

**ECONOMIC DEVELOPMENT AGREEMENT**

**BY AND AMONG**

**Walman Brown Aspen Development LLC**

**and**

**BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY**

**Dated as of June 17, 2024**

## **ECONOMIC DEVELOPMENT AGREEMENT**

This ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") dated as of June 17, 2024, by and among Walman Brown Aspen Development LLC, an Oklahoma limited liability company (the "Developer"), BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY (the "Authority") an Oklahoma public trust.

### **WITNESSETH:**

WHEREAS, the Authority has been created by a Trust Indenture dated November 19, 1973, as supplemented and amended by an Amendment to Trust Indenture dated March 11, 1982, as supplemented and amended by a Second Amendment to Trust Indenture dated August 4, 1983, and as further supplemented and amended by a Third Amendment to Trust Indenture dated March 18, 2014, for the use and benefit of the City under authority of and pursuant to the provisions of Title 60, Oklahoma Statutes 2011, Sections 176 to 180.4, inclusive, as amended and supplemented, the Oklahoma Trust Act and other applicable statutes of the State of Oklahoma; and

WHEREAS, among the Authority's stated purposes are those of promoting and encouraging development of industry and commerce within and without the territorial limits of the City by instituting, furnishing, providing, and supplying property, improvements and services for the City and for the inhabitants, owners and occupants of the property, and governmental, industrial, commercial and mercantile entities, establishments, and enterprises within and without the City; promoting the general convenience, general welfare and public safety of the residents of the City; acquiring by purchase real property useful in instituting, furnishing, providing, or supplying any of the aforementioned property, improvements and services; complying with the terms and conditions of contracts made in connection with or for the acquiring of any of said properties; receiving funds, property and other things of value from, among others, the City; and participating in State and other programs which are to the advantage of the Authority and the City; and the Authority has determined that its undertakings and the performance of its obligations under this Agreement are authorizing and proper functions of the Authority's Trust Indenture; and

WHEREAS, a declared goal of the Authority is to encourage and facilitate economic development within and near the City by attracting new retail and commercial businesses to the Broken Arrow area, and to promote the economic health and expansion of existing industry and commercial businesses within the City; and

WHEREAS, the Oklahoma Supreme Court has held that economic development is a legitimate public purpose for which public funds may be expended and that economic development in the City will allow the City to expand the type and scope of its services, including enhanced public improvements, police protection, fire protection and recreational facilities; and

WHEREAS, the Project Plan envisions the generation of substantial capital investment and creation of significant new retail opportunities within the Project Plan area by establishment of the Project (as defined herein); and

WHEREAS, the Authority owns a approximately 37.9 acres of property located at 1700 Aspen Creek Drive, Broken Arrow, Oklahoma, the legal description of which is attached hereto as Exhibit A-1; and

WHEREAS, the Developer is interested in developing land for construction of a three phased retail environment consisting of an additional 9 pad sites and an additional 260,000 square feet of retail and commercial space to be constructed on the Project Site (hereinafter "Project"); and

WHEREAS, it is estimated that, upon completion, the Project Site will be the future home to at least 8 national tenants and will bring additional revenue and jobs into the City of Broken Arrow; and

WHEREAS, the Authority recognizes that the full development of the Project will have both direct and indirect economic benefits for the City and through such development reasonably expects (i) to realize increased sales tax revenues from Project-based sales in the City, purchases by Project facilities owners and their employees from local vendors; (ii) to realize increases in ad valorem revenues to be derived therefrom by the City, Tulsa County, Oklahoma ("Tulsa County"), Independent School District No. 3 of Tulsa County, Oklahoma and other local and area governmental entities from time to time benefiting therefrom; (iii) that the Project will generally enhance property values, both residential and commercial, within the City; and (iv) that the Project's operation will otherwise contribute significantly to the economic well-being of the citizens of, and residents within and near, the City, and those in Tulsa County and the State of Oklahoma (the "State") generally; and

WHEREAS, the Authority reasonably expects that the establishment of the Project will increase overall sales tax and property tax revenues of the City; and

WHEREAS, the Authority also recognizes that the Project and its operations will have additional direct and indirect economic benefits within and near the City, in Tulsa County and in the State of Oklahoma through, including without limitation, diversifying the local economy, providing economic stimulus for additional employment and other development, and predicated and/or providing training and employment opportunities in manufacturing, sales and management skills; and

WHEREAS, implementation of this Agreement, which is reasonably expected to facilitate the realization of the aforesaid economic benefits to the City and general area, would otherwise be difficult or impractical without certain development incentives, and apportionments and appropriations for such purposes of certain City economic incentives, other forms of public assistance, and the involvement of the City; and

WHEREAS, the Authority desires to assist, encourage and support the Project by providing assistance in development financing (as authorized under the Local Development Act, as defined herein) to the Developer for the construction of public infrastructure and other site improvements in order to facilitate the Project and to encourage higher quality development so as to provide opportunities for full time employment for the residents in and around the geographical area of the City and the consequent benefits to the local economy that will derive therefrom; and

WHEREAS, implementation of the Project and the Project Plan will expand employment in the area, attract major investment, enhance the tax base, and make possible investment, development and economic growth which would otherwise be difficult or impossible without the apportionment of ad valorem taxes, sales and use taxes, and other forms of public assistance to the Project; and

WHEREAS, the Authority and the City deem the execution of this Agreement providing for the implementation of the Project to be vital and in the best interests of the City, and the health, safety, and welfare of the State of Oklahoma and its residents in accordance with the public purposes of the Project and the Project Plan.

NOW, THEREFORE, in consideration of the promises and mutual obligations herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby covenant and agree with each other as follows:

## **ARTICLE I. DEFINITIONS**

In each and every place in and throughout this Agreement, whenever the following terms are used, unless the context shall clearly indicate another or different meaning or intent, they shall have the following meanings:

“Agreement” shall mean this Economic Development Agreement dated as of June 17, 2024, entered into by and among the Developer and the Authority.

“Authority” shall mean the Broken Arrow Economic Development Authority, a public trust having the City as beneficiary thereof.

“City” shall mean the City of Broken Arrow, Oklahoma.

“Construction Plans” shall mean such architectural and engineering drawings, plans, specifications, and other documentation as may be reasonably necessary to describe the nature, scope, materials, quality, quantity, and other information requisite for the construction and fitting of improvements and/or structures included, or to be included, within the Project, which shall be subject to the Authority’s normal and customary review and approval as part of the City’s permitting process.

“Developer” shall mean Walman Brown Aspen Development LLC, an Oklahoma limited liability company.

“Local Development Act” shall mean the Oklahoma Local Development Act, Title 62, Oklahoma Statutes, Section 850, *et seq.* as amended.

“Participant” shall mean any purchaser, ground lessee or successor that acquires any interest in the Project Site but specifically excluding any shareholder of a corporation, any member of a limited liability company, or any partner of a partnership of an entity that purchases, leases or successor that acquires any interest in the Project Site.

“Project” shall mean the development of Project Site into a new retail commercial development all as more specifically described in Article II herein.

“Project Architect” shall mean the any architect retained by Developer (or an assign or successor thereto) for the design of the Project.

“Project Site” shall mean the property described in Exhibit A owned by the Authority and to be acquired by the Developer (or an assign or successor thereto). See Exhibit A for a legal description of the site. See Exhibit B for a map of the site. See Exhibit C for a preliminary Project Site Development Plan.

“Project Site Phases” shall mean Phase 1 as described in Exhibit D, Phase 2 as described in exhibit E, and Phase 3 as described in Exhibit F

“Project Site Improvements” shall mean the infrastructure and other site improvements to be constructed by the Authority and the Developer as contemplated in Section 2.1.

“Substantial completion” shall mean the time at which the work has progressed to the point where, in the opinion of the Authorities’ Engineer, the work is sufficiently complete, in accordance with the Economic Development Agreement so that the work can be utilized for the purposes of which it was intended.

## **ARTICLE II. NATURE OF THE AGREEMENT**

2.1. SCOPE OF THE PROJECT. The City desires to encourage economic development in the City by facilitating the payment of the costs of essential infrastructure improvements and remedial costs necessary to make certain property viable for development, all in a manner that encourages commerce, increases retail opportunities, and generates a corresponding growth in the local tax base. The Developer proposes to acquire and develop approximately 37.9 acres of property owned by the Authority located at the Shops at Aspen Creek, i.e. the Project Site. The subject property currently abuts the Regal Movie Theatre. The Developer’s 3 phase construction plan will consist of Phase 1 to include an estimated \$41,000,000 in annual sales and a commitment to build 160,000 sq. ft. of retail commercial space. Regarding Phase 2, the Developer estimates annual sales of an additional \$25,000,000 and additional commercial retail space of 100,000 sq. ft. The Developer’s Phase 3 estimate is an additional \$10,000,000 in sales and an additional 20,000 sq. ft of commercial retail space. The total capital investment in the Project on behalf of the Developer is projected to be approximately \$ 24 million, plus \$6 million for the cost of Project Site Infrastructure Improvements reimbursed by the Authority.

The City will provide incentives in the sum of \$6 million solely intended for infrastructure, in addition to the land commitment. That in no event shall the infrastructure funding be used for pad sites or any other expense unrelated to infrastructure.

The Authority is responsible for the cost of Project Site Infrastructure up to a total of \$6,000,000.00. listed cost of each infrastructure improvement detailed below, for a total Project Site Infrastructure Improvements cost not to exceed Six Million Dollars (\$6,000,000.00). Any costs of the Project Site Infrastructure Improvements that exceed the total cost of \$6,000,000 shall be paid by Developer solely. Payment of costs from the Authority to the Developer shall be in accordance with the Project Infrastructure Budget attached as Exhibit G in the amounts and at the time each component set forth therein is complete.

The Project Plan has identified certain improvements to be considered Project Site Improvements. Pursuant to and as more specifically described in the Project Plan, the following Project Costs have been designated for completion by or on behalf of Authority and the City:

The Authority and/or the City has contracted or shall contract for or otherwise cause to be completed, and shall bear the cost, if any, of the Project Site Improvements. The Authority shall participate in the costs of the Project Site Improvements in an amount not to exceed \$6,000,000.00. The Developer shall be solely responsible for any amounts in excess of \$6,000,000.00 necessary to complete the Project Site Improvements. Notwithstanding the foregoing, additional Project Costs may be incurred by agreement of the parties as may be specifically authorized under the Project Plan. Nothing herein shall prohibit the Developer, the Authority, and/or the City from seeking, obtaining, and applying available state, federal, or other funding to the payment of certain Project Site Improvements in lieu of including said Project Site Improvements as Project Costs under the Project Plan.

## 2.2. RELATIONSHIP OF THE AUTHORITY, CITY, AND DEVELOPER.

A. The undertaking of this Project is a complex process which will require the mutual agreement of the Authority, and the Developer and their timely actions on matters appropriate or necessary to Project implementation. Each of the parties hereto shall use commercially reasonable efforts in good faith to perform and to assist the other parties in performing their respective obligations under this Agreement, including specifically the performance of obligations hereinafter set forth in Article III and Article IV.

2.3. OTHER GOVERNMENTAL APPROVALS. The implementation of this Project will require approvals by other governmental entities and the City in accordance with applicable laws, ordinances, and regulations. The Authority and the City will in good faith use their best efforts to obtain and expedite the necessary approvals for undertaking and implementing the Project Site Improvements and, to the extent applicable, the construction of the Project, to the extent the Authority or the City has the authority to grant approval. The Authority and the City, with the commercially reasonable cooperation of the Developer, shall be responsible for assisting the Developer in complying with applicable requirements, filing appropriate applications, and taking other steps necessary or desirable to expedite and obtain the approvals necessary for undertaking and implementing the Project Site Improvements and, to the extent applicable, the construction of the Project; provided, that any normal and customary expenses related to said approvals shall be the responsibility of the Developer. The Authority agrees that the City Manager's approval of the Construction Plans shall also constitute the Authority's approval thereof.

## **ARTICLE III. COVENANTS AND OBLIGATIONS OF THE AUTHORITY AND CITY**

### 3.1. SALE OF PROJECT SITE TO DEVELOPER.

A. The Authority agrees to sell to the real property located at Aspen Creek Drive to the Developer in multiple phases as detailed below:

1. Phase 1 Property Sale-The Authority agrees to sell approximately 21.0 Acres as described in Exhibit D to the Developer for the sum of \$10.00 in accordance with the agreement herein;

2. Phase 2 Property Sale-Upon the developers' construction or cause to be constructed of Phase 1, the Authority shall sell to the Developer the North 11.0 Acres (479,160 sq. ft.) as described in Exhibit E for the sum of \$2.00/sq ft. totaling \$958,320.00 to be paid at closing, said closing to occur on or before twelve (12) months after the substantial completion date of Phase I;

3. Phase 3 Property Sale-Upon the developers' construction or cause to be constructed of Phase 2, the Authority shall sell to the Developer the remaining 5.9 AC (257,004 sq. ft.) as described in Exhibit F for the sum of \$6.00/sq. ft. totaling \$1,542,024.00 to be paid at closing, said closing to occur on or before twenty four (24) months from the substantial completion date of Phase I. The difference in price between Phase 2 and 3 is due to arterial frontage.

4. It is understood by and between the parties that the Economic Development Agreement is contingent upon the City acquiring the property as listed herein from the Signorelli Company. In the event the property acquisition is not made by the City/Authority, this agreement shall automatically terminate, and each party shall be released from their obligations herein.

B. In consideration for conveyance of the above-described property, the Developer agrees to timely complete the Development of the Project and Development Timeline and Obligations of the Developer as set forth in Article IV, paragraphs 4.2 and 4.3 below. Furthermore, Developer shall have the Exclusive Right to Purchase all Real Property described in Phases 2 and 3. Failure of the Developer to meet the timelines stated herein shall result in the termination of the Exclusive Right to Purchase.

C. The Authority shall provide infrastructure incentives in an amount not to exceed \$6,000,000.00 to be provided and drawn down as follows:

1. The Developer shall, by competitive bid adhering to all Oklahoma contracting laws pertaining to Municipalities, award the most responsible bid submitted using the Developer's business judgment.

2. Upon each component of the individual infrastructure project being completed and proper paperwork submitted to the Authority for review, the Authority, within 30 days of submission shall pay the Developer for the part so completed in accordance with the Project Infrastructure Budget attached as Exhibit G. The Authority shall be responsible for payment to the Developer of a sum not to exceed \$6,000,000.00 for all infrastructure projects in total. Any amount incurred by the Developer related to infrastructure in excess of \$6,000,000.00 shall be completely borne by Developer. Any payment by the Authority shall be in accordance with the completion of the Project Infrastructure

Budget as set forth in Exhibit G pursuant to an agreed budget and scope of work agreed to by the Authority and the Developer. All infrastructure paid for by the Authority shall be dedicated to the Authority by the Developer once completed.

3. The Developer shall maintain ownership of the parking lot as constructed and shall be solely responsible for its upkeep and maintenance.

#### **ARTICLE IV. COVENANTS AND OBLIGATIONS OF THE DEVELOPER**

4.1. **DEVELOPMENT OF PROJECT SITE.** In accordance with the provisions of this Agreement, the Developer shall develop and/or shall enter into lease or sale arrangements with Participants for the development of the Project Site; provided, that nothing in this sentence shall require or be construed to require the Developer to waive rights that are, or accept agreements or provisions that are not, customary or commercially reasonable for any future tenants or residents. The Developer shall provide to the City periodic updates to the Site Plan and Design Documents for the development of the Project Site, which said documents shall be consistent in all respects with any applicable provisions of the City's Zoning Ordinances and Building and Land Subdivision Codes, and the Engineering Design Criteria Manual. The Site Plan shall consist of conceptual drawings depicting the preliminary scale, placements, and design of the Development. The Design Documents shall consist of drawings and other documents to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, components, and other such essentials as the City may reasonably request to review and approve the nature, quality, and appearance of the Project. The Developer and any Participant shall construct and maintain the Property in accordance with standards applicable to a first-class retail commercial development. The parties understand, acknowledge and agree that the Company shall be solely responsible for constructing and completing or causing the construction or completion of any and all improvements to the Project Site, except as specifically provided herein.

4.2. **DEVELOPMENT OF THE PROJECT.** The Developer shall use its best efforts to commence and complete construction in the most expeditious manner that will allow for the maximum development of the Project Site. The Developer agrees to construct and equip or cause to be constructed and equipped, the Project in accordance with the Construction Plans, and in a manner consistent with the Development Timeline and Obligations of the Company contained in paragraph 4.3, as follows:

A. **PHASE 1**--The Developer shall develop, construct or cause to be constructed four pad sites and an additional approximate 160,000 sq ft of commercial retail space;

B. **PHASE 2**--The Developer shall develop, construct or cause to be constructed within the Project Site, four additional pad sites and up to 80,000 sq. ft. of commercial retail space;

C. **PHASE 3**--The Developer shall develop, construct or cause to be constructed within the Project Site, up to 20,000 square feet of commercial retail space or two (2) additional restaurant pads as determined by the Developer;

D. The Developer shall pay all costs of the Project Site Infrastructure described in Section 2.1 herein in excess of \$6,000,000.00; and



E. The Developer will use good faith efforts to negotiate terms of leases of National Tenants to fill the development with commercial retail options.

4.3. DEVELOPMENT TIMELINE AND OBLIGATIONS OF THE COMPANY. The Developer agrees to complete construction of the Project on the following timeline:

A. , Within 24 months of the commencement of the Project Site Infrastructure, the Developer shall complete its obligations in Section 4.2(A), and shall have completed an additional approximate 160,000 sq. ft. of commercial retail space within the Project Site. This shall be known as the Phase 1 construction.

B. Within 24 months of the completion of Phase 1 construction, the Developer shall have completed its obligations in Section 4.2(B) and shall have completed at a minimum an additional 80,000 sq. ft. of commercial retail space with the Project Site. This shall be known as Phase 2 construction.

C. Within 24 months of the completion of Phase 2 construction, the Developer shall have completed its obligations in Section 4.2(C) and shall have completed at a minimum an additional 20,000 sq. ft. of commercial retail space within the Project Site or two (2) additional restaurant pads. This shall be known as Phase 3 construction.

4.4. PROJECT FINANCING. The Developer shall provide all financing for the development of the Project Site, except with respect to the payment of the agreed \$6,000,000.00 in infrastructure improvements as stated in Section 3.1(C).

A. The Authority acknowledges and agrees Developer and/or Developer's lenders may require certain documents be executed by the parties in order to properly perfect any liens, mortgages or other security interests in and to Project as security for loans extended by such lenders for the development of the Project by Developer. The Authority agrees to reasonably cooperate with any such requests, which may include subordination of the Authority's interest in the Project Site to Developer's lenders.

4.5. REPORTING. The Developer shall provide consolidated reports (not less quarterly) listing all Participants operating within the Project Site of the Project. Such reports shall be made as long as the phased construction is on-going.

4.6 DEDICATION OF RIGHTS-OF-WAY AND EASEMENTS. At its sole cost, the Developer shall dedicate right-of-way, utility easements and other necessary easements within the Project Site shown on and in accordance with the Master Site Plan and the City's Zoning, Building, Land Subdivision Code and Engineering Design Criteria Manual. These dedications shall be accomplished by deeds drafted by the City Engineer for the pertinent rights of way, easements or other necessary conveyances. All other dedications may be accomplished through the platting process. The Developer shall be responsible for all on-site development fees and storm water detention and is responsible to meet all City development standards and fees, save and except fees related to the Phase I land as described herein.

4.7 CLAWBACK PROVISIONS; PERFORMANCE AND TERMINATION; PERSONAL GUARANTY; OTHER REPRESENTATIONS. The Developer shall meet all of the

following commitments, or will be subject to liquidated damages and/or repayment or divesture of any interest in real properties in accordance with this Agreement. The commitments are as follows:

A. Purchase of 21.0 Acre Tract (Phase 1). In consideration for conveyance of the 21-acre tract of real property described as Phase 1 from the Authority to the Developer, the Developer agrees to timely complete all construction obligations set forth in Section 4.3(A). In the event the Developer fails to substantially complete its obligations by the times and dates specified in the Development of Project and Development Timeline and Obligations contained in Sections 4.2(A) and 4.3(A) herein, the Developer shall pay to the Authority a sum calculated on the basis of \$2.50 per square foot for the 21 acre tract of real property described as Phase 1, including any and all real property improvements and fixtures. All Exclusive Rights to Purchase for any remaining property shall be terminated. Notwithstanding the foregoing or anything to the contrary contained herein, in the event Developer has in good faith commenced to construct and is proceeding with all due diligence to complete Phase I of the project then the Authority agrees to extend the period of time within which the provisions of this section become operative for an additional twelve (12) months. Failure of the Developer to construct or cause to construct this phase of the project shall require the Developer to pay to the Authority the total sum of \$2,286,900.00 within 30 days of demand by the Authority.

B. Purchase of 11 Acre Tract (Phase 2): Failure of the Developer to construct or cause to construct this phase of the project shall require the Developer to pay to the Authority the sum of \$1,197,900.00 within 30 days of demand by the Authority.

C. 5.9 Acre Tract (Phase 3). Failure of the Developer to construct or cause to construct this phase of the project shall require the Developer to pay to Authority the sum of \$642,510.00 within 30 days of demand by the Authority.

D. Performance and Termination. In the event the Developer fails to meet the Developer's obligations outlined in Sections 4.2 and 4.3 herein, the Authority may terminate this Economic Development Agreement by giving written notice to the parties and addresses listed in paragraph 6.11. Upon termination, the Developer shall have the repurchase rights set forth above. The parties acknowledge that time is of the essence for purposes of this Agreement.

E. By execution of this Agreement, the Developer certifies that it is a company in good standing under the laws of the State in which it was formed or organized, and has provided the Authority sufficient evidence of such. In addition, the Developer certifies that it owes no delinquent taxes to any taxing unit of this City or County at the time of execution of this Agreement.

F. Developer shall provide the City and the Authority with a memorandum with respect to each lease executed in connection with the Project. Said memorandum shall at a minimum identify the tenant and the term of the lease. Developer shall immediately notify the City and the Authority should any of the retail and commercial entities proposed withdraw or cease being part of the development during the pendency of the Project, and the Developer shall insure that the entity will be replaced with a reasonably similar business to meet the stated intent, needs, and goals of the Project.

G. The Developer will furnish to the Authority and City timely updates throughout the term of the Agreement or as requested by the Authority or City, regarding the general project status, market and general summary financial updates regarding the Developer related to the Project contained herein.

H. The parties' or their representatives will meet as needed to implement the terms of this Agreement and will make a good faith attempt to informally resolve any disputes or issues related to this venture.

4.8 OTHER ACTIONS. The Developer agrees to take such other commercially reasonable actions as may be reasonably necessary or appropriate, and to the extent it is able, to support the implementation of the Project including, by way of example, furnishing information reasonably requested by the Authority or the City for reporting purposes under the Local Development Act, preparation and execution of supporting Project documentation, cooperation in construction activities, preparation of Project activities reports, and assistance in other matters that may be of benefit to the Project; provided, that nothing in this Section 4.8 shall obligate or be deemed to obligate the Developer to (i) incur, expend or enter into any cost, expense, liability or obligation, (ii) disclose any confidential information, information of third parties or information to which it does not have ready access, or (iii) undertake any action for which the Authority and/or the City are responsible for undertaking.

## ARTICLE V. CONSTRUCTION PROVISIONS

5.1. Intentionally deleted.

5.2. CONSTRUCTION PLANS AND CONTRACTS. The Authority and the City shall use their respective best efforts to obtain whatever assistance and approvals may be required from third parties in order to facilitate construction of the Project Site Improvements.

5.3. PERFORMANCE AND COMPLETION BONDS. Any and all contracts, or portions thereof, made by the Authority or the City pursuant to this Agreement shall, to the extent applicable, comply with the bonding requirements of the Bidding Act. Furthermore, the Developer shall cause its general contractor(s), but not any subcontractor(s), to obtain a performance bond with respect to the Project Site Improvements.

5.4. INDEMNIFICATION.

A. The Developer shall indemnify and hold harmless the Authority and the City for any liability for breach of the Developer's obligations under this Agreement; provided, that the Developer shall have no obligation to indemnify the Authority or the City for any such injury or damages to the extent arising out of or from (i) any breach of this Agreement or any other Transaction Agreement by the City or the Authority, (ii) any matter for which the Authority or the City are responsible or liable pursuant to any other contract with the Developer, (iii) any matter for which any other Person or entity is liable to the Authority or the City, or (iv) any matter caused by willful misconduct or gross negligence of the City or the Authority. The Developer shall have the right to control the defense of any third-party claims for which the Authority or the City seek indemnification hereunder. The Authority or the City shall promptly notify the Developer in writing

of any claim subject to this, but in any event shall provide such notification within thirty (30) days of receipt of any such claim in writing.

B. To the fullest extent allowable by law, the Authority and the City shall be liable for and shall indemnify and hold harmless the Developer for (i) any liability to third parties for personal injury or property damage for construction and operation activities of the Authority or the City arising out of or related to this Agreement, the subject matter thereof and/or (ii) breach of the Authority's or the City's obligations stated herein or in any other Transaction Agreement, to the extent not caused by willful misconduct or gross negligence of the Developer, provided that, said indemnification, if lawful, is not intended to be a waiver of tort claims liability limits, and any claims against the Authority and the City shall be limited to the amounts specified in the Governmental Tort Claims Act, Title 51, Oklahoma Statutes, Section 151, *et seq.*, as amended.

5.5. **CHANGE IN SITE PLAN OR DESIGN DOCUMENTS.** If the Developer desires to make any material change to the Site Plan or Design Documents, the Developer shall submit the proposed change to the City for approval. The City may approve the proposed change and notify the Developer in writing of its approval. Such change to the Site Plan or Design Documents shall, in any event, be deemed approved by the City unless rejection thereof, in whole or in part, by written notice thereof by the City to the Developer, setting forth in detail the reasons therefor, made within fifteen (15) days after the date of their receipt of such proposed change. The City shall have full but reasonable discretion to approve, disapprove, or request modification of the Site Plan or the Design Documents to assure desired standards of quality and appearance.

5.6. **CERTIFICATE OF COMPLETION.** Promptly after each building site within the Project Site is completed and upon request of the Developer, the City shall furnish the Developer with an appropriate instrument certifying satisfactory completion of such building site.

(a) City to Withhold Certificates of Occupancy. It is the intent of the parties that the Project Architect's inspections serve as the primary evidence of satisfactory completion of each building site within the Project Site. However, the City building inspection department shall retain its statutory obligation of building inspections required during the construction process.

(b) Effect of Certificates of Completion. The Certificates of Completion issued by the City shall serve as a conclusive determination of satisfaction and termination of those agreements, covenants, and conditions made by the Developer to complete the Development in accordance with this Agreement. The Certificates of Completion may be filed among the public land records in the Office of the Tulsa County Clerk.

(c) Form of Certificates. The certification provided for in this Section shall be delivered to the Developer in a suitable form that will enable it to be recorded in the proper office for the recording of deeds and other legal instruments pertaining to the Property.

(d) City's Failure to Provide Certificates of Completion. If the City declines or fails to provide Certificates of Completion in accordance with the provisions of this Section, the City shall, no later than three (3) days after receiving a written request from the Developer, provide a written explanation of the cause for the denial of a Certificate of Completion.

The explanation shall detail the specific failure(s) or default(s) of the Developer to complete the Development in accordance with building code and the necessary acts to be performed by the Developer in order to obtain a Certificate of Completion. If the City fails to respond Developer's written request within five (5) days after receipt of such written request, then the City shall be deemed to have issued the necessary Certificates of Completion.

## **ARTICLE VI. GENERAL PROVISIONS**

6.1. **NONDISCRIMINATION.** The Developer agrees, in its capacity as the developer of the Project Site, not to discriminate on the basis of race, color, religion, gender, or national origin in the use or occupancy of the any of the buildings and facilities constructed on the Project Site, in violation of any applicable law or regulation.

### **6.2. MUTUAL RIGHTS OF ACCESS.**

A. Authority and City Access to Project Site. Prior to the delivery of premises to businesses that will occupy and operate from the Project, the Developer shall permit representatives of Authority and the City and the Authority and the City shall permit representatives of the Developer to have reasonable access to the Project Site, at all reasonable times, for the purposes of this Agreement, including, but not limited to, construction by the Authority and the City, as the case may be, and inspection of all work being performed in connection with construction. No such access shall interfere with the use or occupancy of the businesses occupying and operating from the Project.

B. No Charge. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Section.

6.3. **CONFLICT OF INTEREST; AUTHORITY'S AND CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.** No official or employee of the Authority or the City shall have any personal interest in this Agreement, nor shall the City or the Authority permit any such person voluntarily to acquire any ownership interest, direct or indirect, in the legal entities which are parties to this Agreement. No official or employee of the Authority or the City shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the Authority or the City of this Agreement or for any amount which becomes due to the Developer or its successors under this Agreement.

6.4. **APPLICABLE LAW, SEVERABILITY AND ENTIRE AGREEMENT.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements made and fully performed in Oklahoma. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or surviving portion(s) of such provision, and each other provision of this Agreement, shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the Authority, the City, and the Developer with respect to the subject matters of this Agreement, there being no

terms, conditions, warranties or representations with respect to the subject matter other than as contained herein.

6.5. THIRD PARTIES. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights express or implied, upon any other person.

6.6. NO PARTNERSHIP OR JOINT VENTURE CREATED. This Agreement specifically does not create any partnership or joint venture between or among the Authority, the City and the Developer, or render any of them liable for any of the debts or obligations of any or the others.

6.7. TIME IS OF THE ESSENCE. The Authority, the City and the Developer understand and agree that time is of the essence with regard to all the terms and provisions of this Agreement.

6.8. REPRESENTATIONS AND WARRANTIES; FORMALITIES AND AUTHORITY. Each party represents and warrants to the other parties that, as of the date hereof and at all times during the term of this Agreement:

A. Such party validly exists and has all necessary power and authority to execute, deliver and perform its obligations under this Agreement to which it is party and to carry out the transactions contemplated hereby and thereby.

B. The execution and delivery by such party of this Agreement to which it is party, the performance by such party of the Agreement to which it is party and the performance by such party of the Agreement to which it is party, have been duly authorized by all necessary proceedings with respect to such party, and no other proceedings with respect to such party are necessary to authorize this Agreement to which such party is party and the transactions contemplated hereby and thereby.

C. This Agreement to which such party is party has been duly executed and delivered by such party and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitutes a valid and binding obligation of such party, enforceable against such party in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

D. The performance by such party of its obligations under this Agreement and the transactions contemplated thereby do not: (i) violate, conflict with or constitute a default (with or without the giving of notice, lapse of time or both) under, accelerate any obligations under, terminate or give rise to a right of termination of, any contract or agreement to which such party is a party or by which any property or asset of such party is bound; (ii) violate, conflict with or constitute a default (with or without the giving of notice, lapse of time or both) under the constitutive documents of such party; (iii) cause the creation of any lien or encumbrance upon any of the properties or assets of such party; (iv) violate, conflict with or constitute a default (with or without the giving of notice, lapse of time or both) under any provision of applicable law with respect to such party; (v) require such party to make or provide any notice to, declaration or filing with, or obtain any consent, authorization, permit or approval from, any governmental entity or

other person or legal entity or (vi) give any governmental entity the right to revoke, withdraw, suspend, cancel, terminate or modify any permit, license or approval held by such party.

E. There is no proceeding, claim or litigation pending or, to the knowledge of such party, threatened, against such party with respect to the transactions contemplated by this Agreement.

F. Intentionally deleted.

6.9. NOTICES AND DEMANDS. Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

A. In the Case of the Developer:

Walman Brown Aspen Development LLC  
Attn: Steve Walman, Managing Member  
7060 South Yale, Suite 900 Avenue  
Tulsa, OK 74136

Bradley K. Beasley  
Boesche McDermott LLP  
110 W. 7th Street, Suite 900  
Tulsa, Oklahoma 74119  
[bbeasley@bme-law.com](mailto:bbeasley@bme-law.com)

B. In the case of Authority:

Broken Arrow Economic Development Authority  
Attn: City Manager  
P. O. Box 610  
220 South First  
Broken Arrow, OK 74012

C. In the case of the City:

City of Broken Arrow, Oklahoma  
Attn: City Manager  
P. O. Box 610  
220 South First  
Broken Arrow, OK 74012

D. In the case of City and Authority additionally to:

City of Broken Arrow  
Attn: Trevor Dennis, City Attorney  
P.O. Box 610

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the others as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

6.10. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the Authority, the City and the Developer and their respective legal representatives, successors and assigns.

6.11. **MODIFICATIONS.** This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the party or parties against whom enforcement of any waiver, change, modification or discharge is sought.

6.12. **UNAVOIDABLE DELAYS.** The time for performance of any term, covenant, condition, or provision of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" means beyond the reasonable control of the party obligated to perform the applicable term, covenant, condition or provision under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to acts of God, any other party to this Agreement, strikes, labor disputes, governmental restrictions, delays in any governmental permitting process that are outside of the Developer's control, court injunctions, riot, civil commotion, acts of public enemy and casualty, but shall not include delays attributable to financial difficulties of such party unless caused by the act or omission of another party hereto. In the event of an unavoidable delay the affected party shall promptly notify the other parties in writing and use its reasonable efforts to mitigate and resolve the unavoidable delay as promptly as possible (keeping the other parties informed of the efforts being made to mitigate and resolve the unavoidable delay).

6.13. **FURTHER ASSURANCES.** Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.

6.14. **ATTORNEYS' FEES.** In the event of any controversy, claim or dispute between the Authority, the City and the Developer affecting or relating to the subject matter or performance of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable expenses, including reasonable attorneys' fees.

6.15. **COUNTERPARTS; HEADINGS.**

A. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.



B. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

6.19. ASSIGNMENT. This Agreement and the rights and obligations of the Developer may be assigned or transferred upon written approval of the other parties hereto, which approval shall not be unreasonably withheld, conditioned or delayed. This Agreement will apply to, be binding in all respects upon and inure to the benefit of the permitted assigns of the parties. Developer may assign its right in and to this Agreement to Developer's primary lender for collateral purposes.

6.16 NO USE OF NAMES. Neither the entry into or consummation of this Agreement, or the transactions contemplated hereby, shall give the City or the Authority, any right to use any name, trademark, servicemark, logo or other intellectual property of the Developer or its affiliates.

6.17 EXHIBITS AND SCHEDULES. The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:

- A. Exhibit A – Project site legal description;
- B. Exhibit B – Project site map;
- C. Exhibit C – Project site development plan;
- D. Exhibit D – Phase 1 land legal description 21.0 acres;
- E. Exhibit E – Phase 2 legal description 11.0 acres;
- F. Exhibit F – Phase 3 legal description 5.9 acres;
- G. Exhibit G – Project Infrastructure Budget

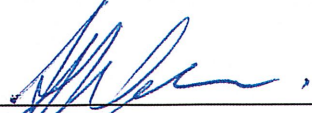
6.18. CONSTRUCTION OF THIS AGREEMENT. The Authority, the City and the Developer acknowledge that they and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

6.19. SURVIVAL. The representations, warranties, covenants and undertakings of the parties set forth in this Agreement shall survive the execution and delivery of this Agreement, and continue in full force until this Agreement has been fully performed in accordance with its terms.

6.20 JURISDICTION AND VENUE. This Agreement shall be interpreted under the laws of the State of Oklahoma. That any lawsuit or challenge to this Agreement shall be commenced and maintained in the District Court of Tulsa County, State of Oklahoma.

IN WITNESS WHEREOF, the Developer, the City, and the Authority have caused this Agreement to be duly executed and delivered as of the date first above written.

**Walman Brown Aspen Development LLC**

By:   
Name: Steve Walman  
Title: Managing Member

STATE OF OKLAHOMA       )  
  )SS  
COUNTY OF TULSA       )

BEFORE ME, the undersigned, a Notary Public in and for said State on the 14 day of June, 2024, personally appeared Steve Walman, to me known to be a Managing Member of Walman Brown Aspen Development LLC an Oklahoma limited liability company, on behalf of said company.

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

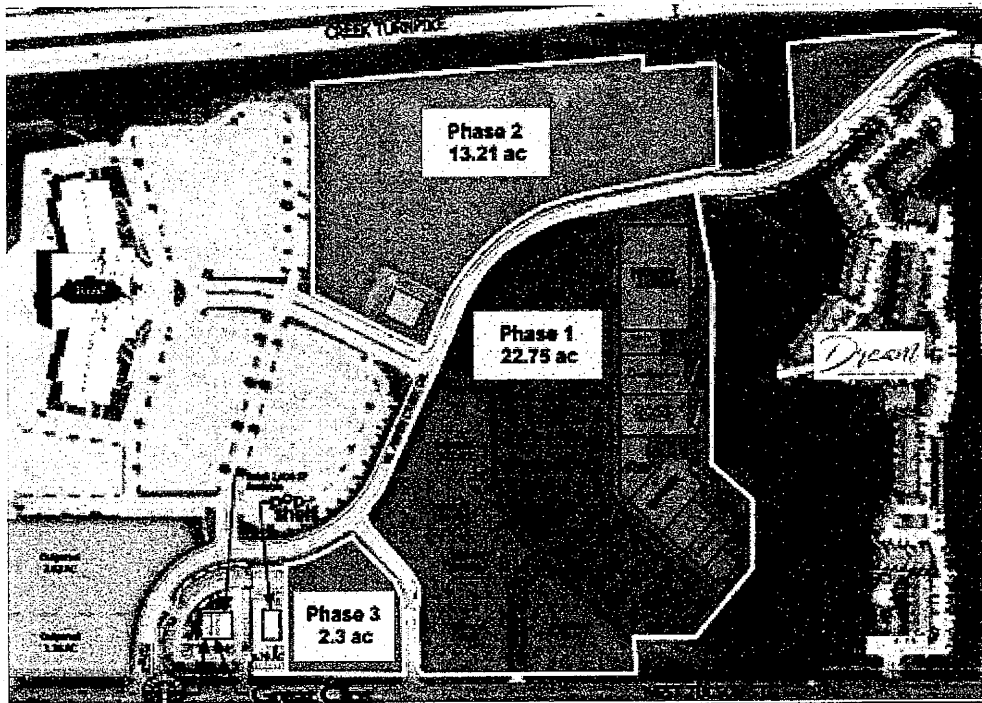
(SEAL)

  
Notary Public

My commission expires \_\_\_\_\_.  
My commission number \_\_\_\_\_.



EXHIBIT A  
MAP OF PROJECT SITE



**EXHIBIT B**  
**PROJECT SITE LEGAL DESCRIPTION**

To be inserted

# EXHIBIT C

## PRELIMINARY SITE DEVELOPMENT PLAN\*

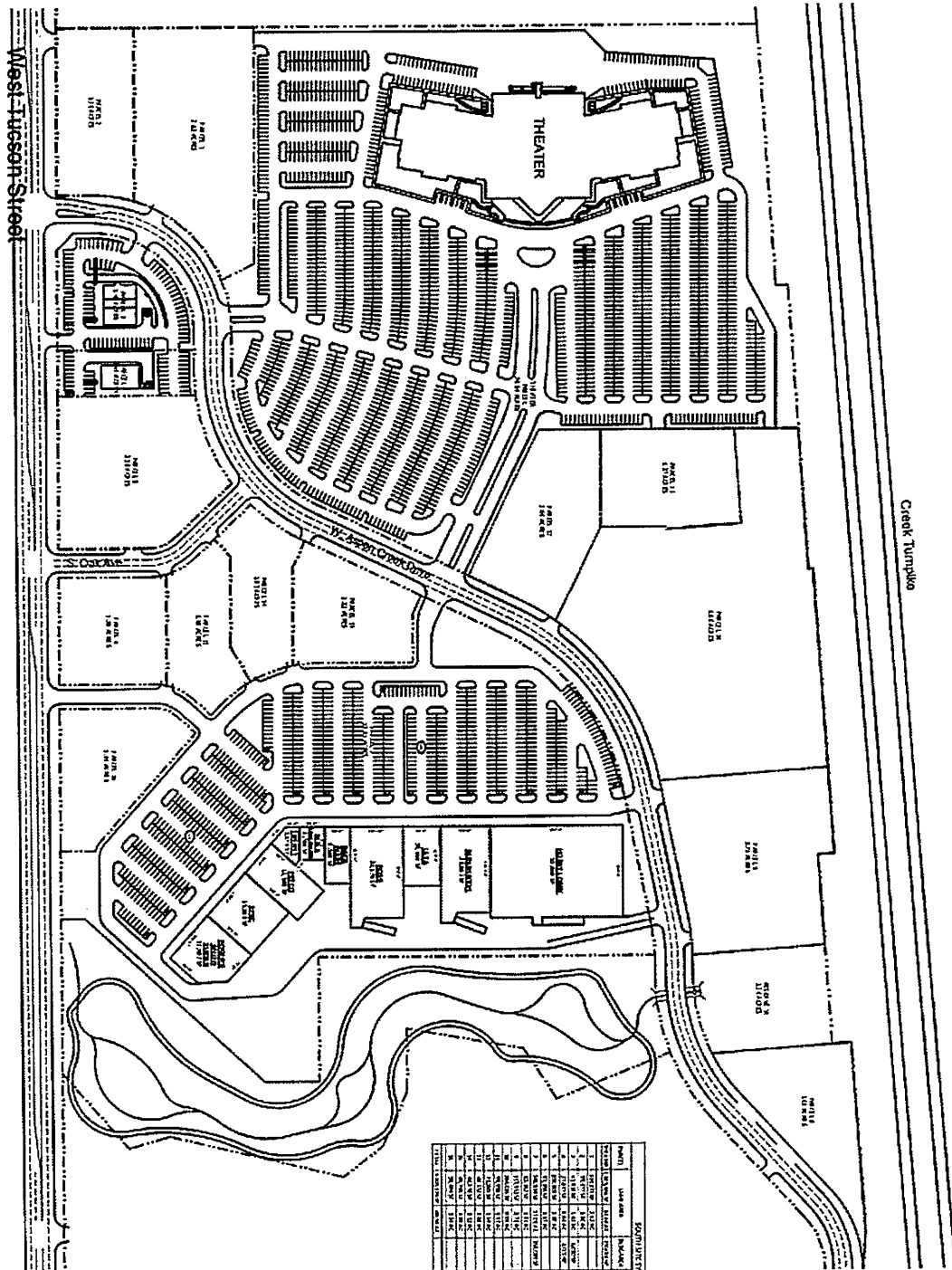


EXHIBIT D  
PHASE 1 LEGAL DESCRIPTION

To be inserted

EXHIBIT E  
PHASE 2 LEGAL DESCRIPTION

To be inserted

EXHIBIT F  
PHASE 3 LEGAL DESCRIPTION

To be inserted



# EXHIBIT G

## Project Infrastructure Budget

PRELIMINARY BUDGETING  
SHOPS AT ASPEN CREEK

5/15/2024 4:18 PM

	unit	unit price	Total
Reimbursables			
01-140 Permit	ls	1.00	ls
01-150 Tap Fees	ls	1.00	ls
ARE			
01-130 Architectural	ls	1.00	ls
01-120 Engineering	ls	1.00	ls
01-190 Testing	ls	1.00	ls
01-110 Surveying	ls	1.00	ls
01-215 SUPERVISION	6.00 mo	12,000.00	mo
Job Site Office	ls		
01-305 Office Rental	6.00 mo	2,500.00	mo
01-305 Delivery / Pick Up / Trailer	4.00 ea	750.00	ea
01-310 Supplies	6.00 mo	400.00	mo
01-330 Project Sign	2.00 ea	350.00	ea
01-540 Storage Containers	6.00 mo	900.00	mo
01-325 Temporary Toilets	6.00 mo	450.00	mo
01-480 Fed - Ex Mail	6.00 mo	100.00	mo
Expenses	ls		
01-340 Travel Expense Super	6.00 mo	3,500.00	mo
01-330 Travel Expense PM	12.00 TRIPS	800.00	TRIPS
01-230 Gas	18.00 wk	100.00	wk
Communication	ls		
01-250 Mobile Phone	6.00 MO	100.00	MO
01-320 Project Phone	6.00 mo	200.00	mo
Cleanup	ls		
01-350 Dumpsters	12.00 ea	650.00	ea
01-270 Daily Clean Up	15.00 day	125.00	day
01-280 Final Clean Up	5,000.00 LS	1.00	LS
Utilities	ls		
01-335 Electric Temporary	6.00 mo	200.00	mo
01-335 Electric Tenant Temporary	mo	800.00	mo
01-340 Water	6.00 mo	75.00	mo
Safety	ls		
01-375 OSHA Visits and Reports	3.00 ea	500.00	ea
01-375 First Aid Kit	2.00 ea	200.00	ea
01-365 Barricades	5.00 ls	500.00	ls
01-360 Feeding	3,500.00 lf	3.50	lf
01-360 Security	hrs	35.00	hrs
01-400 Documentation	ls		
Blueprint Copy	1,500.00 ls	1.00	ls
Start Up Binder	1.00 ea	250.00	ea
Web-Cam	ea	4,000.00	ea
Close Out Docs	1.00 ls	500.00	ls
Equipment	6.00 ls	2,750.00	ls
01-450	ls		
01-220-000			
Engineering and Survey	50,000.00 ls	1.00	ls
Clear & Grub Site	14,270.00 CY	5.10	CY
Occult Place & Cut	57,026.00 CY	4.90	CY
Scalphy & Compact Pad & Paving	85,555.00 SY	0.80	SY
Fine Grade Paving	66,667.00 SY	0.90	SY
Detention Excavation		0.55	cf
Building Pad - assume 3'	27,725.00 CY	22.00	CY
Granular Fill		3.50	sf
Stabilization	66,667.00 SY	5.00	SY
Site Final Grade / Curb Backfill	33,595.00 lf	1.00	lf
Spills Removal		8.00	CY
Erosion Control	30,000.00 ls	1.00	ls
Mobilization	1.00 ls	10,000.00	ls
Saw Cutting		18.00	lf
Striping & Signage	36,500.00 ls	1.00	ls
Powerwash	15,000.00 ls	1.00	ls
01-400-000			
48" Pipe	575.00 lf	125.00	lf
36" Pipe	3,670.00 lf	90.00	lf
24" Pipe	342.00 lf	58.00	lf

US Builders

1 of 2

Confidential

Inlets	29.00	ea	3,500.00	ea	101,500.00
Wrecker	718,640.00	lf	1.00	lf	718,640.00
Sanitary	181,498.00	lf	1.00	lf	181,498.00
Fire Line		lf	1.00	lf	INCLUDED
Trench Safety	12,800.00	ea	1.00	ea	12,800.00
Vaults		ea	16,000.00	ea	EXCLUDED
Fire Hydrant		ea	750.00	ea	INCLUDED
Natural Gas Distribution Allowance	30,000.00	ea	1.00	ea	30,000.00
Backflows & Cages	10.00	lf	3,500.00	lf	35,000.00
Retaining Wall Allowance	13,789.00	sf	24.00	sf	330,936.00
Fencing / Dumpster Enclosure		ea	3,500.00	ea	EXCLUDED
Traffic Control	15,000.00	lf	1.00	lf	15,000.00
Temp Power to Trailer & Site	50,000.00	lf	1.00	lf	50,000.00
Landscape	225,000.00	lf	1.00	lf	225,000.00
Irrigation	112,000.00	lf	1.00	lf	112,000.00
Sidewalks (Site)	19,590.00	sf	5.00	sf	97,950.00
Curbs	8,774.00	lf	7.00	lf	61,418.00
Light Duty Paving 5"	129,160.00	sf	4.75	sf	613,510.00
Medium Duty Paving 6"	376,672.00	sf	4.90	sf	1,845,692.80
Heavy Duty Paving 7"	42,945.00	sf	5.15	sf	221,166.75
Light Pole Bases	25.00	ea	600.00	ea	15,000.00
Tie Into Existing Paving	425.00	lf	9.00	lf	3,825.00
Retaining Walls	320.00	cy	350.00	cy	112,000.00
Bollards	25.00	ea	1,200.00	ea	30,000.00
Paving Joints	548,777.00	SF	0.20	SF	109,755.40
Site Lighting	25.00	ea	3,500.00	ea	87,500.00
Total General Conditions					187,725.00
Total Project Costs					7,031,231.66
Sub-Total					7,218,956.66
Builders Risk					
01-690 Central Expense	7.00%				505,326.97
01-692 Fee	3.00%				231,728.51
01-385 Sales Tax	8.25%				ON MATERIALS
01-620 Bonds					
Total Project					7,956,012.12
Square Foot Cost	774,876.00				10.27

CLARIFICATIONS:

1. WE EXCLUDE THE FOLLOWING ITEMS;

METERS  
TAPS  
ANY BORING  
ANY UTILITY FEES

2. WE ALSO HAVE MADE THE ASSUMPTION - FOR THE PURPOSE OF THIS ESTIMATE THAT THIS IS A BALANCED SITE.

## **EXHIBIT B: SCOPE OF SERVICES – SURVEYING**

---

Project Name: Shops at Aspen Creek  
Location: Broken Arrow, OK  
Wallace Project No.: 2440241.2

Our proposed surveying fees are based on the following scope of services. Should additional scope items be desired, please notify us to allow for modifications to our proposed fees.

### **TOPOGRAPHIC SURVEY:**

- Topography with one-foot interval contours
- Existing buildings and site structures
- Building finished floor elevations at accessible doorways
- Utilities (water, storm sewer, sanitary sewer, gas, electric and communication) as marked by Oklahoma One-call (OKIE) and features/appurtenances located at ground level
- Parking lots and access drives
- Fences
- Trees having a diameter equal to or greater than 12"
  - Tree "dripline" to be shown for heavily wooded areas
- Benchmarks
- Spot Elevations
- All drainage features (above and below ground, where applicable)
- Provide survey control file (Autocad and Digital Terrain Model, etc.)
- Horizontal datum determined in the Oklahoma State Plane Coordinate System (NAD83)
- Vertical datum determined in the North American Vertical Datum of 1988 System (NAVD88)

### **BOUNDARY SURVEY:**

- Locate or establish (set) property corners
- Signed boundary drawing showing property dimensions and monumentation

### **ALTA/NSPS SURVEY:**

- Survey in accordance with latest version of ALTA/NSPS Land Title Survey Standards
- Table A, "Optional Survey Responsibilities and Specifications," as specified by the client
  - Table A Items 1-4, 7(a), 8, 9 and 11 to be included if not specified by client

## EXHIBIT C: PROPOSED FEES

Project Name: The Shops at Aspen Creek  
Location: Broken Arrow, Oklahoma  
Wallace Project No.: 2440241

We propose to provide engineering services on a fixed fee basis:

PUD / Rezoning	\$ 15,000
Subdivision Plat	\$ 12,000
Schematic Design	\$ 33,450
Design Development	\$ 66,900
Construction Documents	\$ 89,200
Detailed Site Plan	\$ 5,000
Landscape Design	\$ 15,000
Bidding / Permitting	\$ 11,150
Construction Administration	\$ 17,300
<b>TOTAL - CIVIL</b>	<b>\$ 265,000</b>

Our current hourly rates are:

Principal	\$230	Technical Designer II	\$160
Associate	\$210	Technical Designer I	\$150
Professional Engineer II	\$175	BIM Technician III	\$145
Professional Engineer I	\$160	BIM Technician II	\$135
Intern Engineer	\$150	BIM Technician I	\$125
GIS Specialist	\$150	Engineering Coordinator	\$115
Director, Landscape Architecture	\$210	Landscape Architect II	\$160
Land Planner II	\$175	Landscape Architect I	\$130
Land Planner I	\$160	Intern Landscape Architect	\$110
Professional Land Surveyor II	\$175	Survey Technician II	\$155
Professional Land Surveyor I	\$160	Survey Technician I	\$120
Intern Land Surveyor	\$150	Instrument Person	\$100
Survey Party Chief	\$145		
Information Technologist	\$160	Administrative	\$110

### REIMBURSABLE EXPENSES:

Expenses such as travel and lodging, reproduction, plotting, express delivery and shipping are considered reimbursable expenses and will be billed at 1.0 times cost.

Expenses such as subconsultant testing services, geotechnical engineering services or other specialty consulting services will be billed at 1.10 times cost.

Payment of any fees required by governmental or other agencies will be billed at 1.0 times cost.

### ADDITIONAL SERVICES:

Services such as revisions, design for unforeseen conditions and items not included the Scope of Services presented above will be considered additional services. Please refer to the Terms and Conditions for more