

**File Attachments for Item:**

10. CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT AND/OR POSTPONEMENT OF CONTRACT K-2324-68: A COMPENSATION AGREEMENT BETWEEN THE CITY OF NORMAN AND NEP NORMAN, LP, FOR NEP'S REIMBURSEMENT OF COSTS FOR THE CITY'S CONSTRUCTION OF A FIRE CIRCULATION DRIVE ON THE ADULT WELLNESS AND EDUCATION CENTER PROPERTY TO BE JOINTLY UTILIZED BY NEP AND THE CITY PURSUANT TO FURTHER AGREEMENT.



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 10/10/2023

**REQUESTER:** Jason Olsen, Director of Parks & Recreation

**PRESENTER:** Elisabeth Muckala, Assistant City Attorney

**ITEM TITLE:** CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT AND/OR POSTPONEMENT OF CONTRACT K-2324-68: A COMPENSATION AGREEMENT BETWEEN THE CITY OF NORMAN AND NEP NORMAN, LP, FOR NEP'S REIMBURSEMENT OF COSTS FOR THE CITY'S CONSTRUCTION OF A FIRE CIRCULATION DRIVE ON THE ADULT WELLNESS AND EDUCATION CENTER PROPERTY TO BE JOINTLY UTILIZED BY NEP AND THE CITY PURSUANT TO FURTHER AGREEMENT.

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### BACKGROUND:

In October 2015, Norman citizens passed the NORMAN FORWARD initiative, funding various quality-of-life projects through a one-half percent (½%) sales tax increase over 15 years. The NORMAN FORWARD Initiative included authorization for a project to construct a new Senior Citizen's Recreation Center. After ongoing community input, the project's scope was expanded into a Senior Wellness Center, later named the Adult Wellness and Education Center (AWE).

The AWE will be located on City-owned land on the southeast corner of Norman Regional Health System's (NRHS) Porter Wellness Village, off North Findlay Avenue. The new AWE will include an indoor, heated saltwater pool with lap swimming, water walking, and hydrotherapy seating; an indoor walking track and training space; a fitness classroom area; lounge and game rooms; both wet and dry craft areas; a small prep and demonstration kitchen; and multipurpose rooms that can be used for eating, events, classes, theatrical plays, games, and much more.

The AWE was authorized in the NORMAN FORWARD initiative in 2015 but was unfunded at that time. The AWE was later funded through two Council actions: re-allocation of Norman Forward funds through securing the Griffin Parkland with a long-term land lease instead of a land purchase (\$7.4 million); an allocation of \$4.8 million from federal Coronavirus Aid, Relief & Economic Security (CARES) Act reimbursements (Resolution R-2021-63); and a land exchange with the Norman Regional Hospital System where the City received \$426,000 in cash and what was then appraised for \$1.2 million in property (718 N. Porter) for a total of a \$14 million budget for construction and design. On December 13, 2022, the Council appropriated \$1.2 million in General Fund balance to up-front the anticipated revenue from the sale of the 718 N. Porter property. The sale proceeds have not been reimbursed to the General Fund; effectively the General Fund has contributed \$1.2 million to the AWE project.

Oklahoma City architectural and engineering (A/E) firm Frankfurt, Short, Bruza (FSB) was selected as the A/E consultant for this project in March 2018. FSB has completed the project's schematic design and construction documents and is assisting with construction administration through the project's completion. The AWE project is scheduled to open in late Fall of this year; final furniture, fixture, and equipment purchases are being made.

The property on which the AWE project is located is directly adjacent, to the east, of property owned by the Norman Regional Hospital Authority d/b/a Norman Regional Health System ("NRHS") and subject to a long-term lease by NRHS to NEP Norman, LP ("NEP Parcel"). As a long-term ground lessee, NEP has constructed the structure on the NEP Parcel and coordinated with the City of Norman regarding the construction of a fire circulation drive for the joint use and benefit of the City Parcel and NEP Parcel. The terms of the agreed access are set forth separately in that certain Reciprocal Easement Agreement ("REA") between NEP, NRHS, and the City and presented as a companion to this item for City Council Consideration as K-2324-84.

### **DISCUSSION:**

Unlike the REA, this Compensation Agreement is only entered into between the City of Norman and NEP. The Agreement provides that NEP is responsible to pay fifty percent (50%) of the construction cost associated with the portion of the Fire Circulation Drive that sits on the City Parcel. Construction of the Fire Circulation Drive on the City Parcel is complete, and the parties have agreed that NEP's share under this Agreement is \$37,609.76.

This expense, as well as the City's use of the portion of the Fire Circulation Drive located on the NEP Parcel, is the consideration provided by NEP in exchange for the City's accommodation of the drive on the City Parcel for NEP's use in compliance with the terms of the REA. City Staff has evaluated this exchange and finds the compensation to be fair and equitable, and the overall agreement of access is ultimately beneficial to the City.

The approval of the Compensation Agreement, K-2324-68, is contingent upon the concurrent approval the REA, K-2324-84. In turn, approval of the REA requires the City's concurrent acceptance of Easement E-2324-26, a drainage and utility easement from NRHS to the City of Norman ("NRHS Easement"). The Compensation Agreement, the REA, and the NRHS Easement are thus presented together as companion items for the City Council's consideration.

Upon approval of this Agreement by City Council and complete execution by all parties, \$37,609.76 is immediately available for deposit in revenue account Reimbursements-Refunds-Miscellaneous General (Account No. 109-365251) by the City, in complete satisfaction of NEP's obligations hereunder.

### **RECOMMENDATION:**

City Staff recommends approval of K-2324-68 and its companion items, K-2324-84 and E-2324-26.

**COMPENSATION AGREEMENT**  
**(NEP NORMAN, LP – NORMAN REGIONAL PORTER CAMPUS)**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Norman, a municipal corporation (hereinafter “City”), and NEP Norman, LP, a Texas Limited Partnership authorized to do business in the State of Oklahoma (hereinafter “NEP”) with reference to the following:

**RECITALS:**

WHEREAS, City and NEP have agreed, or shortly following the execution hereof will agree, to reciprocal access as set forth in that certain Reciprocal Easement Agreement (Porter Avenue Campus) (hereinafter “REA”) between City, NEP and Norman Regional Hospital Authority, an Oklahoma public trust d/b/a Norman Regional Health System (hereinafter “NRHS”) regarding the Fire Circulation Drive identified, described and set forth therein, including, without limitation, as set forth in Exhibit J attached thereto, such Exhibit J also being attached hereto as Exhibit A;

WHEREAS, NEP has a Ground Lease for use of the NEP Ground Lease Parcel, which is directly adjacent to the City Parcel, as those parcels are identified in the REA;

WHEREAS, the City has constructed and installed the Fire Circulation Drive in a manner conforming to the mutual agreement of City and NEP, as set forth in Exhibit A hereto;

AND WHEREAS, the parties enter into this Compensation Agreement in order to set forth the terms of NEP’s compensation to the City for the aforementioned construction of the Fire Circulation Drive.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which are hereby acknowledged, and as reflected in the attached exhibits, the parties hereby agree as follows:

1. **The Consent and Easement Agreement.** Subject to NEP and City’s approval and execution of the REA, and in exchange for the good and valuable consideration described herein, receipt of which is acknowledged by NEP, NEP shall immediately bear and pay fifty percent (50%) of the total Cost of constructing the Fire Circulation Drive on the City Parcel, including all Change Orders and any savings ultimately achieved during the construction. Final cost information has been provided to NEP by the City and the parties agree that fifty percent (50%) of the total cost, and the amount owed immediately by NEP is: **THIRTY-SEVEN THOUSAND SIX HUNDRED NINE AND 76/100 DOLLARS (\$37,609.76)**, and upon NEP’s payment of such sum, NEP shall be relieved of any further obligation to contribute to the Cost of constructing the Fire Circulation Drive.

2. **Advice of Counsel.** The parties represent that they have or could have been fully advised by independent legal counsel with respect to the legal effect of the terms of this Compensation Agreement and hereby execute the same with full legal knowledge of the terms, conditions, and covenants herein.
3. **Capacity for Agreement.** The parties hereby and represent that its signatory party(ies) are vested with the authority to legally bind each party to the terms of this Agreement.
4. **Entire Agreement.** This document represents the entire agreement between the Parties with respect to the cost to construct the Fire Circulation Drive. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter of this Compensation Agreement, including all exhibits, are now merged herein.
5. **Assignability.** This agreement shall not be assigned, except by written agreement of the other party. The REA, as stated therein, is a covenant running with the land and shall benefit/burden the parties' successors and/or assigns.
6. **Survival of Terms.** The terms and conditions of this Agreement will survive the execution and delivery of the conveyances or other rights and interests created by this Agreement.
7. **Execution in Counterparts.** This Agreement may be executed in in one or more counterparts, each of which shall be deemed an original for the purposes of this Agreement.

THIS AGREEMENT is effective the date and time first above written.

**CITY OF NORMAN, OKLAHOMA,**  
A municipal corporation

\_\_\_\_\_  
Mayor Larry Heikkila

Attest:

\_\_\_\_\_  
City Clerk

APPROVED as to form and legality this 26 day of September, 2023.

  
Office of the City Attorney

**NEP Norman, LP,**  
a Texas limited partnership

By: **NEP Norman GP, LLC,**  
a Texas limited liability company,  
its General Partner

By: **New Era Companies, LLC,**  
a Texas limited liability company,  
its Manager

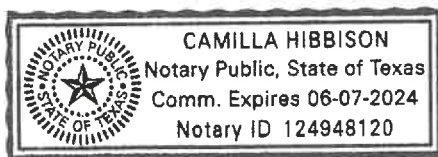
By: \_\_\_\_\_  
Daryn Eudaly, Manager

Attest:

\_\_\_\_\_  
BRAD MCCAFFERTY

STATE OF TEXAS           §  
COUNTY OF TARRANT   §

This instrument was acknowledged before me on the 19<sup>th</sup> day of September, 2023 by Daryn Eudaly, Manager of New Era Companies in its capacity as the Manager of NEP Norman GP, LLC, in its capacity as the General Partner of NEP Norman, LP, a Texas limited partnership, on behalf of said Partnership.

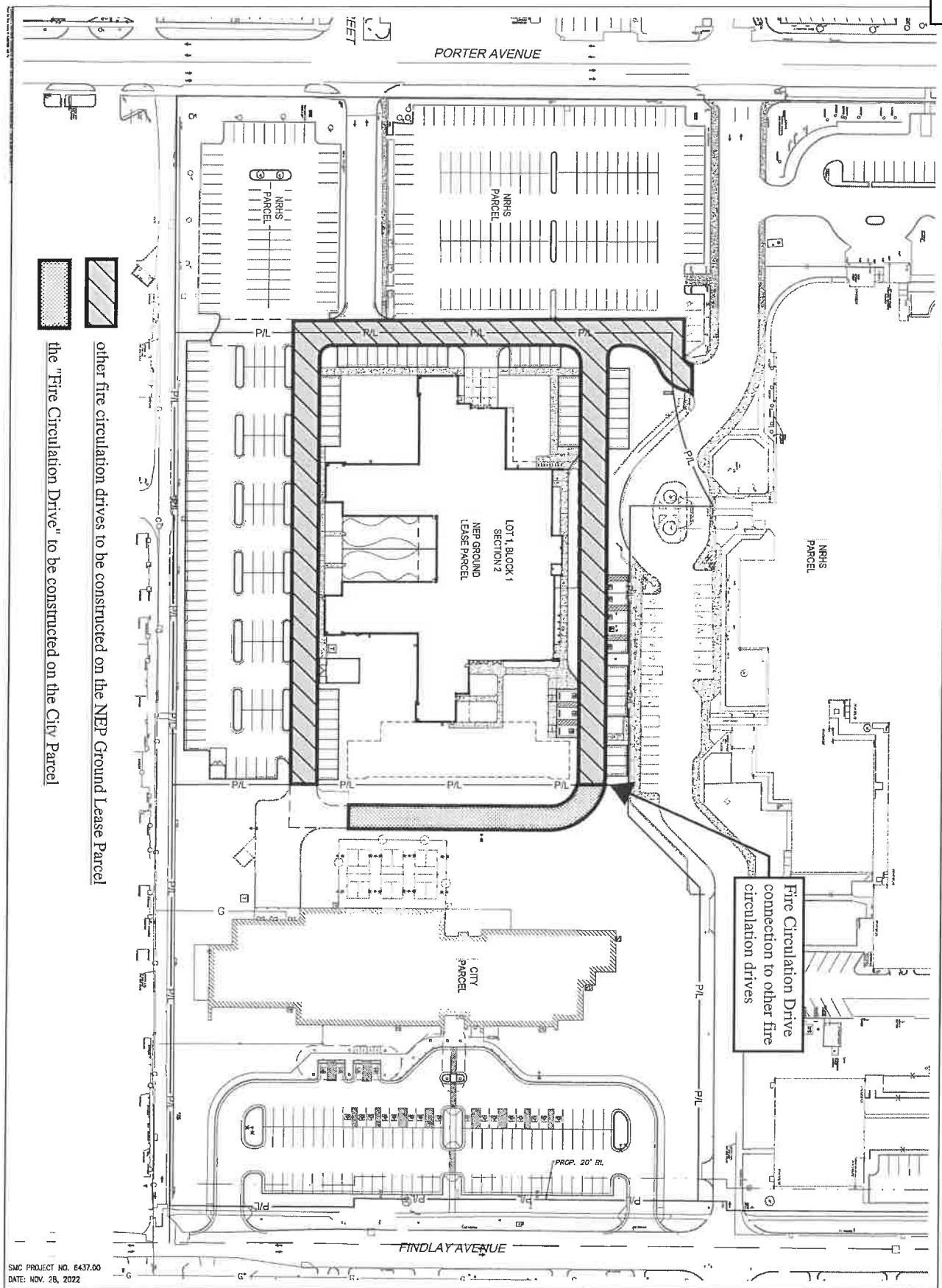


\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My commission expires: 06/07/2024

**Exhibit “A”**

**Fire Circulation Drive Exhibit**



SMC PROJECT NO. 6437.00  
DATE: NOV. 28, 2022

<b>SMC</b> SMC Consulting Engineers, P.C. 815 West Main - Oklahoma City, OK 73109 PH: 405-232-7715 Fax: 405-232-7859	OCEANS NORMAN NRHS PORTER HEALTH VILLAGE NORMAN, OK	<u>EXHIBIT A</u>	Fire Circulation Drive	
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