

CITY COMMISSION MEETING

July 21, 2021 at 7:00 PM

CITY COMMISSION / MUNICIPAL COURT ROOM
518 MECHANIC, EMPORIA, KS

Agenda

Meeting Items

1. Members Present:
2. City Commission Reports and Comments
3. Consent Agenda
4. Public Comment
5. Consider Approval of Ordinance & Request to Rezone a Parcel of land located at 1501 E. Logan Ave., 1503 E. Logan Ave., and 1201 S. Weaver St. from Agricultural to Light Industrial Zoning.
6. Consider Approval of Agreement for the Installation of Electric Vehicle Charging Stations in City Parking Lot.
7. Consider Awarding Bid for the KDOT CCIP Resurfacing K99 Highway & US50 Highway City Project PV2101 & KDOT Project No. 56 U-2389-01.
8. Consider Approval of Agreement with the Humane Society of the Flint Hills, Inc. for Operation of the Emporia Animal Shelter.
9. Consider Approval of Animal Shelter Lease Agreement with the Humane Society of the Flint Hills, Inc.
10. Consider for Approval Development Agreement with Flint Hills Crossing.
11. Approve Ordinance for Common Consumption Area.
12. Report from City Manager on Activities
13. Executive Session



**If you need accommodations due to a disability to participate in this event, meeting, or activity, or alternative format of written materials contact City of Emporia Jeff Lynch, ADA Coordinator at least 48 hours before the event at 620-343-4285 or jlynch@emporia-kansas.gov*

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 2

SUBJECT: Mayor and City Commissioners Reports and Comments

RECOMMENDATION:

BACKGROUND SUMMARY

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

The following is general information for the month of June for the community:

1) Monthly Local Retail Sales Tax Receipts Update

	2020	2021	Increase of \$82,439.94 for the month, and Overall increase of 10.14% from year 2020
	\$393,788.13	\$476,228.07	
YTD	\$2,418,125.99	\$ 2,663,268.14	

2) City Share from County Tax

	2020	2021	Increase of \$35,122.58 for the month, and Overall increase of 8.42% from year 2020
	\$203,615.11	\$238,737.69	
YTD	\$1,240,499.18	\$ 1,344,923.57	

3) **Building Permits issued from 6/1/2021 to 6/30/2021 for new construction, remodeling / repairs and demolition.**

Total number of building permits issued through Code Services:	83
Total of valuations associated with those building permits:	\$ 1,666,334.00
Total number of dollars collected for Building Permit Fees:	\$ 11,683.50

Construct - single family dwellings	1
Demo - single family dwellings	0

Flint Hills Mall CID for June	\$ 18,417.40
Year to Date Total	\$ 101,955.59

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 3

SUBJECT:

Consent agenda:

The items listed on the Consent Agenda are considered by the Governing Body to be routine business items.

Approval of the items may be made by a single motion, second and majority vote with no separate discussion of any item listed. Should a member of the Governing Body desire to discuss any item, at his/her request, it will be removed from the Consent Agenda and considered separately.

- a. Consider minutes of the Meeting held on July 7, 2021.
- b. Consider ratification of Payroll Ordinance for the period ending on July 2, 2021.
- c. Consider Approval of June Budget.
- d. Consider Set Date for Notice of Hearing to Exceed Revenue Neutral Rate and 2022 Budget Hearing.
- e. Consider Approval of 2020 Annual Report.
- f. Consider the Approval of An Agreement With SOS, Inc. For A Parking Lot Easement Regarding A Parking Lot Easement At 1420 C of E Drive.

RECOMMENDATION:

- a. Approve Minutes.
- b. Approve Payroll.
- c. Approve Budget.
- d. Approve Date.
- e. Approve Report.
- f. Approve Agreement.

BACKGROUND SUMMARY:

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 3d

SUBJECT: Request to Set Date for Notice of Hearing to Exceed Revenue Neutral Rate and 2022 Budget Hearing.

RECOMMENDATION: Approve Notice of Hearing to Exceed Revenue Neutral Rate and 2022 Budget Hearing Date.

BACKGROUND SUMMARY

The Commission needs to set the date for a public hearing to be held to Exceed Revenue Neutral Rate and for the 2022 Budget. City Staff recommends September 1, 2021.

The Notice of Hearing to Exceed Revenue Neutral Rate and 2022 budget hearing will be published in the Emporia Gazette 10 days prior to the budget hearing.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 3e

SUBJECT: Consider Approval of 2020 Annual Report.

RECOMMENDATION: Approve 2020 Annual Report.

BACKGROUND SUMMARY:

An annual audit of the City of Emporia's financial statements has been conducted by the audit firm of Cochran Head Vick & Co P.A. Michael Keenan reviewed the audit report with the Commission during the July 14, 2021, study session. The city received a clean audit report.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 3f

SUBJECT: Consider the approval of an agreement with SOS, Inc. for a parking lot easement regarding a parking lot easement at 1420 C of E Drive.

RECOMMENDATION: Approve the easement.

BACKGROUND SUMMARY:

The City of Emporia and SOS, Inc. have been working on an agreement with SOS, Inc. to jointly utilize a parking lot at 1420 C of E Drive. SOS, Inc. has constructed and paid for this parking lot. In exchange for \$65,000.00, a parking lot easement will be approved that allows park/public patrons to utilize the parking lot. SOS Inc. will own and be responsible for the parking lot and ancillary items. The city will help with snow removal and parking stall line painting similar to other parking lots.

Attached is a copy of the proposed agreement.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

PARKING LOT EASEMENT

This Parking Lot Easement agreement is made this ____ day of _____, 2021 by and between SOS Inc. ("Grantor"), and the City of Emporia, Kansas, a municipal corporation ("Grantee") regarding a parking lot at 1420 C of E Drive.

Grantor is owner of real property at the location commonly referred to as 1420 C of E Drive. Grantor has recently constructed a parking lot in the northwest portion of said property more specifically described in the document attached hereto and made part hereof by reference as Exhibit A hereinafter referred to as "Easement Area".

Grantor, for and in consideration of the sum of \$65,000.00 and other good and valuable consideration, hereby grants to Grantee an easement for purposes of public parking, ingress, and egress over that portion of Grantor's real property described in the document attached hereto and made part hereof by reference as Exhibit A. The Easement Area is visually depicted in the document attached hereto and made part hereof by reference as Exhibit B.

Maintenance. Grantor shall be responsible for routine maintenance of light fixtures and pavement in the Easement Area including the parking lot and access driveway and will repair and maintain light poles and pavement at Grantor's expense, including surface and subsurface repairs and maintenance, and seal coverage.

Signage. Grantee may place parking signs in the Easement Area and shall be responsible for repair and maintenance of such signs.

Painting and Snow Removal. Grantee shall be responsible for line painting and snow and ice removal from the Easement Area as reasonably determined necessary by Grantee.

Grantor Usage. As individual members of the public, Grantor's employees, board members, clients, and other visitors may utilize the Easement Area for parking subject to and consistent with any City public parking restrictions as to location or time that are currently in effect or that may be enacted by the Governing Body of the City of Emporia in the future.

Permanent Easement. The Parking Lot Easement is perpetual unless the Grantee terminates or abandons its use of the easement for the stated purpose.

SOS, Inc.

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF LYON)

This instrument was acknowledged before me on this ____ day of _____, 2021
by _____ of SOS, Inc., who is personally known to me to be the same person who
executed the within instrument of writing and acknowledged the execution of the same.

Notary Public

My appointment expires: _____

City of Emporia

By: _____
Robert F. Gilligan, Mayor

Attest: _____
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF LYON)

BE IT REMEMBERED that on this ____ day of _____, 2021, before me, the
undersigned, a Notary Public in and for the County and State aforesaid, came
_____, Mayor of the City of Emporia, A Kansas Municipal Corporation, and
_____, City Clerk of the City of Emporia, who are personally known to me to be
the same persons who executed the foregoing instrument of writing as such municipal officers, and said
Mayor and City Clerk duly acknowledged the execution of the same to be the act of the City of Emporia,
and affixed the seal of the City.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day
and year last above written.

Notary Public

My appointment expires: _____

EXHIBIT A

Access and Parking Area

A PART OF LOT 29 OF BLOCK 'B' IN "C OF E" CENTER OF EMPORIA SUBDIVISION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS; AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NW CORNER OF LOT 29

THENCE S.00° 44' 58"E. ON THE WEST LINE OF SAID LOT 29 (KANSAS 83 SOUTH GRID BEARINGS) FOR 68.50 FEET;

THENCE N.89° 11'02"E. FOR 46.91 FEET:

THENCE S.72° 46' 24"E. FOR 153.19 FEET.

THENCE S.59° 09' 13"E. FOR 41.54 FEET TO THE WEST LINE OF C OF E DRIVE;

THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 625 FEET WITH A

CHORD THAT BEARS N.35°28'38"E AND ON SAID WEST LINE FOR AN ARC

DISTANCE OF 69.05 FEET TO THE NE CORNER OF SAID LOT 29;

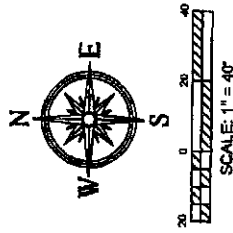
THENCE N.51°09'45"W. ON THE NORTHERLY LINE OF SAID LOT 29 FOR 130.96 FEET;

THENCE S.88°41'27"W. ON THE NORTH LINE OF SAID LOT 29 FOR 167.87 FEET TO THE POINT OF BEGINNING

CONTAINING 0.497 ACRES.

REPORT OF SURVEY

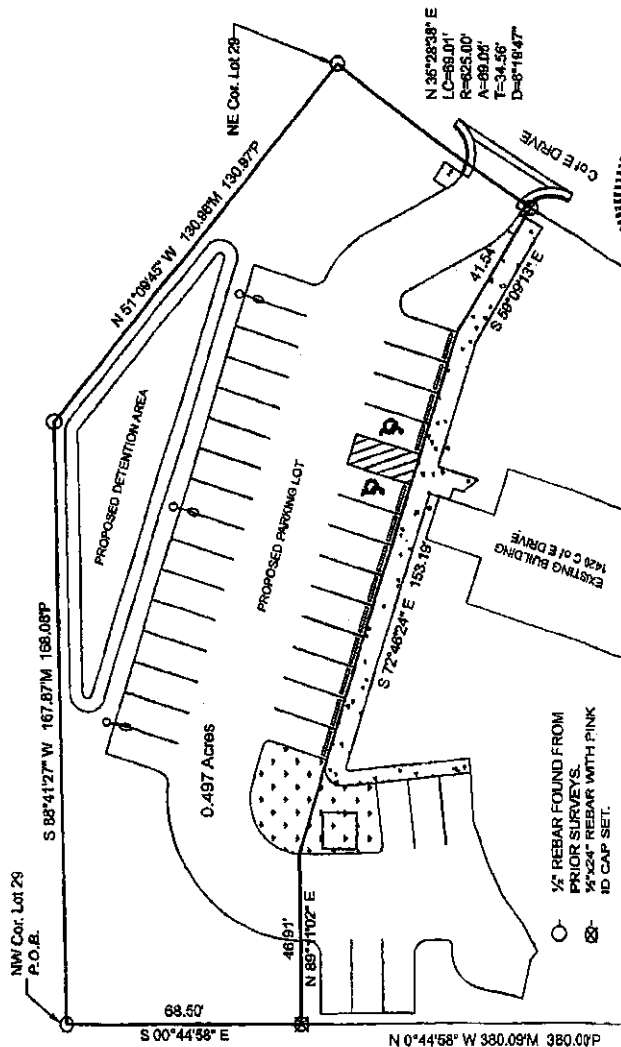
A PART OF LOT 29 IN BLOCK 'B' IN 'C' OF E' CENTER OF EMPORIA SUBDIVISION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS



SOS TO CITY OF EMPORIA: PARKING LOT

A PART OF LOT 29 OF BLOCK 'B' IN 'C' OF E' CENTER OF EMPORIA SUBDIVISION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NW CORNER OF SAID LOT 29
THENCE S.00° 44' 58" E. ON THE WEST LINE OF SAID LOT 29 (KANSAS 83 SOUTH GRID BEARINGS) FOR 68.50 FEET;
THENCE N.89° 11' 02" E. FOR 46.91 FEET;
THENCE S.59° 08' 13" E. FOR 41.54 FEET TO THE WEST LINE OF C OF E DRIVE;
THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 625 FEET WITH A CHORD THAT BEARS N.35° 28' 38" E. AND ON SAID WEST LINE FOR AN ARC DISTANCE OF 69.05 FEET TO THE NE CORNER OF SAID LOT 29;
THENCE N.51° 08' 45" W. ON THE NORTHERLY LINE OF SAID LOT 29 FOR 130.96 FEET;
THENCE S.89° 41' 27" W. ON THE NORTH LINE OF SAID LOT 29 FOR 167.87 FEET TO THE POINT OF BEGINNING.
CONTAINING 0.497 ACRES.



Certification:

State of Kansas
(ss)
County of Lyon

This is to certify and acknowledge that I, Steven S. Broemer, a licensed Land Surveyor in said County and State, did prepare this report under my direct supervision. Further, that this report and survey does not conflict or show, with the client's knowledge, to ownership, easements and restrictions of record, unless otherwise shown or stated. Further, that certain corners may have been obliterated but not physically misrepresented as shown.

NOTE: This document is not original unless the seal, signature, and date are blue ink.

CLIENT: MITCHELL-MARKOWITZ

115 W. 5th, SUITE 1, EMPORIA, KS 66801 (820)549-7451, FAX (820)342-8722	PROJECT #	FIELD DATE	DRAWN BY	SHEET(S)
	2023-02	06/27/2020	SSB, BH	1 OF 1

Reviewed by the County Surveyor this _____ day of _____, 2021.
This survey has been reviewed for filing pursuant to K.S.A. 28-3205 and K.S.A. 28-3011 for content only and is in compliance with these provisions. No other warranties are intended or implied.

County Surveyor of Lyon County, Kansas

EXHIBIT B

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 4

SUBJECT: Public Comment

RECOMMENDATION:

BACKGROUND SUMMARY:

Citizen Appearance Procedures

Presentations by individuals during "Citizen Appearance" portion of the Commission agenda shall be limited two minutes each. No personal attacks, comments or opinions shall be expressed or made against or about any member of the Commission, Mayor, City Employee, individual group or corporation.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 5

SUBJECT: Approve Ordinance and Request to Rezone a Parcel of land located at 1501 E. Logan Ave., 1503 E. Logan Ave., and 1201 S. Weaver St. from Agricultural to I-1, Light Industrial Zoning.

BACKGROUND SUMMARY: Emporia Enterprises is seeking the rezoning of a parcel of land. The Planning Commission denied the request at the May 18th, 2021 meeting.

The Planning Commission voted 6-1 to deny the request. There were multiple objections from neighboring property owners and the general public. Neighbors were concerned with noise and pollution that could impact surrounding residential properties if this area was developed.

This property was recently annexed into the City limits.

LEGAL DESCRIPTION:

TRACT IN THE SE 1/4 OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M. DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF THE SAID SE¼, MARKED BY AN IRON PIN, LYING S00°34'18"E A DISTANCE OF 100.00 FEET FROM THE NORTHEAST CORNER OF THE SAID SE¼; THENCE ON A BEARING OF N89°31'12"W ON A LINE PARALLEL WITH AND 100.00 FEET SOUTH OF THE NORTH LINE OF THE SAID SE¼ FOR A DISTANCE OF 781.88 FEET TO AN IRON PIN; THENCE ON A BEARING OF S00°52'42"E FOR A DISTANCE OF 121.66 FEET TO AN IRON PIN; THENCE ON A BEARING OF S89°00'08"W FOR A DISTANCE OF 50.00 FEET TO AN IRON PIN; THENCE ON A BEARING OF S1°20'12"E FOR A DISTANCE OF 121.68 FEET TO AN IRON PIN; THENCE ON A BEARING OF N88°39'47"E FOR A DISTANCE OF 50 FEET TO AN IRON PIN; THENCE ON A BEARING OF N1°20'13"W FOR A DISTANCE OF 27.70 FEET TO AN IRON PIN; THENCE ON A BEARING OF S89°31'12"E FOR A DISTANCE OF 779.98 FEET TO AN IRON PIN ON THE SAID EAST LINE OF THE SE ¼; THENCE ON A BEARING OF N00°34'18"W ALONG THE SAID EAST LINE FOR A DISTANCE OF 215.31 FEET TO THE POINT OF BEGINNING;

ALSO:

A TRACT OF LAND IN THE SE ¼ OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM THE SOUTHEAST CORNER OF SAID SECTION 23, THENCE NORTH ALONG THE EAST LINE OF SAID SECTION ON AN ASSUMED BEARING OF N00°34'18"W FOR A DISTANCE OF 2,568.66 FEET; THENCE WESTERLY ON AN ASSUMED BEARING OF S89°14'04"W FOR A DISTANCE OF 781.88 FEET TO THE POINT OF BEGINNING; THENCE SOUTHERLY ON AN ASSUMED BEARING OF S00°59'52"E FOR A DISTANCE OF 104.66 FEET; THENCE WESTERLY ON A BEARING OF S89°00'08"W FOR A DISTANCE OF 50.00 FEET; THENCE SOUTHERLY ON A BEARING OF S1°20'12"E FOR A DISTANCE OF 121.68 FEET; THENCE EASTERLY ON A BEARING OF N88° 39'47"E FOR A DISTANCE OF 50.00 FEET; THENCE SOUTHERLY ON A BEARING OF S1°20'13"E FOR A DISTANCE OF 100.00 FEET; THENCE SOUTHEASTERLY ON A BEARING OF S39°51'15"E FOR A DISTANCE OF 163.20 FEET; THENCE WESTERLY ON A BEARING OF N88°45'04"W FOR A DISTANCE OF 250.00

ACTION RECORD

Action: _____

Motion: _____

Second: _____

Abstained: _____

Vote: _____

GEITZ _____

GIEFER _____

GILLIGAN _____

SMITH _____

BRINKMAN _____

AGENDA ITEM SUMMARY

FEET; THENCE SOUTHERLY ON A BEARING OF S1°14'56"W FOR A DISTANCE OF 142.75 FEET; THENCE WESTERLY ON A BEARING OF N88°45'04"W FOR A DISTANCE OF 384.62 FEET; THENCE NORTHERLY ON A BEARING OF N00°32'59"W FOR A DISTANCE OF 573.06 FEET; THENCE EASTERLY ON A BEARING OF N89°14'04"E FOR A DISTANCE OF 531.56 FEET TO THE POINT OF BEGINNING.

ALSO:

THE NORTH 87.5 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER IN SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS

ALSO:

THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, EXCEPT THE FOLLOWING DESCRIBED TRACTS:

BEGINNING AT THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS; THENCE SOUTH 260 FEET; THENCE EAST 206 FEET; THENCE NORTH 260 FEET; THENCE WEST 206 FEET TO THE POINT OF BEGINNING.

AND

A TRACT OF LAND IN THE EAST HALF OF THE NORTHEAST QUARTER (E 1/2 NE 1/4) OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, BEING DESCRIBED AS FOLLOWS: BEGINNING AT POINT 260 FEET SOUTH THE NORTHWEST CORNER OF THE EAST HALF OF THE SAID NORTHEAST QUARTER; THENCE SOUTH 50 FEET; THENCE EAST 206 FEET; THENCE NORTH 50 FEET; THENCE WEST 206 FEET TO THE POINT OF BEGINNING.

RECOMMENDATION:

A request of Emporia Enterprises to rezone the subject property to I-1, Light Industrial.

ACTION:

You may 1) approve the recommendation of the Planning Commission by a majority vote; 2) override the Planning Commission's recommendation by a 2/3 majority vote of the entire City Commission; 3) table the request; or 4) return the application to the Planning Commission, giving reasons for doing so.

ATTACHMENTS:

Planning Commission Minutes Excerpt, Map

The Planning Commission met in a regular session on Tuesday, May 18, 2021, with Chairman Thomas presiding. Members Bucklinger, Duncan, Garrett, Dewitt, Weaver, and Colson were present.

1. 2021-14: A request of Emporia Enterprises Inc. to rezone an approximately 90 acre unplatted parcel located at 1501 E. Logan Ave, 1503 E. Logan, and 1201 S. Weaver Street from Agricultural District Zoning to I-1, Light Industrial Zoning District for potential development as authorized under Article 26-1 of the Zoning Regulations.

ACTION RECORD

Action: _____

Motion: _____ Second: _____
Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

Staff confirmed jurisdiction over this application.

No ex parte communication was declared.

LEGAL DESCRIPTION:

TRACT IN THE SE 1/4 OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M.
DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF THE SAID SE 1/4, MARKED BY AN IRON PIN, LYING S00°34'18"E A DISTANCE OF 100.00 FEET FROM THE NORTHEAST CORNER OF THE SAID SE 1/4; THENCE ON A BEARING OF N89°31'12"W ON A LINE PARALLEL WITH AND 100.00 FEET SOUTH OF THE NORTH LINE OF THE SAID SE 1/4 FOR A DISTANCE OF 781.88 FEET TO AN IRON PIN; THENCE ON A BEARING OF S00°52'42"E FOR A DISTANCE OF 121.66 FEET TO AN IRON PIN; THENCE ON A BEARING OF S89°00'08"W FOR A DISTANCE OF 50.00 FEET TO AN IRON PIN; THENCE ON A BEARING OF S1°20'12"E FOR A DISTANCE OF 121.68 FEET TO AN IRON PIN; THENCE ON A BEARING OF N88°39'47"E FOR A DISTANCE OF 50 FEET TO AN IRON PIN; THENCE ON A BEARING OF N1°20'13"W FOR A DISTANCE OF 27.70 FEET TO AN IRON PIN; THENCE ON A BEARING OF S89°31'12"E FOR A DISTANCE OF 779.98 FEET TO AN IRON PIN ON THE SAID EAST LINE OF THE SE 1/4; THENCE ON A BEARING OF N00°34'18"W ALONG THE SAID EAST LINE FOR A DISTANCE OF 215.31 FEET TO THE POINT OF BEGINNING;

ALSO:

A TRACT OF LAND IN THE SE 1/4 OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM THE SOUTHEAST CORNER OF SAID SECTION 23, THENCE NORTH ALONG THE EAST LINE OF SAID SECTION ON AN ASSUMED BEARING OF N00°34'18"W FOR A DISTANCE OF 2,568.66 FEET; THENCE WESTERLY ON AN ASSUMED BEARING OF S89°14'04"W FOR A DISTANCE OF 781.88 FEET TO THE POINT OF BEGINNING; THENCE SOUTHERLY ON AN ASSUMED BEARING OF S00°59'52"E FOR A DISTANCE OF 104.66 FEET; THENCE WESTERLY ON A BEARING OF S89°00'08"W FOR A DISTANCE OF 50.00 FEET; THENCE SOUTHERLY ON A BEARING OF S1°20'12"E FOR A DISTANCE OF 121.68 FEET; THENCE EASTERLY ON A BEARING OF N88°39'47"E FOR A DISTANCE OF 50.00 FEET; THENCE SOUTHERLY ON A BEARING OF S1°20'13"E FOR A DISTANCE OF 100.00 FEET; THENCE SOUTHEASTERLY ON A BEARING OF S39°51'15"E FOR A DISTANCE OF 163.20 FEET; THENCE WESTERLY ON A BEARING OF N88°45'04"W FOR A DISTANCE OF 250.00 FEET; THENCE SOUTHERLY ON A BEARING OF S1°14'56"W FOR A DISTANCE OF 142.75 FEET; THENCE WESTERLY ON A BEARING OF N88°45'04"W FOR A DISTANCE OF 384.62 FEET; THENCE NORTHERLY ON A BEARING OF N00°32'59"W FOR A DISTANCE OF 573.06 FEET; THENCE EASTERLY ON A BEARING OF N89°14'04"E FOR A DISTANCE OF 531.56 FEET TO THE POINT OF BEGINNING.

ALSO:

THE NORTH 87.5 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER IN SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS

ALSO:

THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, EXCEPT THE FOLLOWING DESCRIBED TRACTS:
BEGINNING AT THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS; THENCE SOUTH 260 FEET; THENCE EAST 206 FEET; THENCE NORTH 260 FEET; THENCE WEST 206 FEET TO THE POINT OF BEGINNING.

AND

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

A TRACT OF LAND IN THE EAST HALF OF THE NORTHEAST QUARTER (E1/2 NE1/4) OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, BEING DESCRIBED AS FOLLOWS: BEGINNING AT POINT 260 FEET SOUTH THE NORTHWEST CORNER OF THE EAST HALF OF THE SAID NORTHEAST QUARTER; THENCE SOUTH 50 FEET; THENCE EAST 206 FEET; THENCE NORTH 50 FEET; THENCE WEST 206 FEET TO THE POINT OF BEGINNING.

Mellisa McAllister, Americus. Addressed the board and inquired about the legal notice and application and questioned if the Planning Commission had jurisdiction.

After further discussion, the meeting proceeded, and the public hearing continued.

Staff presented:

Applicant: Emporia Enterprises

Requested Action: Rezoning

Purpose: Change the zoning classification to meet needs

Address: non-addressed

Size: approximately 90 acres

Existing Zoning: Agricultural

Existing Land Use: Undeveloped lot

Physical Characteristics: floodplain, utilities available, easement in place on pending plat.

Comprehensive Plan: The subject area is slated to be Single Family County Housing (R-1/CH) in the ELC Comp Plan Future Land Use Map.

Analysis:

The applicant is requesting to rezone the subject property. This request is to change the zoning district from Agricultural to I-1, Light Industrial. The applicant desires to use this area for future development of industrial uses.

There is a 1% Annual Chance Flood Channel that is on the far south side of this property but will not impact the buildable area on any of the lots. The current floodplain maps will be reduced with the new maps that should be adopted in November 2021.

This location is adjacent to Industrial Park 3 to the north. There is residential property to the east. Some of these properties are within the City limits, some are within the county. West and south of the subject location is zoned for agricultural use.

Applicable Regulation For Rezoning (Section 26-108).

Factors to be Considered in a Rezoning: When a proposed amendment would result in a change of the zoning classification of any specific property, the recommendation of the Planning Commission, accompanied by a copy of the record of the hearing, shall contain statements as to the present classification, the classification under the proposed amendment, the reasons for seeking such reclassification, a summary of the facts presented, and a statement of the factors upon which the recommendation of the Planning Commission is based using the following guidelines:

1. Whether the change in classification would be consistent with the intent and purpose of these regulations;
2. The character and condition of the surrounding neighborhood and its effect on the proposed change;
3. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions;

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

4. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such a change in classification;
5. Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity;
6. The suitability of the applicant's property for the uses to which it has been restricted;
7. The length of time the subject property has remained vacant or undeveloped as zoned; provided, the use of land for agricultural purposes shall be considered as allowing the land to be vacant or undeveloped;
8. Whether adequate sewer and water facilities, and all other needed public services, including transportation, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified;
9. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development;
10. The recommendations of professional staff;
11. Whether the proposed amendment would be in conformance to and further enhance the implementation of the City's Comprehensive Plan;
12. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification; and,
13. Such other factors as may be relevant from the facts and evidence presented in the application.

Recommendations: Staff recommends approval as this location borders Industrial Park 3, and will act as an extension to the existing park. If approved this item will go to the City Commission for final approval.

Attachments: Application, Zoning/Easement maps, FP Map, Zoning Regulations for Section 5 Section 15

Public Hearing:

The Public Hearing portion was opened.

Kent Heermann, 1720 Trowman Way, Emporia, KS, applicant, addressed the Board and presented background and history on the property and Industrial Park 3, explaining how this area has grown over the last 25 years. Mr. Heermann noted that the location would be platted in future and discussed the changes in the proposed zoning regulations and how they might impact future industrial land. Mr. Heermann expressed possible concerns with the proposed flex use of Industrial Park 4, possibly limiting some industrial uses for that area.

Member Weaver inquired about the possibility of protective covenants for this location.

Mr. Heermann noted that this would be decided by a committee, it could be added in the future if needed, and noted that when platted it would be likely called Park 3 South, and could tie into Park 3.

Member Garrett asked about Industrial Flex use.

Mr. Heermann noted that the ELC Comp Plan has a classification for Industrial Flex that allows for a range of commercial uses as well as some industrial uses. Industrial Park 4 is to be changed to Industrial Flex in the regulating plan. Mr. Heermann expressed that similar uses bring assurance to the potential developers of an area.

Member Colson inquired about Industrial Park 4 vacancy and available industrial land.

Mr. Heermann noted that the park has been vacant for 20 years, that this is a very competitive market, and we do a good job. Industrial Park 3 was vacant for 20 years before it was developed.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

Member Colson asked how much inventory of land do you need?

Mr. Heermann said, as long as we continue to grow, and the workforce and housing is available we will continue to need the space. The market is extremely hot right now. We had a boom from 1997 to 2000, and then from 2006-07, and 2010. There are a lot of competition out there, we need to be patient.

Member Colson: What would you say to someone who says we don't need more industrial land.

Mr. Heermann, Emporia needs to grow, and business will come and go, if we are not proactive we are reactive. Our objective is to grow the community.

Member DeWitt inquired about the biodiesel (RDG) plant.

Mr. Heermann noted that this would go back to Emporia Enterprises within 3 years.

Jeanne McKenna, 719 Commercial, Emporia, KS

Spoke in favor of the application and noted industrial uses have provided over a billion towards property taxes and helps the community grow and prosper.

Opposition.

Coleen Hanson, 1022 Weaver, Emporia, KS

Lived in the area since 2003, noted that the berms didn't work. Noted that street improvements would be needed. Mrs. Hanson expressed concerns about property value if the area was developed.

Gerald Hanson, 1022 Weaver, Emporia, KS

Lived near this location since 2003. Lived in Emporia his life and has been retired for 6 years. Mr. Hanson express that he planned to live at this location the rest of his life and did not want the noise or the sight of an industrial plant located here. He was also concerned how a new industrial sight might impact well water in the area.

Janet Haag, 1811 E. Logan, Emporia, KS

Location Fronts Hills Pet Food Plant. Had more questions, than issues. Wanted to inquire about the possibility of residents on Wannamaka to get City water. Mrs. Haag has concerns about overnight truck noise, lighting, and impacts on well water contamination. The unknown uses are the scary for the neighboring property owners. Mrs. Hagg asked when is the time to discuss the future uses?

Mr. Foster explained the role and function of the public hearing.

Mrs. Haag inquired about transitional zoning. Buffering between residential and industrial uses.

Mellissa McAlester, Americus, KS

Inquired about possible adverse effects of the application, as well as the general health and welfare due to possible zoning change. Expressed concern that the ELC Comp Plan Regulating Plan and current zoning regulations were not matching. Question the Metropolitan Planning Area (MPA) jurisdiction.

Mr. Foster, the MPA is not dissolved and this location is in the City limits. Neighboring properties are within the City limits or MPA.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

Chair Thomas, the application being applied for is within the City limits. Our concern is for property within the MPA and City limits.

Mrs. McAlester, inquired about how the interlocal agreement will change the jurisdiction.

Chair, this is beyond our conversation today, and is currently unknown.

Mrs. McAlester, questioned how the new interlocal agreement would impact the neighboring property owners.

Mrs. McAlester, express concerns with the tax base increase and noted the joint luncheon discussion, and how the BOCC needed to "weigh-in" on the issue. These are bigger issues that need to be discussed.

Member Garrett asked how the interest in the county houses would be any different than the City houses for this location.

Mrs. McAlester, people live the county for different reasons, the zoning would be differed.

Mr. Foster, stated that the zoning for all the houses being discussed were zoned the same, R-1 Single Family.

Mrs. McAlester, the City and county do not have a joint zoning plan, they do have a joint comprehensive plan. Mrs. McAlester, noted that these people moved to the county, and they want to stay in the county.

Member Garrett, noted there is no difference between the City and county for how is area could be impacted by the proposed use.

Member Weaver, asked staff about the new regulations and how the subject area will be impacted.

Mr. Foster, the proposed regulation might broaden uses while limited specific types, allowing for more flexibility overall but still regulating the land uses. Mr. Foster explained some general history of zoning regulations and that the health, welfare, and safety are always paramount with zoning regulations.

Member Colson, weighted out the pros and cons of this application, and expressed a desire to see more concrete plans for this location.

Rebuttal:

Kent Heermann, 719 Commercial St.

The closer you have the sites to shovel ready, the more likely business will locate to the community. There is currently infrastructure at this location and has the highest potential for future development. This will not be a dog kennel, but will be a Simmons, or Hills. If we don't have the zoning, we will miss out on potential business. Next step will be platting, where we can discuss more details, to pave the road.

Mr. Weaver, is there any instance for the potential companies to discuss future plans with the neighbors.

Mr. Foster, nothing would be required.

Member Colson, what are the average wages of Hills and Simmons?

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

Mr. Heermann, \$18-25 an hour, with some seasonal workers.

Mr. Foster, address the audience's question, that this meeting is opportunity for public comment. The City Commission might allow comments, but this the public hearing.

The Public Hearing portion was closed.

Chair Thomas, noted that the public hearing is closed. Also, stated the he voted against the Hill rezoning in the past and wanted to stay consistent with this application.

Question: Could this location be rezoning from I-1, to residential in the future. Mr. Foster noted that the property could be zoned, and/or rezoned as needed in the future, but it would require a public hearing for each request.

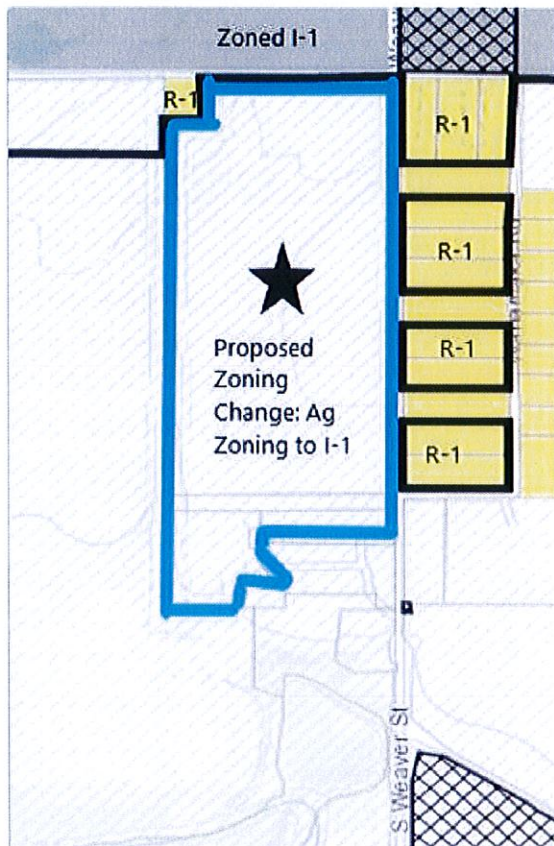
Motion: Member Garrett made a motion to deny the application at this time and expressed concerns that there was not a specific use for this property.

Member Colson seconded the motion.

Member Garrett, added a condition to confirm that the legal notice was applicable to all 90 acres of the subject property.

Application was denied by the Planning Commission 6-1.

AERIAL/ZONING MAP: IMAGE 1: MAP SHOWING LOCATION OF THE PROPERTY (IN BLUE)



ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

ORDINANCE NO. _____

AN ORDINANCE REZONING A PROPERTY IN THE CITY OF EMPORIA, KANSAS FROM AGRICULTURAL ZONING, TO I-1, LIGHT INDUSTRIAL ZONING AND AMENDING THE DISTRICT ZONING MAP TO CONFORM WITH SAID ZONING

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

Section 1. The following described a portion of a property is hereby rezoned from Agricultural Zoning to that of I-1, Light Industrial Zoning to wit:

TRACT IN THE SE 1/4 OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M. DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF THE SAID SE¼, MARKED BY AN IRON PIN, LYING S00°34'18"E A DISTANCE OF 100.00 FEET FROM THE NORTHEAST CORNER OF THE SAID SE¼; THENCE ON A BEARING OF N89°31'12"W ON A LINE PARALLEL WITH AND 100.00 FEET SOUTH OF THE NORTH LINE OF THE SAID SE¼ FOR A DISTANCE OF 781.88 FEET TO AN IRON PIN; THENCE ON A BEARING OF S00°52'42"E FOR A DISTANCE OF 121.66 FEET TO AN IRON PIN; THENCE ON A BEARING OF S89°00'08"W FOR A DISTANCE OF 50.00 FEET TO AN IRON PIN; THENCE ON A BEARING OF S1°20'12"E FOR A DISTANCE OF 121.68 FEET TO AN IRON PIN; THENCE ON A BEARING OF N88°39'47"E FOR A DISTANCE OF 50 FEET TO AN IRON PIN; THENCE ON A BEARING OF N1°20'13"W FOR A DISTANCE OF 27.70 FEET TO AN IRON PIN; THENCE ON A BEARING OF S89°31'12"E FOR A DISTANCE OF 779.98 FEET TO AN IRON PIN ON THE SAID EAST LINE OF THE SE ¼; THENCE ON A BEARING OF N00°34'18"W ALONG THE SAID EAST LINE FOR A DISTANCE OF 215.31 FEET TO THE POINT OF BEGINNING;

ALSO:

A TRACT OF LAND IN THE SE ¼ OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM THE SOUTHEAST CORNER OF SAID SECTION 23, THENCE NORTH ALONG THE EAST LINE OF SAID SECTION ON AN ASSUMED BEARING OF N00°34'18"W FOR A DISTANCE OF 2,568.66 FEET; THENCE WESTERLY ON AN ASSUMED BEARING OF S89°14'04"W FOR A DISTANCE OF 781.88 FEET TO THE POINT OF BEGINNING; THENCE SOUTHERLY ON AN ASSUMED BEARING OF S00°59'52"E FOR A DISTANCE OF 104.66 FEET; THENCE WESTERLY ON A BEARING OF S89°00'08"W FOR A DISTANCE OF 50.00 FEET; THENCE SOUTHERLY ON A BEARING OF S1°20'12"E FOR A DISTANCE OF 121.68 FEET; THENCE EASTERLY ON A BEARING OF N88° 39'47"E FOR A DISTANCE OF 50.00 FEET; THENCE SOUTHERLY ON A BEARING OF S1°20'13"E FOR A

DISTANCE OF 100.00 FEET; THENCE SOUTHEASTERLY ON A BEARING OF S39°51'15"E FOR A DISTANCE OF 163.20 FEET; THENCE WESTERLY ON A BEARING OF N88°45'04"W FOR A DISTANCE OF 250.00 FEET; THENCE SOUTHERLY ON A BEARING OF S1°14'56"W FOR A DISTANCE OF 142.75 FEET; THENCE WESTERLY ON A BEARING OF N88°45'04"W FOR A DISTANCE OF 384.62 FEET; THENCE NORTHERLY ON A BEARING OF N00°32'59"W FOR A DISTANCE OF 573.06 FEET; THENCE EASTERLY ON A BEARING OF N89°14'04"E FOR A DISTANCE OF 531.56 FEET TO THE POINT OF BEGINNING.

ALSO:

THE NORTH 87.5 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER IN SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS

ALSO:

THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, EXCEPT THE FOLLOWING DESCRIBED TRACTS:

BEGINNING AT THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS; THENCE SOUTH 260 FEET; THENCE EAST 206 FEET; THENCE NORTH 260 FEET; THENCE WEST 206 FEET TO THE POINT OF BEGINNING.

AND

A TRACT OF LAND IN THE EAST HALF OF THE NORTHEAST QUARTER (E 1/2 NE 1/4) OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, BEING DESCRIBED AS FOLLOWS: BEGINNING AT POINT 260 FEET SOUTH THE NORTHWEST CORNER OF THE EAST HALF OF THE SAID NORTHEAST QUARTER; THENCE SOUTH 50 FEET; THENCE EAST 206 FEET; THENCE NORTH 50 FEET; THENCE WEST 206 FEET TO THE POINT OF BEGINNING.

Section 2. This ordinance shall become effective upon publication in the official city newspaper.

PASSED AND APPROVED this 21st day of July 2021.

ROBERT F. GILLIGAN, Mayor

ATTEST:

KERRY SULL, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 6

SUBJECT: Consider approval of installing Electric Vehicle Charging Stations in the City-owned parking lot at 1005 Mechanic St., and Execution of Site License Agreement.

RECOMMENDATION: Approve license agreement.

BACKGROUND SUMMARY:

Reviews and discussions were held at the March 24th and July 14th study sessions about allowing Evergy to install electric vehicle charging stations in a City-owned lot at 1005 Mechanic St. (east of the Family Video building). The location of the charging stations would be along the alley on the west side, at the south end, and would utilize four (4) parking stalls. The parking stalls could remain accessible by non-electrical vehicles and would be available on a first-come basis. There would be no cost to the City for installation. The cost of using the charging stations would be approximately 21 cents per hour, paid for by the end user (vehicle owners). The appropriate City staff have reviewed the legal, insurance and construction aspects of the project, made the appropriate revisions, and there are no known issues with the project at this time. Attached is the site license agreement requiring the Mayor's signature. Installation of the charging stations could begin in as soon as eight weeks.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

SITE LICENSE AGREEMENT

THIS SITE LICENSE AGREEMENT ("**Agreement**") is entered into effective as of the ____ day of _____, 2020 ("**Effective Date**") between Evergy Kansas Central, Inc. f/k/a Westar Energy, Inc. and its affiliates ("**EVERGY**"), a Kansas Corporation, with primary offices at 818 S. Kansas Ave., Topeka, KS 66612 and City of Emporia, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas, with a mailing address at P.O. Box 928, Emporia, KS 66801 ("**Host**").

WHEREAS, Host is the owner of that certain property legally described and depicted on Exhibit A (the "**Site**"), attached hereto and incorporated by reference herein;

WHEREAS, EVERGY desires to install and operate 2 Level Two Electric Vehicle Supply Equipment station (together with all related utilities and accessories, the "**EVSE**") in the location shown on the Site Plan on Exhibit B, attached hereto and incorporated by reference herein, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, conditions and agreements set forth herein, EVERGY and Host agree as follows:

1. License. Host hereby grants to EVERGY a license to install and operate the EVSE station in the location(s) within the Site shown on Exhibit B in accordance with and subject to the terms and conditions of this Agreement. The EVSE shall include a vehicle charging station and related signage. EVERGY (or its affiliates) shall (a) at no cost to Host, install all necessary electrical service, connections and equipment to serve the EVSE, and (b) provide all necessary electric utility services to Host at the EVSE. EVERGY shall be responsible for replacing, at EVERGY's expense, any and all parking lot pavement removed during installation of the EVSE with 6" reinforced concrete pavement (AE) city 4,000 psi mix and #4 bars doweled into existing concrete 12" minimum (epoxy grouted) with 2 ft. 6 inch spacing, all rebar overlap shall be 12" minimum. EVERGY will obtain an excavation permit from the City Engineering department prior to commencing any pavement work. Host agrees to take reasonable actions to assist EVERGY with the installation of the EVSE. Upon completion of installation of the EVSE, Host understands and acknowledges that ownership of the EVSE shall remain with EVERGY.

2. Consumption Costs. The responsibility for the payment of kilowatt-hour (kWh) energy charge shall be as follows (check the box that applies; if no box is checked, it is Host Responsibility):

A. Host Responsibility (check here): ☐ The Host pays the kilowatt-hour (kWh) charge including applicable riders, surcharges, taxes and fees assessed by EVERGY and the EVSE charging station user pays the session charge, if applicable as described in the Schedule CCN tariff that can be accessed, once approved by the Kansas Corporation Commission, at www.EVERGY.com/rates.

B. User Responsibility (check here): ☒ The EVSE charging station user pays the kilowatt-hour (kWh) charge including applicable riders, surcharges, taxes and fees

assessed by EVERGY, and, if applicable, the session charge as described in the Schedule CCN tariff that can be accessed at www.EVERGY.com/rates.

During the Term, the Host shall have the right to change the above election (to the alternative option) upon 30 days' prior written notice to EVERGY. Host represents and warrants that it will not charge any third party for the consumption or usage of said power, electrical and/or usage costs at any time during the Term of this Agreement.

3. Access. Host shall provide EVERGY access to and sufficient space for locating and maintaining the EVSE at the locations shown on the Site Plan, and also agrees to provide governmental authorities access to the EVSE for any inspections and installation of monitoring hardware and/or software on the EVSE as necessary for EVERGY to fulfill its reporting requirements to regulatory entities. Host will allow potential end users access to the area where the EVSE is located in the same manner that it grants non-end users access to the area.

4. Operation. EVERGY shall operate the EVSE in accordance with commercially reasonable practices. However, uninterrupted service is not guaranteed, and EVERGY may interrupt service when necessary to ensure safety or to perform maintenance. If any governmental license or permit shall be required for the proper and lawful use of the EVSE, EVERGY, at its sole cost and expense, shall obtain and thereafter maintain the same and shall comply with all of the terms and conditions thereof. EVERGY shall promptly deliver copies of all such licenses and permits to Host.

Hours of Operation; Demand Response Procedures. Except as otherwise provided herein, the EVSE shall be operated by EVERGY for up to 24 hours each day and made available to the general public. Further, Host acknowledges and agrees that EVERGY will be utilizing "Demand Response" ("DR") procedures. The EVSE will display a message notifying the consumer of the various DR application scenarios. Host acknowledges and understands that EVERGY utilizes such Demand Response options to optimize usage at peak times, which could result in temporarily disabling the EVSE from electrical output or consumption during the Term of this Agreement. Host shall not charge EVERGY or any other party rent or any other fees to use the Site during the Term of this Agreement.

5. Consent; Permits. EVERGY shall not install the EVSE, including any utility service, equipment or accessories or, after the installation thereof, alter the EVSE or any of its components in any manner that requires architectural or engineering plans without first obtaining Host's prior written approval (which shall not be unreasonably withheld, conditioned or delayed) of the architectural and engineering plans and specifications therefore. EVERGY shall not install the EVSE or any utility service, equipment or accessories until all required municipal and other governmental permits and authorizations have been obtained by EVERGY.

6. Marketing. The parties understand and agree that the EVSE will be EVERGY-branded. EVERGY may publish and promote the locations of the Sites throughout the Term of the Agreement. Host's name may also be used in the initial launch of the program. Thereafter, neither party will make any press release or otherwise formally publicize the EVSE on the Site without first obtaining formal written approval from the other party. EVERGY has created marketing material which includes but is not limited to logos, stickers, decals and signage made a part of equipment purchased or infrastructure established; printed materials and other marketing and/or outreach materials, activities, and websites. EVERGY has logo usage and publicity standards that can be shared by EVERGY with Host for their review only. With respect to any marketing efforts including but not limited to logos, stickers, decals or signage made a part of equipment purchased or infrastructure established; or any printed materials or other marketing and/or

outreach materials, activities, or websites created by Host under this Agreement, Host agrees to submit such material in advance any such marketing effort, for review and approval by EVERGY, which approval shall not be unreasonably withheld, conditioned or delayed as outlined by the logo usage and publicity standards provided by EVERGY.

7. Maintenance and Repair. EVERGY shall maintain the EVSE in good working condition, ordinary wear and tear excepted, during the Term of this Agreement. Host shall maintain the common area improvements immediately surrounding the EVSE in good condition ordinary, wear and tear excepted, and will promptly notify EVERGY of any problems it is aware of that are related to the EVSE. Such maintenance by Host of the immediately surrounding common areas shall include, but not be limited to, pavement maintenance and snow removal services with the exception of pavement repair as described in Section 1.

8. Term and Termination. This Agreement shall commence on the Effective Date and continue in effect through December 31, 2031 ("**Term**"); provided, however, EVERGY has the right to terminate this Agreement at any time by delivering written notice of such election to Host, in which case the Agreement shall terminate on the date that is 10 days after the Host's receipt of the termination notice. If EVERGY fails to perform any of its obligations or comply with any of the other terms and conditions of this Agreement and such failure continues for a period of 15 days after receipt of written notice from Host, Host may immediately terminate the Agreement by delivering written notice to EVERGY. Upon the expiration or termination of this Agreement, EVERGY will remove the EVSE at EVERGY's cost and expense, and restore the portions of the Site on which the EVSE was installed to a condition similar to the condition it was prior to installation of the EVSE in accordance with the specifications for pavement replacement in Section 1, ordinary wear and tear excepted.

9. Liens. Host represents and warrants that (a) Host is the fee simple owner of the Site and has good and marketable title to the Site and (b) the contents and terms of this Agreement are not in violation of any other agreement entered into by Host with any other party. Neither party will allow any liens or encumbrances to be placed on the EVSE or the Site. If any liens are placed on or filed against the EVSE, or the Site as a result of any work or materials contracted by or on behalf of either party hereto, said party shall cause the lien to be released of record within 15 days after the filing thereof. Nothing in this Agreement shall be construed as empowering either party to encumber or cause to be encumbered the title or interest of Host to the Site nor EVERGY to the EVSE in any manner. Each party shall indemnify the other party against, and hold the other party harmless from, any and all loss, damage, claims, liabilities, judgments, interest, costs, expenses, and attorney fees arising out of the filing of any such lien that is in violation of this section.

10. Insurance. Each party agrees that it will at all times during the term hereof, at its own expense, procure, maintain, and keep in force insurance with an insurance company authorized to transact business in the State of Kansas, a commercial general liability insurance policy covering: (a) the operation and use of the EVSE (in the case of EVERGY) and (b) the operation and use of the Site (in the case of Host), in each case affording protection in an amount of not less than One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for injury to or death of one or more persons. The policy must include customary coverages for liability arising from premises, operations, independent contractors and liability assumed under an insured contract. The policy shall name the other party hereto (including said party's parent, affiliates, subsidiaries, officers, directors, employees, agents and assigns) as additional insureds whereby neither party may cancel or reduce the insurance without first giving the other party hereto at least 30 days prior written notice. Each party further covenants to deposit with the other party a certificate of such insurance and the certificate of each such renewal policy complying with the terms of this Agreement.

Further, unless third-party insurance coverage is required by applicable law, both parties shall have the right to self-insure against perils and liabilities for which it would otherwise be required to obtain insurance under the terms of this Agreement. If a party elects to self-insure against certain perils and/or liabilities against which it would otherwise be required to obtain a policy of insurance under this Agreement, then for purposes of this Agreement, such party shall be deemed to hold insurance against such perils and/or liabilities in the minimum amounts of insurance which such party is otherwise required to maintain under the terms of this Agreement. By so electing, such party shall be deemed to be self-insuring against the perils and/or liabilities that are the subject of such claims.

11. Waiver. Host and EVERGY each hereby waive (to the extent of insurance proceeds collected) any and all rights of recovery, claim, action or cause of action against the other, its agents, officers, or employees for any damage that may occur to the Site, including but not limited to the EVSE, and/or any personal property of such party therein by reason of any cause which is insured against under the terms of any insurance policies referred to herein or self-insured, regardless of cause or origin, including negligence.

12. Indemnification.

EVERGY shall be liable for, and shall indemnify, defend and hold Host harmless from, any and all liabilities, claims, demands, administrative proceedings, orders, judgments, assessments, fines, penalties, costs and lawsuits, of whatever nature (collectively, "**Liabilities**"), arising out of the negligent, willful or intentional acts or omissions of EVERGY, its express agents, contractors or employees at the Site during the Term of this Agreement and/or a breach of any of the representations, warranties, covenants or the terms of this Agreement.

Host shall be liable for, and shall indemnify, defend and hold EVERGY harmless from any and all liabilities arising out of the negligent, willful or intentional acts or omissions of Host, its agents, contractors, subcontractors or employees at the Site during the Term of this Agreement and/or a breach of any of the representations, warranties, covenants or the terms of this Agreement.

Notwithstanding the foregoing, neither party shall be liable for or be required to indemnify, defend or hold the other party harmless to the extent of any Liabilities that are caused by the negligent, willful or intentional acts or omissions of the other party hereto.

13. No Consequential Damages. Except for indemnification obligations to third parties as set forth in Section 14 of this Agreement, neither party shall be liable to the other party for any special, incidental, consequential, punitive or indirect damages or loss of profit or business interruption damages whatsoever.

14. Performance. Performance under this Agreement is subject to all valid laws, rules and regulations of courts or regulatory bodies having jurisdiction.

15. Contingency. If, after execution of this License, EVERGY is unable to use Host's property due to any action, or lack of action, by any federal, state, or local governing agency, this License Agreement may be canceled without obligation on part of either party.

16. Casualty. If all or any portion of the EVSE on the Site are damaged or destroyed by fire or other casualty which materially and adversely affects the operation of the EVSE (any, a "**Casualty**"), Host shall have the right to terminate the Agreement by written notice to EVERGY in which event the Agreement shall terminate on the date that is 10 days after the date of Host's termination notice and

EVERGY may elect to remove the EVSE from the Site. In the event of any Casualty which materially and adversely affects the operation of the EVSE, EVERGY shall have the right to terminate the Agreement by written notice to Host within 14 days after the Casualty, in which event the Agreement shall terminate on the date that is 10 days after the date of EVERGY's termination notice and EVERGY may elect to remove the EVSE from the Site.

17. Assignment. This Agreement and the rights conferred hereunder shall not be assigned by either party except with the prior written consent of the other party in each instance, and such consent shall not be unreasonably withheld, conditioned or delayed.

18. Entire Agreement. This Agreement and the exhibits attached hereto contains the entire agreement of the parties. No term or provision of this Agreement may be modified, amended, changed, or waived, temporarily or permanently, except, in the case of modifications, changes and amendments, pursuant to the written consent of both parties to this Agreement, and in the case of waivers, pursuant to the written consent of the waiving party.

19. No Partnership. This Agreement shall not be construed as creating a partnership, joint venture, agency relationship, franchise, or association, nor shall this Agreement render EVERGY and Host liable as partners, co-venturers or principals.

20. Governing Law. This Agreement shall be governed by the laws of the State of Kansas.

21. Counterparts. This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument. Facsimile and digital electronic signatures shall constitute original signatures for purposes of this Agreement.

22. Notice. Any and all notices shall be in writing and addressed to the parties at the addresses specified below or such other addresses as either party may direct by notice given in accordance with this section, and shall be delivered in one of the following manners: (i) by personal delivery, in which case notice shall be deemed to have been duly given when delivered; (ii) by certified mail, return receipt requested, with postage prepaid, in which case notice shall be deemed to have been duly given on the date indicated on the return receipt; or (iii) by reputable delivery service (including by way of example and not limitation Federal Express, UPS and DHL) which makes a record of the date and time of delivery, in which case notice shall be deemed to have been duly given on the date indicated on the delivery service's record of delivery.

If to EVERGY:

Evergy, Inc.
Attn: Wendy Marine, Product Manager
1200 Main Street
Kansas City, MO 64105

If to Host:

City of Emporia Attn: Jeff Lynch
P.O. Box 928 Emporia, KS 66801

23. Headings. Section headings herein have been inserted for reference only and shall not be deemed to limit or otherwise affect, in any manner, or be deemed to interpret in whole or in part any of the terms or provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto execute this Agreement agreeing to be bound by the terms herein as of the date first above written.

EVERGY

Evergy Kansas Central, Inc.

By: _____

Print Name: Kimberly Winslow

Title: Senior Director – Energy Solutions

Approved as to Legal Form	
PJV	6/28/21
Evergy Law Dept.	

HOST:

City of Emporia _____

By: _____

Print Name: Robert F. Gilligan

Title: Mayor

EXHIBIT A

Legal Description of Site

**Lots 145, 147, 149, 151 and 153 on Mechanic Street in the City of Emporia, Lyon County, Kansas,
according to the recorded plat thereof.**

Between
Emporia Main Street Development Group, LLC
GRANTOR(S)

DATE RECORDED: 04/03/2015 12:03:46PM
NTG INDEBT: 0.00 RECEIPT #: 26218
REC FEE: \$ 8.00
TECH FEE: \$ 3.00
HERITAGE FEE: \$1.00

And
The City of Emporia

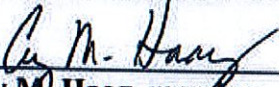
GRANTEE(S)

For good consideration Grantor(s) convey(s) and warrant(s), to the Grantees, his (their) heirs and assigns the following described real property situated in the State of Kansas, County of Lyon :

LOTS 145, 147, 149, AND 151 ON MECHANIC STREET IN THE CITY OF EMPORIA, LYON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF.

EXCEPT AND SUBJECT TO: Easements & Restrictions apparent & of record.

Emporia Main Street Development Group, LLC by,


Cory M. Haag, member

State of Kansas , County of Lyon ,SS:

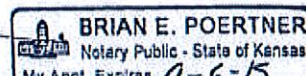
BE IT REMEMBERED, On this 1st day of April, 2015,
Before me, the undersigned, a notary public in and for the County and State aforesaid, came

Emporia Main Street Development Group, LLC by, Cory M. Haag, member

such persons being personally known to me to be the same persons who executed the within instrument of writing and duly acknowledged the execution of the same.

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


Notary Public Brian E. Poertner



Between
Emporia Main Street Development Group, LLC
GRANTOR(S)

DATE RECORDED: 05/01/2015 03:41:17PM
HTG INDEBT: 0.00 RECEIPT #: 26520
REC FEE: \$ 8.00
TECH FEE: \$ 3.00
HERITAGE FEE: \$1.00

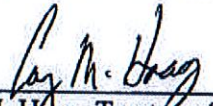
And
The City of Emporia
GRANTEE(S)

For good consideration Grantor(s) convey(s) and warrant(s), to the Grantees, his (their) heirs and assigns the following described real property situated in the State of Kansas, County of Lyon :

**LOT 153 ON MECHANIC STREET IN THE CITY OF EMPORIA,
LYON COUNTY, KANSAS, ACCORDING TO THE RECORDED
PLAT THEREOF.**

**EXCEPT AND SUBJECT TO: Easements & Restrictions apparent & of
record.**

Emporia Main Street Development Group, LLC by,

 *(Trustee Member)*
Cory M. Haag, Trustee of the Cory M. Haag
Revocable Trust dated March 5, 2013, Member

State of Kansas , County of Lyon ,SS:

BE IT REMEMBERED, On this 1st day of May, 2015,
Before me, the undersigned, a notary public in and for the County and State
aforesaid, came
Emporia Main Street Development Group, LLC by, Cory M. Haag,
Trustee of the Cory M. Haag Revocable Trust dated March 5, 2013,
Member

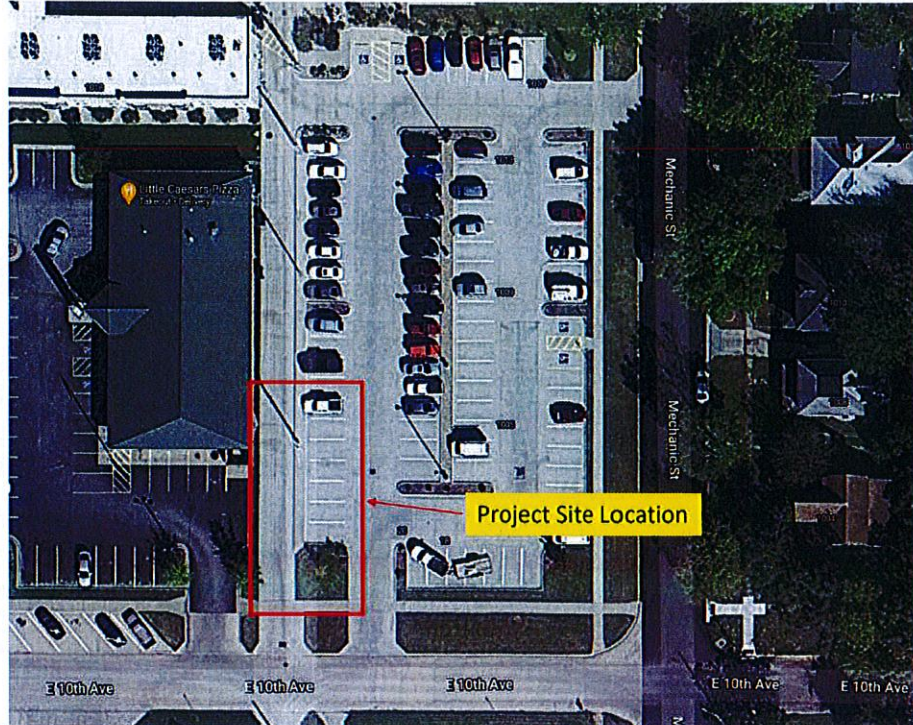
such persons being personally known to me to be the same persons who
executed the within instrument of writing and duly acknowledged the
execution of the same.

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

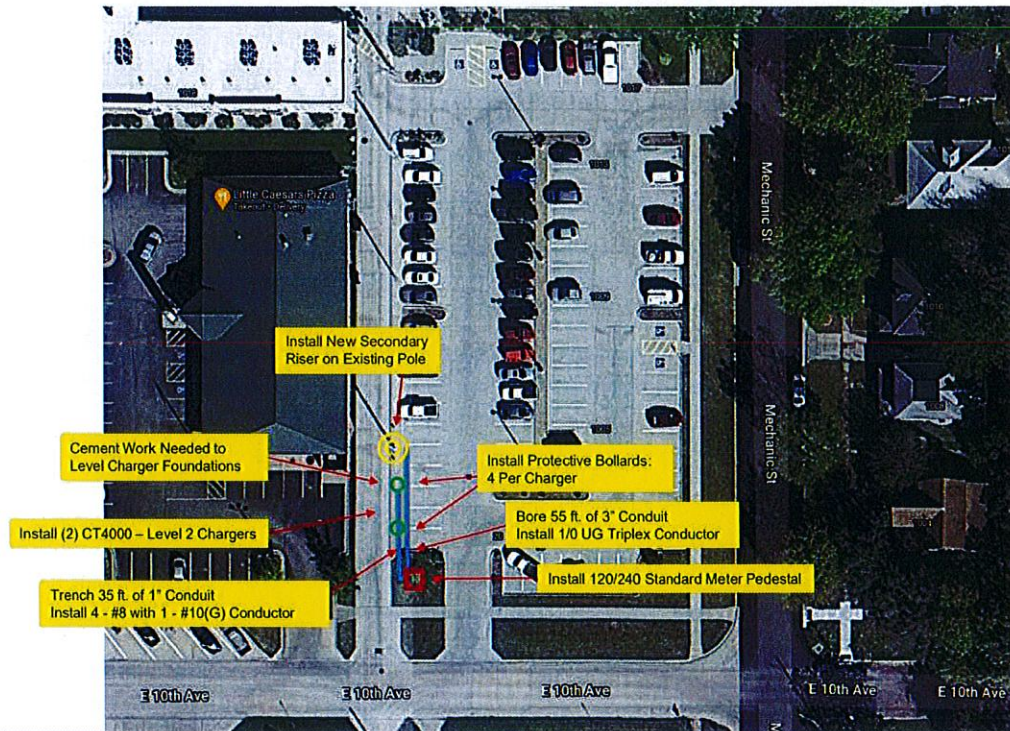
EXHIBIT B

Site Plan where EVSE(s) will be located within the Site

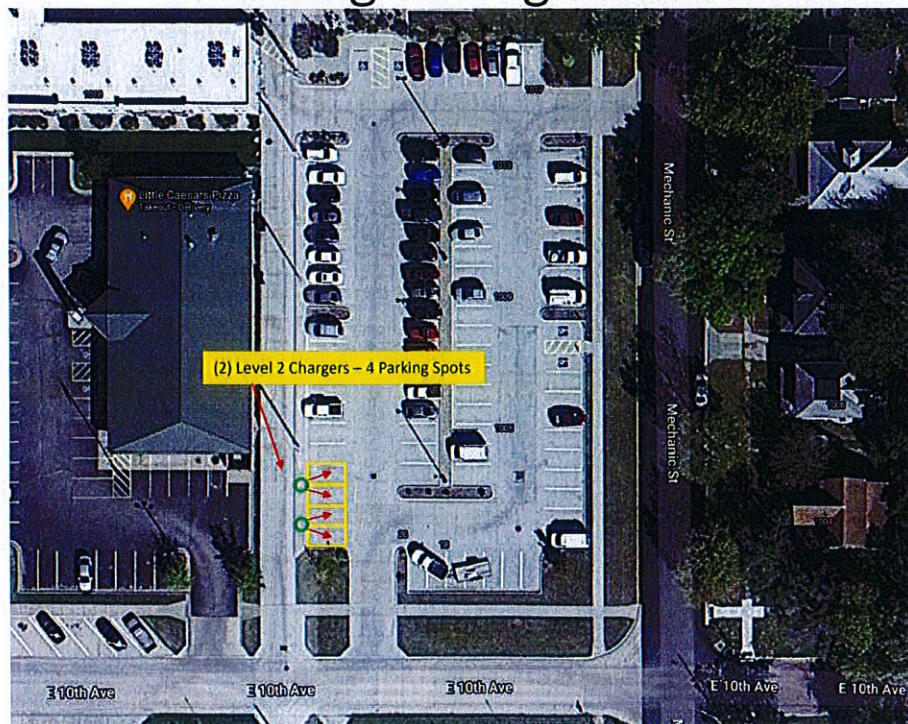
Emporia – 10th and Mechanic St. - Overview



Emporia – 10th and Mechanic St. - Site Sketch



Parking Configuration



AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 7

SUBJECT: Consider awarding a bid for the Construction of the KDOT CCIP Resurfacing K99 Highway (Commercial Street from BNSF to 12th Ave) & US50 Highway (6th Avenue from Neosho St. to Mechanic St.) City Project PV2101 & KDOT Project No. 56 U-2389-01.

RECOMMENDATION: Staff recommends awarding the project to APAC-KS, Inc., Shear Division for a total base bid amount of \$ 619,297.76.

BACKGROUND SUMMARY:

At 2:00 p.m. on Tuesday, July 13, 2021, the City Engineer's Office publicly opened bids on the KDOT CCIP Resurfacing K99 Highway (Commercial Street from BNSF to 12th Ave) & US50 Highway (6th Avenue from Neosho St. to Mechanic St.) City Project PV2101 & KDOT Project No. 56 U-2389-01. The City had two (2) bidders out of two (2) plan holders submit a bid. The following are the bids received and the Engineer's Estimate.

Contractor				Base Bid
APAC-KS, Inc., Shear Div.				\$ 619,297.76
Killough Construction				\$ 740,896.67
Engineer's Estimate				\$ 590,252.40

The staff recommends awarding the project to APAC-KS, Inc., Shear Division for the Base Bid for the total amount of \$ 619,297.76.

The project will be funded with a combination of a City multi-year and \$300,000 of KDOT CCLIP money.

Attached is the complete project bid tabulation sheet for the Base Bids received.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

**CITY OF EMPORIA, KS
BID TABULATION**

**FOR CONSTRUCTION OF KDOT CCLIP RESURFACING K99 HIGHWAY (COMMERCIAL STREET FROM BNSF RR TO 12TH AVE.) & US50 HIGHWAY (6TH AVENUE FROM NEOSHO ST. TO MECHANIC ST.),
CITY PROJECT NO. PV2101 & KDOT PROJECT NO. 56 U-2389-01**

Bids Opened: 2:00pm on 7/13/2021											
			Killough Construction Ottawa, KS		APAC - Kansas, Inc. Emporia, KS		CITY ENGINEER'S ESTIMATE				
Quantity	Units	Description	Unit	Total	Unit	Total	Unit	Total	Unit	Total	Total
1	L.S.	Mobilization	\$95,516.00	\$95,516.00	\$26,376.63	\$26,376.63			\$42,000.00	\$42,000.00	
43,131	S.Y.	Milling & Grinding (1.5" Avg. Depth)	\$3.47	\$149,864.57	\$3.20	\$138,019.20			\$2.20	\$94,888.20	
3,904	TONS	HMA (Commercial Grade) (Class A) (1.5 Avg. Depth)	\$92.00	\$359,168.00	\$86.23	\$336,641.92			\$82.00	\$320,128.00	
3	Ea.	Utility Adjustment (Manhole Riser)	\$550.00	\$1,650.00	\$202.78	\$608.34			\$200.00	\$600.00	
15	Ea.	Utility Adjustment (Valve Box Riser) (Valve Box)(Water)	\$270.00	\$4,050.00	\$125.16	\$1,877.40			\$80.00	\$1,200.00	
8	Ea.	Utility Adjustment (Concrete)(Valve Box)(Water)	\$950.00	\$7,600.00	\$571.92	\$4,575.36			\$600.00	\$4,800.00	
6,716	L.F.	Pavement Marking (Thermoplastic)(White)(4")	\$0.65	\$4,365.40	\$0.82	\$5,507.12			\$3.50	\$23,506.00	
2,604	L.F.	Pavement Marking (Thermoplastic)(White)(6")	\$0.80	\$2,083.20	\$1.09	\$2,838.36			\$1.20	\$3,124.80	
5,490	L.F.	Pavement Marking (Thermoplastic)(Yellow)(4")	\$0.65	\$3,568.50	\$1.09	\$5,984.10			\$0.70	\$3,843.00	
4,442	L.F.	Pavement Marking (Thermoplastic) (Yellow) (4") (Double)	\$1.00	\$4,442.00	\$1.63	\$7,240.46			\$1.20	\$5,330.40	
607	L.F.	Pavement Marking (Thermoplastic) (Yellow) (12") (Diagonal)	\$2.00	\$1,214.00	\$8.70	\$5,280.90			\$7.00	\$4,249.00	
1,848	L.F.	Pavement Marking (Int. Gr.) (White) (24")	\$12.50	\$23,100.00	\$17.40	\$32,155.20			\$16.00	\$29,568.00	
70	Ea.	Pavement Marking Symbol (Int. Gr.) (White) (Left Turn Arrow)	\$200.00	\$14,000.00	\$217.47	\$15,222.90			\$270.00	\$18,900.00	
1	Ea.	Pavement Marking Symbol (Int. Gr.) (White) (Right Turn Arrow)	\$200.00	\$200.00	\$217.47	\$217.47			\$320.00	\$320.00	
1	Ea.	Pavement Marking Symbol (Int. Gr.) (White) (Straight Arrow)	\$200.00	\$200.00	\$326.20	\$326.20			\$320.00	\$320.00	
1	Ea.	Pavement Marking Symbol (Int. Gr.) (White) (Railroad)	\$675.00	\$675.00	\$815.51	\$815.51			\$1,300.00	\$1,300.00	
21	Ea.	Pavement Marking Symbol (Int. Gr.) (ADA Chair)	\$165.00	\$3,465.00	\$217.47	\$4,566.87			\$150.00	\$3,150.00	
1,400	L.F.	Pavement Marking Removal	\$0.50	\$700.00	\$1.09	\$1,526.00			\$2.50	\$3,500.00	
1	Ea.	Traffic Signal Loops (Set Price)	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00			\$2,500.00	\$2,500.00	
1	L.S.	Traffic Control	\$57,160.00	\$57,160.00	\$25,844.59	\$25,844.59			\$26,000.00	\$26,000.00	
1	H.R.	Flagger (Set Price)	\$25.00	\$25.00	\$25.00	\$25.00			\$25.00	\$25.00	
1	L.S.	Maintenance Bond	\$5,550.00	\$5,550.00	\$1,148.23	\$1,148.23			\$1,000.00	\$1,000.00	
				\$740,896.67		\$619,297.76					\$590,252.40
				TOTAL AMOUNT OF BASE BID:							

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 8

SUBJECT: Consider Agreement with the Humane Society of the Flint Hills, Inc. for Operation of the Emporia Animal Shelter.

RECOMMENDATION: Approve Agreement and Authorize Mayor to Sign.

BACKGROUND SUMMARY:

The Humane Society of the Flint Hills, Inc. (HSFH) is a 501(c)3 organization with headquarters in Emporia. The HSFH has operated the Emporia Animal Shelter for the past 6 years under an operations agreement with the City. HSFH desires to renew the agreement under substantially similar terms. The renewal is for automatically renewing one-year terms until July of 2024. The agreement calls for a base fee of \$120,000 paid to HSFH with a three percent increase each successive year.

Under the contract terms, HSFH will be responsible for management and operations of the animal shelter including providing appropriate shelter and veterinary care for animals, maintaining appropriate staffing, providing an annual financial report to the City, accepting all animals from Emporia Police Department and Animal Control, honoring all court orders, and offering walk-in services to the public at least 30 hours per week.

A copy of the agreement is attached for your review.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

THIRD SHELTER OPERATION AGREEMENT

BY AND BETWEEN

THE CITY OF EMPORIA, KANSAS

AND

THE HUMANE SOCIETY OF THE FLINT HILLS, INC.

THIS AGREEMENT, made and entered into by and between the City of Emporia, Kansas, a municipal corporation (hereinafter referred to as "City"), and the Humane Society of the Flint Hills, Inc., a non-profit corporation (hereinafter referred to as "HSFH").

WHEREAS, the City desires to enter into a contract for the provision of animal shelter services in the City of Emporia, and

WHEREAS, the HSFH desires to operate and manage the Emporia Animal Shelter for the benefit of the community and for the benefit of abandoned, lost, stray or injured companion animals.

NOW, THEREFORE, in consideration of the payments set forth in paragraph 1 below, and the mutual promises contained herein, the parties covenant and agree as follows:

1. **Consideration.** In consideration of the payment of one hundred twenty thousand dollars (\$120,000.00), the HSFH is hereby delegated and contracted to operate and manage the Emporia Animal Shelter. It is hereby understood and agreed that the contract sum shall be paid in quarterly payments with the first payment due on April 1, 2018, or such time as may be agreed to by the parties.
2. **Term and Renewal.** The term of this Agreement shall be for one (1) year beginning on July 1, 2021 and shall thereafter automatically renew for two additional one (1) year periods unless either party notifies to other in writing that it elects to terminate this agreement at least ninety (90) days prior to the expiration of a yearly period. If the Agreement automatically renews, the base price of \$120,000.00 shall be adjusted by a three (3) per cent increase each year.
3. **Responsibilities.** The City shall lease to the HSFH by separate lease agreement the Emporia Animal Shelter located at 1226 Hatcher, Emporia, Kansas which shall address maintenance responsibilities, capital improvements, and utilities. City shall purchase and supply to the HSFH all dog and cat license certificates and receipt forms as shall be required by the HSFH in the carrying out of its responsibilities under this contract. The City shall work with HSFH in the event it is deemed necessary to amend or supplement any animal control ordinances to provide for the efficient and economical operation of the animal shelter.

The HSFH shall be responsible for management and operations including the following:

- a. Obtain and maintain appropriate shelter licensing from the State of Kansas.

- b. Maintain appropriate shelter care for all domestic animals which come into its custody, including veterinary care when needed.
- c. Maintain appropriate office hours at the animal shelter for receiving animals, releasing redeemed animals, and adoption of animals including at least 30 hours per week in which the shelter is open to the public for walk-in service.
- d. Maintain adequate staffing levels to accomplish the carrying out of the responsibilities under the Agreement.
- e. HSFH shall be responsible for collecting and accounting for all fees in connection with the operation of the shelter and reporting such to the City.
- f. HSFH shall keep financial records of all transactions at the animal shelter and permit the City, at all reasonable times, to inspect and audit such records. The HSFH shall install and maintain an adequate system of internal controls covering income, donations, and expenses, which meets the City's approval. HSFH shall submit to the City at least quarterly operations reports as required by the State Department of Agriculture on the receipt and disposition of animals.
- g. HSFH shall provide the City with an annual financial report.
- h. HSFH shall keep all records required by the State of Kansas of animals taken into custody showing the date, place, reason, and manner whereby animals were brought into custody with a description of the animal and a record of its final disposition.
- i. HSFH shall accept any animal from Lyon County relinquished to the Shelter except: sick or injured animals which need immediate veterinary care, animals which pose an immediate threat of spreading a communicable disease, or any animal if in the judgment of HSFH there is insufficient space in the shelter and accepting said animal would jeopardize the health of the other animals or personnel in the shelter.
- j. Animals needing veterinary care shall be referred to a designated shelter vet and may be paid for by funds from any source including surplus operation funds, grants, donations, owner or harborer funds or fund raising activities.
- k. HSFH shall establish a volunteer recruitment and training program specifically for shelter volunteers.
- l. HSFH shall establish and utilize a foster care program for shelter dogs.
- m. HSFH shall pursue all avenues of adoption available including, but not limited to, placing shelter dogs with breed rescue groups, urban shelters needing adoptable dogs for adoption events, or training organizations such as therapy dogs, rescue dogs, or disaster dogs. No animals shall be adopted out to dealers for commercial purposes.
- n. HSFH shall accept dogs brought into the shelter by animal control or Emporia Police Department representative in connection with animal violations, or quarantine for animal bites. HSFH shall honor all court orders relative to impounded dogs, including euthanasia. Care of sick or injured animals which are brought into the shelter by animal control or Emporia Police Department

representative in need immediate veterinary care may be addressed by separate agreement.

- o. HSFH may provide for or require the spay/neuter of any animals in their custody.
 - p. HSFH shall provide a copy of its employee manual and grievance procedure to the City for review and approval.
 - q. HSFH shall meet quarterly, or at other time of choosing of the City, with the Chief of Police or Police Chief representative, to discuss operations under this Agreement.
- 4. **Insurance.** HSFH shall procure and maintain during the term of this agreement Workers' Compensation Insurance as prescribed by the laws of the State of Kansas. HSFH shall procure and maintain during the term of this Agreement comprehensive general liability coverage that shall protect HSFH from claims for damages for personal injury, including accidental and wrongful death, as well as from services rendered under this agreement, whether such services be by HSFH or by anyone employed directly or indirectly by them. Such insurance shall provide for limits of not less than \$1,000,000 per occurrence. HSFH shall furnish the City with certificates of insurance to demonstrate that the Society has procured such insurance and that the City has been named as an additional insured therein. Such policies or certificates of insurance shall contain the covenant of the insurance carrier that thirty (30) days written notice shall be given to the City prior to modifications, cancellation, or reduction in coverage of such insurance.
- 5. **No assignment.** HSFH shall not sell or assign this contract or the powers granted to it, or any interest therein, nor any right, power, or authority to allow or permit any other person or party to have an interest in or use any part of the premises owned by the City and now designated as the City Animal Shelter for any purpose whatsoever without the written consent of the City.
- 6. **Independent Contractor.** HSFH, its officers, employees, agents, and volunteers shall act in an independent capacity during the term of this Agreement and not as officers, employees, agents, or volunteers of the City.
- 7. **Termination.** It is mutually understood and agreed by the parties hereto that this Agreement shall continue in effect for three years from the date hereof. However, it is agreed that this Agreement may be terminated by either party upon ninety (90) days written notice to the other of an intention to terminate this agreement or enter into a new agreement. The HSFH shall be paid for its work performed up to the date of termination in accordance with this Agreement.
- 8. **Final Agreement.** This Agreement is intended by the parties hereto as the final and exclusive expression of the provisions contained in this Agreement, and it supersedes and replaces any and all prior contemporaneous Agreements and understandings, oral or written. Any modification of this Agreement shall be in writing and signed on behalf of the parties.
- 9. **Notice.** All notices required under this Agreement shall be sent by regular mail or email to:

Executive Director

Humane Society of the Flint Hills, Inc
PO Box 845
Emporia, KS 66801

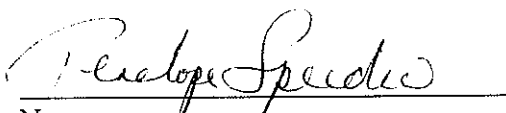
City Manager
City of Emporia
PO Box 928
Emporia, KS 66801

10. **EEOC.** HSFH agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et. seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age 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"; (c) to comply with the reporting requirements set out in K.S.A. 44-1031 and K.S.A. 44-1116, (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration. Parties to this contract understand that the provisions of this paragraph are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
11. **Right to Cure.** Upon Contractor's failure to cure a default (i.e., non-performance or violation of contract terms) within thirty (30) days of written notice of such default from the City to the HSFH, unless such cure period is extended by agreement, this contract may be cancelled or annulled by the City by written notice of default to the HSFH.
12. **Indemnity.** HSFH shall be responsible for, shall defend against, and shall indemnify and hold the City harmless against any and all suits, claims, demands, losses, or actions made against the City based upon, arising from, or incident to the provisions of services by the HSFH under this Agreement. This indemnification does not include indemnification for claims based upon the alleged negligence of a City employee or the alleged unconstitutionality or invalidity of any provision of the State or City codes pursuant to which the HSFH acts. HSFH shall notify the City of any suit, claim, demand, loss or action made or filed against the HSFH upon receipt or learning of it through any other means.

13. **Authority.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal contract binding on such party and enforceable in accordance with its terms.
14. **Third Party Beneficiary.** This agreement shall not be construed as providing an enforceable right to any third party.

IN WITNESS WHEREOF the parties hereto have set their hands this _____ day of July, 2021.

Humane Society of the Flint Hills, Inc.


Name: _____
Title: *President, Humane Society of the Flint Hills*

City of Emporia, Kansas

Robert F. Gilligan, Mayor

ATTEST:

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 9

SUBJECT: Consider Animal Shelter Lease Agreement with the Humane Society of the Flint Hills, Inc.

RECOMMENDATION: Approve Agreement and Authorize Mayor to Sign.

BACKGROUND SUMMARY:

This agreement leases the Emporia Animal Shelter at 1216 Hatcher Street to the Humane Society of the Flint Hills, Inc. (HSFH) for automatically renewing one-year terms, contingent upon a valid Operation Agreement remaining in effect. The agreement will terminate upon termination of the Operation Agreement, or upon 90 days written notice by either party prior to the end of a yearly term.

Under the terms of the agreement, HSFH is responsible for daily maintenance and cleaning. The City is responsible for snow removal, mowing, and nonroutine maintenance items such as mechanical, electrical, and plumbing. HSFH may make alterations or improvements to the building with written consent of the City. Any such improvements will become the property of the City.

A copy of the agreement is attached for your review.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

LEASE AGREEMENT

THIS LEASE AGREEMENT made this ____ day of _____, 2021, between the CITY OF EMPORIA, KANSAS, hereinafter referred to as "City," and the HUMANE SOCIETY OF THE FLINT HILLS, INC., hereinafter referred to as "LESSEE,"

WHEREAS, the City has constructed and owns an animal shelter known as the City of Emporia Animal Shelter located at 1216 Hatcher Street, Emporia, Kansas; and

WHEREAS, the LESSEE is a non-profit 501(c)(3) charity established pursuant to Kansas and Federal law for the purpose of furthering the welfare of companion and other animals, education and investigation of complaints of cruelty, and

WHEREAS, the City and the Humane Society of the Flint Hills have entered into a contractual arrangement for the management of the Emporia Animal Shelter,

NOW, THEREFORE, the City, in consideration of one dollar (\$1.00), the services to be rendered, and the mutual covenants contained herein, hereby rents and leases to the LESSEE, and LESSEE hereby rents and leases from the City, the Emporia Animal Shelter, 1216 Hatcher Street, Emporia, Kansas, and all appurtenant structures, including storage structures and dog runs.

1. Term. (a) The term of this lease shall be for a period of one (1) year starting July 1, 2021, and shall automatically be renewed for one year upon the expiration of each yearly term, unless either party shall on or before ninety (90) days prior to the expiration of the primary term or any subsequent term give written notice to the other of the intent to terminate upon expiration of the then current term.

(b) During the term of this agreement, or any extension thereof, a party may request in writing that the agreement be reopened due to a material change in circumstances affecting the ability of the party to fulfill its obligations under this Agreement, such as, economic factors, change in law, catastrophe, war, etc. Such request shall not be unreasonably denied.

2. Contingency. The parties acknowledge and agree that the leasing and acceptance of the leased premises by the LESSEE is contingent upon the Operation Agreement between the City and the Humane Society of the Flint Hills being in force, and should the Operation Agreement between the parties ever be terminated, such action shall be considered as written notice of termination of this lease agreement without further action. Should a termination occur

for any reason, the parties shall cooperate in changing the management of the facility over so that there is no lapse in care of animals.

3. Maintenance and Repairs. LESSEE shall be responsible for routine, day-to-day maintenance, including but not limited to: cleaning, dusting, disinfecting, proper disposal of waste, replacing paper goods in bathrooms, soap, emptying waste baskets, vacuuming rugs, washing windows, etc. The CITY shall be responsible for all nonroutine items such as mechanical, electrical, plumbing, mowing, snow removal, etc. The parties agree that if there is any dispute about which agency is responsible that they will meet and confer in good faith relative to the same.

4. Insurance. Throughout the term and any extension thereof, CITY shall maintain casualty insurance on the building and contents, and LESSEE shall obtain and keep in force a policy of liability insurance providing general liability coverage for personal injury and property damage with a minimum coverage of at least \$1,000,000. The policy must name the City as an additional insured as its interest appears and the City is entitled to receive notice as to cancellation of the policy. Evidence of coverage may be inspected by the City at any time during regular business hours. LESSEE is responsible for payment of any deductibles on insurance.

5. Alterations. LESSEE shall not make any material alterations to the structure or any existing improvements on the leased property without prior written approval of the City Manager. Any alterations or improvements shall become the sole property of the City.

6. Improvements. LESSEE has the right at its expense to add improvements to the existing leased property and to construct new improvements on the land. All such new improvements shall become the sole property of the City. The City must be informed of any new improvements and approval of such shall not be unreasonably withheld by the City.

7. Inspection. LESSEE shall permit the City to enter the leased premises during regular business hours for the purpose of inspection. LESSEE agrees to comply with the City's reasonable requests with respect to recommendations as to maintenance procedures.

8. Maintenance. LESSEE shall keep the leased property in good and usable condition and repair during the term and any extension, and upon termination will return the leased property in as good a condition as it was when leased, normal wear and tear excepted. Any and all repairs and maintenance, except as stated herein, shall be the sole responsibility of LESSEE.

a) The City shall be responsible for outside maintenance including mowing, weeding, snow removal and ice removal. The City shall be responsible for the sidewalks and parking area in front of the building and the dog runs. The City shall maintain fencing in a usable condition.

b) The LESSEE shall be responsible for routine maintenance of the inside of the facility including window and door cleaning.

c) The City shall be responsible for payment of water, sewer and refuse collection from the facility. The City shall provide and service an internet connection and telephone and FAX service to the facility at no charge. The LESSEE shall be responsible for electricity charges.

d) The City agrees to repair or replace, at the City's sole discretion, any equipment included which becomes obsolete or unusable for its ordinary functions through normal wear and use, or casualty; but not through the negligence of LESSEE, its employees, or agents.

9. Indemnification. The City is subject to limits of liability according to K.S.A. 75-6104 et seq. LESSEE hereby agrees to indemnify and hold harmless the City from claims for damages for injuries to persons or to property occasioned by the alleged negligent conduct of the LESSEE, its employees, officers or agents, arising from the operations and maintenance under this Agreement.

10. Taxes. In the event that any tax liability accrues arising from the lease or use of the leased property by LESSEE, it shall be the sole liability of the LESSEE.

11. Destruction of Leased Property. If during the term of this lease or any extension, the leased property is damaged or destroyed by fire, wind, earthquake or other casualty, the City shall determine the feasibility to repair or replacement of the facility with the insurance proceeds, in consultation with the LESSEE. If the damage is uninsured, and the destruction amounts to 50% of the leased premises, then the lease may be terminated by either party.

12. Default. If the LESSEE defaults in performance of any obligation, and fails to remedy said default within thirty (30) days after the City has given written notice specifying such default, then the City shall have the right to give LESSEE written notice of intent to terminate the lease ten (10) days after such notice is given. If all defaults have not been cured with ten (10) days notice, then the LESSEE'S right to possession shall cease and the lease shall be terminated, unless the parties agree in writing to an extension of time.

13. Notice. All notices which are given under this lease shall be in writing and delivered by regular mail to:

Director
Humane Society of the Flint Hills
PO Box 845
Emporia KS 66801

City Manager
William L White Civic Arena
104 E 5th Ave 2d Fl
Emporia KS 66801

14. Assignment. This lease shall not be sublet or assigned without written permission of the City.

15. Merger. The provisions contained herein are binding upon the parties and their successors. This is the entire agreement between the parties and supersedes any prior written or verbal agreements. This agreement may not be altered or amended except by a written instrument signed by the parties.

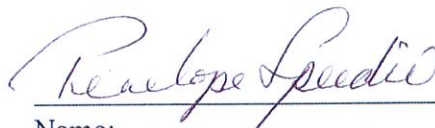
CITY OF EMPORIA, KANSAS

Robert F. Gilligan, Mayor

Attest:

Kerry Sull, City Clerk

HUMANE SOCIETY OF THE FLINT HILLS



Name:
Title: *President*

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 10

SUBJECT: Consideration of Development Agreement for the Flint Hills Crossing Community Improvement District.

RECOMMENDATION: Approve Agreement for the Flint Hills Crossing Community Improvement District.

BACKGROUND SUMMARY:

1. The initial commercial construction is an 8,292 square foot Quik Trip Travel Plaza.
2. The CID includes an 11-acre site which is the first phase of a potential 72-acre commercial development.
3. The CID will contribute 50% of the cost of construction of the collector road and adjacent utilities with the remaining 50% being borne by the City and County thru their share of sales tax collected from QT operations.
4. Sales tax projections for the City and County local sales tax are \$3,110,063 for the 22-year CID period.
5. The maximum exposure is covered in this agreement and is capped at 20% above the current estimate.
6. The City may cancel the Agreement if cost estimates exceed the 20% cap.
7. City hold first position for reimbursement from CID funds. Developer costs will be reimbursed after City direct costs are reimbursed.
8. The agreement is transferable only with Commission approval.
9. The end user (QT) must provide sufficient evidence of the project being constructed before the City makes a final commitment to construction of the roadway.
10. Planning meeting between the City and the end user will begin in the 4th quarter of 2021.
11. For further info please contact Special Project Coordinator Witt.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

**FLINT HILLS CROSSING
COMMUNITY IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT
CITY OF EMPORIA, KANSAS**

This Community Improvement District Development Agreement (“Agreement”) is made and entered into on July __, 2021 (the “Effective Date”), by and between the City of Emporia, Kansas, a municipal corporation (“City”) and JAL Holdings 1, LLC, a Kansas limited liability company, and BERCA, LLC (together, the “Developer”) (the City and Developer are collectively referred to herein as the “Parties”, and each, a “Party”).

RECITALS

A. The entities comprising the Developer are successors in interest to CSJD, LLC, a Kansas limited liability company (“CSJD”), and The Bailey Group, L.P., (“Bailey Group”) (CSJD and Bailey Group are collectively referred to herein as the “Petitioner”) and the Petitioner has submitted a petition to the City requesting formation of a Community Improvement District.

B. The Petitioner owns approximately 72 acres of real property located generally at the northwest corner of the existing I-35/State Hwy 50 off ramp and Graphic Arts Road, in the City of Emporia, Lyon County, Kansas (the “Redevelopment Area”), which the Petitioner and the Parties desire to have prepared for future commercial development in two or more phases.

C. The initial development phase is anticipated to include the construction of an approximately 8,292 sq. ft. gas/convenience store and related site improvements (the “Project”) on that certain real property, consisting of approximately 11 acres of the Redevelopment Area as more particularly described on **Exhibit A** and depicted on **Exhibit B** (the “Property”), which the Petitioner intends to convey to the Developer. Collectively, the Project is comprised of the City Work (as defined hereinafter) and the End User Work (as defined hereinafter).

D. The Developer represents that it has entered into a real estate sales contract (the “Contract”), pursuant to which the Developer has agreed to sell approximately 347,120 +/- square feet of the Property to a private corporation (the “End User”) that intends to finance and complete the construction of that portion of the Project comprising the End User Work. The Contract is contingent upon the City’s agreement to complete the construction of that portion of the Project comprising the City Work in accordance with the terms and conditions of this Agreement.

E. The City has the authority to create a community improvement district (“CID”) pursuant to K.S.A. 12-6a26 *et seq.*, as amended from time to time (the “Act”), for the purpose of financing certain economic development related projects. Under the Act, the owners of the land within the boundaries of a proposed CID may petition the City to request the creation of a CID and the imposition of a community improvement district sales tax within the CID to pay for or reimburse the costs of a portion of the development project.

F. On December 29, 2020, the Petitioner submitted a petition (the “CID Petition”) to the City requesting the formation of a CID (the “District”) for purposes of financing certain costs related to the development of the Property. A copy of the CID Petition is attached as **Exhibit C**.

G. On January 6, 2021 the City adopted Resolution No. 3641, giving notice of a public hearing to be held on February 3, 2021 regarding the advisability of creating the District and levying a community improvement district sales tax in the District.

H. On February 3, the governing body of the City approved the creation of the District through the adoption of Ordinance No. 21-02 (the “CID Ordinance”). As was contemplated in the Petition, the CID Ordinance approved certain public and private improvements related to the Project to be financed in part from revenue generated by the imposition of an additional 1.00% retailers’ sales tax on all taxable sales within the District (the “CID Sales Tax”).

I. Pursuant to Petitioner’s request, the City has agreed to construct the City Work at its sole cost and expense; provided, however, the City shall be reimbursed, from the CID Sales Tax Revenue (as defined hereinafter), fifty percent (50%) of the total costs incurred by the City to construct the collector street and related storm water improvement portion of the City Work and one hundred percent (100%) of costs incurred by the City to construct sanitary sewer and waterline improvements related to the collector street.

J. The parties wish to enter into this Agreement to establish their respective rights, duties, and obligations as they relate to the Project, and to establish the terms and conditions relating to reimbursement of the Parties and the Petitioner for certain CID Eligible Project Costs from the CID Sales Tax Revenue.

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

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions of Words and Terms. Capitalized words used in this Agreement which are not otherwise defined herein shall have the meanings set forth below:

“**Act**” or “**CID Act**” means K.S.A. 12-6a26 *et seq.*, as amended and supplemented from time to time.

“**Applicable Laws and Requirements**” means any applicable constitution, treaty, statute, rule, regulation, ordinance, resolution, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authority.

“Certificate of Expenditures” means a request by the Developer and/or the Petitioner for the City’s approval and reimbursement of CID Eligible Project Costs from the CID Sales Tax Revenue, in substantially the form attached and incorporated as **Exhibit D**.

“CID Eligible Project Costs” means the costs and expenses of (i) the Reimbursable Costs, (ii) Formation Costs, and (iii) such additional “costs” as defined in the Act and approved by the City pursuant to Section 3.02 of this Agreement, which may include costs subsequently identified that are adjacent to and beneficial to the District.

“CID Collection Period” means the period that commences on the date that the CID Sales Tax is imposed and concludes on the date which is the earlier of (i) twenty two (22) years from the date that the CID Sales Tax is first imposed, or (ii) the date that all CID Eligible Project Costs are reimbursed from CID Sales Tax Revenue as provided herein.

“CID Ordinance” means Ordinance No. 21-02, adopted by the Governing Body on February 3, 2021.

“CID Petition” means that certain petition submitted by the Developer, a copy of which is attached as **Exhibit C**.

“CID Sales Tax” means the 1.00% sales tax levied on the sale of tangible personal property at retail or rendering or furnishing services within the District which are taxable pursuant to the Kansas Retailers’ Sale Tax Act (K.S.A. 79-3601 et seq., as amended, within the District and pursuant to the Act.

“CID Sales Tax Fund” means the separate fund established by the City for deposit of the CID Sales Tax, collected within the District and distributed to the City by the State, and that is used to reimburse the CID Eligible Project Costs.

“CID Sales Tax Revenue” means the proceeds of the CID Sales Tax deposited into the CID Sales Tax Fund after deduction of the City Administrative Fee.

“City Administrative Fee” means the administrative fee described in Section 3.06(A).

“City Obligations” means bonds, notes, or other obligations of the City issued to finance costs of the City Work.

“City Work” means the City’s agreements and representations regarding the Project as described in Section 2.01(B) and Section 2.03.

“City Work Budget” means the budget for the City Work, attached hereto as **Exhibit E**, as such City Work Budget may be modified from time to time in accordance with this Agreement.

“Construction Plan” means plans, drawings, specifications and related documents, and construction schedules for the construction of the City Work and for the End User Work, together with all supplements, amendments or corrections, submitted by the City or the End User or End User’s agents and approved by the City.

“District” means the community improvement district created by the CID Ordinance.

“End User” means a private corporation or other private entity described in paragraph D of the Recital section of this Agreement.

“End User Work” means the Developer’s agreements and representations regarding the End User’s development of the portions of the Project described in Section 2.01(A) and section 2.03 and paragraphs C and D of the Recitals to this Agreement.

“Excusable Delays” means any delay or interruption in the performance of obligations under this Agreement which is beyond the reasonable control and without the fault of the Party affected and which the affected Party may not overcome despite good faith efforts and diligence, caused by damage or destruction by fire or other casualty, strike, war, terrorism, riot, sabotage, act of public enemies, epidemics, default of another party, alien invasion, freight embargoes, shortage of materials, unavailability of labor, a change in law, environmental remediation required by the appropriate Governmental Authorities, discovery of cultural, archeological or paleontological resources or endangered species, any lawsuit seeking to restrain, enjoin, challenge or delay construction, failure of a contractor, subcontractor or supplier to furnish labor, services, materials or equipment in accordance with its contractual obligations, acts of God, including earthquake, adverse weather conditions such as, by way of illustration and not limitation, severe rain, snow or ice storms or below freezing temperatures of abnormal degree or abnormal duration, freezing temperatures that prevent the prudent installation of concrete or similar materials, tornadoes, floods, or other causes beyond the reasonable control or fault of the affected Party, which shall include but not be limited to any pending litigation interfering with or delaying construction or performance of the City Work, Developer Work and any pending or threatened litigation interfering with or delaying issuance of City Obligations to pay costs of City Work, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

“Formation Costs” mean the actual, reasonable costs and expenses which are incurred by the City, Developer or Petitioner, to obtain approval of formation of the District and the imposition of the CID Sales Tax, including but not limited to attorneys’ and other professional service fees and expenses of filing the CID Petition, including all incidental costs related to any of the aforementioned activities.

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

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

“Pay-As-You-Go CID Financing” means the reimbursement to the Developer, the Petitioner, and the City of CID Eligible Project Costs, pursuant to K.S.A. 12-6a34, from time to

time as such expenses are documented and as CID Sales Tax Revenue is available, as further provided in this Agreement.

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

“Plans” means Construction Plans and all other Governmental Approvals necessary to construct the Project in accordance with the Emporia City Code, applicable laws of Governmental Authorities and this Agreement.

“Project” has the meaning given it in paragraph C of the Recitals to this Agreement, which is comprised of the End User Work and the City Work.

“Property” means the real property within the boundaries of the District and upon which the Project will be constructed and completed, which is legally described on **Exhibit A** and depicted on **Exhibit B**.

“Reimbursable Costs” means fifty percent (50%) of the total costs incurred by the City in performing the City Work related to the construction of a collector street and related storm drainage and one-hundred percent (100%) of the total costs incurred by the City in performing the City Work constructing sanitary sewer and waterline improvements related to the collector street portion of City Work, and includes financing and interest costs of the City Obligations issued to finance City Work.

“State” means the state of Kansas.

“Term” means that certain period from the Effective Date through that date on which this Agreement expires as set forth in Section 4.01.

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

A. The terms defined in this article include the plural as well as the singular.

B. All accounting terms used but not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made in accordance with generally accepted accounting principles.

C. All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

D. All references in this instrument to designated “Articles,” “Sections” and other subdivisions of this instrument refer to this Agreement as originally executed.

E. The Article and Section headings herein are for convenience only and shall not affect the construction of this Agreement.

F. The representation, covenants and recitations set forth in the recitals to this Agreement are material to this Agreement and are incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The provisions of the Plans, and such resolutions and ordinances of the City introduced or adopted by the City which designate the District, and the provisions of the Act, as amended, are incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms of this Agreement.

ARTICLE II THE PROJECT

Section 2.01. Construction of Project.

(A) *End User Work.* The Developer represents that End User intends to develop an approximately 8,292 sq. ft. gas/convenience store and related infrastructure and coordinate construction of the same with the City’s construction of the City Work.

(B) *City Work.* Subject to the terms of this Agreement, the City and Developer agree the City will construct and complete the City Work as defined in this Agreement and described below:

Construction of a collector street with related storm water improvements, from Graphic Arts Road to the existing roundabout intersection and adjacent to the Kansas Turnpike, and all things necessary and related to such improvements, including but not limited to completion of the sanitary sewer improvements and waterline improvements relating to the collector street.

The City and Developer agree the City Work is a necessary part of the Project and the Reimbursable Costs are included within the CID Eligible Project Costs. A preliminary site plan for the City Work is attached hereto as **Exhibit F**.

The Parties anticipate the City will issue City Obligations, the proceeds of which, less the costs of issuing the City Obligations, will be applied to pay Reimbursable Costs. The issuance of City Obligations is subject to market conditions, approvals by the City’s governing body and by state agencies as required by applicable laws of the State, including approval of the Kansas Attorney General pursuant to K.S.A. 10-108. The City Obligations are also subject to the approving opinion of the City’s bond counsel on matters of legality and the exemption of interest thereon from gross income for income tax purposes under State and federal law. The Parties acknowledge the City’s ability to issue City Obligations for the purposes described herein may be affected by a change in applicable State or federal law.

Section 2.02. Governmental Approvals. All Government Approvals, necessary for construction of the End User Work, shall be secured prior to commencement of construction or development of the End User Work and at the expense of the End User. The City shall cooperate with and provide all usual assistance to the End User in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law; provided, however, nothing in this Agreement shall constitute a waiver or the City's right to consider and approve or deny Governmental Approvals pursuant to the City's regulatory authority as provided by the Emporia City Code and Applicable Laws and Regulations.

Section 2.03. Project Completion; Schedule; Estimated Costs. Notwithstanding anything contained in this Agreement to the contrary, the City's obligation to construct the City Work shall be contingent upon the City's receipt of evidence, sufficient in the City's reasonable and sole judgment, that End User has (i) acquired the Property pursuant to the Contract, and (ii) has committed to begin construction of the End User Work.

The Parties intend for the City and the End User to coordinate their efforts in developing the Project and conduct meetings as necessary (the "Planning Meetings") to create a schedule for completion of the End User Work and the City Work.

The City agrees to construct the City Work in a good and workmanlike manner and in compliance with this Agreement and in compliance with all Applicable Laws and Requirements.

Section 2.04. Excusable Delays; Project Schedule; Extensions. Neither the City nor the Developer shall be deemed to be in default of this Agreement because of an Excusable Delay. The Parties agree the City will not begin performing City Work under this Agreement until the conditions outlined in Section 2.03 of this Agreement have been met. The Parties further agree that all performance and other dates set forth in this Agreement shall be extended where a party seeking the extension has acted diligently and delays and defaults are due to Excusable Delays. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer, to which each Party shall reasonably agree at the request of another Party.

Section 2.05. City Work Budget. The City Work shall be constructed substantially in accordance with the City Work Budget; provided, however, the Parties acknowledge the City Work Budget overall and each specific line item represents a best estimate of the cost of the City Work and each City Work component as of the Effective Date of this Agreement. No costs set forth in the City Work Budget shall require any Party to expend a specific amount for any portion of the City Work or individual line item cost. Subject to Section 2.03, the Developer and the City may modify or amend the City Work Budget at any future date by written consent of the City, approved by the governing body, which consent shall not be unreasonably withheld, conditioned, or delayed. As of the Effective Date of this Agreement, the preliminary estimated total cost of the City Work in the City Work Budget is \$2,417,997.19, plus costs of issuing and interest cost on City Obligations ("Estimated Costs of City Work"). The City shall provide End User and the Developer updated Estimated Costs of City Work, accurate as of the dates of the Planning Meetings. If the Estimated Cost of City Work as of the date of this Agreement increases by 20% or more, the City will notify the Developer and the End User. The City and Developer acknowledge that an increase in of 20% or more of Estimated Costs of City Work will require approval of the

City's governing body before the City begins construction of City Work or issues City Obligations, and that if the governing body fails to approve such increase, the City may terminate this Agreement.

Section 2.06. Rights of Access. The City and its employees and agents shall have the right to access such portions of the Property as reasonably necessary to perform the City Work. The right of access granted by this Section shall be in addition to the City's right to access the Property in the exercise of its proper authority to regulate and provide for the public health, safety, and welfare.

Section 2.07. Periodic Meetings. From the Effective Date until full completion of the Project, the City shall coordinate meetings with the End User and Petitioner to review and discuss the development and construction of the Project.

ARTICLE III PROJECT FINANCING

Section 3.01. Project Costs. The City shall be responsible for and advance all project costs necessary to complete the City Work portion of the Project. The City anticipates issuing City Obligations to finance the City Work, including Reimbursable Costs. The City and Developer agree to reimburse the City for the Reimbursable Costs solely from the CID Sales Tax Revenue and subject to the terms of this Agreement, on a "Pay-As-You Go" basis. The City agrees that the Developer and the Petitioner shall be reimbursed, for any CID Eligible Project Costs paid by the Developer or the Petitioner, solely from the CID Sales Tax Revenue and subject to the terms of this Agreement, on a "Pay-As-You Go" basis. Further, the Parties hereby agree that upon full payment of the City Obligations and Formation Costs, any remaining CID Sales Tax Revenue shall be used to reimburse the Developer and/or Petitioner for such additional "costs" as defined in the Act and approved by the City pursuant to Section 3.02 or Section 3.09 of this Agreement, which may include costs subsequently identified that are adjacent to and beneficial to the District. Neither the City, the Developer, or the Petitioner shall have any responsibility to finance the cost of the End User Work.

Section 3.02. Certification of CID Eligible Project Costs.

A. Certificates of Expenditures – Formation Costs. Upon commencement of the CID Collection Period, the Developer and the Petitioner shall be entitled to submit to the City a Certificate of Expenditures, in the form attached as **Exhibit D**, for purposes of (i) certifying the amount of CID Eligible Project Costs for which reimbursement is then sought, and (ii) verifying that such costs were actually incurred by the Developer or Petitioner, as applicable. Each Certificate of Expenditures shall include itemized invoices, receipts, any lien waivers from vendors, contractors or subcontractors, and evidence of completion of such portion of the Project, or other information reasonably requested by the City to confirm that such costs were incurred, and are eligible for reimbursement under the Act and this Agreement. The City reserves the right

to have its agents or employees inspect all work and records for which a Certificate of Expenditures is submitted.

B. Certificates of Expenditures – City Work. The City and Developer agree that the initial Certificate of Expenditures shall (i) certify the amount of Reimbursable Costs of City Work incurred by the City to perform City Work for which reimbursement is then sought, and (ii) verify that such costs were actually incurred by the City for purposes of completing the City Work. The City shall provide itemized invoices, receipts, any lien waivers from vendors, contractors or subcontractors, and evidence of completion of the City Work, or other information reasonably necessary to confirm that such costs were incurred, and are eligible for reimbursement under the Act and this Agreement, and which, together with previous payments, do not exceed the budgeted amounts shown on the Project Budget as amended from time to time.

C. Review and Approval. The City shall have thirty (30) calendar days after receipt of a Certificate of Expenditures and all supporting documentation to review and respond by written notice to the Developer or Petitioner, as applicable. If the submitted Certificate of Expenditures and supporting documentation demonstrates that: (1) the request relates to eligible “costs,” as defined in the Act and CID Eligible Project Costs, as defined in this Agreement, (2) the work for which payment was made and reimbursement is sought has been completed in accordance with this Agreement; (3) the Developer or Petitioner, as applicable, is not in default under this Agreement; and (4) there is no fraud on the part of the Developer or Petitioner, as applicable, then the City shall approve the Certificate of Expenditures and all CID Eligible Project Costs described therein shall be eligible for reimbursement from the available CID Sales Tax Revenues, pursuant to this Article. If the City determines that a portion of the expenditures listed within the submitted Certificate of Expenditures and supporting documentation for such expenditures should not be approved or that more information about such expenditures is necessary, the City may deny the Certificate of Expenditures, in part, and shall notify the Developer or Petitioner, as applicable, of such determination in writing, setting forth in detail the basis for the denial for each such expenditure. If the City notifies the Developer or Petitioner, as applicable, of any deficiency or of its disapproval of a Certificate of Expenditures, the Developer or Petitioner, as applicable, shall have the opportunity to cure any deficiency or demonstrate that no deficiency exists and respond in writing to the City. The City shall notify Developer or Petitioner, as applicable, within five (5) business days of the receipt of Developer’s or Petitioner’s, as applicable, response of its acceptance of the response or of any remaining deficiency. In the event of a partial denial of the Certificate of Expenditures, that portion of the submitted expenditures that the City approves shall be immediately eligible for reimbursement from the CID Sales Tax Fund but only to the extent funds are available therein, pursuant to the terms of this Agreement. If any portion of the submitted Certificate of Expenditures is found by the City to be not eligible for reimbursement after the Developer or Petitioner, as applicable, responds a determination to deny an expenditure as described above, the City shall notify the Developer or Petitioner, as applicable, in writing and the Developer or Petitioner, as applicable, may appeal such denial to the Governing Body by filing a written request with the City Clerk, within fourteen (14) business days of the receipt of the written denial, that such appeal be heard by the Governing Body. The Governing Body shall conduct a hearing within thirty (30) days of receipt of such request and render a decision immediately upon the conclusion of such hearing.

D. Reimbursement - Priority. Except as otherwise set forth herein, all CID Sales Tax Revenue shall be available for and dedicated to pay CID Eligible Project Costs and shall be utilized according to the procedures set forth herein in the following order of priorities:

- a. First, for reimbursement of the City Work portion of the CID Eligible Project Costs and the City Administrative Fee; and
- b. Second, to pay or reimburse the Developer and/or Petitioner for all of the Formation Costs incurred by the Developer and/or Petitioner; and
- c. Third, for reimbursement of any Formation Costs incurred by the City; and
- d. Fourth, for reimbursement of any additional CID Eligible Project Costs paid by the Developer and/or Petitioner.

Notwithstanding the forgoing, if there are insufficient funds available in the CID Sales Tax Fund to reimburse the City, Developer or Petitioner for such CID Eligible Project Costs, the City shall promptly reimburse the City, Developer or Petitioner on the fifteenth (15th) day of each month as funds become available in the CID Sale Tax Fund.

E. Limitation on City's Payment Obligations. The City's obligations to reimburse CID Eligible Project Costs under this Agreement shall be limited to the CID Sales Tax Revenue.

Section 3.03. CID Sales Tax.

A. Imposition of Sales Tax in District. The City and Developer agree that CID Eligible Project Costs shall be reimbursed, pursuant to the terms and conditions of this Agreement, solely from the CID Sales Tax Revenues.

B. Commencement of CID Collection Period. The City shall notify the state director of taxation to commence the collection and reporting of the CID Sales Tax within the District at the same time and in the same manner as provided for the collection of the state retailers' sale tax upon the earlier of: (a) ten (10) business days after the City receives a request from the Developer to deliver the CID Ordinance to the Kansas Department of Revenue (KDOR), or (b) within ten (10) business days after the City's approval of a Certificate of Expenditures pursuant to this Article. If funds are collected from the CID Sales Tax prior to the approval of a Certificate of Expenditures, such funds shall be held by the City in the CID Sales Tax Fund until the funds are eligible for distribution pursuant to the terms of this Agreement.

C. CID Sales Tax Fund. During the existence of the District, all CID Sales Taxes levied by the State, generated within the District and paid by the State to the City, shall be deposited into the CID Sales Tax Fund, which shall be established and administered by the City in compliance with Applicable Laws and Requirements and this Agreement. The City may invest the funds in the same manner as other funds of the City are invested. Interest earnings shall remain in the CID Sales Tax Fund, and shall be treated in the same manner as CID Sales Tax for purposes of this Agreement.

Section 3.04. Pay-As-You-Go CID Financing. Upon filing and approval of a Certificate of Expenditures, CID Sales Tax Revenue shall be disbursed by the City under this Agreement according to priority set forth in Section 3.02(D), if and to the extent that: (i) the term of the CID Collection Period has not yet expired; (ii) there is CID Sales Tax Revenue in the CID Sales Tax Fund; (iii) the Developer is not in default of any material term of this Agreement beyond any applicable notice and cure periods and/or this Agreement has not been terminated; and (iv) the Developer, Petitioner or City has not previously been reimbursed for such CID Eligible Project Costs.

Section 3.05. No CID Bonds or Other Revenues. The Developer understands and agrees that all reimbursements to the Developer and Petitioner hereunder shall be made only from Pay-As-You-Go CID Financing, and nothing in this Agreement shall in any way obligate the City to issue bonds or other obligations or apply any other revenue of the City to reimburse the Developer and Petitioner for the CID Eligible Project Costs or any other costs of the Project, except as provided herein with respect to the City Work and City Obligations.

Section 3.06. Expenses

A. Payment and Priority of City's Administrative Fee. The City shall be entitled to withdraw and receive from the CID Sales Tax Fund a CID administrative service fee equal to 2.0% of all CID Sales Tax deposited into the CID Sales Tax Fund (the "City Administrative Fee"). The City Administrative Fee shall be used to reimburse administrative and other City costs related to this Agreement during the Term. The CID Administrative Fee shall be paid from the CID Sales Tax deposited into the CID Sales Tax Fund, and shall have first priority to available funds in the CID Sales Tax Fund. The CID Administrative Fee shall be deemed a CID Eligible Project Cost.

B. Costs of Creating CID. Notwithstanding anything contained in this Agreement to the contrary, the reasonable expenses incurred by the City in conjunction with the Petitioner's application for formation of the District, including, but not limited to, actual fees and expenses of City's counsel incurred for drafting documents necessary to creating the District, including this Agreement, publication costs, recording costs, and similar extraordinary administrative expense relating to creation of the District, shall be deemed a Reimbursable Cost. For the avoidance of doubt, the Parties agree that the City shall be reimbursed for one hundred percent (100%) of the costs incurred by the City, in connection with the formation of the District, from the CID Sales Tax Revenue.

Section 3.07. Right to Inspect and Audit. The Developer agrees that, for a period of one (1) year after a Certificate of Expenditures is submitted to and approved by the City for reimbursement, with reasonable advance notice and during normal business hours, the City shall have the right and authority to review, audit, and copy, from time to time, all the Developer's books and records relating to the Certificate of Expenditure and CID Eligible Project Costs, including, but not limited to, all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices. The Developer further agrees that throughout the Term of this Agreement, the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit

and copy Developer's books and records regarding the Project and the CID Sales Tax, and as pertinent to the purposes of this Agreement.

Section 3.08. Sales Tax Information. The City will deliver a copy of its Ordinance creating the CID and levying the CID Sales Tax to the Kansas Department of Revenue (KDOR) as provided in this Agreement. The Developer agrees to use commercially reasonable efforts to provide information to KDOR and the City concerning all current and future owners, occupants or tenants of the Project, including names and addresses of all owners, occupants or tenants, to assist with identification of the CID Sales Tax. To the maximum extent allowed by law, all sales tax related information obtained by the City under this Agreement shall be kept confidential in accordance with K.S.A. 79-3657 and the City will take all reasonable actions to ensure that such information is kept confidential.

Section 3.09. Surplus. If amounts remain in the CID Sales Tax Fund after reimbursement of all CID Eligible Project Costs under this Agreement, the Developer and City will first cooperate in good faith to authorize to apply such funds in a manner permitted by laws of the State in furtherance of the Project, including future phases, by amending this Agreement or expanding the Project to be undertaken. If such cooperative efforts are not undertaken, any surplus amounts described in this Section shall be used as determined by the City for any purpose authorized by the CID Act and laws of the State.

ARTICLE IV USE AND OPERATION OF THE PROJECT

Section 4.01. Term. Unless earlier terminated as provided herein, this Agreement and the District will remain in effect until the expiration of the CID Collection Period.

Section 4.02. Restrictions on Use. During the Term of this Agreement, the Parties acknowledge that the End User anticipates using the Property for purpose of developing the End User Work, as contemplated by this Agreement and the Plans. Nothing in this Section 4.02 shall be construed to prevent Developer from locating other ancillary improvements within the District, so long as such improvements are reasonably related to the operation of the Project and are located, developed and operated pursuant to all applicable ordinances related to the use of land, including zoning or other requirements.

Section 4.03. Operation and Maintenance of Project. The Property, and the business and operations on the Property (including any repairs and maintenance thereof), shall comply with all applicable building and zoning, health, environmental and safety codes and laws and all other Applicable Laws and Requirements. The Parties acknowledge that the End User shall, at its own expense, secure or cause to be secured any and all Governmental Approvals which may be required by the City and any other Governmental Authority having jurisdiction for the construction, reconstruction, or operation of the End User Work.

Section 4.04. Additions and Alterations. The Developer may make additions, alterations, and changes to the Project so long as such additions, alterations, and changes are made

in compliance with all Applicable Laws and Requirements and this Agreement, and as long as the same do not have a material adverse effect on the value of the Project or the Developer's ability to perform its obligations under this Agreement.

Section 4.05. Taxes, Assessments, Encumbrances and Liens.

A. Taxes and Assessments. The Developer shall pay when due all sales taxes, real estate taxes and assessments on the Property. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax or assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto; provided however, that the City may suspend all reimbursements of CID Eligible Project Costs payable to the Developer hereunder during any time that such sales taxes, real estate taxes and assessments remain unpaid. The Developer shall promptly notify the City in writing of a protest of real estate taxes or assessments. The City and Developer acknowledge the intention of the Developer to sell a portion of the Property pursuant to the Contract described in Recital D of this Agreement and agree that upon the transfer of such property under the Contract, the obligation to pay sales taxes, real estate taxes and assessments related to the Property will be the responsibility of the owner of the Property.

ARTICLE V TRANSFER AND ASSIGNMENT

Section 5.01. Transfer or Assignments by Developer. The Developer shall not assign or transfer all or any of its rights or duties under this Agreement prior to completion of the Project (except as described below), without the prior written approval of the City (which will not be unreasonably withheld, conditioned or delayed) except for (i) assignments, transfers and conveyances of all or any of Developer's rights and duties under this Agreement to a subsidiary or affiliate which is owned or controlled by the Developer or a majority of its principals or any entity owned or controlled, directly or indirectly, by the Developer or a majority of its principals, or (ii) for financing purposes as permitted by this Agreement in Section 5.02 ("Permitted Transfer"). The Parties acknowledge that all or portions of the Property or interests in the Property may be sold, transferred, conveyed, leased, or subleased to one or more third parties that intend to develop or use the transferred Property in a manner generally consistent with the CID Petition, and such transfer shall also be deemed a Permitted Transfer. In the event of a Permitted Transfer, the Developer shall nonetheless promptly provide written notice of the same to the City and, upon request by the City, shall provide evidence satisfactory to the City that the transferee is an entity described above.

In addition to Permitted Transfers as described in the preceding paragraph, the rights, duties and obligations of the Developer under this Agreement, may be assigned, in whole or in part, to another entity with the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to any assignment, the City Attorney shall have verified that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of the Project and/or this Agreement being transferred. As a condition to considering any proposed assignment, the

City shall be entitled to request, receive, and review any information or financial statements of the proposed assignee for purposes of determining the proposed assignee's qualifications and financial responsibility. The City shall maintain the confidentiality, to the extent permitted by law, of the financial statements or other information provided by any assignee for consideration. The Developer shall be responsible for and pay the City's actual and reasonable costs and expenses and legal and other third-party professional fees and expenses incurred in connection with reviewing and considering any proposed assignment, or the preparation of any necessary legal or financial documents up to a maximum amount of \$25,000 for each proposed assignment. Any proposed assignee shall, by instruments in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the future obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of the Project, such obligations, conditions and restrictions to the extent that they relate to such portion). The Developer shall be relieved from any assigned obligations upon an approved assignment pursuant to the terms of this section. The Developer agrees, at Developer's cost, to promptly record all assignments in the office of the Register of Deeds of Lyon County, Kansas, in a timely manner following the execution of such agreements.

Section 5.02. Collateral Assignment. The restrictions on assignment, transfer and conveyance of the rights, duties and obligations of the Developer under this Agreement shall not apply to any collateral assignment of the Developer's rights to reimbursement of CID Eligible Project Costs from the CID Sales Tax Fund to secure indebtedness of the Developer; provided that such assignment or transfer shall not grant the assignee or transferee a right to seek direct reimbursement from the CID Sales Tax Fund without written consent of the City as provided in Section 5.01.

Section 5.03. Successors and Assigns. The Parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement (except as otherwise provided in an agreement approved by the City). Notwithstanding the foregoing, no tenant of any part of the Project shall be bound by any obligation of the Developer solely by virtue of being a tenant; provided, however, no transferee or owner of property within the Project except the Developer and the Petitioner shall be entitled to any rights whatsoever or claim upon the reimbursements of CID Eligible Project Costs from the CID Sales Tax Fund as set forth herein, except as specifically authorized herein or in a separate writing by the Developer and the City.

Section 5.03. Excluded Encumbrances and Transfers. The foregoing restrictions on assignments, transfer and conveyance shall not apply to (i) any security interest granted to secure indebtedness to any construction or permanent lender, or (ii) the sale, rental and leasing of portions of the Property for the uses permitted under the terms of this Agreement.

ARTICLE VI GENERAL COVENANTS

Section 6.01. Indemnification of City.

A. Indemnity. The Developer agrees to indemnify and hold the City, its employees, officers, agents and independent contractors and consultants (collectively, the "City Indemnified Parties") harmless from and against any and all suits, claims, costs or defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and attorneys' fees, resulting from, arising out of, or in any way connected with:

1. Any breach, default or failure to perform by the Developer under this Agreement; or
2. The Developer's actions and undertakings in implementation of this Agreement.

This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, *et seq.*), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 *et seq.*) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where the Developer owns or has control of real property pursuant to any of Developer's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA to assure, protect, hold harmless and indemnify the City from liability.

This section shall not apply to liability for damage or injury caused by willful misconduct or negligence of the City or its officers, employees or agents.

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

C. Survival of Obligations. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

Section 6.02. Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the reimbursement of the CID Eligible Project Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past present or future official (elected or appointed), officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as

such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. Nothing in this Section 6.02 shall be construed as waiving liability of the City for acts of its officials, officers, employees or agents, nor shall the waiver provided hereunder extend to any official, officer, employee or agent of the City whom the City contends was not acting on behalf of, or in the scope of his/her employment with the City when the act or omission giving rise to liability occurred.

ARTICLE VII DEFAULTS AND REMEDIES

Section 7.01. Developer Event of Default. Subject to Section 7.05, the occurrence and continuance of any of the following events shall constitute a “Developer Event of Default” hereunder:

A. A default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement (other than a covenant or agreement, a default in the performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of thirty (30) days after the City has delivered to the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall promptly upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch; or

B. The Developer shall file a voluntary petition under any bankruptcy law or any involuntary petition under any bankruptcy law is filed against the Developer in a court having jurisdiction and said petition is not dismissed within sixty (60) days, or the Developer makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of the manage any substantial part of the assets of the Developer and such appointment is not dismissed within ninety (90) days; or any execution or attachment shall issue against the Developer whereupon the District or any part thereof, or any interest therein of the Developer under this Agreement, shall be taken and the same is not released prior to judicial sale thereunder.

Section 7.02. City Event of Default. Subject to Section 7.05, a “City Event of Default” shall mean a default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement, and continuance of such default or breach for a period of thirty (30) days after the Developer has delivered to the City a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 7.03. Remedies upon a Developer Event of Default.

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

1. The City shall have the right to terminate this Agreement or terminate the Developer's rights under this Agreement.
2. The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default. The Parties acknowledge, however, that the Developer's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the Developer be liable for any remote, indirect, consequential, or punitive damages.

B. Upon termination of this Agreement for any reason, the City shall have no obligation to reimburse the Developer for any CID Eligible Project Costs, or any other amounts or costs incurred or paid by the Developer relating to the Project, and the City may elect to terminate the District and/or the CID Sales Tax.

C. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

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

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

Section 7.04. Remedies upon a City Event of Default.

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

1. The Developer shall have the right to terminate the Developer's obligations under this Agreement; or
2. The Developer may pursue any available remedy at law or in equity by suite, action mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement, to enforce and preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover damages incurred by the Developer resulting from such City Event of Default. The Parties acknowledge, however, that the City's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote, indirect, consequential, or punitive damages. The City's liability hereunder shall also be limited by Applicable Laws and Requirements.

B. If Developer has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Developer, then and in every case the Developer and the City shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Developer shall continue as though no such proceeding had been instituted.

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

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

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

Section 7.06. Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Lyon County, Kansas.

ARTICLE VIII REPRESENTATIONS AND WARRANTIES

Section 8.01. Representation of City. The City makes the following representations and warranties, which are true and correct on the Effective Date, to the best of the City's knowledge:

A. Due Authority. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

B. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated herein, and the fulfillment of the terms and conditions of this Agreement do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. No Litigation. There is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to the creation of the District, the levy of the CID Tax, or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performances by the City of the terms and provisions of this Agreement.

D. Governmental or Corporate Consents. No consent or approval that has not been obtained, is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

E. No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

Section 8.02. Representations of the Developer. The Developer makes the following representations and warranties, which are true and correct on the Effective Date, to the best of the Developer's knowledge.

A. Due Authority. The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement

constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

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

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

D. No Material Change. (1) The Developer has not incurred any material liabilities or entered into any material transaction other than in the ordinary course of business except for the transactions contemplated by this Agreement, and (2) there has been no material adverse change in the business, financial position, prospects or results of the operations of the Developer, which could affect the Developer's ability to perform its obligations pursuant to this Agreement, from the time the Developer submitted its petition to the City requesting formation of the District to the execution of this Agreement.

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

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

G. Compliance with Laws. To the knowledge of the Developer, the Developer is in compliance with all Applicable Laws and Requirements affecting any of its affairs, business, and operations as contemplated by this Agreement.

H. Other Disclosures. To the knowledge of Developer, the information furnished to the City by the Developer in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement or any material fact and do not omit to state any

materials fact required to be stated herein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

I. Project. To the knowledge of the Developer, the Property is sufficient to construct the Project as contemplated in this Agreement.

ARTICLE IX GENERAL PROVISIONS

Section 9.01. Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

Section 9.02. Effect of Violations of the Terms and Provisions of this Agreement; No Partnership. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community. The Agreement shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Project or the District. The City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other property proceedings to enforce the curing of such breaches to which it may be entitled. Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

Section 9.03. Time of Essence; Termination. The Parties will make every reasonable effort to expedite the subject matters of this Agreement and acknowledge that the successful performance of this Agreement requires their continued cooperation. Notwithstanding anything in this Agreement to the contrary, if the City is unable to begin construction of the City Work within twenty-four (24) months of the Effective Date of this Agreement, due to circumstances described in Section 2.03, this Agreement shall terminate on such date (unless extended by written agreement of the Parties) and the Parties shall have no further duties or responsibilities to each other. If the Agreement terminates for the reasons described in this Section, each Party shall be responsible for its own costs.

Section 9.04. Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution or ordinance of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 9.05. Agreement Controls. The Parties agree that the Project will be implemented as agreed in this Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter of this Agreement and is a full integration of the agreement of the Parties.

Section 9.06. Validity and Severability. It is the intention of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws of the State of Kansas, and that the unenforceability (or modification to conform with such laws) of any provision of the Agreement shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement is deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 9.07. Equal Opportunity. In conformity with the Kansas act against discrimination (K.S.A. 44-1001 *et seq.*) the Developer and its subcontractors, if any, agree that:

A. The Developer shall observe the provisions of the Kansas act against discrimination and applicable federal law and in doing so shall not discriminate against any person in the performance of work under the Agreement because of race, sex, religion, age, color, national origin, ancestry or disability;

B. The Developer shall include in all solicitations, or advertisements for employees, the phrase, "equal opportunity employer," or a similar phrase to be approved by the City Clerk;

C. If the manner in which the Developer reports to the Kansas human rights commission fails to comply with the provisions of K.S.A. 44-1031 and amendments thereto, the Developer shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;

D. If the Developer is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas human rights commission which has become final, the Developer shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;

E. The Developer shall not discriminate against any employee or applicant for employment in the performance of this Agreement because of race, sex, religion, age, color, national origin, ancestry or disability; and

F. The Developer shall include similar provisions in any subcontract under this Agreement.

Section 9.09. Tax Implications. The Developer acknowledges and represents that (i) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated herein, and (ii) the Developer is relying solely upon its own tax advisors in this regard.

Section 9.10. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required

to agree or to take some action at the request of the other Party, such approval or consent or such request shall be given for the City, unless otherwise provided herein, by the City Manager and for the Developer by any officer of the Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Manager may seek the advice, consent or approval of the Governing Body and the City Attorney, before providing any supplemental agreement, request demand, approval, notice or consent for the City pursuant to this Section.

Section 9.11. Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt request, or by generally recognized, prepaid, commercial courier or overnight air courier service. Notice shall be considered given when received on the date appearing on the return receipt, but if the receipt is not returned within five (5) days, the three (3) days after mailed, if sent by registered or certified mail or commercial courier service; or the next business day, if sent by overnight air courier service. Notices shall be addressed as appears below for each party, provided that if any party gives notice of a change of name or address, notices to the giver of that notice shall thereafter be given as demanded in that notice.

CITY: City of Emporia, Kansas
Attn: City Attorney
111 East 6th Ave.
Emporia, Kansas 66801

With a copy to:
Triplett Woolf Garretson, LLC
Attn: Mary Carson
2959 N. Rock Rd., Ste. 300
Wichita, Kansas 67226

DEVELOPER: BERCA, LLC
Attn: Thomas A. Krueger
501 Commercial Street
Emporia, Kansas 66801

JAL Holding 1, LLC
Attn: Jeffrey DeBauge
2931 West 15th Street
Emporia, Kansas 66801

With a copy to:
Husch Blackwell, LLP
Attn: Charles Renner
4801 Main Street
Kansas City, Missouri 64112

Section 9.12. Kansas Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. It is the intent of the Parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101 et seq.) or the Kansas Budget Law (K.S.A. 79-2925). Therefore, notwithstanding anything to the contrary herein, the City's obligations under this Agreement are to be construed in a manner that assures the City is at all times in compliance with the Kansas Cash Basis Law and the Kansas Budget Law.

Section 9.13. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 9.14. Recording. As required by the Act, the City will record a copy of its ordinance creating the District and levying the CID Sales Tax with the Lyon County Register of Deeds. Additionally, the Parties agree to execute and deliver a memorandum of this Agreement, in proper form for recording and/or indexing in the real estate records of Lyon County, Kansas. This recoding of a memorandum of this Agreement, shall be at Developer's cost and proof of such recording shall be provided to the City.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their duly authorized officers on the day and year first above written.

CITY OF EMPORIA, KANSAS

[seal]

By _____
Robert F. Gilligan, Mayor

ATTEST:

By _____
Kerry Sull, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF LYON)

BE IT REMEMBERED, that on this ____ day of _____, 2021, before me, the undersigned, a Notary Public in and for said County and State, came Rob Gilligan and Kerry Sull, Mayor and City Clerk, respectively, of the City of Emporia, Kansas, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

Notary Public in and for said County and State

My Appointment Expires:

BERCA, LLC

By: _____
Title: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
)
COUNTY OF _____) ss:

BE IT REMEMBERED that on this ____ day of _____, 2021, before me, a notary public in and for said County and State, came _____ of BERCA, LLC, a Kansas limited liability company organized and existing under and by virtue of the laws of said State, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

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

Notary Public in and for
said County and State

My Appointment Expires:

JAL HOLDINGS 1, LLC

By: _____
Title: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
)
COUNTY OF _____) ss:

BE IT REMEMBERED that on this ____ day of _____, 2021, before me, a notary public in and for said County and State, came _____ of JAL Holdings 1, LLC, a Kansas limited liability company organized and existing under and by virtue of the laws of said State, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

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

Notary Public in and for
said County and State

My Appointment Expires:

EXHIBIT A

Legal Description of Property

DESCRIPTION:

A TRACT OF LAND LOCATED NORTHWEST OF THE STREET INTERSECTION OF HIGHWAY I-35 AND GRAPHICS ARTS ROAD, IN THE NORTHEAST QUADRANT OF SECTION 7, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH PM, CITY OF EMPORIA, LYON COUNTY, KANSAS, SAID TRACT A BEING APPROXIMATELY 560' +/- N-S BY 835' +/- E-W CONTAINING 11 ACRES MORE OR LESS.

Depiction of Property

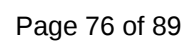


EXHIBIT C

[CID Petition]

EXHIBIT D

CERTIFICATE OF EXPENDITURES

Date: _____
Certificate # _____

City of Emporia, Kansas

Attn: City Manager

Pursuant to the Development Agreement dated _____, 2021 (the "Agreement"), between the City of Emporia, Kansas (the "City") and _____ (the "Developer"), the Developer certifies, with respect to CID Eligible Project Costs eligible for reimbursement under the Agreement, as follows:

1. To the best of my knowledge, all amounts requested are CID Eligible Project Costs, eligible for reimbursement to the City, the Developer or the Petitioner (as defined in the Agreement) under terms of the Agreement.

2. All amounts to be reimbursed have been advanced by the City, the Developer or the Petitioner pursuant to the Agreement, for CID Eligible Project Costs according to the Agreement and represent the fair value of work, materials or expenses.

3. No part of any amount sought to be reimbursed by this Certificate has been previously reimbursed or been the basis for any previous request for reimbursement to the City, the Developer or the Petitioner under the Agreement.

The Developer certifies that Developer is in compliance, in all material respects, with all other provisions of the Agreement. Developer further represents that no event has occurred, and no condition exists that would constitute a Developer Event of Default under the Agreement.

The total reimbursement requested by this Certificate is \$_____, which is itemized on Attachment A to this Certificate and which attachment includes ___ pages. Attachment A is incorporated here by this reference and is signed by the authorized representative of the Developer who signed this Certificate.

[Developer]

By: _____

Title: _____

City Approved:

By: _____

City's Representative

ATTACHMENT A

I hereby request reimbursement from the CID Sales Tax Fund of CID Eligible Project Costs paid by Developer in the amounts specified below, and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete. I have attached supporting documentation as required and described by Section 3.02 of the Development Agreement.

PAYMENT SCHEDULE –REIMBURSABLE COSTS OF CITY WORK

[PAYMENT SCHEDULE –REIMBURSABLE COSTS OF DEVELOPER WORK

		Purpose or Nature	
Payee Name	Payee Address	Of Payment	Amount

By: _____, Developer Representative

Approved by: _____, City Representative

EXHIBIT E

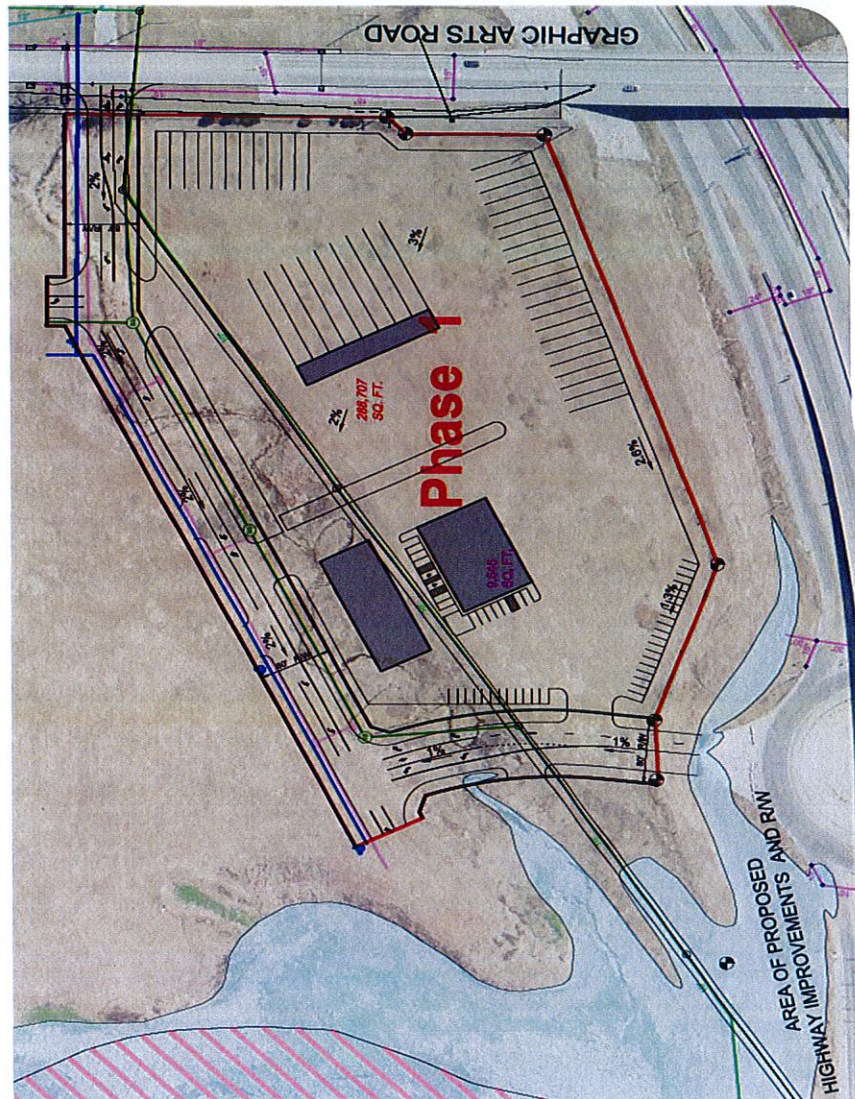
Estimated Project Budget



Note: While we estimated actual improvement costs will be determined at time of construction.

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Site Plan - City Work



EXISTING STORM WATER LINE
EXISTING SANITARY SEWER LINE
EXISTING WATERLINE
PROPOSED PROPERTY LINE / RIGHT-OF-WAY
PROPOSED WATERLINE
PROPOSED FIRE HYDRANT
PROPOSED STORM WATER LINE AND CURB INLET
PROPOSED SANITARY SEWER LINE
PROPOSED SANITARY SEWER MANHOLE
BASE FLOOD ELEVATION
SEE PRELIMINARY FEMA MAP NO. 20111C0236E
REGULATORY FLOODWAY
SEE PRELIMINARY FEMA MAP NO. 20111C0236E

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 11

SUBJECT: Consider Ordinance Establishing Common Consumption Area and Approving Visit Emporia as Permit Applicant.

RECOMMENDATION: Consider Ordinance.

BACKGROUND SUMMARY:

Visit Emporia would like to sponsor a Common Consumption Area in downtown Emporia in a two-block area from Sixth Avenue to Eighth Avenue between Merchant Street and Commercial Street. The Common Consumption Area (CCA) would allow consumption of alcoholic liquor and cereal malt beverages (CMB) in the public parking lots and alleys in that area, as well as on Seventh Avenue.

Licensed drinking establishments (DE's) adjacent to the CCA may apply to the state to participate in the CCA. This will allow patrons of participating DE's to remove alcoholic beverages and CMB from the licensed premises into the CCA. Participating DE's will be required to serve beverages in non-glass containers that include the DE's trade name, logo, or other identifying mark that is unique to the DE.

A special event permit approved by Emporia Police Department would be required for the CCA area to be open. When open, alcohol may be consumed in the CCA between the hours of 12:00 pm and 12:00 am.

When the CCA is open, City fencing will be required to specify the boundaries where alcohol and CMB may be consumed. Alcohol and CMB may not be removed from the boundaries of the CCA and outside alcohol may not be brought in.

The CCA permit holder will be held liable for all alcohol violations that occur within the CCA and participating licensed DE's will be held liable for alcohol violations that occur within their licensed premises.

Ordinance Attached

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A COMMON CONSUMPTION AREA AND AUTHORIZING THE POSSESSION AND CONSUMPTION OF ALCHOLIC LIQUOR AND CEREAL MALT BEVERAGE WITHIN THE COMMON CONSUMPTION AREA BOUNDARIES.

WHEREAS, Visit Emporia, desires to sponsor a Common Consumption Area including an area north of Sixth Avenue and south of Eighth Avenue, east of Merchant Street and west Commercial Street in the City of Emporia, excluding streets and sidewalks adjacent to streets, with the exception of Seventh Avenue and sidewalks adjacent to Seventh Avenue; intended to be used from time to time as a public gathering place for special events where possession and consumption of alcoholic beverages and/or cereal malt beverages (hereinafter referred to as CMB) is authorized during dates and times in which the Common Consumption Area is open, as designated by the Governing Body of the City of Emporia; and

WHEREAS, the Governing Body of the City of Emporia desires to establish said Common Consumption Area and approves Visit Emporia as applicant for the Common Consumption Area Permit.

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

SECTION 1. Establishment of Common Consumption Area. Pursuant to K.S.A. 41-2659, as amended, the Governing Body hereby establishes a Common Consumption Area (hereinafter referred to as CCA) during special events, excluding any and all areas which are currently or otherwise become subject to a license issued pursuant to the Kansas Liquor Control Act or the Club and Drinking Establishment Act; and approves Visit Emporia as the sponsor of the CCA. The Common Consumption area shall include an area north of Sixth Avenue and south of Eighth Avenue, east of Merchant Street and west Commercial Street in the City of Emporia, excluding streets and sidewalks adjacent to streets, with the exception of Seventh Avenue and sidewalks adjacent to Seventh Avenue; as illustrated in Exhibit A, incorporated herein by reference.

SECTION 2. Special Event Permit Required; Streets; Hours. The CCA shall be open during a special event after application and approval a special event permit from the Emporia Police Department. The boundaries of the event shall be clearly marked using City of Emporia fencing. Any public street, roadway, alley, or parking lot that lies within the CCA designated for the special event shall be blocked from motorized traffic during the hours in which alcoholic liquor and/or CMB is consumed. The possession and consumption of alcoholic liquor within the CCA during a special event shall only be allowed between the hours of 12:00 pm and 12:00 am Sunday through Saturday.

SECTION 3. Permit; Directors of the Division of Alcoholic Beverage Control. The Governing Body hereby authorizes the possession and consumption of alcoholic liquor in

the Common Consumption Area during a special event as authorized by the Emporia Police Department with boundaries clearly demarcated by City of Emporia fencing provided that a common consumption area permit ("Permit") has been issued to Visit Emporia by the State of Kansas, Director of the Division of Alcoholic Beverage Control ("Director") in accordance with K.S.A. 41-2659 and amendments thereto.

SECTION 4. Authorized Alcoholic Liquor Containers. All alcoholic liquor and/or CMB removed from a licensed premise, with a valid CCA permit and authorized to participate in the special event, shall be served in a container that displays the licensee's trade name or logo or other identifying mark that is unique to the licensee. No alcoholic beverage removed from a licensed premise shall be in a glass container or any container that otherwise represents a potential danger to the public as determined by law enforcement officials.

SECTION 5. Purchases Outside CCA. The possession or consumption of alcoholic liquor and/or CMB purchased outside of the CCA shall not be permitted inside the boundaries of the special event and CCA.

SECTION 6. Purchases Within CCA. No open container of alcoholic liquor and/or CMB purchased within the CCA shall be removed from the boundaries of the CCA and special event. No alcoholic beverages shall be consumed in vehicles while on the street at any special event within the CCA.

SECTION 7. Licensees. All licensees approved by the Director to participate in the CCA shall at all times comply with any and all federal and state law and City ordinances regulating the purchase, sale, and consumption of alcoholic liquor and CMB.

SECTION 8. Effective Date. The Ordinance shall become effective upon passage and publication of the ordinance summary in the official City newspaper.

PASSED AND APPROVED this 21st day of July, 2021.

Robert F. Gilligan, Mayor

ATTEST:

Kerry Sull, City Clerk

Legend

W 8th Ave

**Exhibit A: Common
Consumption Area - 2021**

W 7th Ave

Constitution St

Merchant St

Commercial St

W 6th Ave

Google Earth

© 2021 Google W 5th Ave

99



500 ft

AGENDA ITEM SUMMARY

MEETING DATE: July 21, 2021

ITEM NUMBER: 12

SUBJECT: Report from the City Manager on City Activities

RECOMMENDATION: This is a verbal report that announces upcoming events, recognizes employees for outstanding contributions and provides the public with information that may be of general interest.

BACKGROUND SUMMARY: This is an opportunity to present information to the public that may not be reported in other news accounts or City activities or to highlight accomplishments of the organization.

Tentative Agenda for July 28th Study Session at 10:00 a.m.

- Continued Review Funds with Tax Levy.
- Review Non-levied funds & 5-Year plan.
- Discuss Highland Street.

Joint Luncheon w/ Emporia Recreation Commission Board At the Emporia Recreation Center

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____