect
§ 4.1.1.11	Architectural interior design	Architect
§ 4.1.1.12	Value analysis	Not Provided
§ 4.1.1.13	Cost estimating	Not Provided
§ 4.1.1.14	On-site project representation	Not Provided
§ 4.1.1.15	Conformed documents for construction	Architect
§ 4.1.1.16	As-designed record drawings	Architect
§ 4.1.1.17	As-constructed record drawings	Not Provided
§ 4.1.1.18	Post-occupancy evaluation	Not Provided
§ 4.1.1.19	Facility support services	Not Provided
§ 4.1.1.20	Tenant-related services	Not Provided
§ 4.1.1.21	Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22	Telecommunications/data and audio/visual design	Owner
§ 4.1.1.23	Security evaluation and planning	Owner
§ 4.1.1.24	Commissioning	Not Provided
§ 4.1.1.25	Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26	Historic preservation	Not Provided
§ 4.1.1.27	Furniture, furnishings, and equipment design	Supplier-designed, Architect-coordinated, Owner-selected
§ 4.1.1.28	Other services provided by specialty Consultants	Owner
§ 4.1.1.29	Land Surveying	Owner
§ 4.1.1.30	Geotechnical Engineering	Owner
§ 4.1.1.31	ICC500 Storm Shelter Inspections	Owner

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

Refer to Architect's Proposal, attached as Exhibit A-1.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

Refer to Architect's Proposal, attached as Exhibit A-1.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .10 Assistance to the Initial Decision Maker, if other than the Architect;
- .11 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .12 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .13 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .15 Other Additional Services as identified in Exhibit A-1.

§ 4.2.2 The Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect only for the services provided upon receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance

with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;

- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Twenty-four (24) visits to the site by TESSERE during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Thirty (30) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as tests for air and water pollution and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within ten (10) days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's

guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

[] Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for 30 consecutive days, the Architect shall be compensated for all services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

N/A

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

N/A

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information when required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)

A Stipulated Sum of Three Hundred Ninety-Seven Thousand Dollars (\$397,000) plus Reimbursable Expenses estimated to be Eleven Thousand Five Hundred Dollars (\$11,500).

- .2 Percentage Basis: Not applicable
(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

- .3 Other: Not applicable
(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

To be determined prior to Additional Supplemental Services being performed.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

To be determined prior to Additional Services being performed.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	twenty percent (20%)
Design Development Phase	twenty percent (20%)
Construction Documents Phase	forty percent (40%)
Construction Phase	twenty percent (20%)

Total Basic Compensation	one hundred percent (100%)
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The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The

rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Refer to Exhibit A-3.

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses; and
- .10 Travel expenditures for consultants.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Fifteen percent (15%) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

N/A

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero (\$0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

1.5 % monthly

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

12.1 SALES TAX

In the event the laws of the State of Kansas should change in such a way so as to require the Architect to charge sales tax for the services and reimbursable expenses to be invoiced to the Owner under this Agreement, any such sales tax due shall be payable by the Owner in addition to the Compensation otherwise due under this Agreement.

12.2 INDEMNIFICATION/HOLD HARMLESS

12.2.1 Architect agrees to indemnify and hold harmless the Owner and its agents and/or employees from damages, liabilities, or costs including reasonable attorney's fees and defense costs for personal injury, bodily injury, property damage, and/or death arising out of the Architect's or any of its agents', servants', and/or employees' negligent acts, and/or negligent failures to act, in the performance of this Agreement. Neither acceptance of the completed Work nor payment therefore shall release the Architect from his/her obligation under this Paragraph.

12.2.2 Owner agrees to indemnify and hold harmless the Architect and its agents and/or employees from damages, liabilities, or costs, including reasonable attorney's fees and defense costs for personal injury, bodily injury, property damage, and/or death arising out of the Owner's or any of its agents', servants', and/or employees' negligent acts, and/or negligent failures to act, in the performance of this Agreement. Neither acceptance of the completed Work nor payment therefore shall release the Owner from his/her obligation under this Paragraph.

12.2.3 This indemnification is subject to the limitations and provisions of the Kansas Cash Basis Law, K.S.A. 10-1101 et seq.

12.2.4 Neither the Owner nor the Architect shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

12.2.5 For damages, losses, or liability arising under the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., such hold harmless and indemnification shall be limited by operation of K.S.A. 75-6105 and amendments thereto, and construction thereof by the courts of the State of Kansas.

12.2.6 This agreement to indemnify/hold harmless shall not run in favor of or inure to the benefit of any liability insurer or third party.

12.3 LIMITATION OF LIABILITY

Neither the Architect, Architect's subconsultants, nor their agents or employees shall be jointly, severally, or individually liable to the Client in excess of the compensation to be paid pursuant to the Agreement or One Million Dollars (\$1,000,000), whichever is greater, by reason of any act or omission, in tort or contract, including breach of contract, breach of warranty, or negligence.

12.4 AVAILABILITY OF PROFESSIONAL LIABILITY INSURANCE

The Architect agrees to maintain professional liability coverage for the period of design and construction of the Project, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the architects practicing the same professional discipline in the state where the project is located are able to obtain such coverage.

12.5 UTILIZING CAD OR REVIT DRAWINGS

12.5.1 In accepting and utilizing any drawings or other data on any form of electronic media generated and provided by the Architect, the Owner covenants and agrees that all such drawings and data are instruments of service of the Architect, who shall be deemed the author of the drawings and data, and shall retain all common law, statutory law and other rights, including copyrights. The Owner and the Architect agree that any CAD or Revit files prepared by either party shall conform to the specifications listed in the attached Exhibit. The electronic files submitted by the Architect to the Owner are submitted for an acceptance period of 30 days. Any defects the Owner discovers during this period will be reported to the Architect and will be corrected as part of the Architect's Basic Scope of Services. Correction of defects detected and reported after the acceptance period will be compensated for as Additional Services.

12.5.2 The Owner further agrees not to use these drawings and data, in whole or in part, for any purpose or project other than the Project which is the subject of this Agreement. The Owner agrees to waive all claims against the Architect resulting in any way from any unauthorized changes or reuse of the drawings and data for any other project by anyone other than the Architect.

12.5.3 In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost, including reasonable attorneys' fees and costs of defense, arising from any changes made by anyone other than the Architect or from any reuse authorized or permitted by the Owner of the drawings and data without the prior written consent of the Architect.

12.5.4 Under no circumstances shall transfer of the drawings and other instruments of service on electronic media for use by the Owner be deemed a sale by the Architect, and the Architect makes no warranties, either express or implied, of merchantability and fitness for any particular purpose.

12.6 SEVERABILITY

Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted, and the remainder of this Agreement shall remain in full force and effect.

12.7 SURVIVAL

Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

12.8 CERTIFICATIONS, GUARANTEES AND WARRANTIES

The Architect shall not be required to sign any documents, no matter by whom requested, that would result in the Architects having to certify, guarantee or warrant the existence of conditions whose existence the Architect cannot ascertain. The Owner also agrees not to make resolutions of any dispute with the Architect or payment of any amount due to the Architect in any way contingent upon the Architect's signing any such certification. As used herein, the word "certify" shall mean an expression of the Architect's professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by the Architect.

12.9 FORCE MAJEURE

The Owner shall not hold the Architect responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the Architect, or that could not have been reasonably foreseen and prevented including, but not limited to, fire, weather, floods, earthquakes, epidemics, war, riots, terrorism, strikes, and unanticipated site conditions.

12.10 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

Architect agrees during the course of this Agreement with the Owner and any resulting Consultant agreements:

12.10.1 to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.); the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.); the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA); and Title VII of the Civil Rights Act of 1964, as amended, and to not discriminate against any person because of ancestry, race, color, religion, sex, sexual orientation, gender identity, pregnancy, age, national origin, disability, low income, genetic information, familial status, or any other basis prohibited by Kansas State or federal law, in the admission or access to, or treatment or employment in, its programs or activities;

12.10.2 to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer";

12.10.3 to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116;

12.10.4 to include these provisions in every Consultant agreement or purchase order so that they are binding upon such Consultant or vendor;

12.10.5 that a failure to comply with the reporting requirements of 12.10.3 above or if Architect is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part, by the Owner.

12.11 WAIVER

A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision during the remainder of this Agreement.

12.12 CASH BASIS AND BUDGET LAW

The right of the Owner to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1101 et seq.), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted to ensure the Owner conforms with these laws at all times. The Owner reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of the Owner's legal counsel, the Agreement may be deemed to violate the terms of any laws of the State of Kansas.

12.13 Architect is an independent contractor and, as such, is not an agent or employee of the Owner.

12.14 This Agreement shall not be assigned or transferred by Architect without the written consent of the Owner.

12.15 Architect certifies it has not engaged in corrupt, fraudulent, or coercive practices in competing for, or in executing the Agreement. For the purposes of this Paragraph:

- .1 "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
- .2 "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
- .3 "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement

12.16 SUSPENSION OF SERVICE

12.16.1 If the Owner is in breach of the payment terms or otherwise is in material breach of this Agreement, the Architect may suspend performance of services upon seven calendar days' notice to the Owner.

12.16.2 TESSERE shall make every effort to submit an invoice for completed Construction Documents seven days prior to the issuing of documents to local governing authorities. A condition of this Agreement is that payment of the current invoice and/or all outstanding invoices shall be made prior to the issuing of documents to local governing authorities.

12.16.3 TESSERE reserves the right to place a lien on the property upon failure by the Client to pay any outstanding invoices within 60 days of the date of the Architect's invoice. If payment of all outstanding invoices is not collected by 90 days from the date of the Architect's invoice, TESSERE reserves the right to take collection action against the Client and stop all work on the Project, including but not limited to issuing pricing, plan check, bidding, or construction documents, or answering field questions.

12.16.4 The Architect shall have no liability to the Client, and the Client agrees to make no claim for any delay or damage as a result of such suspension, lien or collection action caused by any breach of this Agreement by the Client. Upon receipt of payment in full of all outstanding sums due from the Client or curing of such other breach which caused the Architect to suspend services, the Architect shall resume services and there shall be an equitable adjustment to the remaining Project schedule and Fees as a result of the suspension.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:
(Insert the date of the E203-2013 incorporated into this agreement.)

N/A

.3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

- ☐ AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor
Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)

N/A

- ☒ Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and
scopes of services identified as exhibits in Section 4.1.2.)

Additional Project Information, Scope of Services and Assumptions, attached as Exhibit A-1
Conceptual Floor Plan, attached as Exhibit A-2
Hourly Billing Rates, attached as Exhibit A-3
Sample Invoice, attached as Exhibit A-4
Electronic File Disclaimer, attached as Exhibit A-5

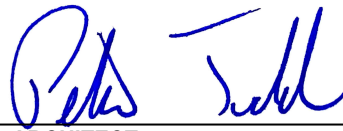
.4 Other documents:
(List other documents, if any, forming part of the Agreement.)

N/A

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

OWNER (Signature)

BY: _____
(Printed name and title)



ARCHITECT (Signature)

BY: Peter A. Todd | AIA | Director of
Community Projects | KS License A6074

(Printed name, title, and license number if required)

April 14, 2025

via e-mail

Mr. Trey Cocking, City Manager
City of Emporia
104 E. 5th Avenue
Emporia, KS 66801

Re: Proposal for Professional Design Services
Fire Station 2 Remodel and Addition
Emporia, Kansas

Dear Mr. Cocking:

We appreciate the opportunity to provide Design Services for the remodel and addition for Emporia Fire Station 2. This will serve as our Proposal for Professional Design Services for the Project listed below.

PROJECT:

This Project is for a remodel and addition of Fire Station 2 in Emporia, Kansas. The Scope of Work for this Project will include the following.

1. The Project is a one-story facility with a total area of approximately 17,700 square feet (Exhibit A-2).
2. Programming and Schematic Design have started for the facility and will need to be further developed before moving into Design Development.
3. The structure and exterior of the facility additions are yet to be determined.
4. An ICC 500 storm shelter will be included in the Project.
5. Geotechnical and Site Surveying Services will be provided by the Client.

It is our understanding that you will be utilizing Construction Management at Risk (CMAR) as the construction delivery method and Crossland Construction will be the CMAR.

Our scope of Services will include Architecture, Civil, Structural, and Mechanical/Plumbing/ Electrical (M/E/P) Engineering, Landscape Architecture, and Interior Design. The anticipated construction cost for the Project is estimated at Five Million Six Hundred Seventy-Nine Thousand Four Hundred Dollars (\$5,679,400).

PROJECT TEAM:

It is our understanding that our office will be working and coordinating our work with you as the primary contact. It is our intention to address all correspondence on this Project to you, unless we are directed otherwise.

For TESSERE, Peter Todd, AIA, will be Principal-in-Charge for the Project, with Kyle Wilkerson, AIA, acting as the designated representative and Project Architect. Our team will also include additional architectural staff as necessary to complete your Project in a timely manner. Correspondence should be addressed to the attention of Mr. Wilkerson.

Our Consultant Team Consists of:

Civil Engineering, Landscape Architecture, and Interior Design: TESSERE, Inc.
Structural Engineering: MKEC Engineering, Inc.
Mechanical/Electrical/Plumbing (M/E/P) Engineering: Integrated Consulting Engineers, Inc.

SCOPE OF SERVICES:

This Section Describes the General Scope of Services and Includes the Following:

1. Meet with the Client to establish administrative procedures, establish a timeline for the Project and gather additional information from the Client-provided concept design.
2. Visit the site with the team.
3. Prepare two additional concept designs for review with the Client. The Concept Drawings will include a Site Plan, Floor Plan, and Exterior Elevations.
4. The CMAR will provide preliminary cost estimates, based on the Concept Drawings.
5. Based on the approved concept and an understanding of the budget, prepare Design Documents to illustrate and describe the development of the approved Concept Documents and shall consist of Plans, Sections, Elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical, and electrical systems, and any other such elements as may be appropriate.
6. Present the Design Documents to the Client for approval.
7. Based on the approved Design Documents and any adjustments to the budget, prepare Construction Documents setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Project.
8. Review the Construction Documents Packages with the Client for an update on the Project and issuance to the CMAR.
9. Issue the Following Document Packages:
 - a. Long Lead Items Package
 - b. Earthwork, Underground, and Structural Package
 - c. Architecture and M/E/P Package
10. Coordinate engineering disciplines including civil, structural, mechanical, and electrical with the documents to ensure systems coordination.
11. Coordinate the interior design and provide finishes for the Project. Our Professional Services do not include the selection and specification of new furniture and furnishings, ordering of furniture and furnishings, or coordination/overview of the installation of furniture.
12. The Architect will compile a Project Manual/Specifications for the Project.
13. Submit completed Construction Documents Packages to the City of Emporia for plan check and make any corrections necessary for the CMAR to obtain a building permit.
14. We have included 12 in-person meetings with two TESSERE staff for design meetings on the Project. All other meetings will be online.
15. The Architect shall provide administration of the Contract between the Owner and CMAR to include the following:
 - a. Answering questions during construction to clarify the design intent of the Documents.

Mr. Trey Cocking, City Manager
April 14, 2025
Page 3 of 5

- b. Periodic visits to the site at appropriate stages of construction to become generally familiar with the progress and quality of the work. We have included 24 site visits as part of our Fee.
- c. Review Contractor's submittal schedule.
- d. Review and certify the amounts due the Contractor, and shall issue certificates in such amounts.
- e. Review and approve or take other appropriate action upon submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
- f. Conduct an inspection to determine the date or dates of Substantial Completion and final completion.
- g. Upon request of the Client, conduct an 11-month warranty walk-through to review the facility operations and performance.

COMPENSATION:

Professional Fees will be a lump sum amount Three Hundred Ninety-Seven Thousand One Hundred Ninety Dollars (\$397,190) plus estimated Reimbursable Expenses in the amount of Eleven Thousand Five Hundred Dollars (\$11,500).

REIMBURSABLE EXPENSES:

Professional Fees do not include Reimbursable Expenses as outlined in the following paragraph.

Reimbursable Expenses include transportation, lodging and subsistence for out-of-town travel, reproduction of documents, photography, shipping, postage, messenger or courier service charges, purchase of maps and similar documents, and other like expense, and as may be authorized by the Owner, professional renderings, scale models, mock-ups, off-hour expenses, and the fees of any special consultant retained by the team. Billings for such Reimbursable Expenses include an administrative fee of 15 percent.

PAYMENT:

TESSERE shall submit invoices on a monthly basis for Compensation and Reimbursable Expenses due for Professional Services performed under this Agreement. Payments shall be due and payable within 30 days from the date of our invoice, and invoices unpaid after 31 days shall bear interest from the date payment is due at 1.5 percent per month.

Presuming we kick this Project off in May 2025, we anticipate billing this Project on the following Schedule:

June	\$63,520
July	\$63,520
August	\$63,520
September	\$63,520
October	\$63,520
November through October 2026.....	approximately \$6,620 per month

Please note that Reimbursable Expenses as listed on this Proposal are in addition to the above-referenced numbers.

TESSERE shall make every effort to submit an invoice for completed Construction Documents seven days prior to the issuing of Documents to local governing authorities. A condition of this Proposal is that payment of the current invoice and/or all outstanding invoices shall be made prior to the issuing of Documents to local governing authorities.

ADDITIONAL SERVICES:

Services requested beyond the scope of Basic Services described above shall be considered Additional Services. Additional Services shall be provided if requested and authorized in writing by the Owner and will be performed for a lump sum amount to be mutually agreed to by both parties prior to beginning. Reimbursable Expenses for Additional Services shall be compensated as outlined above in Reimbursable Expenses.

PROJECT ASSUMPTIONS:

Our Services are based on the following assumptions:

1. We have not included fees for geotechnical services, site survey, third-party structural storm shelter inspections, alerting system design, low-voltage systems design, legal descriptions, environmental studies or abatement, or demolition drawings for the removal of existing buildings on the site.
2. The Client will provide geotechnical services and site survey for TESSERE's use.
3. We will use the 2015 International Building Code for the governing code.
4. Fees do not include printing costs, mailing and postage for distribution of Construction Documents for bidding.
5. Professional renderings are not included.
6. Scale models required for marketing purposes are not included.
7. Plan review fees for permits and rezoning shall be paid by Client. All fees to obtain permit documentation, City or State inspections or other fees to the Authorities Having Jurisdiction (AHJ) shall be paid by either the Client or the General Contractor.
8. Value engineering studies and life-cycle cost analysis studies are not included.
9. Off-site improvements are not included.
10. Videos of the building, including fly-around and fly-through, are not included.
11. Specialty consultants not listed in this Proposal are not included in our Fee.
12. TESSERE has not included fees for any required materials testing or special inspections.
13. As built Drawings are not included in our Fee.
14. Electronic files to the Owner are not included in our Fee. A release is required by the Client.
15. LEED Certification or other sustainable building certification processes are not included in our Fee.

CLIENT'S RESPONSIBILITIES:

1. The Client will appoint a representative for this Project as the day-to-day contact, and decisions will be made in a timely fashion to keep the Project on schedule.

Mr. Trey Cocking, City Manager
April 14, 2025
Page 5 of 5

2. The Client will provide any existing drawings, documents or studies prepared by others for use by the Architect. The Architect shall be able to rely on the accuracy of the information provided.
3. The Client will make payments within 30 days of the date of the invoice from the Architect.

SCHEDULE:

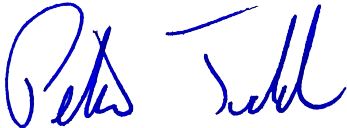
The schedule for the Project will be based on a mutually agreeable timeline. The schedule shall include allowances for periods of time for the Owner's review, review and coordination of consultant's documents, and approval of submissions by authorities having jurisdiction over the Project. We have allotted five months to take the Project through the bidding phase and twelve months for construction.

This Proposal and the attached Terms and Conditions are valid for 60 days from the date of the Proposal. This Proposal shall be deemed accepted by you, if at your request we begin work on the Project, either by email or written correspondence, notwithstanding your failure to issue a Purchase Order and/or authorize TESSERE to prepare an AIA Agreement.

We appreciate the opportunity to meet with you and submit this Proposal. If this Proposal is acceptable, please notify us, and we will prepare an AIA Agreement for your signature. We are ready to start work upon receipt of a signed Agreement for your Project.

Sincerely,

TESSERE, Inc.



Peter A. Todd | AIA
Director of Community Projects

PAT/jh

Enclosure:

c(w/enc.): 22110R25001

TESSERE, INC.
STANDARD TERMS AND CONDITIONS

TESSERE, Inc. shall provide for the Client, in accordance with the following Standard Terms and Conditions, the Basic Services described in the attached Proposal for this Project. These Standard Terms and Conditions and an executed Agreement with the Proposal attached as an Exhibit comprise the entire Agreement between the Client and TESSERE for the Project. The Agreement may be altered only by written Supplemental Agreement.

INITIATION. Unless otherwise agreed, TESSERE is authorized to proceed with the Services as listed in the Proposal.

BASIS OF COMPENSATION. TESSERE will be compensated for Basic Services as described in the Proposal. For items quoted at hourly billing rates, the rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

PAYMENT. TESSERE shall submit invoices on a monthly basis for Compensation and Reimbursable Expenses due for Professional Services performed. Payments shall be due and payable within 30 days from the date of our invoice, and invoices unpaid after 31 days shall bear interest from the date payment is due at the prime rate plus 1.5 percent. TESSERE reserves the right to suspend Services upon seven calendar days' written notice to the Client if the Client is in breach of the payment terms or other material breach of this Proposal. TESSERE reserves the right to assert a lien on the property upon failure by the Client to pay any outstanding invoices within 60 days of the date of the Architect's invoice. If payment of all outstanding invoices is not collected by 90 days from the date of the Architect's invoice, TESSERE reserves the right to take collection action against the Client and stop all work, including but not limited to plan check, bidding, Construction Documents or answering field questions. TESSERE shall have no liability to the Client, and the Client agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Proposal by the Client. Upon receipt of payment in full of all outstanding sums due from the Client or curing of such other breach which caused TESSERE to suspend Services, TESSERE shall resume Services and there shall be an equitable adjustment to the remaining Project schedule and Fees as a result of the suspension.

STANDARD OF CARE. TESSERE shall perform its Services consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances and perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. If TESSERE fails to meet the foregoing standard, TESSERE will perform forthwith at its own cost, and without additional reimbursement from Client, the Services to correct errors and omissions in documents which are caused by TESSERE's failure to comply with the above standard.

OPINIONS OF PROBABLE CONSTRUCTION COST. Since TESSERE has no control over the cost of construction, labor, material or equipment, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, the opinions of probable construction cost which may be made in the course of this Work are to be made on the basis of TESSERE's experience and qualifications in the industry, but TESSERE cannot and does not guarantee that bids or project construction costs will not vary from the estimates, if any, prepared by TESSERE.

USE OF DOCUMENTS. Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Proposal (Documents) are instruments of service and as such are applicable only to the subject Project. The Documents remain the Property of TESSERE. The Documents shall not be used for any other purpose without the written authorization from, indemnification of, and consent of TESSERE.

EQUAL OPPORTUNITY EMPLOYMENT. TESSERE will comply with federal regulations pertaining to Equal Opportunity Employment. It is TESSERE's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, disability, or religion.

INSURANCE. TESSERE will maintain Employer's Liability and Worker's Compensation Insurance as well as Commercial General Liability, Automobile Liability Insurance and Professional Liability Insurance for TESSERE's negligent acts, errors, or omissions in providing Services. A certificate of insurance is available to the Client upon request.

TESSERE INDEMNIFICATION/HOLD HARMLESS. The Architect shall indemnify and hold the Client and the Client's officers and employees harmless, but not defend, from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees, and its consultants in the performance of Professional Services under this Proposal. The Architect has no obligation to pay for any of the indemnitees' costs prior to a final determination of liability or to pay any amount that exceeds the Architect's final determined percent of liability based upon the comparative fault of the Architect, its employees, and its consultants.

CLIENT INDEMNIFICATION/HOLD HARMLESS. The Client shall indemnify and hold harmless TESSERE, its directors, officers, employees, consultants and agents from and against any and all damages, losses and judgments arising from claims by third parties, liabilities or costs, including reasonable attorneys' fees and defense cost, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its' contractors, subcontractors or consultants or anyone for whom the Client is liable.

ADDITIONAL SERVICES. Services not included in this Proposal or which are considered to be beyond the extent of reasonable extrapolation of the Basic Services set forth in this Proposal shall be considered Additional Services. No Additional Services shall be performed nor shall compensation for Additional Services be paid except on the basis of a written Supplemental Agreement.

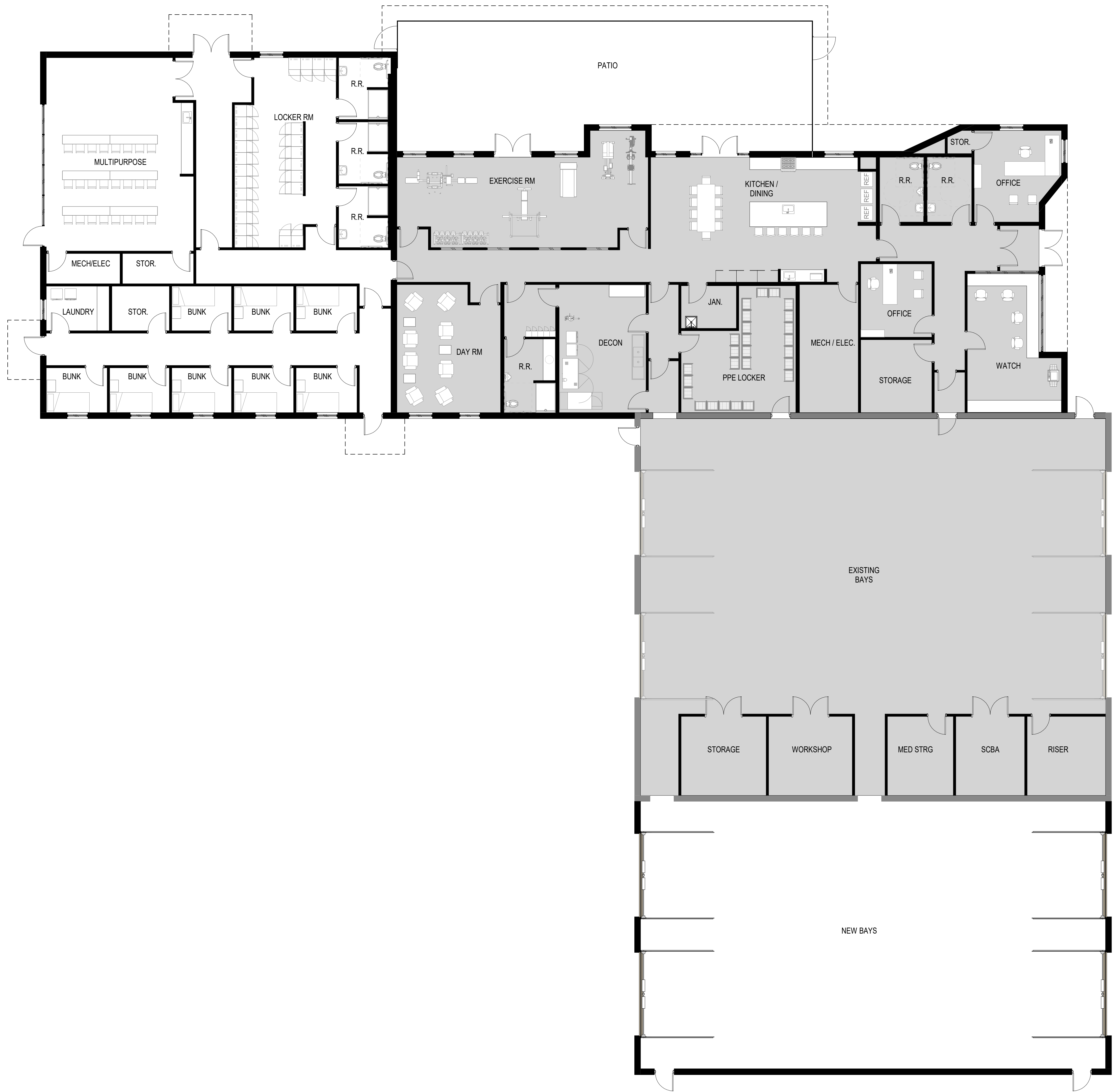
LIMITATION OF LIABILITY. Neither the Architect, Architect's subconsultants, nor their employees shall be jointly, severally, or individually liable to the Client in excess of compensation to be paid pursuant to this Proposal or Three Hundred Ninety-Seven Thousand One Hundred Ninety Dollars (\$397,190), whichever is greater, by reason of any act or omission, in tort or contract, including breach of contract, breach of warranty, or negligence.

CLAIMS AND DISPUTES. Any action for claims arising or related to this Proposal or the Project that is the subject of this Proposal shall be governed by the laws of the State of Kansas. Mediation is an express condition precedent to the filing of any legal action. Unless the parties agree otherwise, the mediation shall be conducted in accordance with the Construction Mediation Rules of the American Arbitration Association.

SUBLETTING OR ASSIGNING CONTRACT. Neither TESSERE nor Client shall assign, transfer, or encumber any rights, duties, or interests accruing from this Proposal without the express prior written consent of the other. This Proposal shall be binding upon the parties hereto and their successors and assigns.

TERMINATION OF PROPOSAL. The right is reserved by either party to terminate this Proposal at any time, upon seven days' written notice. However, TESSERE shall be paid the reasonable value of the Services rendered up to the time of termination on the basis of compensation and payment provisions of this Proposal.

-End of TESSERE
Standard Terms and Conditions-



A FIRST FLOOR - REMODEL/ADDITION FLOOR PLAN OPTION 1

1/8" = 1'-0"



TESSERE Standard Billing Rates

Effective January 1, 2025

Description	Billing Rate/Hour
Executive Management	\$310
Principal In Charge III	\$240
Principal In Charge II	\$220
Principal In Charge I	\$200
Project Manager V	\$230
Project Manager IV	\$190
Project Manager III	\$180
Project Manager II	\$160
Project Manager I	\$135
Architect V	\$200
Architect IV	\$180
Architect III	\$165
Architect II	\$150
Architect I	\$135
Job Captain	\$155
Intern Architect V	\$138
Intern Architect IV	\$130
Intern Architect III	\$125
Intern Architect II	\$115
Intern Architect I	\$105
Architectural Illustrator IV	\$170
Architectural Illustrator III	\$155
Architectural Illustrator I	\$135
Landscape Architect V	\$200
Landscape Architect IV	\$165
Landscape Architect III	\$155
Landscape Architect II	\$135
Landscape Architect I	\$118
Intern Landscape Architect III	\$120
Intern Landscape Architect II	\$115
Intern Landscape Architect I	\$105
Interior Designer V	\$160
Interior Designer IV	\$145
Interior Designer III	\$135
Interior Designer II	\$115
Intern Interior Designer	\$105
Cost Estimator IV	\$170

TESSERE Standard Billing Rates

Page 2 of 2

Description	Billing Rate/Hour
Construction Administrator I	\$140
Conservationist	\$135
BIM Manager	\$200
BIM Technician IV	\$130
BIM Technician III	\$120
BIM Technician II	\$95
BIM Technician I	\$75
Drafter	\$95
Project Administrator	\$140
Administrative Assistant IV	\$130
Administrative Assistant III	\$105
Administrative Assistant II	\$95
Administrative Assistant I	\$85
Director of Engineering	\$280
Professional Engineer V	\$240
Professional Engineer IV	\$230
Professional Engineer III	\$220
Professional Engineer II	\$195
Professional Engineer I	\$170
Civil Designer III	\$190
Civil Designer II	\$160
Civil Designer I	\$135
Engineer In Training III	\$165
Engineer In Training II	\$145
Engineer In Training I	\$130
Director of Planning	\$250
Planner IV	\$160
Planner III	\$148
Planner II	\$135
Planner I	\$118
Graphic Designer	\$105
Permit Expeditor	\$130

EXHIBIT A-4

February 1, 2025
Project No.: 12345R25001
Invoice No.: 111111

TESSERE
1525 E. Douglas
Wichita, KS 67211

TESSERE Project No. _____
Project Name _____

Professional Services rendered for the period January 1, 2025 to January 31, 2025.
Fees

Phase	Fee	Percent Complete	Earned	Previous Fee Billing	Current Fee Billing
Schematic Design	XX,XXX.XX	100.00	XX,XXX.XX	XX,XXX.XX	XX,XXX.XX
Design Development	XX,XXX.XX	100.00	XX,XXX.XX	XX,XXX.XX	XX,XXX.XX
Construction Documents	XX,XXX.XX	50.00	XX,XXX.XX	XX,XXX.XX	XX,XXX.XX
Bidding	XX,XXX.XX	0.00	XX,XXX.XX	XX,XXX.XX	XX,XXX.XX
Construction Administration	XX,XXX.XX	0.00	XX,XXX.XX	XX,XXX.XX	XX,XXX.XX
Total Fee	XX,XXX.XX		XX,XXX.XX	XX,XXX.XX	XX,XXX.XX
Total Fee					XX,XXX.XX
Reimbursable Expenses					
Fees and Permits				XX,XXX.XX	
Travel				XX,XXX.XX	
Printing				XX,XXX.XX	
Postage				XX,XXX.XX	
Freight				XX,XXX.XX	
Total Reimbursable Expenses				XX,XXX.XX	XX,XXX.XX
Total this Invoice					\$XX,XXX.XX

ELECTRONIC FILE DISCLAIMER

At your request, TESSERE is providing you with electronic files for your convenience for the Project referenced in the attached Agreement. These files are subject to the following terms and conditions:

1. You assume all responsibility for the use of these files and any errors or omissions therein.
2. As applicable, these electronic files are compatible with the latest version of AutoCAD and/or Revit, unless otherwise specified. TESSERE makes no representation as to the compatibility of these files with your hardware or software.
3. Data contained on these electronic files are part of our instruments of service and shall not be used by anyone else receiving these data through or from you for any purpose other than for a convenience in the preparation of shop drawings or coordination with the Design Team for the referenced Project.
4. Any other use or reuse by you or by others will be at your risk and without liability or legal exposure to TESSERE.
5. You agree to make no claim and hereby waive, to the fullest extent permitted by law, any claim or cause of action of any nature against TESSERE, our Officers, Directors, Employees, Agents or Subconsultants that may arise out of or in connection with your use of the electronic files.
6. You agree, to the fullest extent permitted by law, to indemnify and hold us harmless against all damages, liabilities or cost, including reasonable attorneys' fees and defense costs, arising out of or resulting from your use or others' use of these electronic files.
7. In no event shall we be liable for any loss or profit or any consequential damages as a result of your use or reuse of these electronic files.
8. These electronic files are not Construction Documents. Differences may exist between these electronic files and corresponding hard-copy Construction Documents. We make no representation regarding the accuracy or completeness of the electronic files you receive.
9. In the event that a discrepancy arises between the signed or sealed Construction Documents prepared by us and the electronic files, the signed or sealed Construction Documents shall govern, and the Architect or Engineer shall be notified.
10. By your use of these electronic files, you are not relieved of your duty and others are not relieved of their duty to fully comply with the Contract Documents, including and without limitation, the need to check, confirm and coordinate all

dimensions and details, take field measurements, verify field conditions and coordinate work with that of other contractors for the Project.

11. The electronic files furnished by us shall be subject to an acceptance period of 14 calendar days during which the receiving party agrees to perform appropriate acceptance tests. We shall correct any discrepancies or errors detected and reported in writing within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and we shall not have any obligations to correct errors or maintain electronic files. Because information presented on the electronic files can be modified, unintentionally or otherwise, we reserve the right to remove all indicia of ownership and/or involvement from each electronic display.
12. Under no circumstances shall delivery of the electronic files for use by you or others be deemed a sale by us, and we make no warranties, either express or implied, of merchantability and fitness for any particular purpose.
13. Your acceptance of these files is considered an acceptance of the above conditions. If these conditions are unacceptable, you shall reply via e-mail that you do not accept the conditions, delete these electronic files from your computer, and agree that they will in no way be used by you.

End of Disclaimer



Commission Action Report

Concept Design Services for William L. White Auditorium

Title: Concept Design Services for William L. White Auditorium

Agenda Date: June 4, 2025

Presented By: Trey Cocking, City Manager

Background:

The City of Emporia is exploring the potential to consolidate various functions, such as Administration, the Engineering Department, Building and Neighborhood Development, and reuse Fire Station No. 1 space—into a renovated and modernized William L. White Auditorium. This approach would optimize the use of existing public facilities and improve long-term operational efficiency.

A key driver for the project is the need to address Americans with Disabilities Act (ADA) compliance. The existing building presents accessibility challenges, including a lack of interior ADA compliant ramps and only one elevator that has limited access to key areas. This concept design phase will evaluate potential improvements that bring the building into compliance with ADA standards.

Key Points

- Scope of this concept design includes:
 - Evaluating spatial needs for relocated departments
 - Developing floor plan options focused on accessibility
 - Identifying potential locations for elevators and interior ramps
 - Conducting site visits and workshops with City staff
- ADA compliance is a core focus of this effort.
- Final deliverables will include four conceptual floor plan options.
- Professional renderings and construction documents are not included at this stage.
- Duration of this concept phase is estimated at three months.

Discussion:

TESSERE will provide architectural-only services to generate concepts for adaptive reuse of the William L. White Auditorium. This early design phase is needed to determine the feasibility of consolidating City functions, and ensuring we have ADA-compliant facility. The work will inform future design development and cost estimates, should the City proceed with renovation planning.

Financial Considerations:

The architectural agreement includes:

Stipulated Sum: \$45,750

Estimated Reimbursable Expenses: \$2,750

Total Estimated Compensation: \$48,500

This project will be funded through the City's Bond and Interest Fund



Commission Action Report

Concept Design Services for William L. White Auditorium

Recommended Action:

Authorize the City Manager to approve the proposal from TESSERE, Inc. in the amount of \$48,500 for architectural concept design services for the William L. White Auditorium

Attachments:

TESSERE Proposal 4/18/2025



April 18, 2025

via e-mail

Mr. Trey Cocking, City Manager
City of Emporia
104 E. 5th Avenue
Emporia, KS 66801

Re: Proposal for Professional Design Services – Amendment to Master Services Agreement
William White Auditorium Concept
Emporia, Kansas

Dear Mr. Cocking:

Thank you for the opportunity to provide Design Services for the City of Emporia. This will serve as our Proposal for Professional Design Services for the Project listed below.

Please reference terms and conditions of the existing AIA Document B121-2018 Master Services Agreement, dated November 11, 2024, between the City of Emporia and TESSERE, Inc., and consider this Proposal a Letter of Authorization under that Agreement, when signed.

PROJECT:

This Project is for Design Services related to the initial remodel concept for the existing William White Auditorium in Emporia, Kansas. Space needs will include City administration, engineering department, existing Fire Station #1 offices, interior ramps, and potential elevator locations. Professional renderings or an animation video are not included in this Agreement.

TESSERE will develop a program and conceptual floor plans based on the Scope of Work list above. Once the Scope of the Project has been defined, our office can provide a Proposal to prepare Design Drawings, Construction Documents, and Bid Documents, as well as oversee the Project during construction. It is our understanding that the construction budget for the Project listed above has yet to be determined. Our Scope of Services for concept design will include Architecture only.

PROJECT TEAM:

It is our understanding that our office will be working and coordinating our Work with you as the primary contact. It is our intention to address all correspondence on this Project to you, unless we are directed otherwise.

For TESSERE, Peter Todd, AIA, will be Principal-in-Charge for the Project, with Kyle Wilkerson, AIA, acting as the designated representative and Project Architect. Our team will also include additional architectural staff as necessary to complete your Project in a timely manner. Correspondence should be addressed to the attention of Mr. Wilkerson.

SCOPE OF SERVICES:

This Section Describes the General Scope of Services and Includes the Following:

1. Meet with the Client to establish administrative procedures, establish a timeline for the Project and gather additional information for the concept.
2. Visit the site to document and verify existing conditions. It is our understanding that existing drawings are available and will be provided.
3. Attend three workshops to identify project needs, and review design concepts.
4. Provide four final floor plan concepts. Budgetary cost estimates will be provided by others.
5. We have included six in-person site visits for field verification and Client meetings. All other meetings will be online.

COMPENSATION:

Professional Fees will be a lump sum amount Forty-Five Thousand Seven Hundred Fifty Dollars (\$45,750) plus estimated Reimbursable Expenses in the amount of Two Thousand Seven Hundred Fifty Dollars (\$2,750).

PAYMENT:

Presuming we kick this Project off in May 2025, we anticipate billing this Project on the following Schedule:

June	\$15,250
July	\$15,250
August	\$15,250

Please note that Reimbursable Expenses as listed on this Proposal are in addition to the above-referenced numbers.

ADDITIONAL SERVICES:

Services requested beyond the scope of Basic Services described above shall be considered Additional Services. Additional Services shall be provided if requested and authorized in writing by the Owner and will be performed for a lump sum amount to be mutually agreed to by both parties prior to beginning. Reimbursable Expenses for Additional Services shall be compensated as outlined above in Reimbursable Expenses.

REMODEL AND RENOVATION DISCLAIMER:

The Documents prepared by the Architect will be prepared based upon reasonable assumptions derived from existing information provided by the Client and from observations of the existing conditions by the Architect without the benefit of field measurements and invasive investigation made undesirable by expense and inconvenience to the Client. It is understood and agreed that

unforeseen conditions uncovered during the progress of the Work may require changes in the Work resulting in additional cost and delay for which the Client shall maintain sufficient contingency. Services required by such changes shall be provided as Additional Services per this Proposal.

PROJECT ASSUMPTIONS:

Our Services are Based on the Following Assumptions:

1. We have not included fees for civil, structural, or mechanical/electrical/plumbing (M/E/P) engineering, geotechnical services, topographic surveys, legal descriptions, environmental studies or abatement, ADA studies, historical building documentation, demolition drawings for the removal of existing buildings on the site, design or construction documents (plans or specifications) or construction administration.
2. We will use the 2015 International Building Code (IBC) as the governing code.
3. Fees do not include printing costs, freight or postage for distribution of Drawings.
4. Professional renderings are not included.
5. Scale models required for marketing purposes are not included.
6. Videos of the concept, including fly-around and fly-through, are not included.
7. Value engineering studies and life-cycle cost analysis studies are not included.
8. Off-site improvements are not included.
9. Specialty consultants not listed in this Proposal are not included in our Fee.
10. TESSERE has not included fees for any required materials testing or special inspections.
11. Electronic files to the Client are not included in our Fee. A release is required by the Client.
12. LEED Certification or other sustainable building certification processes are not included in our Fee.

CLIENT'S RESPONSIBILITIES:

1. The Client will appoint a representative for this Project as the day-to-day contact, and decisions will be made in a timely fashion to keep the Project on schedule.
2. The Client will provide any existing drawings, documents or studies prepared by others for use by the Architect. The Architect shall be able to rely on the accuracy of the information provided.
3. The Client will make payments within 30 days of the date of the invoice from the Architect.

SCHEDULE:

The Schedule for the Project will be based on a mutually agreeable timeline. We anticipate it will take three months to complete the Project from the initial workshop.

Mr. Trey Cocking, City Manager
April 18, 2025
Page 4 of 4

This Amendment is valid for 60 days from the date of the Amendment. This Amendment shall be deemed accepted by you, if at your request. either by e-mail or written correspondence, we begin work on the Project, notwithstanding your failure to sign and return the signed Amendment and/or issue a Purchase Order.

We appreciate the opportunity to meet with you and submit this Amendment. If it is acceptable, please sign below. We are ready to start work at your convenience on this Project.

Sincerely,

TESSERE, Inc.



Peter A. Todd | AIA
Director of Community Projects

PAT/jh

c(w/enc.): 2025P00000016

Approved:

City of Emporia

By: _____

Title: _____

Date: _____



Commission Action Report

Ordinance 25-18 Establishing a Stormwater Utility

Title: Ordinance 25-18 Establishing a Stormwater Utility

Agenda Date: June 4, 2025

Presented By: James Ubert, City Engineer

Background:

The City of Emporia currently operates a stormwater management program that provides critical services to protect infrastructure by controlling stormwater flooding. These services include system maintenance, infrastructure improvements, and regulatory compliance activities to meet state and federal water quality requirements.

To fund needed stormwater projects and ensure the long-term sustainability of this program, City staff has proposed the establishment of a dedicated stormwater utility and user fee. This utility will operate as an enterprise fund, independently accounting for revenues and expenditures associated with stormwater services.

The proposed user fee is structured to fairly distribute program costs based on each property's contribution to stormwater runoff based on Equivalent Residential Units, a system currently utilized by 23 of 26 Cities of the First Class in Kansas.

Authority for the establishment of a stormwater utility is granted under K.S.A. 12-3101 et seq. and the City's home rule powers.

Discussion:

Ordinance No. 25-18 formally creates the City of Emporia's stormwater utility and establishes the legal framework for administration, billing, and oversight. Key provisions include:

- Creation of a stormwater utility fund
- User fee of \$1.00 per Equivalent Residential Unit (ERU) per month for all developed property
 - 1.0 ERU per standard single-family residential parcel
 - 0.5 ERUs per multi-family unit with an individual water bill, and single-family parcels with building footprints under 1,500 square feet
 - Non-residential and multi-family complexes serviced by a single water bill ERUs calculated by dividing impervious surface area by 3,000 square feet
- Appeals process for property owners to contest classifications or charges
- User fees will be included as a line-item on the City utility bill. Developed properties that do not receive a regular utility bill will be billed annually or semi-annually.

The ordinance provides for equitable cost-sharing to support system upkeep and regulatory compliance. Implementation is scheduled to begin January 1, 2026.

Financial considerations:

This Ordinance establishes a dedicated revenue source for stormwater management.

Recommended action:

Approved Ordinance 25-18 Establishing a Stormwater Utility

Attachments:

Ordinance 25-18 Establishing a Stormwater Utility

ORDINANCE NO. 25-18

AN ORDINANCE ESTABLISHING A STORMWATER UTILITY FOR THE CITY OF EMPORIA, KANSAS; PROVIDING FOR THE OPERATION, AND FUNDING OF A STORMWATER MANAGEMENT PROGRAM; AND ESTABLISHING A STORMWATER USER FEE.

WHEREAS, the City of Emporia, under its home rule powers and authority granted by K.S.A. 12-3101 et seq., seeks to establish a stormwater utility and a comprehensive stormwater management program;

WHEREAS, the Governing Body recognizes that stormwater runoff poses risks to public health, safety, infrastructure, and the environment, and that proactive management is in the public interest;

WHEREAS, the City of Emporia currently operates a stormwater management program for the benefit of developed properties through the city that includes planning, infrastructure maintenance, and regulatory compliance;

WHEREAS, the creation of a stormwater utility and establishment of a dedicated and sustainable funding source will ensure the stormwater management program is adequately supported and equitably funded;

WHEREAS, a stormwater utility will provide equitable cost-sharing through user fees that are based on each property's relative contribution to and benefit from the stormwater system, with such fees established as service charges using a fair and reasonable method of apportionment.

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

Section 1. The provisions of this ordinance shall be codified as a new Article V titled "Stormwater Utility" within Chapter 10 of the Code of Ordinances of the City of Emporia, Kansas. Said Article shall read as follows:

"Article VI. STORMWATER UTILITY

Sec. 10-130. Establishment of Stormwater Utility

There is hereby established a stormwater utility for the City of Emporia, Kansas, which shall be responsible for the administration, planning, design, construction, maintenance, and operation of all stormwater facilities and activities within the City. The stormwater utility shall function as a separate enterprise fund, with revenues and expenditures accounted for independently of other City funds.

Sec. 10-131. Definitions.

For purposes of this Article, the following terms shall have the meanings set forth below:

- *City* means the City of Emporia, Kansas.
- *Developed Property* means any parcel of land that has been altered from its natural state by the construction of buildings, structures, pavement, or other impervious surfaces.
- *Equivalent residential Unit (ERU)* means the average impervious surface area of a typical single-family residential property within the City, as determined by the City based on available data and engineering analysis. One (1) ERU shall be used as the basis for calculating stormwater utility fees.

- *Impervious Surface* means any surface that prevents or significantly impedes the infiltration of stormwater into the soil, including but not limited to rooftops, driveways, parking areas, sidewalks, patios, and paved or compacted gravel surfaces.
- *Multi-Family Residential Property* means a residential structure designed and used exclusively for occupancy by more than one family, including duplexes, triplexes, apartment complexes, and condominiums.
- *Nonresidential Property* means all developed properties not classified as single-family residential or multi-family residential, including but not limited to commercial, industrial, institutional, and governmental properties. A property containing both residential and nonresidential will be considered nonresidential.
- *Single Family Residential* means developed property which has a single detached dwelling unit and is used exclusively for residential purposes.
- *Stormwater Management System* means all publicly owned facilities, channels, and structures used for the collection, conveyance, storage, detention, retention, treatment, and disposal of stormwater within the City.
- *Stormwater Management Program* means the comprehensive set of policies, procedures, infrastructure, and activities undertaken by the City to control and manage the quantity and quality of stormwater runoff. This includes planning, design, construction, operation, inspection, maintenance, regulation, education, and enforcement efforts intended to reduce flooding, protect water quality, comply with state and federal regulations, and preserve the public health, safety, and welfare.
- *Stormwater Utility* means the enterprise fund and administrative unit established to implement the stormwater management program and to fund stormwater-related operations and improvements.

Sec. 10-132. Administration.

- (a) The City Manager, or their designee, shall be responsible for the administration and enforcement of the stormwater utility and stormwater management program established by this ordinance.
- (b) The City Manager may designate departments, officials, or employees to perform such duties as are necessary to implement the provisions of this ordinance, including but not limited to billing, collection, data management, public education, and infrastructure planning.
- (c) The City Manager is authorized to develop and adopt administrative policies and procedures consistent with this ordinance, including but not limited to:
 1. Methods for identifying and classifying impervious surface areas;
 2. Procedures for calculating ERUs and assigning user fees;
 3. Standards for verifying property data; and
 4. Internal controls for billing and fund management.
- (d) The stormwater utility shall coordinate its activities with other City departments and applicable federal and state agencies to ensure compliance with environmental regulations and to promote effective stormwater management practices.

Sec. 10-133. Stormwater User Fee

- (a) **User Fee Established.** The City shall impose a monthly stormwater user fee of one dollar (\$1.00) per one (1.0) Equivalent Residential Unit (ERU) on all developed property within the corporate limits of the City.
- (b) **Equivalent Residential Unit (ERU) Rate.** One (1.0) ERU is defined as 3,000 square feet of impervious surface area.

- (c) Standard Residential Rate: Each developed single-family residential property shall be assigned one (1.0) ERU for billing purposes, regardless of its actual impervious surface area, unless otherwise qualified under subsection (d).
- (d) Reduced Residential Rate: Multi-Family dwelling units with individual City utility billing accounts, and single-family residential properties with a total building footprint of less than one thousand five-hundred (1,500) square feet, as determined by the City Manager or designee using County Appraiser data or other reliable data source, shall be assigned one-half (0.5) ERU for billing purposes.
- (e) Non-Residential and Multi-Family Properties: All other developed properties, including but not limited to commercial, industrial, institutional, and multi-family complexes serviced by a single City utility account, shall be charged a stormwater user fee based on the actual impervious surface area of the parcel, divided by the square footage of one (1.0) ERU, with the result rounded to the nearest one-one hundredth (0.01) ERU for billing purposes.

Sec. 10-134. Billing and Collection

- (a) Monthly Billing. Stormwater utility fees shall be billed and collected in the same manner as other city utility fees. Properties that do not receive a regular utility bill from the City shall be billed separately on an annual or semiannual basis. The City may establish administrative procedures for billing, delinquency, late payment, and collection consistent with its utility practices and policies.
- (b) Commencement of Billing for New Construction. Stormwater user fees for new development or additional development to property shall begin on the first day of the month following issuance of a certificate of occupancy by the City. If no certificate of occupancy is issued, billing shall commence upon the earlier of
 - 1. The first date the property is occupied or used, or
 - 2. Ninety (90) days after the substantial completion of impervious improvements. A property is considered substantially complete when its impervious surfaces are in place and capable of contributing runoff to the public stormwater system.
- (c) Responsibility for Payment. The stormwater user fee shall be billed to the utility customer responsible for payment of water and wastewater charges for the property, or to the property owner if no utility account exists. If the property owner and utility customer are not the same, liability for the stormwater user fee shall be joint and several. Non-payment of stormwater fees may be enforced in the same manner as other utility charges, including but not limited to service disconnection, collection actions, or the placement of liens, as authorized by law and City policy.

Sec. 10-135. Appeals and Adjustments.

- (a) Right to Appeal. Any property owner who believes their property has been improperly classified or charged may request a review and adjustment by submitting a written appeal to the City Clerk.
- (b) Grounds for Appeal. An appeal may be filed on one or more of the following grounds:
 - 1. Incorrect impervious surface measurement,
 - 2. Incorrect property classification,
 - 3. Eligibility for a reduced residential rate,
 - 4. Mathematical or clerical error in billing, or
 - 5. Other relevant and material grounds demonstrating that the fee does not fairly reflect the property's use of the stormwater system.
- (c) Appeal Submission. Appeals must be submitted in writing within ninety (90) days of the date the disputed bill was issued. The written appeal must state the basis for the appeal and include any supporting documentation, such as site surveys, property records, or photographs.

- (d) Review and Determination. Upon receipt of a complete appeal, an official designated by the City Manager shall review the appeal and render a written determination within thirty (30) days. If additional information is required, the review period may be extended by written notice to the appellant.
- (e) Adjustment. If the appeal is granted, the City shall adjust the stormwater user fee accordingly. Any overcharges shall be credited to the customer's account or refunded if overpayment exceeds the current balance.
- (f) Finality. The decision of the designated official shall be final unless appealed in writing to the City Manager within fifteen (15) days of the determination. The decision of the City Manager shall be final."

Section 2. This ordinance shall take effect on January 1, 2026, after its publication in the official City newspaper.

Section 3. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, KS as an addition or amendment thereto and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas,
this 4th day of June 2025.

Erren Harter, Mayor

ATTEST:

Kerry Sull, City Clerk



Commission Action Report

Agreement with the Archdiocese of Kansas City, KS
(Sacred Heart Church) for City easement and waterline

Title: Agreement with the Archdiocese of Kansas City, KS
(Sacred Heart Church) for City easement and waterline

Agenda Date: June 4, 2025

Presented By: James Uberty, City Engineer

Background:

Sacred Heart Church is proposing to construct a new school building to replace their approximately 100 yr old structure. They have proposed to construct the new building within the former Cottonwood Street right of way (now abandoned) and over the existing City 8" waterline between E. 1st Avenue and E. 2nd Avenue.

Discussion:

On behalf of Sacred Heart Church, the Archdiocese of Kansas City, KS, has requested the City abandon the existing easement over the waterline in Cottonwood Street from E. 1st Avenue to E. 2nd Avenue. Additionally, Sacred Heart (the Archdiocese of Kansas City) will take over ownership and maintenance of the existing 8" water main as their service line in Cottonwood Street from E. 1st Avenue to E. 2nd Avenue.

Financial considerations:

Agreed payment of \$40,892.22.

Recommended action:

Approve the Agreement with the Archdiocese of Kansas City, KS (Sacred Heart Church) for said abandonment of the City's easement in Cottonwood Street and transfer of ownership of the existing 8" water main, and authorize the mayor to sign the Agreement.

Attachments:

Agreement and Exhibit.

AGREEMENT

THIS CONTRACT, made and entered into this 24th day of February, 2025, by and between The City of Emporia, Kansas hereinafter referred to as (City) and the Roman Catholic Archdiocese of Kansas City in Kansas, a nonprofit corporation a/k/a/ Sacred Heart Church hereinafter referred to as (Sacred Heart Church)

WITNESSETH:

WHEREAS, The City wishes to vacate its water line and easement on Cottonwood Street between 1st and 2nd Avenue and Sacred Heart Church wishes to obtain the easement and assume ownership and maintenance for the easement and water line.

WHEREAS, the City will vacate all of the 20 foot wide utility easement, the centerline of which is the former centerline of Cottonwood Street lying between 1st Avenue and 2nd Avenue in the City of Emporia, Kansas. Sacred Heart Church desires to obtain and maintain such easement. The easement currently has an existing water line owned by the City which Sacred Heart Church assumes full responsibility. This included any and all costs of maintenance or removal of existing line.

WHEREAS, the City is vacating said easement subject to franchise utilities not having utilities in said easement. Examples of franchise utilities include but are not limited to Evergy, Kansas Gas Service, and AT&T.

WHEREAS, Sacred Heart Church will pay the City the costs of designing and constructing a new eight (8) inch water main to the Southeast Transmission Main. The estimated cost to install such line is approximately \$40,892.22. The City and Sacred Heart Church agree that Sacred Heart Church will pay the City \$40,892.22 for the City vacating the easement to Sacred Heart Church.

WHEREAS, the City and Sacred Heart Church agree to the City of Emporia, Mandatory Contractual Provisions Attachment. This document is attached as Exhibit A.

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

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

Erren Harter, Mayor

City of Emporia



John Riley
Vice President
The Roman Catholic Archdiocese of
Kansas City in Kansas, a nonprofit
corporation

Sacred Heart Church

STATE OF KANSAS, COUNTY OF LYON, ss:

BE IT REMEMBERED, That on this ____ day of February, 2025, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Erren Harter, Mayor, City of Emporia, Kansas, who is personally known to me to be the same person who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

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

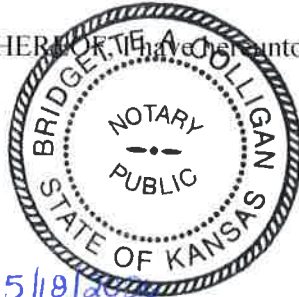
Notary Public

My commission expires:

STATE OF KANSAS, COUNTY OF Wyandotte, ss:

BE IT REMEMBERED, That on this 24th day of February, 2025, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came John Riley, The Roman Catholic Archdiocese of Kansas City in Kansas, a nonprofit corporation, who is personally known to me to be the same person who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

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



Bridgette A. Colligan
Notary Public
Bridgette A. Colligan

My commission expires: 5/18/2024

Exhibit A
CITY OF EMPORIA, KANSAS,
MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions for the City of Emporia, Kansas (hereinafter "the City") and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The provisions found in City of Emporia, Kansas, Contractual Provisions Attachment which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which attached and made a part thereof, said contract being the ____ day of _____, 20____.

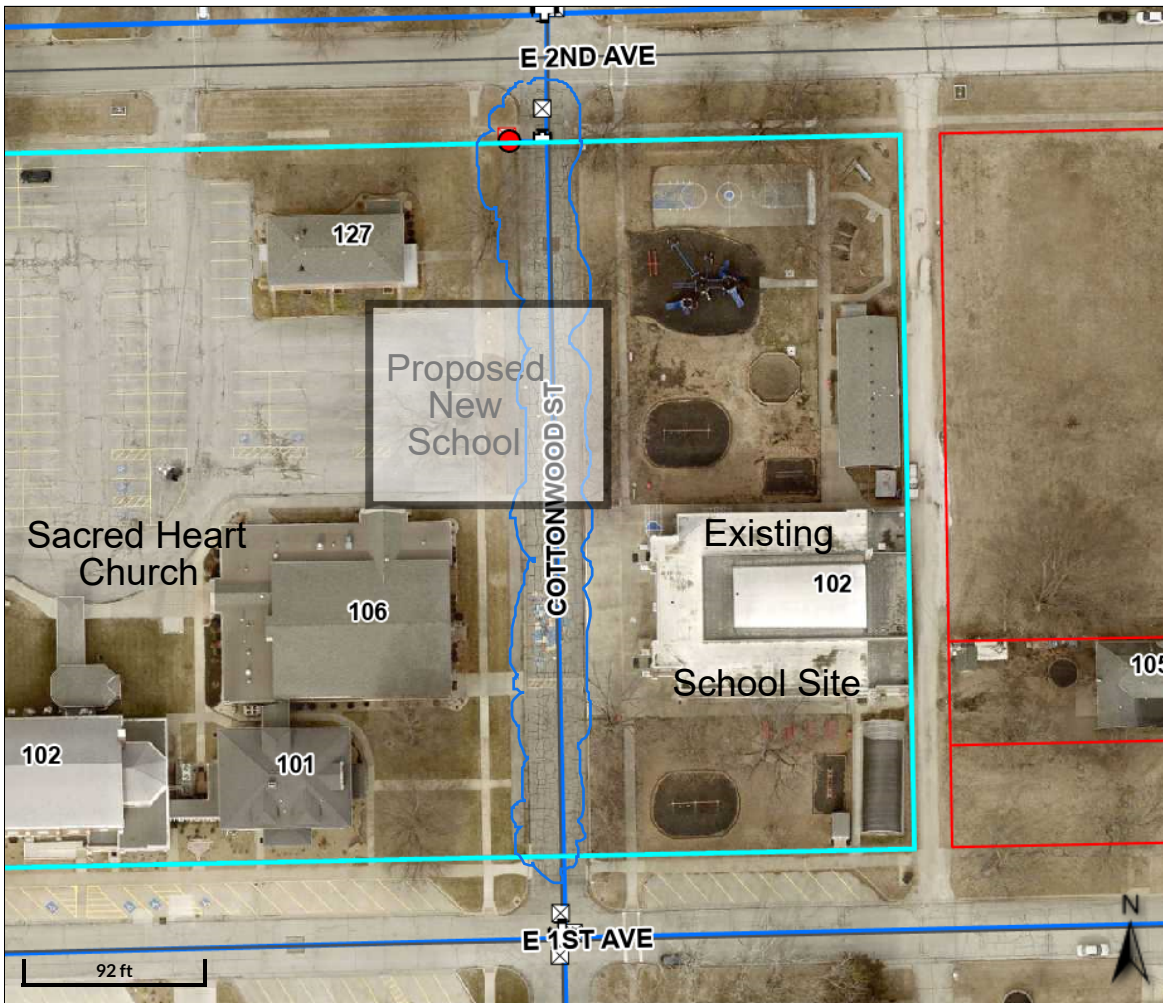
1. Controlling Provisions. It is expressly agreed that the terms of this Contractual Provisions Attachment prevail and control over the terms of any other conflicting provision in any other document relating to the Agreement in which this attachment is incorporated.
2. Representative's Authority to Contract. By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
3. Governing Law and Venue. This Agreement is subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
4. Arbitration, Damages, Jury Trial and Warranties. The Contractor and the City shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in bid or proposal documents is deemed void. The City never consents to the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provisions of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
5. Cash Basis and Budget Law. This Agreement is subject to the Kansas Cash Basis Law, (K.S.A. 10-1101), the Budget Law (K.S.A. 79-2935), and all other laws of the State of

Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all time stay in conformity with such laws, and as a condition of this Agreement, the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

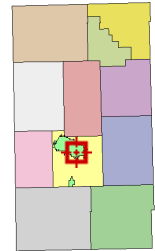
6. Termination Due to Lack of Funding Appropriation. If, in the judgement of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notices shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of this Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
7. Anti-Discrimination Requirements. Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, gender identity, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found in Chapter 13, Article II of the Municipal Code of the City of Emporia; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (f) that Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Emporia Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.
8. No Limit of Liability. Nothing in this Agreement shall be construed to limit the Contractor's liability to the City as such liability may exist by or under operation of law.
9. Disclaimer of Liability. The City shall not hold harmless nor indemnify the Contractor for any liability whatsoever. The liability of the City is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.).
10. Taxes. The City shall not be responsible for, nor indemnify the Contractor for any

federal, state, or local taxes which may be imposed or levied upon the subject matter of this Agreement.

11. Insurance. City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a “self-insurance” fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act, (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
12. Compliance with Law. Contractor shall comply with all applicable local, state, and federal laws and regulations in carrying out this Agreement, regardless of whether said laws are specifically referenced in this Agreement.



Overview



Legend

- Parcels
- City Limits
- Fire Hydrants
- Water Points**
 - ⊠ FH VALVE
 - ⊠ VALVE
 - ⏏ REDUCER
 - ⦿ PLUG
 - ⦿ ELBOW
 - ⦿ TEE
 - ⊕ CROSS
 - <all other values>
- Water Lines**
 - ABANDONED
 - ACTIVE MAINS
 - ACTIVE OTHER
 - PRIVATE/SERVICE LINES
- AddressPoints**
- Road Centerline

Parcel ID	1951501030002000	Alternate ID	n/a	Owner Address	ROMAN CATHOLIC ARCHDIOCESE OF KC IN KS
Sec/Twp/Rng	15-19S-11E	Class	E - Exempt		12615 PARALLEL PKWY
Property Address	106 EXCHANGE	Acreage	3.9		KANSAS CITY, KS 66109-3718
	Emporia				
District	005				
Brief Tax Description	EMPORIA (O.T.), S15, T19S, R11E, ACRES 3.9, LTS 15-28 COTTONWOOD ST & VAC COTTONWOOD ST ADJ & EVEN LTS 16-28 EXCHANGE ST & VAC ALY ADJ (350.0 X 490.0)				
	(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: 2/19/2025

Last Data Uploaded: 2/19/2025 10:12:07 AM

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Commission Action Report

Ordinance No. 25-16 Vacating a Certain Utility Easement.

Title: Ordinance No. 25-16 Vacating a Utility Easement within the Previously Vacated Cottonwood Street Right-of-Way between East 1st Avenue and East 2nd Avenue

Agenda Date: June 4, 2025

Presented By: Justin Givens, Planning & Zoning Administrator

Background:

The Archdiocese of Kansas City/Sacred Heart Catholic Church have requested the vacation of an existing utility easement that was retained when Cottonwood Street was vacated between East 1st Avenue and East 2nd Avenue. The vacation request is to facilitate the expansion of building on the campus.

The Planning Commission, at their May 20, 2025, meeting made a unanimous recommendation for vacating the easement to the City Commission.

Discussion:

The Planning Commission's recommendation came subject to an agreement on the status of the current water main and the future water line plans for the area being approved by the City Commission. Staff initially indicated that this would be a relocation of the existing main and would be part of the Southeast Transmission Line Project, but the timing and associated project for the waterline may change.

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

Financial considerations:

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

Recommended action:

Adopt Ordinance No. 25-16 Vacating a Utility Easement within the Previously Vacated Cottonwood Street Right-of-Way between East 1st Avenue and East 2nd Avenue

Attachments:

Ordinance No. 25-16 Vacating the Easement
Excerpt of Minutes from May 20, 2025, Planning Commission Meeting
Aerial Map

ORDINANCE NO. 25-16

AN ORDINANCE VACATING A CERTAIN EASEMENT IN THE CITY OF EMPORIA, KANSAS.

WHEREAS, A Petition was filed by The Roman Catholic Archdiocese of Kansas City with the Emporia-Lyon County Metropolitan Area Planning Commission requesting vacation of a certain described easement; and

WHEREAS, A Public Hearing was conducted concerning the request for vacation; and

WHEREAS, no written objection was filed with the City Clerk at the time of or before the Public Hearing by an owner or adjoining owner who would be a proper party to the Petition, but has not joined therein;

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

SECTION 1. The following described utility easement is hereby ordered vacated:

The Utility Easement Between East 1st Avenue and East 2nd Avenue Along the Previously Vacated Cottonwood Street, Emporia Original Township, City of Emporia, Lyon County, Kansas.

SECTION 2. This ordinance shall take effect upon publication in the official city newspaper.

PASSED AND APPROVED this 4th day of June 2025.

ERREN HARTER, Mayor

ATTEST:

KERRY SULL, City Clerk



**EMPORIA-LYON COUNTY METROPOLITAN AREA
PLANNING COMMISSION / BOARD OF ZONING APPEALS
EXCERPT OF MINUTES OF MAY 20, 2025
REGULAR MEETING**

The Planning Commission met in a regular session on Tuesday, May 20, 2025, with Chair Rogers presiding. Commissioners Bucklinger, Thomas, Fowler, Ogle, Lingenfelter, and Reed were present.

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

Chair Rogers called the meeting to order.

3. Planning Commission: Consider PC 2025-07 – A Request to Vacate a Utility Easement Within the Vacated Cottonwood Street Right of Way Between East 1st Avenue and East 2nd Avenue.

Chair Rogers asked if proper notice had been given. **Givens** confirmed that proper notice was provided to the newspaper for the original public hearing date.

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

Givens provided the Staff Report.

STAFF REPORT

Application #: PC 2025-07

Applicants: The Roman Catholic Archdiocese of Kansas City

Requested Action: Vacate a Utility Easement within a previously vacated Right of Way

Purpose: Applicants desire to vacate a 20 ft. Utility Easement

Address: 102 Exchange St.

Legal description: The Utility Easement between East 1st Ave. and East 2nd Ave. along the previously Vacated Cottonwood St. Emporia Original Township, Emporia, Lyon County, Kansas

Lot Size: N/A

Existing Zoning: N/A

Future Zoning in ELC Comp. Plan: N/A

Analysis: The applicants have requested the vacation of the existing utility easement that was retained when Cottonwood Street was previously vacated. The applicants are in the process of developing plans to expand buildings on the campus that would extend across the utility easement.

The applicants and City Staff have worked on an agreement that will be presented to the City Commission for approval that centers on the cost share for relocating the existing water line that runs north and south within the previously vacated Cottonwood Street Right of Way. The relocation of the water line will be a part of the Southeast Transmission Line project. The associated costs of the relocation will be borne by the applicant.

Staff is recommending that the vacation be contingent upon the agreement for relocation being approved by the City Commission.

Considerations:

The Utility Advisory Board members received notices of the vacation request. There were no objections to the request noted.

Neighborhood Communications: The only property owner affected by the relocation is the applicant. Public Notice was placed in the official newspaper and no comments or objections have been received.

Recommendation: Staff recommends the Planning Commission forward a recommendation to approve the vacation to the Governing Body contingent upon an agreement with the City on costs associated with the relocation of the water line being approved, and based upon a finding that;

1. Due and Legal Notice has been given – the applicant’s property abuts both sides of the easement and is the only party affected by the vacation. A notice was also provided in the official newspaper as prescribed by law.
2. No private rights will be injured or endangered – the vacation will allow for the church to expand and develop within the existing area.
3. The public will suffer no loss or inconvenience – The applicants will enter into an agreement to share in the costs to relocate the water line within the easement. The public water supply line, will actually be enhanced with the relocation.

The Public Hearing was opened.

No Person spoke during the Public Hearing.

The Public Hearing was closed.

Commissioners held a brief discussion following the Public Hearing. **Givens** stated that the vacation would be subject to the City Commission approving the agreement with the Church for the cost of the relocation.

Commissioner Bucklinger made a motion to approve the Vacation subject to City Commission approval of the agreement, finding that Due and Legal Notice had been given, No private rights would be injured or endangered, and the Public would suffer no loss or inconvenience. Commissioner Fowler seconded the motion. The motion carried 7-0.

Adjournment: With no further discussion, the meeting was adjourned.

Respectfully Submitted,

Justin Givens, Secretary

**Sacred Heart
Utility Easement Vacation**





Commission Action Report

Ordinance 25-17 Pertaining to Animals and Fowl

Title: Ordinance 25-17 Pertaining to Animals and Fowl

Agenda Date: January 8, 2025

Presented By: Christina Montgomery, City Attorney

Background:

The City lifted its 14-year moratorium on chicken ownership in 2022 and updated the farm animal permitting process, first implemented in 1997. Under the current structure, Animal control officers inspect applicant property to ensure compliance with city code requirements prior to permit issuance. If a permit is denied or revoked, the applicant may appeal the decision to the property maintenance appeal board. Farm Animal Permit holders remain subject to City Code provisions related to animal nuisance and property nuisance.

Community members have requested an increase to the number of chickens allowed by City Code.

Discussion:

Ordinance 25-17 amends City Code Section 6-5 and Section 6-10. Changes include the following:

Section 6-5 Animal Enclosures

- Changes section heading from Animal and Fowl Pens to Animal Enclosures.
- Defines Animal Enclosures.
- Prohibits placement of animal enclosures within a right-of-way or utility easement.
- Increases maximum size of chicken enclosures from 50 square feet to 150 square feet.
- Prohibits housing more than 6 chickens in an enclosure.
- Reorganizes and updates language of existing provisions for clarity and ease of use.

Section 6-10 Keeping Domestic Animals

- Increases total number of animals allowed under a farm permit to 6.
- Reorganizes and updates permitting language for clarity and ease of use.

If approved, this ordinance will go into effect after publication in the official city newspaper.

Financial considerations:

Ordinance 25-14 will align court costs and fees more closely with administrative expenses. The city will pay the cost of publication in the official city newspaper.

Recommended action:

Approve Ordinance 25-17 Pertaining to Animals and Fowl

Attachments:

- Ordinance 25-17 Pertaining to Animals and Fowl
- City Code Section 6-2 Animal Nuisance Prohibited
- City Code Section 17-3 Property Nuisance Definitions

ORDINANCE NO. 25-17

AN ORDINANCE PERTAINING TO ANIMALS AND FOWL; AMENDING SECTIONS 6-5 AND 6-10 OF THE CODE OF THE CITY OF EMPORIA, KANSAS AND REPEALING SAID SECTIONS AS THEY EXISTED PRIOR TO THE ADOPTION OF THIS ORDINANCE.

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

Section 1. That Section 6-5 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:

“Section 6-5. Animal Enclosures.

(a) Definition. *Animal enclosure* means any structure, fenced area, coop, pen, kennel, run, stable, shed, or yard, whether permanent or temporary, used to confine, house, or restrict the movement of one or more animals.

(b) Structural and Maintenance Requirements.

1. Animal enclosures shall be constructed of durable materials to securely contain animals.
2. Animal enclosures shall be kept in good repair and maintained in a clean and sanitary condition.
3. Animal enclosures shall provide adequate space—both horizontally and vertically—to allow animals to make normal postural and social adjustments and to move freely.
4. Chicken enclosures must be constructed with secure sides and tops to prevent escape and intrusion, must provide a minimum of twelve (12) square feet per chicken, shall not exceed one hundred fifty (150) square feet in total footprint, and shall not house more than six (6) chickens.

(c) Location and Setback Requirements.

1. Animal enclosures shall not be located within or obstruct any public right-of-way or utility easement.
2. Domestic pet enclosures shall be located no closer than twenty-five (25) feet from the front lot line.
3. Farm animal enclosures shall be located entirely within the rear yard of the property; placement in front or side yards is prohibited.
4. Livestock enclosures shall be located no closer than seventy-five (75) feet from any lot line and no closer than one hundred (100) feet from any dwelling on an adjacent property.
5. Chicken enclosures shall be set back at least ten (10) feet from all lot lines and at least fifty (50) feet from any dwelling, church, school, or business structure not owned or occupied by the keeper of the chickens.

(d) Enforcement. If an enforcement officer determines that a violation of this section exists, the officer may file a complaint with the municipal court. Each day that a violation continues may constitute a separate offense.

(Ord. 97-38, § 1, 10-15-1997; Ord. 98-7, § 2, 3-4-1998; Ord. 22-48, § 1, 11-2-2022; Ord. 24-24 § 1, 8-21-2024; Ord. 25-17 § 1, 6-4-2025)”

Section 2. That Section 6-10 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:

“Sec. 6-10. Keeping Domestic Animals.

(a) General Prohibition. It is unlawful to keep, harbor, maintain, or allow the keeping of any domestic animal in violation of this article, any other provision of the city code, or applicable zoning regulations.

(b) Domestic Pets.

(1) Animal Limits. No person may own or keep more than:

- a. Three (3) dogs;
- b. Three (3) cats; and
- c. No more than five (5) total dogs and cats combined on the same property, regardless of ownership.
Exception: A litter of puppies or kittens may be kept for up to six (6) months from birth.

(2) Grandfather Clause. Any person who legally owned more than the permitted number of dogs or cats prior to September 1, 2024 may continue to keep those animals as long as:

- a. Ownership remains with the same individual; and
- b. The owner provides veterinary records, licensing, or registration documents showing ownership before September 1, 2024, upon request by an enforcement officer.

(c) Farm Animals.

(1) Permit Requirement. No person may own or keep farm animals without a valid Farm Animal Permit issued by the City.

- a. Permits are valid from January 1 to December 31 of each year.
- b. Applications must be submitted to the City Clerk using the established process.
- c. Fees, set by the City Manager, are nonrefundable and nontransferable.

(2) Permit Criteria.

- a. Applicants must demonstrate that:
 - 1. The animals are unlikely to cause a nuisance;
 - 2. Humane care will be provided;
 - 3. The property is suitable for the type and number of animals requested and complies with zoning laws.
- b. The City may consider the following factors:
 - 1. Compliance with animal enclosure standards in Sec. 6-5;

2. Potential for nuisance based on animal type, number, and characteristics of the property;
3. Risk of animals roaming or causing damage to property;
4. Input from neighbors;
5. Any history of related violations by the applicant or caretaker.

(3) Additional Requirements.

- a. Rented Property. Applicants must provide a signed and notarized letter from the property owner granting permission to keep the animals.
- b. Prohibited Activities and Limitations. The following are not allowed:
 1. Livestock on properties smaller than one acre;
 2. More than one large livestock animal (e.g., cow or horse) per acre;
 3. Roosters;
 4. Swine;
 5. Animals not listed in the permit;
 6. Offspring kept past weaning (for mammals) or maturity (for fowl);
 7. Commercial farming or slaughtering.
- c. Animal Limit. No more than six total domestic animals (of any species or breed) are allowed under a single Farm Animal Permit.

(4) Application and Investigation.

- a. Upon receipt, the City Clerk will forward the application to an Enforcement Officer for inspection.
- b. Applicants must demonstrate compliance by clear and convincing evidence.
- c. The Enforcement Officer will submit a written recommendation to the City Clerk based on inspection findings, past complaints, neighborhood input, and the suitability of the premises.
- d. Permits apply only to the person, property, and animals listed.
 1. Permits are not transferable.
 2. Animals may be replaced with the same breed, species, and sex without a new permit.
 3. All other changes require a new application and must be reported to the City Clerk within 14 days.

(5) Determination. Applicants will be notified in writing of the City Clerk's decision. Permits shall be denied if the applicant fails to meet the permit criteria.

(6) Permit Revocation. A permit may be revoked if:

- a. The animals create a nuisance;

- b. Humane care is not provided;
- c. Prohibited animals are found;
- d. Prohibited activities are taking place;
- e. A violation of this Chapter occurs;
- f. Zoning regulations are violated;
- g. False information was provided in the application.

(7) Appeal Process. If a permit is denied or revoked, the City Clerk will notify the applicant by mail. The applicant has ten (10) calendar days to appeal to the Property Maintenance Appeal Board.

(d) Exemptions. Section 6-10 shall not apply to:

- (1) Licensed animal shelters or veterinary clinics;
- (2) Property zoned agricultural; and
- (3) Service animals individually trained to assist persons with disabilities under the Americans with Disabilities Act.

(Ord. 97-38, § 1, 10-15-1997; Ord. 98-7, § 3, 3-4-1998; Ord. 22-48, § 2, 11-2-2022; Ord. 24-24 § 1, 8-21-2024, Ord. 25-17 § 2, 6-4-2025)"

Section 3. That Section 6-5 and 6-10 of the Code of the City of Emporia, Kansas as they existed prior to the adoption of this ordinance are hereby repealed.

Section 4. This ordinance shall take effect upon its publication in the official city newspaper.

Section 5. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, Kansas as an addition or amendment thereto and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 4th day of June 2025.

Erren Harter, Mayor

ATTEST:

Kerry Sull, City Clerk

Sec. 6-2. Animal nuisance prohibited.

- (a) It shall be unlawful for the owner or harbinger of any animal to cause, permit or fail to exercise proper care and control to prevent such animal from performing, creating, or engaging in an animal nuisance.
- (b) Animal nuisance is created when an animal:
 - (1) Molests or interferes with persons or domestic animals by chasing, jumping, barking, growling, charging, attacking, or behaving in a way that a reasonable person would find threatening, alarming, or aggravating;
 - (2) Creates noise for frequent or prolonged periods of time by day or night, disturbs the peace and quiet of any person of ordinary sensitivity within the vicinity of the noise;
 - (3) Creates noxious or offensive odors;
 - (4) Defecates upon any public place or upon premises not owned or controlled by the owner or harbinger unless promptly removed by the animal owner or harbinger;
 - (5) Creates an insect breeding and/or attraction site due to an accumulation of excreta;
 - (6) Damages property other than that of the owner or harbinger;
 - (7) Destroys or damages wildlife on property other than that of the owner or harbinger; or
 - (8) Threatens or causes a condition which endangers public health, safety or welfare.
- (c) Any animal found acting in a way forbidden by this article in the determination of the enforcement officer shall hereby be declared a nuisance, and its owner or harbinger shall be subject to citation.

(Ord. No. 24-24, §§ 1, 2, 8-21-2024)

Sec. 17-3. Definitions.

For the purpose of this chapter, the following definitions apply:

City: The City of Emporia, Kansas.

Code: The Emporia city code.

Commercial or industrial: Areas which are used or intended to be used primarily for other than residential or agricultural purposes.

Compost pile: A mixture consisting of leaves, stems, grasses, dirt and other organic matter which shall be stored in an enclosure and used for garden soil conditioning purposes. Said enclosure shall be screened or placed in a manner which is not offensive to neighboring residents or the general public.

Garbage: Without limitation, any accumulation of animal, fruit or vegetable waste matter which normally is the byproduct of handling, preparation, cooking, serving, delivering, storage or any other use of foodstuffs.

Graffiti: Any drawing, painting, writing, inscription, figure or mark, regardless of its content, of the type which is commonly known and referred to as "graffiti", which is written, drawn, painted, sprayed, scratched or otherwise placed or affixed, regardless of the nature of the material used, on any wall, window, rock, building or portion thereof, fence, gate, sign, other structure, tree or other real or personal property, either publicly or privately owned, and that is visible from any adjacent public or private property or public or private rights-of-way. "Graffiti" shall not include any permitted sign allowed to be erected under applicable code provisions.

Immediate vehicle hazard: Any unattended vehicle which has been placed on jacks, blocks or stands unless such vehicle is placed in a garage or other building.

Inoperable vehicle: A vehicle or component parts thereof which cannot function properly or be used for its original purpose, including, without limitation, a condition of being junked, wrecked, wholly or partially dismantled, discarded or abandoned. Also included would be any vehicle which is not currently registered or licensed or parked in any manner which would be a violation of other city ordinances or incapable of moving under its own power or would be unlawful to operate upon any street, road or highway.

Land: Where specifically limited, or where the context would require limitation, the use of the terms "land" or "real property" shall refer to residential land, nonresidential land and vacant lots.

Nonresidential land: The real property on which nonresidential structures are situated.

Nonresidential structure: Any structure which is used for other than residential purposes, or a part of such structure, or a structure a part of which is used for other than residential purposes and, where applicable, the premises on which such structures are situated.

Nuisance: Means, without limitation, any accumulation or collection of filth, human or animal excrement, tree limbs, lumber, wood, glass, rocks, concrete, dirt, grass clippings, leaves, cans, containers, paper, trash, plastic, petroleum products, styrofoam, rubber, metal, discarded appliances or other household items, abandoned or inoperable vehicles or parts thereof, or any other material or item which is thrown, left, deposited or stored upon any public or private property, except that compost piles as defined herein shall not constitute a nuisance.

The above also includes any place, operation, materials or substance offensive in appearance or which emits or causes any nauseous odors. Any dilapidated fence, wall, building or other structure in disrepair, open pits, pools or ponds of water or fluids, trenches or wells and/or any other condition which is offensive to or a threat to the environmental quality, health, safety or welfare of the city as determined by any city public officer shall also constitute a nuisance.

Owner: Any person, partnership or corporation who alone or jointly and severally with others:

- (1) Has title to real estate;

-
- (2) Is a mortgagee of record of real estate;
 - (3) Has an interest of record in real estate;
 - (4) Has charge, care or control of real estate, as agent of the owner;
 - (5) Is a seller or purchaser under a contract for deed;
 - (6) Is trustee, guardian, testator or administrator of the estate or person of the titleholder; or
 - (7) Is a tenant responsible for maintenance.

Person: Any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or any representative who has charge, care, control or responsibility for maintenance of any premises regardless of status as owner, renter, tenant or lessee, whether or not in possession.

Premises: Any lot, parcel or tract of land, including any structures, and/or excavations located thereon.

Public officer: Any city representative charged by the city manager with the administration and enforcement of this chapter.

Residential land: The real property on which residential structures are situated.

Residential structure: Any building or structure or part thereof, used and occupied for human habitation, or intended to be so used if unoccupied and includes any appurtenances belonging thereto or usually enjoyed therewith.

Restricted mail: Mail which carries on its face the endorsements "return receipt requested" showing address where delivered and "deliver to addressee only" and for which the appropriate fees have been paid upon mailing for the processing of mail so endorsed in accordance with the regulations of the postal department, except that mail on which the addressee is not a natural person or persons the endorsement "deliver to addressee only" may be omitted.

Sales inventory: All equipment, vehicles or products which are displayed or available for sale or temporarily stored on the premises for repair or service.

Section: The stated section of the Emporia city code.

Structure: Except where specifically limited, or where the context would require limitation, the use of the word structure within this chapter shall refer to both residential and nonresidential structures.

Trim: All finish elements to the exterior of the structure including, but not limited to, finish elements surrounding windows, doors or other openings, ornamental features and fascia board.

Unimproved premises: Any lot, parcel or tract of land without any structures or any other type of improvement or development thereon.

Vacant lot: Any real property on which there is situated no residential or nonresidential structure.

Vehicle: Means, without limitation, any automobile, van, truck, all terrain vehicle, motorcycle, moped, motor scooter, recreational vehicle, farm machinery, construction equipment, trailer, wagon or other device mounted on wheels and designed to carry any cargo, operator or passenger, which as originally built contained an engine, regardless of whether it contains an engine at any other time, or which was designed to be towed or otherwise conveyed by another vehicle.

Yard: The area of the premises not occupied by a structure.

(Ord. 95-45, § 3, 12-20-1995; Ord. 02-04, § 1, 3-6-2002)



PUBLIC NOTICE

SPECIAL GATHERING OF THE GOVERNING BODY

There will be a special gathering of the Governing Body on Wednesday, June 11, 2025, at noon, to be held at the David Traylor Zoo Education Center, located at 75 Sodens Rd, Emporia, Kansas. The purpose of this special gathering is to attend the Annual Emporia Friends of the Zoo Luncheon. No action will be taken by the City of Emporia. City Commissioners will be in attendance, and the public is welcome to attend.

Witness my hand and the seal of said City.

Assembly Called by:

Trey Cocking
City Manager

5/30/25

Date

Witness my hand, the seal of said City, this 30th day of May 2025.

Sue Bryson
Deputy City Clerk

5/30/25

Date

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, May 21, 2025, with Mayor Harter presiding and Commissioners Brinkman, Curtis, Sauder and Smith present. Also present were City Manager Cocking, Deputy City Manager Detter, Assistant City Manager Wash, City Clerk Sull and City Attorney Montgomery.

**CITY COMMISSION
(Public Comment)**

This is the time for the public to make comments.

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

Viola Heskett, 2211 Birch Road, Emporia, Kansas and Jerald Campbell, 1201 Presby Drive, Emporia, Kansas, stated their concerns of duplication and/or loss of services at Newman Regional Health and proposed Stormont Vail medical facility.

**CITY COMMISSION
(Board Appointment)**

Emporia Public Library Board:

It was moved by Commissioner Sauder, seconded by Commissioner Brinkman that Terri Summey be appointed to the Emporia Public Library Board for a term ending April 20, 2029. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; Commissioner Smith, aye; and Mayor Harter, aye.

Building Trades Board:

It was moved by Commissioner Curtis, seconded by Commissioner Brinkman that Jason Williams and Stan Grimwood be appointed to Building Trades Board for terms the expire on December 31, 2027. The vote follows: Commissioner Curtis, aye; Commissioner Brinkman, aye; Commissioner Sauder, aye; Commissioner Smith, aye; and Mayor Harter, aye.

**PAVING
(2025 Pavement Preservation Project No. PV2502)
(Various Locations Within City Limits)
(Bids)**

Jim Ubert, City Engineer, was recognized and addressed the Governing Body. He stated bids were received for the 2025 Pavement Preservation Project No. PV2502 for various locations around the city that includes chip seal and fog seal on the following streets: 3rd Avenue (Neosho Street to Rural Street), 8th Avenue (Congress Street to West Street & Woodland Street to Prairie Street), 10th Avenue (State Street to Neosho Street), Grove Avenue (West Street to Walnut Street), Sherman Street (3rd Avenue to 6th Avenue), State Street (Railroad to 12th Avenue), Washington Street (Grove Avenue to 12th Avenue), West 6th Avenue (US-50 Highway to Graphic Arts Road), West Street (3rd Avenue to 6th Avenue) and Wilson Street (6th Avenue to 9th Avenue). He stated four bids were received as follows:

BID TABULATION FOR 2025 PAVEMENT PRESERVATION PROJECT NO. PV2502

Contractor	Base Bid
APAC- Kansas Shears Division	\$197,698.61
American Road Maintenance	\$315,065.00
Bettis Asphalt & Construction	\$330,004.31
Vance Brothers, LLC	\$425,476.22
Engineer's Estimate	\$294,125.90

This project will be funded from the Multi-Year Fund and the City's portion of County sales tax. Staff recommend awarding the 2025 Pavement Preservation Project No. PV2502 to APAC-Kansas Shears Division for the Base Bid in the amount of \$197,698.61.

Commissioner Brinkman made a motion to award the project to APAC-Kansas, Inc., Shears Division for the base bid amount of \$197,698.61 for the 2025 Pavement Preservation Project No. PV2502. Commissioner Smith seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Smith, aye; Commissioner Curtis, aye; Commissioner Sauder, aye; and Mayor Harter, aye.

CITY COMMISSION
(Dynamic Brewing, LLC d/b/a Champions Landing)
(Contract for Tourism-Related Capital Support)

City Manager Cocking stated Dynamic Brewing, LLC proposes to construct three regulation disc golf courses and one foot golf course at Champions Landing located at 1801 Rural Street, Emporia, Kansas. He stated Emporia is already recognized as a disc golf destination and expanding play at Champions Landing strengthens that reputation, extends visitors stays and leverages existing tourism marketing. To stimulate tourism and outdoor recreation, the City will provide Transient Guest Tax (TGT) funding in exchange development of three disc golf courses, one foot golf course, hosting and marketing tournaments and providing four (4) years of limited free public access.

City Attorney Montgomery was recognized and addressed the Governing Body. She stated there have been changes to the contract that were not included in the agenda packet and the new version of the contract be included in the agenda packet and updated online after the Commission Meeting today for viewing by the public. She then reviewed the changes as follows:

1. Purpose – 2nd paragraph.

Contractor proposes to install new recreation amenities available to the public consisting of a 9-18 hole beginner-friendly disc-golf course, an 18 hole intermediate-level disc golf course, an 18 hole advanced-level disc golf course, and a foot-golf course (collectively, the “Phase 1 Improvements”) at Champions Landing, 1801 Rural Street, Emporia, Kansas.

3rd paragraph

The City agrees to provide funding from Transient Guest Tax (“TGT”) revenues to support the project. In return, the Contractor will promote tourism by developing disc-golf and foot-golf courses and hosting and marketing tournaments at those courses. Further, the Contractor will maintain public access to the courses and provide access to Emporia residents, Emporia State University students, and Flint Hills Technical College students free of charge for a minimum of four (4) years.

2. Scope of Work

2.1 Task

Purchase and install 45-54 PDGA-approved baskets

3. Funding, Disbursement & Repayment.

3.1 Amount. – 2nd paragraph

In the event the Contractor installs a 9-hole beginner-friendly disc golf course instead of an 18 hole beginner-friendly disc golf course, the total maximum disbursement shall be

reduced to \$49,675, and the Equipment and Labor portion reduced to a maximum of \$37,675.

3.2 Disbursement.

Disbursement of funds shall be made on a reimbursement basis. The Contractor shall submit documentation verifying all allowable costs incurred under this Agreement. Final disbursement shall not be made until the City has reviewed and approved such documentation.

3.4(b) Repayment Due

(Disbursement for Labor & Equipment / 48) × (48 – number of full months of compliant public access provided).

10. Notice

Contractor address corrected to 1801 Rural on the signature page.

City Manager Cocking stated the agreement outlines the project scope, funding mechanics, maintenance standards and repayment safeguards. Key points of the agreement include:

- **Project Elements:** 45 to 54 PDGA-approved baskets, 45 to 54 disc-golf tee signs, 18-foot-golf tee signs/markers, foot-golf course material, and bridge/spillway repairs.
- **Completion Deadlines:** Equipment installed within 120 days; remaining work and bridge repairs within 180 days, subject to reasonable extensions for weather or force majeure.
- **City Investment:** Up to \$53,950 from the TGT Fund for equipment, installation, site preparations, and marketing.
- **Disbursement Schedule:** 60 % (\$32,370) advanced at contract execution upon receipt of required documentation; 40 % (\$21,580) reimbursed after City acceptance of deliverables.
- **Public-Access Term:** Free greens-fee play for Emporia residents, Emporia State University students, and Flint Hills Technical College students (valid ID required) seven days a week, dawn-to-dusk, for four years. Rental equipment, paid tournaments, and private events are excluded. The course may be closed for weather, maintenance, or special events with at least 48 hours' written notice to the City Clerk.
- **Repayment Protections:** Full or pro-rated repayment required for non-completion, early closure, or other material breach; the City may accept equipment in lieu of repayment.

- **Contractor Obligations:** Ongoing maintenance to public-facility standards, annual tournament coordination, City-approved sponsorship messaging, and \$1 million/\$2 million CGL insurance naming the City as additional insured.
- **Standard Terms:** Independent-contractor status, Kansas law governing, cash-basis safeguards, and anti-discrimination provisions (Exhibit A).

The City will disburse up to \$53,950.00 from the Transient Guest Tax Fund for this agreement. The TGT Fund has sufficient resources to absorb the expenditure without impacting other commitments. Staff recommend approval of the Contract for Tourism-Related Capital Support with Dynamic Brewing, LLC and authorize the City Manager to execute the contract and any associated documents, subject to final legal review.

Following discussion Commissioner Sauder made a motion to approve the Contract for Tourism-Related Capital Support with Dynamic Brewing, LLC and authorize the City Manager to execute the contract as well as the amendments and any associated documents, subject to final legal review. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; Commissioner Smith, 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 April 2025 for the community:

1. Monthly Local Retail Sales Tax Receipts Update

	2024	2025	Increase of \$7,905.76 for the month, and
	\$ 492,491.26	\$ 500,397.02	Overall increase of 2.63% from year 2024.
YTD	\$ 2,091,926.48	\$ 2,148,522.40	

2. City Share from County Tax

	2024	2025	Increase of \$13,944.95 for the month, and
	\$ 250,316.44	\$ 264,261.39	Overall increase of 3.73% from year 2024.
YTD	\$1,065,834.91	\$1,107,078.41	

Building Permits issued from 4/1/2025 to 4/30/2025 for new construction, remodeling/repairs and demolition.

Total number of building permits issued through Code Services:	64
Total of valuations associated with those building permits:	\$3,653,478.65
Total number of dollars collected for Building Permit Fees:	\$ 18,369.50
Construct – Single-family dwellings	5
Demo – Single-family dwellings	0
Flint Hills Mall CID for April 2025	\$ 11,599.18
YTD	\$ 63,259.65
Pavilions CID for April 2025	\$ 12,008.22
CID #2	\$ 12,008.22
YTD	\$ 126,509.64
Fairview Hotel CID for April 2025	\$ 6,414.02
YTD	\$ 26,711.30
West Plaza CID for April 2025	\$ 5,830.00
YTD	\$ 31,145.93

Consent Agenda

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

- a. Approve minutes of the Regular Meeting held on May 7, 2025.

The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, 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 JUNE 4, 2025, MEETING.

- Proclamation Recognizing June as Pride Month.
- Proclamation Recognizing June as Zoo Month.

- Ordinance for Emporia/Lyon County Traffic Safety Committee.
- Sacred Heart Vacation of Utility Easement.
- Agreement with Sacred Heart Church.
- Design Contract for Fire Station No. 2
- Feasibility Study for WLW Auditorium Fire Station No. 1 Space.
- **Study Session:**
 - Art Installation at White Park.
 - Crosswinds Update.
 - Review Outside Appropriations Request.

CITY COMMISSION (Governing Body Comment)

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

EXECUTIVE SESSION

Commissioner Brinkman made a motion to recess into Executive Session for 15 minutes inviting pertinent city staff for the purpose of consultation with the City Attorney regarding a legal matter. The justification for executive session is provided in K.S.A. 75-4319(b)(2) to protect privileged communication in the attorney-client relationship. The open meeting will resume in this room at approximately 11:37 a.m. Commissioner Sauder seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Sauder, aye; Commissioner Curtis, aye; Commissioner Smith, aye; and Mayor Harter, aye.

Upon reconvening the meeting in Regular Session at 11:37 a.m., this same date, in the City Commission Meeting Room, Mayor Harter stated they had consultation with the City Attorney regarding a legal matter and no action was taken.

Commissioner Smith made a motion to recess the meeting at 11:51 a.m., to Conference Room 1AB. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; Commissioner Sauder, aye; and Mayor Harter, aye.

The following items were discussed at the Study Session:

1. Discuss Chickens Permit Requirements.
2. Stormwater ERU/Becker Addition.
3. Joint Traffic Safety Committee.
4. Joint Task Force on Mill Levy Reduction.

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

Erren Harter, Mayor

ATTEST:

Kerry Sull, City Clerk



Commission Action Report

Accepting Overlander Road Right of Way,

City Project No. PV2304

KDOT Economic Development Project No. 56 KA-7312-01

Title: Accepting Overlander Road Right of Way, City Project No. PV2304,
KDOT Economic Development Project No. 56 KA-7312-01

Agenda Date: June 4, 2025

Presented By: James Uberty, City Engineer

Background:

In the course of the preliminary engineering design phase for the project, proposed right of way were identified to construct the proposed roadway, drainage and utility project.

Discussion:

The attached Right of Way documents were appraised and then purchased for the proposed construction of the Overlander Road (W. 6th Avenue to U.S.-50 Highway) Roadway, Drainage, & Utility Improvements.

Financial considerations:

The right of way purchases are a project expense.

Recommended action:

Accept the right of way from the property owners along the proposed project.

Attachments:

Right of Way documents and Exhibit(s).

Exempt per K.S.A. 79-1437e(a)(13)

RIGHT OF WAY

This indenture made this 1st day of November, 2024, by and between **Bold Enterprises LLC** of Emporia, Lyon County, Kansas, hereinafter referred to as First Party, and the City of Emporia, Lyon County, Kansas, a municipal corporation hereinafter referred to as Second Party.

WITNESSETH:

That the First Party, in consideration of the sum of one dollar (\$1.00) duly paid, the receipt of which is hereby acknowledged, does by these presents grant and convey unto the Second Party, its successors and assigns, all the First Party's interest in the following described parcel, lying, being and situated in the County of Lyon and State of Kansas, to wit:

DESCRIPTION:

A TRACT IN THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, AS DESCRIBED BY AARON C. DAVIS, PS 1368, ON AUGUST 30, 2024, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SE $\frac{1}{4}$;
THENCE N. 00° 41' 26" W. (BASIS OF BEARINGS) ON THE WEST LINE OF SAID SE $\frac{1}{4}$ FOR 1010.00 TO THE NORTHWEST CORNER OF A PREVIOUSLY DESCRIBED TRACT AS RECORDED IN DOCUMENT NO. 2016-01352 IN THE LYON COUNTY REGISTER OF DEEDS OFFICE;
THENCE N. 87° 54' 03" E. ON THE NORTH LINE OF SAID PREVIOUSLY DESCRIBED TRACT FOR 30.01 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF OVERLANDER ROAD, AND THE **POINT OF BEGINNING**;
THENCE CONTINUING N. 87° 54' 03" E. ON SAID NORTH LINE FOR 10.00 FEET;
THENCE S. 00° 41' 26" E. PARALLEL WITH THE WEST LINE OF SAID SE $\frac{1}{4}$ FOR 954.98 FEET TO A POINT 55 FEET NORTH OF THE SOUTH LINE OF SAID SE $\frac{1}{4}$;
THENCE S. 46° 23' 50" E. FOR 20.96 FEET TO A POINT 55 FEET EAST OF THE WEST LINE OF SAID SE $\frac{1}{4}$;
THENCE N. 87° 53' 45" E. PARALLEL WITH THE SOUTH LINE OF SAID SE $\frac{1}{4}$ FOR 305.15 FEET;
THENCE N. 02° 06' 15" W. AT RIGHT ANGLES FOR 10.00 FEET;
THENCE N. 87° 53' 45" E. PARALLEL WITH SAID SOUTH LINE FOR 68.87 FEET TO THE WESTERLY LINE OF LIFT STATION TRACT AS DESCRIBED IN BOOK 557 AT PAGE 549 IN THE LYON COUNTY REGISTER OF DEEDS OFFICE;

THENCE S. 07° 35' 10" W. ON THE WESTERLY LINE OF SAID LIFT STATION TRACT FOR 17.25 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF WEST SIXTH AVENUE;
THENCE S. 87° 53' 45" W. ON SAID NORTH RIGHT OF WAY LINE FOR 396.30 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF OVERLANDER ROAD;
THENCE N. 00° 41' 26" W. ON SAID EAST RIGHT OF WAY LINE FOR 976.99 FEET TO THE POINT OF BEGINNING.
SAID TRACT CONTAINS 0.305 ACRES.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, forever for the purpose of a perpetual right of way for the construction and maintenance of a street in any manner which the Second Party may deem necessary and for all uses incidental thereto or any other governmental purpose including, without limitation, the construction, installation and maintenance of utilities by the Second Party and its franchisees.

First Party does hereby covenant, promise and agree with the Second Party, that at the delivery of these presents it is lawfully seized in its own right, or an absolute indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with the appurtenances thereto; the same are free, clear and discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of whatever nature or kind soever; and that First Party will warrant and forever defend the interest unto the Second Party, its successors and assigns, against the First Party's successors, and all and every person or persons whomsoever, lawfully claiming or to claim the same by, through or under the First Party.

IN WITNESS WHEREOF the First Party has executed this indenture as of the date first above written.

Bold Enterprises, LLC

Nicol Dold member
Nicol Dold, Member

Bold Enterprises, LLC

Christopher Dold member
Christopher Dold, Member

Bold Enterprises, LLC

Amy Bradford member
Amy Bradford, Member

Bold Enterprises, LLC

Reason Bradford member
Reason Bradford, Member

STATE OF KANSAS, COUNTY OF LYON, ss:

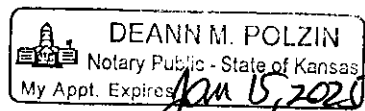
BE IT REMEMBERED, on this 1st day of November, 2024, before me, the undersigned, a notary public in and for the County and State aforesaid, came **Amy Bradford, Member of Bold Enterprises LLC**, such person(s) being personally known to me to be the same person(s) who executed the within instrument of writing and duly acknowledge the execution of the same.

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

Deann M Polzin
NOTARY PUBLIC

My Commission Expires:

January 15, 2025



STATE OF KANSAS, COUNTY OF LYON, ss:

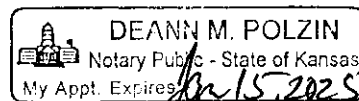
BE IT REMEMBERED, on this 1st day of November, 2024, before me, the undersigned, a notary public in and for the County and State aforesaid, came **Reason Bradford, Member of Bold Enterprises LLC**, such person(s) being personally known to me to be the same person(s) who executed the within instrument of writing and duly acknowledge the execution of the same.

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

Deann M Polzin
NOTARY PUBLIC

My Commission Expires:

January 15, 2025



STATE OF KANSAS, COUNTY OF LYON, ss:

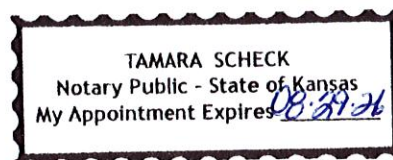
BE IT REMEMBERED, on this 31st day of October, 2024,
before me, the undersigned, a notary public in and for the County and State
aforesaid, came **Nicol Dold, Member of Bold Enterprises**, such person(s) being
personally known to me to be the same person(s) who executed the within instrument of
writing and duly acknowledge the execution of the same.

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

Tamara Scheck
NOTARY PUBLIC

My Commission Expires:

08.29.26



STATE OF KANSAS, COUNTY OF LYON, ss:

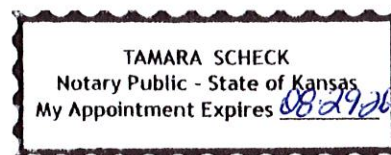
BE IT REMEMBERED, on this 31st day of October, 2024,
before me, the undersigned, a notary public in and for the County and State
aforesaid, came **Christopher Dold, Member of Bold Enterprises**, such person(s)
being personally known to me to be the same person(s) who executed the within
instrument of writing and duly acknowledge the execution of the same.

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

Tamara Scheck
NOTARY PUBLIC

My Commission Expires:

08.29.26



Exempt per K.S.A. 79-1437e(a)(13)

RIGHT OF WAY

This indenture made this 23rd day of October, 2024, by and between **Bruce Davis, Owner**, of Emporia, Lyon County, Kansas, hereinafter referred to as First Party, and the City of Emporia, Lyon County, Kansas, a municipal corporation hereinafter referred to as Second Party.

WITNESSETH:

That the First Party, in consideration of the sum of one dollar (\$1.00) duly paid, the receipt of which is hereby acknowledged, does by these presents grant and convey unto the Second Party, its successors and assigns, all the First Party's interest in the following described parcel, lying, being and situated in the County of Lyon and State of Kansas, to wit:

DESCRIPTION:

A TRACT IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., CITY OF EMPORIA, LYON COUNTY, KANSAS, AS DESCRIBED BY AARON C. DAVIS, PS 1368, ON AUGUST 30, 2024, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

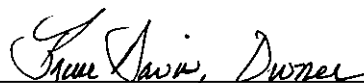
COMMENCING AT THE NORTHWEST CORNER OF SAID NE $\frac{1}{4}$;
THENCE N. 87° 53' 45" E. (BASIS OF BEARINGS) ON THE NORTH LINE OF SAID NE $\frac{1}{4}$ FOR 361.15 FEET;
THENCE S. 02° 06' 15" E. AT RIGHT ANGLES FOR 33.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF WEST SIXTH AVENUE, AND THE **POINT OF BEGINNING**;
THENCE CONTINUING S. 02° 06' 15" E. FOR 17.00 FEET TO A POINT 50 FEET SOUTH OF SAID NORTH LINE;
THENCE N. 87° 53' 45" E. PARALLEL WITH SAID NORTH LINE FOR 120.00 FEET;
THENCE N. 02° 06' 15" W. FOR 17.00 FEET TO SAID SOUTH RIGHT OF WAY LINE;
THENCE S. 87° 53' 45" W. ON SAID SOUTH RIGHT OF WAY LINE FOR 120.00 FEET TO THE POINT OF BEGINNING.
SAID TRACT CONTAINS 0.047 ACRES.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, forever for the purpose of a perpetual right of way for the construction and maintenance of a street in any manner which the Second Party may deem necessary and for all uses incidental thereto or any other governmental purpose including, without limitation, the construction, installation and maintenance of utilities by the Second Party and its franchisees.

First Party does hereby covenant, promise and agree with the Second Party, that at the delivery of these presents it is lawfully seized in its own right, or an absolute indefeasible estate of inheritance in fee simple, of and in all and singular the above

granted and described premises, with the appurtenances thereto; the same are free, clear and discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of whatever nature or kind soever; and that First Party will warrant and forever defend the interest unto the Second Party, its successors and assigns, against the First Party's successors, and all and every person or persons whomsoever, lawfully claiming or to claim the same by, through or under the First Party.

IN WITNESS WHEREOF the First Party has executed this indenture as of the date first above written.

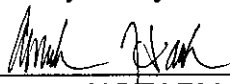


Bruce Davis, Owner

STATE OF KANSAS, COUNTY OF LYON, ss:

BE IT REMEMBERED, on this 23rd day of October, 2024, before me, the undersigned, a notary public in and for the County and State aforesaid, came **Bruce Davis, Owner**, such person(s) being personally known to me to be the same person(s) who executed the within instrument of writing and duly acknowledge the execution of the same.

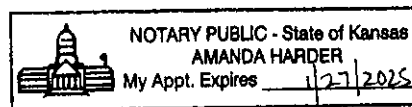
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.



NOTARY PUBLIC

My Commission Expires:

1/27/2025



Exempt per K.S.A. 79-1437e(a)(13)

RIGHT OF WAY

This indenture made this 17th day of January, 2025, by and between **Pilot Travel Centers LLC**, a Delaware limited liability company, successor-by-merger to CFJ Properties, hereinafter referred to as First Party, and the City of Emporia, Lyon County, Kansas, a municipal corporation hereinafter referred to as Second Party.

WITNESSETH:

That the First Party, in consideration of the sum of one dollar (\$1.00) duly paid, the receipt of which is hereby acknowledged, does by these presents grant and convey unto the Second Party, its successors and assigns, on an as-is basis subject to all matters of record, all the First Party's interest in the following described parcel, lying, being and situated in the County of Lyon and State of Kansas, to wit:

DESCRIPTION:

A TRACT IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, AS DESCRIBED BY AARON C. DAVIS, PS 1368, ON AUGUST 30, 2024, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SW $\frac{1}{4}$;
THENCE S. 00° 41' 26" E. (BASIS OF BEARINGS) ON THE EAST LINE OF SAID SW $\frac{1}{4}$ FOR 81.90 FEET;
THENCE S. 88° 18' 08" W. FOR 30.00 FEET TO A POINT OF INTERSECTION WITH THE WEST RIGHT OF WAY LINE OF OVERLANDER ROAD AND THE SOUTH RIGHT OF WAY LINE OF U.S. 50 HIGHWAY, AND THE **POINT OF BEGINNING**;
THENCE CONTINUING S. 88° 18' 08" W. ON SAID RIGHT OF WAY LINE FOR 10.00 FEET;
THENCE S. 00° 41' 26" E. PARALLEL WITH THE EAST LINE OF SAID SW $\frac{1}{4}$ FOR 1257.86 FEET TO THE NORTH LINE OF OVERLANDER ADDITION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS;
THENCE N. 88° 18' 03" E. ON SAID NORTH LINE FOR 10.00 FEET TO THE NORTHEAST CORNER OF SAID OVERLANDER ADDITION, AND THE WEST RIGHT OF WAY LINE OF OVERLANDER ROAD;
THENCE N. 00° 41' 26" W. ON SAID WEST RIGHT OF WAY LINE FOR 1257.86 FEET TO THE POINT OF BEGINNING.
SAID TRACT CONTAINS 0.289 ACRES.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, forever for the purpose of a perpetual right of way for the construction and maintenance of a street in any manner which the Second Party may deem necessary and for all uses incidental thereto or any other governmental purpose including, without limitation, the

construction, installation and maintenance of utilities by the Second Party and its franchisees.

First Party does hereby covenant, promise and agree with the Second Party, that at the delivery of these presents it is lawfully seized in fee simple, of and in all and singular the above granted and described premises, with the appurtenances thereto subject to all matters of public record; and that First Party will warrant and forever defend its interest unto the Second Party, its successors and assigns, against the First Party's successors, and all and every person or persons whomsoever, lawfully claiming or to claim the same by, through or under the First Party.

IN WITNESS WHEREOF the First Party has executed this indenture as of the date first above written.

Pilot Travel Centers LLC

By: 
Bradley Anderson
Authorized Representative



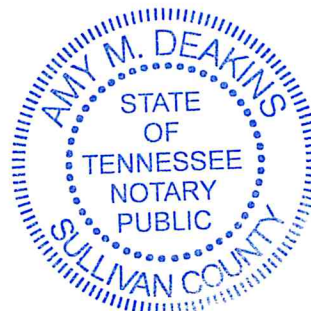
STATE OF TENNESSEE
COUNTY OF KNOX, ss:

BE IT REMEMBERED, on this 17th day of January, 2025, before me, the undersigned, a notary public in and for the State aforesaid, came Bradley Anderson, Authorized Representative of **Pilot Travel Centers LLC**, such person(s) being personally known to me to be the same person(s) who executed the within instrument of writing and duly acknowledge the execution of the same.

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


NOTARY PUBLIC

My Commission Expires: December 28, 2026



Exempt per K.S.A. 79-1437e(a)(13)

RIGHT OF WAY

This indenture made this 15th day of May, 2025, by and between **Dynamic Discs, Inc.**, a corporation organized and existing under the laws of the State of Delaware and successor-in-interest to Dynamic Distribution Co., hereinafter referred to as First Party, and the **City of Emporia, Kansas**, a municipal corporation organized and existing under the laws of the State of Kansas, hereinafter referred to as Second Party.

WITNESSETH:

That the First Party, in consideration of the sum of one dollar (\$1.00) duly paid, the receipt of which is hereby acknowledged, does by these presents grant and convey unto the Second Party, its successors and assigns, all the First Party's interest in the following described parcel, lying, being and situated in the County of Lyon and State of Kansas, to wit:

DESCRIPTION:

A TRACT IN THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, AS DESCRIBED BY AARON C. DAVIS, PS 1368, ON AUGUST 30, 2024, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SE $\frac{1}{4}$;
THENCE N. 00° 41' 26" W. (BASIS OF BEARINGS) ON THE WEST LINE OF SAID SE $\frac{1}{4}$ FOR 1010.00 FEET TO THE SOUTHEAST CORNER OF A PREVIOUSLY DESCRIBED TRACT AS RECORDED IN DOCUMENT NO. 2021-00439 IN THE LYON COUNTY REGISTER OF DEEDS OFFICE;
THENCE N. 87° 54' 03" E. ON THE SOUTH LINE OF SAID PREVIOUSLY DESCRIBED TRACT FOR 30.01 FEET TO THE EAST RIGHT OF WAY LINE OF OVERLANDER ROAD, AND THE **POINT OF BEGINNING**;
THENCE CONTINUING N. 87° 54' 03" E. ON SAID SOUTH LINE FOR 10.00 FEET;
THENCE N. 00° 41' 26" W. PARALLEL WITH THE WEST LINE OF SAID SE $\frac{1}{4}$ FOR 610.00 FEET TO THE NORTH LINE OF SAID PREVIOUSLY DESCRIBED TRACT;
THENCE S. 87° 53' 45" W. ON SAID NORTH LINE FOR 10.00 FEET TO SAID EAST RIGHT OF WAY LINE;
THENCE S. 00° 41' 26" E. PARALLEL WITH THE WEST LINE OF SAID SE $\frac{1}{4}$ FOR 610.00 FEET TO THE POINT OF BEGINNING.
SAID TRACT CONTAINS 0.140 ACRES.

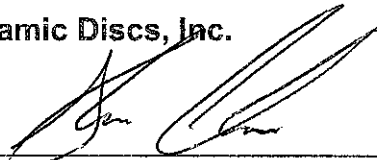
TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, forever for the purpose of a perpetual right of way for the construction and maintenance of a street in any manner which the Second Party may deem necessary and for all uses incidental thereto or any other governmental purpose

including, without limitation, the construction, installation and maintenance of utilities by the Second Party and its franchisees.

First Party does hereby covenant, promise and agree with the Second Party, that at the delivery of these presents it is lawfully seized in its own right, or an absolute indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with the appurtenances thereto; the same are free, clear and discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of whatever nature or kind soever; and that First Party will warrant and forever defend the interest unto the Second Party, its successors and assigns, against the First Party's successors, and all and every person or persons whomsoever, lawfully claiming or to claim the same by, through or under the First Party.

IN WITNESS WHEREOF the First Party has executed this indenture as of the date first above written.

Dynamic Discs, Inc.

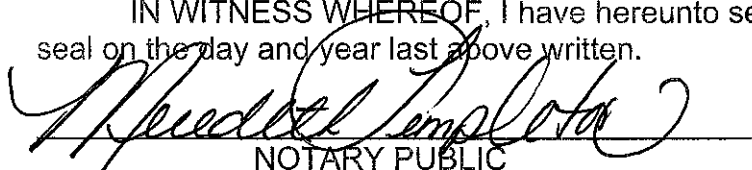


Shane Cline, Director of Finance

STATE OF KANSAS, COUNTY OF LYON, ss:

BE IT REMEMBERED, on this 15th day of May, 2025, before me, the undersigned, a notary public in and for the County and State aforesaid, came **Shane Cline, Director of Finance of Dynamic Discs, Inc.**, such person(s) being personally known to me to be the same person(s) who executed the within instrument of writing and duly acknowledge the execution of the same.

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



NOTARY PUBLIC

My Commission Expires:

11-28-26



Exempt per K.S.A. 79-1437e(a)(13)

RIGHT OF WAY

This indenture made this 16 day of December, 2024, by and between **Midcontinent Orion Corp.**, of Emporia, Lyon County, Kansas, hereinafter referred to as First Party, and the City of Emporia, Lyon County, Kansas, a municipal corporation hereinafter referred to as Second Party.

WITNESSETH:

That the First Party, in consideration of the sum of one dollar (\$1.00) duly paid, the receipt of which is hereby acknowledged, does by these presents grant and convey unto the Second Party, its successors and assigns, all the First Party's interest in the following described parcel, lying, being and situated in the County of Lyon and State of Kansas, to wit:

DESCRIPTION:

A TRACT IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., CITY OF EMPORIA, LYON COUNTY, KANSAS, AS DESCRIBED BY AARON C. DAVIS, PS 1368, ON AUGUST 30, 2024, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SW¹/₄;
THENCE N. 00° 41' 26" W. (BASIS OF BEARINGS) ON THE EAST LINE OF SAID SW¹/₄ FOR 33.01 FEET;
THENCE S. 87° 53' 49" W. FOR 30.01 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF OVERLANDER ROAD, AND THE **POINT OF BEGINNING**;
THENCE CONTINUING S. 87° 53' 49" W. ON THE NORTH RIGHT OF WAY LINE OF WEST SIXTH AVENUE FOR 10.00 FEET;
THENCE N. 00° 41' 26" W. PARALLEL WITH THE EAST LINE OF SAID SW¹/₄ FOR 626.99 FEET TO THE NORTH LINE OF A PREVIOUSLY DESCRIBED TRACT AS RECORDED IN BOOK 392 AT PAGE 58 IN THE LYON COUNTY REGISTER OF DEEDS OFFICE;
THENCE N. 87° 53' 49" E. ON THE NORTH LINE OF SAID PREVIOUSLY DESCRIBED TRACT FOR 10.00 FEET TO SAID WEST RIGHT OF WAY LINE;
THENCE S. 00° 41' 26" E. PARALLEL WITH THE EAST LINE OF SAID SW¹/₄ FOR 626.99 FEET TO THE POINT OF BEGINNING.
SAID TRACT CONTAINS 0.144 ACRES,

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, forever for the purpose of a perpetual right of way for the construction and maintenance of a street in any manner which the Second Party may deem necessary and for all uses incidental thereto or any other governmental purpose including, without limitation, the construction, installation and maintenance of utilities by the Second Party and its franchisees.

First Party does hereby covenant, promise and agree with the Second Party, that at the delivery of these presents it is lawfully seized in its own right, or an absolute indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with the appurtenances thereto; the same are free, clear and discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of whatever nature or kind soever; and that First Party will warrant and forever defend the interest unto the Second Party, its successors and assigns, against the First Party's successors, and all and every person or persons whomsoever, lawfully claiming or to claim the same by, through or under the First Party.

IN WITNESS WHEREOF the First Party has executed this indenture as of the date first above written.

Midcontinent Orion Corp.


J. C. Hawes, President

STATE OF KANSAS, COUNTY OF LYON, ss:



BE IT REMEMBERED, on this 10th day of December, 2024, before me, the undersigned, a notary public in and for the County and State aforesaid, came **J. C. Hawes, President of Midcontinent Orion Corp.**, such person(s) being personally known to me to be the same person(s) who executed the within instrument of writing and duly acknowledge the execution of the same.

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


NOTARY PUBLIC

My Commission Expires:

April 5th, 2028

Exempt per K.S.A. 79-1437e(a)(13)

RIGHT OF WAY

This indenture made this 9th day of December, 2024, by and between **Glendo, LLC** of Emporia, Lyon County, Kansas, hereinafter referred to as First Party, and the City of Emporia, Lyon County, Kansas, a municipal corporation hereinafter referred to as Second Party.

WITNESSETH:

That the First Party, in consideration of the sum of one dollar (\$1.00) duly paid, the receipt of which is hereby acknowledged, does by these presents grant and convey unto the Second Party, its successors and assigns, all the First Party's interest in the following described parcel, lying, being and situated in the County of Lyon and State of Kansas, to wit:

DESCRIPTION:

A TRACT IN LOT 4, MARTIN-EAGLE SUBDIVISION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS, AND A PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, AS DESCRIBED BY AARON C. DAVIS, PS 1368, ON AUGUST 30, 2024, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SE $\frac{1}{4}$;
THENCE N. 00° 41' 26" W. (BASIS OF BEARINGS) FOR 1620.00 FEET TO THE SOUTHWEST CORNER OF A PREVIOUSLY DESCRIBED TRACT AS RECORDED IN DOCUMENT NO. 2014-02678;
THENCE N. 87° 53' 45" E. ON THE SOUTH LINE OF SAID PREVIOUSLY DESCRIBED TRACT FOR 30.01 FEET TO THE **POINT OF BEGINNING**;
THENCE CONTINUING N. 87° 53' 45" E. ON SAID SOUTH LINE FOR 10.00;
THENCE N. 00° 41' 26" W. PARALLEL WITH THE WEST LINE OF SAID SE $\frac{1}{4}$ FOR 329.83 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 4;
THENCE CONTINUING N. 00° 41' 26" W. PARALLEL WITH SAID WEST LINE FOR 183.50 FEET;
THENCE N. 43° 50' 38" E. FOR 21.39 FEET TO THE NORTH LINE OF SAID LOT 4;
THENCE S. 88° 22' 42" W. ON SAID NORTH LINE FOR 25.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 4;
THENCE S. 00° 41' 26" E. ON THE WEST LINE OF SAID LOT 4 FOR 198.59 FEET TO THE SOUTHWEST CORNER OF SAID LOT 4;
THENCE CONTINUING S. 00° 41' 26" E. PARALLEL WITH THE WEST LINE OF SAID SE $\frac{1}{4}$ FOR 329.83 FEET TO THE POINT OF BEGINNING.
SAID TRACT CONTAINS 0.124 ACRES.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, forever for the purpose of a perpetual right of way for the construction and

maintenance of a street in any manner which the Second Party may deem necessary and for all uses incidental thereto or any other governmental purpose including, without limitation, the construction, installation and maintenance of utilities by the Second Party and its franchisees.

First Party does hereby covenant, promise and agree with the Second Party, that at the delivery of these presents it is lawfully seized in its own right, or an absolute indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with the appurtenances thereto; the same are free, clear and discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of whatever nature or kind soever; and that First Party will warrant and forever defend the interest unto the Second Party, its successors and assigns, against the First Party's successors, and all and every person or persons whomsoever, lawfully claiming or to claim the same by, through or under the First Party.

IN WITNESS WHEREOF the First Party has executed this indenture as of the date first above written.

Glendo, LLC



Mr. Chris Correll, President

STATE OF KANSAS, COUNTY OF LYON, ss:

BE IT REMEMBERED, on this 9th day of December, 2024, before me, the undersigned, a notary public in and for the County and State aforesaid, came **Mr. Chris Correll, President of Glendo, LLC**, such person(s) being personally known to me to be the same person(s) who executed the within instrument of writing and duly acknowledge the execution of the same.

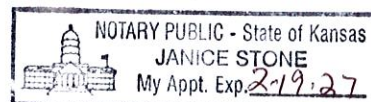
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.



NOTARY PUBLIC

My Commission Expires:

2-19-27



Exempt per K.S.A. 79-1437e(a)(13)

RIGHT OF WAY

This indenture made this 18 day of April, 2025, by and between **Camso Manufacturing USA, LTD**, a Delaware corporation, hereinafter referred to as First Party, and the City of Emporia, Lyon County, Kansas, a municipal corporation hereinafter referred to as Second Party.

WITNESSETH:

That the First Party, in consideration of the sum of one dollar (\$1.00) duly paid, the receipt of which is hereby acknowledged, does by these presents grant and convey unto the Second Party, its successors and assigns, all the First Party's interest in the following described parcel, lying, being and situated in the County of Lyon and State of Kansas, to wit:

DESCRIPTION:

A TRACT IN LOT 1, OVERLANDER ADDITION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS, AND ALSO BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, AS DESCRIBED BY AARON C. DAVIS, PS 1368, ON AUGUST 30, 2024, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SW $\frac{1}{4}$;
THENCE N. 00° 41' 26" W. (BASIS OF BEARINGS) ON THE EAST LINE OF SAID SW $\frac{1}{4}$ FOR 660.00 FEET;
THENCE S. 87° 53' 49" W. FOR 30.01 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF OVERLANDER ROAD, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 1 IN SAID OVERLANDER ADDITION, AND THE **POINT OF BEGINNING**;
THENCE CONTINUING S. 87° 53' 49" W. ON THE SOUTH LINE OF SAID LOT 1 FOR 10.00 FEET;
THENCE N. 00° 41' 26" W. PARALLEL WITH THE EAST LINE OF SAID SW $\frac{1}{4}$ FOR 640.74 FEET TO THE NORTH LINE OF SAID LOT 1;
THENCE N. 88° 18' 03" E. ON SAID NORTH LINE FOR 10.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 1;
THENCE S. 00° 41' 26" E. ON THE EAST LINE OF SAID LOT 1 FOR 640.67 FEET TO THE POINT OF BEGINNING.
SAID TRACT CONTAINS 0.147 ACRES.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, forever for the purpose of a perpetual right of way for the construction and maintenance of a street in any manner which the Second Party may deem necessary and for all uses incidental thereto or any other governmental purpose including, without limitation, the

construction, installation and maintenance of utilities by the Second Party and its franchisees.

IN WITNESS WHEREOF the First Party has executed this indenture as of the date first above written.

Camso Manufacturing USA, LTD,
a Delaware corporation

By: Jeff Harrell
Jeff Harrell, Senior Real Estate Manager
Michelin North America, Inc.,
as Authorized Representative

STATE OF SOUTH CAROLINA, COUNTY OF GREENVILLE, ss:

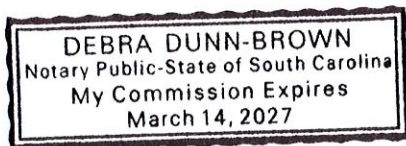
BE IT REMEMBERED, on this 28 day of APRIL, 2025, before me, the undersigned, a notary public in and for the County and State aforesaid, came **Jeff Harrell, Senior Real Estate Manager, Michelin North America, Inc., as Authorized Representative of Camso Manufacturing USA, LTD**, such person(s) being personally known to me to be the same person(s) who executed the within instrument of writing and duly acknowledge the execution of the same.

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

Debra Dunn-Brown
NOTARY PUBLIC

My Commission Expires:

MARCH 14, 2027



Exempt per K.S.A. 79-1437e(a)(13)

RIGHT OF WAY

This indenture made this 18TH day of MARCH, 2025, by and between **RCA Enterprises, LLC** of Wichita, Sedgwick County, Kansas, hereinafter referred to as First Party, and the City of Emporia, Lyon County, Kansas, a municipal corporation hereinafter referred to as Second Party.

WITNESSETH:

That the First Party, in consideration of the sum of one dollar (\$1.00) duly paid, the receipt of which is hereby acknowledged, does by these presents grant and convey unto the Second Party, its successors and assigns, all the First Party's interest in the following described parcel, lying, being and situated in the County of Lyon and State of Kansas, to wit:

DESCRIPTION:

A TRACT IN LOT 1, MARTIN-EAGLE SUBDIVISION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS, BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, AS DESCRIBED BY AARON C. DAVIS, PS 1368, ON AUGUST 30, 2024, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

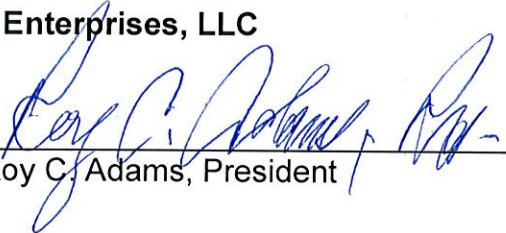
COMMENCING AT THE NORTHWEST CORNER OF SAID SE $\frac{1}{4}$;
THENCE S. 00° 41' 26" E. (BASIS OF BEARINGS) ON THE WEST LINE OF SAID SE $\frac{1}{4}$ FOR 81.90 FEET;
THENCE N. 88° 18' 08" E. FOR 30.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1, AND THE **POINT OF BEGINNING**;
THENCE S. 00° 41' 26" E. ON THE WEST LINE OF SAID LOT 1 FOR 349.69 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1;
THENCE N. 88° 22' 42" E. ON THE SOUTH LINE OF SAID LOT 1 FOR 25.00 FEET;
THENCE N. 46° 09' 22" W. FOR 21.04 FEET;
THENCE N. 00° 41' 26" W. PARALLEL WITH THE WEST LINE OF SAID LOT 1 FOR 334.70 FEET TO THE NORTH LINE OF SAID LOT 1, AND THE SOUTH RIGHT OF WAY LINE OF U.S. 50 HIGHWAY;
THENCE S. 88° 18' 08" W. ON THE NORTH LINE OF SAID LOT 1 AND SAID SOUTH RIGHT OF WAY LINE FOR 10.00 FEET TO THE POINT OF BEGINNING.
SAID TRACT CONTAINS 0.083 ACRES.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, forever for the purpose of a perpetual right of way for the construction and maintenance of a street in any manner which the Second Party may deem necessary and for all uses incidental thereto or any other governmental purpose including, without limitation, the construction, installation and maintenance of utilities by the Second Party and its franchisees.

First Party does hereby covenant, promise and agree with the Second Party, that at the delivery of these presents it is lawfully seized in its own right, or an absolute indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with the appurtenances thereto; the same are free, clear and discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of whatever nature or kind soever; and that First Party will warrant and forever defend the interest unto the Second Party, its successors and assigns, against the First Party's successors, and all and every person or persons whomsoever, lawfully claiming or to claim the same by, through or under the First Party.

IN WITNESS WHEREOF the First Party has executed this indenture as of the date first above written.

RCA Enterprises, LLC

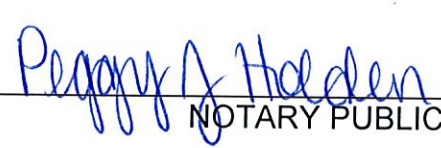


Mr. Roy C. Adams, President

STATE OF KANSAS, COUNTY OF SEDGWICK, ss:

BE IT REMEMBERED, on this 18th day of March, 2025, before me, the undersigned, a notary public in and for the County and State aforesaid, came **Mr. Roy C. Adams, President of RCA Enterprises**, such person(s) being personally known to me to be the same person(s) who executed the within instrument of writing and duly acknowledge the execution of the same.

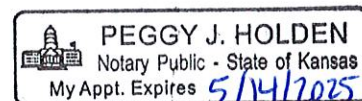
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

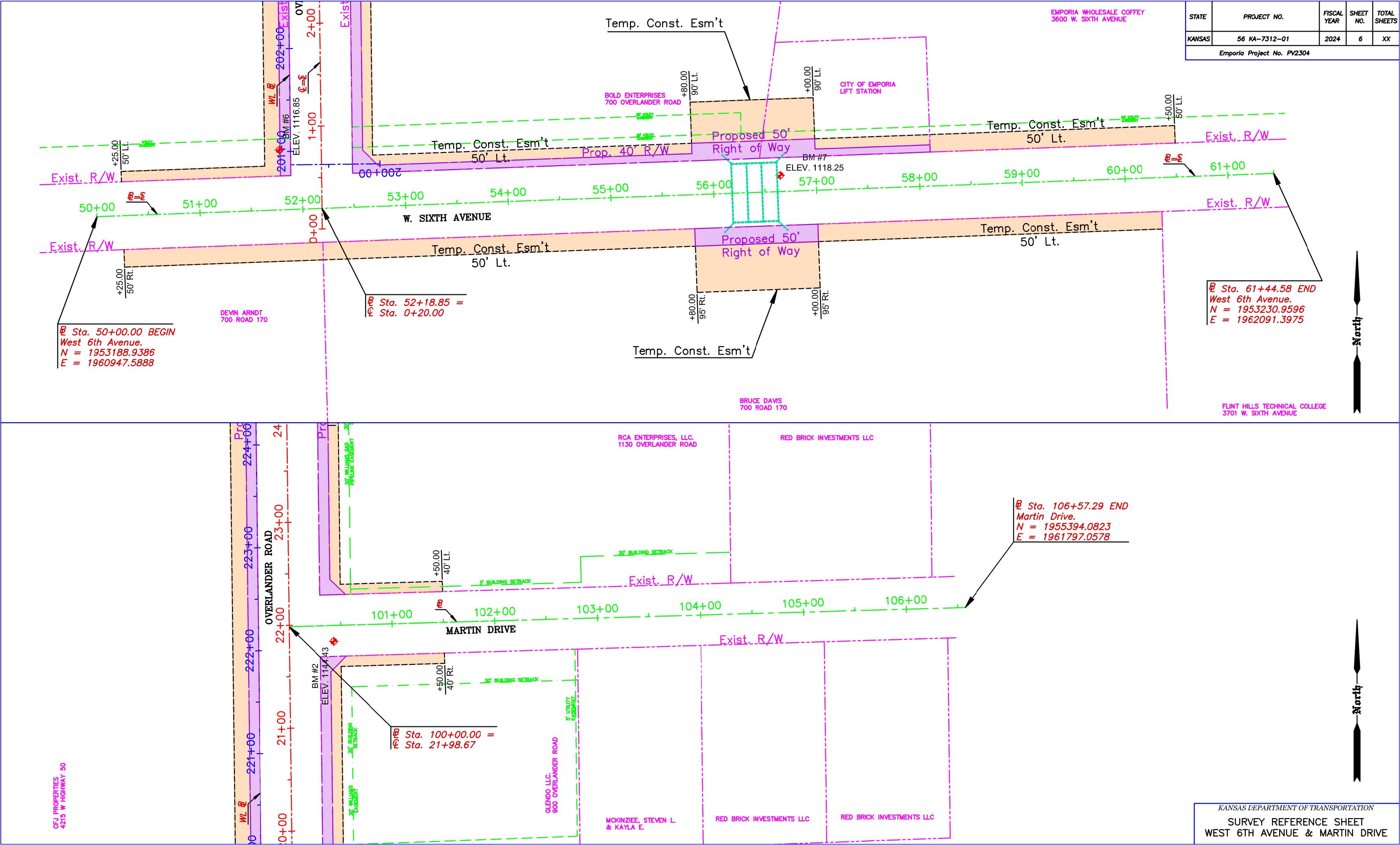
- 

NOTARY PUBLIC

My Commission Expires:

5/14/2025





STATE	PROJECT NO.	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
KANSAS	56 KA-7312-01	2024	6	XX
Emporia Project No. PV2304				

@ Sta. 61+44.58 END
West 6th Avenue.
N = 1953230.9596
E = 1962091.3975

@ Sta. 106+57.29 END
Martin Drive.
N = 1955394.0823
E = 1961797.0578

@ Sta. 100+00.00 =
Sta. 21+98.67

@ Sta. 50+00.00 BEGIN
West 6th Avenue.
N = 1953188.9386
E = 1960947.5888



Commission Action Report

618 Mechanic Roof Replacement

Title: 618 Mechanic, Friends of the Library, Roof Replacement

Agenda Date: June 4, 2025

Presented By: Kevin Hanlin, Public Lands and Facilities

Background:

Staff has been working with Ben Moore Studios for the design and RFP to replace existing roof at 618 Mechanic (this is the address on the building, County Appraiser identifies it as 616 Mechanic). Roof replacement is only for the subject address as the adjacent building, connected by a common wall, had a new roof installed in 2018.

Discussion:

Ben Moore Studios received two bids:

Evergreen Design-Build for \$75,552

Wray Roofing, Inc. for \$135,700

Financial considerations:

Funds would come from Multi-Year with a total cost of \$80,552, which includes consultant and roof install costs..

Recommended action:

Approve as the existing roof has numerous leaks and requires constant repairs. Friends of the Library occupies the front half of the building, and the majority of leaks are in this area.

Attachments:

Evergreen Design-Build Bid
Wray Roofing, Inc. Bid

SECTION 01 10 06 – BID FORM

In compliance with your Notice to Bidders and Instructions to Bidders, the Undersigned proposes to furnish all labor, materials, equipment, devices, haulage, services and incidentals necessary to construct the project in accordance with the Construction Contract Documents & Specifications prepared by Ben Moore Studio LLC

The undersigned bidder acknowledges receipt of the following Addenda:

None(☒) #1(☐) #2(☐) #3(☐) #4(☐) #5(☐)

City of Emporia

• Base Bid – TPO ROOFING \$ 75,552.00

- Included in the base bid is section 12100 Allowances

• Alternate No. 1 (MODIFIED BITUMEN) \$ No bid.

- The owner reserves the right to accept alternates not in the numerical order.
- *The General Contractor will receive a notice to proceed, prior to the date of commencement. The General Contractor will order, procure all required materials required for the project prior to the date of commencement.*

Time of Completion

The bidder agrees that the entire Work of the project will be completed in 120 calendar days from the notice to proceed.

Major Subcontractors - List all subcontractors Name & Address:

Proposed Electrical Subcontractor:

Name: None.

Address:

Contract and Contract Security

If notified of the acceptance of this Bid within 60 calendar days of the time set for opening bids, the Undersigned agrees to execute the Construction Contract within 10 days of the receipt of such notification and in accordance with this Bid and the Contract Documents.

The Bidder agrees, if awarded the Contract, to execute and deliver to the Architect all required bonds and insurance certificates as set forth in the Instructions to Bidders. **The bidder agrees and complies with all applicable federal requirements for this federally funded project.**

Declarations

The undersigned hereby declares that he has carefully examined the Site, the Notice to Bidders, the Instructions to Bidders, the Project Manual, and the Drawings, has satisfied himself as to all quantities and conditions, and understands that in signing this Bid he waives all right to plead any misunderstanding regarding same.

The undersigned understands that their competence and responsibility and that of their proposed subcontractors as well as any other factors of interest to the Owner will be a consideration in making the award.

The Owner reserves the right to reject any or all bids and to waive any informality or irregularity concerning the bids received as it may be in their interest to do so.

Evergreen Design-Build

Legal Name of Bidder

Corporate Seal

(if bid is submitted by a corporation)

Justin Mallon

By Authorized Officer (Signature)

Justin Mallon, President

Printed Name, Title

5/1/2025

Date

813 Graham St

Street Address

Emporia, KS 66801

City, State, Zip

620-344-2249

Telephone Number

justin@evergreen.build

E-mail Address

END OF SECTION 011006**Notes:**

Bid includes \$5,000 allowance per specs.

Roof is 60mil tpo with 20 year warranty through manufacturer.

Roof is fully adhered.

1/4" thick dexcell cover board is included. Coverboard is mechanically attached to roof.

Replace gutter/downspouts/trim on south wall, and add new coping cap on west wall .

Includes strip existing roof.

Project only includes roof on 50'x121' building with existing modified bitimun roof. No work is included for adjacent roof.

No consideration is given for federal wage rates, verified payroll, etc.

SECTION 01 10 06 – BID FORM

In compliance with your Notice to Bidders and Instructions to Bidders, the Undersigned proposes to furnish all labor, materials, equipment, devices, haulage, services and incidentals necessary to construct the project in accordance with the Construction Contract Documents & Specifications prepared by Ben Moore Studio LLC

The undersigned bidder acknowledges receipt of the following Addenda:

None(☒) #1(☐) #2(☐) #3(☐) #4(☐) #5(☐)

City of Emporia

- Base Bid – TPO ROOFING \$ 135,700.00
 - *Included in the base bid is section 12100 Allowances* Voluntary Alternate #01 \$ 112,500.00
See attached for Scope
 - Alternate No. 1 (MODIFIED BITUMEN) \$ 156,100.00
- The owner reserves the right to accept alternates not in the numerical order.
 - *The General Contractor will receive a notice to proceed, prior to the date of commencement. The General Contractor will order, procure all required materials required for the project prior to the date of commencement.*

Time of Completion

The bidder agrees that the entire Work of the project will be completed in 90 calendar days from the notice to proceed.

Major Subcontractors - List all subcontractors Name & Address:

Proposed Electrical Subcontractor:

Name: NA

Address: _____

Contract and Contract Security

If notified of the acceptance of this Bid within 60 calendar days of the time set for opening bids, the Undersigned agrees to execute the Construction Contract within 10 days of the receipt of such notification and in accordance with this Bid and the Contract Documents.

The Bidder agrees, if awarded the Contract, to execute and deliver to the Architect all required bonds and insurance certificates as set forth in the Instructions to Bidders. **The bidder agrees and complies with all applicable federal requirements for this federally funded project.**

Declarations

The undersigned hereby declares that he has carefully examined the Site, the Notice to Bidders, the Instructions to Bidders, the Project Manual, and the Drawings, has satisfied himself as to all quantities and conditions, and understands that in signing this Bid he waives all right to plead any misunderstanding regarding same.

The undersigned understands that their competence and responsibility and that of their proposed subcontractors as well as any other factors of interest to the Owner will be a consideration in making the award.

The Owner reserves the right to reject any or all bids and to waive any informality or irregularity concerning the bids received as it may be in their interest to do so.

Wray Roofing, Inc.

Legal Name of Bidder

Corporate Seal

(if bid is submitted by a corporation)

By Authorized Officer (Signature)

Kevin Wray President

Printed Name, Title

05/05/25

Date

1521 NW 36th St.

Street Address

North Newton, KS 67117

City, State, Zip

(316)283-6840

Telephone Number

derrickk@wrayroofing.com

E-mail Address

END OF SECTION 011006





Commission Action Report

Informational Items

Title: Informational Items

Agenda Date: June 4, 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, June 18, 2025.

Commission Meeting :

- National Teachers Hall of Fame Proclamation
- Stormont Vail Final Plat
- Ordinance Amending the Emporia/Lyon County Joint Traffic Safety Committee

Study Session :

- Community Dashboard
- Review of Appropriation and Sponsorship Requests
- Sanitary Sewer Overflows
- Snow Update



Commission Action Report

Executive Session

Title: Executive Session

Agenda Date: June 4, 2025

Recommended Action:

Recess into executive session for 15 minutes inviting pertinent city staff to discuss confidential data of a third party relating to economic development. The justification for the executive session is provided by K.S.A. 75-4319(b)(4) to protect financial affairs and trade secrets of third parties. The open meeting will resume in this room at approximately __:____ a.m./p.m.

Title: White Memorial Park

Agenda Date: June 4, 2025

Presented By: Tayler Wash, Assistant City Manager

Background:

The Emporia Community Arts Alliance (ECAA) is seeking the City Commission's formal approval to install a new public art sculpture in White Memorial Park. The proposed sculpture will be created by Wichita-based artist Kate Pepper and constructed with the assistance of Mitchell-Markowitz Construction. It consists of ten mosaic-covered concrete pillars of varying heights and diameters. The installation will include integrated uplighting for nighttime visibility and be fully ADA accessible, with 36-inch pathways.

Discussion:

Key components for consideration include the proposed use of public space, the scale and design of the sculpture, and its visual relationship to the surrounding park environment. Renderings and diagrams provided demonstrate that the installation preserves open sightlines and complements existing park features.

Beyond aesthetics, the sculpture is envisioned as a dynamic community asset. Its installation is designed to activate and revitalize White Memorial Park by drawing residents and visitors into the space. With ties to Emporia's broader arts culture, the piece is expected to promote the city as a regional destination for public art, offering photo opportunities and serving as a backdrop for events and celebrations.

The project includes a strong community engagement component, with multiple opportunities for residents to participate in the hands-on creation of the mosaic tiles. Sessions will be held with local youth organizations, the public library, and community partners. One session will coincide with an upcoming Emporia First Friday Art Walk, which will also serve as the sculpture's public unveiling. The event will feature live media coverage and food vendors, further encouraging public participation and local business support.

Once installed, the sculpture will be maintained and protected by the Gazette Collective, ensuring its long-term contribution to the community.

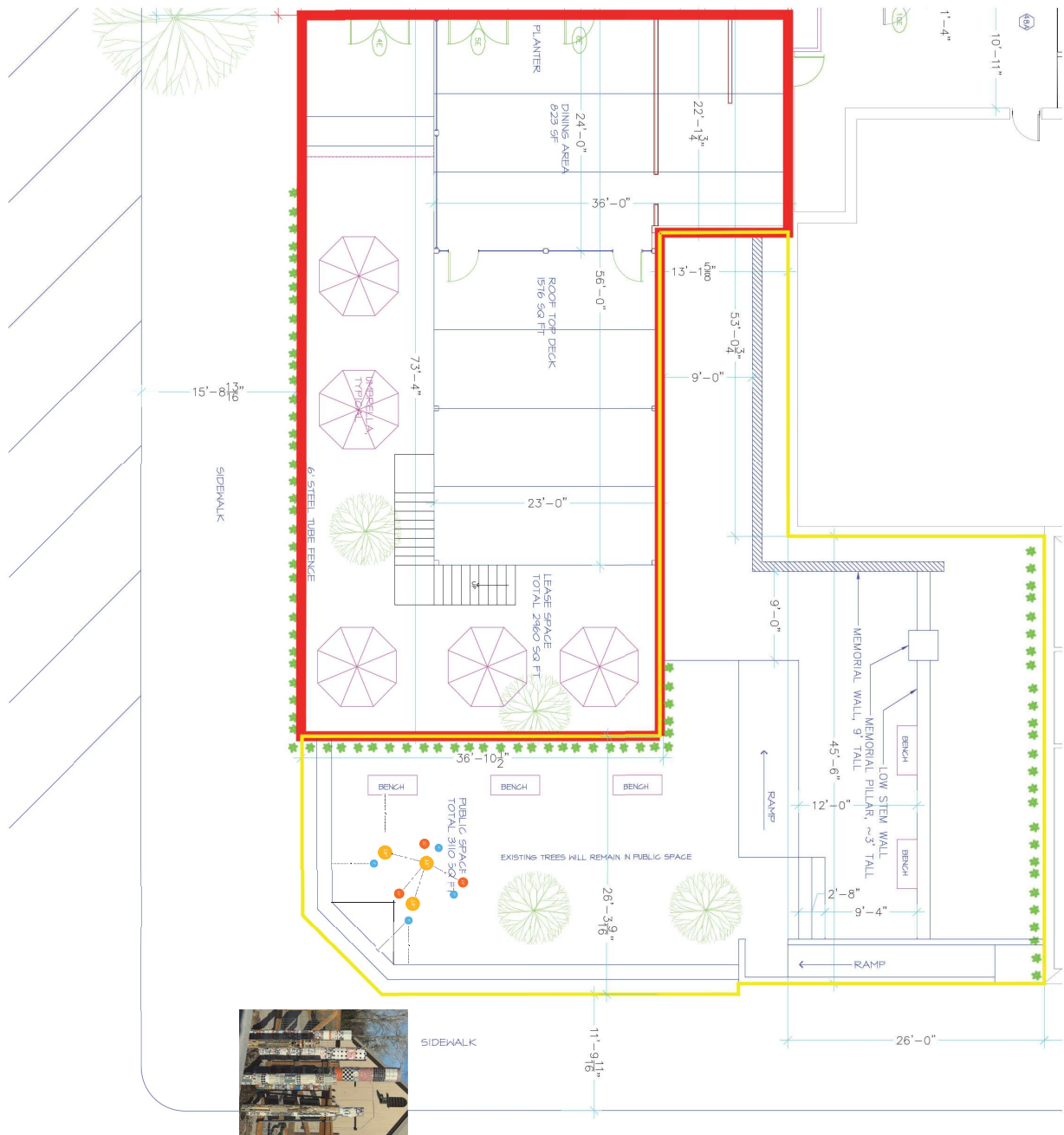
Financial Considerations:

There is no financial impact to the City. This project is fully funded and resourced by ECAA and its partners. Construction is donated by Mitchell-Markowitz Construction. Uplighting system is funded by ESB Financial. Long-term maintenance will be provided by the Gazette Collective. The City's role is limited to approving the installation site and permitting the use of White Memorial Park for this purpose.

Attachments:

White Park Art Installation Renderings/Examples

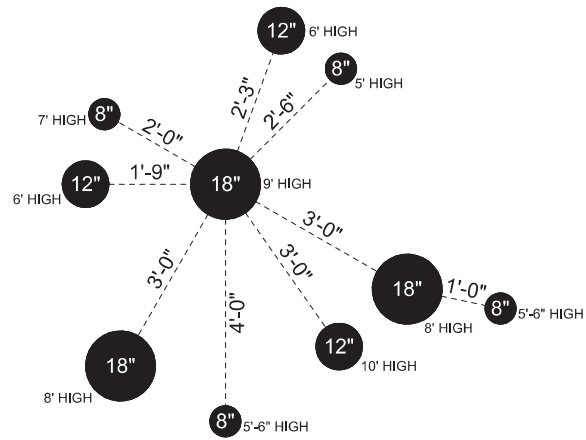
MERCHANT STREET



SIXTH AVENUE



SHEET
DATE
DRAWN BY
DESIGNED BY
SCALE
CHK #



PLAN VIEW



LOOKING EAST



LOOKING SOUTH



LOOKING WEST





Title: Pre Budget discussion
Agenda Date: June 4, 2025
Presented By: Janet Harrouff, Director of Finance

Background

State statutes require all taxing entities to adopt an annual budget. There are specific dates that must be met during the budget process. Per KSA 79-2988, the taxing entity must declare if they will or will not exceed the Revenue Neutral Rate (RNR) by July 20th to the County Clerk. If the RNR is exceeded, the budget hearing must be held between August 20th and September 20th, and the final budget must be adopted between August 20th and October 1st.

Discussion

Summary of revenue sources by fund
Proposed budget calendar and process
Current fund balances and reserve requirements

Financial Considerations

A budget must be adopted in order to levy taxes and pay expenses.

Attachments

Summary of revenue sources by fund

Budget calendar

Fund balances

City of Emporia

Revenue sources by Fund

Allowed Expenses

General Fund

Ad Valorem Taxes	19%
Sales Tax	23%
Franchise Fees	10%
Motor Vehicle Taxes	2%
Charges for Services	9%
Fines & Fees	2%
Administrative Transfers	11%

Expenses related to general government operations

Multi Year Fund

County Wide Sales tax

Infrastructure expenses

Library Fund

Ad Valorem Taxes

Motor Vehicle Taxes

Expenses for the Library

TGT Fund

Transient Guest tax

Expenses related to tourism for Emporia

Industrial Fund

Ad Valorem Taxes

Motor Vehicle Taxes

Industrial related expenses

Economic Development Sales Tax Fund

City sales tax

Economic Development related expenses

Special Alcohol Fund

Liquor Tax

Rehabilitation or counseling for drug/alcohol

Special Park Fund

Liquor Tax

Expenses related to park operations

Special Street Fund

Gasoline Tax based upon Population

Expenses related to street operations

Drug Forfeiture Fund

Money from drug cases

Funds can only be spent by the Chief of Police

Bond & Interest Fund

Ad Valorem Taxes

Motor Vehicle Taxes

Money to be used for Bond Payments

Water Fund

User Fees

Water related expenses

Waste Water Fund

User Fees

Wastewater related expenses

Solid Waste Fund

Polycart/dumpster fees

Roll off fees

Landfill fees

Solid Waste related expenses

2026 Budget

Calendar for Budget Preparation

March 24, 2025	Send CIP lists to Department Heads for review and update.
April 7, 2025	Open Budget for Department Heads to enter 2026 budget
April 7, 2025	CIP list due from Department Heads
May 9, 2025	2026 Budget request due from Department Heads
June 4, 2025	Discuss with Commission- revenue sources, fund balances
June 18, 2025	Review outside Appropriation requests – groups in attendance
July 2, 2025	Review CIP items – department heads in attendance
July 2, 2025	Overview of all funds
July 16, 2025	Determine RNR intent
July 16, 2025	Set public hearing for 2026 Budget for September 3, 2025
July 16, 2025	Set public hearing for 2026 Budget for August 20, 2025 if no RNR
July 18, 2025	Notify County Clerk of RNR intent and hearing date
August 6, 2025	Budget discussion
August 11, 2025	Planning commission to review proposed CIP list
August 15, 2025	Publish Budget Hearing in Gazette and on City website if no RNR
August 20, 2025	Final discussion of 2026 Budget & 5-year plan
August 20, 2025	Approve budget and 5 year plan if no RNR
August 22, 2025	Publish Budget Hearing in Gazette and on City website
August 22, 2025	Publish RNR budget hearing in Gazette and on City Website
September 3, 2025	Hold RNR hearing – Roll Call Vote is REQUIRED on Resolution
September 3, 2025	Hold Budget hearing
September 3, 2025	Adopt 2026 budget and 5-year plan.
September 22, 2025	Submit budget to County Clerk

City of Emporia Fund Balances

Fund	2024 Ending Cash Balance	Reserve Percentage as of 12/31/2024	2025 Budget	2026 Budget Request
101 General Fund	6,741,569.37	29.70%	29,678,836.00	30,342,058.00
102 Multi Year Fund	2,326,981.19		5,972,930.00	8,196,365.00
103 Insurance Reserve	699,713.00		-	
104 Vacant Property Program	7,579.64		-	
201 Library Fund	80.35		1,248,955.00	1,201,743.00
203 Transient Guest Tax Fund	671,186.14		1,140,000.00	1,075,200.00
204 Industrial Fund	25,977.69		26,161.00	2,000.00
205 Economic Sales Tax Fund	1,038,291.47		1,834,727.00	881,000.00
206 Special Alcohol Fund	122,643.00		144,400.00	112,200.00
207 Special Park & Recreation Fund	124,327.20		211,728.00	133,000.00
208 Special Street Fund	188,561.72		973,593.00	1,173,742.00
209 Drug Money Forfeitures Fund	65,740.92		47,045.00	5,000.00
210 Storm Water Fund	139,005.51		-	
218 Emergency Shelter Grant Fund	-		-	
224 Fire Public Education	7,793.85			
225 Police Grants Fund	(848.73)		-	
251 Emporia Homeowner Repair	6,276.16		-	
252 2014 Housing Rehab	27,379.58		-	
254 2020 CDBG Rehab Grant	3,994.00		-	
260 Land Bank	133,962.71		-	
301 Bond and Interest Fund	3,945,106.16		6,222,319.00	1,635,716.00
305 Equipment Reserve Fund	249,175.89		-	
401 Coronavirus Recovery Grant	-		-	
406 Internal Improvement Fund	3,703,647.84		-	
407 Rec Center Projects	(131,520.42)		-	
409 Water Treatment Plant Improvement	403,518.92		-	
413 Water Main Improvements	(5,927,797.91)		-	
415 Civic Auditorium Project Fund	194,164.34		-	
423 Airport Improvements Fund	218,037.32		-	
428 Park Improvements Fund	(168,579.64)		-	
441 Paving Projects Fund	(1,832,333.29)		-	
442 Construction Projects Fund	(11,126,754.88)		-	
444 Waste water Improvement	3,592,218.19		-	
501 Water Utility Fund	10,000.04	0.10%	10,584,276.00	16,649,306.00
502 Sewer Fund	640,981.46	9.04%	7,113,940.00	10,940,760.00
503 Solid Waste Fund	2,528,036.63	39.80%	8,473,676.00	10,125,368.00
601 Worker's Comp Fund	2,158,727.73		-	
602 Health Care Fund	2,394,295.69		-	
708 Fire Insurance Proceeds	6,835.34		-	
	13,187,974.18		32,394,211.00	39,351,150.00