



City Council Chambers 214 SE 8th  
Street, 2nd Floor Topeka KS 66603  
<https://www.topeka.org>

## Governing Body Agenda

**February 6, 2024**  
**6:00 PM**

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**Mayor: Michael A. Padilla**

### **Councilmembers**

<b>Karen A. Hiller</b>	<b>District No. 1</b>	<b>Marcus D.L. Miller</b>	<b>District No. 6</b>
<b>Christina Valdivia-Alcala</b>	<b>District No. 2</b>	<b>Neil Dobler</b>	<b>District No. 7</b>
<b>Sylvia E. Ortiz</b>	<b>District No. 3</b>	<b>Spencer Duncan</b>	<b>District No. 8</b>
<b>David Banks</b>	<b>District No. 4</b>	<b>Michelle Hoferer</b>	<b>District No. 9</b>
<b>Brett D. Kell</b>	<b>District No. 5</b>		

**Interim City Manager: Richard U. Nienstedt**

Addressing the Governing Body: Public comment for the meeting will be available via Zoom or in-person. Individuals must contact the City Clerk's Office at 785-368-3940 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) by no later than 5:00 p.m. on the date of the meeting, after which the City Clerk's Office will provide Zoom link information and protocols prior to the meeting. View the meeting online at <https://www.topeka.org/communications/live-stream/> or at <https://www.facebook.com/cityoftopeka/>.

Written public comment may also be considered to the extent it is personally submitted at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) on or before the date of the meeting for attachment to the meeting minutes.

The Federal Communications Commission (FCC) has adopted use of the 711 dialing code for access to Telecommunications Relay Services (TRS). TRS permits persons with a hearing or speech disability to use the telephone system via a text telephone (TTY) or other device to call persons with or without such disabilities. To reach the City Clerk's office using the TRS, please dial 711.

Agendas are available by 5:00 p.m. on Thursday in the City Clerk's Office, 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or on the City's website at <https://www.topeka.org>.

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**CALL TO ORDER:**

**INVOCATION:**

**PLEDGE OF ALLEGIANCE:**

**1. ROLL CALL:**

**2. PRESENTATIONS:**

- **Lead & Copper Rule Improvements Compliance (LCRI)**
- **Shawnee County Emergency Operations Plan (EOP)**

**3. CONSENT AGENDA:**

- A. Professional Services Contract - Cook, Flatt and Strobel Engineers, PA - Street Improvement Project 841097.07**

**APPROVAL of a Public Works Engineering Contract between the City of Topeka and Cook, Flatt and Strobel Engineering, PA, in an amount not to exceed \$77,000 for engineering services.**

*(Approval will authorize the City Manager to sign and execute the contract for design and preparation of project plans and construction documents for the Street Improvement Project 841097.07 on NW Norris, from NW West Street to NW Western Avenue.)*

- B. MINUTES of the regular meeting of January 16, 2024; and the Special Meeting of January 17, 2024**

- C. APPLICATIONS:**

**4. ACTION ITEMS:**

- A. Ordinance - City Vegetation Ordinance**

**ORDINANCE introduced by Interim City Manager Richard U. Nienstedt concerning exterior property area maintenance provisions of the International Property Maintenance Code, amending Sections 8.60.140, 8.60.070 and 8.60.080 of the Topeka Municipal Code and repealing original sections.**

**Voting Requirement: Action requires five (5) votes of the City Council. The Mayor does not vote. The proposed ordinance involves a matter of home rule on which the Mayor has veto authority.**

*(The amendment relates to vegetation that is over 12" that has turned into shrubs, trees or vines and the exterior property area maintenance provisions of the International Property Maintenance Code.)*

- B. Election - FOTZ Board of Directors Representative**

**SELECTION of one City Council voting representative to serve a three-year term on the Friends Of Topeka Zoo ("FOTZ") Board of Directors.**

**Voting Requirement: Action requires at least six (6) votes of the Governing Body. The council member receiving the highest number of votes will be elected, providing they have a minimum of 6 votes.**



*(Article Eleven of City of Topeka Contract No. 49243, between the City and FOTZ, requires the selection of a City Council member to serve a 3-year term of office in accordance with the Bylaws established by the FOTZ Board of Directors.)*

**C. Resolution - Hotel Topeka Operation Funding Request**

**DISCUSSION and POSSIBLE ACTION of A RESOLUTION introduced by Interim City Manager Richard U. Nienstedt regarding additional funding for operations and maintenance of Hotel Topeka.**

**Voting Requirement: Action requires at least six (6) votes of the Governing Body.**

*(Approval would authorize an additional \$500,000 tranche of operational funds from the General Fund (Hotel Non-Departmental Expense) to operate and maintain Hotel Topeka. A request for an additional \$277,355 of operational funding was received by the City on January 26, 2024. If the resolution is approved, a portion of the additional \$500,000 tranche would be used to pay the requested funds. The Management Agreement requires a minimum working capital account of \$150,000 be maintained and to advance funds to cover all operating expenses. Funds must be remitted within 10 days of a request.)*

**5. NON-ACTION ITEMS:**

**A. Discussion - City Fleet Garage Relocation**

**DISCUSSION concerning the relocation of the City's Light Duty Fleet Garage.**

*(Construction of the Polk Quincy Viaduct project requires closure and demolition of the Light Duty Fleet Garage in the first quarter of 2025.)*

**6. PUBLIC COMMENT:**

**Public comment for the meeting will be available via Zoom or in-person. Individuals must contact the City Clerk's Office at 785-368-3940 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) by no later than 5:00 p.m. on the date of the meeting, after which the City Clerk's Office will provide Zoom link information and protocols prior to the meeting. Written public comment may also be considered to the extent it is personally submitted at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) on or before the date of the meeting for attachment to the meeting minutes. View the meeting online at <https://www.topeka.org/communications/live-stream/> or at <https://www.facebook.com/cityoftopeka/>.**

**7. ANNOUNCEMENTS:**

**8. EXECUTIVE SESSION:**

**Executive Sessions are closed meetings held in accordance with the provisions of the Kansas Open Meetings Act.**

*(Executive sessions will be scheduled as needed and may include topics such as personnel matters, considerations of acquisition of property for public purposes, potential or pending litigation in which the city has an interest, employer-employee negotiations and any other matter provided for*

*in K.S.A. 75-4319.)*

**9. ADJOURNMENT:**



City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
[www.topeka.org](http://www.topeka.org)  
February 6, 2024

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DATE: February 6, 2024  
CONTACT PERSON: Sylvia Davis, Director of DOCUMENT #:  
Utilities; Dusty Nichols,  
Shawnee County  
Emergency  
Management  
SECOND PARTY/SUBJECT: PROJECT #:  
CATEGORY/SUBCATEGORY  
CIP PROJECT: No  
ACTION OF COUNCIL: JOURNAL #:  
PAGE #:

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**DOCUMENT DESCRIPTION:**

- Lead & Copper Rule Improvements Compliance (LCRI)
- Shawnee County Emergency Operations Plan (EOP)

**VOTING REQUIREMENTS:**

**POLICY ISSUE:**

**STAFF RECOMMENDATION:**

**BACKGROUND:**

**BUDGETARY IMPACT:**

**SOURCE OF FUNDING:**

**ATTACHMENTS:**

**Description**

Get the Lead Out Presentation



CITY OF  
**TOPEKA**



# Lead and Copper Rule Improvements Update

# Lead and Copper Rule (LCR)

2

1991  
EPA established  
the LCR



2021  
LCR Revisions



2023  
LCR Improvements



# Expected LCRR/LCRI Proposal Requirements

3

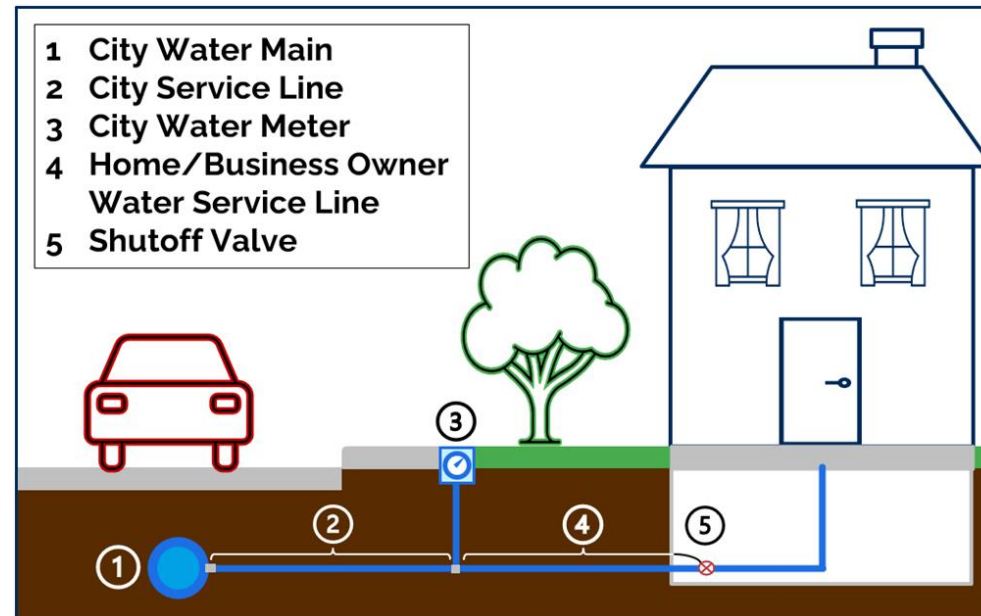
- Requires creation of a publicly accessible inventory for materials used in public and private service lines (October 2024)
- Includes new testing requirements for all elementary schools and childcare facilities (5 year timeframe)
- Requires a replacement plan of known City owned water lines constructed with lead materials (10 year timeframe)
- Requires more active role in public education and messaging about lead in drinking water



# Topeka's Inventory

4

- Verifying remaining 10% of our unknown lines
- Physical inspections by City staff
- Using customer surveys to identify unknown private service line materials



# Topeka's LCR Compliance

5

- Finalizing communications plan
- Preparing for survey roll out
- Updates to <https://www.topeka.org/utilities/drinking-water-quality/>
- Begin working with schools and daycares
- Actively searching for funding opportunities





# QUESTIONS?





City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
[www.topeka.org](http://www.topeka.org)  
February 6, 2024

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DATE: February 6, 2024  
CONTACT PERSON: Braxton Copley, Director of Public Works DOCUMENT #:   
SECOND PARTY/SUBJECT: Cook, Flatt and Strobel Engineers, PA PROJECT #: T-841097.07  
CATEGORY/SUBCATEGORY 007 Contracts and Amendments / 005 Professional Services  
CIP PROJECT: Yes  
ACTION OF COUNCIL: JOURNAL #:   
PAGE #:

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**DOCUMENT DESCRIPTION:**

**APPROVAL of a Public Works Engineering Contract between the City of Topeka and Cook, Flatt and Strobel Engineering, PA, in an amount not to exceed \$77,000 for engineering services.**

*(Approval will authorize the City Manager to sign and execute the contract for design and preparation of project plans and construction documents for the Street Improvement Project 841097.07 on NW Norris, from NW West Street to NW Western Avenue.)*

**VOTING REQUIREMENTS:**

At least six (6) votes of the Governing Body is required.

**POLICY ISSUE:**

Whether to approve the contract for professional services. Pursuant to TMC 3.30.010, all contracts for professional services exceeding \$50,000 must be approved by the Governing Body.

**STAFF RECOMMENDATION:**

Staff recommends that the Governing Body approves the contract as part of the consent agenda.

**BACKGROUND:**

On August 25, 2023, the City issued a request for proposals bid event 2864 for Professional Engineering Services for providing engineering design and construction documents for the complete reconstruction of the roadway of NW Norris Street, from West Street to Western Ave. Proposals were received on September 20, 2023 and evaluated. After evaluations staff recommend entering into an agreement for services as specified with

the most qualified firm for this particular project with Cook, Flatt and Strobel Engineering, PA.

**BUDGETARY IMPACT:**

\$77,000.00

**SOURCE OF FUNDING:**

2024 CIP, Res # 9425, Fix our streets sales tax

**ATTACHMENTS:**

**Description**

Cook Flatt and Strobel Engineering Contract

2024 CIP PDF Page 120

TMC Code Section 3.30.010

Contract No. \_\_\_\_\_

Project No. T-841097.07

**CITY OF TOPEKA  
PUBLIC WORKS DEPARTMENT  
ENGINEERING DIVISION**

**STANDARD AGREEMENT  
FOR  
ENGINEERING SERVICES**

THIS AGREEMENT, is between the City of Topeka, Kansas (Owner) and Cook, Flatt & Strobel Engineers, P.A.  
(Engineer);

**WITNESSETH:**

WHEREAS, the Owner wishes to employ the Engineer to perform professional engineering services on Project No. T-841097.07, Street Improvement Project. These services include providing engineering design and construction documents for pavement replacement along NW Norris Street from NW West Street to NW Western Avenue (the Project); and, WHEREAS, the Engineer is prepared to provide the Services;

NOW THEREFORE, in consideration of the promises contained in this Agreement, the Owner and Engineer agree to the following:

**ARTICLE 1 - EFFECTIVE DATE**

The effective date of this Agreement shall be \_\_\_\_\_

**ARTICLE 2 - GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Kansas and the codes of the City of Topeka

Contract No. \_\_\_\_\_

Project No. T-841097.07

### **ARTICLE 3 - SERVICES TO BE PERFORMED BY ENGINEER**

Engineer shall perform the Services described in Attachment A, Scope of Services, in accordance with applicable sections of the City of Topeka Design Criteria and Drafting Standards of latest revision.

### **ARTICLE 4 - COMPENSATION**

Owner shall pay Engineer in accordance with the Attachment B, Compensation.

### **ARTICLE 5 – OWNER’S RESPONSIBILITIES**

Owner shall be responsible for all matters described in Attachment C, Owner's Responsibilities.

### **ARTICLE 6 - SUPPLEMENTAL AGREEMENTS**

The provisions set forth in Attachment D, Supplemental Agreements shall be incorporated into this Agreement.

### **ARTICLE 7 - PROJECT SCHEDULE**

The provisions set forth in the Attachment E, Project Schedule shall be incorporated into this Agreement.

### **ARTICLE 8 - STANDARD OF CARE**

Engineer shall exercise the same degree of care, skill, and diligence in the performance of Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances.

### **ARTICLE 9 - INDEMNIFICATION AND INSURANCE**

Engineer hereby agrees to fully indemnify and hold harmless Owner and any of its departments, divisions, agencies, officers, employees and elected officials from all loss, damage, cost, or expenses specifically including attorneys' fees and other expenses of litigation incurred by or on behalf of the Owner and any of its officers, employees or elected officials arising out of Engineer's negligent performance of Services under this Agreement. Engineer specifically agrees that this duty to indemnify and hold harmless will apply to the following:

- a. Claims, suits, or action of every kind and description when such suits or actions arise from the alleged negligent acts, errors, or omissions of the Engineer, its employees, agents, or subcontractors.

Contract No. \_\_\_\_\_

Project No. T-841097.07

- b. Injury or damages received or sustained by any party because of the negligent acts, errors, or omissions of the Engineer, its employees, agents, or subcontractors.

Engineer shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure him against claims and liabilities which arise because of the execution of this Agreement.

The insurance coverages are as follows:

- (1) Commercial General Liability Insurance, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
- (2) Automobile Liability Insurance, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
- (3) Worker's Compensation Insurance and Employer's Liability Insurance, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
- (4) Professional Liability Insurance, with a limit of \$1,000,000 for each claim and aggregate.

Prior to issuance of the Notice to Proceed by Owner, Engineer shall have on file with Owner certificates of insurance acceptable to Owner. Said certificates of insurance shall be filed with Owner in January of each year or may be submitted with each agreement.

Engineer shall also maintain valuable papers insurance to assure the restoration of any plans, drawings, field notes or other similar data relating to the work covered by this agreement, in the event of their loss or destruction, until such time as the work has been delivered to the Owner.

Upon completion of all Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article shall survive.

Contract No. \_\_\_\_\_

Project No. T-841097.07**ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY**

Engineer shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project, (2) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to Engineer, to fulfill contractual responsibilities to the Owner or to comply with federal, state or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Engineer in Attachment A, Scope of Services.

**ARTICLE 11 - OPINIONS OF COST AND SCHEDULE**

Since Engineer has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project construction schedules, Engineer's opinion of probable construction costs and of construction schedules shall be made on the basis of experience and qualifications as a professional engineer. Engineer does not guarantee that proposals, bids, or actual Project construction costs will not vary from Engineer's cost estimates or that actual construction schedules will not vary from Engineer's projected schedules.

**ARTICLE 12 - REUSE OF DOCUMENTS**

All documents, including, but not limited to, drawings, specifications, and computer software prepared by Engineer pursuant to the Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer. Any verification or adaptation requested by Owner shall entitle Engineer to compensation at rates to be agreed upon by Owner and Engineer.

Contract No. \_\_\_\_\_

Project No. T-841097.07**ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by Engineer as part of the Services shall become the sole property of Owner, however, that both Owner and Engineer shall have the unrestricted right to their use. Engineer shall retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property protected under the copyright laws of the United States. Rights to intellectual property developed, utilized, or modified in the performance of services shall remain the property of Engineer. Owner shall have the unlimited right to the use of intellectual property developed, utilized, or modified in the performance of the Services at no additional cost to the Owner.

**ARTICLE 14 - TERMINATION**

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to Owner. If termination or suspension is for Owner's convenience, Owner shall pay Engineer for all Services performed prior to the date of the termination notice. Upon restart, an adjustment acceptable to Owner and Engineer shall be made to Engineer's compensation.

**ARTICLE 15 - DELAY IN PERFORMANCE**

Neither Owner nor Engineer shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party. For purposes of this Agreement, such circumstances include abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage, judicial restraint, and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Owner or Engineer under this Agreement.



Contract No. \_\_\_\_\_

Project No. T-841097.07

Should such circumstances occur, the nonconforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement.

For delays in performance by Engineer, as set forth in Attachment E, Project Schedule, which are caused by circumstances which are within its control, such delays shall be documented on the Engineer's Project Performance Evaluation form. Said form shall be completed at the conclusion of Project and acknowledged by both Owner and Engineer. Completed form shall be retained by Owner for a period of five years and reviewed prior to consultant selection for City projects.

In the event Engineer is delayed in the performance of Services because of delays caused by Owner, Engineer shall have no claim against Owner for damages or contract adjustment other than an extension of time.

#### **ARTICLE 16 - COMMUNICATIONS**

Any communication required by this Agreement shall be made in writing to the address specified below:

Engineer: Michael J. Morrissey, P.E.  
Cook, Flatt & Strobel Engineers, P.A.  
2930 S.W. Woodside Drive  
Topeka, KS 66614  
(785) 272-4706

Owner: City of Topeka Engineering Division  
620 SE Madison, 2nd Floor  
Topeka, KS 66607  
(785) 368-3842

With a Copy to: City Clerk  
215 SE 7<sup>th</sup> Street  
Topeka, KS 66603

Nothing contained in the Article shall be construed to restrict the transmission of routine communications between representatives of Engineer and Owner.

Contract No. \_\_\_\_\_

Project No. T-841097.07**ARTICLE 17 - WAIVER**

A waiver by either Owner or Engineer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

**ARTICLE 18 - SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**ARTICLE 19 - INTEGRATION**

This Agreement represents the entire and integrated agreement between Owner and Engineer. All prior and contemporaneous communications, representations, and agreements by Engineer, whether oral or written, relating to the subject matter of this Agreement, as set forth in Attachment D, Supplemental Agreements are hereby incorporated into and shall become a part of this Agreement

**ARTICLE 20 - SUCCESSORS AND ASSIGNS**

Owner and Engineer each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

Contract No. \_\_\_\_\_

Project No. T-841097.07**ARTICLE 21 - ASSIGNMENT**

Neither Owner nor Engineer shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Engineer from employing independent consultants, associates, and subcontractors to assist in the performance of the Services; however, other agreements to the contrary notwithstanding, in the event Engineer employs independent consultants, associates, and subcontractors to assist in performance of the Services, Engineer shall be solely responsible for the negligent performance of the independent consultants, associates, and subcontractors so employed.

**ARTICLE 22 - THIRD PARTY RIGHTS**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and Engineer.

**ARTICLE 23 – RELATIONSHIP OF PARTIES**

Nothing contained herein shall be construed to hold or to make the Owner a partner, joint venturer, or associate of Engineer, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties hereto is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.

Contract No. \_\_\_\_\_  
Project No. T-841097.07

IN WITNESS WHEREOF, Owner and Engineer have executed this Agreement.

CITY OF TOPEKA

Owner

By: Richard U. Nienstedt

Interim City Manager

Title

Date:

Attest:

City Clerk, Brenda Younger

Cook Flatt & Strobel Engineers, P.A.

Engineer

By: Kevin Holland, PE

Vice-President

Title

Date:

Attest:

Contract No. \_\_\_\_\_  
Project No. T-841097.07

**ATTACHMENT A  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Topeka, Kansas  
Engineer: Cook, Flatt & Strobel Engineers, P.A.  
Project Number & Name: Street Improvement Project No. T-841097.07  
NW Norris Street from NW West Street to NW Western Avenue

**SCOPE OF SERVICES**

**BASIC SERVICES**

The project is specifically defined below:

1. Provide design services and construction documents for asphaltic pavement of NW Norris Street from NW West Street to NW Western Avenue.
2. The construction documents will require the following included scope of services:
  - a. Data Collection: Ground Survey, R/W research, utility research.
  - b. UP Railroad coordination
  - c. Base Topography map creation
  - d. Concept Plans
  - e. Field Check Plans
  - f. Office Check Plans/Utility Plans
  - g. Final Plans and Specifications
  - h. Engineer's Opinion of Probable Costs.
  - i. A maximum of two Public Information Meeting presentations at venues provided by the City of Topeka.
  - j. As-Built documents after receiving inspector's field mark-ups.
3. Project will require Utility coordination, Union Pacific Railroad coordination, preconstruction meeting attendance, Traffic Control Plans, Construction Sequencing Plans, and Erosion Protection Plans.
4. Exhibits for R/W or Temporary Easement requirements will be provided as needed. City of Topeka may use these documents to complete the acquisitions in-house.
5. Supplementary Services apply to the project, and are not included in the initial design contract. Costs for all supplemental services will be added by contract amendment as they are determined.

**SUPPLEMENTAL SERVICES**

Any work requested by the Owner that is not included in the Basic Services will be classified as Supplemental Services. Supplemental Services shall include, but are not limited to the following.

1. Union Pacific Railroad Permitting fees. Any Fees paid to the Union Pacific Railroad will be added to this contract by amendment as they are encountered, with no markup.

Contract No. \_\_\_\_\_

Project No. T-841097.07

2. RailPros observation fees. Observation fees will be determined during the ground survey phase of the design. Any Fees paid to the RailPros or other Union Pacific Railroad required subcontractor will be added to this contract by amendment as they are encountered, with no markup.
3. Any changes in general scope, extent or character of the project from its design, including but not limited to change in size, complexity, Owner's Schedule, character of construction or method of financing; and revising previously accepted studies, reports or design documents when such revisions are required by changes in laws, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies/reports/documents or designs or due to any other causes beyond the Engineer's control. This project does not require the collection of traffic counts, traffic studies, bidding services, staking services, inspection, or construction administration.

Payment will be in accordance with the provisions of Attachment B of the Agreement.

Contract No. \_\_\_\_\_  
Project No. T-841097.07

**ATTACHMENT B  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Topeka, Kansas  
Engineer: Cook, Flatt & Strobel Engineers, P.A.  
Project Number & Name: Street Improvement Project No. T-841097.07  
NW Norris Street from NW West Street to NW Western Avenue

**COMPENSATION**

For the services covered by this Agreement, the Owner agrees to pay the Engineer as follows:

- A. For the Basic Services described in Attachment A, an hourly rate plus mark-ups and expenses as defined below not-to-exceed \$77,000.00. Payments shall be made monthly in amounts which are consistent with the amount of engineering services provided, as determined by the Engineer.
- B. Compensation for Supplemental Services shall be made as defined below, when authorized in writing by the Owner. The maximum limit for each item of additional service shall be established individually and specifically agreed to by the Owner as stated below, unless the service is included in a subsequent agreement.

Hourly rates for each classification as defined by the Engineer's rate schedule, see Attachment F. Hourly charge rates are subject to adjustment annually on January 1. Overtime, when authorized by the Owner, will be billed at 1.5 times the rates listed (non-engineer time only).

Reimbursable charges will be considered the amount of actual costs of expenses or charges, including such items as staking materials, equipment rental, equipment hourly charges, mileage, toll telephone calls, reproduction and similar project related expenses.

- D. The entire amount of each statement shall be due and payable upon receipt by the Owner.
- E. It is understood and agreed:
  - 1. That the Engineer shall start the performance of Services within 10 days of receipt of a notice to proceed and shall complete the work in accordance with the contract times set forth in Attachment E, Project Schedule.
  - 2. That the Engineer shall keep records on the basis of generally accepted accounting practice of costs and expenses which records shall be available for inspection at all reasonable times.

Contract No. \_\_\_\_\_  
Project No. T-841097.07

**ATTACHMENT C  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Topeka, Kansas  
Engineer: Cook, Flatt & Strobel Engineers, P.A.  
Project Number & Name: Street Improvement Project No. T-841097.07  
NW Norris Street from NW West Street to NW Western Avenue

**OWNER'S RESPONSIBILITIES**

The Owner will furnish, as required by the work and not at the expense of the Engineer, the following items:

1. Make available to the Engineer all records, reports, maps, and other data pertinent to provision of the services required under this contract.
2. Examine all plans, specifications and other documents submitted by the Engineer and render decisions promptly to prevent delay to the Engineer.
3. Designate one City of Topeka employee as the Owner representative with respect to all services to be rendered under this agreement. This individual shall have the authority to transmit instructions, receive information and to interpret and define the Owner's policies and decisions pertinent to the Engineer's services.
4. Issue notices to proceed to the Engineer for each phase of the design services.



Contract No. \_\_\_\_\_  
Project No. T-841097.07

**ATTACHMENT D  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

Owner:	City of Topeka, Kansas
Engineer:	Cook, Flatt & Strobel Engineers, P.A.
Project Number & Name:	Street Improvement Project No. T-841097.07 NW Norris Street from NW West Street to NW Western Avenue

**SUPPLEMENTAL AGREEMENTS**

Owner and Engineer agree that the following communications, representations, and agreements by Engineer, whether oral or written, relating to the subject matter of the Agreement are hereby incorporated into and shall become a part of the Agreement as set forth in ARTICLE 19 - INTEGRATION.

Contract No. \_\_\_\_\_

Project No. T-841097.07

**ATTACHMENT E  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Topeka, Kansas  
Engineer: Cook, Flatt & Strobel Engineers, P.A.  
Project Number & Name: Street Improvement Project No. T-841097.07  
NW Norris Street from NW West Street to NW Western Avenue

**PROJECT SCHEDULE**

Owner and Engineer recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the work is not completed within the times stipulated herein, plus any extensions thereof. Accordingly, Engineer has established time intervals, in calendar days, for submittals at various stages of the project as detailed below. As each actual submittal date occurs, Engineer shall meet with Owner to discuss the progress of the work and the actual submittal date shall be documented. If project is behind schedule, the reason shall be recorded. Engineer shall not be responsible for the time required by Owner's representative to review Engineer's submittal. When review is complete, Owner shall, in writing, authorize Engineer to proceed to the next submittal date. After final submittal date, Engineer and Owner shall meet to evaluate Engineer's performance with regard to design schedule. An Engineer's Project Performance Evaluation form shall be completed and acknowledged by both Owner and Engineer. Completed form shall be retained by Owner for a period of five years and reviewed prior to consultant selection for City projects. Past performance shall be accounted for on the evaluation sheet used to rank consultants during the interview process.

1. Schedule. Engineer will make plan submittals to Owner based on the following schedule:
  - a. Field Check - Engineer will submit field check drawings within 60 calendar days after Notice to Proceed by Owner.
  - b. Right-of-Way Drawings - Engineer will submit right-of-way drawings within 45 calendar days after the Notice to Resume Work is given by Owner following Field Check.
  - c. Office Check - Engineer will submit office check drawings and specifications within 60 calendar days after the Notice to Resume Work is given by Owner following Field Check.
  - d. Final Plans - Engineer will submit bid documents within 45 calendar days after the Notice to Resume Work is given by Owner following Office Check.
  - e. Union Pacific Railroad may require up to 6 months of review of Final Plans, and 30 days of review for each subsequent Final Plan revision. Bid Documents will be provided 30 days after final approval from the Union Pacific Railroad.
  - f. As-Built Plans – Engineer will submit as-built plans within 30 calendar days after marked-up plans are returned to the Engineer, from the Owner or within 30 calendar days after all punch list items have been completed if the Engineer's firm provided construction inspection services for the project.

Contract No. \_\_\_\_\_

Project No. T-841097.07

**ATTACHMENT F  
TO  
AGREEMENT FOR ENGINEERING SERVICES**

**2023 RATE SCHEDULE  
COOK, FLATT & STROBEL ENGINEERS, P.A.**

<b>LABOR CATEGORY</b>	<b>HOURLY RATE</b>
Senior Engineer	\$176.00
Engineer	\$156.00
Intern Engineer	\$117.00
Architect/Landscape	\$183.00
Senior Design Technician	\$154.00
Senior Technician	\$117.00
Technician	\$99.00
Junior Technician	\$81.00
Licensed Surveyor	\$148.00
Survey Chief	\$118.00
Survey Technician	\$85.00
Survey Crew (2 person)	\$212.00
Survey Crew (1 person)	\$153.00
Drilling Crew (2 person)	\$309.00
Construction Manager	\$174.00
Construction Supervisor	\$123.00
Senior Construction Technician	\$121.00
Construction Technician	\$99.00
Junior Construction Technician	\$70.00
Project Manager	\$216.00
Principal	\$268.00
Administrative	\$138.00
Clerical/Support	\$89.00
<b><u>Direct Expenses</u></b>	
Mileage	\$0.655/mile
Mileage (Drill rig)	\$5.20/mile
Motel	At Cost
Meals	\$59.00/Day

COOKFLA-01

DROWE



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/13/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Peoples Insurance Group</b> <b>1415 SW Topeka Blvd</b> <b>Topeka, KS 66612</b>	<b>CONTACT NAME:</b> <b>Derek Rowe</b> <b>PHONE</b> (A/C, No, Ext): <b>(785) 271-8097</b> <b>FAX</b> (A/C, No): <b>E-MAIL ADDRESS:</b> <b>drowe@peoplesinsure.com</b>														
<b>INSURED</b>  <b>Cook, Flatt, &amp; Strobel Engineers PA</b> <b>2930 SW Woodside Dr.</b> <b>Topeka, KS 66614</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td><b>INSURER A : Cincinnati Insurance Company</b></td> <td><b>10677</b></td> </tr> <tr> <td><b>INSURER B : Cincinnati Indemnity Company</b></td> <td><b>23280</b></td> </tr> <tr> <td><b>INSURER C : Continental Casualty Company</b></td> <td><b>20443</b></td> </tr> <tr> <td><b>INSURER D :</b></td> <td></td> </tr> <tr> <td><b>INSURER E :</b></td> <td></td> </tr> <tr> <td><b>INSURER F :</b></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	<b>INSURER A : Cincinnati Insurance Company</b>	<b>10677</b>	<b>INSURER B : Cincinnati Indemnity Company</b>	<b>23280</b>	<b>INSURER C : Continental Casualty Company</b>	<b>20443</b>	<b>INSURER D :</b>		<b>INSURER E :</b>		<b>INSURER F :</b>	
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<b>INSURER E :</b>															
<b>INSURER F :</b>															

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> CLAIMS-MADE    <input checked="" type="checkbox"/> OCCUR </div> <div> <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER:  <input type="checkbox"/> POLICY    <input checked="" type="checkbox"/> PROJECT    <input type="checkbox"/> LOC  <input type="checkbox"/> OTHER: </div> </div>			<b>ECP 0433938</b>	<b>4/15/2023</b>	<b>4/15/2024</b>	EACH OCCURRENCE \$ <b>1,000,000</b>
			DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>1,000,000</b>				
			MED EXP (Any one person) \$ <b>10,000</b>				
			PERSONAL & ADV INJURY \$ <b>1,000,000</b>				
			GENERAL AGGREGATE \$ <b>2,000,000</b>				
		PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b>					
<b>A</b>	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY  <input type="checkbox"/> HIRED AUTOS ONLY </div> <div> <input type="checkbox"/> SCHEDULED AUTOS  <input type="checkbox"/> NON-OWNED AUTOS ONLY </div> </div>			<b>EBA 0433938</b>	<b>4/15/2023</b>	<b>4/15/2024</b>	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b>
			BODILY INJURY (Per person) \$				
			BODILY INJURY (Per accident) \$				
			PROPERTY DAMAGE (Per accident) \$				
<b>A</b>	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <div style="display: flex; justify-content: space-between;"> <div>DED</div> <div>RETENTION \$</div> </div>			<b>ECP 0433938</b>	<b>4/15/2023</b>	<b>4/15/2024</b>	EACH OCCURRENCE \$ <b>5,000,000</b>
			AGGREGATE \$ <b>5,000,000</b>				
<b>B</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> <div style="display: flex; justify-content: space-between;"> <div>           ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)            If yes, describe under DESCRIPTION OF OPERATIONS below </div> <div>             Y / N  <input checked="" type="checkbox"/> N    N / A </div> </div>			<b>EWC 0433939</b>	<b>4/15/2023</b>	<b>4/15/2024</b>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
			E.L. EACH ACCIDENT \$ <b>1,000,000</b>				
			E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b>				
			E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>				
<b>C</b>	<b>Prof. Liability</b>			<b>AEH591909121</b>	<b>4/15/2023</b>	<b>4/15/2024</b>	<b>Aggregate Limit</b> \$ <b>5,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Re: All Work for the City of Topeka

**CERTIFICATE HOLDER****CANCELLATION**

<b>City of Topeka</b> <b>215 SE 7th St.</b> <b>Topeka, KS 66606</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b> 
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RFP FOR PROFESSIONAL ENGINEERING SERVICES

## **NW NORRIS STREET**

### **West Street to Western Avenue**

Project T-841097.07

Submitted to:  
CITY OF TOPEKA, KANSAS

Submitted by:  
COOK, FLATT & STROBEL ENGINEERS, PA

September 20, 2023



Cook, Flatt & Strobel Engineers, P.A.  
2930 SW Woodside Drive  
Topeka, Kansas 66614  
785.272.4706  
www.cfse.com

September 20, 2023

City of Topeka  
Contracts and Procurements Division  
215 SE 7th Street, Basement, Room 60  
Topeka, KS 66603-3983

**RE: RFP for Professional Engineering Services | T-841097.07 | NW Norris Street - West Street to Western Ave**

CFS Engineers is pleased to offer our proposal to provide professional engineering services to the City of Topeka. The City of Topeka Engineering Department has been an extremely important client to CFS for over 60 years. We **value the strong working relationship we have built with you** and all of the Public Works departments. We wish to continue to strengthen these relationships with this NW Norris Street project. With our **extensive understanding** of the City of Topeka processes already in place, we know **how to work as an extension of your staff**, and will further develop stream-lined processes for managing the project.

CFS Engineers has selected Michael Morrissey, PE to provide engineering services for the City of Topeka. Mr. Morrissey's previous experience with Topeka and its staff allows the **City to maintain a direct line of communication with our team** to ensure the project keeps to schedule and budget.

To accomplish this project, we have **assembled a diverse team of committed professionals** that bring the strength of past experiences and a holistic approach needed to amplify the project's success. By engaging the citizens in our own community, our team has greatly contributed to developing transportation strategies for the City of Topeka that work. We are proud of our continued efforts with the City of Topeka and other regional communities to develop similar roadway improvements.

Michael and the CFS staff **know how to function as a government representative** not only as designers, but also as advisors, responsible for coordinating outside services from other private firms and government entities. **We understand the correct professional posture while acting on the City's behalf**, is crucial to public relations. We often coordinate, lead and participate in public meetings, events, and press interviews. CFS understands that as your engineer, **we are always working for your best interest**.

We **value how our work has advanced the growth and development of the City of Topeka**, and look forward to continuing to be of service to the community. The included information illustrates the professional qualifications and experiences that make the CFS team the most qualified for the NW Norris Street project. Your consideration is sincerely appreciated!

Respectfully Submitted,  
Cook, Flatt & Strobel Engineers, PA

Kenneth M. Blair, PE  
Project Director  
785.272.4706 | kblair@cfse.com

Mike Morrissey, PE  
Project Manager | Point of Contact  
785.272.4706 | mmorrissey@cfse.com



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## PROJECT UNDERSTANDING

The project's focus is replacing approximately 1950 linear feet of roadway with asphalt pavement. The existing roadway is a mix of asphalt and gravel. The City of Topeka has selected this location as a pilot project for higher Recycled Asphalt Pavement (RAP) content. For price evaluation and awarding at bid, we will be including alternate bids for the standard City mixes currently outlined in the Standard Specifications. The project also includes evaluation of water, sanitary sewer, and storm sewer utility review, and replacement if deemed necessary. With the U.P. Railroad along the entire length of the project, railroad coordination and permitting will be required. Every power and light poles skirt the south side of the roadway as well. There are also three residential drive accesses that will be impacted during construction.

## PROJECT APPROACH

The project as described is inherently more complicated than face value due to the presence of the Union Pacific Railroad tracks, which are less than 50' away and parallel to centerline of road. This causes some difficulty for both design and construction.

### RAILROAD COORDINATION

Union Pacific Railroad has minimum requirements when performing work, including ground survey, in proximity to the tracks. As such, our very first critical path item will be encountered upon in securing the permissions to complete the ground survey. CFS Engineers worked with the U.P. Railroad on the N. Kansas Avenue project. This project was delayed, due to endless U.P. Railroad reviews and requirements that needed updating. The U.P. uses a third party review team, RailPros. CFS Engineers has gained a vast amount of experience in the process with the U.P. in that project and is ready to kickoff the project with the permitting outreach. The ground survey alone will likely cost the City of Topeka a \$3,055 application fee, a fee which will be incurred again at construction permitting. The permit to complete ground survey may be turned around quicker than construction, however, the U.P. reserves 90-120 days to complete their review, and this time frame expands every time they return comments with "resubmit". We are confident that the ground survey stage will take less than 90 days to get an approval, but the construction permitting could take every bit of 120 days after we complete final plans. CFS Engineers has recently been through this process, and we are prepared to navigate it in the most time-efficient manner. Understandably, the requested start construction date in the



Entrance Drive and Railroad Access Point at Lincoln St



Union Pacific Offices and Parking



2nd Railroad Access Just West of Project



RFP is unattainable due to the U.P. and RailPros review timeframes.

The timeframes for U.P. and RailPros reviews will be reduced if we do not plan any trenching activities. The RFP for the project includes evaluation of water, sanitary sewer, and storm sewer utility review, and replacement if deemed necessary. Trenching for these items within 50' of the rails, which they are, will inevitably cause a more extensive construction plan review and construction requirements from RailPros and the U.P. Requirements such as track movement monitoring, and sacrificial anode protection of utilities, and RailPros construction observation are all to be expected.

### UTILITY COORDINATION

The storm drainage for this area is all at grade ditches. The west end has no discernable destination, and the east end has two inlets at Western Avenue just north of Norris. The elevation of each end is virtually the same at elevation 880.00. As such, CFS Engineers will evaluate the stage levels to drain into the existing inlets. There may be some ability to add inlets to the system at Western, however it will not extend very far, because the inlets currently only have a flowline depth of 3.78 feet. Shallow ditches will likely need to be used, as in the existing condition, but with improved definition to keep the roadways clear, even when the ditches fill with water. The Union Pacific Railroad runs along the south edge the entire length of the project, and it appears that the U.P. uses various points along the way as access points for track maintenance and crossings. This potentially precludes the ability for us to convert to a curbed section, or even a laydown Type IV curb section. The final roadway section will need to keep both drainage and U.P. Railroad access in mind.

There is only a small amount of sanitary sewer near Western Ave., a 1926 8" VCP pipe system with brick manholes. The determination to replace this system must be made as soon as possible during the design so that the proper permit applications can get turned in to RailPros. We would request that the City of Topeka either provide sewer camera data ASAP, or include it in the scope of the design contract. CFS Engineers uses Hydroklean as a subconsultant for all of our sewer cam needs.

The water distribution is by a 6" PVC (C900) installed in 1995. There is a parallel transmission line at 24" ductile iron pipe, installed in 2003. These dates are relatively young, and so we would be interested in reviewing break history to decide if any repairs or replacements are necessary. This is one category where trenching can be significantly reduced or even eliminated if the water systems are already adequate.

### TRAFFIC CONTROL

Traffic control can easily be handled with a complete shutdown of the road, with only a short temporary shoofly detour for Railroad access and the three homes. See our Exhibit for a preliminary look at the sequencing with access.

### PUBLIC ENGAGEMENT

Two public meetings are planned. The first meeting will occur after Concept Plans have been discussed and agreed upon with the City of Topeka staff. The meeting will focus on introducing the project to property and business owners. We will gather input on their concerns, provide the anticipated construction timeframe and outline our plan for maintaining access to properties and businesses during construction. The second meeting will occur after Office Check plans to present



Google-Street View Shows the Ponding Issues at Buchanan



Power Poles in the Ditch Line for Drainage

the final design, and receive any last minute concerns of the property owners. This meeting will finalize access during construction and the construction schedule. Mike Morrissey has proven experience giving quality public presentations and conveying important information such as phasing and access plans.

The Covid-19 pandemic created new challenges for public information, and for a time public engagement was through recorded Zoom meetings. Recently, a return to physical Public Meetings has emerged. We will preferably continue in-person meetings, but will be cognizant of the potential to return to virtual meetings.

### CONSTRUCTION PHASE SERVICES

We understand the City may provide construction administration and inspection utilizing in-house personnel. Our team can also provide construction administration and inspection to supplement the City staff. If included in the final contract scope, CFS will assist the City in the advertisement, bid and construction phases of this project. We regularly provide these services to our clients and employ a competent and certified group of construction inspectors. Our team consists of engineers that have been a part of roadway improvement projects throughout Topeka. We understand that unforeseen construction issues need to be resolved quickly, and we work with the City to make timely decisions to keep the Contractor and project moving forward. Our team understands the importance of resolving construction issues quickly and correctly with the budget, safety, and longevity in mind. Another area where CFS Engineers excels is Quantity tracking, Pay app review, and Change Order reconciliation. With CFS Engineers as your Construction Admin professionals, the City of Topeka reduces the minutia workload on staff. The following services can be incorporated at the discretion of the City as a part of the design project or under separate purchase order. Our services during construction would include the following:

- » Construction observation
- » Full time on-site representation (if needed)
- » Shop drawing review
- » Oversight of testing services
- » Project meetings
- » Monthly pay estimates monitoring
- » Progress monitoring
- » Final inspection/contract closeout
- » Record drawing preparation (as-builts)

## COMPANY BACKGROUND

CFS is a full-service civil engineering consulting firm that provides professional engineering, transportation and environmental services throughout the Midwest. Our staff of over 90 professionals offers client-focused solutions for public infrastructure, private development, structural, geotechnical and survey projects. As a medium sized firm, we maintain stability, constantly pushing for state-of-the-art solutions, while remaining focused on our core values of service and project quality. We consider it a privilege to have partnered with hundreds of communities and clients for the past half-century.

To Cook, Flatt & Strobel, engineering is more than just eye-pleasing design. To us, engineering means relationships, community and trust while forging lasting, reliable partnerships with common goals. We are strategic thinkers, detailed producers, and innovative problem solvers. We work hard to deliver quality with passion while remaining flexible and dependable.

Our team includes dynamic professionals passionate about tackling challenges and generating real-world, common sense solutions. Within each project, we strive to improve quality of life, protect natural resources, and better the environment. CFS integrates a broad range of services within one organization, offers comprehensive approaches to clients, and provides expertise to infrastructure challenges.

**We're not just an engineering firm; we're an extension of your values and hard work.**

### TRANSPORTATION & ROADWAY DESIGN

Over 80% of our projects include a transportation component - designing what is necessary for the efficient movement of people and goods across the country. CFS provides the following transportation services: location studies, rehabilitation/reconstruction, local streets, urban and rural collectors and arterials, highways and freeways, multi-level interchanges, pedestrian facilities, railroad crossings, airfields, intelligent transportation systems (ITS) and complete streets

### SURVEY

CFS Engineers utilizes the most current technology and qualified staff to collect and manage topographic and boundary data. Licensed land surveyors prepare all legal descriptions, including easements, rights-of-way, and exhibits. CFS survey crews provide staking services for hundreds of different projects including grading, bridges, roads, utilities, sites, and buildings. We work with the contractor to provide clear, accurate direction for construction.

### CFS ENGINEERS SERVICES:

Transportation / Roadway Design  
Complete Streets  
Traffic Engineering  
Multi-Modal Transportation Planning & Engineering  
Landscape Architecture  
Surveying  
GIS Mapping  
Geotechnical  
Public Utilities  
Utility Coordination  
Public Involvement

Type of Business: Corporation

Date of Establishment: 1961

Based in the heartland, CFS spans 7 regional offices in Kansas and Missouri, ready to serve your engineering needs.

### OFFICE LOCATIONS:

Topeka, Kansas (2)  
Lawrence, Kansas  
Kansas City, Kansas  
Kansas City, Missouri  
Springfield, Missouri  
Jefferson City, Missouri

### CONTACT INFORMATION:

Mike Morrissey, PE  
Project Manager | Point of Contact  
2930 SW Woodside Drive  
Topeka, KS 66614  
o: 785.272.4706  
mmorrissey@cfse.com





## UTILITY COORDINATION

CFS Engineers will proactively manage utility coordination efforts by meeting with each utility company to verify existing utility locations and integrate the vital information into our design to identify potential conflicts and outline relocation requirements. This work, early in the project development process, helps to ensure that future change orders and cost overruns do not occur. CFS also provides as-builts and relocation management services.

## RAILROAD COORDINATION

Many projects are located within areas of railroad rights-of-way and require coordination with railroad companies to ensure that all requirements are met and the project is not delayed. CFS keeps abreast of each company's rules and regulations and pro-actively coordinates projects with private railroad owners.

## GEOTECHNICAL

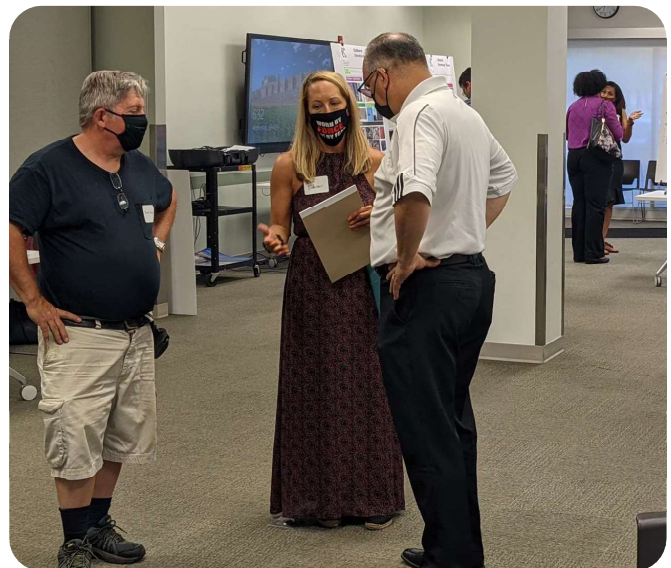
CFS performs subsurface investigations and sampling as well as testing, analysis, and evaluation of materials and preparation of geotechnical reports including all data, procedures, testing, results and recommendations. CFS provides various types of geotechnical analysis and design, including foundation analysis and design, subsurface drainage analysis and design, and pavement analysis and design. We can also conduct any necessary geophysical surveys utilizing seismic testing, resistivity testing, sonic testing, magnetic testing, ground penetrating radar or thermography. CFS also has our own drill rig which helps with responsiveness.

## CONSTRUCTION ADMINISTRATION

CFS has provided construction phase services for 57 years. Our staff of certified inspectors and managers work with the Client to review construction activities in accordance with the design and contract documents, within the allocated budget and scheduled deadlines. Our staff of experienced construction managers and observers/inspectors are provided with on-going training and certified equipment.

## PUBLIC INVOLVEMENT

CFS provides a wide range of services to engage a variety of stakeholder groups in the public process. This includes communications, stakeholder engagement, public education and outreach, public involvement, and public relations. We take technical and complex policy and design information and make it easily understandable for diverse groups - a scenario where stakeholders feel empowered and able to engage in the process. We utilize various levels of technology but never forget that the public involvement process is best served by traditional face-to-face discussion.



## SIMILAR EXPERIENCE

### CLARION WOODS STREET IMPROVEMENTS TOPEKA, KANSAS

During the project, CFS investigated drainage issues within the Clarion Woods neighborhood and provided geotechnical reports along with cost estimates for design scoping of pavement and curb rehabilitation. The team also provided survey, design and construction administration for improvements to streets and storm sewers. Additionally, CFS provided construction documents and construction staking for the project.

During construction, contractors unexpectedly ruptured a gas service line. After repairing the line, Kansas Gas Services contracted CFS to provide On-Call survey services to aid in their relocation of additional service lines that KGS had previously expected to be at clear depth. 12 lines were in fact too shallow. Our fast paced efforts kept the KGS crews ahead of the road crews during the phasing of the project.

CFS provided engineering services for neighborhood improvements including design for street and storm sewers, survey and construction administration. Additionally, CFS worked with the City of Topeka to provide a substantial public involvement program that included several meetings.

### N. KANSAS AVE RECONSTRUCTION PROJECT TOPEKA, KANSAS

This project was initially a pavement replacement project, which quickly transformed into a complete design and replacement of the water main, and storm sewer system. This took the U.P. Railroad coordination and approval up a notch on permitting requirements. There were many lessons learned during the course of design and permitting. CFS Engineers now understands the systems in place with RailPros and the Union Pacific Railroad for permitting projects in or near the U.P. right-of-way.

The total length of the project was 660 linear feet of roadway replacement. Storm sewer and waterline both crossed under the tracks. The waterline was designed using ductile iron pipe, with cathodic protection provided by sacrificial anode clusters at each end of the pipe. A high volume cross continental fiber optic line owned by MCI runs parallel to the new waterline, and so coordination and clearance was of the utmost importance. The storm sewer was designed primarily with concrete pipe, with four short sections of polyethylene pipe (PE) as a pilot test for the City to evaluate for future allowance on City projects.





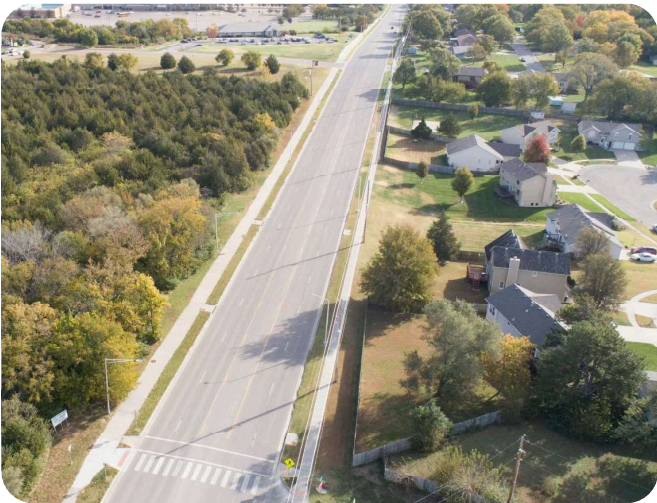
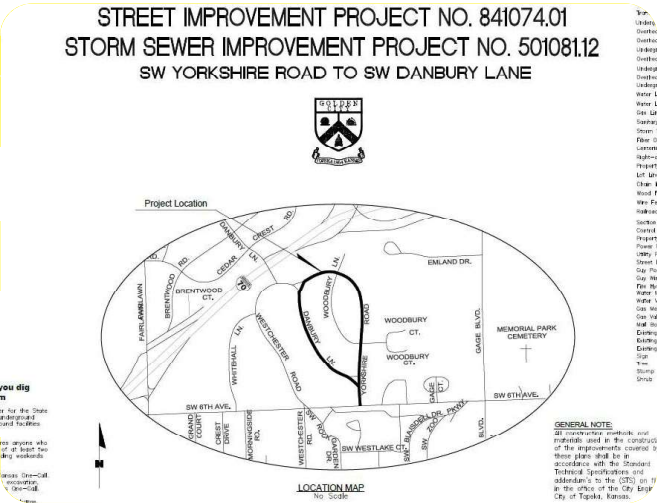
**DANBURY / YORKSHIRE  
NEIGHBORHOOD IMPROVEMENTS**  
TOPEKA, KANSAS

This fast-paced neighborhood improvement and waterline project required complete ground survey, pavement bores, and storm sewer CCTV. Our robust basemap includes all utilities accurately mapped, such that new 6" PVC watermain can be constructed in conjunction with all new concrete pavement and curbs. A drainage study was conducted to determine the needed storm sewer improvements. The phasing complexities of maintaining the 55 homeowners access as well as keeping them in water on a daily basis is a challenge currently being met by our team.

**SW 21ST STREET - URISH TO ARVONIA**  
TOPEKA, KANSAS

SW 21st Street was widened from a rural 2 lane roadway to a 5-lane roadway with storm sewer, sidewalks, lighting, and significant utility relocations throughout the project.

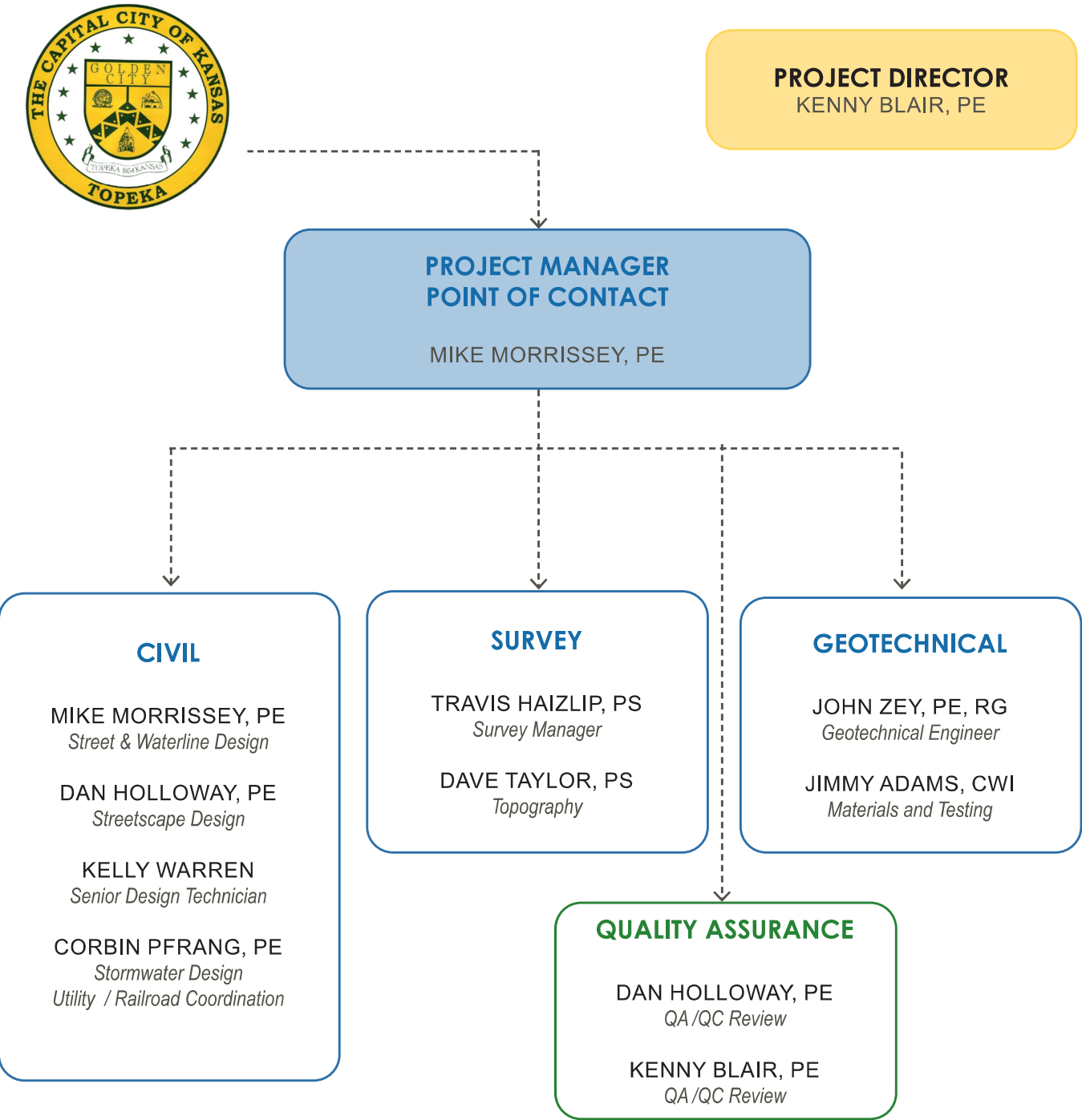
Our project team was responsible for survey, geotechnical work, developing the plans through conceptual into final construction documents, right-of-way plans, and coordination with utility companies to relocate gas mains, water lines including a main, telecommunications lines, cable lines, fiber and power lines. Once a contractor was awarded the bid, our team also provided the construction administration and construction observation for the project.



Project Currently Under Construction

# PROJECT TEAM

Our staff are expert designers, reviewers and inspectors when it comes to transportation design. At the project site, we naturally recognize issues with pavement markings, signage, lighting, sight lines and obstructions, clear zones, traffic control, signalization, pedestrian facilities, drainage and other roadway features. We have experience with several roadway improvements, new roadway connections, and large award winning facilities. Our team is ready to start work on this project.

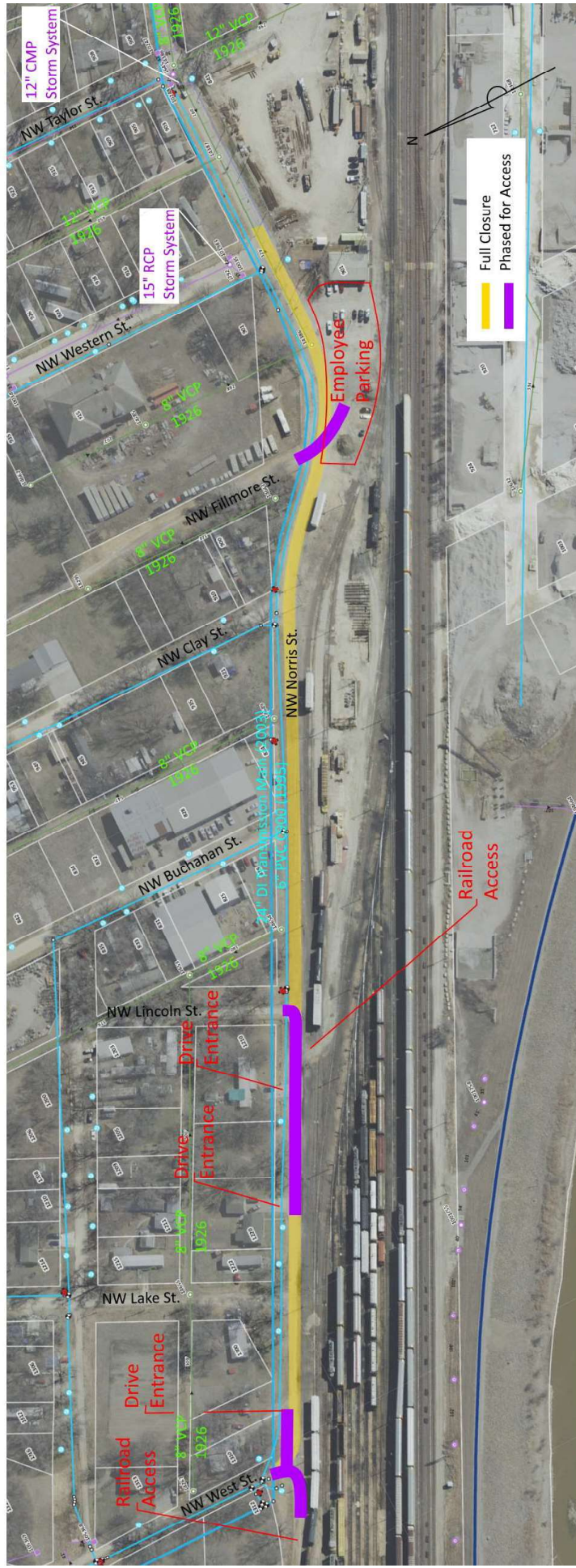


PROJECT DESIGN SCHEDULE

CITY OF TOPEKA NW Norris Street Improvements Project Project T-841097.07																
ID	Task Name	Start	Finish	<div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div></div>												
1	Design Contract Date	Fri 10/13/23	Fri 10/13/23	◆ 10/13												
2	Kickoff Meeting - Programming Concept Layouts	Fri 10/13/23	Thu 10/19/23													
3	Ground Survey / Utility Marking	Fri 10/13/23	Fri 11/10/23													
4	COT Utilitiy Evaluation	Fri 10/13/23	Fri 11/10/23													
5	Field Check Plans - Layouts and Sequencing	Mon 10/23/23	Fri 12/15/23	◆ 12/15												
6	Permitting First Submittal	Fri 12/15/23	Fri 12/29/23	◆ 12/29												
7	Office Check Plans Preparation	Fri 12/29/23	Fri 3/8/24	◆ 3/8												
8	COT Review	Mon 3/11/24	Fri 3/29/24													
9	PS&E and Utility Plans Preparation	Mon 4/1/24	Fri 5/3/24	◆ 5/3												
10	U.P. Comments / Utility Companies Review	Mon 1/15/24	Fri 7/19/24													
11	Utility Relocations	Mon 7/22/24	Fri 10/11/24													
12	Final Plans, Specifications, Estimates for Bidding	Mon 7/22/24	Fri 8/30/24	◆ 8/30												
13	Advertisement	Wed 9/11/24	Wed 9/11/24	◆ 9/11												
14	Bid Letting	Wed 10/9/24	Wed 10/9/24	◆ 10/9												
15	Contract Execution	Fri 11/22/24	Fri 11/22/24	◆ 11/22												
16	Contractor Certifications for work in U.P. R/W	Fri 11/22/24	Sat 1/18/25													
17	Begin Construction	Mon 2/3/25	Mon 2/3/25	◆ 2/3												



## EXHIBIT



# ONE VISION. ONE TEAM. ONE CALL.



CFS Engineers  
2930 SW Woodside Drive  
Topeka, Kansas 66614  
785.272.4706







# CITY OF TOPEKA

## Event # 2864-0

**Name:** Professional Engineering Services T-841097.07

**Reference:** NW Norris St., West St to Western Ave T-841097.07

**Description:** The City of Topeka is requesting proposals for professional engineering services for Project No. T-841097.07, NW Norris Street from West Street to Western Avenue. The services include providing engineering design and construction documents for the complete reconstruction of the roadway.

**Buyer:** Glenn Roth

**Status:** Draft

**Event Type:** RFP

**Currency:** USD

**Category:** PROFESSIONAL SERVICES

**Sub Category:** ENGINEERING

**Sealed Bid:** Yes

**Respond To All Lines:** Yes

**Q & A Allowed:** Yes

**Number Of Amendments:** 0

## Event Dates

**Preview:**

**Q & A Open:** 08/25/2023 02:31:00 PM

**Open:** 08/25/2023 02:30:00 PM

**Q & A Close:** 09/13/2023 05:00:00 PM

**Close:** 09/20/2023 02:00:00 PM

**Dispute Close:**

## Terms And Conditions

### General

### General

Read all terms and conditions before registering or responding to a bid event.

Thank you for your interest in registering online to do business with the City of Topeka. All data in this website is subject to the Statutes of the State of Kansas and ordinances contained in the Topeka Municipal Code. The City of Topeka shall not be held liable or legally bound by any software limitations or defect. The City of Topeka operates under and is subject to the Central Time Zone (CST or CDT).

The City of Topeka strives to include as many suppliers to enhance the competitive sealed bidding process. The City is unable to include every supplier in all events that they may be able to quote on. Registration on this site does not guarantee your organization notification of every bidding opportunity.

## Event # 2864-0: Professional Engineering Services T-841097.07

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### Disclaimer

The City of Topeka attempts to maintain continuous access to the supplier portal. However, from time to time, access may be interrupted or prevented due to maintenance, site problems, Internet problems, or problems experienced by the user due to the user's computer system. The City makes no warranties that the supplier portal will be uninterrupted or error-free. Regardless of the source of any problem, it is the user's responsibility to ensure that its bid is timely received. Because of the discrepancies inherent in timing mechanisms (e.g. cell phone, computers, mobile devices), the bid time will be determined based upon the time indicated on the City server for the Strategic Sourcing application. If the user does not submit its bid at or before the time indicated on the City server for the Strategic Sourcing application, the bid will be electronically rejected by the Strategic Sourcing application as untimely.

The City shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses resulting from: (i) the use or the inability to use the supplier portal; (ii) unauthorized access to or alteration of the user's transmissions or data; or (iii) any other matter relating to the supplier portal.

It shall be the bidder's responsibility to advise the City of Topeka of any specifications, language, other requirements or any combinations thereof, which restricts or limits bidding. Such notification must be submitted in writing and must be received by the Contracts and Procurement Division no later than five (5) days prior to the bid closing. The specifications were written with the intent of permitting competitive bidding. The City of Topeka reserves the right to waive minor deviations in the specifications which inadvertently restrict bidding to a single manufacturer (or vendor) or when such deviations do not alter nor deter the City from accomplishing the intended use or function. Each bid shall include descriptive literature and specifications on the product bid. However, the providing of this material shall not be considered a substitute for listing deviations.

Amendments to Bids: To ensure maximum access opportunities for users, events/solicitations shall typically be posted for a minimum of ten (10) days and no amendments shall typically be made within the last three days before the event/solicitation is due. Bidders/vendors are cautioned that the competitive nature of their offers could be affected if their submission does not include all amendments. For this reason bidders/vendors are advised to revisit all solicitations to which they intend to respond three (3) days prior to the due date. It is the bidder's/vendor's responsibility to check the website from time to time for updates to events/solicitations and to pick up additional addenda and information.

All bids shall be considered firm for a period of forty-five (45) calendar days from the bid opening date unless otherwise stated in the bid specification document(s).

If bidders have a concern about bid specifications, or any term or condition that they believe restricts competition, bidders must contact, in writing, the Procurement Buyer assigned, no later than five (5) days prior to bid closing. Upon receipt, the Procurement Buyer will research the issue and provide a response within five (5) days. Failure to submit a question or concern within the five (5) day period will waive any right the bidder may have to challenge the bid letting or a bid award.

### Standard Terms and Conditions

#### Contractor's Statement of Agreement

##### Contractor's Statement of Agreement

The City of Topeka, Kansas requires that all contracts of the City and its agencies include specific provisions to ensure equal employment opportunity and that all contractors provide evidence of the adoption of an affirmative action program. To comply with these requirements, all persons wishing to enter into a contract with the City shall complete and sign this agreement.

The contractor agrees to:

1. Comply with K.S.A. 44-1030 requiring that:

(A) The contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability unrelated to such person's ability to engage in the particular work, national origin or ancestry;

(B) In all solicitations or advertisements for employees, the contractor shall include the phrase, "equal opportunity employer," or a

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## Event # 2864-0: Professional Engineering Services T-841097.07

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similar phrase to be approved by the Contracts and Procurement Division;

(C)If the contractor fails to comply with the manner in which the contractor reports to the Contracts and Procurement Division in accordance with the provisions of K.S.A. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

(D)If the contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Contracts and Procurement Division which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and

(E)The contractor shall include the provisions of paragraphs (A) through (D) in every sub-contract or purchase order so that such provisions will be binding upon such sub-contractor or vendor.

2.Guarantee that during the performance of any City contractor agreement the contractor, sub-contractor, vendor, or supplier of the City shall comply with all provisions of the Civil Rights Act of 1866 as amended, Civil Rights Act of 1964 as amended, Equal Employment Opportunity Act of 1972 as amended, Executive Order 11246, Age Discrimination in Employment Act of 1967 as amended, Americans with Disabilities Act of 1990 and Rehabilitation Act of 1973 as amended, Equal Pay Act of 1963 and City of Topeka Ordinance No. 16889 and any regulations or amendments thereto.

3.Submit to the Contracts and Procurement Division a written affirmative action program, a certificate of compliance or such other certificate as is acceptable to the Contracts and Procurement Division which is evidence of the adoption of an affirmative action program.

The contractor agrees to maintain a current and accurate plan on file with the Contracts and Procurement Division and shall update the plan as needed.

Company NameCompany Address

Signature and TitleDate

Revised 01-10-01

### Contractual Provision

City of Topeka  
Department of Administrative and Financial Services  
Contracts and Procurement Division (Rev 06.2021)

### CONTRACTUAL PROVISIONS

#### 1.TERMS HEREIN CONTROLLING PROVISIONS

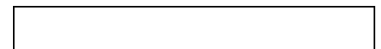
It is expressly agreed that the terms of each and every provision in this Attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.

#### 2.AGREEMENT WITH KANSAS LAW

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

#### 3.TERMINATION DUE TO LACK OF FUNDING

If, in the judgment of the City Manager, sufficient funds will not be available to continue the functions performed in this agreement and for the payment of the charges hereunder, City may terminate this agreement at the end of its current and any succeeding fiscal year. City agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided City under the contract. City will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by City, title to any such equipment shall revert to contractor at the end of City's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the City or the contractor.



## Event # 2864-0: Professional Engineering Services T-841097.07

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### 4. TERMINATION FOR CONVENIENCE

The Director of Contracts & Procurement or designee may terminate performance of work under this contract in whole or in part whenever the Director determines that the termination is in the best interest of the City. In the event of termination, the Director or designee shall provide the Contractor written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may not have been terminated by the notice.

### 5.DISCLAIMER OF LIABILITY

No provision of this contract will be given effect that attempts to require the City to defend, hold harmless, or indemnify any contractor or third party for the City's acts or omissions. The City's liability is limited to the liability established in the Kansas Tort Claims Act, K.S.A. 75-6101 et seq.

### 6.ANTI-DISCRIMINATION CLAUSE

The contractor agrees: (a) to comply with all federal, state, and local laws and ordinances prohibiting unlawful discrimination and to not unlawfully discriminate against any person because of age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer;" and (c) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor. The contractor understands and agrees that the failure to comply with the requirements of this paragraph may constitute a breach of contract, and the contract may be cancelled, terminated or suspended, in whole or in part by the City of Topeka.

### 7.ACCEPTANCE OF CONTRACT

This contract shall not become effective until the legally required approvals have been given.

### 8.ARBITRATION, DAMAGES, WARRANTIES

Notwithstanding any language to the contrary, no interpretation shall be allowed to find the City or any department or division thereof subject to binding arbitration. Further, the City of Topeka shall not be subject to attorney fees and no provision 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.

### 9.REPRESENTATIVE'S AUTHORITY TO CONTRACT

By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

### 10.RESPONSIBILITY FOR TAXES

The City of Topeka shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

### 11.INSURANCE

The City of Topeka shall not be required to purchase any insurance against loss or damage to any personal property to which this contract relates. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), and the claims provisions of the Code of the City of Topeka (Section 3.35.010 et seq.), the contractor shall bear the risk of any loss or damage to any personal property in which the contractor holds title.

CONTRACTOR: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

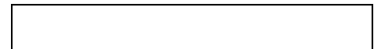
## Terms and Conditions

### STANDARD TERMS AND CONDITIONS

Qualification Based Selection (RFP, RFQ, etc.)

Includes Architectural, Engineering, and Appraisal Services for Public Buildings and Improvements

1. READ ALL STANDARD TERMS AND CONDITIONS, SPECIAL TERMS AND CONDITIONS AND THE SCOPE OF WORK CAREFULLY. Failure to abide by all the conditions of this request may result in the rejection of a proposal. Inquiries about this request must be



## Event # 2864-0: Professional Engineering Services T-841097.07

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addressed during the open question and answer period. Proposals including attachments (proposal, drawings, photographs, etc.) shall be submitted through the City's online bidding portal.

2. **SINGLE POINT OF CONTACT:** The single point of contact for all inquiries, questions, or requests shall be the City of Topeka Contracts and Procurement Buyer or their designee initiating this solicitation. All communications shall be directed to the Buyer. No communication is to be had with any other City employee or representative while the bidding event is open and until a contract and/or purchase order is awarded and issued. Bidders may have contact with other City employees or representatives during negotiations, contract signing, or as otherwise specified in the solicitation documentation.

3. **NEGOTIATED PROCUREMENT:** The City reserves the right to negotiate with the selected bidder of this solicitation. The final evaluation and award is made by the Procurement Negotiating Committee (Committee), which consists of the Department Director of the originating department, the Director of Administrative and Financial Services, the Director of Contracts and Procurement, or their designees. (For architectural, engineering and appraisal services, the City Engineer or designee will take the place of the Director of Contracts and Procurement or designee.)

4. **APPEARANCE BEFORE COMMITTEE:** Bidders may be required to appear before the Committee to explain their understanding and approach. The Committee may request additional information. Bidders are prohibited from electronically recording these meetings. All information received prior to the cut-off time will be considered as part of the bidder's best and final offer. No additional revisions shall be made after the specified cut-off time unless requested by the Committee.

5. **QUESTIONS & ADDENDA:** All questions shall be submitted during the open questions period section of the City's online bidding portal. It shall be the bidder's responsibility to monitor the City's bidding portal for answers to questions and any addenda issued that may alter or change the scope of the solicitation. Any and all binding modifications to the solicitation shall be made by addendum.

6. **PRE-PROPOSAL CONFERENCE:** If so noted, all Pre-Proposal Conferences will be scheduled and information posted on the Meetings section in the solicitation. Attendance is typically not mandatory, but is strongly encouraged. At the Pre-Proposal Conference impromptu questions will be permitted and spontaneous unofficial answers will be provided when possible. However, bidders should clearly understand that the only official answer or position of the City will be by written and issued by addendum.

7. **COST OF PREPARING PROPOSAL:** The cost of developing and submitting the proposal is entirely the responsibility of the bidder. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating the contract, and other costs associated with the solicitation.

8. **EVALUATION OF PROPOSALS:** Award shall be made through the qualification based selection process. Consideration and evaluation of such proposals will include but not be limited to:

- Adequacy and completeness of proposal;
- Compliance with the terms and conditions of the request;
- Experience in providing like services or products;
- Qualified staff;
- Methodology in accomplishing objectives;
- Response format as required by this request;
- Price; and
- Any other requirements specific to the service or product as outlined by the City of Topeka.

9. **ACCEPTANCE OR REJECTION:** The City reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify criteria in the solicitation; and unless otherwise specified, to accept any item in a proposal.

10. **CONTRACT:** The successful bidder may be required to enter into a written contract with the City, which will incorporate the Contractual Provisions Attachment and Contractor's Statement of Agreement. No contract shall be considered to have been entered into by the City unless executed by the City Manager and the vendor. Professional service contracts exceeding fifty thousand dollars (50,000) must be approved by the Governing Body prior to being executed by the City Manager.

11. **CONTRACT DOCUMENTS:** In the event of a conflict in terms of language among the documents, the following order shall govern:

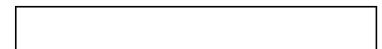
- Contractual Provisions Attachment and Contractor's Statement of Agreement, if incorporated in the Contract;
- Written modifications to the executed contract;
- Written contract signed by the parties;

12. **OPEN RECORDS ACT:** All proposals become the property of the City of Topeka. Kansas law requires all information contained in proposals to become open for public review (with certain exceptions available under the Act) once a contract is signed or all proposals rejected.

13. **FEDERAL, STATE AND LOCAL TAXES - GOVERNMENTAL ENTITY:** Unless otherwise specified, the price as negotiated shall include all applicable federal, state, and local taxes. The successful vendor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this solicitation. The City of Topeka is exempt from state sales or use taxes, and federal excise taxes. These taxes shall not be included in the bidder's price quotations.

14. **SUSPENSION FROM BIDDING:** Any vendor who defaults on delivery as defined in this solicitation may, at the discretion of the Director of Contracts and Procurement, be barred from bidding or receiving an award on any subsequent solicitation for a period of time to be determined by the City.

15. **INSURANCE:** The City shall not be required to purchase any insurance against loss or damage to any personal property nor shall the City establish a self-insurance fund to protect against any loss or damage. Subject to the provisions of the Kansas Tort



## Event # 2864-0: Professional Engineering Services T-841097.07

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Claims Act, the vendor shall bear the risk of any loss or damage to any personal property.

16. CASH BASIS AND BUDGET LAWS: All contracts are subject to the State of Kansas Cash Basis and Budget laws. [K.S.A. 10-1101; 79-2925 et seq.] Any obligation incurred as a result of the issuance of the contract or purchase order binds the City only to the extent that funds are available at the time payment is required.

City Legal Approval February 8, 2022

### RFP Special Provisions

#### SPECIAL PROVISIONS

Proposal Format: The following information shall be part of the technical proposal: Vendors are instructed to prepare their Technical Proposal following the same sequence as this section of the Request For Proposal.

(1) Transmittal letter which includes the following statements:

(a) That the vendor is the prime contractor and identifying all subcontractors

(b) That the vendor is a corporation or other legal entity

(c) That no attempt has been made or will be made to induce any other person or firm to submit or not to submit a proposal

(d) That the vendor does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or disability

(e) That no cost or pricing information has been included in the transmittal letter or the Technical Proposal. Pricing information, if requested, shall be uploaded as separately named electronic file.

(f) That the vendor presently has no interest, direct or indirect, which would conflict with the performance of services under this contract and shall not employ, in the performance of this contract, any person having a conflict

(g) That the person signing the proposal is authorized to make decisions as to pricing quoted and has not participated, and will not participate, in any action contrary to the above statements;

(h) Whether there is a reasonable probability that the vendor is or will be associated with any parent, affiliate or subsidiary organization, either formally or informally, in supplying any service or furnishing any supplies or equipment to the vendor which would relate to the performance of this contract. If the statement is in the affirmative, the vendor is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting the City and/or the federal government the right to examine any directly pertinent books, documents, papers and records involving such transactions related to the contract. Further, if at any time after a proposal is submitted, such an association arises, the vendor will obtain a similar certification and authorization and failure to do so will constitute grounds for termination of the contract at the option of the City

(i) Vendor agrees that any lost or reduced federal matching money resulting from unacceptable performance in a contractor task or responsibility defined in the Request, contract or modification shall be accompanied by reductions in City payments to contractor and

(j) That the vendor has not been retained, nor has it retained a person to solicit or secure a City contract on an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business. For breach of this provision, the Committee shall have the right to reject the proposal, terminate the contract and/or deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

Vendor's Qualifications: The vendor must include a discussion of the vendor's corporation and each subcontractor if any. The discussion shall include the following:

(a) Date established

(b) Ownership (public, partnership, subsidiary, etc.)

(c) Number of personnel, full and part time, assigned to this project by function and job title

(d) Data processing resources and the extent they are dedicated to other matters

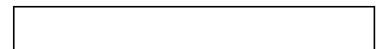
(e) Location of the project within the vendor's organization

(f) Relationship of the project and other lines of business and

(g) Organizational chart

The contractor shall be the sole source of contact for the contract. The City will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

A description of the vendor's qualifications and experience providing the requested or similar service including resumes of personnel assigned to the project stating their education and work experience. The vendor must be an established firm recognized





## Event # 2864-0: Professional Engineering Services T-841097.07

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for its capacity to perform. The vendor must be capable of mobilizing sufficient personnel to meet the deadlines specified in the Request.

A timeline for implementing services.

Payment: To be negotiated.

### Insurance Req with Errors and Omissions Coverage

#### INSURANCE REQUIREMENTS

**WORKERS COMPENSATION:** Contractor's, when required by law must maintain in effect throughout the life of this contract, Workers Compensation insurance to cover the contractor's employees, in full limits as required by statute.

**INSURANCE RESPONSIBILITY & LIABILITY:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the City or any of its departments, officers or employees responsible for loss or damage to persons or property as a result of the contractor's actions.

#### CONTRACTOR SHALL MAINTAIN MINIMUM COVERAGE AS FOLLOWS:

Commercial General Liability:  
Per Occurrence \$1,000,000  
General Aggregate \$2,000,000  
Products & Completed Operations Coverage Aggregate \$2,000,000  
Property Damage per occurrence \$100,000

Automobile Liability  
Combined Single Limit for Bodily Injury and Property Damage Aggregate \$500,000

Professional Liability (Errors and Omissions)  
Provide separate "claims made" form  
Per Claim \$1,000,000  
General Aggregate \$2,000,000

**CERTIFICATES OF INSURANCE:** Certificates of Insurance should be issued immediately after the Contractor received notification of award and prior to the notice to proceed. The Contractor must not commence any work under this Contract until Purchase Orders are issued by the City of Topeka.

**NAMED INSURED:** The City of Topeka shall be named as an additional insured party on the Certificate of Liability Insurance.

**NOTIFICATION OF ALTERATION OR MATERIAL CHANGE OR CANCELLATION:** A minimum of ten (10) days written notification must be given by an insurer or any alteration, material change, or cancellation affecting any certificates or policies of insurance as required under this Contract. Such required notification must be sent via Registered or Certified Mail to the address below:

City of Topeka  
Contracts & Procurement Division  
215 SE 7th Street, Room 60  
Topeka, KS 66603

## Attachments

Event # 2864-0: Professional Engineering Services T-841097.07

Attachment

Event 2864 Professional Engineering Services NW Norris Street T-841097.07.pdf

Commodity Codes

Commodity Code	Description
918	CONSULTING SERVICES
925	ENGINEERING SERVICES, PROFESSIONAL

Line Details

Line 1: Professional Engineering Services T-841097.07

**Description:** Enter 1.00 in the unit price field and upload your technical proposal. Pricing proposals are not being solicited at this time and will be negotiated with the selected firm. You must click "Submit" to submit your proposal.

**Item:** PRO ENG SERVICES T-841097.07    NW NORRIS

**Commodity Code:** 925    ENGINEERING SERVICES, PROFESSIONAL

**Quantity:** 1.000                      **UOM:** EA

**Requested Delivery Date:** 12/31/2024

**Require Response:** Yes

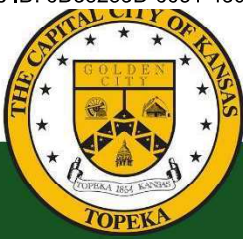
**Add On Charges Allowed:** No

**Price Breaks Allowed:** No

**Alternate Items Allowed:** No

Line 1 Distributions

Event Company	Dist Company	Acct Unit	Account	Percent
1	1	2923020105	53000	100.000%

**CITY OF  
TOPEKA**

Contracts & Procurement Division  
City Hall, 215 SE 7<sup>th</sup> St., Room 60  
Topeka, KS 66603

[procurement@topeka.org](mailto:procurement@topeka.org)  
Tel: 785-368-3749  
Fax: 785-368-4499

**PROFESSIONAL ENGINEERING SERVICES  
ROADWAY RECONSTRUCTION NW NORRIS STREET – WEST  
STREET TO WESTERN AVENUE  
T-841097.07**

**I. Purpose for Request**

The City of Topeka (City) is requesting proposals for professional engineering services for Project No. T-841097.07, “NW Norris Street – West Street to Western Avenue”. The services include providing engineering design and construction documents for the complete reconstruction of the roadway.

**II. Background Information**

This project includes reconstruction of NW Norris Street from West Street to Western Avenue. The existing road is asphalt and in some sections street maintenance crews have placed gravel. Drainage in the area is poor and water ponds in several areas. The road runs adjacent to the Railroad. See the image at the end of this document for a map of the general project location.

This project has been selective as a pilot to test performance of asphalt mix with higher Reclaimed Asphalt Pavement (RAP) use. Alternate bids shall be given for a typical city asphalt base mix and an asphalt base mix with a maximum of 25% RAP and use of PG 58-28 binder. City utilities in the area shall be investigated and replacement shall be incorporated into the design if necessary.

**III. Scope of Services**

This project will produce a set of drawings and project manual for a roadway reconstruction project. The project will be designed and constructed in accordance with the City of Topeka and Shawnee County Standard Technical Specifications. Basic Services provided may include, but are not limited to the following:

- a. Meet with City staff at critical stages throughout design.
- b. Perform field and topographic surveys.
- c. Perform investigative soil borings.
- d. Coordinate with other City utilities and private utility owners.
- e. Design roadway improvements including alignment and other road geometries.
- f. Design ditches to store runoff from the road and infiltrate into the soils (Q50 desired, but flexible).
- g. Communicate with the Railroad and address their requirements/concerns during the design phase.

- h. Prepare temporary easement, permanent easement, and/or right-of-way descriptions as necessary.
- i. Develop construction phasing and traffic control plans to carry traffic during construction.
- j. Develop and submit conceptual drawings (30% complete) with an estimate of probable construction costs (EPCC).
- k. Develop and submit field-check drawings (60% complete) and an updated EPCC.
- l. Facilitate two (2) public meetings: the first to be held after field-check drawings are complete to introduce residents to the project and gather input; the second to be held after the bid letting, but prior to construction.
- m. Develop and submit office-check drawings and project manual (90% complete) and an updated EPCC.
- n. Develop and submit final drawings, project manual, invitation to bid, bid form, and a final EPCC for the purpose of bidding the project.
- o. Respond to questions from prospective bidders as necessary.
- p. Prepare addenda as necessary.
- q. Prepare a tabulation of bids and make a recommendation of award for construction.

#### **IV. Deliverables**

Final project drawings, project manual with technical specifications, and cost estimates will be completed for a bid letting by January 26<sup>th</sup>, 2024 and construction by May 6<sup>th</sup>, 2024. The Engineering Division will administer the Project for the City.

#### **V. City Resources to Be Provided**

All information that the City has relating to the project will be made available to the selected firm.

#### **VI. Proposal Format**

All information submitted becomes the property of the City of Topeka. Proposals received after the time indicated in this request will not be considered. Proposals are to be limited to a total of 10 (ten) pages (not counting front and back cover, cover letter, table of contents, and section dividers) using margins not smaller than 0.75" and font size not smaller than 10. The proposal should include the following:

- a. Project understanding
- b. Project approach
- c. Company background
- d. Similar experience
- e. Project team
- f. Proposed design schedule
- g. Exhibit (optional; limit 1 page; e.g. preliminary alignment for the Project, plan-profile sheet from a previous project)

#### **VII. Selection Process**

The City will review all submittals and select the Firm that is deemed most qualified to begin the negotiation process for the scope of services and schedule of fees. If the City and the selected Firm

cannot agree on scope and/or a schedule of fees, the City may terminate negotiations and proceed with selecting another Firm. Proposal evaluation scoring will be based primarily on the following considerations:

- a. 20% Project Understanding
- b. 20% Project Approach
- c. 10% Company Background
- d. 15% Similar Experience
- e. 10% Project team
- f. 25% Proposed Design Schedule





Capital Improvement Project Summary								
<b>Project Name:</b>		Pavement Management Rehabilitation & Reconstruction Program 2024		<b>Project Type:</b>		Street		
<b>Project Number:</b>		841097.00		<b>Council Priority:</b>		Investing in Infrastructure		
<b>Department:</b>		Public Works		<b>Project Year(s):</b>		2024		
<b>Division:</b>		Street		<b>Estimated Useful Life:</b>		10 Year(s)		
<b>Council District(s):</b>		Multiple		<b>Contact:</b>		Robert Bidwell		
<b>Type:</b>		Repair/Replace		<b>New to CIP?</b>		No		
<b>Primary Funding Source:</b>		Fix Our Streets Sales Tax		<b>If Not New, First Year in CIP:</b>				
<b>Estimated Operating Cost</b>		\$0		<b>2024-2032 \$ Approved in previous CIP</b>		\$6,300,000		
<b>Total Project Cost:</b>		\$9,800,000		<b>New money in 2024-2033 CIP:</b>		\$3,500,000		
<b>Funds Approved Prior to 2024</b>				<b>Total 2024-2033 CIP:</b>		\$9,800,000		
<b>Total 2024-2026 3 year CIB:</b>				<b>Total 2024-2026 3 year CIB:</b>		\$9,800,000		
<b>Project Description:</b>								
This program consists of the rehabilitation and reconstruction of existing streets and is funded through the citywide 1/2 cent sales tax. Current projects under consideration and study include but are not limited to: Hi-Crest Neighborhood (SE 37th St. to 31st St. and west of Adams St.); NE River Rd. (Crane St. to Sardou Ave.); NW Elm Row Ave. (Tyler St. to Topeka Blvd.); NW Menninger Rd. (Green Hills Rd. to Rochester Rd.); SE Madison St. (north of 10th Ave. intersection); SW 37th St. (Kirklawn Ave. to Topeka Blvd.); SW 57th St. (US-75 to Topeka Blvd. within City Limits only); SW MacVicar Ave. (south of 6th Ave. intersection); Westwood Neighborhood (select streets from SW 21st St. to 17th St. and from Arnold Ave. to MacVicar Ave.). Selection of projects will be depend on pavement condition index and project cost increases.								
<b>Project Justification:</b>								
The program is used to fund street construction projects across the City. Historically, it has addressed areas that are underserved by larger projects and retains flexibility to respond to resident complaints or segments that have degraded faster than anticipated. 2019 analysis showed that 44.5% of the city's road segments are classified as needing reconstruction or major rehabilitation. 48.5% of local and collector roads are beneath the threshold for reconstruction or major rehabilitation and are addressed using these funds.								
<b>History:</b>								
As of 3/29/2023: 2019 program has a budget of \$6,660,000 with \$6,569,627 worth of expenses. All funds have been allocated 2020 program has a budget of \$ 11,500,000 with \$10,644,052 worth of expenses. \$129,993 remains unallocated 2021 program has a budget of \$8,000,000 with \$6,717,499 worth of expenses. \$181,641 remains unallocated 2022 program has a budget of \$7,600,000 with \$5,473,034 worth of expenses. All funds have been allocated 2023 program has a budget of \$7,300,000 with \$102,339 worth of expenses. All funds have been allocated.								
M	Asset Condition	Equity and Inclusion	Fiscal Impact	Operating Efficiency	Priority Alignment	Project Urgency	Total Score (0-100)	
Score	2.4	2.5	3.0	1.4	2.8	1.3	74	
Project Estimates		2024	2025	2026	2027	2028	2029-2033	Total CIP
Design/Admin Fees		\$ 1,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,000,000
Right of Way		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Construction/Service Fees		\$ 8,800,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,800,000
Contingency		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Technology		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Financing Costs (Temp Notes)		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Cost of Issuance (Rev/GO Bonds)		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Reserve Fund (Rev Bond)		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capitalized Interest		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals		\$ 9,800,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,800,000
Financing Sources		2024	2025	2026	2027	2028	2029-2033	Total CIP
G.O. Bonds		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Revenue Bonds		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
ARPA and/or G.O. Bonds		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Fix Our Streets Sales Tax		\$ 9,800,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,800,000
Countywide Sales Tax		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Fund General		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Fund Facilities		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Fund Fleet		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Fund IT		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Fund Parking		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Fund Stormwater		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Fund Wastewater		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Fund Water		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Federal Funds		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
CDBG		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
G.O. Bonds - Special		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals		\$ 9,800,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,800,000

### **3.30.010 Authority of City Manager to sign certain contracts – Professional service contracts.**

(a) Pursuant to Charter Ordinance No. 94, Section 22 (Appx. [A](#), Section [A2-55](#)), the City Manager is hereby authorized to sign all contracts binding the City, unless:

- (1) Governing Body approval of the contract or the subject matter of the contract is required by City ordinance or resolution;
- (2) Governing Body approval of the contract or the subject matter is required by State or Federal law; or
- (3) Other City officers or employees are specifically authorized by ordinance to approve and sign the contract.

(b) On and after October 1, 2021, any contract for professional services exceeding \$50,000 shall be approved by the Governing Body. "Professional services" includes architects, engineers, appraisers, land surveyors, management and systems analysts, financial and accounting firms, attorneys, information technology consultants, land use planners, project management and other similar services requiring specialized knowledge or certification in a particular field.

(c) The authority granted by this section is subject to all ordinances and laws which restrict and limit the ability of the City to enter into binding contracts. Further, this section does not authorize the avoidance of or exemption from any administrative reviews or approvals of contracts as required by City ordinances or regulations.

(d) The provisions of this section shall not preclude the City Manager from seeking and obtaining the approval of the Governing Body prior to signing certain contracts, notwithstanding the authority granted in this section. (Ord. 20311 § 1, 8-17-21.)

**Cross References:** City Council – Mayor, Chapter [2.15](#) TMC.

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**The Topeka Municipal Code is current through Ordinance 20311, passed August 17, 2021.**

Disclaimer: The City Clerk's Office has the official version of the Topeka Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

**Note:** This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

[City Website: www.topeka.org](http://www.topeka.org)

[Code Publishing Company](#)



City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
[www.topeka.org](http://www.topeka.org)  
February 6, 2024

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DATE: February 6, 2024  
CONTACT PERSON: Karen Hiller, Public Health and Safety Committee Chair DOCUMENT #:  
SECOND PARTY/SUBJECT: Vegetation Ordinance PROJECT #: TMC Chapter 8.60  
CATEGORY/SUBCATEGORY 013 Ordinances - Codified / 150 Vegetation  
CIP PROJECT: No  
ACTION OF COUNCIL: Discussion 01-16-24. JOURNAL #:  
PAGE #:

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**DOCUMENT DESCRIPTION:**

**ORDINANCE** introduced by Interim City Manager Richard U. Nienstedt concerning exterior property area maintenance provisions of the International Property Maintenance Code, amending Sections 8.60.140, 8.60.070 and 8.60.080 of the Topeka Municipal Code and repealing original sections.

**Voting Requirement:** Action requires five (5) votes of the City Council. *The Mayor does not vote. The proposed ordinance involves a matter of home rule on which the Mayor has veto authority.*

*(The amendment relates to vegetation that is over 12" that has turned into shrubs, trees or vines and the exterior property area maintenance provisions of the International Property Maintenance Code.)*

**VOTING REQUIREMENTS:**

Discussion only. Action requires five (5) votes of the City Council. The Mayor does not vote. The proposed ordinance involves a matter of home rule on which the Mayor has veto authority.

**POLICY ISSUE:**

Whether or not to approve a Vegetation Ordinance. This ordinance concerns the exterior property area maintenance provisions of the International Property Maintenance Code, amending Sections 8.60.140, 8.60.070 and 8.60.080 of the Topeka Municipal Code and repealing original sections.

**STAFF RECOMMENDATION:**

Staff recommends the City Council move to adopt the ordinance.

**BACKGROUND:**



The Governing Body adopted the Changing Our Culture of Property Maintenance 2022-2026 Goals and Challenges on December 14, 2021. The fourth challenge within the set goals is to improve the appearance of the community through management of uncultivated and overgrown vegetation.

From the CoCPM Initiative statement, the average resident or visitor would score Topeka's property appearance at least a 7 on a scale of 10. The Police Department would rate 80% or more of properties as "in compliance" with CPTED (Crime Prevention through Environmental Design) principles within 5 years. At the same time, tree and shrub abatements by City Departments would be reduced by at least 50%.

Initiative will require a minor amendment or new legal interpretation of the Code about vegetation that is over 12" that has turned into shrubs, trees or vines as well as a synch-up with a non-IPMC section of the TMC that addresses the same issue. It will also likely require a major community education campaign in conjunction with a major volunteer assistance campaign to bring our community back to this threshold standard. Optimal partnership with all City departments who deal with exterior maintenance issues (Police, Engineering, Zoning, Forestry) and the Kansas Department Of Transportation as well as a combined ticketing, billing and collections system.

**BUDGETARY IMPACT:**

Budgetary impact is unknown at this time.

**SOURCE OF FUNDING:**

Not Applicable.

**ATTACHMENTS:**

**Description**

Proposed Ordinance

Property Maintenance Code Services Standard Operating Procedures (SOP)

Public Health and Safety Committee Report (January 3, 2024)

Public Health and Safety Committee Minutes (DRAFT January 3, 2024)

Public Health and Safety Minutes November 15, 2023

(Published in the Topeka Metro News \_\_\_\_\_)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE introduced by Interim City Manager Richard Nienstedt concerning exterior property area maintenance provisions of the International Property Maintenance Code, amending § 8.60.140, § 8.60.070 and § 8.60.080 of the Topeka Municipal Code and repealing original sections.

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

Section 1. That section 8.60.140, Section 302 – Exterior property areas, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Section 302 – Exterior property areas.**

Section 302.4, Weeds, is deleted in its entirety and the following provisions shall be substituted therefor:

~~Weeds~~Vegetation.

(a) All ~~premises and exterior property~~ shall be maintained free from ~~weeds or plant growth~~vegetation in excess of twelve inches in height.

(b) All noxious weeds, as defined by the Kansas Department of Agriculture pursuant to K.S.A. 2-1313a and amendments thereto, shall be prohibited. ~~Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however this term shall not include cultivated flowers and gardens.~~

(c) Vegetation means, but is not limited to, weeds, woody vines, volunteer saplings under four to six inches in diameter, shrubs, brush, grass and uncultivated plants; however this term shall not include cultivated trees, shrubs and vines and gardens, which are defined as areas cultivated for growth of vegetables, fruits, herbs, flowers, ornamental grasses and native plants. A native plant is any plant indigenous to

29 the local ecosystem.

30 (b) Notwithstanding subsection (a), an owner of undeveloped property that  
31 exceeds two acre is responsible for removing or destroying vegetation, except for grass  
32 or ground cover, within fifteen feet of any sidewalks, streets or adjacent property lines.

33 (c) Upon failure of the owner or agent having charge of the property to comply  
34 with Section 302.4 after service of a notice of violation, the person may be subject to  
35 prosecution in accordance with Section 106.3. Upon failure to comply with the notice,  
36 the City or its contractor may enter upon the property to remove or destroy the ~~weeds~~  
37 ~~and/or~~ vegetation and assess the costs against the owner.

38 Section 2. That section 8.60.070, Section 106 – Violations, abatements, fees,  
39 of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

40 **Section 106 – Violations, abatements, fees.**

41 Section 106.3, Prosecution of violation, is deleted in its entirety and the following  
42 provisions shall be substituted therefor:

43 A person who fails to comply with a notice of violation served in accordance with  
44 Section 107, shall be guilty of a misdemeanor and, if convicted, may be punished in  
45 accordance with subsection (b). A violation of this chapter shall be deemed a strict  
46 liability offense. Abatement of a violation by the Code Official shall not be a defense or  
47 excuse to a violation. The pendency of an administrative hearing pursuant to section  
48 8.60.110 or section 8.75.040 shall not be a defense to a violation or prevent prosecution  
49 and adjudication in Municipal Court.

50 (b) Punishment for a violation of the International Property Maintenance Code  
51 (IPMC), adopted pursuant to TMC 8.60.010, shall be as follows:

- (1) Upon a first conviction, a fine of not more than one thousand dollars;
- (2) Upon a second conviction, a fine of not less than one hundred dollars nor more than one thousand dollars;
- (3) Upon a third conviction, a fine of not less than five hundred dollars nor more than one thousand dollars;
- (4) Upon a fourth or subsequent conviction, a fine of not less than one thousand dollars nor more than two thousand five hundred dollars;
- (5) In addition to the preceding fines such person may be punished by a term of imprisonment which shall not exceed six (6) months, or by both such fines and imprisonment.
- (c) For the purposes of determining whether a conviction is a first or subsequent conviction in sentencing under this section:
- (1) conviction includes being convicted of a violation of the IPMC, and it is irrelevant whether an offense occurred before or after conviction for a previous offense.
- (2) conviction includes being convicted of a violation of the IPMC or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section.
- (3) any convictions occurring during the three years prior to the date of the occurrence shall be taken into account when determining the sentence to be imposed.
- (d) Each day that any violation of this ordinance continues shall constitute a separate offense and be punishable hereunder as a separate violation.
- (e) In addition to the penalties set forth above, the court may require that the owner register the property pursuant to Chapter 8.65 TMC.

75           Section 106.4, Violation penalties, is deleted in its entirety and the following  
76 provisions shall be substituted therefor:

77           Administrative penalties.

78           (a)    There shall be an administrative monetary penalty of \$100.00 imposed on  
79 the owner or, in the case of inoperative vehicles, the vehicle owner for each violation of  
80 this chapter that remains uncorrected after the time period stated in the notice of  
81 violation has elapsed.

82           (b)    The administrative monetary penalty for a second or subsequent violation  
83 for which an administrative penalty has been imposed under this chapter that remains  
84 uncorrected after the time period stated in the notice of violation has elapsed for the  
85 same property within 12 months of the same or substantially same violation shall be  
86 \$200.00.

87           Section 106.5, Abatement of violations, is deleted in its entirety and the following  
88 provisions shall be substituted therefor:

89           (a)    Abatement. Upon the expiration of the compliance period stated in the  
90 notice of violation, the Code Official shall inspect the property. The Code Official may  
91 grant an extension of time if the owner demonstrates that due diligence is being  
92 exercised in abating the violation. If the owner has failed to comply within the  
93 compliance period or has failed to timely request an appeal hearing, the Code Official  
94 may abate the violation and assess the costs against the owner. If the costs are not  
95 paid within 30 days, the cost may be collected pursuant to K.S.A. 12-1,115 and  
96 amendments thereto and/or charged against the property pursuant to K.S.A. 12-1617e,  
97 K.S.A. 12-1617f, K.S.A. 12-1755, or K.S.A. 17-4759 and amendments thereto.

(b) Fees. The costs incurred by the City for abatement, including any administrative costs, shall be paid by the owner or, in the case of inoperative vehicles, the vehicle owner. The administrative costs shall be:

General violations of the IPMC \$140.00

~~Weeds and grasses~~ Vegetation \$140.00

Inoperative vehicles \$175.00

Section 3. That section 8.60.080, Section 107 – Notices, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Section 107 – Notices.**

Section 107.2, Form, is deleted in its entirety and the following provisions shall be substituted therefor:

The notice prescribed in Section 107.1 shall include the following:

1. Description of the real estate sufficient for identification.

2. A statement that includes a description of the conditions and identifies violations of Chapter 8.60.

3. A statement that the property owner must abate the violation by the date designated in the notice.

4. A statement advising that any owner may request an appeal hearing before an Administrative Hearing Officer. The request shall be submitted to the Code Official on or before the date designated in the notice. The scope of the appeal shall be limited to the following: (i) whether the provisions of Chapter 8.60 apply; (ii) whether the Code Official has correctly interpreted Chapter 8.60; and/or (iii) whether the requirements of Chapter 8.60 can be adequately satisfied by other means.

121 5. A statement that if the violations(s) is not corrected or a hearing requested, the  
122 City may impose administrative penalties, abate the violation, and assess the costs  
123 against the owner.

124 6. A statement advising that failure to timely comply with the notice may result in  
125 prosecution in Municipal Court regardless whether an administrative hearing is pending.

126 Section 107.3, Method of Service, is deleted in its entirety and the following  
127 provisions shall be substituted therefor:

128 (a) Method of Service. Notice shall be served in one of the following manners:

129 1. Personal service; residence service. Delivering the notice to the  
130 property owner or leaving the notice at the property owner's dwelling or usual  
131 place of abode with someone of suitable age and discretion who resides there.

132 2. Personal service; residence service unsuccessful. If personal or  
133 residence service cannot be made, service may be effected by: (i) leaving a copy  
134 of the notice at the property owner's dwelling or usual place of abode; and (ii)  
135 mailing to the property owner by first-class mail a notice that the copy has been  
136 left at the dwelling or usual place of abode.

137 3. Personal service; legal entity. If the property owner is a legal entity,  
138 service may be effected as follows:

139 (i) serving the notice on an officer, manager, partner or a resident,  
140 managing or general agent;

141 (ii) leaving a copy of the notice at any business office with the  
142 person having charge of the office; or

143 (iii) serving the notice on any agent authorized by appointment or

144 by law to receive service of process.

145 4. Certified mail, return receipt requested, to the last known address of the  
146 property owner as reflected in the records of the County Appraiser.

147 5. Delivery failure. If the property owner or the property owner's agent has  
148 failed to accept delivery of notice or otherwise failed to effectuate receipt of  
149 notice during the preceding twenty-four month period, notice may be provided by  
150 other methods, including but not limited to door hangers, conspicuously posting  
151 notice on the property, personal notification, telephone communication, electronic  
152 communication, or first class mail.

153 6. In addition to the methods identified in this section, but not in lieu of, the  
154 Code Official may provide notice by other methods, including, but not limited to,  
155 door hangers, conspicuously posting notice on the property, personal notification,  
156 telephone or electronic communication, or first class mail.

157 7. As authorized by K.S.A. 12-1617f, the Code Official may provide a one-  
158 time yearly written notice by mail or personal service to the owner or occupant  
159 which will permit subsequent abatement mowings without any additional notice.  
160 The notice shall also include a statement that no further notice shall be given  
161 prior to cutting or removing ~~weeds~~vegetation.

162 (b) Proof of Service. Proof of service of the notice shall be certified at the time  
163 of service by a written declaration under penalty of perjury executed by the person  
164 effecting service, declaring the time, date and manner in which service was made.

165 Section 4. That original § 8.60.140, § 8.60.070 and § 8.60.080 of The Code of  
166 the City of Topeka, Kansas, are hereby specifically repealed.



Section 5. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 6. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 7. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council on \_\_\_\_\_.

CITY OF TOPEKA, KANSAS

ATTEST:

Michael A. Padilla, Mayor

Brenda Younger, City Clerk

# PROPERTY MAINTENANCE CODE SERVICES

## Standard Operating Procedure

Title: Special Notice 23-0001 - Vegetation			
Prepared By: John Schardine	Date Prepared:	Approved By:	Date Approved:

### Purpose:

The purpose of Special Notice number 23-0001-Vegetation is to augment additional elements to the current definition of Vegetation under Standard Operating Procedure PMU 02 Weeds, Grass & Vegetation Violations. Additional elements to be considered under this code shall include woody vines, volunteer saplings, shrubs, brush and uncultivated plants; however this term shall not include cultivated trees, shrubs, vines and gardens, which are defined as areas cultivated for growth of vegetables, fruits, herbs, flowers, ornamental grasses and native plants. The implementation of these new elements shall be applied in phases over a three-year period; except whereas under extreme circumstances when the Code Official is exposed to such incidents that have created a health and safety issue for the occupants or general public, the Code Official shall have the authority to cite the code as written. Any enforcement actions regarding the additional elements shall require the approval of the Code Manager or his/her designee.

The projected time frame for partial to full implementation is as follows.

### Phase In Approach

#### Year 1 – Educational Awareness Campaign addressing Code changes and cost differential

- Substantial Differences in the cost of abetments should be discussed
- Letters in water bills/ COT Facebook/ media blast
- Courtesy letters addressing the cost associated with future enforcement
- Public feedback and input will be considered.

#### Year 2 – Partial Enforcement

- 15 foot off of Right-of-Ways will be enforced
- Public access points will be enforced
- Courtesy letters addressing the cost associated with future enforcement
- Letters in water bills/ COT Facebook/ media blast
- Public feedback and comments will be considered.

#### Year 3 - Full Enforcement of Adopted Code

- Adopted Code will be applied to full yards and easements

_____ John Schardine, Director Property Maintenance Unit	_____ Date Approved
--	------------------------

# COMMITTEE REFERRAL SHEET

## COMMITTEE REPORT

**Name of Committee:** Public Health and Safety

**Title:** ORDINANCE: Discussion - Vegetation Ordinance

**Date referred from Council meeting:** NA

**Date referred from Committee:** January 3, 2024

**Committee Action:** MOTION: To recommend the Vegetation updates to the International Property Maintenance Code (IMPC), and the stage implementation to the Governing Body for adoption. Committee member Kell made a motion to approve. Committee member Valdivia-Alcala seconded.

**Comments:**

**Amendments:** None.

**Members of Committee:** Councilmembers Karen Hiller (Chair), Christina Valdivia-Alcalá, Brett Kell and Spencer Duncan.

**Agenda Date Requested:** January 16, 2024



# CITY OF TOPEKA

## CITY COUNCIL COMMITTEE MEETING MINUTES

### PUBLIC HEALTH & SAFETY COMMITTEE

CITY COUNCIL  
City Hall, 215 SE 7<sup>th</sup> Street, Suite 255  
Topeka, KS 66603-3914  
Tel: 785-368-3710  
Fax: 785-368-3958  
www.topeka.org

**Date:** January 3, 2024

**Time:** 1:00pm

**Location:** 1<sup>st</sup> Floor Conference Room; City Hall 215 SE 7<sup>th</sup> Street

**Committee members present:** Councilmembers Karen Hiller (Chair), Christina Valdivia-Alcalá, Brett Kell, and Spencer Duncan

**City staff present:** Property Maintenance Division Director John Schardine, City Attorney Amanda Stanley, Planning Director Rhiannon Friedman, Wendi Rieb, Housing Services Division Director Carrie Higgins, Interim Finance Director Rachelle Mathews, Utilities Director Sylvia Davis

#### 1) Call to Order

Chairwoman Hiller called the meeting to order at 1:00pm. Committee members and staff introduced themselves.

#### 2) Approval of November 15, 2023 Meeting Minutes

Committee member Valdivia-Alcalá made a motion to approve the minutes. Committee member Duncan seconded. Approved 4-0-0.

#### 3) Changing Our Culture of Property Maintenance

Chairwoman Hiller introduced that staff would be presenting some updates and two action items as they relate to the Changing Our Culture of Property Maintenance (CoCPM) initiative.

##### Property Maintenance Division Updates:

Property Maintenance Division Director John Schardine provided a copy of the consent form, notice of violation, and hardship form to review with the Committee.

##### Consent to Inspection or Abatement Form

Division Director Schardine stated this form has remain unchanged, however policy now indicates that consent forms are not required for interior inspections. They are suggested. If the occupant does not want to fill one out, or sign one, Property Maintenance will not require them to do so. Chairwoman Hiller noted that was a huge improvement. She stated these changes have been on the

checklist for the initiative, and being able to move them over to the accomplishment list was exciting.

Notice of Violation Form - This had received some requests by Committee members to update some of the language to make it a bit more inviting and friendlier, while also encouraging people to voluntarily comply with regulations. Division Director Schardine noted the addition of contact information to include the Housing Navigator, to the form.

Hardship Form and Process - The Housing Navigator, Irma Faudoa, completes this form, if it is needed. These cases are looking for property owners who might suffer from an illness or financial setback that would allow them to qualify for assistance from the City. Housing Services Division Director Carrie Higgins assisted in developing this form, and works closely with Ms. Faudoa. This form is the starting process for interested parties. If they meet the qualifications, and fill out the hardship form. The form provides the owner with additional time, and also helps connect them with the Housing Navigator to seek additional resources that they can connect with.

LMI Supplemental Funds Recommendation:

Chairwoman Hiller introduced that the Low-moderate income (LMI) supplemental funds recommendation emerged from the CoCPM Leadership team. One of the top priorities in Property Maintenance was to address those who had resources and responsibilities in a different way than the LMI residents that may not have the skills or money to adequately correct an issue. She noted that the Housing Services division has been able to secure a grant of \$750K from the Federal Home Loan Bank (FHLB). This grant is to be spread out over three (3) years, so is essentially \$250K a year. One of the issues with this grant is that the FHLB has stipulations on how and where those funds can be spent. One such stipulation is that they cannot be spent West of Washburn, South of 21<sup>st</sup> Street, East of California, and other areas to the North and in Central Topeka as well. There are big holes within these outside areas, and the ask to staff was to identify how much money it might take to cover the areas that the FHLB does not cover. The goal is to request some additional funding that would be overseen by the Housing Services Division to help in the low-moderate income (LMI) areas that the FHLB grant does not cover; distressed areas within or outside of Neighborhood Improvement Associations.

Chairwoman Hiller asked Division Director Schardine to expand on the need for the request and on the creative ways the Property Maintenance Division has been able to assist people, particularly seniors. He stated that, in the past, he had asked Inspectors to make contact with the properties that suffer, code violations that may not have been written up, or elderly occupants who would not have the funding available by themselves to make repairs. One of the requirements is to open a case, and then bring the Housing Services staff in to help get in contact with the property owner. The property owner can file for the application for the grant. This has helped out in the past, especially when Property Maintenance was working in the Hi-Crest neighborhood. Chairwoman Hiller noted that one reason for asking about both grants was in anticipation of completing more interior inspections in 2024. Cases will include more than painting and cleaning up the yard, but rather health and safety issues for occupants.

Chairwoman Hiller clarified that these dollars would only be for property owner-occupants, and are not available for landlords or renters.

Housing Services Director Carrie Higgins provided information about the proposal. When looking at the FHLB grant, there is a requirement that the sort area of 50% of applications have to come from SORT, which means if the 50% mark is not achieved, and an application comes in that is outside, staff has to hold onto it until that 50% mark and make sure the City is maintaining it throughout the year. Some of the applicants who are not in the SORT area are having to wait a very long time to receive assistance. Having a separate pot of money that does not have to adhere to those same restrictions would allow the City to help those individuals receive services quicker.

Division Director Higgins stated staff had reviewed the number of cases that are moved over from year to year, that the City has not been able to help because of the SORT area, and they looked at the potential for an increase in code violations over the next year, and that is how they came to the estimated \$200K. This would be used through the next year and a half, to finish off the three-year cycle with the FHLB grant. There are frequently code violations where the house and unattached garage both need to be fixed. The current FHLB grant does not allow for repairs on the structure that is not attached to the house. The additional funds would provide another major benefit to helping address these types of issues, so that the garage could also be fixed in addition to the home.



If Interim Finance Director Rachelle Mathews stated that this one-time pot of money would come from the 2023 Surplus funds that are used for capital expenditure-type projects. It would be transferred out of the General Fund into a specified project, much like an operational CIP project that the Governing Body received in a notebook annually. Staff's suggestion for this funding is based on accounting guidance and to time it with the nature of the remainder of the FHLB grant.

Chairwoman Hiller inquired about the timing of the considerations of the entire list of year-end funding balances? Interim Director Mathews stated Finance is still closing the 2023 year-end balances. There are two months still missing of sales tax, to retro-back into 2023, and this has a material impact on where the surplus is going to be. It is Finance's intent to provide a Q4 report to the Governing Body at the March 5<sup>th</sup> meeting that would include the list of potential uses of the 2023 Surplus. If it is the will of the Committee, this item would be included within the list of things to choose from and appropriate the Surplus to.

Committee member Valdivia-Alcalá referenced that this specific request is to request dollars from the 2023 Surplus that will cover the final year and a half that the City has left on the FHLB grant. She inquired if, depending on how well that works out, there may be an interest to make a consideration to continue with this funding in the future, and possibly become part of the CIP eventually?

Chairwoman Hiller stated that, at this point, it is a one-time ask, but suggested that everyone keep a reminder for the potential of working it into future year budgets for the Consolidated Plan, and there could be a possibility of returning in three years to make it a permanent and annual request. At this time, Chairwoman Hiller would like to make the one-time request. Committee member Valdivia-Alcalá referenced the importance of documenting and tracking how those dollars area spent, in order to show the Governing Body, the results of what was accomplished with the \$200K.

Committee member Valdivia-Alcala inquired if there was a projection as to how many households might be helped with this additional funding? Division Director Higgins responded there was an average of \$20K applied toward the cost of each applicant's property. This would help roughly ten (10) additional households. There may be an opportunity to stretch that \$200K further by providing assistance, in conjunction with the FHLB grant, to help fix a garage or other

unattached structure. In those types of situations, the full \$20K would not need to be allocated for the garage, and could be put toward an additional application.

Committee member Valdivia-Alcalá clarified that once the 50% of FHLB funding has been utilized for houses within the zone group, funding could then be used to help those residing outside of the zone group. Division Director Higgins confirmed, and stated the percentages stay pretty consistent with that 50/50.

Chairwoman Hiller added that, with the City's Grant Writer, there may be additional opportunities to find matching grants and other sources for funding.

Committee member Duncan inquired about the City's Grant Writer. Interim Finance Director Mathews confirmed that April Hazen-Shaffer had been hired in late 2023, and had been working to get integrated and on-boarded with the City. She has managed a \$4M Federal Medicare Grant in previous life experience, and has experience in both writing grants as well as being on the back-end of compliance and maintenance.

MOTION: Recommend that \$200,000 from the 2023 Revenue Surplus be allocated to the Housing Department and dedicated for use in funding home repairs for LMI families who have property maintenance code violations, and do not otherwise have the means to address them. Committee member Kell made a motion to approve. Committee member Valdivia-Alcala seconded. Approved 4-0-0.

Chairwoman Hiller requested this item would be placed on the January 16<sup>th</sup> Governing Body agenda for introduction and discussion. It would then be voted on by the Governing Body at a meeting in March.

#### Vegetation Ordinance:

Division Director Schardine suggested a two-year educational campaign to include literature and public meetings, to educate property owners and tenants about these proposed changes.

Changes include:

- Added Section 1 (c): "Vegetation means, but is not limited to, weeds, woody vines, volunteer saplings under four to six inches in diameter, shrubs, brush, grass and uncultivated plants; however, this term shall not include cultivated trees, shrubs and vines and gardens, which are defined as areas cultivated for

growth of vegetables, fruits, herbs, flowers, ornamental grasses and native plants. A native plant is any plant indigenous to the local ecosystem”.

- The word “vegetation” was substituted for “weeds” throughout the ordinance.
- It replaces the word “vegetation” beyond just grasses and weeds over twelve inches tall, to be more inclusive of things the property shall be maintained free from.
- Added Section 1 (b)(b): “Notwithstanding subsection (a), an owner of undeveloped property that exceeds two acres is responsible for removing or destroying vegetation, except for grass or ground cover, within fifteen feet of any sidewalks, streets, or adjacent property lines”.

Division Director Schardine stated this addition came into play when Property Maintenance sends out notices to large parcels of property, the property owners were intimidated and thought they had to maintain the complete piece of property. When, in reality, it is the health and safety concerns of the neighbors that Property Maintenance is interested in. Requesting the fifteen feet away from any property line, sidewalks, walkways and roadways also varies if the property is totally wooded.

There is a level of discretion the Property Maintenance Inspectors are able to exercise with these cases. Owners are encouraged to contact the Inspector to find out how the Inspector is determining what needs to be cut and how often it needs to be cut, and what the responsibility is on the owner’s behalf. There is also discretion on how much of the property must be cut. If it is a health and safety concern because there is an occupied home nearby the overgrown parcel, the owner may be requested to cut the full parcel, whereas if the parcel is near farm property that is not occupied, the request will be to cut back fifteen feet to allow for safe passage for pedestrians and vehicles.

Committee member Kell voiced concern about grass fires in areas where longer grass is allowed to be left. He provided an example of the trailer park on the north side of 37<sup>th</sup> street, near the walking trail and railroad. Division Director Schardine provided some additional information about that specific property, noting his staff is working with the owner to address some of the issues pertaining to the securement and safety of the property. Committee member Kell was concerned about the toll on the Fire Department these types of grass fires cause. Division Director Schardine took note of the concerns.

Chairwoman Hiller stated the issue of discretion was an important piece of the language of the ordinance, rather than simply adding it into the SOP.

Chairwoman Hiller referenced the types of vegetation that will be allowed under the ordinance, such as ornamental grass or native plants, and inquired if Division Director Schardine had been aware of people strictly using these types of vegetation as their full yard?

Moving the overgrowth to fifteen feet. Division Director Schardine noted that the main concern they were hoping to address was pedestrian traffic, or overgrowth blocking vehicle traffic and obstructing the view. Property Maintenance has been testing the fifteen-foot request for a couple of years, and has received generally positive feedback from both the owners who are required to mow as well as from neighbors who live nearby.

The Vegetation Ordinance will be a phased-in approach, with the first two years focusing on educating the public on expectations. Courtesy letters to owners will be exchanged to let them know about the City of Topeka's adoption of the new vegetation ordinance, and that by (whatever date), these items will be in violation of the ordinance. Additional public information communication will be pushed out on the various social media platforms, the City's website, and other printed resources. Public feedback and education year one and two. Year three will see full enforcement. Division Director Schardine expects the majority of owners to voluntarily comply with the requested changes within those first two years, and noted it would likely be a small percentage of people who will wait until enforcement to address the matters.

Year two will expand on year one, from simply being public information to explaining the health and safety concerns that overgrown properties pose. If doors or windows that the Fire Department might need to access during an emergency is being blocked by overgrowth, that will be something that will begin to be addressed in year-two and the expectation will be that the property owners will abide by the request. The term "Public Access" refers to doors and windows on a structure, or any point of entry that emergency services would need to have access to in order to get inside of a structure.

Committee member Duncan inquired when the timeline begins. Chairwoman Hiller noted the idea would be that the ordinance would be passed in 2024, which

would begin the clock on year one. If the ordinance was voted on by the Governing Body in February, would begin year one, and it would be fully in place by 2026.

MOTION: To recommend the Vegetation updates to the International Property Maintenance Code (IMPC), and the stage implementation to the Governing Body for adoption. Committee member Kell made a motion to approve. Committee member Valdivia-Alcala seconded.

Chairwoman Hiller added that the recommendation that is being sent to the January 16<sup>th</sup> Governing Body agenda comes with an understanding that there may be some additional conversation from Division Director Schardine and City Legal about the fifteen-foot mowing requirement.

#### **4) Other Items**

No additional items.

#### **5) Adjourn**

Chairwoman Hiller adjourned the meeting at 1:48pm.

Meeting video can be viewed at: <https://youtu.be/SpdMpTBfRLY>



# CITY OF TOPEKA

## CITY COUNCIL COMMITTEE MEETING MINUTES

### PUBLIC HEALTH & SAFETY COMMITTEE

CITY COUNCIL  
City Hall, 215 SE 7<sup>th</sup> Street, Suite 255  
Topeka, KS 66603-3914  
Tel: 785-368-3710  
Fax: 785-368-3958  
[www.topeka.org](http://www.topeka.org)

**Date:** November 15, 2023

**Time:** 1:00pm

**Location:** 1<sup>st</sup> Floor Conference Room; City Hall 215 SE 7<sup>th</sup> Street (*virtual attendance option also available*)

**Committee members present:** Councilmembers Karen Hiller (Chair), Christina Valdivia-Alcalá, Brett Kell, and Spencer Duncan

**City staff present:** Property Maintenance Division Director John Schardine, City Attorney Amanda Stanley, Deputy City Attorney Mary Feighny, Communications Director Gretchen Spiker, Community Engagement Division Director Monique Glaude, Planning Director Rhiannon Friedman, Wendi Rieb

#### 1) Call to Order

Chairwoman Hiller called the meeting to order at 1:00pm. Committee members and staff introduced themselves.

#### 2) Approval of June 21, 2023 Meeting Minutes

Committee member Valdivia-Alcalá made a motion to approve the minutes. Committee member Duncan seconded. Approved 4-0-0.

#### 3) Changing Our Culture of Property Maintenance

Chairwoman Hiller introduced Wendi Rieb. Wendi is serving as the Staff Facilitator for the Changing Our Culture of Property Maintenance Initiative.

##### Action/Marketing/Mowing Team:

Community Engagement Division Director Monique Glaude discussed the Mowing Initiative graphic. This graphic can be found on the Changing Our Culture of Property Maintenance (CoCPM) webpage at:

<https://www.topeka.org/citycouncil/changing-our-culture-of-property-maintenance>

- In 2022, there were 55 total calls about the mowing initiative program. In 2023, there were 111 total calls.
- In 2022, the ability to track calls specifically about the mowing vendors was not available. However, in 2023, there were 39 calls for mowing vendors.

- In 2022, there were 1,626 mowing citations issued through the Property Maintenance Division. As of August 2023, there were 758 mowing citations.
- In 2022, there were 230 properties mowed by the mowing vendors. There have been 305 properties mowed by vendors in 2023.
- The social media posts were performed by the Communications Department. There were 12 posts in 2022 and 10 posts in 2023.
- There was one (1) Community Engagement Division-led event in 2022, and five (5) in 2023.

Division Director Glaude voiced appreciation for the mowing vendors who participated in the 2023 program. They were able to offer reasonable priced services to the city's neighbors in need. The vendors who offered vendor service were:

- Robert Johnson Jr.
- Cesar Arteaga-Solis
- Andres Garcia
- Nathan O'Bier
- Anthony Ortega

Committee member Valdivia-Alcalá inquired if the Committee could be provided with a breakdown of the number of mows that were provided by each of the mowing vendors? Division Director Glaude confirmed she could send that information at a later time.

Division Director Glaude expanded on the piece about tracking calls for mowing vendors. She stated that late in the season of 2022, the idea of opening the program up and asking mowing vendors, who would offer reasonably priced mows, to let the City know their information so it could be better tracked and recorded. As it was late in the season in 2022, when the idea came to fruition, the information was not able to be tracked that year. Division Director Glaude stated she was still receiving calls for service as of August, and felt it was something worth continuing to track in 2024.

Chairwoman Hiller inquired about pricing information and how it was distributed to interested parties. Division Director Glaude stated the pricing information was provided to callers, however it was just a quote and the vendor were able to go to the actual home and provide the full information. Chairwoman Hiller voiced excitement that the goal was to allow the community to help themselves or help



each other, and she felt that was met as the City did not have to call additional vendors out to help with that.

Irma Forbes with the Gil Carter Initiative provided an update on how the organization assisted with mowing for community members. Ms. Forbes noted that other health and safety issues were noticed when they were out mowing. She suggested that they could possibly report these types of issues to Property Maintenance when they are noticed while they are out mowing, it may be helpful.

Committee member Valdivia-Alcalá inquired about the types of issues that were encountered. Ms. Forbes stated it was a lot of debris. Things that would harbor insects or rodents. There was also a possible zoning issue of someone operating a mechanics shop next door to an elderly citizen, and the citizen felt helpless to fight the issue, and feel that there would be retaliation if they report it.

Chairwoman Hiller inquired with Ms. Forbes as to whether the Gil Carter Initiative might be interested in continuing mowing with the program in the future? Ms. Forbes indicated they would be.

Jermel Walker, Coordinator and Director of Volunteer services with Omni Circle provided an update about their experience for mowing with the CoCPM program. Their organization mowed roughly 216 yards, which was a bit fewer than 2022. He contributed some of that to the storms that came through earlier in the season and the debris that was in the way. Mr. Walker stated they began the initiative as a way to inspire other members in the Central Park neighborhood to step in and mow their own yards or help their neighbors out, and contributed people mowing their own yards or neighbor's yards as another reason they mowed fewer yards this year. Mr. Walker stated Omni Circle would like to continue to mow in the Central Park neighborhood, but they had also received questions from people outside of the neighborhood who asked for help with learning how to use the equipment to learn how to care for their lawn. But, as Omni Circle was restricted to the Central Park area, the requests could not be met. He stated that is something that could be changed in the future.

Division Director Glaude discussed a question that had come up from both Gil Carter Initiative and Omni Circle about whether they would be able to accept requests to mow for citizens outside of their corresponding Neighborhood Improvement Areas (NIA). She stated they would be able to go outside of their

respective neighborhoods, but said they would need to ensure the citizen resided within a NIA. She stated the agencies would not need to seek the City's permission, but would need to record the mow on their report.

Committee member Valdivia-Alcalá was interested in finding similar people or groups within the District 2 area that shared the same enthusiasm as Mr. Walker and Omni Circle. She noted that there is a high rental area in Oakland, and has a lot of elders who would benefit from having help with mowing their yard. She would like to invite Omni Circle to attend the NIA meetings in her district in 2024, to speak toward their passion and the program.

Chairwoman Hiller discussed an idea of identifying groups within each NIA that could possibly adopt a neighborhood. She talked about possibly having some of the experienced vendors train or meet with those new partners, and having a speaker bureau or something similar. Having one civic group, or local church group adopt an NIA, or area of an NIA, would move the needle on the campaign. Division Director Glaude suggested that the Community Engagement Division was open as well to partner together, if Omni Circle and the Gil Carter Initiative would like to meet for an offline conversation, to develop a "train the trainer" program for the 2024 season.

Mr. Walker mentioned that City of Topeka employees are able to volunteer and donate time within the community. He is working with the Human Resources Department to see what some type of incentive program could coincide with employees who volunteer a set number of hours.

Committee member Duncan inquired about whether the City of Topeka is the hub for connecting the homeowner to the mowing vendor? Division Director Glaude responded that Community Engagement is the administrator of the program, for the mowing initiative. Their team answer the phone, or the email of the inquiry. Staff asks if the individual is interested in seeking a volunteer from the United Way of Kaw Valley Topeka Volunteers module; and if they are, staff shares that information with the citizen. The City does not vet the volunteers, and cannot guarantee citizens that a volunteer will match or be matched with them. She noted that the majority of the calls received in 2023 were people looking for mowing vendors. The five vendors provided the City with their price range, however quotes would be provided as they went to view the actual yard.

Community Engagement is the “connector”. They are able to provide resources and information.

Committee member Duncan noted that part of his district included the Crestview neighborhood, that does not have an established NIA, but that many of the citizens would possibly meet the criteria for falling within the HUD requirements. Chairwoman Hiller inquired if there was flexibility with the HUD requirements, if there is a block group that meets the criteria? Division Director Glaude felt this discussion may need to be started offline to look into further.

Michael Odupitan, with Omni Circle, discussed a few initial concerns that they would have with expanding the program outside of their neighborhood. There may be a need for some additional support with getting equipment to the other locations, and gas for driving to the other areas of town, trailers, and other considerations.

Committee member Valdivia-Alcalá inquired about the number of days that were set aside for mowing? Mr. Odupitan said they had been mowing twice a week, on Mondays and Saturdays, or on Mondays and Fridays, alternating between Fridays and Saturdays. That gave the Omni team four days throughout the month that they were going out and mowing grass.

Committee member Valdivia-Alcalá inquired if Mr. Odupitan felt there would be a possibility for interested individuals to volunteer with Omni Circle, and to learn to utilize the equipment, and if he felt there would be a possibility to expand? Mr. Odupitan felt that if they had more volunteers, it would be possible to expand and send people to different locations. There would be a need for additional equipment if the volunteer base were to expand, as the current stock is typically used by the current group. There would need to be additional supervisors for any group of volunteers that would go out. It is not impossible, but there would be a number of considerations that would need to be met for that to happen.

Communications Director Gretchen Spiker reviewed some accomplishments that were achieved within the 2023 season. This information can also be found on the CoCPM webpage. Accomplishments include:

- The Governing Body approved updates to the City’s Retaliatory Eviction Ordinance and created a new LLC Ordinance (late 2022).

- Completed the second year of the Summer Mowing Initiative with partners of the Gil Carter Initiative and Omni Circle.
- The City created a new Housing Navigator position to help connect those in need with available resources, at the City and among partner agencies.
- The City took a strategic approach to help fill vacant Property Maintenance Inspector positions.
- Staff created a robust resource guide. It can be found on the webpage, but paper copies are also available on-site with various City departments, as well as some being distributed to a lot of the City's community partners. The resource guide has also been adopted by the City's Property Maintenance Unit, so the guide is being shared with the people they serve.

Director Spiker noted some upcoming pieces that will be rolling out in 2024. Some of those include:

- Develop a public education campaign, related to common issues that Property Maintenance sees often. The goal is to begin rolling that information out in the spring of 2024.
- Part of the campaign will be sharing information on social media, channel 4 and through the City's other platforms. The information will be about the most common property maintenance violations, resources specific to those various issues, provide information on what is acceptable condition and what is not, visuals and photos will be included at every opportunity. This campaign aims at arming folks with the information so they can address these issues on their own.

Committee member Valdivia-Alcalá requested the group contact the NIA's, and to also put presentations on the local NIA social media platforms, out to help get the information out. She suggested possibly also sending some type of mass mailing out to a larger number of citizens to encourage participation and share information.

Chairwoman Hiller mentioned that one of the purposes of having the mowing program give quarterly updates moving forward. The accomplishment list on the webpage will continue to be updated, and hotlinks will be added to that page as well, to allow people who are interested in a specific topic to click on and learn more.

#### LLC Ordinance - Memo on Deferred Judgement:

City Attorney Amanda Stanley provided information about the LLC ordinance and Retaliatory Eviction ordinance. She referenced a memo from the Prosecutor, Kelly Trussell had been provided to the Committee in their agenda packets, the information included is through the beginning of October 2023. This ordinance has changed the game. There have been 108 total LLC entity cases filed within the past ten months. Of those cases, 82 are either already corrected or will be soon. This is a marked difference. In addition, it has changed how the majority of entities are now responding to charged code cases. The City went from regularly having business entities never appear in Municipal Court now make regular contact with the Prosecution office and Property Maintenance. The LLC's are trying to fix their violations and are appearing in court. Staff will give another update in January with the full 2023 year of information.

Chairwoman Hiller inquired if there were any retaliatory eviction cases that had been filed since that ordinance had passed? City Attorney Stanley stated there had been a few individuals who had tried to file a complaint under retaliation, but unfortunately they did not meet the elements of the ordinance.

City Attorney Stanley suggested that, from an information standpoint, if the City were to do a public information campaign that might raise awareness of the retaliatory eviction, the Legal office would be available to assist.

Committee member Valdivia-Alcalá stated she would like to consider, possibly twice a year, having a concise report that shows the impact that the City is making with regard to going after some of the LLC's that are known to be troublesome. City Attorney Stanley responded she would be able to have some addition of statistical data and a report that shows how many of these cases are being filed against the same entity.

Chairwoman Hiller inquired if City Attorney Stanley felt giving reports twice a year would be possible? City Attorney Stanley confirmed that would be able to happen. Committee member Valdivia-Alcalá noted another piece to include in future reports would be the collection of fines and fees. City Attorney Stanley stated the fines and fees report would need to come from Judge Thadani.

Chairwoman Hiller thanked City Attorney Stanley for her, and the Legal team's, work on creating this LLC ordinance. City Attorney Stanley stated she would like to submit an article to the International Municipal Lawyers, to see if they would

publish it as an idea that other cities could use. Chairwoman Hiller noted the Committee would write letters of support, if needed.

#### Property Maintenance Update:

Property Maintenance Division Director John Schardine noted there were some recent changes made to the Property Maintenance Inspector job description. He noted that these changes were needed in order to attract applicants that may have an interest in the position. Some changes to the job description included:

- Collaboration requirements within the Community Partners and other City staff to address chronic health and safety issues.
- Implementation of anti-blight strategies.
- Acknowledgement that an Inspector must be able to properly learn and apply codes, building codes, State statutes, and bring properties into compliance.
- Removed the two-year construction related science as a requirement.
- Removed a certification requirement from Kansas Association of Code Enforcement (KACE) and expanded it from 12 months to 24 months.
- Added requirements of a one-year customer service experience.
- Added proficiency requirement in computer processing database entry, case management and iPad experience.

After this change, the number of applicants rose significantly. He noted that as of August, there had been 28 applicants. Currently, there are nine Inspectors, with a tenth coming on board soon. There is one remaining position left to fill.

Chairwoman Hiller noted those changes were recommendations by Karen Black. Division Director Schardine confirmed and said they are already making a difference. Committee member Valdivia-Alcalá spoke toward continued improvements for the customer experience. She stated that Karen Black had helped her become aware of how pivotal the role the Inspectors play toward customer service.

Chairwoman Hiller noted that updating the job description was an internal operation decision. The Committee and Governing Body were not going to be voting on this, but she felt it was important for the group to understand that it was one of the Initiative's goals to get that updated and to find out whether there was success in recruiting and performance.

Division Director Schardine reviewed the job description of the Housing Navigator position. Irma Faudoa is currently the Housing Navigator.

- This position was another suggestion from Karen Black. In addition to the housing navigator role, Ms. Faudoa's role has expanded and she serves as the co-chair for the Homeless Initiative.
- The goal of the Housing Navigator position is to assist homeowners with identifying alternative paths for completing compliance requirements. The homeowners who have medical or financial hardships often have limited resources, but the Housing Navigator assists in finding those resources. The Housing Navigator will submit and conduct comprehensive interviews in resources and grants to find the homeowner's needs.
- The Housing Navigator shall work with Code Official, Court Services, DEI Office, Housing Services and Community Partners to provide our community with quality customer service, necessary resources in a reasonable, equitable manner to adequately address the needs of the property owners.
- The Housing Navigator keeps records and logs of the citizens she is helping or has helped.

Chairwoman Hiller inquired if having the Housing Navigator position has helped to relieve or augment the work that the Inspectors had been doing before?

Division Director Schardine noted that it did not impact the Inspectors as much, but it has dramatically decreased the workload off of the court services. Ms. Faudoa intercepts the cases that would have been sent to court because of non-compliance, and she has identified the reasons those cases have not gone, or have not been satisfied. The folks need help, and she has assisted with finding them resources.

Committee member Valdivia-Alcala would like to request having Ms. Faudoa present to the Committee twice a year on trends she is seeing with the most consistent issues she is dealing with. Committee member Valdivia-Alcalá inquired if the Housing Navigator has the resources within the City set up to where she can connect them, and what does that success look like? This information would help the Committee and public understand how important this role is.

Division Director Schardine noted that Municipal Judge Thadani would also have some input as to the impact the Housing Navigator has with regard to the cases he encounters. Judge Thadani has invited Ms. Faudoa to the municipal court on a



regular basis and he has been able to remove several cases from the docket because he referred them to Ms. Faudoa.

Chairwoman Hiller asked if there would still be some trends to look at, from the year prior, in terms of how many cases went through the administrative process and to court and the transfer of that? Division Director Schardine confirmed that could be provided.

Division Director Schardine noted that the Housing Navigator was a position that was deeply needed and provided a valuable piece of customer service to the citizens.

#### Housing Violations:

Division Director Schardine noted the housing violation policy updates were a team effort. They tried to identify some of the common issues. They deleted some of the confusing narratives, and asked Legal to clarify some of the processes. He reviewed a few bullet points to include:

- Consent for the occupants - Some occupants have been afraid of retaliation and do not report interior dwelling issues. In the past, Property Maintenance required the occupant to sign a consent form to allow Inspectors to perform the interior dwelling inspection. The occupants were afraid their name would be associated with the case and they would decline to report. Division Director Schardine rescinded that policy and has made it a verbal option. The notes had been added to the case and the notes are kept on a need-to-know basis for the PMU staff only.
- Holiday Notice - This is a courtesy notice. PMU understands that some corrections cannot be made when the weather is cold, such as chipping paint. Previously, PMU would send a notice but it was confusing, because as the year progressed, the number of days given to have the issue addressed would decrease. So, in November, the notice would give them 120 days. In December, it would give them 110 days, and it would shorten from there as the months get closer to spring. Division Director Schardine stated that, beginning in November 2023, the courtesy notices will reflect one day and that one day will be May 1<sup>st</sup>. So, come May 1<sup>st</sup>, if you received a notice to correct an exterior violation, such as flaking or peeling paint, you would have until May 1<sup>st</sup> to come up with a game plan. The game plan must be communicated to our

Property Maintenance Inspectors. If that occurs, the division would continue the case with the owner's cooperation. If the plan is not communicated, Property Maintenance would move forward with opening a case. Committee member Valdivia-Alcalá inquired if there was a guess on roughly how many cases, by percentage, are being dealt with on an annual basis for paint issues? Division Director Schardine stated he would have to do some research to find that answer, but expanded that when the Inspectors go on-site to do an inspection, they inspect the property from top to bottom. They do not look for whatever the complaint was, or whatever they initially found. They do sanitation cases, vehicles, graffiti, structures, weeds, etc. If there is a violation in the winter months, they are going to receive a notice for that violation now. If they have other violations, they will receive a standard notice of violation.

- Committee member Valdivia-Alcalá voiced a concern for the number of unsheltered individuals who stay in District 2, and asked if there was a way to ensure the City is strengthening up procedure with having the owners board up abandoned properties and buildings? She noted there were properties with more egregious issues, such as making sure abandoned structures are boarded up, than peeling paint. Division Director Schardine responded their office has priorities, the first one is health and safety issues. There are a lot of fires in the city, so the unit prioritizes the security of the structures first, and ensure the exterior portion is safe and secured before turning the focus to making sure it is brought up to code.

There is a large number of irresponsible property owners and the bad behaviors are what the Property Maintenance Unit is trying to change. The unit is constantly trying to focus efforts on changing the behaviors. This will not be an immediate change, but they will be getting notices constantly and phone calls.

Chairwoman Hiller inquired if there was an interface with the Housing Navigator? If, for example, they have five much more severe safety violations, and the house is peeling paint, is this part of Ms. Faudoa's role currently? Or maybe envisioned to help put together a package that works for that particular case, assuming this owner is an LMI occupant? Division Director Schardine confirmed that it could be. He is putting pressure on the Inspectors to identify the property owners that may need assistance. If something becomes a chronic issue, he may ask Inspectors to find out what the root cause of the problem is.

- Committee member Valdivia-Alcalá referenced the procedure change to only requiring verbal consent from tenants to request an interior inspection. The first approach has been dialogue on getting into the common areas within the apartment complexes, and having the fire department work with Property Maintenance. How are we shifting toward being able to make tenants feel less terrified of asking for help? In many of these cases, tenants are living in filth and unsafe conditions. The lack of safety is even more concerning when children are involved. Division Director Schardine stated the Property Maintenance Unit meets bi-weekly with the Fire Marshal's office. They are currently on the topic of vacant structures, but he plans to bring the Fire Marshal up to date with the collaboration idea of performing joint inspections involving the multi-family housing, including all of the apartment complexes. They will be working on a joint policy that will involve both divisions, and may even include having a separate Inspector assigned to the Fire Marshal's office to join them with the inspections. Chairwoman Hiller asked if Division Director Schardine would be able to provide another update report at the first quarter meeting in 2024? Division Director Schardine confirmed he felt he would have something to share by then.

Committee member Duncan inquired if the Property Maintenance Unit was equally assessing violations, such as chipping paint, for inhabited properties as they are vacant properties? Division Director Schardine noted that, at the time of inspection, the unit does not know if a structure is vacant or occupied. That determination would probably become more obvious during a reinspection, and if it is decided that no progress has been made. If the Inspectors learn the house is vacant, they would begin working through another avenue to find out how long it has been vacant, why it is vacant and why the homeowner is being irresponsible. Committee member Duncan reframed his question to ask if, once it is determined a property is vacant, but that it is secured, would the Inspectors still enforce and issue citations in the same way that inhabited houses are? Division Director Schardine confirmed the owner would be held accountable for uninhabited houses the same way as occupied houses.

- Committee member Duncan inquired if the rules outlined in the SOP were only for residential properties or if they also applied to commercial properties?

Division Director Schardine responded that the rules applied for both residential and commercial properties the same.

- Committee member Valdivia-Alcalá stated she had received notification that there are currently attempts in Topeka to create a Tenants Rights Movement. She felt this movement should be a consideration to the Committee as they continue working on the education pieces of the initiative.
- Division Director Schardine commented that some of the new paragraphs in the SOP policy had been common practices that the Property Maintenance Unit had been practicing for years, however he recognized that it was important to get these in print, to clarify those practices. This information is available on the City's website.

Chairwoman Hiller reminded everyone that the SOP that was reviewed at this meeting was for Housing Violations only. There are a number of other SOP's that Property Maintenance has been working on, and she has requested Division Director Schardine to report those to the internal CoCPM small group team, and that they will come back before the Committee once it is felt there was progress made.

Division Director Schardine referenced the Kansas Residential Landlord Tenant Act (KRLTA), and said he noticed that many of the occupants of rental properties, that their team come across, do not have a copy of the information. He was bothered by the expectations of the occupants, and what they were living through. After reminding the tenants that these conditions are not something they should simply be putting up with. He began to understand, from talking with them, that from tenants experiencing this quality of life for years, the low expectation for housing had become a learned behavior. Division Director Schardine reminded that he had told the Committee that it was his intention to raise the expectations of what acceptable living conditions were for tenants. Part of achieving that goal was to put something together to ensure that all staff involved, with every case that is opened for an interior inspection, that they provide the occupants a copy of the KRLTA. He is currently working with Director Spiker to create a postcard with a QR code on it, to make it easier for them to access a copy of the Act. They can and will provide a printed copy, if requested.

Division Director Schardine explained the process for interior inspections when it came to multi-family housing for apartments. When an Inspector responds to a complaint and does the inspections, and fails the inspection due to an interior violation, the Inspector goes back out 60 days later. If the original tenant has since moved out, Division Director Schardine wants the case to continue and wants the Inspector to complete another inspection. He has updated the policy to state the Inspector is to contact the property manager and to gain access at a reasonable date and time to the unit, complete the inspection and pass or fail it. If the Inspector does not get access, Property Maintenance will get a warrant to complete the inspection, and will hold the property manager accountable. He stated this was an example of something that has been practiced, but was not previously written as policy. Division Director Schardine stated it was important to him to change the behavior of the property owners that take advantage of the occupants.

Chairwoman Hiller inquired about the Retaliatory Eviction Ordinance. Division Director Schardine stated that information is also provided to tenants, as well as an affidavit that the occupant can fill out and turn into the Prosecutor's office with the Municipal Court to file a complaint. Chairwoman Hiller noted that Housing and Credit Counseling Inc (HCCI) has reported that they also provide this education to tenants and landlords, when it comes to retaliatory evictions, and that even if the Municipal Court is not seeing complaints filed, it does not mean the education is not working.

Division Director Schardine stated he and Wendi Rieb had created an internal contact list for the large property owners. This information may include things such as names and phone numbers for attorneys, foremen and construction crews, property managers, etc. If Property Maintenance is not getting compliance from the initial notice, Division Director Schardine has given direction to the Inspectors to reach out to the attorney and foreman at once, in an email. In one such case, this practice has been a huge success. It not only kept the case out of court, but it has also proved to be helpful and appreciated by the recipients.

Vacant Properties: [Video minute mark 1:29:24]

Division Director Schardine stated that Ms. Rieb is the Senior Program Manager, and has been working with Vacant Properties for years, and oversees the registration program. He introduced a suggested amendment to the Vacant Property Ordinance. Ms. Rieb noted the Governing Body had received a

presentation on the Vacant Property Registration the night prior. The program will be shifting from a six-month registration to an annual registration. It will also no longer charge a registration fee. The hope is that this will encourage more compliance by owners to register their vacant properties. In a report run November 15<sup>th</sup>, there are 22 cases that are not considered to be a property in compliance. This status is not changed until the owner agrees that the property is vacant. An additional reason for requesting compliance, is so that First Responders have the current information, should they be called to that property. The Vacant Property team began meeting in September, with the goal at that time being to talk about the ordinance, and how to get the contact information. Since that time, the team has added on the May8 recommendations made by Karen Black. Division Director Schardine stated they began looking at who needs to know, and why do they need to know. They came up with First Responders. The team took a deeper dive and realized they were not getting compliance out of fining people. People were not paying and did not seem to care about registering their vacant property. He noted a suggestion made Ms. Rieb, about reaching out to Shawnee County with an idea for paying taxes. Ms. Rieb responded the idea was, if people are going into a system to pay taxes, they are likely listing an email address or name and other contact information that could be captured and displayed. To date, the County has not responded, however, staff continue looking at other avenues such as working with the Utilities Department of Councilman Duncan and the Landbank Commission.

Committee member Valdivia-Alcalá inquired how long ago staff had reached out to the County? Ms. Rieb responded they had reached out a couple of weeks ago, and it has only been one attempt to contact them. Her inquiry was sent to the County Treasurer, Larry Mah, and that she was waiting to receive a response from him. Chairwoman Hiller stated one of the things she and Ms. Rieb have been doing is sorting out the whole workplan. One of Ms. Rieb's ideas of obtaining contact information on the registration solves that issue. She referenced an example of where the Police Department, Fire Department, Property Maintenance and Utilities Departments have independent lists, and asked the question as to if it was even necessary to have a registration? The question posed by Division Director Schardine was about what was really needing to be known. The information that really needed to be answered was whether or not someone was occupying a property at this time? She stated that even a registration program like what Property Maintenance had, cannot answer that question, because occupancy of a property can change within a week. By pooling the various contact lists into one

single list, and obtaining the contact information at least annually, when people pay their property tax, it simplifies the process without requiring additional procedures. Chairwoman Hiller stated a goal was to set up a system that was voluntary, where people are eager to participate in because it is easy and makes sense, rather than just fining and penalizing, and creating more processes. She suggested that if a change was needed to State Law to be able to have the City receive contact information from the County. Correspondingly, contacting the County under the vacant property list about the tax sales, and some other things, and finding out whether it is the same contact person with the County and having one point-person on the City-side, to coordinate together.

Committee member Duncan stated the Landbank group met, for the first time, November 14<sup>th</sup>. There is a high interest from the group in wanting to know what the vacant properties are across the city. This answer is going to take coordination with the City and County. He stated the Planning & Development Services Director Rhiannon Friedman, and staff, would be able to assist with this effort, and to streamline the process. There are several entities that would like to have that information, but they do not all need to be working independently on the same effort. Chairwoman Hiller noted there were always question about the number that was in the Housing Study, and agreed that having information from Director Friedman and staff, would help validate that number. But there is also a need to validate it against a real list of where these properties are, so they can be identified and not simply just counted. The Landbank Commission will be looking at repurposing vacant structures, and the Homeless Initiative team is talking about people making inappropriate uses of, or permitted uses of the vacant structures and properties; so moving them forward into the same database, with the same challenges, it exciting to see progressing.

Chairwoman Hiller indicated she would be interested in receiving an update from either or both teams, if there are developments that can be shared at that time.

#### **4) Other Items**

Committee member Valdivia-Alcalá commented that, as long as she is assigned to the Public Health & Safety Committee, she would remain deeply committed to having a City health component added to Committee duties. As issues of mental health, addiction, and other challenges that Shawnee County's Health Department keep track of, she believes strongly that it is beneficial for the City to develop important partnerships, with the shared goal to break out of the silos and share



information. She would like to ask the Shawnee County Health Department present to the Committee about some of the health issues, crises, and disparities that the city is looking at. The hope is to look at all of the intersecting and entwined pieces of affordable housing, unsheltered crisis, homelessness, addiction, wandering mentally ill persons, slum landlords, trying to help the neighborhoods and lift up Topeka as a whole. This is to the benefit of the residents that live in Topeka, but also in trying to bring new people to Topeka. She feels this goal cannot be met unless the Committee, Governing Body, and City government can get a better understanding of what people are seeing and dealing with on the ground.

## **5) Adjourn**

The next scheduled Public Health & Safety Committee meeting is scheduled for January 3, 2024. Chairwoman Hiller adjourned the meeting at 2:48pm.

Meeting video can be viewed at:

<https://youtu.be/NIUoVq5wnkM?si=ijnGjJbzSTp0h6Zn>



City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
[www.topeka.org](http://www.topeka.org)  
February 6, 2024

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DATE:	February 6, 2024	
CONTACT PERSON:	Richard U. Nienstedt, Interim City Manager	DOCUMENT #:
SECOND PARTY/SUBJECT:	FOTZ Board of Directors Voting Representative	PROJECT #:
CATEGORY/SUBCATEGORY	006 Communication / 005 Other	
CIP PROJECT:	No	
ACTION OF COUNCIL:		JOURNAL #:
		PAGE #:

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**DOCUMENT DESCRIPTION:**

**SELECTION** of one City Council voting representative to serve a three-year term on the Friends Of Topeka Zoo ("FOTZ") Board of Directors.

**Voting Requirement:** Action requires at least six (6) votes of the Governing Body. The council member receiving the highest number of votes will be elected, providing they have a minimum of 6 votes.

*(Article Eleven of City of Topeka Contract No. 49243, between the City and FOTZ, requires the selection of a City Council member to serve a 3-year term of office in accordance with the Bylaws established by the FOTZ Board of Directors.)*

**VOTING REQUIREMENTS:**

Action requires at least six (6) votes of the Governing Body. The council member receiving the highest number of votes will be elected, providing they have a minimum of 6 votes.

**POLICY ISSUE:**

Pursuant to Article Eleven of City of Topeka Contract No. 49243, one City Council Member representative must be selected to serve as a voting member on the FOTZ Board of Directors in accordance with the length of term established in the Bylaws of the FOTZ Board of Directors, which is three years.

**STAFF RECOMMENDATION:**

Staff recommends the Governing Body select one council member to serve a three-year term as a voting member on the FOTZ Board of Directors.

**BACKGROUND:**

A License and Management Agreement ("LMA") was approved by the Governing Body on February 9, 2021, for purposes of transferring management and operational responsibilities related to the Topeka Zoo and Conservation Center to FOTZ. Article Eleven of the LMA (City of Topeka Contract No. 49243), entitled "Representation on FOTZ Board of Directors" provides that one City council member be selected to serve as a voting member, and two City staff members be selected to serve as ex officio non-voting members, on the FOTZ Board of Directors. This was codified in TMC 11.10.040 by Ordinance 20290. The City Manager is responsible for appointing the two Staff members by virtue of the position they hold with the City: Director of Administrative and Financial Services and Director of Public Works, or their designees.

On April 16, 2021, former Councilmember Michael Lesser was selected to serve a three-year term on the FOTZ Board, he resigned as a member of the City Council in October 2022. Councilmember Spencer Duncan was selected to fill the unexpired term ending February 2024.

**BUDGETARY IMPACT:**

There is no budgetary impact to the City.

**SOURCE OF FUNDING:**

Not applicable.

**ATTACHMENTS:****Description**

City of Topeka Contract No. 49243 (Lease Master Agreement)  
Amended FOTZ Bylaws (April 1, 2021)

**CONTRACT NO. 49243**

**LICENSE AND MANAGEMENT AGREEMENT**

**by and between**

**THE CITY OF TOPEKA, KANSAS**

**and**

**THE FRIENDS OF THE TOPEKA ZOO**

**related to the**

**TOPEKA ZOO AND CONSERVATION CENTER**

This License and Management Agreement is made effective this 9<sup>th</sup> day of February, 2021, ("Effective Date"), by and between the City of Topeka, Kansas, ("the CITY"), a municipal corporation, and Friends of the Topeka Zoo, ("FOTZ"), a Kansas non-profit corporation.

**RECITALS**

WHEREAS, the City owns and operates the Topeka Zoo and Conservation Center ("Zoo");  
and

WHEREAS, FOTZ is a non-profit corporation organized and existing under Kansas law whose mission includes but is not limited to the carrying on of charitable, benevolent, social service, educational and public benefit work in the community for the development and improvement of a Zoo in the City of Topeka and Shawnee County, Kansas, and improving the educational and conservation influence of zoos with children, adults and the general public; and

WHEREAS, the City and FOTZ have been working together to promote and support the operation and development of the Zoo for over fifty-five (55) years and are both dedicated to the advancement of the Zoo and support the stated mission of FOTZ; and

WHEREAS, the City and FOTZ have entered into the following agreements in furtherance of their relationship and the mission of FOTZ:

- A certain Topeka Zoo Support Agreement, City of Topeka Contract No. 45959, dated May 5, 2017, which memorializes the terms and nature of support provided by FOTZ to the Zoo; and
- A certain Education Support and Guest Services Agreement, City of Topeka Contract No. 47578, dated March 7, 2019, through which FOTZ provides guest services and educational support to the Zoo; and
- A certain Development Agreement, City of Topeka Contract No. 47234, dated October 22, 2018, through which terms and conditions are provided in relation to the funding and development of the "Kay's Garden and Event Center" Exhibit at the Topeka Zoo, which includes an Asian Garden and a Gallery and Event Center.

WHEREAS, the City and FOTZ recognize that the Zoo is a vital cultural and recreational community asset and wish to enhance the Zoo's contributions to the community in the areas of recreation, education and conservation; and

WHEREAS, the City and FOTZ are committed to the ongoing development, support and enrichment of the Zoo and share the goal of providing a top flight zoo for a city the size of Topeka, for its citizens, for the citizens of its neighbor communities and for those who visit Topeka; and

WHEREAS, the City and FOTZ pledge to utilize their combined experience as set forth herein, to help ensure the continued success and growth of the Zoo; and

WHEREAS, the City has determined that it is in the best interest of the City and the citizens of Topeka to enter into an agreement with FOTZ related to the operation and management of the Zoo under the terms and conditions set forth in this License and Management Agreement (the "Agreement").

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

## **ARTICLE ONE**

### **RECITALS; DEFINITIONS; OTHER AGREEMENTS**

**1.1 Recitals.** The Recitals set forth above are incorporated and made part of this License and Management Agreement for all purposes.

**1.2 Definitions.** Defined terms are indicated by initial capital letters. Defined terms shall have the meanings set forth herein and the following terms are more specifically set forth below:

(a) "*Applicable Laws*" means all federal, state and local laws, rules and regulations existing on the Effective Date, or later enacted or amended, which are applicable to the Zoo or the Parties.

(b) "*AZA*" means the Association of Zoos and Aquariums.

(c) "*Capital Project*" means any real property and/or physical improvements, maintenance and repairs to the Zoo Premises that exceed the City's capitalization threshold. If funding is from bond proceeds, the Capital Project must be included as part of the project description set forth in the closing documents.

(i) Capital Infrastructure reflects Capital Projects funded primarily through funds raised by FOTZ during the time within which this Agreement is in effect.

(ii) Capital Contributions reflect the portion of the License and Management Fee the City agrees to pay FOTZ to fund Capital Projects, as more particularly set out in Article One subsection (o)(ii).

- (d) "City" means City of Topeka, Kansas.
- (e) "City Directors" means the <insert #> voting members of FOTZ's Board of Directors as specifically provided for in Article Eleven.
- (f) "County" means Shawnee County, Kansas.
- (g) "Countywide Retailers' Sales Tax" means the one-half cent sales tax levied in Shawnee County, beginning on January 1, 2017 and expiring on December 31, 2031, pursuant to the affirmative vote of the citizens of Shawnee County on November 4, 2014, as memorialized in the Interlocal Agreement between the Board of County Commissioners of the County of Shawnee, Kansas and the City of Topeka, Kansas, dated April 19, 2016 (City of Topeka Contract No. 44926).
- (h) "Default" means any material breach by a Party of its obligations under this Agreement, which breach (i) has a material effect on the day-to-day operations of the Zoo; and (ii) continues without being cured for sixty (60) days after written notice of the breach from the other Party.
- (i) "Effective Date" means 12:00 a.m. on April 3, 2021.
- (j) "Employee Services Agreement" means an agreement between the City and FOTZ, which is attached hereto as **Exhibit A** and incorporated herein by reference.
- (k) "Expiration Date" means 11:59 p.m. on December 31, 2035.
- (l) "FOTZ" means the Friends of the Topeka Zoo, a non-profit corporation organized under the laws of the State of Kansas.
- (m) "Force Majeure Event" means events beyond the reasonable control of the Party such as, but not limited to: insurrection; strikes; labor shortages; market conditions; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; epidemics; pandemics; quarantine restrictions; freight embargoes; unusually severe weather; government orders causing delays or prohibitions; administrative and permitting delays; or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform.
- (n) "Governing Body" means the Mayor and City Council Members of the City of Topeka, Kansas.
- (o) "License and Management Fee" means:
  - (i) the annual payment made by the City to FOTZ, in quarterly installments, to support the daily operations of the Zoo as more specifically set forth in Article Seven, Section 7.5 herein; and



(ii) the Capital Contributions made by the City to FOTZ to fund Capital Projects in the amount and manner, and within the time frame, more specifically described in Article Eight herein.

(p) "*Loaned Animals*" means all animals that are exhibited, housed or otherwise kept or cared for, which are under loan from other institutions or governmental entities or persons; or which are on loan to other institutions or governmental entities in accordance with applicable AZA procedures. See **Exhibit B**. "Loaned Animals" shall not include "Zoo Animals."

(q) "*Parties*" means, collectively, the City and FOTZ.

(r) "*Termination*" means the date upon which this Agreement ends upon (i) the Expiration Date; (ii) the end of a mutually-agreed upon renewal period; or (iii) an act identified in Section 17.1 or 17.2.

(s) "*Topeka Zoo and Conservation Center*" means a specified area of approximately 32 acres located within the Topeka Zoological Park. A map showing the boundaries of the Topeka Zoo and Conservation Center is attached hereto as **Exhibit C** and incorporated herein by reference.

(t) "*Topeka Zoological Park*" means a 59-acre parcel of property located in Gage Park (635 SW Gage Boulevard, Topeka, Kansas); and within which the County has been granted a revocable license to use and maintain all amenities, with the exception of the Topeka Zoo and Conservation Center, pursuant to City of Topeka Contract No. 42895, dated May 13, 2013. A map, with a corresponding legal description, of the Topeka Zoological Park is attached hereto as **Exhibit D** and incorporated herein by reference.

(u) "*USDA*" means the United States Department of Agriculture.

(v) "*Zoo*" means the combination of all of the assets related to the Topeka Zoo and Conservation Center, operated as a going concern, including, without limitation, the Zoo Premises and Zoo Collection.

(w) "*Zoo Animals*" means all animals that are currently, and will in the future be, exhibited, housed or otherwise kept or cared for on the Zoo Premises, which shall become the sole property of FOTZ. See **Exhibit E**. "Zoo Animals" shall not include "Loaned Animals."

(x) "*Zoo Collection*" means Zoo Animals, Loaned Animals and Zoo Personal Property.

(y) "*Zoo Employees*" means individuals who are employed by FOTZ; and/or individuals who are employed by the City and have been assigned to work at the Zoo.

(z) "*Zoo Liaison*" means the City Manager, or the particular staff member(s) he or she designates to serve as a liaison between the City and FOTZ on particular matters related to this Agreement.



(aa) “Zoo Personal Property” means the items listed on *Exhibit F*, including, but not limited to, vehicles, equipment, furniture, tools, supplies, merchandise, trade names, trademarks, intellectual property and all other tangible and intangible personal property acquired or developed by the City on or prior to the Effective Date for the exclusive use at or by the Zoo, generally consistent with the City’s Asset Management Policy. “Zoo Personal Property” specifically excludes non-transferable licenses, all City trademarks (including the City logo) and any software licenses issued to the City that are not explicitly assigned to FOTZ as part of this transaction.

(bb) “Zoo Premises” or “Premises” means the Topeka Zoo and Conservation Center, together with all buildings, structures, animal habitats, fixtures, improvements, appliances, grounds, paths, walkways, fencing, driveways and parking lots located in or around such Premises, or used in connection therewith, that were in existence as of the Effective Date, or constructed or installed prior to Termination of this Agreement, located within the Topeka Zoological Park.

(cc) “Zoo Records” means all books and records pertaining to and maintained at the Zoo as of the Effective Date; but not including human resources or personnel records, or records maintained by and belonging to FOTZ prior to the effective date of this Agreement.

### **1.3 Existing Agreements between the Parties.**

(a) The “Employee Services Agreement” between the City and FOTZ related to former and current employees of the City, which is more specifically referenced in Article Six of this Agreement, is hereby incorporated and made part of this Agreement for all purposes.

(b) The “Guest Services Agreement” between the City and FOTZ (City of Topeka Contract No. 47578), is hereby null and void upon the Effective Date of this Agreement.

(c) The “Annual Support Agreement” between the City and FOTZ (City of Topeka Contract No. 45959), is hereby null and void upon the Effective Date of this Agreement.

(d) The “Development Agreement” between the City and FOTZ (City of Topeka Contract No. 47234), is hereby incorporated into this Agreement by reference and shall remain in effect until FOTZ has fully reimbursed the City for debt service on the Kay’s Garden and Event Center Bonds (2018B PAB GO Bonds or bonds that subsequently refund the 2018B PAB bonds).

**1.4 Transfer of Specified Contracts and Documents.** The Parties will endeavor to transfer and assign all contracts, permits, registrations, certifications, memberships, accreditations, licenses and any other applicable documents or instruments in accordance with Section 10.4.

## **ARTICLE TWO**

## NAME; ENGAGEMENT; OBLIGATIONS

**Section 2.1 Name.** The name of the Zoo shall remain the “Topeka Zoo and Conservation Center” from the Effective Date through Termination of this Agreement, unless both parties mutually agree to a name change in writing.

**Section 2.2 Scope of Engagement.** The City hereby engages FOTZ to be the sole and exclusive manager and operator of the Zoo from the Effective Date through Termination of this Agreement, during which FOTZ will own the Zoo Collection, with the exception of Loaned Animals. FOTZ, hereby agrees to manage and operate the Zoo from the Effective Date through Termination of this Agreement without any further duty or obligation on the part of the City to compensate FOTZ for such services beyond the consideration required herein. As the sole and exclusive manager and operator of the Zoo, FOTZ shall have exclusive authority over the management and operations of the Zoo and all activities therein; provided, however, that FOTZ shall adhere to all of the terms and conditions set forth in this Agreement.

**Section 2.3 Management and Operation.** FOTZ shall manage, operate and maintain the Zoo consistent with AZA accreditation standards, and pay all costs associated therewith in accordance with the terms and conditions set forth in this Agreement and the following minimum standards:

(a) **Days/Hours of Operation.** Except for a Force Majeure Event, the Zoo shall remain open on a yearly calendar basis generally consistent with the opening and closing dates observed during the five (5) years immediately preceding the Effective Date of this Agreement. FOTZ shall have authority to increase the days and hours during which the Zoo is open to the public; but shall not, absent agreement from the City, reduce the days and hours of operation.

(b) **Management of Zoo Collection.** FOTZ will provide for the care and maintenance of the Zoo Collection in accordance with Applicable Laws, as well as Article Five, Section 5.2 herein.

(c) **Public Services.** FOTZ will provide visitor services to members of the public visiting the Zoo which are normal and customary within the zoo industry, including, but not limited to, admissions, concessions, attractions and public safety.

(d) **Safety.** FOTZ will maintain, develop and implement policies and procedures to reasonably protect Zoo Employees and members of the public from injury or physical harm.

**Section 2.4 Master Plan.** The Parties mutually agree that a viable Master Plan is an important component and tool for the continued growth and improvement of the Zoo. FOTZ has developed a Master Plan, which is attached hereto as *Exhibit G*, and FOTZ shall continue to pursue implementation of the components contained in the Master Plan in consultation with the City's Planning and Development Director, as the same may be amended by FOTZ from time to time.

## ARTICLE THREE TERM; OPTION TO RENEW

This Agreement shall be for a period of time commencing on the Effective Date and extending through the Expiration Date, unless earlier terminated as set forth in Sections 17.1 and 17.2 of this Agreement; provided, however, that the Parties shall have the mutual option to renew this Agreement for two (2) additional ten (10) year periods. Any Party wishing to exercise the option to renew this Agreement must provide the other Party with written notice of its intent to renew, accompanied by a proposed new schedule for operating and capital maintenance amounts, at least one (1) year prior to the Expiration Date or end of the initial ten-year renewal period, whichever is applicable, for purposes of providing sufficient time within which to review the schedule provided prior to any mutually agreed upon decision related to renewal. It is the intent of the Parties that the schedule outlining the renewal amounts be priced with the final year of this Agreement (i) adjusted by the then-prevailing annual inflation rate; and (ii) reduced by the level of funds raised or other contribution streams secured by FOTZ (replacement revenue) that materialized during the course of the Agreement.

## **ARTICLE FOUR PREMISES**

**Section 4.1    Title; Ownership of Premises.** The City is and shall remain the fee simple owner of the Zoo Premises throughout the duration of this Agreement. FOTZ has no authority to and shall not (i) lease, encumber, pledge, mortgage or otherwise subject the Premises to any lien, security interest or other charge, or otherwise cloud the title of the Zoo Premises; or (ii) assert any lien on, or claim against, the Zoo Premises to secure the performance of the City's obligations hereunder.

**Section 4.2    Deed Restrictions; Licenses.**

(a)    Deed Restrictions. The real estate deed of conveyance dated May 31, 1899, between the City and Louisa H. Gage, et al., which includes the Zoo Premises, contains certain restrictions that the City must adhere to. See *Exhibit H*.

(b)    License for Topeka Zoological Park; Exception. Pursuant to a license agreement entered into between the City and the County on May 13, 2013 (City of Topeka Contract No. 42895), the City provided the County with a revocable license to use and maintain all of the amenities within the 59-acre Topeka Zoological Park with the exception of the Topeka Zoo and Conservation Center. See *Exhibit I*.

(c)    License for Topeka Zoo and Conservation Center. In order to adhere to the deed restrictions set forth in subsection (a) of this Section 4.2, this Agreement grants to FOTZ a revocable license, pursuant to which FOTZ shall be entitled to manage, operate, use and maintain the "Topeka Zoo and Conservation Center."

**Section 4.3    Use of Premises.** FOTZ acknowledges and agrees that the Zoo Premises shall only be used for the management and operation of a Zoo, which may include educational programs consistent with the purposes and intent of this Agreement, as well as use of the Premises for entertainment, fundraising or similar uses as a source of revenue and support for the Zoo and/or FOTZ; provided, however, such activities and uses are consistent with Applicable Laws. FOTZ



shall not use or permit the Premises to be used for any other purpose without prior written consent of the City.

**Section 4.4 Expansion of Zoo Premises.** FOTZ acknowledges that the City has issued a license to Shawnee County, Kansas to use, maintain and improve certain amenities located within the Topeka Zoological Park as set forth in the contract referenced in Section 4.2(b) above. This contract provides that the City will make a reasonable effort to provide at least twelve (12) months' prior notice to Shawnee County of the City's intent to expand the existing fenced perimeter. Accordingly, in the event FOTZ desires to expand the existing fenced perimeter, FOTZ shall consult with the City Manager at least eighteen (18) months in advance of the desired expansion; provided, however, that the foregoing shall not preclude or otherwise limit the City Manager, FOTZ and Shawnee County from mutually agreeing to expansion on an expedited basis. Notwithstanding any other term of this Section 4.4, no expansion shall occur unless the Governing Body approves such expansion.

**Section 4.5 City-Sponsored Events.** During each calendar year, the City shall be entitled to utilize the Zoo Premises for up to two (2) City-sponsored events free of charge. The dates and particular conditions associated with such events shall be mutually agreed upon by the Parties. FOTZ will not unreasonably withhold its agreement related to the date and time of such events; provided, however, that the scheduling of such events shall be subject to, and shall not supersede, any events previously scheduled by FOTZ and any dates reserved by FOTZ for future events.

**Section 4.6 Alcohol Sales and Consumption.**

(a) **Alcohol Sales.** FOTZ may apply to the Kansas Department of Revenue/Alcoholic Beverage Control for a license to sell alcoholic liquor ("alcohol") for consumption on the Zoo Premises and duly sell alcoholic beverages for consumption on the Zoo Premises; provided, however, that at all times when alcohol is being sold or consumed, FOTZ shall comply with and ensure compliance with the Kansas Liquor Control Act and all administrative regulations promulgated by the Kansas Department of Revenue/Alcoholic Beverage Control and shall, further, be subject to the following conditions:

(1) FOTZ shall not sell alcoholic beverages during any period in which it does not have an active license in good standing with the Kansas Department of Revenue/Alcoholic Beverage Control permitting such sales.; and

(2) FOTZ shall not sell alcoholic beverages during any period that FOTZ fails to maintain the insurance as required in Article Fourteen.

(b) **FOTZ Subsidiary.** The Parties acknowledge that a wholly-owned subsidiary of FOTZ has obtained a license from the Kansas Department of Revenue/Alcoholic Beverage Control to sell alcohol and that FOTZ initially intends to sell alcoholic beverages through this wholly-owned subsidiary and the City approves of the wholly-owned subsidiary subject to compliance with this Section 4.6. Notwithstanding, FOTZ shall remain responsible to the City for compliance with Section 4.6.

(c) Sales by Vendors or Contractors. FOTZ shall remain responsible to the City for compliance with this Section 4.6 even if services are provided by outside vendors or contractors with their own liquor license.

#### **Section 4.7 Maintenance Associated with General Operations.**

(a) Zoo Premises: Routine Maintenance. FOTZ shall be responsible for all routine, day-to-day maintenance, periodic maintenance and preventative maintenance, including, but not limited to: janitorial services, window washing, pest control, general upkeep, repair, replacement and upgrades, including repair to any netting, general landscaping, including regular tree trimming, landscape maintenance and also including all necessary or prudent maintenance on mechanical systems such as heating, ventilation, cooling, electrical, plumbing, irrigation and lighting, associated with the Zoo Premises. Such maintenance work will be completed by FOTZ in a timely, workmanlike manner. Damage caused by FOTZ, FOTZ's vendors or any other contracted service while performing maintenance work shall be the sole responsibility of FOTZ. Routine maintenance shall relate to projects that do not qualify as a Capital Project pursuant to Section 1.2(c).

(b) Trash Removal. FOTZ shall be responsible for maintaining the Zoo Premises in a clean and sightly condition, free from any trash, litter and debris.

(c) Major Tree Maintenance. All major tree maintenance and repair required within and around the Zoo Premises shall be the sole responsibility of FOTZ. Any such work shall be conducted in a timely, workmanlike manner.

(d) Snow and Ice Removal.

(1) FOTZ. Except as provided in Section 4.7(d)(2) below, snow and ice removal required within and around the Topeka Zoo and Conservation Center shall be the sole responsibility of FOTZ.

(2) County. Pursuant to a license agreement entered into between the City and the County on May 13, 2013 (City of Topeka Contract No. 42895), the City provided the County with a revocable license to maintain and improve streets, roadways, parking lots and sidewalks associated with or attenuated to specified amenities within the Topeka Zoological Park; which includes the parking area(s) shown on the attached ***Exhibit J***. The County is responsible for snow and ice removal associated with these parking area(s) pursuant to Section 2(K) on page 3 and subsection (C) on page 4 of Contract No. 42895.

(e) Zoo Personal Property; Maintenance and Replacement. FOTZ shall maintain all Zoo Personal Property in good condition and repair. FOTZ shall not be responsible for any diminution in value of such Zoo Personal Property due to normal, customary and expected wear and tear. FOTZ shall replace Zoo Personal Property with items of similar quality in the event a particular piece of property becomes inoperable or unusable and, in FOTZ's reasonable discretion, is necessary for operation of the Zoo.

(f) Reimbursement. In the event that it becomes necessary for the City to undertake any maintenance-related activities for the Zoo Premises pursuant to this Section 4.7, after notice and opportunity to cure as required by Section 17.3(b) herein, the City may perform such maintenance and FOTZ shall reimburse the City for the costs and expenses of such maintenance.

(g) Records. FOTZ shall keep all records and documentation of maintenance and replacement activities that are required to be kept by the AZA and Applicable Laws and shall make such records and documentation available to the City in accordance with Article Nine herein.

**Section 4.8 City's Right of Entry.** The City or its designated representative(s) shall have the right at all times to enter all portions of the Zoo Premises to inspect the Zoo or its operations; and to do any act which the City may be obligated or have the right to do under this Agreement. The City shall not unreasonably interfere with the operations of the Zoo or the activities of FOTZ hereunder and any action taken by the City under this Section 4.7 shall be consistent with USDA regulations and AZA guidelines. Nothing in this section shall impose or be construed to impose upon the City any independent obligation to construct or maintain improvements or make repairs, replacements and alterations, or create any independent liability for any failure to do so.

## **ARTICLE FIVE**

### **TRANSFER, CARE and USE OF ZOO COLLECTION**

**Section 5.1 Initial Transfer of Zoo Collection to FOTZ.** The City will execute a Bill of Sale transferring to FOTZ the Zoo Collection on the Effective Date. Moreover, the City will take any reasonable steps necessary to transfer Zoo Personal Property to FOTZ, including execution of certificates of title. Any part of the Zoo Collection remaining on or at the Zoo Premises on the Effective Date that may have been omitted from the Bill of Sale shall be deemed automatically transferred to FOTZ on the Effective Date.

#### **Section 5.2 Care and Use.**

(a) Animals. FOTZ shall provide care for all Loaned Animals and Zoo Animals. Such care shall be provided in accordance with all applicable standards, policies and guidelines of the AZA and USDA, or their successor entities, including, but not limited to, animal care and management, veterinary care, husbandry, feeding, cleaning, enrichment, research, acquisition and disposition. Such care shall also be provided in accordance with any other Applicable Laws.

(b) Use. The City grants exclusive permission to FOTZ to use the Zoo Collection for the benefit of the Zoo and assist with the operation of the Zoo for Zoo-related purposes. FOTZ shall not use the Zoo Collection, or otherwise permit the Zoo Collection to be used, for any other purpose without prior written consent of the City.

#### **Section 5.3 Sale or Disposition.**



(a) Process. FOTZ may sell or otherwise dispose of any part of the Zoo Collection that is not subject to donor commitments or restrictions, including, but not limited to, those arising out of historic designations or loan agreements, upon FOTZ's determination that such sale or disposition is in the best interests of the Zoo through application of industry standards and best practices. Such sale or disposition shall be made in strict conformance with all Applicable Laws, as well as applicable policies, standards, guidelines or procedures, including, but not limited to, those of the AZA and USDA.

(b) Proceeds. All proceeds received by FOTZ for the sale or disposition of any part of the Zoo Collection shall be used solely for the benefit of the Zoo.

(c) Reporting. Any part of the Zoo Collection having an asset value in excess of that set forth in the City's Capital Asset Policy, which was sold or disposed of by FOTZ during a calendar year, shall be referenced in the annual report required pursuant to Section 9.3(a). Such report shall contain a detailed accounting of such sale or disposition, as well as any additional information that may be requested by the City related to the same.

**Section 5.4 Subsequent Transfer of Zoo Collection upon Termination**. Upon Termination of this Agreement, FOTZ shall transfer the Zoo Animals, Loaned Animals and Zoo Personal Property to the City in accordance with Section 17.5(b). Regarding personal property obtained by FOTZ for use at the Zoo from the Effective Date through Termination of this Agreement, the City shall have a first right-of-refusal upon Termination of this Agreement to purchase personal property that is necessary for maintaining the Zoo Animals, Loaned Animals and Zoo Premises as long as FOTZ does not intend to use such personal property in its post-termination operations. Notwithstanding the foregoing, however, FOTZ, in its sole discretion, shall endeavor to transfer personal property that is necessary for maintaining the Zoo Animals, Loaned Animals and Zoo Premises to the City upon Termination of this Agreement at no cost, if economically feasible for FOTZ to do so. All personal property not purchased by the City or transferred to the City pursuant to this Section 5.4, shall remain FOTZ's property to the extent such personal property was not part of the original Zoo Personal Property transferred on the Effective Date.

## **ARTICLE SIX EMPLOYEE/LABOR-RELATED MATTERS**

**Section 6.1 Employee Services Agreement**. The Parties understand and acknowledge that certain City employees will be impacted by this Agreement. Concurrent with this Agreement, the City and FOTZ have entered into an "Employee Services Agreement" concerning the rights and responsibilities of such City employees.

**Section 6.2 Bargaining Unit Employees**. Both parties recognize that there are certain City employees who work at the Zoo who are subject to a collective bargaining agreement between the City and the American Federation of Teachers (AFT) ("Bargaining Unit Employees.") The City recognizes that it has a contractual responsibility to advise AFT in advance of the potential elimination of Zoo positions from City employment and to meet and confer with AFT regarding the terms and conditions of affected employees. The meet and confer process concluded with AFT ratification of a Tentative Agreement amending Contract No. 46203 and/or Contract No. 48941.

The City's Governing Body approved the Tentative Agreement on January 12, 2021, resulting in Contract No. 49174, which is attached as Exhibit 1 to the Employee Services Agreement.

**Section 6.3 Non-Bargaining Unit Employees.** The employment options available to non-bargaining unit employees will be set forth in the Employee Services Agreement.

**Section 6.4 Oversight of Zoo Employees.**

(a) Responsibility. Except as expressly set forth in this Agreement and in the Employee Services Agreement, FOTZ agrees to abide by the terms and conditions contained in any existing labor agreement that encompasses those who remain employees of the City in conjunction with its day-to-day supervision of such employees. FOTZ shall control and supervise the conduct, demeanor and appearance of Zoo Employees, who shall be expected to render a high degree of courteous and efficient service to the public. Employees shall be trained in accordance with applicable AZA standards and protocols.

(b) Compliance with Applicable Laws. FOTZ shall comply with all Applicable Laws related to Zoo Employees.

(c) Benefits. FOTZ shall be responsible for providing and processing any employment benefits provided to those Zoo Employees who are employed by FOTZ.

(d) Conflicts. With the exception of Section 6.4(e), in the event of any conflict between this Agreement and the Employee Services Agreement, the Employee Services Agreement shall control.

(e) At Will Employment. Notwithstanding any provision of this Agreement or the Employee Services Agreement, all Zoo Employees employed directly by FOTZ shall be at-will employees.

## **ARTICLE SEVEN REVENUES**

**Section 7.1 Retention of Revenues.** FOTZ shall be entitled to collect, receive, retain and use for the benefit of the Zoo all revenues derived from the operations of the Zoo not explicitly excluded by the terms of this Agreement, including without limitation net proceeds from gate receipts, food and retail concessions, ride revenues/fees, sales tax, memberships, sponsorship opportunities, parking and contributions and/or revenues otherwise received by or on behalf of the Zoo by bequest, gift or otherwise.

**Section 7.2 Fees.**

(a) Admission. The City and FOTZ agree that maintaining affordable pricing for Zoo admission and attractions is an essential component to successful operation of the Zoo. Admission and attraction pricing shall be at the sole discretion of FOTZ; provided, however, that FOTZ shall provide the City Manager with sixty (60) days' prior written notice of any rate increase, understanding that both Parties agree to utilize their best efforts to ensure that access to the Zoo remains an affordable family experience. Governing Body



approval will be required for any rate increase from the Effective Date through the Expiration Date to the extent such rate increase will result in a rate increase of one-hundred twenty percent (120%) of the rate previously in effect.

(b) Membership. Any increases in the price of FOTZ memberships shall be at the sole discretion of FOTZ.

(c) Other. FOTZ shall be responsible for setting prices and/or appropriate fees for all concession, retail, rental, event experiences, sponsorships or other such activities and offerings at the Zoo.

### **Section 7.3 Funds Raised by FOTZ.**

(a) Best Efforts. FOTZ agrees to use its best efforts to secure gifts of cash, property, bequests and endowments for use in paying for operational expenses and capital improvements at the Zoo. To the extent such funds are collected and maintained by FOTZ, then notwithstanding any other provision of this Agreement, such funds shall remain solely FOTZ property should this Agreement be terminated at some future date by either party. Any and all cash or in-kind donations received by FOTZ for the operation of the Zoo, or for preservation or display, shall be retained by FOTZ and shall be used for the stated purpose; provided, however, that a report of such donations shall be made in accordance with this Article Nine.

(b) Materially Different Improvement or Alteration; City Approval. To the extent any donation (in cash, in kind or otherwise) to FOTZ would result, in the commercially-reasonable determination of FOTZ, in changes to the Zoo Premises that would result in an improvement or alteration materially different from the Master Plan or that would materially impact a popular, existing exhibit, FOTZ shall notify the City of such terms and/or conditions within fifteen (15) days of receiving notice of such donation and the City may within thirty (30) days thereafter agree to such terms and conditions that the City deems reasonable. The City reserves the right to object to any terms and/or conditions that are, in the City's sole opinion, unreasonable or inconsistent with City policy by providing written notice to FOTZ setting forth the City's specific objections to the same. In complying with this Section of the Agreement, FOTZ is not required to disclose the source of any donations received by FOTZ; nor will it be required to provide the City with any donor identifying information from the Effective Date through Termination of this Agreement.

(c) Asset Preservation. Consistent with FOTZ's charitable purpose in accordance with Section 501(c)(3) of the Internal Revenue Code, and the parties mutual desire to ensure the long-term sustainability of the Zoo, FOTZ shall take all reasonably prudent actions necessary to ensure that any gifts of cash, property, bequests and endowments received from third parties while this Agreement is in effect, are held and utilized in a manner that will preserve and restrict the subject matter of the gift to the intended use and purpose of the gift, including without limitation and for purposes of illustration only, for the purposes of supporting a specific aspect of Zoo operations, supporting a specific animal habitat, supporting a specific Zoo program, or supporting a specific Capital Infrastructure Project. In the event that this Agreement terminates or

expires, FOTZ's intention is to continue to operate consistent with its charitable purpose in accordance with Section 501(c)(3) of the Internal Revenue Code, and accordingly FOTZ shall continue to hold and utilize any such gifts contemplated by this Section 7.3(c) in a manner that will preserve and restrict the subject matter of the gift to its intended use and purpose. In the event of FOTZ's insolvency or bankruptcy (or if FOTZ is the recipient of an involuntary filing by creditors) or dissolution or ceasing of corporate operations, FOTZ shall take all actions necessary to ensure that any such gifts contemplated by this Section 7.3(c) are held and utilized in a manner that will preserve and restrict the subject matter of the gift to its intended use and purpose and for the benefit of the Zoo.

**Section 7.4 Transfer of Funds Received by City for FOTZ.** Any funds received by the City for the benefit of the Zoo following the Effective Date, including all previously received, but unexpended, and all future donations, gifts and contributions, if any, as well as federal, state, regional, county or local grants from governmental, public, quasi-public or private entities, if any, shall be promptly paid to FOTZ for use in connection with the operations of the Zoo; subject to any terms and conditions relating to such funds. If FOTZ accepts such funds, it shall be responsible for compliance with all conditions of such funds received and responsible for all consequences of any ineligible or inappropriately spent funds and shall indemnify and defend the City from the same.

**Section 7.5 Annual License and Management Fee.**

(a) Annual Amounts. The City shall pay to FOTZ a fixed dollar amount management fee for each year set forth below:

<u>Year</u>	<u>Annual Contribution</u>
2021	\$1,837,895.28
2022	\$1,973,310.46
2023	\$1,991,070.26
2024	\$2,130,013.38
2025	\$2,149,183.50
2026	\$2,291,737.86
2027	\$2,312,363.50
2028	\$2,458,614.28
2029	\$2,480,741.80
2030	\$2,554,151.51
2031	\$2,577,138.87

2032	\$2,600,333.12
2033	\$2,623,736.12
2034	\$2,647,349.75
2035	\$2,671,175.90

(b) Distribution. The City shall distribute the annual License and Management Fee to FOTZ in quarterly payments on or before the 1<sup>st</sup> business day of each January, April, July and October during which the Agreement is in effect in accordance with the percentages listed below; provided, however, that in 2021, the License and Management Fee shall be distributed in three installments on the Effective Date, July 1 and October 1 (or the next succeeding business day) in accordance with the percentages listed below. Reductions to these quarterly payments shall be made as provided in Section 7.5(c) below.

(1) 2021 Quarterly Payments. For the year 2021, the installments shall be provided as follows: Effective Date – 35%; 3<sup>rd</sup> Quarter – 20%; 4<sup>th</sup> Quarter – 20%.

(2) Subsequent Quarterly Payments. For all other years, quarterly installments shall be provided as follows: 1<sup>st</sup> Quarter – 33%; 2<sup>nd</sup> Quarter – 27%; 3<sup>rd</sup> Quarter – 20%; 4<sup>th</sup> Quarter – 20%.

(c) Reductions. Notwithstanding subsection (a) above, the City shall reduce the Annual License and Management Fee paid to FOTZ in the following situations:

(1) Voter-Approved Taxes. In the event of a voter-approved tax that would provide funding specific to the Zoo, the annual License and Management Fee shall be reduced in the amount of the revenue provided by any such future increase; provided, however, that this reduction shall not include any allocation of the Countywide Retailers' Sales Tax made to the Zoo, as described in Section 8.3.

(2) Property Insurance – Zoo Premises. Each of the quarterly installment payments referenced in Section 7.5(b) above shall be reduced, in equal amounts, to reimburse the City for the amount paid to maintain property insurance on the Zoo Premises as described in Section 14.1(b). The City shall generally impose such reductions from the calendar quarter or quarters in which the City makes such insurance payments, (which may be to third-parties or an insurance trust within the City's treasury).

(3) Employee Services Agreement. Each of the quarterly installment payments referenced in Section 7.5(b) above shall be reduced by the dollar value of compensation and benefits attributable to City employees who are assigned to the Zoo as described in the attached Employee Services Agreement in Section 2(b).

No written amendment to this Agreement will be required to effectuate reductions to the annual License and Management Fee set out in this subsection (c).

**Section 7.6 Taxes on Revenue.** FOTZ shall be responsible for payment of all sales or excise taxes (if any) related to revenues that it receives on items or experiences sold at the Zoo.

**Section 7.7 Renewal Periods.** In the event this Agreement is renewed by the City and FOTZ pursuant to Article Three of this Agreement, the Parties intend that the City shall make funds available to FOTZ during the renewal period then in effect as an annual License and Management Fee in an amount and based upon a schedule consistent with Article Three.

## **ARTICLE EIGHT CAPITAL PROJECTS**

**Section 8.1 City's Capital Contributions.** Given City ownership of the Premises, the City agrees to continue funding existing debt service on previously-issued general obligation and/or revenue-secured bonds and notes for Zoo-related Capital Projects. In addition, the City shall make Five Million Seven Hundred Thousand Dollars (\$5,700,000.00) available to FOTZ through the Expiration Date in order to address capital maintenance issues. The City shall establish a drawdown mechanism to ensure that FOTZ has access to the funding related to the Capital Projects within a reasonable time upon written demand to the City's Finance Director; provided the expense (i) meets the City's capitalization threshold (currently \$5,000.00), (ii) is eligible to be capitalized and (iii) is included as part of a project description provided by FOTZ in writing to the City's Finance Director not later than June 1<sup>st</sup> of each year, which description may be amended by the City's bond counsel as required to conform such request with State law, set out in applicable bond documents.

(a) Effective Date through September 30, 2028. From the Effective Date through September 30, 2028, the City shall make Two Million Eight-Hundred Fifty Thousand Dollars (\$2,850,000.00) in taxable bond proceeds available to FOTZ for the purpose of addressing capital maintenance on the Zoo Premises. Such bond proceeds shall be made available to FOTZ as soon as possible within six (6) months of the Effective Date of this Agreement subject to the conditions set forth in Section 8.1, subsections (a)(1) and (a)(2) below.

(1) FOTZ shall, within two (2) months of the Effective Date of this Agreement, provide for City bond counsel review a project description as described earlier in this Section 8.1.

(2) FOTZ may submit a written request, not more than monthly, to the City in order to draw-down bond proceeds. Such written request shall include at least (i) the amount of such draw in dollars, (which amount shall be not less than Fifty Thousand Dollars (\$50,000.00)), and (ii) a certification that FOTZ will use the drawn funds on Capital Projects within the scope of the City's bond resolution.

(3) Not later than the end of the month following the month in which a draw request is paid by the City to FOTZ, FOTZ shall provide the City for each draw: (i) a description of each Capital Project on which funds were used; (ii) an itemized list of the expenses for which FOTZ applied the draw organized by Capital Project, (iii) corresponding invoices and (iv) proof of payment (cancelled checks,



copies of bank statements, printouts from online banking portals) for each invoice, including copies of lien waivers from contractors and subcontractors, as applicable. FOTZ may, at its option, pre-fund costs associated with Capital Projects, submitting all required information required in this subsection concurrent with a draw request.

(4) In any month during which FOTZ has not provided the City with the requisite documentation in a timely manner for purposes of substantiating a prior draw, the City may refuse to honor a subsequent FOTZ draw request(s).

(5) If FOTZ uses the proceeds of a draw for an expense that is later determined not to be covered by this Section 8.1, FOTZ shall repay the City the total amount of said expense within thirty (30) days of the date on which the City notifies FOTZ.

(b) October 1, 2028 through Expiration Date. The City shall make Ninety-Eight Thousand Two Hundred Seventy-Five Dollars and Eighty-Six Cents (\$98,275.86) available to FOTZ in 2028 (in addition to the funds allocated pursuant to Section 8.1(a) above) and Three Hundred Ninety-Three Thousand One Hundred Three Dollars and Forty-Five Cents (\$393,103.45) available to FOTZ in each of the following seven years (2029 through 2035). If the Governing Body does not approve additional bond authority or specifically identify another funding source to cover this commitment for this period of time for the purpose of addressing Capital Projects on the Zoo Premises, then the amount of this commitment shall be added to and incorporated as part of the annual License and Management Fee payment earned by and distributed to FOTZ in accordance with Section 7.5(b).

(c) Renewal Periods. In the event this Agreement is renewed by the City and FOTZ pursuant to Article Three of this Agreement, the Parties intend that the City shall make funds available to FOTZ during the renewal period then in effect for the purpose of addressing Capital Projects on the Zoo Premises in an amount and based upon a schedule consistent with Article Three.

**Section 8.2 Parking Area Improvements.** Pursuant to a license agreement entered into between the City and the County on May 13, 2013 (City of Topeka Contract No. 42895), the City provided the County with a revocable license to maintain and improve streets, roadways and sidewalks associated with or attenuated to specified amenities within the "Topeka Zoological Park," which include the parking area(s) shown on *Exhibit J*.

**Section 8.3 Countywide Retailers' Sales Tax.** The Parties acknowledge that the countywide retailers' sales tax that became effective on January 1, 2017, and expires on December 31, 2031, approves the use of sales tax proceeds for the Topeka Zoological Park. The Interlocal Agreement between referenced in Section 1.2(g) allocates up to Ten Million Dollars (\$10,000,000.00) for Zoo Phases 1, 2, 3, 4 and 5, subject to two contingencies: (1) the availability of sales tax funding; and (2) the City of Topeka's Capital Improvement Plan, which is reviewed annually. Subject to the foregoing contingencies, FOTZ shall be entitled to receive the sales tax revenue for any Capital Infrastructure project associated with Zoo Phases 1, 2, 3, 4 and 5, as outlined in Exhibit B of the Interlocal Agreement, as may be amended from time to time, pursuant to the process delineated in Section 8.4.

**Section 8.4 FOTZ-Funded Capital Improvements.** The Parties contemplate that FOTZ may, from time to time, at FOTZ's sole cost and utilizing the Countywide Retailers' Sales Tax allocated to the Zoo, undertake Capital Infrastructure Projects consistent with the Master Plan, as it may be amended by FOTZ from time to time, subject to the following conditions:

(a) Prior Notice, Approval Required. Prior to making any expenditure of funds for any single Capital Infrastructure improvement or alteration to the Zoo Premises, other than expenditures relating to planning, investigation, and the development of construction plans, drawings, renderings and any other document related to the planning phase, FOTZ shall provide the City Manager with a written proposal detailing the Capital Infrastructure improvement or alteration, along with reasonably sufficient documentation demonstrating FOTZ's commitment to comply with the project criteria set out below in subsection (b), provided, however, that with respect to subsection (b)(4), FOTZ shall only be required to provide the City Manager with a funding and financing proposal. The City Manager will have sixty (60) days after receipt of such documentation to conduct a review and either approve or deny the capital project. Failure of the City Manager to issue a determination within sixty (60) days shall constitute approval. Should the City Manager deny the Capital Project, the City shall provide FOTZ with the reason for such denial in writing. If FOTZ elects to dispute this decision, it shall provide additional documentation related to the specific dispute deficiency within thirty (30) days. Failure by the City to issue a determination on any newly submitted documentation within ninety (90) days shall constitute denial.

(b) Capital Infrastructure Process. Prior to commencing construction of any Capital Infrastructure improvement or alteration to the Zoo Premises, FOTZ shall be required to provide the City Manager with reasonably sufficient documents demonstrating FOTZ's compliance with the project criteria set out below in this subsection (b).

(1) That all proposed improvements are consistent with the then-current master plan.

(2) That all improvements are to be constructed to meet standards for safety and quality of construction as established under Applicable Laws or by AZA, or a similar organization with jurisdiction. All such submissions shall be sufficient enough in detail to enable the City to make an informed judgment concerning the quality of the contemplated improvements and renovations.

(3) That the Zoo's AZA accreditation is in good standing; or FOTZ is actively pursuing the reinstatement of its accreditation by seeking to construct improvements required by the AZA to restore accreditation or otherwise respond to the noted deficiencies.

(4) That FOTZ has the funding necessary to construct the proposed capital project, or that it has other financing commitments sufficient to fund the proposed Capital Project including the Countywide Retailers' Sales Tax allocated to the Zoo; and that it has/will have sufficient resources for operation and maintenance of the capital project. All such financial documentation shall be

sufficient enough in detail to enable the City to make an informed judgment concerning FOTZ's financial capacity.

(5) That FOTZ has submitted to the City a construction plan, drawings and renderings demonstrating conformity to the master plan and project criteria.

(6) That FOTZ has committed to provide certificates, or other acceptable proof of insurance, and payment and performance bonds required by the City regarding the proposed construction or improvement after construction contracts have been entered into following City approval. Proof of insurance and payment and performance bonds must be submitted to the City before any construction or site work can begin.

(c) Compliance; Reporting. Any Capital Infrastructure improvement or alteration to the Zoo Premises made by FOTZ shall comply with Applicable Law, including, but not limited to, K.S.A. 60-1111, which requires a payment bond for public improvements under certain conditions. FOTZ shall be responsible for obtaining any required permits for such improvements or alterations at its expense. FOTZ shall maintain records of all Capital Infrastructure improvements or alterations and provide a report of the same to the Governing Body as part of the annual report required in Article Nine.

## **ARTICLE NINE BOOKS, RECORDS and REPORTING**

### **Section 9.1 Books and Records.**

(a) Right to Inspect; Audit. FOTZ shall maintain accurate and complete books and records related to the Zoo and its compliance with this Agreement, including all revenues and expenditures, in accordance with generally accepted accounting principles. Upon five (5) days prior written notice to FOTZ, the City, at its sole expense, shall have the right to inspect and audit such books and records at reasonable times during normal business hours.

(b) Retention and Destruction. All such books and records shall be maintained by FOTZ for a minimum of ten (10) years from the date of creation; but may, thereafter, be destroyed in accordance with a record retention policy, established by the FOTZ Board of Directors, after providing the City at least thirty (30) days' notice of the pending destruction. Provided, however, that the following records of FOTZ shall at all times be preserved and made available to the City (or transferred to the City) upon request:

(1) All records relating to acquisitions and dispositions of capital assets;

(2) Any information related to the operation of the Zoo that FOTZ is required to maintain and/or file with the AZA, the State of Kansas, the USDA or any other entity having jurisdiction over the Zoo;

(3) Records relating to the construction or maintenance of Capital Projects; and

- (4) Any claims made against FOTZ for which FOTZ may or has requested assistance or indemnification from the City.

The inspection and audit rights granted in this Section shall survive the expiration or Termination of this Agreement for a period of two (2) years.

**Section 9.2 Use of Zoo Records.** With the exception of documents that have been classified as attorney-client privilege, FOTZ shall have full rights of access to and use of, all Zoo Records for the purpose of operating and managing the Zoo. For additional records pertaining to the Zoo that may be maintained by the City at City offices, FOTZ shall have access upon reasonable request. FOTZ may add to the Zoo Records in the course of performance of its duties under this Agreement; but may not dispose of any Zoo Records except in accordance with the record retention policy described in Section 9.1 above.

**Section 9.3 FOTZ Reporting.** From the Effective Date through Termination, FOTZ shall submit to the City the following reports:

(a) **Annual Reports.** No later than March 31<sup>st</sup> of each year, FOTZ shall furnish an annual written report of its activities in the prior calendar year to the City. This report shall include, at a minimum, the following items:

- (1) Fundraising activities in the past year; provided, however, that FOTZ shall not be required to provide the identities or any identifying information of its donors;
- (2) Attendance during the past year (paid and unpaid);
- (3) Number and type of memberships issued (paid and unpaid);
- (4) A summary of major educational programming in the past year;
- (5) Any acquisitions or dispositions of Zoo Animals or Zoo Personal Property in the past year;
- (6) The scheduled hours of operation of the Zoo in the current year and a report on compliance with the schedule of hours provided to the City in the previous annual report;
- (7) A basic profit/loss statement and balance sheet; and
- (8) An itemized schedule of all insurance policies and coverage amounts that name the City as an additional insured.

(b) **Quarterly Reports.** FOTZ shall provide the City Manager with a Quarterly Report, which shall be shared with the Governing Body, containing (at a minimum) the following information:



- (1) Admission Fee Data;
- (2) Attendance Data;
- (3) Capital Infrastructure Improvement or Alteration Data; and
- (4) Year-to-Date Budget Performance Data.

(c) Independently Audited Financial Statements. By no later than April 1<sup>st</sup> of each year, FOTZ shall provide independently audited financial statements signed by a certified public accountant detailing year-end revenues (public, earned, contributed); expenditures (operating and capital); liabilities; and fund balances. This deadline may be extended by up to sixty (60) days with approval by the City. The audit must be performed in accordance with the following standards, where applicable:

- (1) Generally accepted auditing standards, as promulgated by the American Institute of Certified Public Accountants;
- (2) The Kansas Municipal Audit Guide publication.
- (3) The current revision of the Government Auditing Standards, issued by the Comptroller General of the United States.
- (4) The current AICPA industry audit guide titled Audits of State and Local Governmental Units.
- (5) The Single Audit Act and all amendments thereto.
- (6) Title 2, CFR Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

If the City receives federal funds which it, in turn, passes to FOTZ as a sub-recipient of such funds, FOTZ shall obtain a financial and compliance audit of such funds provided by the State pursuant to this Agreement. Such audit shall be conducted by an independent public or certified public accountant and shall be performed in accordance with the Single Audit Act and all amendments thereto. FOTZ is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Agreement. Audits conducted pursuant to this Section must be submitted no later than nine (9) months following the close of FOTZ's fiscal year. FOTZ agrees to provide the State with an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is FOTZ, and not of a parent, member or subsidiary corporation of FOTZ, except to the extent such an expanded audit may be determined to be in the best interests of the City. The audit shall include a statement from the Auditor that the Auditor has reviewed this Agreement and that FOTZ is not out of compliance with the financial aspects of this Agreement.

(d) Litigation; Claims. FOTZ shall provide notice to the City as soon as reasonably possible after it receives a notice that litigation has been commenced, a written

threat of litigation from an attorney or a written notice of a claim or incident, involving a serious personal injury to any person or animal at the Zoo.

(e) Property Damage. As soon as reasonably possible after learning of damage in excess of Fifty Thousand Dollars (\$50,000.00) to the Zoo, FOTZ shall provide a report detailing such material damage to, or loss of, property. Such report shall include a summary of any damage to any item at, or on, the Zoo; together with detailed information concerning the underlying incident.

(f) Escape of Animal(s). In the event an animal(s) capable of causing injury to humans escapes from its enclosure, FOTZ will follow its emergency protocols, which include immediately notifying the Topeka Police Department, other emergency authorities and the City, and will keep the City informed of developments in a timely manner.

(g) Ability to Manage, Operate Zoo. FOTZ will, upon notice or receipt of notice, make the City aware of any matters that might jeopardize FOTZ's ability to manage and operate the Zoo; including, but not limited to, its ability to exhibit the Zoo Collection, including, but not limited to, the following (and providing copies of all related documents) to the extent applicable:

(1) Reports to, and correspondence with, the AZA that pertain to the Zoo's accreditation;

(2) Reports related to USDA licensing, such as site visit reports and/or annual inspection reports;

(3) Reports to, and correspondence with, other applicable organizations or entities that pertain to the Zoo's operation and ability to exhibit the Zoo Collection;

(4) Any notice of intent to place a lien of any kind, or levy a tax on, the Zoo Premises or the Zoo Collection;

(5) Any notice of any kind, whether generated by a third party or based on information known to FOTZ from any other source, including FOTZ itself, that FOTZ will be unable to meet its regular financial obligations, its obligations to creditors, its obligations to manage and operate the Zoo or will be filing any form of insolvency or bankruptcy (or be the recipient of an involuntary filing by creditors) or will cease corporate operations.

**Section 9.4 City Reporting.** From the Effective Date through Termination, the City shall submit the following information to FOTZ as soon as reasonably possible after:

(a) Claims. Receipt of any notification, report or claim related to personal injury or property damage received by the City, which involves the Zoo;

(b) Litigation. Receipt of any notice that litigation has been commenced, or receipt of any written threat of litigation from an attorney, which involves the Zoo;

(c) Financial Commitments. The City has knowledge that its ability to meet financial commitments made to FOTZ under this Agreement might be significantly compromised;

(d) Accreditation; Licensing. Receipt of any reports or notices from AZA, USDA or other accreditation or licensing agencies; or

(e) Ability to Operate. Notice or receipt of notices of any matters that might jeopardize FOTZ's ability to exhibit its animal collection or otherwise operate the Zoo.

## **ARTICLE TEN**

### **ACCREDITATION; LICENSING AND PERMITS**

**Section 10.1 Accreditation.** The City and FOTZ acknowledge and mutually agree that continuing accreditation of the Zoo by the Association of Zoos and Aquariums ("AZA") is of critical importance to the Zoo's success. From the Effective Date through the Termination of this Agreement, the City and FOTZ shall cause the Zoo to be at all times accredited and in good standing with the AZA. At least one year prior to each scheduled AZA accreditation review, the parties agree to meet to review and discuss, and in good faith address, all issues that may require attention to ensure continued accreditation of the Zoo. In the event the Zoo loses its AZA accreditation, FOTZ shall immediately take all necessary actions to re-obtain accreditation and in the event FOTZ fails to re-obtain accreditation within the later of one (1) year or the conclusion of an application to re-obtain accreditation, then this Agreement shall immediately terminate.

**Section 10.2 Exhibitors License.** From the Effective Date through Termination of this Agreement, FOTZ shall maintain an Exhibitors License through the USDA. In the event FOTZ's Exhibitor's License is revoked by the USDA, this Agreement shall immediately terminate.

**Section 10.3 Must Stay Current.** Attached hereto and incorporated herein as *Exhibit K* is a list of all contracts, permits, registrations, certifications, memberships, accreditations, licenses, permits and/or any other applicable documents or instruments currently held by the City or FOTZ in connection with operation of the Zoo. To the extent any such license or permit is currently in the name of the City, FOTZ is hereby authorized to perform such services under said licenses or permits, as required, until such time as those licenses and permits can be transferred to FOTZ as set out in Section 10.4 below, or in the event assignment or transfer is not available, then within such reasonable period of time as FOTZ can obtain a replacement license or permit. FOTZ shall ensure that all items listed in *Exhibit K* remain current from the Effective Date of this Agreement through Termination, as may be deemed necessary to provide continuity of operations.

#### **Section 10.4 Assignment and/or Transfer.**

(a) Initial Assignment and/or Transfer to FOTZ. The City hereby assigns and/or transfers any and all contracts, permits, registrations, certifications, memberships, accreditations, licenses and any other applicable documents or instruments listed in *Exhibit K* to FOTZ, with the same deemed necessary to provide continuity of operations. FOTZ shall have the right to reject any such documents or instruments for good cause. In the event such documents cannot be transferred for any reason, FOTZ shall be responsible for

obtaining suitable replacements for such documents and shall bear any costs related thereto. FOTZ will indemnify the City from any and all obligations under any contracts that are assigned and/or transferred from the Effective Date of this Agreement through Termination. Following the initial assignment and/or transfer of such documents and instruments to FOTZ, it will be the sole responsibility of FOTZ to renew any existing, or acquire any additional, documents and instruments necessary to fully perform its obligations under this Agreement, at its sole cost and expense, as well as comply with all Applicable Laws related to such documents and instruments.

(b) Subsequent Transfer upon Termination. Upon Termination of this Agreement, FOTZ will engage in all actions required to transfer all contracts, permits, registrations, certifications, memberships, accreditations, licenses and any other applicable documents or instruments listed in *Exhibit K* back to the City, as may be necessary to provide continuity of operations.

## **ARTICLE ELEVEN**

### **REPRESENTATION ON FOTZ BOARD OF DIRECTORS**

**Section 11.1 City Directors.** From the Effective Date through Termination of this Agreement, as evidence of the public-private partnership between the City and FOTZ, one (1) City council member representative of the City shall be appointed to the FOTZ Board of Directors as a voting member and two (2) staff members of the City shall be appointed as ex officio members to FOTZ's Board of Directors ("City Directors") as more specifically set out below:

(a) Elected Officials. The Governing Body shall elect one (1) council member representative (to serve as a voting member) as City Director in conjunction with the election of other established Governing Body standing committees. The length of the council member representative's term shall be in accordance with the FOTZ bylaws.

(b) Staff Representatives. The City Manager shall appoint two (2) individuals to serve as ex officio (non-voting) members from the Effective Date through the Termination of this Agreement. More specifically, the Director of Administrative and Financial Services and the Director of Public Works, or their designee.

The City Directors shall not be subject to recommendation of the FOTZ Nominating Committee, or similar subset of the FOTZ Board of Directors.

### **Section 11.2 Notice of Meetings; Access to Documents.**

(a) Access to Records; Notice of Meetings. The City Directors shall have full access to FOTZ's records to the same extent as other members of FOTZ's Board and shall be entitled to notice of FOTZ's activities, including meetings, to the same extent as any other member of FOTZ's Board.

(b) FOTZ Organizational Documents. The FOTZ Board of Directors shall revise its By-Laws, and/or other governing documents, for the purpose of demonstrating the existence of the City Director positions and exempting them from the "giving requirement" established for members of the FOTZ Board. This Section 11.2(b) cannot be



nullified by any change or amendment to FOTZ's organizational documents from the Effective Date through Termination of this Agreement.

**Section 11.3 Binding Effect.** Except as otherwise stated herein, the City Directors shall enjoy and be subject to all rights, obligations and incidents which accrue to or are binding upon any director of FOTZ. Accordingly, the City Directors shall be subject to FOTZ's Articles of Incorporation, Bylaws, resolutions and any other duty or policy that the FOTZ Board of Directors are subject to, including, but not limited to, FOTZ's conflict of interest policy.

## **ARTICLE TWELVE UTILITIES**

FOTZ shall pay One Hundred Percent (100%) of the costs associated with all water, sewer, gas, electricity, lighting, trash collection and all other types of utility services used at, or provided to, the Zoo.

## **ARTICLE THIRTEEN TRANSITION**

### **Section 13.1 Responsibilities.**

(a) The City will remain responsible for all expenses, costs, claims and liabilities, subject to any and all defenses and immunities available to the City, incurred or arising prior to the Effective Date in connection with the City's ownership, operation and maintenance of the Zoo. If, on or after the Effective Date, an expense, cost, claim or liability which occurred prior to the Effective Date is submitted to FOTZ, the City shall be responsible for the same.

(b) FOTZ will remain responsible for all expenses, costs, claims and liabilities, subject to any and all defenses and immunities available to FOTZ, incurred or arising prior to the Effective Date in connection with FOTZ's activities, including contracts, if any, executed by FOTZ concerning the Zoo, its donors, vendors, volunteers, renters or any other person or entity.

**Section 13.2 Zoo Liaison – Notice to FOTZ.** The City Manager shall provide FOTZ with notice of the particular staff member(s) he or she has designated to serve as the Zoo Liaison between the City and FOTZ during the transition on matters that include, but are not limited to, financial administration, employment, personal property, information technology and compliance with USDA regulations or AZA accreditation standards.

## **ARTICLE FOURTEEN INSURANCE**

**Section 14.1 Coverage Required.** From the Effective Date through Termination of this Agreement, FOTZ shall procure and maintain in full force and effect, at its own cost and expense,

the insurance coverages detailed in the subsections below from companies licensed to do business in the State of Kansas and rated A- or better by A.M. Best, or a similar rating agency.

(a) General Liability Insurance. Commencing no later than the date of execution of this Agreement, FOTZ shall procure and maintain throughout the life of this Agreement General Liability Insurance Coverage with limits of liability in an amount not less than Two Million Dollars (\$2,000,000.00) in the aggregate during each policy period, which shall be no longer than one (1) year, and in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, with an umbrella of Five Million Dollars (\$5,000,000.00). Such insurance shall be issued by an insurer authorized to do business in Kansas deemed acceptable to the City and shall provide that the City, its officers, employees, agents and volunteers are to be named as "Additional Insureds" under the policy. The policy shall stipulate that such insurance shall operate as Primary Insurance coverage. Any other applicable City insurance policy shall operate only as excess coverage. The policy shall not include any exceptions for amusement rides or animal liability. The insurance shall be an "occurrence" policy, not a "claims-made" policy.

(b) Property Insurance. Commencing no later than the date of execution of this Agreement, FOTZ shall procure and maintain property insurance coverage for all its assets, including vehicles. The City shall provide and maintain property insurance coverage for all its owned assets, including the Zoo Premises, and may elect to be self-insured; provided, however, that FOTZ shall be responsible for (i) reimbursing the City in the amount the City pays to maintain such property insurance coverage as set out in Section 7.5(c)(2) and (ii) paying the initial Twenty-Five Thousand Dollars (\$25,000.00) of the deductible associated with any property losses that may occur in accordance with the City's property insurance policy.

(c) Professional Liability (Errors and Omissions). Commencing no later than the date of execution of this Agreement, FOTZ shall procure and maintain professional liability insurance coverage for the performance of the services set out in this Agreement with a combined single limit of liability in an amount not less than Two Million Dollars (\$2,000,000.00) in the aggregate during each policy period, which shall be no longer than one (1) year, and in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence. FOTZ shall be required to maintain such coverage relating to FOTZ's actions or non-actions under this Agreement for a minimum of three (3) years following completion of the performance or attempted performance of the provisions of this Agreement.

(d) Workers' Compensation Insurance. Commencing no later than the date of execution of this Agreement, FOTZ shall procure and maintain during the life of this Agreement Workers' Compensation Insurance in accordance with all applicable statutes of the State of Kansas.

(e) Motor Vehicle Insurance. Commencing no later than the date of execution of this Agreement, FOTZ shall procure and maintain during the life of this Agreement Motor Vehicle Insurance, including Kansas No-Fault Coverages, with limits of liability not

less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

#### **Section 14.2 Certificates of Insurance.**

(a) Required. Prior to execution of this Agreement by the City, FOTZ shall (i) provide Certificates of Insurance demonstrating compliance with this Article Fourteen; (ii) ensure that all insurance certificates and any endorsements specify the name and address of the issuing insurance company, the policy limits and any exclusions; and (iii) provide all insurance certificates and any endorsements to the Zoo Liaison, who shall provide copies to the City's Department of Human Resources and Division of Contracts and Procurement.

(b) Failure to Provide Certificate of Insurance. Failure to provide a Certificate of Insurance or to obtain and maintain required insurance coverage shall constitute a material breach of this Agreement and the City may, at its determination, procure the required coverage and invoice FOTZ or deduct the cost of such insurance from any amount owed to FOTZ under this Agreement for said insurance or provide FOTZ thirty (30) days' notice of the City's intent to terminate this Agreement; which termination shall be effective without further action unless FOTZ provides the required Certificate of Insurance within said notice period.

**Section 14.3 Prior Notice Required—Change in Coverage; Expiration; Cancellation.** Any alteration or material change affecting any policies or certificates of insurance required by this Agreement, (including, but not limited to, any change in coverage, expiration dates or cancellation) shall require FOTZ to provide the City with copies of the corresponding notice from its insurance carrier within three (3) business days of receipt of such notice.

#### **Section 14.4 Periodic Review by City; Proof of Insurance.**

(a) Periodic Review; Notification of Changes. FOTZ agrees to provide insurance coverages that are customary and commercially reasonable, with all required provisions and minimum limits as set forth in Section 14.1. The City shall review applicable insurance limits and coverages on an annual basis. Following this review, the City shall notify FOTZ of any requested changes in the minimum limits and the Parties shall endeavor in good faith to agree to any change in the minimum limits. If the parties cannot come to agreement, Section 17.1 may be applied.

(b) Failure to Provide Proof of Insurance. FOTZ's failure to provide the City with any Certificate of Insurance for any of the policies specified herein, which properly evidence naming the City and its agents as additional named insureds shall be deemed a material breach of this Agreement. The City may request complete copies of any of the insurance policies specified in Section 14.1 for review on an annual basis. FOTZ's failure to provide the City with complete copies of such policies within thirty (30) days of the City's written request shall be deemed a material breach of this Agreement.



**Section 14.5 Fire or Other Damage to Premises; Obligation to Replace.** In the event of a fire and/or other casualty to the Zoo Premises that causes damage or destruction, the Parties shall comply with applicable State law. The Parties shall cooperate by submitting timely claims for any damaged property under any potentially applicable insurance policy so that any damaged property is replaced.

## **ARTICLE FIFTEEN INDEMNIFICATION**

**Section 15.1 FOTZ's Duty to Indemnify.** FOTZ shall indemnify and save harmless, the City, its elected officials, officers, employees, volunteers and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments and expenses of every type and description, including any attorney's fees and/or costs of the City's legal staff or outside attorneys reasonably incurred by the City (hereafter collectively referred to as "liabilities"), to which any or all of them may be subjected, by reason of, or resulting from, directly or indirectly, any act or omission of FOTZ, its Board members, officers, employees, volunteers or agents in connection with the performance or nonperformance of the Agreement, its management and operation of the Topeka Zoo and Conservation Center, and all activities therein, or its care, use and maintenance of the Zoo Premises and Zoo Collection, whether or not such liabilities are litigated, settled or reduced to judgment. FOTZ shall, upon the City's request, defend at FOTZ's sole cost and expense any action, claim or suit which asserts or alleges any claim, whether well founded or not, that is based, in whole or in part, directly or indirectly, upon any act or omission of FOTZ, its Board members, officers, employees volunteers or agents in connection with the performance or nonperformance of this Agreement, its management and operation of the Topeka Zoo and Conservation Center, and all activities therein, or its care, use and maintenance of the Zoo Premises and Zoo Collection, or breach of representations or warranty under the Agreement. In the event that a final decision is rendered by a court of competent jurisdiction, including the resolution of any appeals, or a judgment allocates liability by determining that any portion of damages awarded is attributable to the City's gross negligence or willful misconduct, the City shall pay the portion of damages, including attorney fees and costs, which is allocated to the City's gross negligence or willful misconduct. As used herein, the phrase "gross negligence or willful misconduct" shall not include any act or omission by the City, its officers, employees, volunteers or agents occurring in connection with, or related to, the review, approval or acceptance of any service or work product performed or provided by FOTZ that is alleged to have caused, or has caused, personal injury or property damage.

**Section 15.2 City's Duty to Indemnify.** Without waiving the City's right to state a defense based on governmental immunity to any claim brought by a third party, the City shall indemnify and save harmless, FOTZ, its officers, employees, volunteers and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments and expenses of every type and description, including any attorney's fees and/or costs of FOTZ's legal staff or outside attorneys reasonably incurred by FOTZ (hereafter collectively referred to as "liabilities"), to which any or all of them may be subjected, by reason of, or resulting from, directly or indirectly, any act or omission of the City, its employees, volunteers or agents in connection with the performance or nonperformance of the Agreement, whether or not such liabilities are litigated, settled or reduced to judgment. The City shall, upon FOTZ's request, defend at the City's sole cost and expense any action, claim or suit which asserts or alleges any claim, whether well founded or not, that is based, in whole or in part, directly or indirectly, upon any act or omission



of the City, its officers, employees volunteers or agents in connection with the performance or nonperformance of this Agreement. In the event that a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable to FOTZ's gross negligence or willful misconduct, FOTZ shall pay the portion of damages, including attorney fees and costs, which is allocated to FOTZ's gross negligence or willful misconduct. As used herein, the phrase "gross negligence or willful misconduct" shall not include any act or omission by FOTZ, its officers, employees or agents occurring in connection with, or related to, the review, approval or acceptance of any service or work product performed or provided by the City that is alleged to have caused, or has caused, personal injury or property damage.

**Section 15.3 Kansas Tort Claims Act.** To the extent possible and available, the City and/or FOTZ shall assert that any alleged loss is subject to the Kansas Tort Claims Act.

## **ARTICLE SIXTEEN REPRESENTATIONS AND WARRANTIES**

**Section 16.1 As Is, Where Is, with All Faults.** All property (real and personal) and all rights transferred or conveyed pursuant to this Agreement are made available to FOTZ strictly and only on an "AS IS, WHERE IS CONDITION BASIS WITH ALL FAULTS KNOWN OR UNKNOWN, OBVIOUS OR LATENT." The City disclaims warranties and representations concerning the condition (but not the ownership) of the Zoo. FOTZ acknowledges that it has had full opportunity to inspect the Zoo and obtain facility assessment reports. FOTZ accepts the Zoo subject to this Agreement in AS IS, WHERE IS CONDITION.

**Section 16.2 Representations of the City.** The City represents and warrants that it has the power and authority to execute and deliver this Agreement and also to perform obligations listed hereunder. The City represents and warrants that the license conveyed to FOTZ by this Agreement is permissible with respect to the real estate deed of conveyance dated May 31, 1899, between the City and Louisa H. Gage, et al. Further, the City represents and warrants that the execution, delivery and performance of this Agreement has been authorized by all necessary actions, which has been obtained prior to the Effective Date hereof. The City represents and warrants that, as of the Effective Date, it is not a party to any agreement or understanding that would prevent, limit or hinder in any material manner its performance of any obligation under this Agreement.

**Section 16.3 Representations of FOTZ.** FOTZ represents and warrants that it is a tax exempt non-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code, as amended, and has the power and authority to execute, deliver and perform its obligations under this Agreement and that the execution, delivery and performance of this Agreement has been authorized by appropriate corporate action. FOTZ further represents and warrants that it will maintain its (i) existence as a corporation, (ii) qualification to do business in Kansas and (iii) status as a tax exempt non-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code from the Effective Date of this Agreement through Termination of the same.

FOTZ represents and warrants that as of the Effective Date of this Agreement it is not a party to any agreement or understanding that would prevent, limit or hinder in any material manner its performance of any obligation under this Agreement. FOTZ represents and warrants that as of the Effective Date of this Agreement it has no interest, and that it shall not acquire any interest

through Termination of this Agreement, that would conflict in any manner or degree with the performance of obligations under this Agreement and further agrees not to employ any person or entity it knows has such an interest unless full disclosure of the conflict has been made in advance to the City and the consent of the City is obtained.

**Section 16.4 Pending Litigation.** Nothing in this Agreement shall impact the rights of the parties concerning any pending litigation.

**Section 16.5 Mutual Representations and Warranties.** The City represents to FOTZ and FOTZ represents to the City as follows:

(a) Neither party has knowledge of, or reasonable grounds to know of, any basis for the assertion against that Party, as of such dates, of any liability of any nature or in any amount relating to the Zoo that is not fully disclosed to the other.

(b) There are no actions, suits, claims, investigations or legal, administrative or arbitration proceedings pending or, to the best of each Party's knowledge, threatened or likely to be asserted by or against that Party or relating to the Zoo, this Agreement and/or the transactions contemplated hereby, before any court, governmental agency or other body, including any quasi-judicial or administrative forum, and no judgement, order, writ, injunction, decree or other similar command of any court, governmental agency or body has been entered against or served upon that Party.

(c) Each Party acknowledges: (i) that each Party does not assume any employee benefits of the other Party whatsoever; and (ii) neither Party shall have any obligation to provide specific employee benefits prospectively and (iii) each Party remains responsible for all wages and benefits of its employees accrued prior to the Effective Date.

(d) To the best of each Party's knowledge, there is no hazardous material in, on or under the Zoo Premises. In addition, there are no presently pending or threatened administrative or enforcement actions, investigations, compliance orders, claims, demands, actions or litigation based on environmental laws or regulations or otherwise related to the presence of hazardous material, in, on or under the Zoo Premises. Neither Party makes any other environmental representations or warranties.

(e) The performance of this Agreement is not in violation of any laws, statutes, local ordinances, state or federal regulations, court or administrative order or ruling.

(f) Each Party represents and warrants that neither this Agreement, nor any other information furnished by a Party in connection with the transactions contemplated by this Agreement, contain any untrue statement of material fact, or omit to state any material fact, necessary to make the statements contained therein misleading; considering the circumstances under which they were made.

(g) Both Parties have, to the best of each Party's knowledge, complied with all of the provisions of all contracts and commitments pertaining to the Zoo. There are no outstanding contracts or commitments for which either Party will become obligated other than those set forth in *Exhibit K*.

## ARTICLE SEVENTEEN TERMINATION

**Section 17.1 Early Termination by the City.** This Agreement may be terminated by the City after the Effective Date and prior to the Expiration Date, or any subsequent renewal periods, under any of the following circumstances:

(a) Termination due to Default. A Default by FOTZ that is not cured within the period of time prescribed in Section 17.3.

(b) Termination due to Other Circumstances.

(1) Appointment of a receiver, trustee, liquidator, custodian or similar official of all or a substantial part of, FOTZ assets; or

(2) Insolvency of FOTZ; or

(3) Filing of a voluntary petition in bankruptcy by FOTZ; or

(4) Filing of an involuntary petition in bankruptcy against FOTZ that is not dismissed within ninety (90) days thereafter; or

(5) A general assignment for the benefit of FOTZ creditors; or

(6) FOTZ's inability to pay its debts as they become due; or

(7) Dissolution of FOTZ; or

(8) In the event that the City's title to the Zoo Premises is adjudged by a court of competent jurisdiction to be in question, or to be such that the City is prohibited from allowing the use of the Zoo Premises as contemplated under this Agreement by virtue of the Louisa Gage Deed restrictions, the Parties shall immediately endeavor in good faith to amend this Agreement in order to allow FOTZ to continue to operate and manage the Zoo; provided, however, that if this Agreement cannot be cured to allow FOTZ to continue to operate and manage the Zoo, then this Agreement shall terminate. In the event this Agreement terminates under this Section 17.1(b)(8), the Parties shall meet to discuss the transition, including payment of FOTZ's actual expenses in transitioning operation of the Zoo back to the City; or

(9) In accordance with Section 10.1 or 10.2 of this Agreement; or

(10) Pursuant to an election by the City to revoke the license to FOTZ to operate and manage the Zoo Premises without cause; provided, however, that in the event the City elects to revoke the license of FOTZ under this Section 17.1(b)(10), then the City shall reimburse FOTZ in the amount of One Hundred Thousand Dollars (\$100,000.00), which represents the amount of FOTZ's estimated start-up

costs that will not be covered by the Annual License and Management Fee, or the actual amount of FOTZ's start-up costs, whichever is less.

**Section 17.2 Early Termination by FOTZ.** This Agreement may be terminated by FOTZ after the Effective Date and prior to the Expiration Date, or any subsequent renewal periods, under any of the following circumstances:

(a) Termination due to Default. A Default by the City that is not cured within the period of time prescribed in Section 17.3.

(b) Termination due to Failure to Pay Annual Fee; Fund Capital Contribution. If, for any fiscal year, the City fails to appropriate sufficient funds for payment to FOTZ of the required Annual License and Management Fee as provided in Article Seven of this Agreement and make funding available for the Capital Contribution, as provided in Article Eight of this Agreement; provided, however, if the failure to make any such appropriation is for the reason that the City intends to implement closure, transfer or sale of the Zoo, (not including sale or transfer to FOTZ in which case the fees during transition shall be negotiated), FOTZ shall continue to manage and operate the Zoo for six (6) months from the date of the failure to make the appropriation only if the City agrees to pay FOTZ and does actually pay FOTZ the portion of the Annual License and Management Fee and Capital Contribution FOTZ would otherwise have received for the six (6)-month time period.

**Section 17.3 Conflict; Dispute Resolution.** If the Parties cannot reach resolution on a matter related to, or arising out of, this Agreement involving a potential Default, the Parties shall pursue the following dispute resolution process:

(a) Notice of Conflict. A Party who believes there is a conflict arising under this Agreement that may involve a potential Default may provide written notice (a "Notice of Conflict") to the other Party. Such Notice of Conflict shall include a detailed statement of the conflict and a clear indication of the Party's position with regard to the conflict.

(b) Resolution of Conflict or Notice of Default; Opportunity to Cure.

(1) Within five (5) days after the Notice of Conflict described in subsection (a) above is provided, the Parties will initiate good faith discussions to resolve the subject matter of the Notice of Conflict. Such discussions will be conducted between the Parties' chief executive officers or appropriate executive level designees (each an "Executive Representative"). Each Executive Representative shall possess the necessary authority to resolve the subject matter of the Notice of Conflict. The Executive Representatives shall have thirty (30) days from the Notice of Conflict to resolve the conflict.

(2) If the Parties' Executive Representatives are unable to resolve the conflict within the thirty (30) day period after the date on which the first meeting was held, then the Executive Representative of the Party who believes a Default has occurred may provide written notice (a "Notice of Default") to the other Party.



(3) No legal proceedings against the claimed defaulting Party shall be instituted nor shall the claiming Party be entitled to damages if, within sixty (60) business days from the receipt of a Notice of Default, the claimed defaulting Party undertakes acts to cure, correct or remedy such claimed Default, proceeds with due diligence to complete such cure, correction or remedy and such cure, correction or remedy is completed within sixty (60) business days of the date such claimed defaulting Party received the Notice of Default. The Parties may agree to extend the time to cure, correct or remedy the alleged Default.

(4) In addition to specific provisions of this Agreement, performance by a Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to a Force Majeure Event or a Default by the other Party. The time of performance hereunder shall be extended for the period of any delay or delays caused by or resulting from any Force Majeure Event or Default by the other Party. FOTZ shall provide notice to the City if and when any such Force Majeure Event or Default occurs and FOTZ may be granted such extensions based upon the period of such Force Majeure Event or Default.

(c) Failure to Resolve Conflict or Cure Default. In the event of a Default that is the subject of a Notice of Default cannot be cured within the sixty (60) business day time period set out in subsection (b)(3) above, or within any mutually agreed-upon extension period, then, prior to any Party commencing litigation against the other, any dispute arising out of the terms or performance of this Agreement shall be first submitted to mediation before a mediator agreeable to each Party. The Parties agree to split the cost of such mediator on a 50/50 basis. Should mediation not successfully resolve the issue(s) between the Parties, litigation may be commenced. In any legal proceeding, each Party knowingly, intentionally and voluntarily waives the right to trial by jury in any action, counterclaim, dispute or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims arising against all parties to such actions and proceedings. In the event of any litigation or mediation between the Parties regarding an alleged breach of this Agreement, neither party shall be entitled to attorney fees.

**Section 17.4 Notice of Termination.** If the City or FOTZ elects to terminate this Agreement as set forth in Sections 17.1 or 17.2 above, excluding Termination under Section 17.1(b)(9) above, it shall provide written notice of termination to the other Party specifying the date on which termination is to become effective; which date shall not be less than ninety (90) days following the date on which notice of termination is provided. Termination of this Agreement by any non-defaulting Party as set forth in Sections 17.1 and 17.2 above shall not relieve the defaulting Party of responsibility or liability for any loss, damage or expense caused by the defaulting Party's failure to perform its duties and obligations under this Agreement; provided, however, that in no event shall the City incur any liability to FOTZ for failure to appropriate sufficient funds for the payment of the License and Management Fee to FOTZ other than the amounts the City is obligated to pay FOTZ under this Agreement for the period of time FOTZ continues to operate and manage the Zoo.

The election by FOTZ to terminate this Agreement pursuant to Section 17.2 is subject to FOTZ's conditional obligation to continue to operate and manage the Zoo for an additional time period as set forth in Section 17.2.

**Section 17.5 Effect of Expiration or Termination.** Upon the Expiration Date of this Agreement, or, in the event of early Termination pursuant to Sections 17.1 and 17.2, on the specified effective date of any such Termination of this Agreement, or, if reasonably necessary, within five (5) business days after the specified effective date of such early Termination, the following actions shall occur:

(a) Zoo Premises. FOTZ shall provide the City with sole possession, custody and control of the Premises as required by this Agreement, in no worse condition than it was in at the Effective Date or applicable subsequent date of acquisition, allowing for normal wear and tear. Similarly, FOTZ shall provide the City with sole possession of the Zoo Collection, together with subsequent additions or subtractions thereto, and subject to deterioration that occurred despite the exercise of reasonable care in accordance with standard practices employed by established AZA accredited zoos.

(b) Zoo Collection. FOTZ shall return to the City the possession, custody and control of the Zoo Animals, Loaned Animals and Zoo Personal Property, allowing for normal wear and tear; provided, however, that the possession, custody and control of any personal property FOTZ obtained for use at the Zoo from the Effective Date through Termination of this Agreement shall be determined in accordance with Section 5.4 of this Agreement.

(c) Records. FOTZ will surrender and return to the City (or otherwise make available to the City at the Zoo Premises) all Zoo Records.

(d) Responsibility for Claims.

(1) The City will assume all responsibility and liability for the management and operations of the Zoo immediately upon Termination of this Agreement except where FOTZ continues to manage and operate the Zoo under Section 17.2. The City will be responsible for any claims relating to the Zoo and Zoo operations that arise beginning from the Expiration Date or date of Termination of this Agreement, or upon the date that FOTZ ceases to manage and operate the Zoo under Section 17.2.

(2) FOTZ will continue to be responsible and liable for any claims relating to the Zoo and Zoo operations that arose prior to the Termination of this Agreement for which FOTZ would be responsible under the terms of this Agreement, including the obligation to indemnify and defend the City and, to the extent necessary, to maintain any insurance policy required under this Agreement so as to protect the availability of insurance proceeds for any such claim.

(e) Outstanding Obligations. The Parties will undertake to resolve in good faith, and make payment for, any obligations outstanding under this Agreement on the Expiration Date or the date of Termination.



(f) Employee Services Agreement. Termination of this Agreement shall also act to terminate the Employee Services Agreement without further notice and shall serve to terminate.

**Section 17.6 Use of Remaining Funds.** Upon the Termination of this Agreement, FOTZ shall first be entitled to use any remaining portion of the License and Management Fee or funding for capital projects received from the City to cover FOTZ's reasonable costs and expenses associated with ceasing to manage and operate the Zoo. Any then-remaining portion of the License and Management Fee or funding for capital projects obtained by FOTZ shall be forwarded to the City upon the date FOTZ ceases to operate the Zoo.

**Section 17.7 Removal of Property upon Termination.** Upon the Expiration Date, or sooner termination of this Agreement as permitted by the Agreement, FOTZ may remove, at its own expense, its own furniture, furnishings, equipment, inventory and trade fixtures. It is agreed that the City, or the City's assignees, during the thirty (30) day period following the date of termination, shall have the first right to purchase any furniture, furnishings, equipment and trade fixtures of FOTZ, which FOTZ will not use for its post-Termination operations, for the same price that FOTZ would be willing to sell said goods to any other person. Should FOTZ fail to remove said items not purchased by the City within thirty (30) days after the period of the City's option expires, it shall lose all right, title and interest in and to said items and the City may elect to keep them or dispose of them without notice or liability to FOTZ.

## **ARTICLE EIGHTEEN MISCELLANEOUS**

**Section 18.1 Non-Appropriation; Available Funds; Cancellation.** In accordance with the Kansas Cash Basis Law, payments by the City are subject to annual appropriation by its Governing Body. When the City makes a written determination that funds are not appropriated or otherwise available to support continued performance of this Agreement, this Agreement shall be cancelled. A determination by the City that funds are not appropriated or otherwise available to support continued performance of this Agreement shall be final and conclusive.

**Section 18.2 No Liens.** FOTZ will not suffer, or through its actions cause to be filed upon the Zoo Premises, any lien or encumbrance of any kind.

**Section 18.3 Intellectual Property.** Any and all intellectual property associated with marketing of the Zoo, including, without limitation, advertising campaigns, membership materials, leadership campaigns, special events, trademarks, trademark applications, copyrights and copyright applications, shall be the exclusive property of FOTZ, to which FOTZ shall have the entire right, title and interest.

**Section 18.4 Force Majeure.** Either Party shall be excused from the performance under this Agreement for any period of time during which the party is prevented from performing its obligations hereunder as a result of a Force Majeure Event. Such non-performance shall not constitute grounds for default.

**Section 18.5 Successors and Assigns.**

Adopted/Approved  
February 9, 2021

(a) The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the City and FOTZ and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third party beneficiaries to this Agreement.

(b) Other than in the ordinary course of business, FOTZ shall not, without the advance written consent of the City, assign any of its rights or obligations hereunder; *provided, however*, that any such assignment must be (i) to a tax exempt non-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code or (ii) approved by written opinion of the City's bond counsel.

(c) Absent explicit written agreement by the City, no assignment shall release or terminate FOTZ's responsibility to the City for the performance of all obligations contained in this Agreement.

(d) The foregoing is not intended to limit the right of FOTZ to enter into subcontracts for the performance of portions of its obligations hereunder, including, but not limited to, concessions or equipment leasing transactions (such as for new technology equipment, vehicles or other equipment) so long as such transactions (i) do not create any liability, contingent or otherwise, to the City and (ii) are with a tax exempt non-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code or are approved by written opinion of the City's bond counsel.

**Section 18.6. No Tenancy.** FOTZ shall not by virtue of this Agreement be deemed to have become a tenant of the City, or the Zoo Premises, or have acquired any legal or equitable interest in the Zoo Premises; rather, FOTZ is merely a licensee permitted to be on the Zoo Premises solely for the purpose of exercising therein the rights granted in this Agreement. Upon Termination of this Agreement, the City shall have the right through such means as it sees fit to remove and exclude therefrom FOTZ, and any of FOTZ's employees, without being deemed guilty of any unlawful entry, trespass or injury of any sort whatsoever.

**Section 18.7 Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

**Section 18.8 Compliance with Applicable Law.** In conducting all activities under this Agreement, and in its operation of the Zoo, FOTZ shall comply with all applicable federal, state and local laws, including, but not limited to, those governing occupational health and safety and the treatment and well-being of the Zoo Collection.

**Section 18.9 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected unless amended or modified by mutual consent of the parties.

**Section 18.10 Headings.** All headings in this Agreement are for convenience only and shall not affect the interpretation or enforcement of this Agreement in any way whatsoever. Words

used in the singular shall include the plural and words used in the masculine shall include the feminine in all cases where such would apply.

**Section 18.11 Entire Agreement; Amendment in Writing; Waiver.**

(a) This Agreement contains the sole and entire Agreement of the parties with respect to the subject matter of the Agreement and, unless expressly provided herein, no prior or contemporaneous oral or written representation or agreement between the parties shall have any legal effect.

(b) This Agreement may not be amended or modified except by written agreement executed by the Parties, their respective successors, permitted assigns or legal representatives. This Agreement and the rights to payment hereunder shall not be assignable or transferrable to any other party without the prior written consent of the other party hereto.

(c) No provision in this Agreement shall be waived unless such waiver is expressly made in writing and signed by an authorized representative of each Party.

**Section 18.12 Non-Collusion and Acceptance.** The undersigned persons acting on behalf of FOTZ, affirm, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of FOTZ, that he/she has not, nor has any other member, employee, representative, agent or officer of FOTZ, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

**Section 18.13 Binding Authority.** The City and FOTZ confirm to one another through the signatures to this Agreement that each has full power and authority to enter into this Agreement. The action contemplated by this Agreement has been duly authorized by all actions necessary for the City and FOTZ. No other action is necessary on the part of either the City or FOTZ to authorize execution of this Agreement.

**Section 18.14 No Binding Authority.** Except as provided in this Agreement, no Party shall have the authority, express or implied, to bind the other Party to any obligation whatsoever and shall indemnify and defend the other Party from any claims arising from any such action.

**Section 18.15 Relationship of Parties.** The services to be rendered by FOTZ pursuant to this Agreement are as an independent contractor only and the relationship between FOTZ and the City is solely that of licensor and licensee and owner and contractor. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, a joint management relationship or a relationship of employment or agency.

**Section 18.16 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be taken to be one in the same instrument, for the same effect as if all of the parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counter part of this Agreement without impairing the legal effect of any signatures thereon and may attach to



another counterpart of this Agreement identical in form hereto; but having attached to it one or more additional signature pages.

**Section 18.17 Construction of Agreement.** Each Party and its respective legal counsel has had an opportunity to review, revise and have input into this Agreement. Neither Party, nor their respective legal counsel, shall be construed to be the drafter or primary drafter of this Agreement. In the event of a dispute regarding the construction of this Agreement, ambiguities or questions of interpretation shall not be construed more in favor of one Party than the other; rather, questions of interpretation shall be construed equally as to each Party.

**Section 18.18 Other Necessary Acts.** Each Party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the purposes and intents of this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges provided in this Agreement.

**Section 18.19 No Third Party Beneficiaries.** In no event shall any person or entity that is not a party to this Agreement be an expressed, implied or intended third-party beneficiary of this Agreement.

## ARTICLE NINETEEN NOTICES

**Section 19.1 City to FOTZ.** All notices from the City to FOTZ shall be deemed duly served if mailed, postage prepaid, by registered or certified U.S. Mail to FOTZ at the following address, or at such other address or to such other addresses as FOTZ may designate in writing from time to time:

FOTZ Board President  
635 SW Gage Blvd  
Topeka, KS 66606

*With a copy to:*  
Timothy D. Resner  
FOTZ Board Attorney  
1414 SW Ashworth Place, Suite 201  
Topeka, KS 66604

**Section 19.2 FOTZ to City.** All notice from FOTZ to the City shall be deemed duly served if mailed, postage prepaid, by registered or certified U.S. Mail to the City at the following address:

City Manager  
City of Topeka, Kansas  
City Hall  
215 SE 7<sup>th</sup> Street  
Topeka, Kansas 66603

*With a copy to:*  
City Attorney  
City of Topeka, Kansas  
City Hall  
215 SE 7<sup>th</sup> Street  
Topeka, Kansas 66603

**CITY OF TOPEKA, KANSAS**

**FRIENDS OF THE TOPEKA ZOO**

Adopted/Approved  
February 9, 2021

Brent Trout  
Brent Trout  
City Manager

ATTEST:

Brenda Younger  
Brenda Younger  
City Clerk



Fred Patton  
Fred Patton  
President, Board of Directors

ATTEST:

Kelly D. Kelsey  
Print Name: Kelly D. Kelsey  
Secretary, Board of Directors



# EXHIBIT A

## Employee Services Agreement



3A.



City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
www.topeka.org  
February 9, 2021

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DATE: February 9, 2021  
CONTACT PERSON: Brent Trout, City Manager DOCUMENT: 49244  
SECOND PARTY/SUBJECT: Friends of the Topeka Zoo PROJECT #:  
CATEGORY/SUBCATEGORY 006 Communication / 005 Other  
CIP PROJECT: No  
ACTION OF COUNCIL: Discussion 02-02-21. JOURNAL #: 2021  
*Approved on 2/9/2021* PAGE #:

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**DOCUMENT DESCRIPTION:**

APPROVAL of the terms and conditions of a License and Management Agreement with the Friends of Topeka Zoo ("FOTZ") that will provide for the operation and management of the Topeka Zoo and Conservation Center by FOTZ as part of a proposed Public Private Partnership.

**Voting Requirement:** At least six (6) votes of the Governing Body is required.

**VOTING REQUIREMENTS:**

At least six (6) votes of the Governing Body is required.

**POLICY ISSUE:**

Whether to approve the terms and conditions of a License and Management Agreement with FOTZ, which will provide for the operation and management of the Topeka Zoo and Conservation Center by FOTZ as part of a proposed public private partnership.

**STAFF RECOMMENDATION:**

Entering into a public private partnership with FOTZ to operate and manage the Topeka Zoo and Conservation Center is a policy decision for the Governing Body.

**BACKGROUND:**

The subject of Zoo governance has been discussed during multiple Governing Body meetings: June 4, 2019; December 3, 2019; March 2, 2020; October 6 and 13, 2020; November 10, 2020 and December 1 and 8, 2020. At the December 8th meeting, the Governing Body directed the City Manager to pursue a public private partnership with FOTZ and bring forward a License and corresponding Management Agreement for its consideration.

**BUDGETARY IMPACT:**

The current budget impact is unknown at this time.

**SOURCE OF FUNDING:**

This is under review.

**ATTACHMENTS:**

**Description**

License and Management Agreement Overview REVISED as of Feb 8, 2021  
Revisions to Proposed License and Management Agreement Considered by the GB on Feb 2, 2020 (REVISED as of Feb 8, 2021)  
License and Management Agreement (Clean Version) REVISED as Feb 8, 2021  
Exhibit A - (Employee Services Agreement - Jan 21, 2021)  
Exhibit B - (Loaned Animals as of Feb 4, 2021)  
Exhibit C - (Aerial Map of Topeka Zoo and Conservation Center)  
Exhibit D - (Aerial Map of Topeka Zoological Park)  
Exhibit E - (Zoo Animals as of Feb 4, 2021)  
Exhibit G (FOTZ Master Plan) Updated Feb 9, 2021  
Exhibit F - (Zoo Personal Property as of Feb 4, 2021)  
Exhibit H - (Gage Park Deed)  
Exhibit I - (License Agreement between the City and Shawnee County - May 13, 2013)  
Exhibit J - (Aerial Map of Area Maintained and Improved in Accordance with Terms of Exhibit I)  
Exhibit K - (Contracts, Permits, Licenses, etc. as of Feb 4, 2021)  
Question/Answer Summary (Received through Feb 9, 2021)  
Question/Answer Summary (Received through Feb 4, 2021)  
Dec 8, 2020 Financial Services Memo (Includes FOTZ Response Summary Document)  
Columbia Capital Memo - Financial Pro Forma - Dec 8, 2020  
Zoo Operating Cost Focus - Pro-Forma  
Question/Answer Summary (Received through Feb 1, 2021)  
FOTZ Resolution Feb 8, 2021

*(Exhibit A to License and Management Agreement)*

**CITY OF TOPEKA CONTRACT NO. 49244  
Employee Services Agreement**

This Employee Services Agreement is by and between the City of Topeka, Kansas, ("City"), a municipal corporation, and Friends of the Topeka Zoo, ("FOTZ"), a Kansas non-profit corporation. The Effective Date of this Employee Services Agreement is February 9, 2021, the date on which the Governing Body approved the License and Management Agreement with FOTZ.

WHEREAS, the Effective Date of the License and Management Agreement has been established as April 3, 2021, and is intended to be the date on which the management and operational duties and responsibilities of the Topeka Zoo and Conservation Center (hereinafter "Zoo") transfer to FOTZ; and

WHEREAS, a separate and earlier Effective Date is necessary for this Employee Services Agreement in order to allow sufficient time for City employees assigned to the Zoo to consider and make elections pertaining to future employment options with the City or with FOTZ.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL CONVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

Section 1. Zoo Employees Transitioning to FOTZ Employment. Within seven (7) calendar days of the date on which the Governing Body approves a License and Management Agreement with FOTZ, FOTZ will extend offers of employment to all City employees who are actively employed on a full time basis at the Zoo.

(a) FOTZ Offers of Employment. The FOTZ offers of employment will include the position, grade and step offered to the City employee; and will designate a regular rate of pay for each employee that is between two percent and three percent (2% and 3%) higher than the City employee's regular rate of pay on the date the offer is made to the employee.

(i) The FOTZ offers of employment to AFT bargaining unit employees will provide, at a minimum, the information specified in Attachment A-Class I and Attachment A-Class II to the Supplemental Agreement to City of Topeka Contract No. 48941 (hereinafter "Supplemental Agreement"). AFT bargaining unit employees will have a minimum of twenty-one (21) days to accept employment with FOTZ. The Supplemental Agreement is attached hereto as EXHIBIT 1 and incorporated herein.

(ii) The FOTZ offers of employment to non-union employees will provide, at a minimum, the information specified in EXHIBIT 2. In order to accept

employment with FOTZ, the "Election Regarding Zoo Employment for Non-Union Employees," attached as EXHIBIT 3, must be completed within twenty-one (21) days after the FOTZ offers of employment are provided to non-union employees.

(iii) FOTZ agrees that during the first six months of FOTZ employment, no City employee who transitions to FOTZ employment will have his or her hourly rate of pay or salary reduced except pursuant to a legitimate disciplinary reason.

(b) Commencement of FOTZ Employment. City employees who accept the FOTZ offer of employment will commence employment with FOTZ on between April 3 and April 5, 2021.

(c) Combined Seniority. For employment benefits that take seniority into account, FOTZ will credit transitioning City employees with the time those employees had been employed continuously by the City.

(d) Vacation Accruals. Each Employee who timely accepts the FOTZ offer of employment may elect to transfer accrued, unused, unpaid vacation in an amount that is equivalent to a maximum of fifty percent (50%) of the allowable FOTZ "Paid Time Off" calendar year allotments for 2021 (which allotments are set forth in ¶ 12(a) of Exhibit 1).

(i) Vacation accruals that transfer to FOTZ will be credited to the Employee's PTO bank.

(ii) The City will pay to FOTZ the dollar equivalent of the vacation accruals that any employee elects to transfer to the FOTZ PTO bank. The dollar equivalent will be based on the Employee's regular rate of pay as of the date City employment terminates.

(e) Accrued Sick Leave. Each Employee who timely accepts the FOTZ offer of employment may transfer up to a maximum of 240 hours of accrued, unused, unpaid sick leave to a Short-term Disability Bank maintained by FOTZ.

(i) The transfer of sick leave hours is an unfunded liability and will not be paid out upon the termination of FOTZ employment.

(ii) While vacation and sick leave under the FOTZ PTO program is combined and must be exhausted prior to utilization of the Short-term Disability Bank maintained by FOTZ, FOTZ agrees to the following exception related to absences caused by a Covid-19 event: If an employee's PTO bank is decreased to a level below ten (10) days due to a Covid-19 event, such employee will be allowed to use accumulated time in his/her Short-term Disability Bank for the remainder of the Covid-19 related absence.

(f) Severance Pay. For each City employee who accepts FOTZ's offer of employment, FOTZ will provide severance pay, at FOTZ's expense, if the employee is

terminated by FOTZ due to a reduction in force that occurs within one year of the employee's commencement of employment with FOTZ. Severance pay will be based on the Employee's combined ZOO seniority with the City and FOTZ and will be calculated using the employee's regular base hourly wage:

- (i) Less than one (1) year seniority: no severance pay.
- (ii) One (1) year or more and up to ten (10) years seniority: One week salary for each of the first ten (10) complete years of service.
- (iii) Over ten (10) years seniority: One week salary for each of the first ten complete years of service and two (2) weeks' salary for each complete year of service in excess of ten (10) years of service up to a maximum of one (1) year's salary.

(g) KPERS Penalties. The Parties acknowledge that KPERS has provided an opinion that City employees retiring and commencing employment with FOTZ shall not trigger a statutory penalty or liability pursuant to KSA 74-4914(5)-(10), and the Parties have relied upon this assumption in entering into this Agreement. In the event KPERS assesses any KPERS contribution rate pursuant to KSA 75-4914(5)-(10) for those employees who transition from City employment to FOTZ employment under the terms of this Agreement, the Parties shall negotiate allocation of the responsibility of any such increased contribution rate in good faith.

Section 2. City Employees Assigned to the Zoo. Certain AFT employees, as described in the Supplemental Agreement, are provided the option to remain employed by the City in a Zoo position; and each management and executive employee is provided the option to remain employed by the City in a Zoo position. This Section applies to any City employee who is provided the option to retain City employment in a Zoo position and elects to exercise that option.

(a) Any City employee in a Zoo position shall retain his or her City salary and benefits, including seniority. Leave will be granted based on seniority whether the employee is a FOTZ employee or a City employee.

(b) City is responsible for the payroll processing of all compensation and employment benefits for City employees assigned to the Zoo. On a quarterly basis, the dollar amount of the compensation and benefits provided by the City to City employees in a Zoo position will be deducted from the FOTZ Quarterly License and Management Fee payments provided these employees continue to be employed by the City and assigned to a Zoo position. The City will provide FOTZ with a written schedule detailing the dollar cost of compensation and benefits for these City employees at least thirty days prior to each quarterly disbursement date.

(c) City employees assigned to the Zoo will be supervised by whomever FOTZ assigns to supervise them. FOTZ employees who supervise City employees must attend

training deemed appropriate by the City's Director of Human Resources. City employees may supervise FOTZ employees, if deemed appropriate by FOTZ.

(d) City employees assigned to the Zoo will receive annual performance evaluations by their supervisor in accordance with city procedures in effect at the time. Upon completion, performance evaluations will be forwarded to the City's Director of Human Resources who will determine any annual merit wage increase to be given the employee based on the performance evaluation, taking into consideration comparable wage increases given to other City employees.

(e) Discipline of City employees will be governed by the AFT Labor Agreement for bargaining unit employees and the City's Personnel Manual for non-bargaining unit employees.

(f) FOTZ will make City employees assigned to the Zoo reasonably available for City training requested by the City's Director of Human Resources and will provide these employees with all City policies provided to FOTZ by the City.

(g) City shall be responsible for providing workers compensation benefits for City employees assigned to the Zoo. FOTZ will immediately notify the City's Risk Management Division of any injury to any City employee in accordance with Risk Management's procedures and shall comply with state and local laws and procedures.

### Section 3. Miscellaneous.

(a) FOTZ will hire and employ such other personnel as shall, in its judgment, be required to operate, manage and maintain the Zoo in accordance with the provisions of the License and Management Agreement. FOTZ will have sole responsibility for all decisions relating to the hiring, supervision, discipline, and termination of such personnel, all of whom shall be employees of FOTZ except those City employees covered by Section 2 above.

(b) FOTZ will have sole authority and responsibility to determine the personnel policies and procedures applicable to its employees, subject to the provisions of subsections (i) and (ii) below.

(i) FOTZ will adopt reasonable personnel policies prohibiting employment discrimination and harassment, violence in the workplace, and drug and alcohol use; and provide and maintain reasonable "whistleblower" protections for its employees.

(ii) Without limiting FOTZ's responsibility for the hiring of personnel, FOTZ agrees that it will obtain a criminal background check prior to hiring any new employee who is not transitioning from City employment to FOTZ employment.



(c) As a contractor of the City, FOTZ shall comply with Topeka Municipal Code 3.30.470 with respect to its work performance.

IN WITNESS WHEREOF, the Parties have hereto executed this Agreement as of this 9th day of February, 2021.



ATTEST:

Brenda Younger  
Brenda Younger, City Clerk

CITY OF TOPEKA, KANSAS

Brent Trout  
Brent Trout, City Manager

APPROVED AS TO FORM AND LEGALITY

DATE \_\_\_\_\_ BY \_\_\_\_\_

FRIENDS OF THE TOPEKA ZOO

Fred Patton  
Fred Patton, President



**EXHIBIT 1**

CITY OF TOPEKA CONTRACT NO. 49174

*Supplement Agreement to City of Topeka Contract Nos. 46203 and 8941*

4B.



City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
www.topeka.org  
January 12, 2021

DATE: January 12, 2021  
CONTACT PERSON: Jacque Russell, Human Resources Director DOCUMENT #: 49174  
SECOND PARTY/SUBJECT: AFT Kansas Local 6406 PROJECT #:  
CATEGORY/SUBCATEGORY 007 Contracts and Amendments / 020 Employee Agreements  
CIP PROJECT: No  
ACTION OF COUNCIL: JOURNAL #: 2021  
Approved on 1/12/2021 PAGE #:

**DOCUMENT DESCRIPTION:**

APPROVAL of a Supplemental Agreement to City of Topeka Contract No. 48941 between the City of Topeka and AFT Kansas Local 6406 amending certain terms and conditions of employment pertaining to zoo employees.

**Voting Requirement:** At least six (6) votes of the Governing Body is required.

*(Approval would establish the process for AFT employees to transition to employment with Friends of the Topeka Zoo ("FOTZ") in the event the Governing Body approves a License and Management Agreement with FOTZ.)*

**VOTING REQUIREMENTS:**

At least six (6) votes of the Governing Body is required.

**POLICY ISSUE:**

Whether to approve a tentative agreement that amends the current AFT labor agreement to allow for a transition of zoo bargaining unit employees to FOTZ employment.

**STAFF RECOMMENDATION:**

Staff recommends the Governing Body move to approve the supplemental agreement.

**BACKGROUND:**

Once discussions commenced with the Governing Body about a potential Public-Private Partnership with FOTZ related to the operation and maintenance of the Topeka Zoo, representatives of the City and of AFT engaged in the meet and confer process to identify a potential transition process for zoo employees to transfer to FOTZ employment. A tentative agreement was reached and has been ratified by AFT members. The tentative

agreement, titled "Supplemental Agreement to City of Topeka Contract No. 48941," is now presented to the Governing Body for approval.

**BUDGETARY IMPACT:**

The budgetary impact will be determined by the terms of a License and Management Agreement between the City and FOTZ. If a License and Management Agreement is not approved by the Governing Body by March 31, 2021, the tentative agreement with AFT is rendered null and void.

**SOURCE OF FUNDING:**

Presently unknown.

**ATTACHMENTS:**

**Description**

AFT Supplemental Agreement  
Contract No. 48941

CITY OF TOPEKA CONTRACT NO. 49174

SUPPLEMENTAL AGREEMENT TO CITY OF TOPEKA CONTRACT NO. 48941

THIS SUPPLEMENTAL AGREEMENT to City of Topeka Contract Nos. 46203 and 48941 is entered into on this 10<sup>th</sup> day of February, 2020, by and between the City of Topeka, a duly organized municipal corporation hereinafter referred to as "City" and AFT Kansas Local 6406, hereinafter referred to as "Union."

WHEREAS, City and Union previously entered into City of Topeka Contract No. 46203 which governs terms and conditions of the employment relationship between the City and the Union through December 31, 2020; and City of Topeka Contract No. 48941 was recently approved by the Governing Body, to be effective January 1, 2021.

WHEREAS, it is in the best interest of both parties to agree upon additional conditions in the event the Governing Body approves a proposed License and Management Agreement between the City and Friends of the Topeka Zoo ("FOTZ"), whereby City would contract with FOTZ to manage and operate the Topeka Zoo and Conservation Center ("Zoo").

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Whenever the term "Effective Date" is used in this Supplemental Agreement, it shall mean the date the Governing Body approves a License and Management Agreement with FOTZ. If a License and Management Agreement is not approved and executed on or before March 31, 2021, these amendments are null and void.

2. AFT employees working in positions assigned to the Topeka Zoo (excluding Public Works Facilities' positions) will be offered comparable positions by FOTZ in the event a License and Management Agreement with FOTZ is approved. These employees

are hereinafter referred to as "Impacted Employees" and all Impacted Employees will be provided an offer of employment from FOTZ no later than one week after the Effective Date.

3. For purposes of this Supplemental Agreement, there will be two classes of Impacted Employees:

(a) Class I Impacted Employees consist of employees assigned to the Topeka Zoo who are not eligible, within three years of the Effective Date of this Agreement, to draw a retirement benefit through KPERS. Class I Impacted Employees will have the option to accept the FOTZ offer of employment on a date and time specified within the FOTZ offer of employment, which date shall be no sooner than three (3) weeks after the offers of employment are provided to Employees.

(b) Class II Impacted Employees consist of employees assigned to the Topeka Zoo who are eligible, within three years of the Effective Date of this Agreement, to draw a retirement benefit through KPERS. Class II Impacted Employees will have the option to make an election to either remain in their current city position or accept the offer of employment from FOTZ. The election deadline will be on a date and time specified within the FOTZ offer of employment, which date shall be no sooner than three (3) weeks after the offers of employment are provided to Employees.

4. Each FOTZ offer of employment to Class I Impacted Employees will provide the information specified in Class I-Attachment A and will include an election form as set forth in Class I-Attachment B.

5. Each FOTZ offer of employment to Class II Impacted Employees will provide the information specified in Class II-Attachment A and will include an election form as set forth in Class II-Attachment B.

6. For a period of time beginning on the Effective Date and ending five weeks thereafter, Class I Impacted Employees will be provided the option to apply for open AFT or other non-bargaining unit positions under a preferential hiring process. Under this preferential hiring process, Zoo employees who meet the minimum qualifications for an



open AFT or non-bargaining unit position will be selected for the position and will be subject to a six-month interim probationary period.

7. For the time period beginning on the Effective Date and ending five weeks thereafter, the parties agree that the requirements of Article 14 Section 1(a) and the selection criteria set forth within the first paragraph of Article 14 Section 1(b) shall be amended as follows: A preferential hiring process for Class I Impacted Employees, as set forth in paragraph 6 directly above, shall take priority over other contractually-stated promotion criteria during the time period set forth in this paragraph.

8. The parties agree that the benefits of continued employment to all Impacted Employees and the preferential hiring process offered to Class I Impacted Employees render the Article 8 Section 1, Reduction in Force: Lay Off provisions inoperable.

9. The parties agree that the purpose of Article 8 Section 2 Severance Pay is to provide "temporary relief" to employees who have lost employment. The parties further agree that temporary relief is not required and the severance pay provision shall be considered inoperable for Impacted Employees because all Impacted Employees have the option to transition their employment with the City to employment with FOTZ.

10. Impacted employees who fail to timely complete and return their election form (Class I or II-Attachment B) will be considered to have voluntarily resigned their employment with the City.

11. Pursuant to an agreement between City and FOTZ, FOTZ will provide severance pay to any employee who transfers to FOTZ employment under the terms of these amendments but who is terminated by FOTZ as a result of a reduction in force that occurs within one year of the employee's commencement of employment with FOTZ. Severance pay will be based on the Impacted Employee's combined ZOO seniority with the City and FOTZ and will be calculated using the employee's regular base hourly wage:

- (a) Less than one (1) year seniority: no severance pay.
- (b) One (1) year or more and up to ten (10) years seniority: One week salary for each of the first ten (10) complete years of service.
- (c) Over ten (10) years seniority: One week salary for each of the first ten complete years of service and two (2) weeks' salary for each complete year of service in excess of ten (10) years of service up to a maximum of one (1) year's

salary.

12. Each Impacted Employee who timely accepts the FOTZ offer of employment may elect to transfer accrued, unused, unpaid vacation in an amount that is equivalent to a maximum of fifty percent (50%) of the allowable FOTZ "Paid Time Off" calendar year allotments. The election must be made on the applicable Attachment B.

(a) The FOTZ "Paid Time Off" calendar year allotments for 2021 will be as follows:

Full-time employees are credited PTO based on the following schedule:

<b>Years of Completed Service With City of Topeka</b>	<b>Annual PTO Days (Hours)</b>
Less than one year	15 (120)
One and Two years	18 (144)
Three and Four years	19 (152)
Five and Six years	20 (160)
Seven and Eight years	21 (168)
Nine and Ten years	22 (176)
Eleven and Twelve years	23 (184)
Thirteen and Fourteen years	24 (192)
Fifteen and Sixteen years	25 (200)
Seventeen and Eighteen years	26 (208)
Nineteen years and thereafter	27 (216)

(b) Transferred accruals will be credited to an Impacted Employee's PTO bank maintained by FOTZ on the date the employee commences employment with FOTZ.

(c) If an Employee elects to transfer vacation to FOTZ, any remaining accrued, unused, unpaid vacation will be paid out by the City as part of the Employee's final pay.

13. Each Impacted Employee who timely accepts the FOTZ offer of employment will transfer up to a maximum of 240 hours of accrued, unused, unpaid City Sick leave to a Short-term Disability Bank maintained by FOTZ. Both parties understand that there is no intention that hours in the FOTZ Short-term Disability Bank will be paid out upon separation of employment with FOTZ.

14. City shall seek to include language within the proposed Employee Services

Agreement between City and FOTZ that would provide:

(a) During the first six months of FOTZ employment, no City employee who transitions to employment with FOTZ shall receive a reduction in their hourly rate of pay or salary, except pursuant to a legitimate disciplinary reason.

(b) If an employee's PTO bank with FOTZ is decreased to a level below ten (10) days due to a Covid-19 event, such employee will be allowed to use accumulated time in his/her short-term disability bank for the remainder of the Covid-19 related absence.

15. All other terms and conditions of City of Topeka Contract Nos. 46203 and 48941 not specifically amended herein shall remain in full force and effect.


IN WITNESS WHEREOF, the parties have hereto executed this Amendment as of the day and year first above written.

CITY OF TOPEKA, KANSAS



Brent Trout, City Manager

ATTEST:

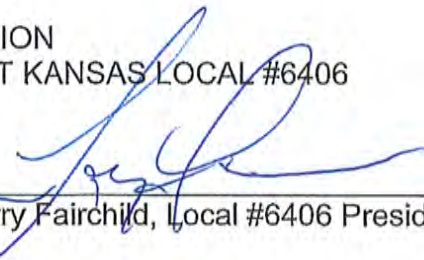
  
Brenda Younger, City Clerk

APPROVED AS TO FORM AND LEGALITY

DATE \_\_\_\_\_ BY \_\_\_\_\_



UNION  
AFT KANSAS LOCAL #6406



Larry Fairchild, Local #6406 President

  
Brian Kelly, Local #6406 Steward

**CLASS I - ATTACHMENT A**

**NOTICE OF EMPLOYMENT OPTION WITH FOTZ**

Dated: \_\_\_\_\_

Dear AFT Employee [individual letters to each zoo employee]:

Please consider the following actions that are time-sensitive:

1. You have the opportunity to transfer your employment to FOTZ, effective \_\_\_\_\_, in the position of [specify position]. Your transfer to employment with FOTZ pursuant to the terms set forth within Attachment B requires execution of Attachment B on or before 5:00 p.m. on \_\_\_\_\_. The option to transfer employment to FOTZ will expire at 5:01 pm on \_\_\_\_\_.
2. If you choose to exercise your option to accept employment with FOTZ per the terms set forth in paragraph 1, you will also be given preferential hiring opportunities during the time period of \_\_\_\_\_ through \_\_\_\_\_, for any open AFT position or other non-bargaining unit city position for which you meet the minimum qualifications.
3. In the event you do not timely accept a position with FOTZ in accordance with paragraph 1 or obtain another city position in accordance with paragraph 2, you will be considered to have voluntarily resigned your employment with the City of Topeka, effective \_\_\_\_\_.

**CLASS I - ATTACHMENT B**

Friends of the Topeka Zoo (FOTZ) offers to employ \_\_\_\_\_ NAME \_\_\_\_\_ in the position of \_\_\_\_\_ POSITION/TITLE \_\_\_\_\_ at \_\_\_\_\_ GRADE/STEP \_\_\_\_\_ at the hourly wage rate of \$ \_\_\_\_\_ HOURLY PAY RATE \_\_\_\_\_. (FOTZ will be requested to provide position description and 2021 FOTZ pay matrix.)

The OFFER above is open until 5:00 p.m. on \_\_\_\_\_. In order to accept the position, the following ELECTION must be executed and returned to the City of Topeka's Human Resources Department no later than 5:00 p.m. on \_\_\_\_\_.

I, \_\_\_\_\_ NAME \_\_\_\_\_, elect to: (please select one of the boxes below)

**BOX A** ☐ accept employment with FOTZ in the position described above effective \_\_\_\_\_, 2020. This election includes the following terms:

\*FOTZ will credit my \_\_\_\_\_ years of service with the City of Topeka toward years of service with FOTZ for any employment benefits that take seniority into account, including the allotment of "Paid Time Off" and the approval process for "Paid Time Off."

\*I authorize the City of Topeka to transfer \_\_\_\_\_ hours of my vacation accruals to FOTZ; and I understand that the maximum number of hours that I may transfer is \_\_\_\_\_ hours.

\*I authorize the City of Topeka to provide a copy of my Personnel File to FOTZ.

\*I agree to provide **written notification** to FOTZ should I elect to commence drawing KPERS retirement benefits while employed by FOTZ and I understand that **receipt of KPERS retirement benefits may result in up to a 30% reduction in pay or termination of my employment with FOTZ.**

**BOX B** ☐ decline employment with FOTZ because I have secured a new position with the City or, if not, resign my employment with the City effective \_\_\_\_\_ 1.

\_\_\_\_\_  
SIGNATURE OF EMPLOYEE

STATE OF KANSAS  
COUNTY OF SHAWNEE

Signed or attested before me on \_\_\_\_\_, 2020, by  
«Name» \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public Signature

My commission expires: \_\_\_\_\_

1 Date will be inserted that reflects one day earlier than the effective date of FOTZ employment within Box A above.

**CLASS II - ATTACHMENT A**  
**NOTICE OF EMPLOYMENT OPTION WITH FOTZ**

Dated: \_\_\_\_\_

Dear AFT Employee [individual letters to each zoo employee]:

Please consider the following actions that are time-sensitive:

1. You have the opportunity to transfer your employment to FOTZ, effective \_\_\_\_\_, in the position of [specify position]. Your transfer to employment with FOTZ pursuant to the terms set forth within Attachment B requires execution of Attachment B on or before 5:00 p.m. on \_\_\_\_\_. The option to transfer employment to FOTZ will expire at 5:01 pm on \_\_\_\_\_.
2. Because you are an employee eligible to draw a retirement benefit through KPERS within three (3) years of the Effective Date of this Agreement, you have the alternative option not to transfer your employment to FOTZ per the terms set forth in paragraph 1 above, and remain an employee of the City of Topeka in accordance with City of Topeka Contract No. 46203 with AFT Kansas Local 6406, including amendments. This election choice is provided within Attachment B and must be made on or before 5:00 pm on \_\_\_\_\_.
3. In the event you fail to make a timely election specified within Attachment B, you will be considered to have voluntarily resigned your employment with the City of Topeka, effective \_\_\_\_\_.



CLASS II - ATTACHMENT B

Friends of the Topeka Zoo (FOTZ) offers to employ \_\_\_\_\_ NAME \_\_\_\_\_ in the position of \_\_\_\_\_ POSITION/TITLE \_\_\_\_\_ at \_\_\_\_\_ GRADE/STEP \_\_\_\_\_ at the hourly wage rate of \$ \_\_\_\_\_ HOURLY PAY RATE \_\_\_\_\_. (FOTZ will be requested to provide position description and 2021 FOTZ pay matrix.)

The following ELECTION must be executed and returned to the Human Resources Department no later than 5:00 p.m. on \_\_\_\_\_.

I, \_\_\_\_\_ NAME \_\_\_\_\_, elect to: (please select one of the boxes below)

☐ accept employment with FOTZ in the position described above effective \_\_\_\_\_. This election includes the following terms:

\*FOTZ will credit my \_\_\_\_\_ years of service with the City of Topeka toward years of service with FOTZ for any employment benefits that take seniority into account.

\*I authorize the City of Topeka to transfer \_\_\_\_\_ hours of my vacation accruals to FOTZ; and I understand that the maximum number of hours that I may transfer is \_\_\_\_\_ hours

\*I authorize the City of Topeka to provide a copy of my Personnel File to FOTZ.

\*I will provide **written notification** to FOTZ should I elect to commence drawing KPERS retirement benefits while employed by FOTZ and I understand that **receipt of KPERS retirement benefits may result in up to a 30% reduction in pay or termination of my employment** with FOTZ.

OR

☐ remain a city employee in my current position of \_\_\_\_\_ pursuant to AFT Contract No. 48941.

\_\_\_\_\_  
SIGNATURE OF EMPLOYEE

STATE OF KANSAS  
COUNTY OF SHAWNEE

Signed or attested before me on \_\_\_\_\_, 2020, by  
«Name» \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public Signature

My commission expires: \_\_\_\_\_

## EXHIBIT 2

### NOTICE OF FOTZ EMPLOYMENT OPTION FOR NON-UNION EMPLOYEES

Dated: \_\_\_\_\_

Dear \_\_\_\_\_ [Mgmt Employee]:

1. You have the opportunity to transfer your employment to FOTZ, effective \_\_\_\_\_, in the position of [specify position]. Your transfer to employment with FOTZ pursuant to the terms set forth within Attachment B requires execution of Attachment B on or before 5:00 p.m. on \_\_\_\_\_. The option to transfer employment to FOTZ will expire at 5:01 pm on \_\_\_\_\_.
2. In the event you do not timely accept a position with FOTZ in accordance with paragraph 1, you will continue in your current employment position with the City of Topeka at your current compensation level, but you may be assigned a different working title and your immediate supervisor will be assigned by FOTZ.

**EXHIBIT 3**

**ELECTION REGARDING ZOO EMPLOYMENT FOR NON-UNION EMPLOYEES**

Friends of the Topeka Zoo (FOTZ) offers to employ \_\_\_\_\_ NAME \_\_\_\_\_ in the position of \_\_\_\_\_ POSITION/TITLE \_\_\_\_\_ at \_\_\_\_\_ GRADE/STEP \_\_\_\_\_ at the hourly wage/salary rate of \$ \_\_\_\_\_ HOURLY PAY RATE \_\_\_\_\_.

**The following ELECTION must be executed and returned to the Human Resources Department no later than 5:00 p.m. on \_\_\_\_\_.**

I, \_\_\_\_\_ NAME \_\_\_\_\_, elect to: *(please select one of the boxes below)*

☐ accept employment with FOTZ in the position described above effective \_\_\_\_\_. This election includes the following terms:

\*FOTZ will credit my \_\_\_\_ years of service with the City of Topeka toward years of service with FOTZ for any employment benefits that take seniority into account.

\*I authorize the City of Topeka to transfer \_\_\_\_\_ hours of my vacation accruals to FOTZ; and I understand that the maximum number of hours that I may transfer is \_\_\_\_\_ hours.

\*I authorize up to a maximum of 240 hours of accrued, unused, unpaid Sick leave to be transferred to a Short-term Disability Bank maintained by FOTZ.

\*I authorize the City of Topeka to provide a copy of my Personnel File to FOTZ.

**OR**

☐ remain a city employee in the position of \_\_\_\_\_ at my current compensation level pursuant to policies and procedures governing City employment, as well as applicable provisions within the License and Management Agreement between FOTZ and City.

\_\_\_\_\_  
SIGNATURE OF EMPLOYEE

STATE OF KANSAS  
COUNTY OF SHAWNEE

Signed \_\_\_\_\_ or attested before me on \_\_\_\_\_, 2020, by  
«Name» \_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature

My commission expires: \_\_\_\_\_

# EXHIBIT B

## List of Loaned Animals

(as of 02-04-21)

#### Animals in on Loan

- 1 Three Banded Armadillo
- 2 Giraffe
- 2 North American Black Bear
- 1 Nicobar Pigeon
- 1 Sumatran Tiger
- 2 African Painted Dog
- 1 Blue Crowned Motmot
- 3 Black and White Ruffed Lemur
- 1 Greater Malayan Chevrotain
- 5 Golden Lion Tamarin
- 1 East African Crowned Crane
- 2 Eurasian Eagle Owl
- 2 Pronghorn
- 1 Bornean Orangutan
- 1 American Alligator
- 1 Patas Monkey
- 1 Black Footed Ferret
- >60 Salt Creek Tiger Beetles

#### Animals out on Loan

- 1 Western Lowland Gorilla
- 1 Leopard Tortoise
- 1 Furrowed Wood Turtle

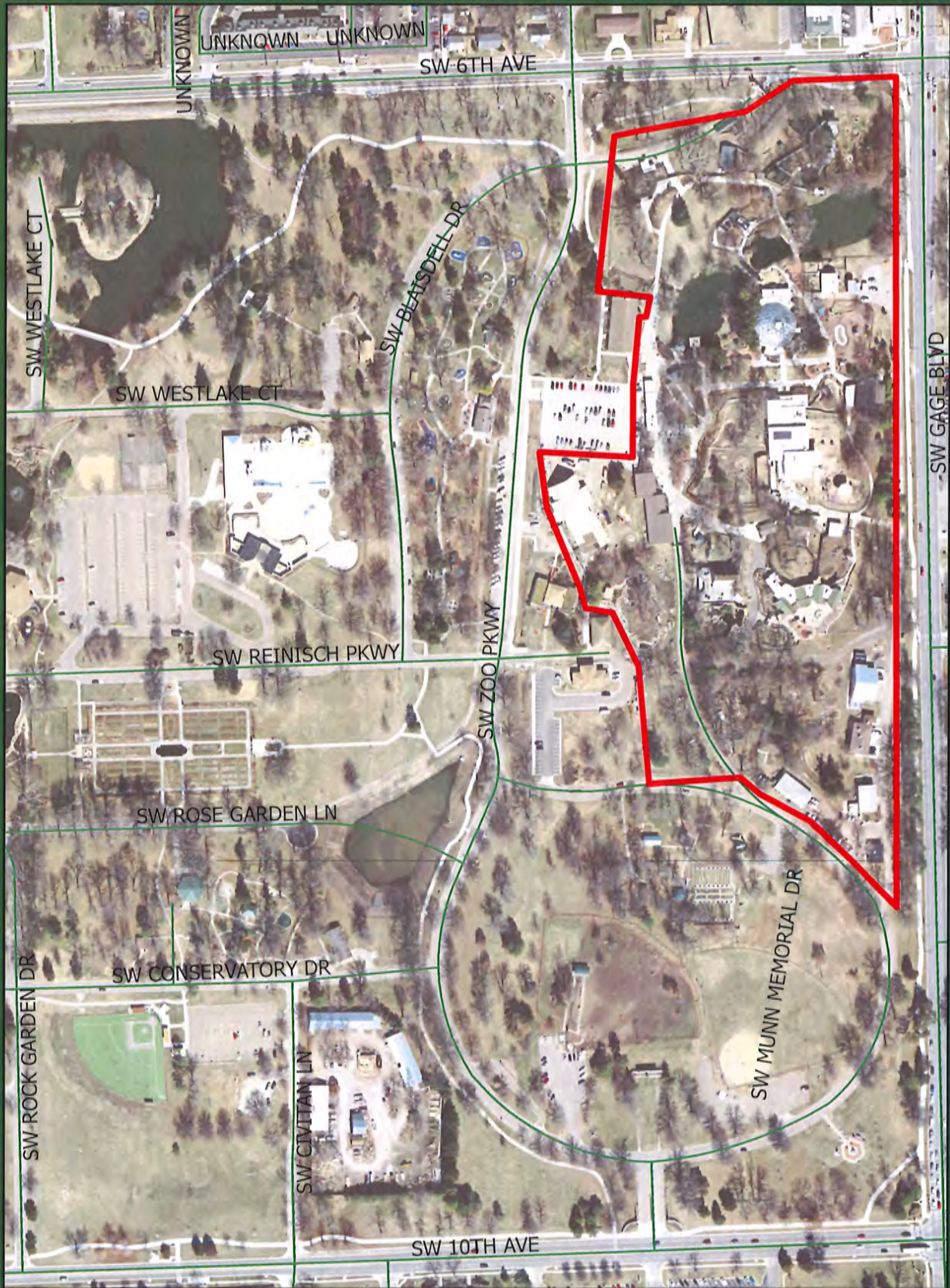
# EXHIBIT C

Map of

Topeka Zoo and  
Conservation Center



# Exhibit "C"



While the City of Topeka, KS makes every effort to maintain and distribute accurate information, NO WARRANTIES AND/OR REPRESENTATIONS OF ANY KIND are made regarding information, data, or services provided. In no event shall the City of Topeka, Kansas be liable in any way to the users of this data. Users of the data shall hold the City of Topeka, Kansas harmless in all matters and accounts arising from the use and/or accuracy of this data base.



Map Author: NJF  
Date Created:  
1/26/2021 4:33 PM

0.02  
Miles



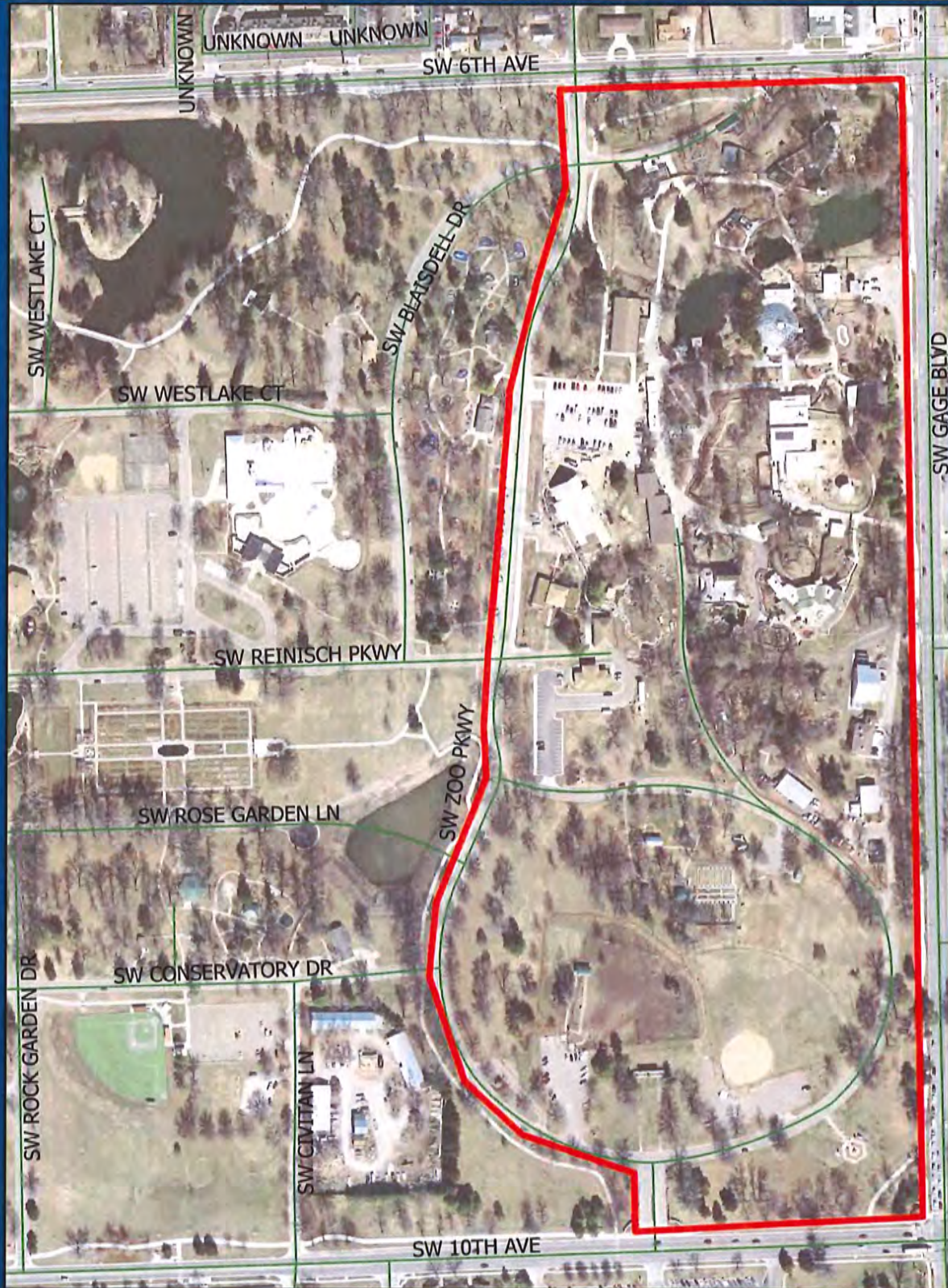
Topeka Zoo and  
Conservation Center  
Exhibit "C"

# EXHIBIT D

## Map of Topeka Zoological Park



# Exhibit "D"

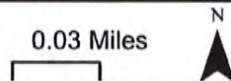


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Map Author: NJF  
Date Created: 1/26/2021 10:28

0.03 Miles



Topeka Zoo and  
Conservation Center  
Exhibit "D"

## Topeka Zoological Park Legal Description

A tract in the Northeast Quarter of Section 34, Township 11 South, Range 15 east of the 6<sup>th</sup> P.M., in the City of Topeka, Shawnee County, Kansas, described as:

Beginning at the Southeast corner of said Northeast Quarter; thence South 87°47'10" West, North American Datum 1983, Kansas North Zone basis, on the South line of said Northeast Quarter, 737.21 feet; thence North 2°08'07" West, 177.94 feet; thence westerly on a non-tangential curve concave northerly, having a radius measure of 592.96 feet and an arc length of 18.73 feet, the chord of which bears North 83°02'04" West, 18.73 feet; thence North 82°07'12" West, 19.19 feet; thence westerly on a curve concave northerly having a radius measure of 504.73 feet and an arc length of 118.40 feet, the chord of which bears North 75°24'00" West, 118.12 feet; thence northwesterly on a curve concave northeasterly having a radius measure of 428.86 feet and an arc length of 311.47 feet, the chord of which bears North 47°52'28" West, 304.67 feet; thence North 27°04'04" West, 5.67 feet; thence northerly on a curve concave easterly having a radius measure of 484.89 feet and an arc length of 420.15 feet, the chord of which bears North 2°14'41" West, 407.13 feet; thence North 22°34'42" East, 215.10 feet; thence northerly on a curve concave westerly having a radius measure of 164.60 feet and an arc length of 102.13 feet, the chord of which bears North 4°48'03" East, 100.50 feet; thence northerly on a curve concave easterly, having a radius measure of 380.22 feet and an arc length of 144.66 feet, the chord of which bears North 2°04'28" West, 143.79 feet; thence North 3°05'23" East, 566.02 feet; thence South 86°54'37" East, 28.00 feet; thence North 3°05'23" East, 137.67 feet; thence northerly on a curve concave easterly having a radius measure of 496.23 feet and an arc length of 191.13 feet, the chord of which bears North 14°07'25" East, 189.95 feet; thence North 25°09'27" East, 123.30 feet; thence North 64°50'33" West, 12.00 feet; thence northerly on a curve concave westerly, having a radius measure of 250.70 feet and an arc length of 120.45 feet, the chord of which bears North 11°23'35" East, 119.30 feet; thence North 2°22'24" West, 257.63 feet; thence North 87°37'08" East on the North line of said Northeast Quarter, 825.97 feet to the Northeast corner of said Northeast Quarter; thence South 1°20'15" East on the East line of said Northeast Quarter, 2654.15 feet to the point of beginning.

Contains 59.385 acres, more or less.

# EXHIBIT E

## List of Zoo Animals

(as of 02-04-21)



Taxonomy Class	Common Name	Sex Type	House Name
Amphibia	Tiger salamander	Male	Hulk
Amphibia	Vietnamese mossy frog	0.0.2	
Arachnida	Brazilian black tarantula	Undetermined	
Arachnida	Brazilian blue tarantula		
Arachnida	Chaco golden knee tarantula	Male	
Arachnida	Curlyhair tarantula	Undetermined	
Arachnida	Red-kneed tarantula	Female	Maria
Arachnida	Pink toe tarantula	0.0.1	
Arachnida	Salmon pink bird eater tarantula		
Arachnida	Striped knee tarantula	0.0.1	
Arachnida	Ecuadorian olive tarantula		
Arachnida	Striped bark scorpion	0.0.1	
Arachnida	Asian forest scorpion	0.0.1	
Arachnida	Wolf spider	Undetermined	
Aves	American golden eagle	Male	Chockey
Aves	Bali myna	Female	
Aves	Bali myna	Male	
Aves	Black crane	Male	
Aves	Black crane	Male	
Aves	Blue-grey tanager	Male	
Aves	Blue-grey tanager	Male	
Aves	Blue-grey tanager	Male	
Aves	Blue-grey tanager	Male	
Aves	Blue-throated piping-guan	Male	Rowdy Roddy
Aves	Common ostrich	Female	Purple
Aves	Common ostrich	Male	Red
Aves	East African grey crowned-crane	Female	Kuanga
Aves	Eastern screech owl	Female	Alula
Aves	Eastern screech owl	Female	Charlotte
Aves	Great horned owl	Female	Cheyenne
Aves	Grey-necked wood rail	Male	
Aves	Hamerkop	Female	Natasha
Aves	Hamerkop	Male	Boris
Aves	Harlan's red-tailed hawk	Female	Gatsby
Aves	Helmeted guineafowl	Female	
Aves	Helmeted guineafowl	Undetermined	
Aves	Helmeted guineafowl	Undetermined	
Aves	Helmeted guineafowl	Undetermined	
Aves	Helmeted guineafowl	Undetermined	
Aves	Nicobar pigeon	Female	Lemon Drop
Aves	Nicobar pigeon	Female	Peppermint Pattie
Aves	Nicobar pigeon	Female	Jolly Rancher
Aves	Nicobar pigeon	Female	



Aves	Nicobar pigeon	Male	
Aves	Nicobar pigeon	Male	
Aves	Nicobar pigeon	Male	Laffy Taffy
Aves	Nicobar pigeon	Male	
Aves	Nicobar pigeon	Male	Jaw Breaker
Aves	Nicobar pigeon	Male	Hot Tamale
Aves	Nicobar pigeon	Undetermined	
Aves	Purple glossy starling	Female	
Aves	Purple glossy starling	Male	
Aves	Rainbow Lorikeet	Female	Olive
Aves	Rainbow Lorikeet	Female	Delta
Aves	Rainbow Lorikeet	Female	Articuno
Aves	Rainbow Lorikeet	Female	Jack
Aves	Rainbow Lorikeet	Female	Clementine
Aves	Rainbow Lorikeet	Female	Echo
Aves	Rainbow Lorikeet	Female	Grape
Aves	Rainbow Lorikeet	Female	Starly
Aves	Rainbow Lorikeet	Female	Brandy
Aves	Rainbow Lorikeet	Female	Farfetch'd
Aves	Rainbow Lorikeet	Female	Alejandro
Aves	Rainbow Lorikeet	Female	Kiwi
Aves	Rainbow Lorikeet	Male	Zazu
Aves	Rainbow Lorikeet	Male	Starburst
Aves	Rainbow Lorikeet	Male	Rose
Aves	Rainbow Lorikeet	Male	Jazi
Aves	Rainbow Lorikeet	Male	Quila
Aves	Rainbow Lorikeet	Male	Swablu
Aves	Rainbow Lorikeet	Male	Melon
Aves	Rainbow Lorikeet	Male	Rona
Aves	Rainbow Lorikeet	Male	Alfalfa
Aves	Rainbow Lorikeet	Male	Charly
Aves	Red-capped cardinal	Male	Paul
Aves	Red-capped cardinal	Male	Mitchell
Aves	Red-capped cardinal	Male	
Aves	Red-collared widow bird	Female	
Aves	Red-collared widow bird	Male	
Aves	Red-tailed hawk	Male	Red
Aves	Ringed teal	Male	
Aves	Roseate spoonbill	Female	Zsa Zsa A05
Aves	Roseate spoonbill	Female	
Aves	Scarlet ibis	Female	
Aves	Scarlet ibis	Female	
Aves	Scarlet macaw	Male	Roscoe
Aves	Scarlet macaw	Male	Dusty
Aves	Silver-beaked tanager	Male	
Aves	Taveta golden weaver	Male	
Aves	Taveta golden weaver	Male	
Aves	Taveta golden weaver	Male	
Aves	Temminck's tragopan	Female	
Aves	Troupial	Female	
Aves	Troupial	Female	

Aves	Troupial	Male	
Aves	Troupial	Male	
Aves	Trumpeter swan	Female	
Aves	Trumpeter swan	Female	
Aves	Trumpeter swan	Female	Sedna
Aves	Trumpeter swan	Male	Silla
Aves	Turkey vulture	Female	Lily
Aves	Violet turaco	Female	
Aves	Whistling duck	Male	
Aves	Whistling duck	Male	
Aves	Whistling duck	Male	
Aves	Whistling duck	Undetermined	
Aves	White-cheeked pintail	Male	
Aves	White-cheeked pintail	Male	
Aves	Wild turkey	Female	Pink
Aves	Wild turkey	Male	Floyd
Chilopoda	Vietnamese centipede		
Diplopoda	Giant African millipede	0.0.6	
Diplopoda	Millipede	1 units	
Insecta	Annam Stick Insect	1 units	
Insecta	Chinese mantis	Undetermined	
Insecta	Cockroach, Peppered	1	
Insecta	Honeybee	1 units	
Insecta	Honeybee	1 units	South Hive 2
Insecta	Honeybee	1 units	
Insecta	Jungle Nymph	1 units	
Insecta	Madagascar hissing cockroach	1	
Insecta	Sabah thorny stick insect	1 units	
Insecta	Toe biter	0.0.1	
Insecta	Two-spotted assassin bug	1 units	
Insecta	Two-striped walkingstick	1 units	
Mammalia	African elephant	Female	Tembo
Mammalia	African hunting dog	Male	Kellan
Mammalia	African lion	Female	
Mammalia	American Jacob sheep	Male	Jake
Mammalia	Asian elephant	Female	Cora
Mammalia	Cape porcupine	Male	Spike
Mammalia	Cougar	Female	Cassy
Mammalia	Cougar	Male	Dakota
Mammalia	Four-toed hedgehog	Female	Pinecone
Mammalia	Giraffe	Female	Elizabeth
Mammalia	Giraffe	Female	Hope
Mammalia	Giraffe	Male	Sgt Peppers
Mammalia	Hippopotamus	Male	Tank
Mammalia	Hoffmann's two-toed sloth	Female	Jackie

Mammalia	Hoffmann's two-toed sloth	Female	Sago
Mammalia	Indian flying fox	Female	Barbara
Mammalia	Indian flying fox	Female	Pamela
Mammalia	Indian flying fox	Female	Selena
Mammalia	Indian flying fox	Female	Harley
Mammalia	Indian flying fox	Female	Zatanna
Mammalia	Indian flying fox	Female	Martha
Mammalia	Indian flying fox	Male	Damien
Mammalia	Indian flying fox	Male	Bruce
Mammalia	Indian flying fox	Male	Belmont
Mammalia	Indian flying fox	Male	Jason
Mammalia	Kirk's dik-dik	Male	KRACKLE
	Lesser Madagascar		
Mammalia	hedgehog tenrec	Female	Sophie
Mammalia	Llama	Female	Gertie Gertie/B12
Mammalia	Malayan sun bear	Male	Ho Ho
Mammalia	Nigerian dwarf goat	Female	Cocoa
Mammalia	Nigerian dwarf goat	Male	Oreo
Mammalia	North American river otter	Male	Albert
Mammalia	North American river otter	Male	Tony
Mammalia	Northwest Bornean orangutan	Female	Rudy
Mammalia	Northwest Bornean orangutan	Male	Bumi
Mammalia	Patas monkey	Female	Pili
Mammalia	Patas monkey	Female	Siku
Mammalia	Patas monkey	Female	Freeda
Mammalia	Patas monkey	Female	Emma
Mammalia	Patas monkey	Male	Harry
Mammalia	Pronghorn	Female	Sassafras
	Southern three-banded		
Mammalia	armadillo	Female	Erin
Mammalia	Striped skunk	Female	Phoebe
Mammalia	Sumatran tiger	Female	Zayana
Mammalia	Sumatran tiger	Male	Badar
Mammalia	Sumatran tiger	Male	Kansa Raja Raja
Mammalia	Sumatran tiger	Male	Bintang
Mammalia	Sumatran tiger	Male	Sanjiv
Mammalia	Virginia opossum	Female	Jill
Osteichthyes	Amur carp	0.0.50	
Reptilia	African spurred tortoise	Male	Dafina
	Argentine black and white		
Reptilia	tegu	Male	Alphie
Reptilia	Boa constrictor	Undetermined	Rocky Balboa
Reptilia	Children's python	Male	Dhakhan
Reptilia	Crested gecko	Male	Vanuatu
Reptilia	Dwarf caiman	Male	Pat
Reptilia	Leopard tortoise	Female	Shelda
Reptilia	Leopard tortoise	Male	Speedy
Reptilia	Milksnake	Male	Bessie

Reptilia	New Guinea blue-tongued skink	Undetermined	Steve
Reptilia	Ornate box turtle	Female	Mshike
Reptilia	Painted turtle	Female	Mona Lisa
Reptilia	Red-footed tortoise	Male	Big Red
Reptilia	Royal/ball python	Male	Garrus
Reptilia	Royal/ball python	Male	Grunt
Reptilia	Royal/ball python	Male	Reggie
Reptilia	Speckled kingsnake	Undetermined	Freckles
Reptilia	Spiny softshelled turtle	Male	Keshtoga
Reptilia	Three-toed box turtle	Female	Koyake
Reptilia	Western hingeback tortoise	Female	Inkisi
Reptilia	Western ratsnake	Undetermined	William Shakespeare
Reptilia	Yellow-spotted Amazon River turtle	Male	Davy Jones
Reptilia	Yellow-spotted Amazon River turtle	Male	Captain Barbosa
Reptilia	Yellow-spotted Amazon River turtle	Male	Jack Sparrow

# EXHIBIT F

## List of Zoo Personal Property (as of 02-04-21)

Type	UNIT #	Year	MAKE MODEL	VIN/SN	TAG #	CLASS TYPE	MILES/ HOURS	DATE RC'D	Zoo Name
Vehicle	30052	1996	1996 FORD F350F	2FDKF37H2TCA05584	55656	MT/C3	104,787	01/11/1996	dump truck AM
Vehicle	30005	2002	CHEV Express Van	1GNFG15M521182838	59080	VAN/FULL	98,808	03/21/2002	white van
Vehicle	30012	2002	2002 CHEV C1500	1GCEC19V22E177379	54383	LT/C1	63,875	12/28/2001	Vet Truck
Vehicle	30010	2006	2006 DODGE CARAVAN	1D4GP25E06B682579	55497	VAN/MINI	76,826	04/25/2006	ed van
Vehicle	30022	2006	2006 CHEV C1500	3GCEC14X56G201150	66565	LT/C1	25,615	02/01/2006	AC truck
Cart	30023	2008	EZ-GO RVX- 48V	5012564	NONE	LE/GC	0	1/11/2021	DT Cart
Cart	30024	2008	EZ-GO RVX-48V	5114756	NONE	LE/GC	0	1/11/2021	NR Cart
Cart	30026	2003	Club Car DS 48V	AQ0307-255729	NONE	LE/GC	0	1/11/2021	CZ cart
Cart	30025	2003	Club Car DS 48V	AQ0525-513139	NONE	LE/GC	0	1/11/2021	EVS cart
Cart	30032	1999	1999 CLUB CAR TURF II	RG9905743646	NONE	PC/GC	3,740	06/10/2005	hort cart
Cart	30033	2001	2001 CLUB CAR CARRYALL I	FG0109-996260	NONE	PC/UC	0	12/01/2005	hort cart
Cart	30034	2001	2001 CLUB CAR TURF II	RG0103-982477	NONE	PC/UC	0	01/20/2006	vet cart
Cart	30037	2003	2003 EZ-GO C303 TXT STD	1583399	NONE	PC/GC	0	05/22/2013	Ed cart
Cart	30027	2004	2004 VILLAGER CLUB CAR	FQ0405365919	NONE	LE/GC	0	02/10/2011	office
Cart	30036	2005	2005 EZ-GO ST 350	2306664	NONE	PC/GC	0	05/22/2013	AM cart
Cart	30038	2006	2006 EZ-GO GOLF CART TXT	2379209	NONE	LE/GC	0	09/25/2015	RF cart
Cart	30039	2006	2006 EZ-GO GOLF CART	2379213	NONE	LE/GC	0	09/25/2015	CA Cart
Cart	30040	2006	2006 EZ-GO GOLF CART TXT	2300981	NONE	LE/GC	0	12/16/2015	ADT cart
Cart	30041	2006	2006 EZ-GO GOLF CART TXT	2379302	NONE	LE/GC	0	12/16/2015	keeper cart
Cart	41022	2000	2001 CLUB CAR TURF 6	JG0032 916855	NONE	PC/UC	0	01/01/2001	Maint Flat Bed
Cart	41023	2000	2001 CLUB CAR TURF 6	O99822	NONE	PC/UC	0	01/01/2001	Maint Box
Mower	30035	2006	2006 CUB CADET GT1554	1E016H30126	NONE	MW/RM	18	05/17/2006	mower
Industrial	30004	1995	1995 JOHN DEERE 955	CH3048D014424	NONE	TR/AG	336	05/10/1995	john deere
Industrial	30109	1995	1995 GRASSHOPPER 721 MOWER	45-4380	NONE	MW/RM	1,356	04/04/1995	mower
Industrial	30108	2002	2002 GRASSHOPPER 928D	5216019	NONE	MW/RM	2,441	04/02/2002	blower
Industrial	30007	2006	2006 BOBCAT S185	530313278	NONE	HE/SL	1,516	04/10/2006	skid loader



Trailer	30008	1977	1977 SERTA Trailer	0415077	15402	TL/TL	0	05/22/1978	
Trailer	30101	1984	1984 RAWHIDE HT TRAILER	1674	15403	TL/TL	0	12/20/1984	horse trailer
Trailer	30102	1990	1990 STARLITE 165CR TRAILER	1EYF21629LC028657	16171	TL/TL	0	12/12/1989	flat bed/red
Trailer	30002	2008	2008 CARRY-ON 4X6 FLAT BED	4YMUL06128M023581	74217	TL/TL	0	01/30/2009	
Industrial	30104	2008	2008 LINCOLN Bobcat	LJ400005H	NONE	SE/WE	0	02/01/2009	welder
Industrial	30112	2012	2012 PACIFIC PG-7500D	PDG06634	NONE	HE/GE	0	04/20/2012	generator

Item	Replacement Cost	Model
Gas Sterilizer	6,899	AN74i EO
Dental Machine	7,797	VetPro 1000
Anesthesia Machine	8,298	Titanxl - Radiology
X-ray Unit	78,124	Dxeaco
X-ray Plate	24,659	Radiology
X-ray Digital Portable	49,341	portable vetrocket
Surgery Table	6,995	Surgery
Ultrasound Portable	22,875	Siemens
Ultra-low	11,478	VWR
Carnivore/Ape Shipping Crate	5,500	Custom built
Elephant Strap Spreader Bar	7,200	Custom built

# EXHIBIT G

## FOTZ Master Plan

### For Zoo



TQPEKA ZOO &amp; CONSERVATION CENTER - 2021

# EXHIBIT H

Real Estate

Deed of Conveyance

between

City and

Louisa H. Gage, et al.

Dated May 31, 1899

Deed.

Louisa H. Gage, et al, to The City of Topeka.

Filed June 14, 1899 at 2:40 P. M.

This indenture made this 31st day of May 1899 by and between Mrs. Louisa H. Gage of Topeka, Shawnee County, Kansas, widow of the late Guilford G. Gage, deceased, Stephen T. Gage, widower, of Oakland, California, Caroline E. Kenry and her husband, Moses R. Kenry, of Hillsdale County, Michigan, Chestina E. Stevens, widow, of Ashtabula County, Ohio, and Norris L. Gage unmarried, of Ashtabula County, Ohio, being the only heirs and devisees of the real estate of said G. G. Gage, deceased, parties of the first part, and the City of Topeka, in Shawnee County, State of Kansas, party of the second part.

Witnesseth, that said parties of the first part, in consideration of their regard for said city and in order as nearly as possible to carry out the wishes of said G. G. Gage, deceased, do hereby, solely upon the conditions and for the special purposes hereinafter named, grant and convey to the said City of Topeka and its successors forever the following described real estate situate in the County of Shawnee and State of Kansas, to wit:

The east eighty (80) acres of the north east quarter of section thirty four (34) in township eleven (11) of range fifteen (15) east of the sixth principal meridian:

For the purpose and upon the express condition that the said City of Topeka shall at all times, own, control, improve, and use the said real estate as a public Park, to be known as "Gage Park", for the benefit of the health comfort and recreation of the citizens of Topeka and their friends, and such other orderly persons as may resort thereto.

And said real estate shall be inalienable by said city of Topeka, either by way of deed, conveyance, lease, or in any other manner, and shall be forever held and used for the purposes aforesaid, except that said city may lease, for such time and upon such terms and conditions as may be determined by its proper authorities, a portion thereof, of or in the south end thereof not extending further north than forty (40) rods from the south line and not exceeding twenty (20) acres, to "The Country Club" of Topeka, or such other organization or society for the promotion of health, comfort and recreation, as may improve and use the same for such purposes and upon the express condition that the same shall be used for such purposes.

And upon violation of, or default in, or non-compliance with any of the conditions aforesaid, the grant hereby made shall be forfeited, and said land and every right thereto or therein shall revert to and become the absolute and exclusive property of said parties of the first part, their heirs and assigns.

In Witness whereof, said parties of the first part have hereunto set their hands the day and year aforesaid.

Louisa H. Gage  
Norris L. Gage  
Chestina E. Stevens  
Stephen T. Gage  
Caroline E. Kenry  
Moses R. Kenry



# EXHIBIT I

## License Agreement between the City and Shawnee County

Dated May 13, 2013

City of Topeka Contract No. 42895

Shawnee County Contract No. C259-2013

### TOPEKA ZOOLOGICAL PARK IN GAGE PARK LICENSE

THIS LICENSE is entered into as of this 13<sup>th</sup> day of May 2013 ("Effective Date") by and between The City of Topeka, Kansas, ("Licensor") having an address of 215 SE 7<sup>th</sup> Street, Topeka, Kansas 66603-3914 and Shawnee County, Kansas, ("Licensee") having an address of 200 SE 7<sup>th</sup> Street, Topeka, Kansas 66603-3914.

#### STATEMENT OF PURPOSE

WHEREAS, on January 1, 2012, Licensor and Licensee consolidated the operations, functions, and programs of the City of Topeka Parks and Recreation Department with the Shawnee County Parks and Recreation Department under the control of the Licensee; and

WHEREAS, the consolidation agreement (City of Topeka Contract No. 41460/Shawnee County Contract No. C304-2011) excludes the Topeka Zoological Park (Zoo Property) which remains under the ownership, direction and control of Licensor; and

WHEREAS, the Licensor, as owner of the Zoo Property, is required to adhere to the alienation restrictions set forth in the real estate deed of conveyance dated May 31, 1899, between Louisa H. Gage, et al., and the Licensor, filed of record on June 14, 1899, in book 258, page 250 by the Register of Deeds of Shawnee County, Kansas (hereinafter the "Louisa Gage deed")(attached, incorporated and made part hereof as if fully set forth herein) which restrictions apply to the Zoo Property, and

WHEREAS, Licensor is willing to grant a license to Licensee to access, use, maintain and improve specific amenities on Zoo Property for park and recreational activities upon the conditions granted herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Grant of License. Licensor grants a revocable license to Licensee to access, use, maintain and improve specific amenities located on the property with the following legal description:

A tract in the Northeast Quarter of Section 34, Township 11 South, Range 15 east of the 6<sup>th</sup> P.M., in the City of Topeka, Shawnee County, Kansas, described as:

Beginning at the Southeast corner of said Northeast Quarter; thence South 87°47'10" West, North American Datum 1983, Kansas North Zone basis, on the South line of said Northeast Quarter, 737.21 feet; thence North 2°08'07" West, 177.94 feet; thence westerly on a non-tangential curve concave northerly, having a radius measure of 592.96 feet and an arc length of 18.73 feet, the chord of which bears North 83°02'04" West, 18.73 feet; thence North 82°07'12" West, 19.19 feet; thence westerly on a curve concave northerly having a radius measure of 504.73 feet and an arc length of 118.40 feet, the chord of which bears North 75°24'00" West, 118.12 feet; thence northwesterly on a curve concave northeasterly having a radius measure of 428.86 feet and an arc length of 311.47 feet, the chord of which bears North 47°52'28" West, 304.67 feet; thence North 27°04'04" West, 5.67 feet; thence northerly on a curve concave easterly having a radius measure of 484.89 feet and an arc length of 420.15 feet, the chord of which bears North 2°14'41" West, 407.13 feet; thence North 22°34'42" East, 215.10 feet; thence northerly on a curve concave westerly having a radius measure of 164.60 feet and an arc length of 102.13 feet, the chord of which bears North 4°48'03" East, 100.50 feet; thence northerly on a curve concave easterly, having a radius measure of 380.22 feet and an arc length of 144.66 feet, the chord of which bears North 2°04'28" West, 143.79 feet; thence North 3°05'23" East, 566.02 feet; thence South 86°54'37" East, 28.00 feet; thence North 3°05'23" East, 137.67 feet; thence northerly on a curve concave easterly having a radius measure of 496.23 feet and an arc length of 191.13 feet, the chord of which bears North 14°07'25" East, 189.95 feet; thence North 25°09'27" East, 123.30 feet; thence North 64°50'33" West, 12.00 feet; thence northerly on a curve concave westerly, having a radius measure of 250.70 feet and an arc length of 120.45 feet, the chord of which bears North 11°23'35" East, 119.30 feet; thence North 2°22'24" West, 257.63 feet; thence North 87°37'08" East on the North line of said Northeast Quarter, 825.97 feet to the Northeast corner of said Northeast Quarter; thence South 1°20'15" East on the East line of said Northeast Quarter, 2654.15 feet to the point of beginning.

Contains 59.385 acres, more or less.

## 2. License Conditions

Licensee may enter onto, use, manage, improve, and otherwise maintain the following amenities located on Zoo Property:

- A. The Big Gage Shelter House with the proviso Licensor may use the facility at no charge if scheduled at least ninety (90) days prior to event; Licensor scheduling and use within ninety (90) days is subject to availability and consistent with established public reservation policies;
- B. The Helen Hocker Theater Compound consisting of the Theater, the Theater Ticket Office and its Parking Lot, and the Theater Storage Facility;
- C. The Horseshoe Play Complex including the Horseshoe Pits and parking area, the Horseshoe Storage Building, Horseshoe Play Structure, and the Horseshoe Restroom facility all in conjunction with the Topeka Horseshoe Association;

D. The Trolley Shelter;

E. Steak Grill;

F. Hill's Pet Nutrition Bark Park;

G. Softball Field Gage No. 1 in conjunction with area softball league and tournament play as scheduled by Shawnee County Parks and Recreation Department;

H. Munn Memorial (circa 1923), with the proviso that the historic pioneer tribute memorialized thereby be respected and maintained;

I. All War Memorial, with the proviso that the patriotic gratitude memorialized thereby be respected and maintained;

J. Stone Entrance Arch (circa 1910), vicinity Sixth and Gage, with the proviso that the historic nature of the arch be respected and maintained; and

K. All interior streets, roadways, and sidewalks associated with or attenuated to the above amenities for the purposes of maintaining, managing, using, and improving the subject property as a public park/public recreational area.

3. No Interest Acquired. By grant of this REVOCABLE LICENSE, the Licensor does not convey and the Licensee does not receive any estate or proprietary interest in the subject property. Licensee acquires no right of possession superior to that of Licensor. Accordingly, the property shall not be maintained, managed, used, or improved by the Licensee except as allowed by the terms of this license.

4. Permission; Construction. Licensee is prohibited from constructing new or additional facilities, amenities, or structures, hereinafter "qualifying structures", without the express written approval of the Licensor. Licensee is prohibited from modifying, remodeling, and/or renovating existing amenities without the express written approval of the Licensor.

5. Signage. Licensor grants to Licensee authority to construct, maintain, and operate an electronic sign at the corner of Tenth Street and Gage Boulevard or a similarly suitable location. Design and placement of any such sign must have prior written approval of Licensor, and must suitably identify Licensor as owner of the subject property. Licensor shall be entitled to no less than one-third use of such electronic message display board for municipal purposes, defined as one-third of operating time per twenty-four hour period. Except as provided hereinabove, Licensee is prohibited from erecting or displaying any and all signage except as specifically directed, approved, and controlled by the Licensor by written agreement. Such use will not be unreasonably withheld, consistent with the Statement of Purpose above.

6. Expansion. Licensor will make a reasonable effort to provide the Licensee at least a twelve (12) month notification if Licensor plans to expand the existing fenced perimeter of the

Topeka Zoo. In such event, the Licensor will provide the Licensee an adequate opportunity to remove any affected qualifying structures.

The Licensor hereby grants the Licensee this license to maintain, manage, use, and improve the above-listed amenities on Zoo property, and the Licensor grants to the Licensee the authority to contract with other parties in order to effectuate the maintenance, management, use, and improvement of the amenities consistent with this license. Any party that contracts with the Licensee for the purposes set out in this license shall also have the privilege to enter onto the subject property for said purposes. Any contract or agreement for the aforesaid use must be in conformance with the standards and restrictions as set forth in the Louisa Gage deed and this license and contain the following recitation: "All parties to this agreement understand and are bound by the restrictions, responsibilities, and limitations set out in City of Topeka Contract No. 428957/Shawnee County Contract No. 2593 [insert #'s from this license] as well as the terms of the deed conveying title to the subject property to the City of Topeka filed of record June 14, 1899, in book 258, page 250 by the Register of Deeds of Shawnee County, Kansas."

#### CONSIDERATION

This permission is given to the Licensee in return for and acknowledgment of the following consideration(s):

- A. Licensee agrees to operate, use, keep in good repair, and otherwise maintain the listed amenities at Licensee's cost, except as provided for herein.
- B. Licensee agrees to reimburse Licensor for costs of insurance maintained by Licensor on the above-listed amenities upon proof provided of such costs.
- C. Licensee agrees to maintain all interior streets, roadways, parking lots, and sidewalks associated with or attenuated to the above amenities at Licensee's cost.
- D. Licensee agrees to assume responsibility for electrical, water, heating and cooling, communication, and any other utility contracts and services relating to the licensed property and amenities denominated in this license at Licensee's cost.
- E. Licensee agrees to prohibit use of the facilities for any purpose other than as agreed upon in this license and any use restrictions as expressed on any properly recorded deeds of conveyance on the above-described property.

Retention of Revenues. The Licensor hereby agrees that the Licensee shall retain all revenues, fees, and all other monies generated through the Licensee's operation of listed amenities on Zoo Property as a public park/recreational area, except as provided for herein.

The Licensee hereby agrees that it will receive no right of payment or any type of financial support from the Licensor for its operation of the property as a result of this specific license, except as provided for herein.

#### TERM OF LICENSE

This license shall become effective upon the signatures by both parties and shall remain in continuous effect at the discretion of the Licensor. The Licensor in good faith agrees to allow

the Licensee to maintain, manage, use, and improve the listed amenities on Zoo Property as a public park/public recreational area under this license so long as the Licensee agrees to and does in good faith maintain, manage, use, and improve the property as a public park/public recreational area, subject to the needs of the Licensor for any or all of the property and/or the amenities thereon.

#### TERMINATION OF LICENSE

Inherent in the nature of a license, the Licensor retains the right to unilaterally cancel this license at any time. Additionally, the Licensor hereby provides notice that, should the Licensee at any time cease to operate the amenities on the Zoo Property as a public park/public recreational area, the Licensor may cancel this license and will be not liable for any debts owed by the Licensee to any third party resulting from the cancellation of this license.

It is mutually agreed by the parties hereto that in the event title of the Licensor to any land or portion of land to be used by Licensee hereunder is adjudged by a court of competent jurisdiction to be in jeopardy, or to be such that the Licensor is prohibited from allowing such use as is contemplated hereunder, then, and in that event, this license shall terminate forthwith, and Licensee shall, from such time thereafter, have no right, interest, or claim against the Licensor whatsoever.

#### DISCLAIMER OF LIABILITY


Nothing in this license shall be construed that the Licensor holds harmless or otherwise indemnifies the Licensee for any cause of action arising out of the Licensee's activities in connection with Zoo Property. Licensee shall exercise its privileges hereunder at its own risk and irrespective of any negligence of Licensor, Licensee shall indemnify Licensor against all liability for damages, costs, losses, and expenses resulting from, arising out of, or in any way connected with, the occupation or use of the premises by Licensee, or the Licensee's invitees, or guests of Licensee, or the failure on the part of Licensee to perform fully all and singular Licensee's responsibilities as enumerated and agreed to herein.

#### ASSIGNABILITY

Licensee's privileges hereunder shall not be assignable in whole or in part.

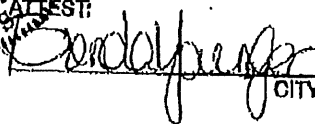
IN WITNESS WHEREOF, the parties hereto have executed this license on the year and date first above written.


CITY OF TOPEKA, KANSAS  
LICENSOR

  
Jim Colson, City Manager

Attest:



  
CITY CLERK

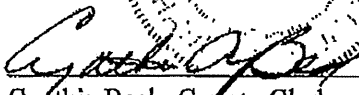
APPROVED AS TO FORM AND LEGALITY  
DATE 5-13-13 BY 



SHAWNEE COUNTY BOARD OF COMMISSIONERS  
LICENSEE

  
Michele A. Buhler, Chair,

Attest:

  
Cynthia Beck, County Clerk  
5/13/2013



# ADMINISTRATIVE ACTION FORM

Contact Person:	Judy Olander	Date:	5.13.13
Document:	Contract/Agreement	Document #	42895
Second Party/Subject:	Shawnee County	Project #:	n/a
Originating Department:	Legal - ATTY	CIP Project:	
Category/Subcategory:	007 Contracts and Amendments / 018 Other		

## Requested Action:

Approve as presented

File with the City Clerk

License agreement for use of various facilities in Topeka Zoological Park by Shawnee County Parks and Recreation

MAY 17 2013

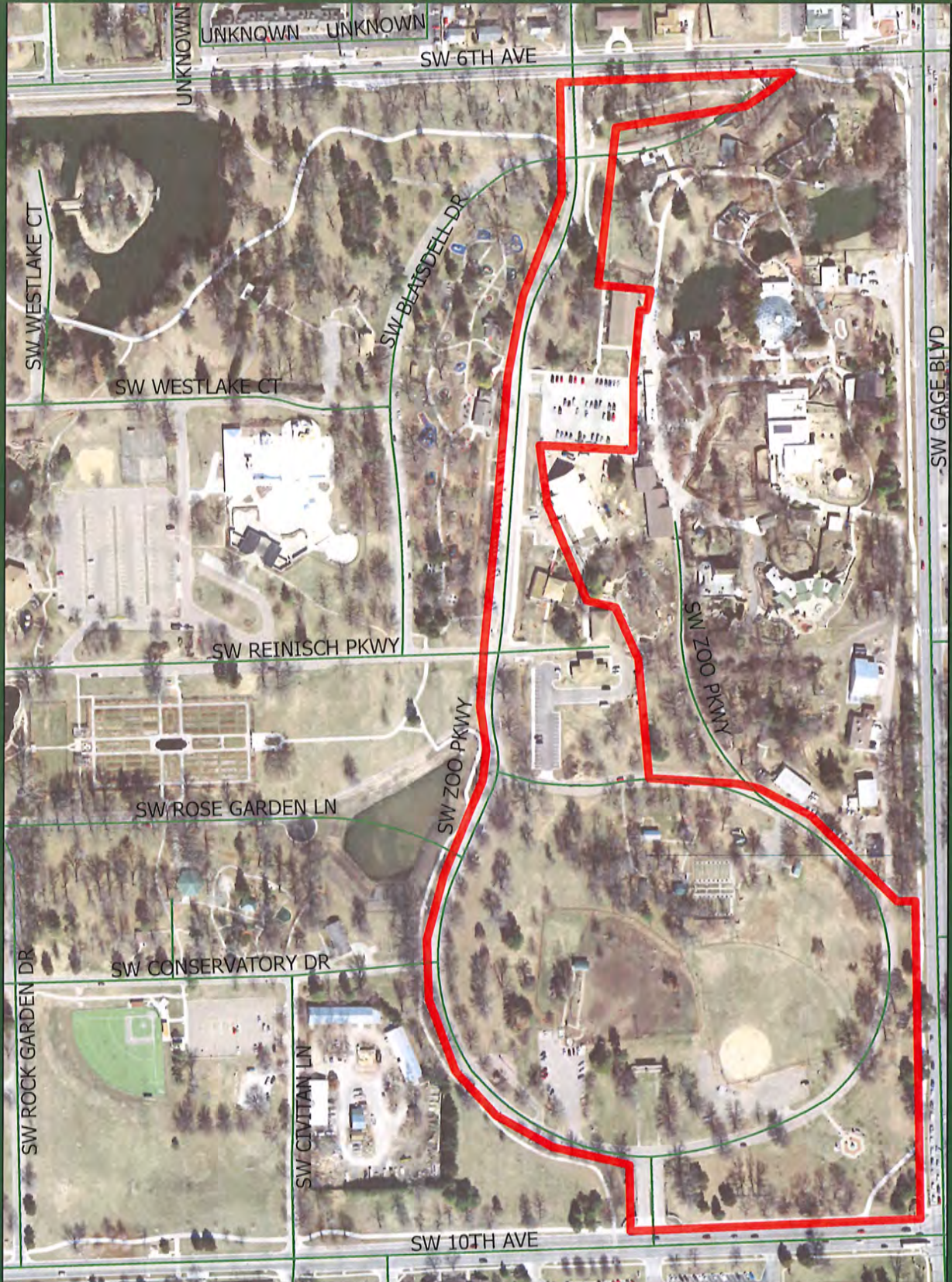
## Approval/Action Routing: (See Routing Instructions on Sheet 2).

Approved by:	Housing and Neighborhood Development	Date:	
Approved by:	City Controller	Date:	
Approved by:	<i>Judy Olander</i>	Date:	5-13-13
Approved by:	<i>B. Younger</i>	Date:	5-13-13
Approved by:	City Clerk	Date:	
Approved by:		Date:	
Approved by:		Date:	
Return to:	Tammy Fisher in Legal	Date:	

# EXHIBIT J

Map of  
Area within which  
specific amenities  
to be maintained and  
improved in  
accordance with  
terms of Exhibit I

# Exhibit "J"



While the City of Topeka, KS makes every effort to maintain and distribute accurate information, NO WARRANTIES AND/OR REPRESENTATIONS OF ANY KIND are made regarding information, data, or services provided. In no event shall the City of Topeka, Kansas be liable in any way to the users of this data. Users of the data shall hold the City of Topeka, Kansas harmless in all matters and accounts arising from the use and/or accuracy of this data.



Map Author: NJF  
Date Created:  
1/26/2021 4:35 PM

0.02  
Miles



Topeka Zoo and  
Conservation Center  
Exhibit "J"



# EXHIBIT K

List of Current  
Contracts,  
Permits, Licenses,  
etc.

as of 02-04-21

**Contracts:**

- 2 Equipment Rental Agreements between the City of Topeka and Century Business Solutions, City of Topeka Contract No. 46677 dated March 7, 2018, and City of Topeka Contract No. 45725 dated February 10, 2017

**Permits:**

- United States Department of Interior, US Fish and Wildlife Service Eagle Exhibition Permit, Permit Number MB710293-0
- United States Department of Interior, US Fish and Wildlife Service - Waterfowl Sale and Disposal Permit, permit number MB690675-0
- United States Department of Interior, US Fish and Wildlife Service – Kansas Special Canada Goose Permit, permit number 19-SN-BMR-007
- State of Kansas Scientific, Education, or Exhibition Wildlife Permit, Permit No. SC-018-2019 (re-application pending)
- United States Department of Interior, US Fish and Wildlife Service – List of Authorized Individuals for Threatened and Endangered Species Permit, relating to permit number TE053961-1 held by Henry Doorly Zoo
- United States Department of Agriculture – Permit to Move Live Plant Pests, Noxious Weeds, and Soil, permit number P526P-18-02578
- State of Alaska, Department of Fish and Game – Live Exhibition Permit for Black Bear “Val”, permit number 14-186

**Licenses, Registrations and Certificates:**

- United States Department of Agriculture – Animal Welfare Act Class C Exhibitors License, Certificate Number 48-C-0003
- Kansas Department of Agriculture, Kansas Live Plant Dealer License, Dealer # 11967 (renewal application pending)
- Federal Communications Commission – Radio Station Authorization, Registration Number 0002402998
- Kansas Department of Health and Environment – Outdoor Summer Camp School Age Program Childcare License No. 0073657-007
- Kansas State Board of Veterinary Examiners, Veterinary Premise Registration Number 1339
- Kansas Department of Health and Environment, Bureau of Community Health Systems, Radiation Control Program - KDHE X-ray Equipment Registration Number 2684

**Letters of Authorization:**

- LOA for possession of Black-Footed Ferret, Studbook Number 8337, from the Department of Interior, US Fish and Wild Life Service, dated February 23, 2020
- LOA for possession of Black Bear “Indie,” from the State of Oregon Department of Fish and Wildlife, dated May 30, 2014



**Accreditations:**

- Association of Zoos and Aquariums Certificate of Accreditation for the Topeka Zoo and Conservation Center, dated September 10, 2017

**Institutional Memberships:**

- World Association of Zoos and Aquariums
- Association of Zoos and Aquariums
- Association of Zoological Horticulturists
- Elephant Managers Association

**AMENDED AND RESTATED BY-LAWS**  
**of**  
**FRIENDS OF THE TOPEKA ZOO, INC.**  
Revised April 1, 2021

**ARTICLE I**  
**OFFICES**

**Section 1.01. Principal Office.** The Principal office of the corporation in the State of Kansas shall be located in the City of Topeka, Shawnee County, Kansas. The corporation may have such other offices as the Board of Directors may designate or as the affairs of the corporation may require from time to time.

**Section 1.02. Registered Office.** The registered office of the corporation may be, but need not be identical to the principal office in the State of Kansas, and the Board of Directors may change the address of the registered office from time to time.

**ARTICLE II**  
**PURPOSE**

**Section 2.01. Purpose.** The corporation's purpose shall be in accordance with and subject to its Articles of Incorporation, as amended from time, and consistent with its creation and existence as Kansas non-profit corporation organized under the laws of the State of Kansas to carry on exclusively charitable, educational and literary work in the community for developing, improving and otherwise supporting the Topeka Zoo and Conservation Center in Shawnee County, Kansas, and consistent with its exemption under section 501(c)(3) of the internal revenue code of 1986, as amended (26 U.S.C. §501(c)(3)).

**Section 2.02. Dissolution.** Upon the dissolution of the corporation, the board of directors or governing body of the corporation in its sole discretion, after paying or providing for the payment of all liabilities of the corporation, shall distribute the assets of the corporation exclusively: (1) In accordance with the exempt purpose of the corporation, in the manner determined by the board of directors or governing body, or (2) to organizations qualified for exemption under section 501(c)(3) of the internal revenue code of 1986, as amended (26 U.S.C. §501(c)(3)), and specified by the board of directors or governing body, or (3) to a state or local government consistent with the corporations exempt purpose. Any assets of the corporation not so disposed of shall be disposed of by the district court of the county where the principal office of the corporation is then located, exclusively for the purposes or to the

organizations provided above, as determined by the court.

### **ARTICLE III MEMBERSHIP**

**Section 3.01. Eligibility of Membership.** Any interested individual, association, partnership, or corporation may become a member upon the payment of such dues, assessments, or contributions as shall from time to time be determined by the Board of Directors. Membership shall be one-year duration, provided that the Board of Directors may establish a category of membership for a period of longer than one year upon the payment of special consideration. Except as specifically provided, membership shall terminate at the end of the membership year for which dues, assessments, or contributions have been made.

**Section 3.02. Voting Rights.** The words “membership” and “member” shall in every instance used in these bylaws refer to one membership unit of any category now or hereafter established. Each membership shall have the right to one vote in all matters submitted to the vote of the general membership, regardless of whether the membership is an individual, association, partnership, or corporation, and regardless of the classification of the membership. Membership may submit a written authorization of proxy in the event of absence from the annual meeting.

**Section 3.03. Register of Members.** There shall be kept in the principal office of the corporation a current register of the membership which shall contain the name, address, and classification of each member and which shall be open to inspection by any member during reasonable business hours and upon reasonable notice.

**Section 3.04. Removal of Members.** Any member may be removed from the membership by a majority vote of the members present at any annual meeting or at a special meeting of the members called for that purpose, for conduct deemed prejudicial to the corporation, provided, that such member shall have first been served with written notice of the accusations against him/her, and shall have been given an opportunity to produce his/her witness, if any, and to be heard at the meeting at which such vote is taken.

**Section 3.05. Membership Meetings.** Any meeting of the members of the corporation may be held at any place within the State of Kansas, at such time and place as specified by resolution of the Board of Directors. An annual meeting of the members shall be held each year, one of the purposes of which shall be the election of Directors to the Board of Directors. Special meetings of the members may be called by the President, by resolution of the Board of Directors, or upon a written request for such meeting, stating the purpose thereof, signed by at least 10% of the membership, and submitted to the President. At least ten (10) days prior to such meeting, the Secretary of the Corporation shall provide notice of the meeting specifying the time, place and a statement of purpose of such meeting. The notice shall be sent to each member in good standing at the address contained in the register

#### **AMENDED AND RESTATED BY-LAWS of FRIENDS OF THE TOPEKA ZOO, INC.**

of members provided for in Section 3.03. Such notice shall be deemed duly served when the same has been deposited in the United States mail with postage fully prepaid, plainly addressed to the member as above provided.

**Section 3.06. Quorum.** The actual presence, in person or by proxy, of at least 20 members of the corporation shall constitute a quorum at any meeting of the members, either annual or special. In the event fewer than a quorum is present at any annual or special meeting a majority of those present may adjourn the meeting. Once a quorum has been established at any such meeting, the subsequent withdrawal of member shall not affect the ability of such meeting to transact the business brought before said meeting.

**Section 3.07. Adjournment of a Meeting.** Any meeting of the members, either annual or special may be adjourned from time to time by a vote of a majority of the members present. It shall not be necessary to give notice of the adjourned meeting or of the business to be transacted, unless the adjournment is for a period of longer than thirty (30) days, in which case, notice of the reconvention of the meeting shall be given as in the case of an original meeting. All reconvened meeting times shall be published.

## **ARTICLE IV BOARD OF DIRECTORS**

**Section 4.01. Power of Directors.** The business, property, and affairs of this corporation shall be managed by a Board of Directors composed of no less than ten (10) and no more than thirty (30) natural persons, each of whom shall be an active dues paid member of the corporation. At least a majority of the members of the Board of Directors shall possess the rights of majority. Each Director shall hold office for the term for which he/she is elected or appointed and until, in the case for an elected Board member, his/her successor is elected and qualified.

**Section 4.02. Election and Appointment of Directors.** At the annual meeting of the members, an equal number of Directors shall be elected by the members for a term of three (3) years to succeed the Directors whose terms then expire. Additional Directors may be appointed by a majority of the Board of Directors for one (1) year terms up to the maximum number of Directors provided in Section 4.01. No more than one member of any immediate family may serve as a Director at a time. In the event that the final term of a Director serving as President is set to expire before the end of the term as President, the Board may extend the term of the Director to coincide with the term of President.

**Section 4.03. City Directors.** Notwithstanding anything to the contrary in these Bylaws, during the time when the License and Management Agreement by and between the City of Topeka, Kansas and the Friends of the Topeka Zoo related to the Topeka Zoo and Conservation Center entered into on or about February 9, 2021 (the "LMA") is in effect and in accordance with Article Eleven of the LMA:

## **AMENDED AND RESTATED BY-LAWS of FRIENDS OF THE TOPEKA ZOO, INC.**

- a. One (1) FOTZ Board member shall be a City of Topeka City council member representative appointed by the City of Topeka Governing Body, to serve a three year term in accordance with Section 4.02 of these Bylaws; and
- b. Two (2) ex-officio (non-voting) members of the FOTZ Board, consisting of the Director of Administrative Services and the Director of Public Works, or their designees, shall be appointed by the City Manager in accordance with the LMA (collectively the council person director and ex-officio City staff members shall be referred to as the “City Directors”).

The City Directors shall accede to all rights identified in the LMA and under these Bylaws and shall be subject to all obligations, duties and responsibilities of the Board of Directors, provided, however, that in accordance with the LMA, the City Directors shall not be subject to election or removal by the FOTZ Board and/or membership and shall not be subject to any giving requirement of the FOTZ Board. Any vacancies in the City Director positions shall be filled by the City of Topeka.

**Section 4.04. Vacancies.** Vacancies in the Board of Directors shall be filled by a majority vote of the remaining Directors. The term of any Director elected to fill a vacancy shall extend to the end of the original term of the Director whose death, removal or resignation created the vacancy.

**Section 4.05. Resignation and Removal.** Any Director may resign by giving written notice of such intention to the Secretary. Any Director may be removed by a majority vote of the Board of Directors whenever, in the judgment of the Board of Directors, the interests of the corporation will be served by such removal. Any Director shall be deemed to have resigned if within a consecutive twelve (12) month period the Director has failed, without notice, to attend three (3) regular board meetings or has failed with or without notice, to attend four (4) regular board meetings. Notice of absence must be given prior to the meeting to the Secretary or President or CEO. Notice must be received by noon of the meeting day. Failure or choice, by the Board, to recognize a deemed resignation under this section shall not constitute a waiver of future enforcement. The Board President and/or Secretary will notify the Director about attendance prior to the third absence.

#### **Section 4.06. Power to Delegate Authority.**

- a. The Board of Directors shall have the power to create by resolution such committees as it determines to be proper, which committees shall have, to the extent provided in such resolution, the authority of the Board of Directors in the management of the business of the corporation. Each such committee shall be comprised of members of the corporation, some or all of which may be Directors, as designated in accordance with Section 4.11 below. Such committees shall be selected so as to employ the services of different Board members from time to time so that as many Board members as feasible may participate on the various committees. Each such committee shall submit a written report annually

**AMENDED AND RESTATED BY-LAWS  
of  
FRIENDS OF THE TOPEKA ZOO, INC.**

to the Secretary of the corporation.

- b. The Board of Directors shall have the power to appoint by resolution such task forces as it determines to be proper, which task forces shall have, to the extent provided in such resolution, such limited authority and purposes as prescribed by the Board of Directors. Each such task force shall be comprised of members of the corporation, some or all of which may be Directors, and various stakeholders as identified by the Board of Directors. Such task forces shall be selected so as to employ the services of different Directors from time to time so that as many Directors as feasible may participate on the various task forces. Each such task force shall submit a written report annually to the Secretary of the corporation.

#### **Section 4.07. Meetings.**

- a. Regular meetings of the Board of Directors shall be held not less frequently than nine (9) times per year, at such time and place, as the Board of Directors shall determine. A majority of the Directors shall constitute a quorum at any regular meeting, and if less than a majority of the Board of Directors is present at any meeting, a majority of those present may adjourn such meeting to reconvene at another time without further notice.
- b. Special meetings of the Board of Directors may be called by the President or by a majority of the Board. Written notice of any special meeting must be given to each member of the Board, stating the time, place and specific purpose of the special meeting. A majority of the Directors shall constitute a quorum at any special meeting, and if less than a majority of the Board of Directors is present at any meeting, a majority of those present may adjourn such meeting to reconvene at another time without further notice.
- c. Notice of the time, place and purpose of any meeting of the members of the Board of Directors may be waived by written instrument by any Director, either before or after such meeting has been held. Business transactions must be approved by a majority of those Board members present and voting.

**Section 4.08. Action without Meeting.** Any action required to be taken at a meeting of the Directors may be taken without a meeting if a consent, in writing, setting for the action so taken, shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a majority vote.

**Section 4.09. Advisory Board.** The Board of Directors shall have the power to appoint such members of the corporation as it determines to be proper to serve in an advisory capacity to the Board of Directors for such length of time as determined by the Board of Directors and such persons serving in an advisory capacity shall be collectively known as the Advisory Board.

**Section 4.10. Executive Committee.** At their first meeting after their election, the Board



shall select an Executive Committee to consist of the Officers of the Corporation and such other at-large members of the Board the President shall designate. At large members shall serve terms designated by the President and approved by the Board. The President shall preside at the meetings. During the intervals between the meetings of the Board, the Executive Committee shall possess and may exercise all powers of the Board in management and direction of the affairs of the Board in all cases in which specific directions have not been given by the Board. The Executive committee will have the power to authorize individual expenditures of \$5,000 not to exceed an aggregate of \$25,000 between board meetings unless other limits are designated by the Board of Directors from time to time. The President or the President's designee shall report all actions taken by the Executive Committee in between Board meetings to the Board of Directors at the next regular Board of Directors meeting.

**Section 4.11. Standing Committees.** Committee assignments will be given by the Executive Committee to the Board members. Board members will serve on at least two (2) committees. The Executive Committee may also create new committees as needed for special events. Standing committees are: Education, Budget & Finance, Leopard Spot Gift Shop, Media/Public Relations, Nominating & By-laws, Technology, Personnel and Development.

**Section 4.12. Yearly Pledge to the Organization.** Upon acceptance of a Board position, the Director will donate to the organization a sum of money based on the amount determined by the Executive Committee each year and outlined in a separate policy. Such donation may be monetary or in-kind service or merchandise. All monetary donations will be held in a designated account to be used for fundraising purposes to support the zoo.

## **ARTICLE V OFFICERS OF THE CORPORATION**

**Section 5.01. President.** The President shall be selected by, and from the membership of the Board of Directors, and must also be a member of the corporation, and serve a term of two (2) years. The President shall have the general and active management of the business of the corporation and shall see that all orders and resolution of the Board are carried into effect. The President shall be an ex-officio member of all committees and shall have the general powers and duties of supervision and management usually vested in the office of the President of the corporation. The President shall serve until a successor or replacement is elected by majority approval of the Board. For one (1) year following the President's term, unless re-elected as President or elected to another Officer position or elected to the Executive Committee, the outgoing President shall serve as an ex-officio member of the Executive Committee.

**Section 5.02. Vice President.** The Vice President shall be selected by, and from the membership of the Board of Directors and shall be a member of the corporation and serve a term of two (2) years. The Vice-President shall perform the duties and exercise the powers of the President during any absence or disability of the President.

## **AMENDED AND RESTATED BY-LAWS of FRIENDS OF THE TOPEKA ZOO, INC.**

**Section 5.03. Secretary.** The Secretary shall be selected by, and from the membership of the Board of Directors, and shall be a member of the corporation and shall attend all meetings of the members and the Board of Directors and shall preserve in books of the corporation, true minutes of the proceedings of all such meetings. The Secretary shall have authority to affix the seal of the corporation to all instruments where its use is required, shall give all notices required by statute, by law or by resolution and shall perform such duties as may be delegated by the Board of Directors. The Secretary shall serve a term of one (1) year. The Secretary shall maintain the monthly attendance roster of volunteer hours performed by members of the Board of Directors, shall maintain the minutes and other documents of Board proceedings and perform such other duties as are assigned by the Board.

**Section 5.04. Treasurer.** The Treasurer shall be selected by, and from the membership of the Board of Directors, and shall be a member of the corporation, and serve a term of one (1) year. The Treasurer shall render to the President and Directors at the regular meetings of the Board and whenever requested by them, and account of all transactions as treasurer and of the financial condition of the corporation.

**Section 5.05. Other Officers.** Other officers of the corporation may be created by resolution of the Board of Directors and the persons elected to fill those offices in such manner as may be determined by such resolution.

**Section 5.06. General requirements.** All officers shall possess the rights of majority. The offices of Secretary and Treasurer may be held by the same person, but no other two (2) offices designated in Sections 5.01 through 5.04 may be held by the same person.

**Section 5.07. Bond.** The Board of Directors may require any officer or agent to file with the corporation a satisfactory bond conditioned for favorable performance of the duties of such office or agent.

**Section 5.08. Removal, Resignation, and Vacancies.** Any officer may be removed by majority vote of the Board of Directors whenever, in the judgment of the Board, the interests of the corporation will be served thereby. Any officer may resign by written notice to the Secretary of the corporation. All officers shall serve until his/her successor is elected and qualified.

**Section 5.09. Chief Executive Officer.** The Board of Directors may employ the services of a Chief Executive Officer ("CEO") or any other employee, agent or independent contractor it deems necessary to conduct the business of the corporation. The CEO shall be in charge of day-to-day operations of the corporation, and the duties of the CEO will be determined yearly by the Executive Committee. The CEO shall be a non-voting member of the Board of Directors and is expected to attend the regular meetings. The CEO will have yearly oral and written reviews with the Executive Committee.

## **ARTICLE VI MISCELLANEOUS**

### **AMENDED AND RESTATED BY-LAWS of FRIENDS OF THE TOPEKA ZOO, INC.**

**Section 6.01. Written Instruments.** Except as may otherwise be provided in these Bylaws, all deeds and mortgages made by the corporation and all other written contracts and agreements to which the corporation shall be a party shall be approved in advance by the Board of Directors and shall be executed in the name of the corporation by the President or Vice President and attested to by the Secretary. However, these Bylaws shall require only the signature of the President.

**Section 6.02. Loans.** No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances. Loan documents and debt instruments shall be executed as provided in Section 6.01.

**Section 6.03. Checks.** All checks, drafts or other orders for the payment of money issued in the name of the corporation shall be signed by the President, Vice President or by a designated staff member or agent as determined by the Board of Directors. Section 6.02 shall govern notes or other evidences of indebtedness.

**Section 6.04. Deposits.** All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks or other depositories as the Board of Directors may select.

**Section 6.05. Fiscal Year.** The fiscal year of the corporation shall begin on the first day of January and end on the 31<sup>st</sup> day of December.

**Section 6.06. Waiver of Notice.** Whenever any notice is required to be given to any Director of the corporation by law or pursuant to the provisions of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

**Section 6.07. Personal Liability and Indemnity.** Except as otherwise provided by law a Director, Officer, employee or volunteer of the corporation shall not be liable for the debts or obligations of the corporation, and a Director, Officer, employee or other volunteer shall not be personally liable in that capacity for a claim based upon any act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions in bad faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. Except as to matters as to which personal liability may be imposed, as provided in the previous sentence, the corporation shall indemnify, defend, and hold its Directors, Officers, employees and volunteers harmless from any cost or expense, including reasonable attorney fees, which might be incurred by them by reason of any claim or suit against them arising out of the performance of their duties as Director, Officer, Employee or Volunteer of the corporation.

**AMENDED AND RESTATED BY-LAWS  
of  
FRIENDS OF THE TOPEKA ZOO, INC.**

**ARTICLE VII  
AMENDMENT**

Section 7.01. Amendments. These Bylaws may be amended at any regular or special meeting of the Board of Directors by affirmative vote of a majority of the quorum. Amendments may also be submitted, by petition signed by no less than ten percent (10%) of the members, to a vote of the members at the annual meeting, provided such petition is submitted, and the signatures verified by the Secretary, not later than a date set by the Board of Directors and communicated in the FOTZ newsletter or other means to the membership each year in sufficient time to have the proposed amendment published in the notice of the annual meeting. All amendments to the Bylaws shall be communicated to the membership in the FOTZ newsletter within one hundred twenty (120) days of adoption.

ADOPTED AND APPROVED on this 1<sup>st</sup> day of April, 2021.

---

Fred Patton  
President of the Board

Attest:

---

Kelly Kelsey  
Secretary of the Board

**AMENDED AND RESTATED BY-LAWS  
of  
FRIENDS OF THE TOPEKA ZOO, INC.**



City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
[www.topeka.org](http://www.topeka.org)  
February 6, 2024

---

DATE: February 6, 2024  
CONTACT PERSON: Braxton Copley, Public Works Director DOCUMENT #:  
SECOND PARTY/SUBJECT: Hotel Topeka Operation PROJECT #: Funding Request  
CATEGORY/SUBCATEGORY 020 Resolutions / 005 Miscellaneous  
CIP PROJECT: No  
ACTION OF COUNCIL: JOURNAL #:  
PAGE #:

---

**DOCUMENT DESCRIPTION:**

**DISCUSSION and POSSIBLE ACTION of A RESOLUTION** introduced by Interim City Manager Richard U. Nienstedt regarding additional funding for operations and maintenance of Hotel Topeka.

**Voting Requirement:** Action requires at least six (6) votes of the Governing Body.

*(Approval would authorize an additional \$500,000 tranche of operational funds from the General Fund (Hotel Non-Departmental Expense) to operate and maintain Hotel Topeka. A request for an additional \$277,355 of operational funding was received by the City on January 26, 2024. If the resolution is approved, a portion of the additional \$500,000 tranche would be used to pay the requested funds. The Management Agreement requires a minimum working capital account of \$150,000 be maintained and to advance funds to cover all operating expenses. Funds must be remitted within 10 days of a request.)*

**VOTING REQUIREMENTS:**

Action requires at least six (6) votes of the Governing Body.

**POLICY ISSUE:**

To approve an additional \$500,000 tranche of operation funds for Hotel Topeka as required by the Management Agreement within 10 days of a request. The Management Agreement requires that a minimum working capital account of \$150,000 be maintained and to advance funds to cover all operating expenses.

**STAFF RECOMMENDATION:**

Staff recommends the Governing Body move to approve the resolution.

**BACKGROUND:**

On October 17, 2023, the Governing Body approved Resolution No. 9478 authorizing the expenditure of \$500,000 to operate and maintain Hotel Topeka. To date, the City has expended \$300,132 in operational transfers and \$117,065 in Capital Expenditure approved requests. The remaining authority balance is \$82,802.

The Management Agreement requires that a minimum working capital account of \$150,000 be maintained and to advance funds to cover all operating expenses. The City is obligated to remit the funds within 10 days of a request.

A request for an additional \$277,355 of operational funding was received by the City on January 26, 2024. If the resolution is approved, a portion of the additional \$500,000 tranche would be used to pay the requested funds.

**BUDGETARY IMPACT:**

\$500,000

**SOURCE OF FUNDING:**

General Fund: Hotel Non-Departmental Expense

**ATTACHMENTS:****Description**

Resolution

Topeka Development Corporation Expense Summary

Resolution No. 9478 (October 17, 2023)

Hotel Topeka Management Agreement



1 RESOLUTION NO. \_\_\_\_\_

2  
3 A RESOLUTION introduced by Interim City Manager Richard U. Nienstedt regarding  
4 additional funding for operations and maintenance of Hotel Topeka.

5 WHEREAS, on October 17, 2023, the Governing Body issued Resolution No. 9478  
6 which provided funding to the single purpose entity (SPE), now known as the Topeka  
7 Development Corporation, in an amount not to exceed \$500,000; and

8 WHEREAS, the City has received a request for operational funding in the amount  
9 of \$227,355; and

10 WHEREAS, the management agreement requires the owner to maintain a  
11 minimum working capital account of \$150,000; and

12 WHEREAS, the Governing Body acknowledges additional funding needs to be  
13 authorized.

14 NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE  
15 CITY OF TOPEKA, KANSAS, that the Governing Body authorizes funding to the Topeka  
16 Development Corporation, not to exceed an additional \$500,000 from General Fund –  
17 Hotel Non-Departmental Expense to operate and maintain Hotel Topeka.

18 ADOPTED and APPROVED by the Governing Body on \_\_\_\_\_.

19 CITY OF TOPEKA, KANSAS  
20  
21

22  
23 \_\_\_\_\_  
24 Michael A. Padilla, Mayor

25 ATTEST:  
26  
27

28  
29 \_\_\_\_\_  
30 Brenda Younger, City Clerk

Date	Description	Amount	Category
12/1/2023	TOP HOTEL - OPERATING RESERVE	131,335.09	ADMINISTRATIVE COSTS
12/5/2023	TOP HOTEL - OPERATING RES #1	18,664.91	ADMINISTRATIVE COSTS
12/5/2023	TOP HOTE OP RES ROUND	(0.09)	ADMINISTRATIVE COSTS
12/1/2023	TOPHOTEL - LOCKS	90,661.82	CAPITAL OUTLAY BLDING & IMPROV
12/1/2023	TOPHOTEL - SPRINKLERS	7,297.00	CAPITAL OUTLAY BLDING & IMPROV
12/1/2023	TOPHOTEL - ACTUATORS	19,106.09	CAPITAL OUTLAY BLDING & IMPROV
12/5/2023	TOP HOTEL - OPERATING RES #2	150,000.00	ADMINISTRATIVE COSTS
12/18/2023	DIRECTORS & OFFICERS PREMIUM	132.47	INSURANCE - ADMINISTRATIVE COST

<b>Total Hotel Disbursements</b>	<b>417,197.29</b>
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Resolution 9478 Limit	500,000.00
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<b>Remaining Authority</b>	<b>82,802.71</b>
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Total Operating Expenditures	300,132.38
Total Approved and Paid Capital Expenditures	117,064.91

**RESOLUTION NO. 9478**

A RESOLUTION introduced by Interim City Manager Richard U. Nienstedt regarding the purchase and management of the Hotel Topeka.

WHEREAS, on May 30, 2023, the Governing Body approved the purchase of the Hotel Topeka ("the Hotel") by negotiated purchase agreement; and

WHEREAS, on May 30, 2023, the Governing Body issued Resolution No. 9419 which announced the City's intent to reimburse itself for certain capital expenditures in connection with the acquisition, renovation and equipping of the Hotel through the proceeds of tax-exempt bonds; and

WHEREAS, the City has deposited \$766,875.00 towards the purchase price of the Hotel; and

WHEREAS, the closing is set for October 31, 2023, where the City intends to pay the remainder of the purchase price in the amount of approximately \$6.9 million; and

WHEREAS, the Governing Body intends to create a single purpose entity ("SPE") wholly owned by the City that will take title to the Hotel and contract with a management company to operate the Hotel; and

WHEREAS, the Governing Body acknowledges that the SPE will need funds to operate the Hotel; and

WHEREAS, as the Governing Body's ultimate goal is to secure an entity that will purchase, operate and manage the Hotel, the Governing Body, on October 10, 2023, approved a contract with REVPAR to assist in that respect as well as advise on the selection of a management company to operate the Hotel.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS, that

26        Section 1.    The Governing Body authorizes the City Manager to complete the  
27   purchase of the Hotel by paying the remainder of the purchase price of approximately \$6.9  
28   million as adjusted at closing for cash, accounts receivable, license and permit fees,  
29   prepaid expenses, consumable inventory, taxes, assessments, fees, liens, utilities and  
30   advance bookings.

31        Section 2.    The City Manager is authorized to: (a) facilitate the process of  
32   creating an SPE wholly owned by the City to take title to the Hotel; (b) provide funding to  
33   the SPE not to exceed \$500,000 from operating reserves to operate and maintain the  
34   Hotel; and (3) take whatever actions are necessary to achieve the ultimate goal of  
35   securing an entity that will purchase, operate and manage the Hotel.

36        ADOPTED and APPROVED by the Governing Body on October 17, 2023.



CITY OF TOPEKA, KANSAS

Michael A. Padilla, Mayor

ATTEST:

Brenda Younger, City Clerk

# **HOTEL MANAGEMENT AGREEMENT**

Between

**Topeka Development Corporation**

and

**TOKS Associates LLC**

**a Kansas limited liability company**

**Hotel Topeka at City Center**  
1717 Southwest Topeka Boulevard  
Topeka, Kansas 66612

## HOTEL MANAGEMENT AGREEMENT

THIS HOTEL MANAGEMENT AGREEMENT (this “**Agreement**”) is made as of the 31 day of October 2023 between Topeka Development Corporation, a public benefit corporation organized and existing under the laws of Kansas (“**Owner**”) with its principal place of business in Topeka, KS, and TOKS Associates LLC, a limited liability company organized and existing under the laws of Kansas (“**Operator**”) with its principal place of business in Philadelphia, PA.

### **RECITALS**

A. Owner owns the property known as Hotel Topeka at City Center and located at 1717 Southwest Topeka Boulevard, Topeka, KS 66612 (including all components identified in Section 1.1, the “**Property**”).

B. Operator is in the business of managing hotels.

C. Owner desires to engage Operator to manage and operate the Property on Owner’s behalf, and Operator desires to accept such engagement.

**NOW, THEREFORE**, in consideration of the promises, and other good and valuable consideration, Owner and Operator, intending to be legally bound, agree as follows:

### ARTICLE I

#### THE HOTEL

1.1. Owner and Operator acknowledge that the Property contains:

- A. A building (the “**Building**”) with 224 guest rooms, lobby, meeting space, lounge, pool and fitness center;
- B. A restaurant, and a kitchen and related food and beverage facilities (all also in the Building), from which foodservice is provided to guests in the Restaurant and other parts of the Property, and as well as at Hotel-catered events outside of the Property, including at the Maner Conference Center (located at 1717 SW Topeka Blvd, Topeka, KS 66612).
- C. Mechanical systems and built-in installations (the “**Installations**”) of the Building including, but not limited to, heating, ventilation, air conditioning, electrical and plumbing systems, refrigeration and kitchen equipment;
- D. Furniture, furnishings, wall coverings, floor coverings, window treatments, fixtures and hotel equipment (the “**FF&E**”);
- E. Glassware, linens, and other items of a similar nature (the “**Operating Equipment**”);



- F. Stock and inventories of paper supplies, cleaning materials and similar consumable items and food and beverage (the “**Operating Supplies**”);
- G. A parking lot adjacent to the Building;
- H. All right, title and interest of Owner in and to the walkway running east and west between the Property and the Maner Conference Center (located at 1717 SW Topeka Blvd, Topeka, KS 66612), it being understood that Operator shall be responsible for the maintenance and security of this walkway.

## ARTICLE II

### OPERATING TERM

2.1. This Agreement will commence on the date Owner takes title to the Property (the “**Commencement Date**”) and will expire on December 31, 2023 (the “**Initial Term**”). This Agreement may be renewed for additional terms of six (6) months each (each a “**Renewal Term**”) unless written notice is delivered to Operator at least thirty (30) days before the expiration of the applicable Term. The Initial Term and any Renewal Term(s) are referred to collectively herein as the “**Term**.”

2.2. Promptly following the Commencement Date, the Parties agree to execute a certificate in the form attached hereto as **Exhibit “B”** specifying the Commencement Date.

## ARTICLE III

### GENERAL SERVICES BY OPERATOR

3.1. During the Term, Operator, as agent and for the account of Owner, subject to the Budgets (as defined in Section 9.4), this Agreement and availability of funds (or as funded by Owner in the event Total Revenues are not sufficient) will provide the following services:

- A. Recruit, train, direct, supervise, employ and dismiss on-site staff (“**Hotel Employees**”) in connection with the operation of the Property;
- B. Develop and implement advertising, marketing, promotion, publicity and other similar programs for the Property;
- C. Negotiate and present to Owner for execution, leases, licenses and concession agreements for and lobby space and office space at the Property (collectively, “**Leases**”), if any, and collect the rent under such Leases and otherwise administer the Leases;
- D. Negotiate and enter into contracts for the provision of services to the Property. Notwithstanding the foregoing, Operator shall not enter any of the following contracts without the advance written approval of Owner:
  - (i) any contract providing in whole or in part for a “barter” arrangement;

- (ii) any equipment lease, whether or not the same would be characterized as a capital lease under the Uniform System;
  - (iii) any contract with an affiliate of Operator, or any person or entity that has any equity interest in Operator or any affiliate of Operator;
  - (iv) any contract that has a term (including an initial term or an initial term plus one or more renewal terms) totaling more than one year, unless (A) any renewal after an initial term of one year or less is solely on a month-to-month basis; or (B) the contract is terminable by Owner, at any time, upon not more than thirty (30) days' notice without the payment of any fee or premium;
  - (v) any contract that requires payments totaling more than \$20,000 per year; and
  - (vi) any contract that is a loan or credit agreement (excluding trade credit incident to sales of goods or services in the ordinary course of business).
- E.** Apply for, process and take all necessary steps to procure and keep in effect in Owner's name (or, if required by the licensing authority, in Operator's name or both) all Licenses;
  - F.** Unless otherwise specified by Owner, purchase all FF&E, Operating Equipment and Operating Supplies necessary for the operation of the Property;
  - G.** Provide routine accounting and purchasing services as required in the ordinary course of business and administer payroll for Hotel Employees;
  - H.** Maintain the Property in a good state of repair, and use commercially reasonable efforts to maintain and operate the Property in accordance with all applicable laws, statutes, ordinances, rules, regulations and orders of the local board of fire underwriters or similar body
  - I.** At Owner's direction and with Owner's prior written approval, institute, defend and settle any legal or administrative proceedings relating to the Property, provided that Owner's approval shall not be required for Operator to settle any claim for an uninsured payment of less than Five Thousand Dollars (\$5,000) if the settlement agreement includes a general release in favor of Owner, Operator and their respective affiliates
  - J.** Subject to Section 10.6, at Owner's direction or with Owner's prior written approval, represent Owner in connection with the making of any Capital Improvements which are not Major Renovations, and if authorized, negotiate and enter into agreements for architectural, engineering, testing, consulting and construction services;
  - K.** Reasonably cooperate with Owner and any prospective purchasers or lenders in

connection with any actual or proposed sale or refinancing of the Property; and

- L.** Provide such other services as are required under the terms of this Agreement as are customarily performed by management companies of comparable full-service hotels or are necessary for day-to-day operation, management and supervision of the Property and its business, which may include, if directed by Owner, catering functions at the adjacent Maner Conference Center.
- M.** Procure and maintain, in the name of Operator, the Property or Owner, as appropriate, all licenses, operating permits and other governmental authorizations that are necessary for the operation of the Property, including (without limitation) a Hotel Drinking Establishment/Caterer liquor licenses in Operator's name from the Alcohol Beverage Control (ABC) division of the Kansas Department of Revenue and a corollary license from the City of Topeka (collectively, the "**Licenses**"). Operator shall immediately notify Owner in writing if Operator loses a License or has a License suspended, or if Operator becomes aware of any event or circumstance that may result in Operator losing a License.

**3.2.** Subject to the Budgets, the other applicable provisions of this Agreement and the availability of funds, Operator shall use commercially reasonable and good faith efforts operate the Property in accordance with the terms of any applicable Major Agreements and the Operating Standards, as well as Kansas Department of Revenue Policy Memorandum 2001-4 (Revised).

**3.3.** Notwithstanding any other provision of this Agreement to the contrary, Operator's obligations with respect to any Major Agreement shall be limited to the extent that: (i) summaries of the relevant portions, together with complete and accurate copies of the Major Agreements have been delivered to Operator sufficiently in advance of the effective date of the Major Agreements to allow Operator to review and approve the terms of such Major Agreements; and (ii) the provisions thereof and/or compliance with such provisions by Operator (1) are applicable to the day-to-day operation, maintenance and non-capital repair and replacement of the Property or any portion thereof, (2) do not require contribution of capital by Operator or payments of Operator's own funds, (3) do not materially increase Operator's obligations hereunder or materially decrease Operator's rights hereunder, (4) do not limit or attempt to limit any corporate activity or transaction with respect to Operator or its affiliates other than in connection with the operation of the Property, (5) are within the reasonable control of Operator by reason of its management and operation of the Property pursuant to this Agreement, and (6) are otherwise within the scope of Operator's duties under this Agreement.

Owner acknowledges and agrees, without limiting the foregoing, that any failure of Operator or the Property to comply with the provisions of any Major Agreement arising out of (A) the condition of the Property, and/or the failure of the Property to comply with the provisions of such Major Agreement prior to Operator's assuming the day-to-day management thereof, (B) construction activities at the Property, not supervised by Operator, (C) inherent limitations in the design and/or construction of, location of and/or parking at the Property, (D) instructions from Owner to operate the Property in a manner inconsistent with the major Agreements, and/or (E) Owner's failure to approve any matter requested by Operator in Operator's reasonable good faith business judgment as necessary or appropriate to achieve compliance with any Major Agreement, shall not be deemed

a breach by Operator of its obligations under this Agreement. Operator shall be entitled to rely upon summaries of the Major Agreements (other than any franchise agreement) provided by Owner and on a copy of any future franchise agreement provided by Owner.

#### **ARTICLE IV**

##### **GENERAL OPERATION OF THE HOTEL**

**4.1.** Owner engages Operator as the exclusive operator of the Property during the Term and Operator hereby accepts such engagement. Subject to the terms of this Agreement, the applicable Budgets and availability of funds, Operator will have control and discretion in the operation, direction, management and supervision of the Property. Such control and discretion of Operator will include, without limitation, the determination of credit policies, terms of admittance, charges for rooms, food and beverage policies, entertainment and amusement policies, leasing, licensing and granting of concessions for commercial space at the Property, if any, and all phases of advertising, promotion and publicity relating to the Property.

**4.2.** Operator shall operate the Property and all of its facilities and activities in substantially the same manner as is customary and usual in the operation of similar, full-service hotels within a sixty (60)-mile radius of the Property to the extent consistent with the Property's facilities and in accordance with the Operating Standards.

**4.3.** Operator will be available to consult with and advise Owner, at Owner's reasonable request, concerning all policies and procedures affecting the business at the Property. Operator shall consult with Owner before implementing any material changes in policies and procedures relating to the Property.

**4.4.** Owner is responsible for all costs of compliance with the Americans with Disabilities Act and any applicable laws, regulations or orders related to the physical condition of the premises, improvements thereon, or any website (collectively "**ADA**"). Owner is also responsible for all costs of remediating any pollutants, waste and hazardous materials, including but not limited mold, legionella or other microbial substances and pollutants as defined under the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et. Seq. ("**RCRA**") or any related, federal, state or city environmental statute or law ("**Pollutants**"), on or related to the Property. Notwithstanding anything to the contrary within the foregoing, Operator will promptly inform Owner if Operator becomes aware of any failures of the Property to comply with any of the aforementioned laws, and will cooperate with Owner and Owner's contractors in their efforts to make all changes necessary to cause compliance. For the avoidance of doubt, Operator shall be responsible for day-to-day guest facing compliance with the ADA (e.g. making reasonable accommodations for guests with disabilities who request them) and state and federal environmental laws (e.g. properly storing and disposing of cleaning supplies and refrigerants).

**4.5.** Owner shall have the right to close the Property from time to time on a temporary basis to perform such renovations or other work in the Property as Owner may determine in its sole and absolute discretion. During any such period of closure Operator shall provide the services set forth in Section 3.1 above, to the extent applicable during such period and Owner shall continue to, in lieu of any management fee, pay to Operator a fee of \$5,000 per month. Owner will provide Operator at least thirty (30) days' written notice of its intent to close the Property.

## ARTICLE V

### AGENCY; HOTEL EMPLOYEES

**5.1.** Operator will act as agent of Owner. The scope of Operator's agency shall be limited to performance of its obligations under this Agreement. Without limiting the generality of the immediately preceding sentence, unless otherwise approved in writing by Owner, Operator shall have no authority to represent Owner in communications with the government of Shawnee County and/or the Stormont Vail Events Center, including its Advisory Board. Nothing in this Agreement will constitute or be construed to be or create a partnership or joint venture between Owner and Operator. Operator acknowledges and agrees that the agency granted by this Agreement is not coupled with an interest. All debts and liabilities to third persons incurred by Operator in the course of its operation and management of the Property consistent with the terms of this Agreement, and not incurred through any gross negligence, intentional misconduct or fraud of Operator, are Operating Expenses.

**5.2.** Notwithstanding anything to the contrary within Section 5.1, all Hotel Employees will be employees of Operator or, in certain cases, a staffing agency. Any new staffing agencies to be used after the Commencement Date must be authorized in an approved Budget or otherwise approved in advance and in writing by Owner. Under no circumstances will Owner or any of Owner's affiliates employ, or be deemed to employ, any Hotel Employees. Compensation of Hotel Employees or staffing agency employees shall be Operating Expenses.

**5.3.** Operator may enroll eligible Hotel Employees in pension, medical and health, life insurance and similar employee benefit plans substantially similar to corresponding plans implemented in full/limited-service hotels in the area of the Property. Such plans may, with Owner's prior written approval (which is hereby expressly given with respect to the current plans offered by Operator to eligible Hotel Employees) be joint plans for the benefit of employees at more than one property owned, leased or managed by Operator or its affiliates. Employer contributions to such plans (including any termination related liability), costs, expenses and reasonable administrative fees constitute Operating Expenses. The administrative expense of any joint plans will be equitably apportioned among properties covered by such plan. The Patient Protection and Affordable Care Act, federal or state laws (collectively, "**Health Care Laws**") may require Owner or Operator to offer a certain level of healthcare coverage or be subject to fines and/or penalties. The employer portion of premiums or costs associated with healthcare coverage offered to Hotel Employees pursuant to Health Care Laws is an Operating Expense.

**5.4.** Operator, in its reasonable discretion, may (A) on a space-available basis, provide reasonable lodging and use of Property facilities for Operator's executive employees visiting the Property in connection with the performance of services at the Property pursuant to this Agreement; and/or (B) with Owner's prior written approval, on a space-available basis, provide the General Manager of the Property and other Key Hotel Employees temporary living quarters within the Property and the use of all Property facilities, at a discounted price or without charge, as the case may be; provided, however, that any such use or discount shall not exceed that lesser of thirty (30) days or the time that is customary and usual in the operation of comparable full-service hotels in the State of Kansas.

**5.5.** Operator shall develop and implement policies, procedures and programs for the Property

(collectively, the “**Employment Policies**”) reasonably designed to effect compliance with the Employment Laws and to operate the Property in accordance therewith. Operator shall operate the Property in material compliance with all Employment Laws. The Employment Policies shall be consistent with industry standards from time to time for reputable companies managing similar, full-service hotels.

5.6. The parties agree that, on and after the effective date of termination or expiration of this Agreement, hotel personnel employed by Operator immediately prior to the effective date of termination will either be employed by Owner or Owner’s designee, or Owner will take such other action with respect to their employment, which may include notification of the prospective termination of their employment, so as, in any case, to ensure that Operator does not incur any liability pursuant to the U.S. Work Adjustment and Retraining Notification Act, as amended and as may be further amended from time to time, or similar state statute or municipal ordinance (collectively, the “**WARN Act**”). Owner hereby agrees to defend, indemnify and hold harmless Operator from and against any and all manner of claims, actions, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ fees and disbursements) relating to or arising from Owner’s breach of this covenant, including, without limitation, any liability, costs and expenses arising out of asserted or actual violation of the requirements of the WARN Act. Further, Owner agrees to assume, pursuant to written severance agreements reasonably approved by Owner, all severance pay, accrued vacation or personal leave, COBRA and similar liabilities and obligations to the Property’s personnel, which Operator shall or may incur in connection with such termination of this Agreement, and Owner hereby agrees to defend, indemnify and hold harmless Operator from and against any and all manner of claims, actions, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ fees and disbursements) relating to or resulting from Owner’s breach of the foregoing covenant, including limitation, any liability, cost and expenses arising out of asserted or actual violation of the requirements of the COBRA legislation. Upon Owner’s written request to Operator, Operator shall take all reasonable action prudent and proper as operator, to notify, advise and reasonably cooperate with Owner in order to assist Owner to comply with the WARN Act or COBRA legislation and to mitigate Owner’s expense or liability with respect to the WARN Act and COBRA legislation.

5.7. Operator may (a) participate in negotiations with toward a collective bargaining agreement for Hotel Employees, and (b) subject to Owner’s prior written approval, enter into or amend any collective bargaining agreement in place for the Hotel Employees. Operator will consult with Owner regarding, and keep Owner advised of, any collective bargaining negotiations. Owner shall have an opportunity to participate in any such negotiations. Each of the parties represents and warrants to the other that, as of the date of this Agreement, it is not aware of any efforts to organize a union of any Hotel Employees.

5.8. With respect to the Property’s General Manager and all Hotel Employees who report directly to the General Manager, which may include (without limitation) a Director of Sales and Marketing, a Director of Revenue Management (the “**Key Hotel Employees**”), the parties acknowledge and agree that: (i) Operator shall not hire any Key Hotel Employee without the prior written approval of Owner (after Owner has been given a reasonable opportunity to interview the candidate), which approval shall not be unreasonably withheld, conditioned or delayed, (ii) for a period of one (1) year after a Key Hotel Employee commences employment at the Property, Operator will not transfer any such Key Hotel Employee from the Property to another property managed by Operator



or its affiliates without the prior written approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed, and (iii) Owner may consult directly with the General Manager, Director of Sales and Marketing, the Director of Revenue Management. Except for the Key Hotel Employees, Owner shall not contact any Hotel Employee regarding the operations of the Property without the prior approval of Operator, said approval not to be unreasonably withheld or delayed.

**5.9** During the Term, Operator shall not enter into any employment agreement with any Hotel Employee without the prior written consent of Owner, which consent may be withheld by Owner in its sole and absolute discretion.

## **ARTICLE VI**

### PROVISION OF FUNDS

**6.1.** Without prejudice to Owner's rights under Section 21.1, Operator will act solely as agent and on behalf of Owner in performing its obligations hereunder. Operator will not be in default of this Agreement to the extent it is unable to perform any obligation due to the lack of available funds from the operation of the Property or as otherwise provided by Owner.

**6.2.** Operator shall in no event be required to advance any of its funds for the operation of the Property.

## **ARTICLE VII**

### CENTRALIZED SERVICES

**7.1.** To the extent provided for in approved Budgets or otherwise approved by Owner in advance and in writing, Operator shall provide, or cause its affiliates to provide, to the Property, Hotel Employees and/or guests, network services, centralized accounting services, IT services, purchasing services, revenue management services, training, satisfaction surveys, and/or other centralized services which may be available generally to similarly situated properties (individually and collectively, "**Centralized Services**"). The Centralized Services currently provided by Operator are described in **Exhibit "A"** attached hereto. Unless otherwise agreed in advance and in writing by Owner in its sole and absolute discretion, all revenue management services shall be provided on a centralized, "above-property" basis, and there shall be no director of revenue management employed at the Property.

**7.2.** The cost of Centralized Services will be estimated in the Budget and reasonably allocated to the Property in a manner that does not unreasonably favor other hotels managed by Operator over the Property.

**7.3.** Operator may in its discretion enter into certain purchasing, maintenance, service or other contracts with respect to the operation of the Property and other hotels operated by its affiliates through a multi-property purchasing plan (collectively, "**MPPP**") pursuant to which the affiliates of Operator may receive rebates, discounts, cash or other incentives, administration fees, concessions, or economic considerations (collectively, "**Rebates**") from the vendors or suppliers of goods or services. Owner acknowledges and agrees that (a) the Property is likely to receive

substantial benefit from its participation in such MPPP which the Property could not obtain on its own, (b) any and all Rebates are the sole property of the purchasing affiliate and not Owner, and (c) the receipt by affiliate of any Rebates does not breach any fiduciary or other duty which Operator may have to Owner. Notwithstanding the foregoing, Operator hereby covenants to Owner that the terms of any MPPP in which the Property participates, when taken as a whole, will not be materially less favorable to the Property than the prevailing terms of contracts to provide similar goods or services on a single-property basis obtainable on a commercially reasonable basis from unrelated parties in the area of the Property.

## **ARTICLE VIII**

### **WORKING CAPITAL AND BANK ACCOUNTS**

**8.1.** On the Commencement Date, Owner will deposit into the Agency Account initial working capital for the Property in the amount of \$150,000. Thereafter, Owner shall provide at all times to be maintained in the Agency Account, either from Total Revenues or funds otherwise provided by Owner, a minimum amount of \$150,000 (the “**Minimum Working Capital Amount**”). (For the avoidance of doubt, the immediately preceding sentence includes all of Owner’s responsibility to replenish and maintain working capital after completion of the initial \$150,000 deposit. The immediately preceding two sentences do not provide for two, separate minimum balances that must be maintained.) From time-to-time, if Operator believes there are insufficient funds in the Agency Account to permit Operator to pay all Operating Expenses as they come due pursuant to this Agreement, then Operator shall provide written notice to Owner with an explanation of the need for additional working capital together with backup substantially supporting the request. Within ten (10) days after receiving any such notice, explanation and backup, Owner shall provide any additional working capital to the Agency Account.

**8.2.** Property-related funds received by Operator will be deposited in one or more account(s) in the name of Owner (the “**Agency Account**”) in a Topeka, KS branch office of Bank of America, N.A., or another federally insured bank, savings and loan or trust company, with a branch office in Topeka, KS, selected by Operator, reasonably approved by Owner. Subject to the cash management provisions and account requirements of the Major Agreements, all cash, checks, and credit card receipts received by Operator in the operation of the Property shall be deposited in the Agency Account. Operator will pay all Operating Expenses, Fixed Charges, fees pursuant to Article X below, capital costs and other amounts required under this Agreement from the Agency Account. Interest on the Agency Account shall accrue to the benefit of Owner but shall be available to pay any Operating Expenses.

**8.3.** If requested by Owner in writing, Operator will open a separate account in the name of Owner (the “**Reserve Account**”) in a federally insured bank, savings and loan or trust company, with a branch office in Topeka, KS, selected by Owner. Operator will deposit a percentage of Total Revenues in the Reserve Account as required by any Major Agreements and otherwise in accordance with the Budget. Operator shall pay for approved capital expenses and procurement of FF&E from the Reserve Account in accordance with applicable Budgets and as otherwise approved by Owner in writing. The Agency Account and Reserve Account shall collectively be referred to herein as the “**Accounts.**”)

**8.3.** The Accounts shall be owned by Owner, but under the control of Operator. Owner will

have online access to view all activity in the Accounts activity in real time. Checks or other documents of withdrawal will be signed by representatives of Operator, each of which will be bonded or otherwise insured. Amounts remaining in the Agency Account after paying Operating Expenses will be returned to Owner after the final accounting after the termination or expiration of the Agreement.

## ARTICLE IX

### BOOKS, RECORDS AND STATEMENTS; BUDGETS

**9.1.** Operator shall keep books of account and other records reflecting the operation of the Property in accordance with the latest edition of the *Uniform System of Accounts for the Lodging Industry* adopted by the American Hotel & Lodging Educational Institute (the “**Uniform System**”), with such exceptions as may be required by the provisions of this Agreement. Attached to this Agreement as Schedule 9.1 is a summary of all modifications to the methodology in the Uniform System that Operator implements in its standard practice as of the date of this Agreement. Owner hereby approves the modifications identified in Schedule 9.1. Operator may, with prior notice to Owner, unless the same is objected to in writing by Owner within thirty (30) days after such notice is delivered to Owner, make such additional modifications to the methodology in the Uniform System as are consistent with Operator’s standard practice in accounting for its operations under management contracts generally, so long as such modifications do not affect the determination of Total Revenues, Operating Expenses or Fixed Charges. Except for the books and records which may be kept in Operator’s home office or other suitable location pursuant to the adoption of a central billing system or other centralized service, the books of account and all other records relating to or reflecting the operation of the Property shall be kept at the Property, and shall be made available to Owner and its representatives at all reasonable times for examination and inspection. All books of account, guest records and front office records, will be the property of Owner, shall be treated by Operator as confidential and proprietary information of Owner and shall not be used by Operator in any manner which is detrimental to or in competition with Owner or its affiliates. Upon any termination of this Agreement, all of such books and records shall thereafter be available to Operator at all reasonable times for inspection, audit, examination and transcription for a period of three (3) years or, at Owner’s option, turned over to Operator. Operator shall also grant Owner access for such period to Operator’s databases and accounting records relating to the Property subject to such reasonable conditions as Operator may require for the protection of information not relating to the Property. Nothing contained in this Section 9.1 shall require Operator to disclose to Owner any employment records that Operator is required by law to hold in confidence. In addition to the Property’s books and records, Operator shall maintain guest records and data in accordance with all applicable laws, including with respect to protection of guest privacy and the security of personal identifiable information of guests.

**9.2.** Operator will deliver to Owner within twenty (20) days after the end of each month, the following items (collectively, the “**Monthly Reports**”):

- A. An executive summary noting highlights of operations for such month and explaining variances from Budgets and from the results of the comparable period in the prior year;
- B. A balance sheet as of the last day of such month with comparison to the last day of

the prior month and the last day of the prior Fiscal Year with explanation of variances from the prior year and the prior month;

- C. A statement of cash flows for such month;
- D. An income and expense statement for such month and year-to-date with comparison to current year Budgets and the comparable periods of the prior year with explanation of variances from the prior year and from the Budgets;
- E. A report of Property operating statistics with respect to rooms and food and beverage operations for such month (including occupancy and average daily rates);
- F. A twelve-month summary and forecast of cash flow (including Total Revenues and Operating Expenses) for the current Fiscal Year including a projection of year-end net cash flow using (i) actual year-to-date figures, (ii) forecasts for the next 30, 60 and 90-day periods and (iii) budgeted amounts for the balance of the Fiscal Year;
- G. A summary of outstanding accounts receivable with aging schedule;
- H. A summary of outstanding accounts payable with aging schedule;
- I. To the extent not included in the foregoing, computations of Total Revenues, Operating Expenses, Fixed Charges, and any other amounts on which the Basic Fee may be based;
- J. A reasonably-detailed summary of Reimbursable Expenses for the previous month, with comparisons to the Budgets and the prior year, and containing a reasonably detailed explanation of variances therefrom;
- K. A summary of capital expenditures during such period;
- L. The Property's STR, Inc (f/k/a Smith Travel Research "STAR" Report;
- M. A schedule of any and all Intercompany Invoices during the preceding month, which relate in any way to the Property or operation of the Property;
- N. Guest Survey Summary (GSS) reports, if subject to a franchise agreement; and
- O. Such other monthly reports as Owner may reasonably request and as are customarily provided by managers of similar, full-service hotels.

The Monthly Reports shall be (a) prepared in accordance with GAAP (including GAAP's best practices for municipal entities) and, to the extent applicable, the Uniform System (including, but not limited to, line-item descriptions), (b) prepared in accordance with prevailing standards for similar, full-service hotels to the extent the Uniform System is not applicable and (c) certified by a senior officer of Operator. In addition to the Monthly Reports, Operator shall provide Owner with weekly operating reports and operating forecasts with respect to the Property.

**9.3.** Year-end financial statements for the Property (including a balance sheet, income statement and statement of cash flows) shall be prepared and certified by a senior officer of Operator and an independent certified public accountant selected by Owner. For each full or partial Fiscal Year during which Owner is affiliated with the City of Topeka, Kansas, Operator shall cooperate with Owner to perform an annual audit consistent with the procedures of the City of Topeka. Otherwise, Operator shall deliver audited financial statements to Owner within a mutually agreed upon timeframe. In either event, the year-end statements shall include computations of Total Revenue, Operating Expenses, Fixed Charges and the Basic Fee; and Operator shall cooperate in all respects with such accountant in the preparation of such statements. the cost of any audit prepared pursuant to this Section 9.3 shall be an Operating Expense of the Property.

**9.4.** No later than November 1, 2023 for the Fiscal Year beginning on the Commencement Date and ending December 31, 2023, and thereafter on or before each November 1 during the Term, Operator will submit to Owner for the next Fiscal Year (including any fraction of a calendar year at the beginning and/or end of the Term) the following items, which, upon approved by Owner as provided in Section 9.5, are collectively referred to in this Agreement as the “**Budgets**”:

- A.** A proposed operating budget setting forth in reasonable line-item detail the projected income from and expenses of all aspects of the operations of the Property (when approved as provided in Section 9.5, the “**Operating Budget**”);
- B.** A proposed capital budget setting forth in reasonable line-item detail proposed capital projects and expenditures for the Property including but not limited to FF&E expenditures (when approved as provided in Section 9.5, the “**Capital Budget**”);
- C.** A cash flow forecast on a monthly basis (when approved as provided in Section 9.5, the “**Cash Flow Forecast**”);
- D.** Operator’s proposed marketing plan (when approved as provided in Section 9.5, the “**Capital Budget**”);
- E.** An executive summary noting highlights of the foregoing items and commenting upon general market trends affecting the projected operations of the Property; and
- F.** Such other reports or projections as Owner may reasonably request and as are customarily provided by managers of similar, full-service hotels.

The proposed Budgets shall (a) be prepared in accordance with GAAP and, to the extent applicable, the Uniform System (including, but not limited to, line-item descriptions), and (b) be prepared in accordance with prevailing standards for similar, full-service hotels to the extent the Uniform System is not applicable.

**9.5.** Owner and Operator shall meet promptly after Operator submits the proposed Budgets to Owner at a mutually agreeable time. Operator shall provide any information, analysis and explanations with respect to the proposed Budgets as Owner may reasonably request and, subject to the provisions of Sections 9.6 and 9.7 below, shall revise the proposed Budgets as necessary to reflect such changes as Owner may require.

**9.6.** Owner shall have sixty (60) days after the date on which it receives Operator's proposed Capital Budget (or until such later date as the Operating Budget with respect to the same Fiscal Year is finally approved) to review, approve, disapprove or to request changes in the entries and information appearing in Operator's proposed Capital Budget. If Owner does not respond within such 60-day period, Owner will be deemed to have approved of the Capital Budget. Owner shall have the right to condition its approval of Operator's proposed Capital Budget upon the adoption of any additions, deletions or other changes to such proposed Capital Budget as may be required by Owner, which changes shall be incorporated into Operator's proposed Capital Budget and such Capital Budget, as so revised, shall be adopted. Operator shall have no authority to make capital expenditures except as permitted by an approved Capital Budget or otherwise in this Agreement. Operator shall promptly report to Owner in writing any actual or anticipated deviation from the Capital Budget of any material or long-term consequence of which Operator is aware. Owner shall have the right in its sole discretion to amend any approved Capital Budget from time to time upon five (5) days prior written notice to Operator so long as Operator has not committed or made any financial obligations relative to such budgeted item; provided, however, that if Owner so amends the Capital Budget, Owner and Operator shall promptly thereafter amend the Operating Budget (for the purposes of Article X only) to reflect such amendment of the Capital Budget. Notwithstanding anything to the contrary contained herein, but subject to Section 3.3 above, the parties acknowledge and agree that Owner's lender may have certain approval rights over the Capital Budget and the response periods in the Major Agreements shall control.

**9.7.** Owner shall have sixty (60) days after the date on which it receives the Operating Budget and the other items referenced in subsections 9.4 (C), (D), (E) and (F) above to review, approve, disapprove or to request changes in the entries and information appearing in the Operating Budget, Cash Flow Statement and Marketing Plan, respectively. Owner's failure to respond within such 30-day period shall be deemed an approval of the applicable Operating Budget by Owner. Any notice of disapproval of the Operating Budget and/or such other items shall state with particularity the line items appearing therein which Owner disapproves and the amount Owner is willing to approve for each such line item in Owner's reasonable judgment. If Owner disapproves the Operating Budget or requests changes therein, or if Owner fails to respond to the proposed Operating Budget within such 60-day period, then Owner and Operator shall attempt in good faith during the subsequent thirty (30) day period to resolve any disputes, which attempt shall include, if requested by either party, at least one meeting of executive-level officers of Owner and Operator. Notwithstanding anything to the contrary contained herein, but subject to Section 3.3 above, the parties acknowledge and agree that Owner's lender may have certain approval rights over the Operating Budget and the response periods in the Major Agreements shall control.

**9.8.** Upon Owner's written approval of the Budgets, Operator will operate the Property in accordance with the Budgets subject to the permitted variances set forth in this Section 9.8. Operator will not, without Owner's prior written approval:

- A.** Incur any expense for any line-item, in the Operating Budget which causes the aggregate expenditures for such line-item to exceed the budgeted amount by the greater of 5% or \$10,000, provided that Operator may, without Owner's approval, pay any Necessary Expenses, Emergency Expenses or any direct expenses which exceed the Budgeted amounts which are directly related to incremental increases in occupancy above the levels projected in the Budget, including but not limited to

wages and labor costs, credit card charges, franchise fees, if any, etc. and likewise reduce direct incremental expenditures from the budgeted amounts due to decreased occupancy, provided that Operator shall report the same to Owner within 24 hours after incurring any Necessary Expenses or Emergency Expenses; or

- B.** Perform any Capital Improvement (other than those paid for as Emergency Expenses) not provided for in the Capital Budget.

**9.9.** If any Budgets or component thereto, is not approved by Owner prior to the first day of any Fiscal Year (including any fraction of a calendar year at the beginning or end of the Term), then, Operator will cause the Property to be operated substantially in accordance with the prior approved Budgets as modified by components of such Budgets for the applicable Fiscal Year approved by Owner, and prorated if it is for a fractional Fiscal Year.

**9.10.** Operator agrees to operate the Property within the parameters of the Budgets (subject only to the exceptions expressly provided for in this Agreement), and to use commercially reasonable efforts to operate the Property in a manner that maximizes Total Revenue and minimizes Operating Expenses.

**9.11.** Operator shall promptly provide to Owner any other information (including, but not limited to, copies of bank statements, notices of claims and legal proceedings and inventories of FF&E, Operating Equipment and Operating Supplies, space leases and hotel contracts and franchise reports) relating to the Property or its operations that Owner may reasonably request from time to time or upon a standing basis.

**9.12.** Operator shall at all times during the term of this Agreement, at no cost or expense to Operator, cooperate with Owner's accountants and provide them with access to all financial and other information relating to the Property, and access to Operator's accountants, work papers and to otherwise assist in minimizing the cost of the audit, and sufficient to enable the Owner to prepare audited financial statements.

**9.13.** Operator shall permit Owner and its authorized representatives, as frequently as reasonably requested by Owner, to inspect the Property and Operator's accounts and records pertaining thereto and make copies thereof, during usual business hours upon reasonable advance notice, subject only to any business confidentiality requirements reasonably requested by Operator. In conducting such inspections, Owner shall not unreasonably interfere with the conduct of business at the Property. Operator will provide customary gratuitous accommodations, services and amenities at the Property to Owner and its authorized representatives in connection with such inspections.

## **ARTICLE X**

### **MANAGEMENT FEES AND PAYMENTS TO OPERATOR AND OWNER**

**10.1.** Owner will pay Operator a monthly management fee equal to the greater of 3% of Total Revenues (defined in Section 11.1), or \$7,500 per month, provided, however, that the total fee for any full Fiscal Year shall be no less than \$120,000 (the "**Basic Fee**"). If, at the end of any full Fiscal Year, the total of the monthly installments of the Basic Fee is less than \$120,000, then



Owner shall, no later than January 15 of the Fiscal Year that immediately follows, pay Operator an amount equal to the difference between \$120,000 and the total of the monthly installments of the Basic Fee made during preceding Fiscal Year. Owner will also pay Operator an Accounting Fee (“**Accounting Fee**”) of \$1,500 per month. Upon termination or expiration of the Agreement, Operator will be paid a wind down fee (“**Wind Down Fee**”) to compensate for operational and accounting-related issues equal the average Basic Fee for a single month earned during the immediately preceding twelve (12) full calendar months or, if Operator has not operated the Property for 12 full calendar months, the average Basic Fee for a single month based on the total time when Operator operated the Property. Unless otherwise agreed by Owner in its sole and absolute discretion, all accounting services for the Property shall be provided on a centralized, “above-property” basis, and there shall be no director of finance or comptroller employed at the Property.

**10.2.** Concurrent with Operator’s completion of delivery of the Monthly Reports for any month, Operator shall be entitled to withdrawal the Basic Fee and Accounting Fee from the Agency Account for such month.

**10.3.** On or before the twentieth (20th) day following the last day of each calendar quarter (or such other fiscal period as Owner and Operator may determine) of each Fiscal Year during the Term, after (a) payment of Operating Expenses, Fixed Charges and, to the extent the same are to be paid by Operator under this Agreement, debt service (if any), capital costs and other amounts, (b) any required payment to Operator pursuant to this Article X and (c) retention of working capital consistent with and subject to Section 8.1 hereof and the approved Budgets as further described in Article IX and amounts reasonably sufficient to assure the uninterrupted and efficient operation of the Property as required under Section 8.1 above, all remaining funds in the Agency Account shall be paid to Owner.

**10.4.** Following delivery of the annual financial statements referenced in Section 9.3, if any adjustment is necessary to any Basic Fee, Operator will either: (a) remit to Owner, any excess amounts Operator may have received for such fees during such calendar year or (b) be paid out of the Agency Account or by Owner, any deficiency in the amounts due Operator for the Basic Fee.

**10.5.** The parties acknowledge that Operator operated the Property as a court-appointed Receiver, appointed by the Shawnee County District Court in case number 2021-cv-000201, up to the Commencement Date, and that there shall not be any transition costs incident to Operator beginning the performance of its obligations under this Agreement; provided that Owner will pay any Reimbursable Expenses, such as travel expenses, that are incurred by Operator as a result of the sale of the Property to Owner.

**10.6.** Except as necessary to protect life, safety and property, Owner shall have sole and absolute discretion to determine whether the Property requires Capital Improvements, Major Renovations or other renovation or upgrade to remain competitive and preserve the asset. If any Capital Improvements, Major Renovations or other renovations or upgrades are necessary, then the parties may (but shall not be required to) agree in writing for Operator to serve as project manager for services such as establishing the scope for design, materials and construction for renovation, requesting bids and securing agreements with contractors, supervising contractor work and updating the Owner on project accounting details. Any project management services will be

provided pursuant to a separate written project management services signed by Owner and Operator.

## **ARTICLE XI**

### **DEFINITIONS**

“**Capital Improvements**” shall mean improvements to the Property and replacement or refurbishing of FF&E that constitute portions of the Property which are capitalized in accordance with GAAP.

“**Emergency Expenses**” shall mean any expenses with respect to the Property, regardless of amount, which, in Operator’s good faith judgment, are immediately necessary to protect the physical integrity or lawful operation of the Property or the health or safety of its occupants or employees.

“**Employment Laws**” shall mean all federal, state, local and foreign statutes, laws, ordinances, regulations, decisions, rules, permits, judgments, orders and decrees affecting labor union activities, civil rights or employment (including but not limited to hiring and termination of employment) in the United States, including, without limitation, the Civil Rights Act of 1870, 42 U.S.C. § 1981, the Civil Rights Acts of 1871, 42 U.S.C. § 1983 the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended, the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, the Rehabilitation Act, 29 U.S.C. § 701, *et seq.*, the Americans With Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. § 12101, *et seq.*, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 301, *et seq.*, the Equal Pay Act, 29 U.S.C. § 201, *et seq.*, the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*, the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*, all as amended from time to time and together with any similar laws now or hereafter enacted, and any regulations, rules or orders promulgated pursuant to such statutes.

“**Fiscal Year**” means each calendar year or partial calendar year within the Term.

“**Fixed Charges**” means the cost of the following items relating to the Property or its facilities, properly attributable under the Uniform System for the relevant period :

- (i) Real estate taxes, assessments, personal property taxes and any other ad valorem taxes imposed on or levied in connection with the Property, the Installations and the FF&E (collectively, “**Property Taxes**”), and Business Privilege and Net Profit taxes payable on the operations of the Property;
- (ii) Insurance against liability and physical damage to the Property; and
- (iii) Rental payments or payments for purchase options under leases of equipment which are capital leases under the Uniform System; and

- (iv) Any contributions into the FF&E Reserve Account (or accruals thereof).

**“Intercompany Invoice”** shall mean any invoice or billing statement sent by Operator or any of its affiliates to Operator, for purposes of assessing a charge or accommodating a transfer of funds between such entities.

**“Major Agreements”** shall mean any loan agreement including any instruments governing municipal bonds, cash management agreement, mortgage, deed of trust, ground lease, instrument governing municipal bonds, or franchise agreement encumbering the Property or affecting the Property.

**“Major Renovation”** shall mean any alteration or renovation or related series of alterations or renovations of the Property which is (i) not in the ordinary course of business at the Property and (ii) a material addition of rooms or other facilities at the Property, or a material change in the layout of such rooms or other facilities at the Property having a material impact upon the Property’s structure or infrastructure systems.

**“Necessary Expenses”** shall mean any Operating Expenses, regardless of amount, which are necessary for the continued operation of the Property and which are not within the reasonable control of Operator (including, but not limited to, those for franchise fees, credit card charges and utility charges).

**“Operating Expense(s)”** means costs and expenses of maintaining, conducting and supervising the operation of the Property which are properly attributable under the Uniform System for the relevant period. Subject to the exclusions set forth below in this definition, Operating Expenses will include, without limitation:

- (i) The cost of Operating Equipment and Operating Supplies;
- (ii) Salaries and wages of Hotel Employees, payroll taxes and employee benefits. The salaries or wages of off-site employees or executives of Operator are not Operating Expenses, provided that if it becomes necessary for an off-site employee or executive of Operator to temporarily perform services at the Property of a nature normally performed by a Hotel Employee, wages (including payroll taxes and employee benefits) for such period only as well as traveling expenses are Operating Expenses, in which event his or her salary (including payroll taxes and employee benefits), up to the amount of the salary of the last on-site employee who is being temporarily replaced by an off-site employee or executive, for such period only as well as his or her traveling expenses shall be both an Operating Expense and a Reimbursable Expense. If and to the extent that any employee of Operator performs services for any hotels in addition to the Property, any allocation of such employee’s compensation as an Operating Expense of the Property shall be expressly set forth in the Operating Budget and shall be subject to Owner’s reasonable approval;
- (iii) Cost of goods and services in connection with the operation of the Property including, without limitation, revenue management, IT, heat and utilities,

laundry, landscaping, exterminating services and office supplies;

- (iv) The cost of all repairs to and maintenance of the Property;
- (v) Insurance premiums (or the allocable portion thereof in the case of blanket policies), deductibles, or self-insured retentions for insurance maintained under Article XIII (other than insurance against physical damage to the Property), including bonds, and losses incurred on any self-insured risks (including deductibles);
- (vii) Taxes, assessments, permit fees, inspection fees, and water and sewer charges and other charges (other than income or franchise taxes) payable by or assessed against Owner with respect to the operation of the Property;
- (viii) If approved by Owner in advance and in writing or otherwise provided in the approved Budgets, legal fees of outside counsel for services directly related to the Property or fees of an outside independent certified public accountant for services directly related to the operation of the Property;
- (ix) Expenses for advertising the Property and all expenses of sales promotion and public relations activities;
- (xi) The Basic Fee, Accounting Fee and any other fees payable pursuant to this Agreement; or
- (xiii) Any other item specified as an Operating Expense in this Agreement or deemed an Administrative or General Expenses under the Uniform System.

Operating Expenses exclude:

- (i) Amortization and depreciation;
- (ii) The making of or repayment of any loans or any interest thereon;
- (iii) The costs of any alterations, additions or improvements which for Federal income tax purposes must be capitalized and amortized over the life of such alteration, addition or improvement;
- (iv) Any Fixed Charge; or
- (v) Payments into or out of the FF&E Reserve Account.

**“Operating Standards”** shall mean the operation of the Property in a manner consistent with (a) the standards, policies and programs that Operator recommends from time to time with respect to the operation, maintenance and repair of the Property (and if this Agreement requires Owner’s approval over the foregoing, to the extent such are reasonably acceptable to Owner); (b) in a manner (i) designed to optimize over the Term the financial performance of the Property and (ii) intended to protect and preserve the assets that comprise the Property; (c) the requirements and

limitations set forth in this Agreement, including those relating to the approved Budget for each applicable Fiscal Year; and (d) if and when applicable, the requirements of any franchisor under any franchise or license agreement as it relates to the operation of the Property.

**“Reimbursable Expenses”** shall mean all out-of-pocket expenses and disbursements reasonably incurred by Operator, pursuant to, in the course of, and directly related to, the management and operation of the Property under this Agreement to the extent the same are approved by Owner (either as part of an approved Budget or otherwise approved by Owner in writing) and with specificity (it not being sufficient if an expense merely falls within the limit of a category of expenses in an approved Budget), provided, however, that specific approval shall not be required for reimbursement of out-of-pocket expenses or disbursements that are Emergency Expenses. For the avoidance of doubt, Reimbursable Expenses shall not include any of the expenses of the central or branch offices maintained by Operator or any unbudgeted travel (economy airfare only, with hotel stays at the Property when space is available) and entertainment expenses incurred by Operator’s corporate, regional or other so called “above-property” personnel (except as set forth in clause (ii) of the definition of Operating Expenses).

**“Total Revenues”** means all income, revenue and proceeds resulting from the operation of the Property and all of its facilities (net of refunds and credits to guests and other items deemed “Allowances” under the Uniform System) which are properly attributable under the Uniform System to the period in question. Subject to the exclusions set forth below in this definition, Total Revenues includes, without limitation, all amounts derived from:

- (i) Rental of rooms, banquet facilities, meeting and business center facilities;
- (ii) Sale of food and beverage whether sold in a bar, lounge or restaurant, delivered to a guest room, sold through an in-room facility or owned vending machines, provided in meeting or banquet rooms or sold through catering operations;
- (iii) Charges for admittance to or the use of recreational facilities;
- (iv) Rent under Leases;
- (v) Charges for Property services or amenities, including, but not limited to, telephone service, in-room movies, and laundry services;
- (vi) Proceeds of business interruption or similar insurance;
- (vii) Service charges (less any portion thereof paid to Hotel Employees, which portion shall be Operating Expenses) or administrative charges; and
- (viii) Any rebates paid or payable to Owner with respect to the Property pursuant to Section 7.3.

Total Revenues exclude:

- (i) Sales or use taxes or similar governmental impositions collected by Owner

or Operator;

- (ii) Proceeds of insurance other than business interruption or similar insurance;
- (iii) Proceeds of the sale or condemnation of the Property, any interest therein or any other asset, or the proceeds of any loans or financings;
- (iv) Capital contributed by Owner to the Property;
- (v) Repayment of any loans or interest by Owner;
- (vi) Receipts of any tenant, licensee or concessionaire under a Lease;
- (vii) Tips, service charges and other gratuities received by Hotel Employees
- (viii) The proceeds of any judgments, awards or settlements except to the extent the same represent (a) recoveries of any items expressly included in this definition of Total Revenues or (b) the recoupment of any amount paid as an Operating Expense or Fixed Charge;
- (ix) Interest earned on the Owner Account, Agency Account or the FF&E Reserve Account;
- (x) Tax credits paid or payable to Owner; or
- (xi) Security deposits under any space leases.

## **ARTICLE XII**

### **FF&E RESERVE**

**12.1.** To the extent that Owner is required by any franchisor or lender to maintain a reserve for FF&E, Operator may open a separate bank account that meets the requirements of Section 8.2 (the “**FF&E Reserve Account**”), make transfers from the Agency Account to the FF&E Reserve Account, and use funds from the FF&E Reserve Account to maintain compliance with Owner’s obligations to the franchisee or lender.

## **ARTICLE XIII**

### **INSURANCE**

**13.1.** Throughout the Term of this Agreement, and provided that funds from Total Revenues or funds otherwise provided by Owner are available, Operator shall arrange for and maintain, at Owner’s expense, the following insurance in connection with the Property:

- A. Insurance covering the Building, the Installations and the FF&E on the “Special Form” (also known as the “All Risk” form) against such risks as are customarily covered by such insurance (including coverage for earthquake, increased cost of construction, cost of debris removal, sink holes, one full year’s business interruption with 12 months extended period of indemnity and including, but not

limited to, the management fees and payments to Operator provided in Article X hereof and any franchise fees as continuing expenses and extra expense to the extent available) in an amount not less than 100% of the then current full replacement cost thereof or such other amount as may be determined by Owner; provided that earthquake coverage shall be in an amount of the probable maximum loss as determined in a seismic study or such other amount as may be reasonably determined by Owner;

- B. Insurance for loss and damage (direct and indirect) from steam boilers, pressure vessels or similar apparatus, air conditioning systems, piping and machinery, and sprinklers, if any, now or hereafter installed in or about the Property, in an amount not less than 100% of the then current full replacement cost thereof or such other amount as may be determined by Owner; and
- C. Commercial general liability insurance, with amounts not less than \$1,000,000 per occurrence and \$2,000,000 for the aggregate of all occurrences within each policy year, as well as excess liability (umbrella) insurance with limits of at least \$50,000,000 per occurrence, on an "occurrence" form covering each of the following with respect to Owner and Operator: bodily injury (including death) property damage, personal and advertising injury (including assault and battery, false arrest, detention or imprisonment or malicious prosecution, libel, slander, defamation or violation of the right of privacy, and wrongful entry or eviction), products and completed operations. Coverage shall be primary, non-contributory and excess to any other coverage;
- D. Comprehensive form vehicle liability insurance for owned, non-owned and hired vehicles, in the amount of \$1,000,000;
- F. Innkeeper's legal liability insurance covering property of guests while on the Property premises for which Owner is legally responsible (other than property in a safe deposit box), with a limit of not less than \$5,000 for any one occurrence or \$25,000 in the aggregate; and
- G. Safe deposit box legal liability insurance covering property of guests while in a safe deposit box at the Property for which Owner is legally responsible, with a limit of not less than \$25,000 for any one occurrence.

All insurance policies in Section 13.1A and 13.1B shall name the Owner as the Insured Party and name the Operator as an additional insured, and such other parties as may be required by the terms of the Major Agreements as appropriate.

All insurance policies in section 13.1C, 13.1D, 13.1F and 13.1G shall name the Operator as the Named Insured and the Owner as additional insured on a primary and non-contributory basis, and other parties will be added as additional insureds as required under any Major Agreement as appropriate and if customarily available in the insurance marketplace.

**13.2.** Throughout the Term of this Agreement, and provided that funds from Total Revenues or funds otherwise provided by Owner are available, Operator shall arrange for and maintain, at



Owner's expense, the following insurance in connection with the Property:

- A. Worker's compensation insurance or insurance required by similar employee benefit acts, in an amount not less than that prescribed by applicable law and Employers Liability insurance having a minimum per occurrence limit of \$1,000,000 or such greater amount as may be agreed upon in writing by the parties in the Budget or otherwise, against all claims which may be brought for personal injury to or death of Hotel Employees;
- B. Fidelity or Crime insurance, in such amounts and with such deductibles as the parties may agree upon in the Budget or otherwise, covering Operator's employees at the Property in job classifications normally insured under prudent hotel management practices in the United States or otherwise required by law;
- C. Employment Practices Liability Insurance with a minimum limit of \$1,000,000 per claim and annual aggregate and a deductible in an amount agreed upon in writing by the parties, in the Budget or otherwise;
- D. Cyber liability insurance coverage in the amount of \$2,000,000 per claim and in the aggregate, with Owner included as an additional insured for claims arising out of the wrongful acts or negligence of the Operator. and
- E. Such other or additional insurance or coverage as may be (i) required under the provisions of any applicable Major Agreements or (ii) customarily carried by prudent owners of similar, full-service hotels in the geographic area of the Property.

Owner shall be responsible for the premium for any insurance coverage and shall also be responsible for any and all deductibles and self-insured retentions in connection with such coverages. Owner shall reimburse Operator promptly after demand for any premiums paid by Operator on Owner's behalf and such reimbursement shall be an Operating Expense.

**13.3.** All insurance policies obtained by Operator under 13.2 shall name Operator as the insured party. The Owner will be included as a joint loss payee under the coverage required under 13.2.B. and an Insured Co-Defendant under the coverage required in 13.2.C. for claims arising out of the wrongful acts of the Operator.

**13.4.** All insurance policies shall be on forms reasonably approved in advance by Owner and shall be in such form and with such companies having a rating of A- or better by AM Best's or a similar rating by another nationally recognized rating agency as shall be required by Owner (provided with respect to Operator Insurance, any such requirement will not cause the Operator to be in breach of any loan facility entered into by Operator) and shall comply with the requirements of any Major Agreement. Insurance may (at Operator election with Owner's prior approval) be provided under blanket or master policies covering one or more other hotels operated by Operator or owned by Owner; The portion of the premium for any blanket or master policy which is allocated to the Property as an Operating Expense or Fixed Charge shall be determined in an equitable manner by Owner and reasonably approved by Operator (with respect to insurance carried by Owner), and by Operator and reasonably approved by Owner (with respect to Operator Insurance).

**13.5.** The originals of all insurance policies or certificates thereof shall be delivered to Owner and Operator on the Commencement Date and thereafter prior to the expiration date of the policies then in force. All such policies shall specify that they cannot be canceled on less than thirty (30) days prior written notice to the party carrying the insurance (or such longer period as may be required under a Major Agreement) and shall provide that claims shall be paid notwithstanding any act or negligence of Owner or Operator or their respective agents or employees.

**13.6.** All insurance policies shall provide, to the extent customarily obtainable from the insurance company providing such insurance, that the insurance company will have no right of subrogation against Owner, Operator, any party to a Major Agreement or any of their respective agents, employees, partners, members, officers, directors or beneficial owners.

**13.7.** Owner and Operator hereby release one another from any and all liability, to the extent of the waivers of subrogation obtained under Section 13.6, associated with any damage, loss or liability with respect to which property insurance coverage is provided pursuant to this Article or otherwise.

**13.8.** The proceeds of any insurance claim (other than proceeds payable to third parties under the terms of the applicable policy) with respect to insurance carried by Operator shall be paid into the Owner Account to the extent of Owner's interest therein unless otherwise required by the terms of a Major Agreement, in which event the terms of such Major Agreement shall control.

**13.9.** Operator shall promptly investigate and make a complete and timely written report to the appropriate insurance company as to all accidents, all claims for damage relating to the ownership, operation, and maintenance of the Property, and any damage or destruction to the Property and the estimated cost of repair thereof and shall prepare any and all reports required by any insurance company in connection therewith. All such reports shall be timely filed with the insurance company as required under the terms of the insurance policy involved, and a copy of all such reports shall be made available to Owner.

**13.10.** Neither Owner nor Operator shall on its own initiative or pursuant to the request or requirement of any third party, take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article XIII to be furnished, or increase the amount of any then-existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Owner, are included therein as additional insureds, and the loss is payable under such additional separate insurance in the same manner as losses are payable under this Agreement. Each party shall immediately notify the other party that it has obtained any such separate insurance or of the increasing of any of the amounts of the then existing insurance.

#### **ARTICLE XIV**

##### **PROPERTY TAXES**

**14.1.** If funds from Total Revenues or funds otherwise provided by Owner are available, Operator will pay all Property Taxes on behalf of Owner not less than ten (10) days prior to the applicable due dates. Operator shall promptly furnish Owner with proof of payment of Property Taxes.

**14.2.** Operator may from time to time advise Owner of the desirability of contesting the validity or amount of any Property Tax (a “**Tax Contest**”). Owner may, whether or not Operator so recommends, pursue a Tax Contest, and Operator agrees to cooperate with Owner in a Tax Contest and execute any documents or pleadings required for such purpose, provided that the facts set forth in such documents or pleadings are accurate and that such cooperation or execution does not impose any liability on Operator. All costs and expenses of a Tax Contest will be an Operating Expense.

**14.3.** The parties acknowledge that, as an entity affiliated with the City of Topeka, Owner is exempt from property tax, and that this Article XIV and any other provisions of this Agreement applicable to Owner’s payment of property taxes shall apply only if and when this Agreement is assigned to and assumed by a person or entity that is not exempt from property taxes or the City elects to add the Property to the tax rolls thereby, making property taxes applicable.

## **ARTICLE XV**

### **DAMAGE OR DESTRUCTION ; CONDEMNATION**

**15.1.** If the Property is damaged by fire or other casualty, Operator will promptly notify Owner. Operator shall cooperate with and assist Owner in evaluating the extent of the damage, filing and pursuing insurance claims, developing plans for the restoration of the Property and modifying the applicable Budgets to reflect the effect of the casualty on operations. This Agreement shall remain in full force and effect subsequent to such casualty provided that Owner may terminate this Agreement upon thirty (30) days prior notice to the other party if (a) Owner elects to close the Property as a result of such casualty (except on a temporary basis for repairs or restoration).

**15.2.** Operator will promptly notify Owner if all or any portion of the Property becomes the subject of a condemnation proceeding or if Operator learns of any such proceeding. Operator shall cooperate with and assist Owner in evaluating the effect of the condemnation, pursuing any negotiation, litigation, administrative action or appeal relating to the condemnation award, developing plans for the restoration of the Property and modifying the applicable Budgets to reflect the effect of the condemnation on operations.

**15.3.** Either party may terminate this Agreement on thirty (30) days’ prior written notice to the other party if (a) all or substantially all of the Property is taken through condemnation or (b) less than all or substantially all of the Property is taken, but, in the reasonable judgment of the party giving the termination notice, the Property cannot, after giving effect to any restoration as might be reasonably accomplished through available funds from the condemnation award, be profitably operated as a similar, full-service hotel.

**15.4.** Any condemnation award or similar compensation shall be the property of Owner, provided that Operator may bring a separate proceeding against the condemning authority for any damages and expenses specifically incurred by Operator as a result of such condemnation.

## **ARTICLE XVI**

### **EVENTS OF DEFAULT**

**16.1.** Each of the following will constitute an event of default and give rise to a right of termination for cause (each, an “**Event of Default**”):

- A. Subject to Section 8.1, if either party is in default in payment of any amount required to be paid under the terms of this Agreement, and such default continues for ten (10) days after receipt of written notice from the other party;
- B. If either party is in material default in the performance of its other obligations under this Agreement, and such default continues for thirty (30) days after receipt of written notice from the other party, provided that if such default cannot by its nature reasonably be cured within such thirty-day period, an event of default will not occur if and so long as the defaulting party promptly commences and diligently pursues the curing of such default;
- C. If either party (i) makes an assignment for the benefit of creditors, (ii) institutes any proceeding seeking relief under any federal or state bankruptcy or insolvency laws, (iii) institutes any proceeding seeking the appointment of a receiver, trustee, custodian or similar official for its business or assets or (iv) consents to the institution against it of any such proceeding by any other person or entity (an “**Involuntary Proceeding**”); or
- D. If an Involuntary Proceeding is commenced against either party and remains undismissed for sixty (60) days.
- E. If Owner fails to fund operating revenue shortfalls or working capital in accordance with the terms hereof including but not limited to Section 8.1 and such failure prevents Operator from effective operation of the Hotel.

**16.2.** The right of termination set forth in Sections 16.1 and 17.1 are cumulative, and not in substitution for, but is in addition to, any and all rights and remedies for breach of contract available at law or in equity.

**16.3.** Neither party will be deemed to be in default of its obligations under this Agreement (other than a payment obligation) if and to the extent that such party is unable to perform such obligation as a result of fire or other casualty, act of God, strike or other labor unrest, unavailability of materials, war, riot or other civil commotion, invasion, insurrection, acts of terrorism, sabotage, failure of transportation, outbreak of disease, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, actions of labor unions, and governmental actions or any other cause beyond the control of such party (which does not include the inability of such party to meet its financial obligations) (each a “**Force Majeure Event**”).

## **ARTICLE XVII**

### **TERMINATION**

**17.1. Termination By Operator for Cause.** Operator may terminate this Agreement for Owner’s Event of Default upon ten (10) business days’ written notice of Operator’s intent to terminate for cause, except for a termination for an Event of Default pursuant to Section 16.1E, which shall be

five (5) business days' written notice. Owner and Operator acknowledge and agree that any Event of Default by Owner causing termination of this Agreement will cause Operator to suffer actual and substantial damage, which would be extremely difficult or impossible to accurately quantify in a reasonable and timely manner. Operator and Owner agree that it is difficult for Operator to quantify damages and that, as reasonable compensation for damages Operator will suffer due to Owner's material breach, Owner will pay Operator, as liquidated damages and not as a penalty, the of the greater of ninety (90) days' fees or (b) the balance of fees Operator would have earned pursuant to Article X during the Term. Ninety (90) days of fees are calculated as three (3) times the average of all monthly fees earned pursuant to Article X of this Agreement (not actually paid over the life of the Agreement). Payment of all monies called for under this paragraph shall be made by Owner to Operator within thirty (30) days of Owner's receipt of the notice of termination by Operator for cause.

**17.2. Special Termination Rights.** Notwithstanding anything to the contrary set forth in this Agreement, either party may terminate this Agreement at any time during the Initial Term, without cause, upon providing at least thirty (30) days' prior written notice to the other or sixty (60) days' prior written notice during any Renewal Term , without any termination fee or other liability on account of such termination.

**17.3. Termination on Sale.** Notwithstanding anything to the contrary set forth within this Agreement, Owner may terminate this Agreement incident to sale of the Property upon at least forty-five (45) days' prior written notice, without any termination fee or other liability on account of such termination. If this Agreement is terminated pursuant to this Section 17.3 , then Owner shall pay to Operator the a Termination Fee equal to 45 days' of the Basic Fee.

**17.4. Final Accounting.** Within five (5) days after any notice of termination (irrespective of the party providing such notice), Operator shall provide Owner a list of all payments that are or will be owed by the Property to Operator, Hotel Employees and all other persons between the date of the termination notice and the effective date of termination. Provided Owner is not in default, and Owner has paid all sums required under the Agreement, following expiration or termination of the Agreement, Operator will complete the necessary final accounting work for the Property within thirty (30) days of the effective date of termination. It is understood and agreed that the Wind Down Fee is partially in consideration of this service, and that no additional fee shall be payable for this service. Operator will deliver to Owner all records, books, accounts, contracts, leases, receipts for deposits, unpaid bills and other papers or documents which pertain to the Property with the exception of employee records, which must be retained by Operator according to law. Operator may keep and maintain copies of any records that it delivers to Owner, provided that the same be kept in confidence by Operator. Upon such termination or withdrawal, Owner will assume responsibility for payment of all approved or authorized unpaid bills of the Property.

**17.5. Final Payment of Taxes.** Upon termination of this Agreement for any reason, Operator will provide Owner with an estimate of all accrued taxes as of the date of termination for which the Operator may be held legally responsible for nonpayment such as sales and use tax and taxes specific to the sale and/or consumption of liquor.

**17.6.** Upon the expiration or earlier termination of this Agreement, Operator shall reasonably cooperate with Owner in transferring management of the Property to Owner or another

management company with as little hindrance to the operations of the Property as practicable. Without limiting the generality of the foregoing, Operator shall:

- A. provided that Operator is not terminating this Agreement pursuant to Section 17.1, at Owner's written request, the Parties may agree to have Operator continue to manage the Property under this Agreement for such period (not to exceed 60 days) as Owner may request after the date of such expiration or termination upon all of the terms and conditions of this Agreement;
- B. use commercially reasonable] efforts (i) to transfer to Owner or Owner's nominee all Licenses or (ii) if such transfer is prohibited by law or Owner otherwise elects, to cooperate with Owner or Owner's nominee in connection with the processing by Owner or Owner's nominee of any applications for all Licenses, including, to the extent allowed by law, Operator continuing to operate, while such applications are pending, the liquor operations under its Licenses pursuant to an interim agreement in a form agreeable to Operator (in which case Owner shall indemnify and hold Operator harmless against any liability arising as a result of Operator's continuation of such operation, except for the gross negligence or willful misconduct of Operator); provided, in either case, that the costs and expense of any such transfer or the processing of any such application shall be paid by Owner or Owner's nominee; and
- C. assign to Owner or Owner's nominee simultaneously with the termination of this Agreement, and the assignee shall assume, all space leases, contracts, concessions agreements and agreements in effect with respect to the Property then in Operator's name; provided, however, that Owner need not assume any space leases, contracts, concessions agreements and agreements entered into without Owner's consent in violation of this Agreement.

**17.7.** Upon any termination of this Agreement, Owner shall pay to Operator any Reimbursable Expenses supported an expense report that includes copies of receipts.

## **ARTICLE XVIII**

### **ASSIGNMENT**

**18.1.** Operator shall not assign this Agreement or any of its obligations hereunder without the prior written consent of Owner; provided that, Operator may assign this Agreement or the proceeds of this Agreement to any entity controlling, controlled by or under common control with Operator (control being deemed to mean the ownership of 50% or more of the stock or other beneficial interest in such entity and/or the power to direct the day-to-day operations of such entity and/or possessing common management). Nothing in this Agreement shall prohibit or be deemed to prohibit any pledge by Operator of the Base Fee, Accounting Fee or any other amounts received by Operator under this Agreement to any lender as collateral security for debt of Operator and/or Operator's affiliates.

**18.2.** Owner shall not assign this Agreement without the prior consent of Operator, provided that Owner may assign this Agreement without Operator's consent to (a) a single-purpose entity

controlled by Owner, or (b) the Topeka Public Building Commission.

**18.3.** Upon any permitted assignment of this Agreement and the assumption of this Agreement by the assignee, the assignor shall be relieved of any obligation or liability under this Agreement arising after the effective date of the assignment.

## ARTICLE XIX

### NOTICES

**19.1.** Any notice, statement or demand required to be given under this Agreement must be in writing, sent by postage prepaid, return receipt requested, or by a nationally recognized express courier (e.g. FedEx), receipt confirmed, addressed if to:

**Operator:** TOKS Associates LLC  
c/o G.F. Management, LLC  
Attn: Jeff Kolessar  
Eight Penn Center, 23<sup>rd</sup> Floor  
1628 JFK Boulevard  
Philadelphia, PA 19103

**with a copy to:** Ashley Kazman Price, Esquire  
AHP Law Group LLC  
1628 JFK Boulevard, Ste. 2300  
Philadelphia, PA 19103

**Owner:** [SPE TBD] *Topeka Development Corporation*  
c/o City Clerk  
215 S.E. 7<sup>th</sup> Street  
Topeka, KS 66603

**with copies to:** City of Topeka Public Works Department  
620 S.E. Madison  
Topeka, KS 66607  
Attn: Mr. Braxton Copley

and

Lannan Legal PLLC  
1717 K Street, N.W., Suite 900  
Washington, D.C. 20006

or to such other addresses as Operator and Owner designate in the manner provided in this Section 19.1. Any notice or other communication is deemed given on the date when delivery is made to the recipient or rejected by the recipient.

## ARTICLE XX



## SUBORDINATION; ESTOPPELS

**20.1.** Operator acknowledges and agrees that its rights under this Agreement may be subject and subordinate to the lien of any first mortgage or deed of trust loan, or any junior mortgage or deed of trust loan or mezzanine equity pledge held by an institutional investor or under municipal bonds, encumbering the Property whether now or hereafter existing. The provisions of this Section 20.1 shall be self-operative, but Operator agrees to execute and deliver a subordination or assignment agreement containing customary and reasonable terms as the holder of any such lien may reasonably request.

**20.3.** Owner and Operator agree that from time to time upon the request of the other party or a party to a Major Agreement, it shall execute and deliver within ten (10) days after the request a certificate confirming that this Agreement is in full force and effect, stating whether this Agreement has been modified and supplying such other information as the requesting party may reasonably require.

## ARTICLE XXI

### INDEMNIFICATION

**21.1.** Operator shall indemnify and hold Owner (and Owner's agents, principals, shareholders, partners, members, officers, directors and employees) harmless from and against all liabilities, losses, claims, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) that may be incurred by or asserted against any such party from any third-party claim and that arise from (a) the fraud, willful misconduct or gross negligence of the executive or off-site employees of Operator (which for purposes of this Section 21.1 shall include the General Manager of the Property), or (b) the material breach by Operator of any provision of this Agreement. Owner shall promptly provide Operator with written notice of any claim or suit brought against it by a third party which might result in such indemnification and Operator shall have the option of defending any claim or suit brought against the Owner with counsel selected by Operator and reasonably approved by Owner. Owner shall cooperate with the Operator or its counsel in the preparation and conduct of any defense to any such claim or suit and shall have the right to reasonably participate in such defense.

**21.2.** Except as provided in Section 21.1, Owner shall indemnify and hold Operator (and Operator's agents, principals, shareholders, partners, members, officers, directors and employees) harmless from and against all liabilities, losses, claims, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) that may be incurred by or asserted against such party and that arise from or in connection with (a) the performance of Operator's services under this Agreement, (b) any act or omission of Owner or any third party that is not an affiliate of Operator or (c) or any other occurrence related to the Property whether arising before, during or after the Term. Operator shall promptly provide Owner with written notice of any claim or suit brought against it by a third party which might result in such indemnification and Owner shall have the option of defending any claim or suit brought against Operator with counsel selected by Owner and reasonably satisfactory to Operator. Operator shall cooperate with the Owner or its counsel in the preparation and conduct of any defense to any such claim or suit and shall have the right to reasonably participate in such defense.

**21.3.** If any claim is made against Owner and/or Operator which is based upon a violation or alleged violation of the Employment Laws (an “**Employment Claim**”), then the Employment Claim shall fall within Owner’s indemnification obligations under Section 21.1 unless it is based upon the willful misconduct or gross negligence of Operator’s executive employees, including the General Manager of the Property (including such willful misconduct or negligence as may arise in the hiring, supervision or dismissal of any Property Employee).

**21.4.** Notwithstanding any contrary provision of this Agreement, Operator will be excused from its obligations to operate the Property and from its other obligations under this Agreement, to the extent and whenever Operator’s compliance with such obligations is prevented or restricted by (i) the occurrence of a Force Majeure Event (as defined in Section 16.3), (ii) an insufficiency of funds available to Operator in the Agency Account; (iii) the revocation of or refusal to grant licenses or permits by the applicable governmental entity, where such revocation or refusal is not due to any act or failure to act by Operator, or (iv) any material breach by Owner of its obligations under this Agreement, (v) to the extent and whenever there is herein provided a limitation upon Operator’s ability to expend funds in respect of the Property (for example, the limitations contained in this Agreement respecting Owner’s rights to approve budget line items and modifications thereto and monies available for variances from the Budgets).

**21.5.** The provisions of this Article shall survive the termination of this Agreement with respect to acts, omissions and occurrences arising during the Term.

**21.6.** Neither party shall enter into any settlement of any claim for which it is entitled to indemnification of the other party without the other party’s prior written consent, which shall not be unreasonably withheld or delayed.

## **ARTICLE XXII**

### **MISCELLANEOUS**

**22.1.** Owner and Operator will execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding, and enforceable as between them and as against third parties.

**22.2.** Owner acknowledges and agrees that the terms of this Agreement and all exhibits, attachments or addenda or other agreements ancillary to, or executed in connection with this Agreement, and any amendments of the foregoing (the “**Confidential Terms**”) are strictly confidential and Owner will not disclose such Confidential Terms to any third party or entity (including the press) without the prior written consent of Operator; provided, however, (i) Owner may disclose Confidential Terms, without Operator’s prior consent, when required (a) to obtain the advice of professionals or consultants, (b) to obtain financing for the Property from a lender or potential lender or as required under any loan or financing agreement to which any of Owner or its affiliates is or becomes a party, (c) to those of Owner’s managers, members, shareholders, partners, officers, directors or employees as is necessary for the ownership or operation of the Property, (d) in connection with the sale or other transfer of the Property or a leasehold interest in the Property, (e) as required or requested by any governmental authority or representative thereof or pursuant to legal process in connection with any legal proceedings, or as required by the Kansas Open Records Act, K.S.A. 45-215 *et seq.* or any similar applicable law, (f) as may be necessary or

appropriate to disclose, in such party's judgment, in connection with a proposed equity offering to be made by Owner or its respective affiliates or (f) by any applicable laws; and (ii) Operator may disclose Confidential Terms, without Owner's prior consent, when required (a) to obtain the advice of professionals or consultants, or (b) to those of Operator's members, shareholders, partners, officers, directors or employees as is necessary for the operation of the Property or (c) in order to perform the services contemplated herein and in connection with engaging vendors and providers to provide goods and services for Hotel operations.. The obligations set forth in this Section 22.3 shall survive any termination or expiration of this Agreement.

**22.4.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or written. Owner acknowledges that in entering into this Agreement Owner has not relied on any projection of earnings, statements as to the possibility of future success or other similar matter which may have been prepared by Operator.

**22.5.** The headings of the titles to the several articles of this Agreement are inserted for convenience only.

**22.6.** A waiver of any of the terms and conditions of this Agreement may be made only in writing and not be deemed a waiver of such terms and conditions on any future occasion.

**22.7.** This Agreement is binding upon and inure to the benefit of Owner and Operator and their respective successors and permitted assigns.

**22.8.** This Agreement is governed by, and be construed and enforced in accordance with, the laws of the State of Kansas, without giving effect to any conflict of law rule or principle of such laws that would result in application of any other state's laws.

**22.9.** If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the minimum extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

**22.10. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN OR THEREIN, AND AGREE TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO AFFECT SUCH WAIVER.**

**22.11.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute a single instrument. This Agreement may be signed and/or transmitted by e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign, AdobeSign or similar electronic signature technology), and such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's handwritten signature. The Parties further consent and agree that

(1) to the extent a party signs this Agreement using electronic signature technology, by clicking “SIGN”, such party is signing this Agreement electronically, and (2) the electronic signatures appearing on this Agreement shall be treated, for purposes of validity, enforceability and admissibility, the same as handwritten signatures.

**22.12.** Any action brought by either party against the other arising under or related to this Agreement shall be brought exclusively within the United States District Court for the District Kansas (Topeka Division) or, if federal subject matter jurisdiction is lacking, in a state court of competent jurisdiction in Shawnee County, Kansas. Each of the parties hereby consents to the personal jurisdiction of such courts and waives any objection based on venue or the doctrine of *forum non conveniens* to any such action being adjudicated in any such court.

**22.13.** Any reference in this Agreement to a “loan” or “debt” shall be deemed to include municipal bonds, and any reference to a “lender” shall be deemed to include the municipality that issued such bonds, its manager or agent with respect to the bonds, or any successor-in-interest to any of the foregoing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Operator and Owner have duly executed this Agreement as of the day and year first above written.



Attest:

*Brenda Younger*  
Brenda Younger, City Clerk

**OWNER:**

**Topeka Development Corporation**

By: *Richard U. Nienstedt*  
Name: Richard U. Nienstedt  
Title: Executive Director

**OPERATOR:**

**TOKS ASSOCIATES LLC**

By: *Jeff Kolessar*  
Name: Jeff Kolessar  
Title: Member

**Exhibit “A”**

**Centralized Services**

<b>Fees</b>	<b>Description</b>
Information Technology Services \$350 / month plus \$1,520 / year	To reimburse for costs related to installation, integration, and ongoing support of IT related systems at the Property.
Revenue Management Services \$1,499 / month	To reimburse for costs related to resources and tools focused on delivering topline revenue and market share information.
HR/Benefits Administration Fee \$1,045 / year plus \$80 per hired employee / year	Services including recruiting system, performance management, hot line, benefits administration.

Note: These charges will be modified on an annual basis in connection with the review and approval of the Budgets.

## Exhibit "B"

### Commencement Date Certificate

Pursuant to that certain Hotel Management Agreement (the "**Management Agreement**") dated as of October 31, 2023 between the Topeka Development Corporation ("**Owner**") and TOKS Associates LLC ("**Operator**"), Owner and Operator hereby acknowledge and agree that the Commencement Date under the Management Agreement is \_\_\_\_\_, 2023.

IN WITNESS WHEREOF, the undersigned have executed this Commencement Date Certificate to be effective as of the date first written above.


#### OWNER:

Topeka Development Corporation

By:   
Name: Richard W. Niehstedt  
Title: Executive Director

#### OPERATOR:

TOKS Associates LLC

By:   
Name: Jeff Kolessar  
Title: Member



## **SCHEDULE 9.1**

### **Modifications to the Methodology in the Uniform System that Operator Implements in its Standard Practice as of the Date of this Agreement**

[insert]



**City of Topeka**  
**Council Action Form**  
**Council Chambers**  
**214 SE 8th Street**  
**Topeka, Kansas 66603**  
**[www.topeka.org](http://www.topeka.org)**  
February 6, 2024

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**DATE:** February 6, 2024  
**CONTACT PERSON:** Braxton Copley, Public Works Director  
**DOCUMENT #:**  
**SECOND PARTY/SUBJECT:** Fleet Garage Relocation  
**PROJECT #:**  
**CATEGORY/SUBCATEGORY** 006 Communication / 005 Other  
**CIP PROJECT:** No  
**ACTION OF COUNCIL:**  
**JOURNAL #:**  
**PAGE #:**

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**DOCUMENT DESCRIPTION:**

**DISCUSSION** concerning the relocation of the City's Light Duty Fleet Garage.

*(Construction of the Polk Quincy Viaduct project requires closure and demolition of the Light Duty Fleet Garage in the first quarter of 2025.)*

**VOTING REQUIREMENTS:**

Discussion only. No action required by the Governing Body.

**POLICY ISSUE:**

Whether or not to approve a \$5.5 million amendment to the Capital Improvement Budget for the design and construction of a new City Fleet Garage to provide Light Duty vehicle services.

**STAFF RECOMMENDATION:**

Staff recommends the Governing Body consider an amendment to the Capital Improvement Budget for design and construction of a new City Fleet Garage to provide Light Duty services.

**BACKGROUND:**

The City of Topeka Light Duty Garage has been in service since 1994, and consists of 16,700 square feet. The City of Topeka has an aged fleet which has a higher overall cost of ownership than a newer fleet. The Light Duty Garage services police vehicles and light duty cars and trucks operated by various departments. The cost of ownership is driven by the preventative and corrective maintenance costs required by older vehicles. Based on the composition and unique nature of the fleet and analysis of costs, internal cost for repair and maintenance is less than outsourcing the service to a third party. For these reasons, Staff recommends

that the City should continue its current level of Light Duty Fleet services. Additionally Staff recommends that the City commit to relocate the Fleet Light Duty Garage as soon as possible to a new facility to avoid the reduction of service levels when the KDOT Polk Quincy Viaduct project requires closure and demolition of the the garage in the first quarter of 2025. Further, Staff believes the best long-term financial decision for the City is to invest in a new Fleet Garage to be constructed in the City owned parking lot (SE 8th Street and Madison) located south of the Cyrus K. Holliday Building located at SE 620 Madison, Topeka.

**BUDGETARY IMPACT:**

Architect Estimate: \$5,500,000 to construct a new Fleet Garage on the City owned parking lot (SE 8th Street and Madison) located south of the Cyrus K. Holliday Building, 620 SE Madison Street, Topeka. Estimated proceeds from KDOT for the current building is \$2,300,000 resulting in a \$3,200,000 funding gap. Additionally staff have provided KDOT with a request to increase the amount of compensation to cover the costs of systems not included in KDOT's initial offer such as vehicle exhaust and sand/oil separator. The total amount of the request is \$826,000 which would bring the total compensation to \$3,126,000 resulting in a funding gap of \$2,374,000

**SOURCE OF FUNDING:**

Capital Improvement Budget

**ATTACHMENTS:**

**Description**

Fleet Garage Relocation Presentation

Cover Memo - Fleet Light Duty Cost of Services Revised (B. Copley Oct 24, 2023)



CITY OF  
**TOPEKA**



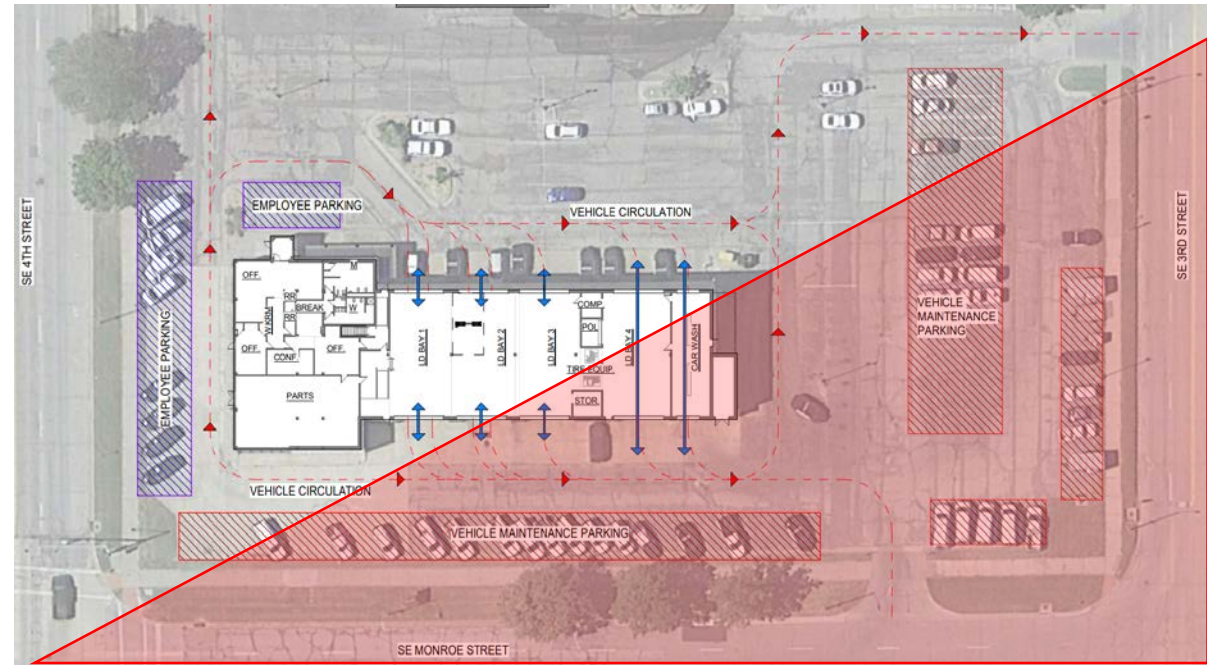
# Fleet Garage Relocation Governing Body Discussion

February 6th, 2024

# Fleet Operations – Light Duty Relocation

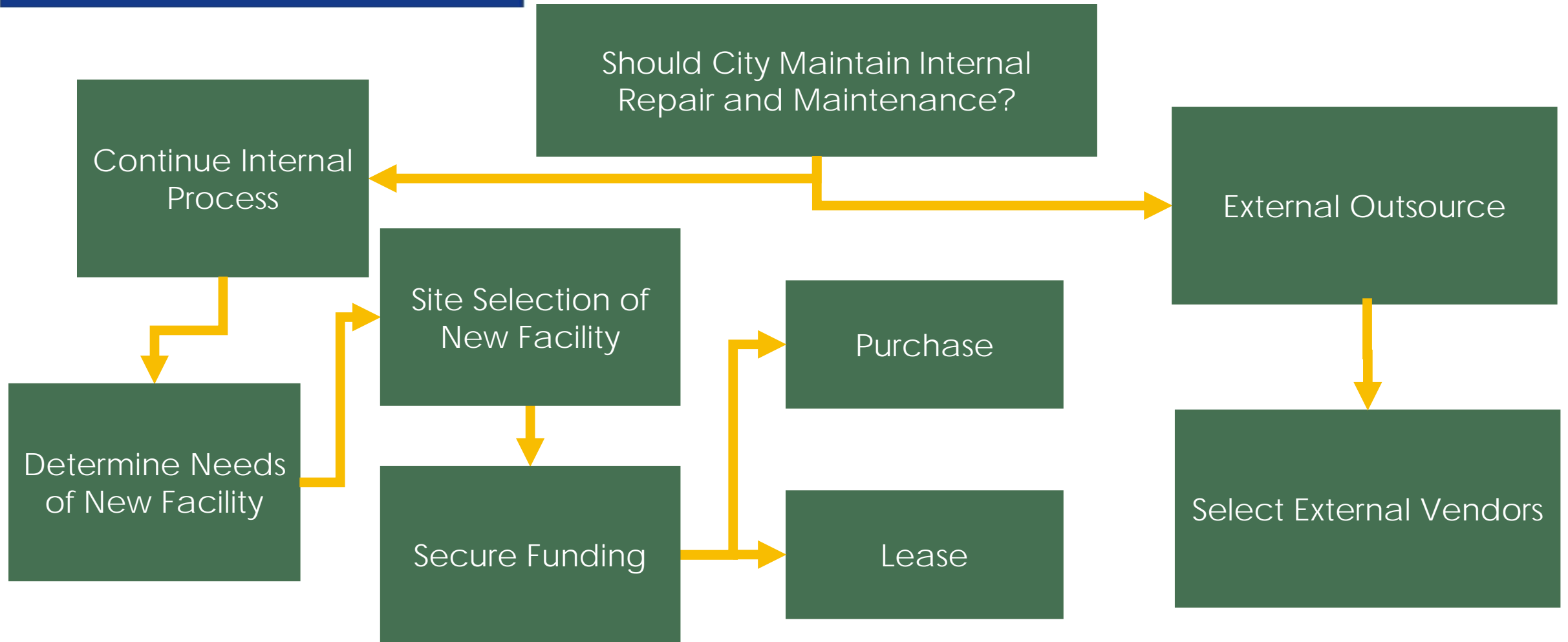
2

- Construction of the Polk Quincy Viaduct will require closure and demolition of the light duty garage in Q1 of 2025
  - In use since 1994
  - 16,700 sq. ft. facility
  - 18 bays and car wash
- Staff was asked to analyze if City should continue to service light duty fleet internally



# Fleet Operations – Light Duty Relocation

3



# Fleet Operations – Light Duty Relocation

4

- What equipment is serviced by the location scheduled for demolition?
- What is the overall cost of making repairs internally?
- Are the internal cost of repairs consistent or less than outsourcing to a 3<sup>rd</sup> party?
  - Efficiencies of current shop
  - Types of repairs performed





# Fleet Operations – Total Fleet Composition

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- Equipment serviced by shop
  - Non vehicle equipment includes trailers, pumps, small motor equipment, up to street sweepers, backhoes and road graders

Equipment Counts				
	Equipment Maintenance	Heavy Duty (Fire)	Light Duty	Total
Vehicle	149	39	477	665
Non Vehicle	334	32	74	440
<b>Total</b>	<b>483</b>	<b>71</b>	<b>551</b>	<b>1105</b>





# Fleet Operations – Budget by Shop

- Excludes cost of vehicles

Total Cost by Shop			
	Equipment Maintenance	Fire	Light Duty
Employee Expense	\$516,613	\$392,243	\$497,415
Utilities	\$22,865	\$10,888	\$20,688
Office Expense	\$9,761	\$4,874	\$9,733
Internal Services	\$32,590	\$17,124	\$35,906
Insurance	\$10,838	\$5,161	\$9,806
Vehicle	\$98,613	\$49,273	\$98,607
Maintenance	\$107,039	\$80,647	\$79,911
Financial/Software	\$13,051	\$7,162	\$15,598
Total	\$811,370	\$567,372	\$767,663



# Fleet Operations – Light Duty Fleet Composition

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- Light Duty fleet consists of trucks, vans, SUV's, automobiles and motorcycles and other equipment
  - Oldest vehicles in service are 30 years old and up to 173,657 miles
  - 64 different make models are in service with 153 make/model years
  - Most common vehicle is a Ford Explorer, 140 Ford Explorers in service

Light Duty Vehicles							
	Light-Truck	Van	SUV	Auto	Motorcycle	Non Auto	Average
Vehicles	147	21	199	103	7	74	
Average Mileage	47,081	56,288	68,780	56,514	9,284	0	50,229
Average Age	8.9	10.0	6.4	11.1	3.3	11.9	8.6



# Fleet Operations – Light Duty Repairs

8

- Light Duty fleet mechanics perform majority of maintenance and repair for light duty fleet
- Industry standard would be 80% \*PM work and 20% \*\*CM
  - Due to age of fleet we are at 22% PM work
- Heavy workload of upfits, typical police SUV requires 40 to 45 hours of after market upfit per vehicle

Category	% to Ttl
PM	22%
Repair/Replace	30%
Diagnose	9%
Upfit	20%
Decommision	4%
Indirect ***	15%

\* (PM) Preventive Maintenance \*\* (CM) Corrective Maintenance \*\*\* Indirect work includes transport, shop cleanup, training or other non-billed hours





# Fleet Operations – Decommission

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- When vehicles are beyond repair, fleet will recover parts that are common to the fleet to minimize cost of replacement parts
  - Doors, headlights, fenders etc.
- Example of benefits:
  - PD #84 was involved in accident and arrived in shop on 11/29/23 at 9:30
  - Replaced door with salvaged door in stock
  - Placed back in service by 12:50 same day, internal labor cost of \$242
  - Estimate for door replacement, painting, applying decal and labor externally is \$1600-\$1800





# Fleet Operations – Light Duty Efficiency

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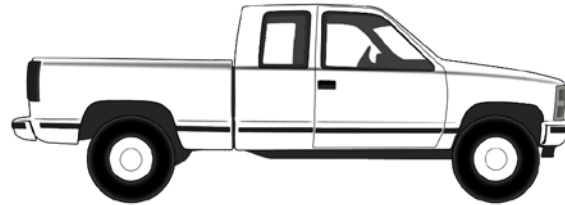
- Industry standard is 1 mechanic per 90-110 vehicle equivalent units(VEU), VEU represents a standard passenger sedan's annual routine maintenance and repair



Trailer = .25 VEU



Sedan = 1 VEU



Lt Truck = 1.5 VEU



Police Patrol = 2.5 VEU

- Light duty fleet of 551 assets represents 931 total VEU's
  - At full staff of 5 technicians that is 186.3 VEU's per technician



- Staff carefully analyzes services to determine what repairs can be outsourced more cost effectively
  - Examples of externally performed repairs
    - Painting
    - Body Work
    - Specialty Diagnostic Work
    - Transmission Rebuilds
    - Vehicle Alarm System Installations
    - Vehicle Window Tinting
  - Total light duty external cost for 2023 \$104,068.59 (total budget \$767,663)







# Fleet Operations – Light Duty Repairs

Service	Internal Cost	Low Bid	% Savings
Brake Replacement, pads, rotors and labor	\$601.00	\$750.00	24.8%
4 tires mounted and balanced	\$759.00	\$920.00	21.2%
Diagnose cranking system, replace battery	\$164.00	\$268.00	63.4%
Diagnose A/C system, check leaks, evacuate and recharge	\$177.00	\$200.00	13.0%
Full Upfit	\$12,077.00	\$13,322.00	10.3%

- Fleet regularly solicits quotes for services to confirm we are providing service to departments below market rates
- Based on lower wages, lack of taxes, marketing expense or profit margin we are consistently lower than outsourcing
- Above costs are based on a recent sample of 5 common repairs to a 2020 Ford Explorer



- Addl Fleet Services:
  - Tag Management
  - Vehicle Registration
  - Fuel Management
  - Procurement, sale and disposition of assets
  - Loaner vehicles
- Table on the right shows the additional fleet cost that would remain if all repairs were outsourced

Light Duty Cost		
	Light Duty (Repairs Only)	Light Duty (Admin Costs)
Employee Expense	\$438,510	\$58,905
Utilities	\$20,688	\$0
Office Expense	\$6,608	\$3,125
Internal Services	\$0	\$35,906
Insurance	\$9,806	\$0
Vehicle	\$4,512	\$6,259
Maintenance	\$167,747	\$0
Financial/Software	\$0	\$15,598
<b>Total</b>	<b>\$647,871</b>	<b>\$119,793</b>

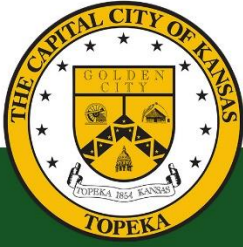


- Based on the composition of fleet, and analysis of costs, internal cost for repair and maintenance is less than outsourcing to a 3<sup>rd</sup> party
- Staff has contacted other fleet operations in Topeka including Shawnee County Public Works, Shawnee County Sheriff, USD 501 and KDOT regarding partnership in a shared use facility
  - Shawnee County Public Works, Shawnee County Sheriff and KDOT expressed they are satisfied with their current facilities but do not have excess capacity to operate as a shared facility with City of Topeka
  - USD 501 has not responded as of this presentation
  - KDOT has offered 3 bays at their Gage facility as a partial temporary solution



- Staff recommendation is to seek approval of a CIB amendment for design and construction of new Light Duty Fleet garage.
  - Architect's estimate is \$5.5M to construct garage on city owned parking lot at 8<sup>th</sup> and Madison.
  - Estimated proceeds from KDOT for the current building are \$2.3M, resulting in a \$3.2M funding gap.
    - Additional requests of \$826,000 have been made of KDOT, if approved it would lower the funding gap to \$2.4M.





# CITY OF TOPEKA

Braxton Copley, Public Works Director  
Holliday Building, 620 SE Madison St.  
Topeka, KS 66603

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October 24, 2023

To: Richard U. Nienstedt, Interim City Manager

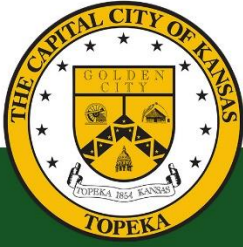
From: Braxton B. Copley, Public Works Director

RE: Light Duty Fleet Cost of Service-Revised

During the presentation to the Public Infrastructure Committee meeting, questions were asked about the age and condition of our fleet as well as whether it would be more cost effective for the City to contract the maintenance of the light duty fleet to a third party. Following is a summary of the key factors that fall under the light duty vehicle maintenance. The advanced age and relatively poor condition of our fleet results in a higher overall cost of ownership due to the preventative and corrective maintenance necessary to keep the fleet operational. Because of the specialized nature of the light duty vehicles including police, public works and utilities, upfits of after-market equipment are necessary for the vehicles to be placed into service. Our internal cost of service for upfitting a vehicle is less than third parties. Finally, our internal cost of service for corrective and preventative maintenance is less than a third party would charge to perform similar services. For these reasons, we firmly believe that the City should continue providing fleet services. Further, with the demolition of the fleet light duty shop scheduled for Q1 2025, we would request the governing body to amend the CIB to authorize a project for the design and construction of a new light duty fleet garage.

As I told the committee, having a brand new fleet requires a completely different level of preventative maintenance and corrective maintenance than an aged fleet. The average age of our LD fleet is 9.3 years. A fleet with an advanced age requires more preventative and corrective maintenance. The industry best practice is a ratio of 80% of preventative maintenance to 20% corrective maintenance. In our light duty fleet, we currently maintain a ratio of 26% of preventative maintenance to 74% corrective maintenance. Obviously, it takes more mechanic time and costs more to do a repair to a vehicle instead of preventative maintenance such as changing the oil or tires.

To help keep purchase of light duty vehicles low, we order base models and then upfit them with the equipment necessary for employees to safely do their jobs such as emergency lighting, global position satellite and computer terminals. During the last 12 months we have performed 71 upfits per year. Our internal cost of service for upfitting a vehicle is less than third parties charge. Further, our staff can be responsive and jump on the upfit as opposed to scheduling the work with a third party vendor. For example, the cost of upfitting a police cruiser requires approximately \$7,000 in parts and takes 40-45 hours. The cost of the same work performed by a third party garage would be approximately \$13,300 and would normally require 90 days advance notice to schedule.



## CITY OF TOPEKA

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We have analyzed our most common repairs and preventative maintenance tasks including tire replacement and repair, brake replacement and repair and oil changes. We have compared those costs to the amounts charged by third party vendors. Our cost of service is lower than if we were to contract with a third party. For example the internal cost of a brake replacement is \$667 for parts and labor while a third party would charge \$750 - \$1099. Another example is tire replacement. Internal cost is \$698 while the external cost would be \$1,269. Attached is a schedule comparing the costs of internal repairs/maintenance to those by third parties. Additionally we have attached a spread sheet showing the total number of preventative maintenance services provided by fleet broken down according to service types.

The other point to consider is that fleet staff provide a host of additional services such as fuel management, tag management, vehicle registration and vehicle sale and purchase services. If repairs and maintenance were to be outsourced, these additional services would need to be contracted for as well or would have to be performed by fleet or other city personnel.

In sum the City of Topeka has an aged fleet which has a higher overall cost of ownership than a newer fleet. The cost of ownership is driven by the preventative and corrective maintenance costs required by older vehicles. Additionally the cost of upfitting vehicles and providing preventative and corrective maintenance in house is less than contracting with a third party. For these reasons, we recommend that the City should continue its current level of light duty fleet services. Additionally we recommend that the City commit to relocate the light duty garage as soon as possible to a new facility to avoid the reduction of service levels when the KDOT Polk Quincy Viaduct project requires closure and demolition of the LD garage in Q1 of 2025. Further, we believe the best long-term financial decision for the City is to invest in a new fleet garage to be constructed in the City owned parking lot south of the Holliday Building. Please let me know if you have any questions.



City of Topeka  
Council Action Form  
Council Chambers  
214 SE 8th Street  
Topeka, Kansas 66603  
[www.topeka.org](http://www.topeka.org)  
February 6, 2024

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DATE: February 6, 2024  
CONTACT PERSON: DOCUMENT #:  
SECOND PARTY/SUBJECT: Public Comment PROJECT #:  
Protocol  
CATEGORY/SUBCATEGORY  
CIP PROJECT: No  
ACTION OF COUNCIL: JOURNAL #:  
PAGE #:

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**DOCUMENT DESCRIPTION:**

PUBLIC COMMENT PROTOCOL

**VOTING REQUIREMENTS:**

**POLICY ISSUE:**

**STAFF RECOMMENDATION:**

**BACKGROUND:**

Procedures for Addressing the Governing Body

In accordance with Governing Body Rules, the following protocols for public comment apply:

- Each person shall state his or her name and city of residence in an audible tone for the record.
- All remarks shall be addressed to the Governing Body as a whole -- not to any individual member.
- In order to provide additional time for as many individuals as possible to address the Governing Body, each individual signed up to speak will need to complete his or her comments within four minutes.

The following behavior will not be tolerated from any speaker:

- Uttering fighting words
- Slander
- Speeches invasive of the privacy of individuals (no mention of names) Unreasonably Loud Speech
- Repetitious Speech or Debate
- Speeches so disruptive of proceedings that the legislative process is substantially interrupted

Any speaker who engages in this type of behavior will be warned once by the presiding office (Mayor). If the



behavior continues, the speaker will be ordered to cease his or her behavior. If the speaker persists in interfering with the ability of the Governing Body to carry out its function, he or she will be removed from the City Council Chambers or Zoom meeting room.

Members of the public, Governing Body and staff are expected to treat one another with respect at all times.

#### Zoom Meeting Protocol

- Make sure your Zoom name, email and/or phone number matches what was submitted to the City Clerk when you signed up for public comment. Any misnamed or unauthorized users will not be admitted to Zoom.
- Please keep your mic muted and your camera off until you are called by the Mayor to give your comment.
- If you are cut off during your comment time due to an internet connection or technical issue, you will need to submit your comments in writing to the City Clerk at [atcclerk@topeka.org](mailto:atcclerk@topeka.org) or 215 SE 7th Street, Room 166, Topeka, KS 66603 for attachment to the minutes.
- If you break any of the public comment rules, you will receive one warning from the Mayor. If you continue any prohibited behavior, you will be removed from the Zoom meeting room and will not be allowed to rejoin.
- Public comment is limited to four minutes. You may receive an extension at the discretion of the Governing Body. The timer will be visible to you in the 'City of Topeka Admin' window on the Zoom app. Call-in users will hear one beep when a minute is remaining and then another beep when time has expired.
- Please do not share the Zoom login information with anyone. Any unauthorized users will not be admitted to the Zoom meeting room.

#### **BUDGETARY IMPACT:**

#### **SOURCE OF FUNDING:**