

CITY COMMISSION MEETING

AGENDA

CITY COMMISSION / MUNICIPAL COURT ROOM
518 MECHANIC, EMPORIA, KS
September 1, 2021 at 1:30 pm

1. Members present: Mayor Gilligan

<u>Vice Mayor Smith</u>	<u>Commissioner Geitz</u>
<u>Commissioner Giefer</u>	<u>Commissioner Brinkman</u>
<u>City Manager McAnarney</u>	<u>City Clerk Sull</u>
<u>Asst. City Mgr. Massey</u>	<u>City Attorney Montgomery</u>
2. Consent Agenda.
3. Public Comment.
4. Consider the Purchase of two Fairway Mowers for the Golf Course.
5. Consider Approval of an Application for a Final Plat of the Brownstone Addition Subdivision.
6. Consider a Bid for the Funston Street & 5th Ave Paving Improvements Project No. PV2008.
7. Consider Accepting Southern Star Central Gas Pipeline Inc Encroachment Agreement.
8. Consider Agreement with the Humane Society of the Flint Hills, Inc. for Operation of the Emporia Animal Shelter.
9. Consider Animal Shelter Lease Agreement with the Humane Society of the Flint Hills, Inc.
10. Consider Ordinance Amending City Code Section 25-21 to Adopt the 48th Edition of the Standard Traffic Ordinances for Kansas Cities.
11. Consider the Approval of the Items Required for a Kansas Department of Commerce Loan Application Under the Economic Development Category.
12. Report from City Manager on Activities.
13. City Commission Reports and Comments.
14. Executive Session.
15. 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 Jeff Lynch, City of Emporia ADA Coordinator at least 48 hours before the event at 620-343-4285 or email jlynch@emporia-kansas.gov*

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 2021

ITEM NUMBER: Consent Agenda

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 Regular Meeting held on August 18, 2021.
- b. Consider ratification of Payroll Ordinance for the period ending on August 27, 2021.

RECOMMENDATION:

- a. Approve Minutes
- b. Approve Payroll

BACKGROUND SUMMARY:

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 2021

ITEM NUMBER: 3

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: September 1, 2021

ITEM NUMBER: 4

SUBJECT: Consider the purchase of two Toro Reelmaster 3575-D fairway mowers in the amount of \$112,416.56 from Professional Turf Products utilizing the Sourcewell pre-negotiated governmental contract #137227.

RECOMMENDATION: Approve the purchase.

BACKGROUND SUMMARY:

The City of Emporia budgeted \$130,000.00 (\$65,000.00 from the General Fund and \$65,000.00 from the Special Park Fund) in the 2021 adopted budget. We are replacing two 21-year old mowers. We were able to demo the recommended units and determined they were able to cut and turn quicker than our current heavyweight mowers. We did demo several other units and believe the Toro Reelmaster 3575-D fairway mowers are the best option for our course.

This purchase would be \$17,583.44 under the budgeted amount.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____



Professional Turf Products, L.P.

10935 Eicher Dr.
Lenexa, Kansas 66219
Derek Harrison
(316) 250-2902
harrisond@proturf.com



Count on it.



Ship To	Emporia Municipal Golf Course	Date:	8/25/2021
Bill To		Tax Rate	
Contact	Kelley Storch	Destination	
Address	1133 S. Highway 99, Emporia, KS 66801-7548	Trade-In	
		Finance	
Phone	(316) 342 7666	Account Type	Contract
Email	kstorch@emporia-kansas.gov	QMS: ID	Q81783
Comments:	Applicable sales & property tax not included. Quoted with Sourcewell ID# 137227		

Proposal

Qty	Model #	Description		Extended
1	03821	Reelmaster 3575-D	\$	38,995.32
5	03639	22 Inch 7-Inch, 8-Blade (Fsr) Forward Swept	\$	15,600.00
		Reel Edgeseries		
5	107-3280	Rear Roller Scraper Kit (22 Inch)	\$	307.13
1	03405	7-inch Weight for CUs with No Attachments	\$	494.52
		(Kit of 5)		
1	30671	Universal Sunshade, Red	\$	725.40
1	30090	400 Hour MVP Filter Kit	\$	85.91
		Reelmaster 3575-D	\$	56,208.28

SubTotal	\$	56,208.28
Destination	\$	-
Tax (Estimated)	\$	-
TOTAL	\$	56,208.28

Comments:

For all New Equipment, Demo units may be available for up to 20% savings.
For all New Equipment, Refurbished units may be available for up to 40% savings.
Due to unexpected issues with much of our supply chain, we are experiencing longer lead times that we have seen in the past.

Terms & Conditions:

1. Orders are considered contractual. Order cancellations are subject to fees up to 10% of the original order value.
2. New equipment delivery time will be determined once credit is approved & documents are executed.
3. Due to market volatility prices are subject to change.
4. Payments by Credit Card are subject to convenience fee.
5. After 30 days all prices are subject to change without notice.
6. Used and Demo equipment is in high demand and availability is subject to change.
 - A. Upon firm customer commitment to purchase, said equipment availability will be determined and "locked".

- B. In the event equipment is unavailable at time of order, PTP will employ every resource to secure an acceptable substitute.
- C. PTP strongly advises the customer to issue a firm PO as quickly as possible after acceptance of quotation.
- 7. "Trade In Allowances" will be treated as a credit for future parts purchases on PTP account unless other arrangements have been made.

Returns Policy:

- 1. All returns are subject to restocking, refurbishing, usage, and shipping fees.
- 2. All returns must be able to be sold as new.
- 3. Items missing parts are non returnable.
- 4. Professional Turf Products will have sole discretion as to the resalable condition of the product.
- 5. This policy does not apply to items that are defective, or shipped incorrectly by PTP or one of its vendors.

Payment:

- 1. Terms are net 10 unless prior arrangements have been made.
- 2. Quoted prices are subject to credit approval.
 - A. PTP will work with third party financial institutions to secure leases when requested to do so.
 - B. When using third party financiers, documentation fees & advance payments may be required.
 - C. For convenience, monthly payments are estimated based on third party rate factors in effect at time of the quotation.
 - D. PTP assumes no liability in the event credit becomes unavailable or rates change during the approval process.
- 3. There will be a service charge equal to 1.5% per month (18% per annum) on all past due invoices.
- 4. By Law we are required to file a "Notice to Owner" of our intent to file lien in the event of payment default.
This notice must be sent within 60 days of the date the original invoice and will happen automatically regardless of any special payment arrangements that may have been made.

Authorized Signature: _____

Date: _____



Professional Turf Products, L.P.

10935 Eicher Dr.
Lenexa, Kansas 66219
Derek Harrison
(316) 250-2902
harrisond@proturf.com



Count on it.



Ship To	Emporia Municipal Golf Course	Date:	9/1/2021
Bill To		Tax Rate	
Contact	Kelley Storch	Destination	
Address	1133 S. Highway 99, Emporia, KS 66801-7548	Trade-In	
		Finance	
Phone	(316) 342 7666	Account Type	Contract
Email	kstorch@emporia-kansas.gov	QMS: ID	Q81783
Comments:	Applicable sales & property tax not included. Quoted with Sourcewell ID# 137227		

Proposal

Qty	Model #	Description		Extended
1	03821	Reelmaster 3575-D	\$	42,894.85
5	03639	22 Inch 7-Inch, 8-Blade (Fsr) Forward Swept Reel Edgeseries	\$	17,160.00
5	107-3280	Rear Roller Scraper Kit (22 Inch)	\$	337.84
1	03405	7-inch Weight for CUs with No Attachments (Kit of 5)	\$	543.97
1	30671	Universal Sunshade, Red	\$	797.94
1	30090	400 Hour MVP Filter Kit	\$	94.50
		Reelmaster 3575-D	\$	61,829.11

SubTotal	\$	61,829.11
Destination	\$	-
Tax (Estimated)	\$	-
TOTAL	\$	61,829.11

Comments:

For all New Equipment, Demo units may be available for up to 20% savings.
For all New Equipment, Refurbished units may be available for up to 40% savings.
Due to unexpected issues with much of our supply chain, we are experiencing longer lead times that we have seen in the past.

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- Orders are considered contractual. Order cancellations are subject to fees up to 10% of the original order value.
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 - A. PTP will work with third party financial institutions to secure leases when requested to do so.
 - B. When using third party financiers, documentation fees & advance payments may be required.
 - C. For convenience, monthly payments are estimated based on third party rate factors in effect at time of the quotation.
 - D. PTP assumes no liability in the event credit becomes unavailable or rates change during the approval process.
3. There will be a service charge equal to 1.5% per month (18% per annum) on all past due invoices.
4. By Law we are required to file a "Notice to Owner" of our intent to file lien in the event of payment default.

This notice must be sent within 60 days of the date the original invoice and will happen automatically regardless of any special payment arrangements that may have been made.

Authorized Signature: _____

Date: _____

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 2021

ITEM NUMBER: 5

SUBJECT: Consider approval of final plat and acceptance of dedication of land for public purposes for the Brownstone Addition Subdivision, located at a non-addressed parcel located at the Southwest corner of US-50 and Graphic Arts Road, as authorized by Section 6-301 of the Emporia Subdivision Regulations.

BACKGROUND SUMMARY: The applicant is requesting approval of a Final Plat to allow for utilities and future development. The property is currently zoned for C-3 General Commercial this would allow for a hotel and travel plaza, or other related uses, once the final plat is approved.

The Utility Advisory Board met on January 22nd, 2021, and discussed the property, all easements were found to be sufficient. The Technical Review Team met several times, including on July 7, 2021, to discuss the application, and revisions were made as requested. This item was approved by the Planning Commission on August 17th, 2021 by a 6-1 vote.

RECOMMENDATION: Approve final plat and accept dedication of land for public purposes

ACTION:

You may 1) approve the final plat and accept the dedication of land for public purposes; 2) deny the final plat; or 3) defer action for an additional 30 days for the purpose of allowing for modifications to comply with the requirements established by the governing body. All actions may be taken by majority vote.

ATTACHMENTS: Planning Commission Minutes Excerpt, Plat, Zoning/Flood Maps, Preliminary/Final Plats

LEGAL DESCRIPTION:

A TRACT OF LAND LYING IN THE SE 1/4 OF SECTION 7, 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 7, THENCE NORTHERLY ON THE EAST LINE OF SAID SECTION 7 ON AN ASSUMED BEARING OF N00°06'15"W FOR A DISTANCE OF 1779.15 FEET; THENCE S88°34'43"W FOR A DISTANCE OF 65.02 FEET TO THE POINT OF BEGINNING; THENCE S88°34'43"W FOR A DISTANCE OF 360.00 FEET; THENCE S00°06'15"E FOR A DISTANCE OF 300.00 FEET; THENCE S88°34'43"W FOR A DISTANCE OF 493.66 FEET; THENCE N00°06'15"W FOR A DISTANCE OF 1049.98 FEET TO A POINT ON THE SOUTH RIGHT OF WAY OF U.S. HIGHWAY 50; THENCE SOUTHEASTERLY ALONG THE SOUTH RIGHT OF WAY OF U.S. HIGHWAY 50 FOR A DISTANCE OF 861.71 FEET; THENCE S00°06'15"E FOR A DISTANCE OF 617.22 FEET TO THE POINT OF BEGINNING.

ALSO:

A TRACT OF LAND LYING IN THE SE 1/4 OF SECTION 7, 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 7, THENCE NORTHERLY ON THE EAST LINE OF SAID SECTION 7 ON AN ASSUMED BEARING OF N00°06'15"W FOR A DISTANCE OF 1479.15 FEET; THENCE S88°34'43"W FOR A DISTANCE OF 918.68 FEET TO THE POINT OF BEGINNING; THENCE S88°34'43"W FOR A DISTANCE OF 774.57 FEET; THENCE N02°18'46"W FOR A DISTANCE OF 826.34 FEET; THENCE N38°08'35"E FOR A DISTANCE OF 255.23 FEET; THENCE N03°04'49"E FOR A DISTANCE OF 47.97 FEET TO A POINT ON THE SOUTH RIGHT OF WAY OF U.S. HIGHWAY 50; THENCE SOUTHEASTERLY ALONG THE SOUTH RIGHT OF WAY OF U.S. HIGHWAY 50 FOR A DISTANCE OF 645.77 FEET; THENCE S00°06'15"E FOR A DISTANCE OF 1049.98 FEET TO THE POINT OF BEGINNING, BUT

ACTION RECORD

Action: _____

Motion: _____

Second: _____

Abstained: _____

Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

EXCEPTING FROM THE ABOVE THE FOLLOWING DESCRIBED TRACT AS TAKEN BY CONDEMNATION IN LYON COUNTY DISTRICT COURT CASE NO. 06CV67:

COMMENCING AT THE NORTHWEST CORNER OF THE SE 1/4 OF SAID SECTION 7; THENCE BEARING N87°48'06"E ALONG THE NORTH LINE OF SAID SE 1/4 A DISTANCE OF 1148.94 FEET; THENCE BEARING S02°11'54"E A DISTANCE OF 91.69 FEET TO THE SOUTH RIGHT OF WAY OF HIGHWAY U.S. 50 AND THE POINT OF BEGINNING; THENCE BEARING N88°17'29"E ALONG THE U.S. 50 RIGHT OF WAY A DISTANCE OF 152.96 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT WITH A RADIUS OF 5659.65 FEET; THENCE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 6°57'57", AN ARC DISTANCE OF 688.09 FEET; THENCE BEARING S41°30'45"W A DISTANCE OF 315.03 FEET; THENCE BEARING N87°28'03"W A DISTANCE OF 144.25 FEET; THENCE BEARING N39°09'41"W A DISTANCE OF 299.90 FEET; THENCE BEARING S88°41'53"W A DISTANCE OF 277.47 FEET; THENCE BEARING N46°58'34"W A DISTANCE OF 28.14 FEET TO THE POINT OF BEGINNING. LANDS ABUTTING SAID HIGHWAY SHALL HAVE NO RIGHT OR EASEMENT OF ACCESS THERETO, EXCEPT IN THE AREA DESCRIBED ABOVE AS 144.25 FEET HAVING A BEARING OF N87°28'03"W AND THE RIGHT OF ACCESS SHALL BE UPON COMPLETION OF CONSTRUCTION OF THE PROJECT, UPON APPROVAL OF A PLAT FOR ALL OR A PART OF SUBJECT PROPERTY BY THE CITY OF EMPORIA, WITH A PUBLIC THOROUGHFARE OR COMMERCIAL PUBLIC STREET AND ITS CONNECTION TO HIGHWAY 50 WHICH COMPLIES WITH KDOT DESIGN AND PERMITTING REQUIREMENTS.

PLANNING COMMISSION MINUTES:

The Planning Commission met in a regular session on Tuesday, August 17, 2021, with Chairman Thomas presiding. Members Bucklinger, Duncan, Colson, Garrett, Weaver and Dewitt were present.

APPLICATION 2021-17: A request of Red Brick Investments for a final plat of the Brownstone Addition Subdivision, located at a non-addressed parcel located at Southwest corner of US-50 and Graphic Arts Road, as authorized by Section 6-401 of the Emporia-Lyon County Metropolitan Planning Area Subdivision Regulations.

Bucklinger asked if construction can proceed before the approval from KDOT? Lynch said he will need to do more research before giving a definite yes or no answer.

Garrett asked if something goes wrong and KDOT doesn't approve, would it alter the final plat in terms of planning and zoning? Lynch said that he thinks they are separate issues but not 100% sure.

Garrett asked do you see any reason for us to wait until KDOT approves? Lynch answered for planning purposes it's a stand-alone decision but of course it affects the whole development.

Garrett asked in terms of compliance of the final plat with our planning and zoning regulations, is that a condition? Krause answered if they make changes it would have to go back to a minor plat application.

Weaver asked Mr. Hutchinson if they have any updates on KDOT? Mr. Hutchinson said that they have been talking to KDOT a few times a week regarding access to the roundabout and there have been couple of little changes. They are wanting to make sure it is big enough. Another issue is paint parkings. The plan is to put material where the fence is. They already put a road in so they can have access in and out of the property.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

Motion: Member Bucklinger made a motion to approve Application 2021-17 based on staff recommendations. Member Weaver seconded the motion. Motion approved 6-1. Member Colson opposed.

Background Summary:

The Planning Commission is requested to approve a Final Plat to allow for utilities and future development. The property is currently zoned for C-3 General Commercial this would allow for a hotel and travel plaza, or other related uses.

Analysis:

The applicant is proposing a new subdivision development at this location. The Final Plat will allow this property to start construction. City staff met weekly with the applicant and discussed this project. The Utility Advisory Board met on 1/22/2021 and discussed the property and found the proposed easements sufficient for utility needs. The Technical Review Team met multiple times on 12/16/2020 and 1/20/2021 and discussed the property and applications. Comments were noted and addressed throughout the process, in order to submit a complete plat.

In addition to this preliminary plat, there will need to be a re-plat of the neighboring parcel that connects Martin Drive (Martin-Eagle Subdivision). This plat will be submitted to this office in the near future.

Martin Drive will end at a Cul-de-Sac. Subdivision regulations allow for cul-de-sacs with a turnaround of no less than an eight-foot diameter. This is sufficient with the proposed plan.

A drainage study has been submitted and the applicant has been working with the Kansas Department of Water Resources regarding the existing floodplain. A full Drainage Study has been reviewed and is sufficient. All local and state floodplain requirements will be met.

The applicant has also provided a traffic study and is working closely with KDOT concerning access off the roundabout. At this time the allowance has not been formalized.

Nonconformities: The proposed new FEMA Floodplain Map will take effect in November 2021; the green areas will be deleted from the flood plain, red is adding to the floodplain, and yellow is remaining the same.

Public Utilities: Water and sewer are available.

Recommendations: Staff recommends approval of the Brownstone Addition Final Plat, as it complies with the Emporia Subdivision Regulations.

Appeal Process:

Kansas Statute 12-760. **Same; appeals to district court.** (a) Within 30 days of the final decision of the City or county, any person aggrieved thereby may maintain an action in the district court of the county to determine the reasonableness of such final decision.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

Aerial/Zoning Map:

IMAGE 1: AERIAL MAP SHOWING LOCATION OF THE PROPERTY

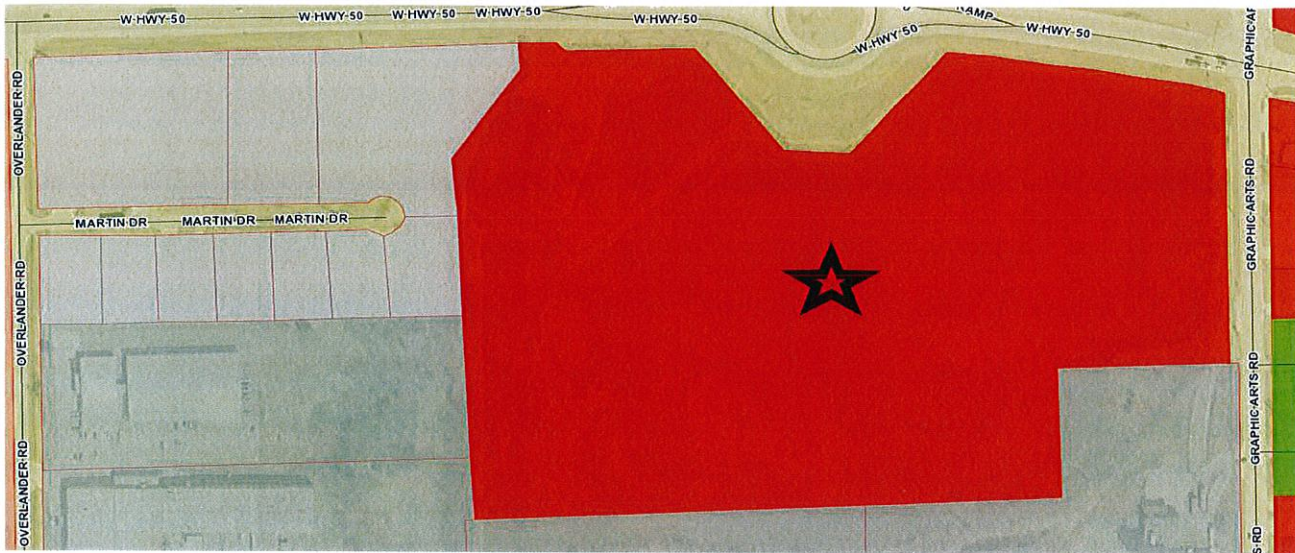
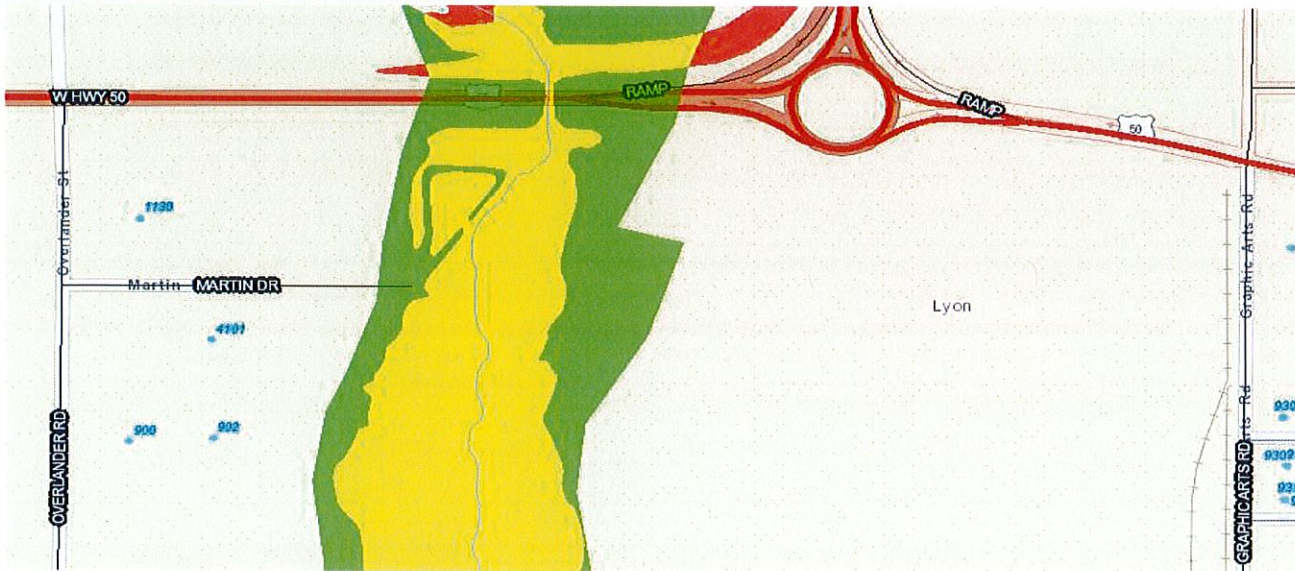


IMAGE 2: CURRENT FLOODPLAIN MAP



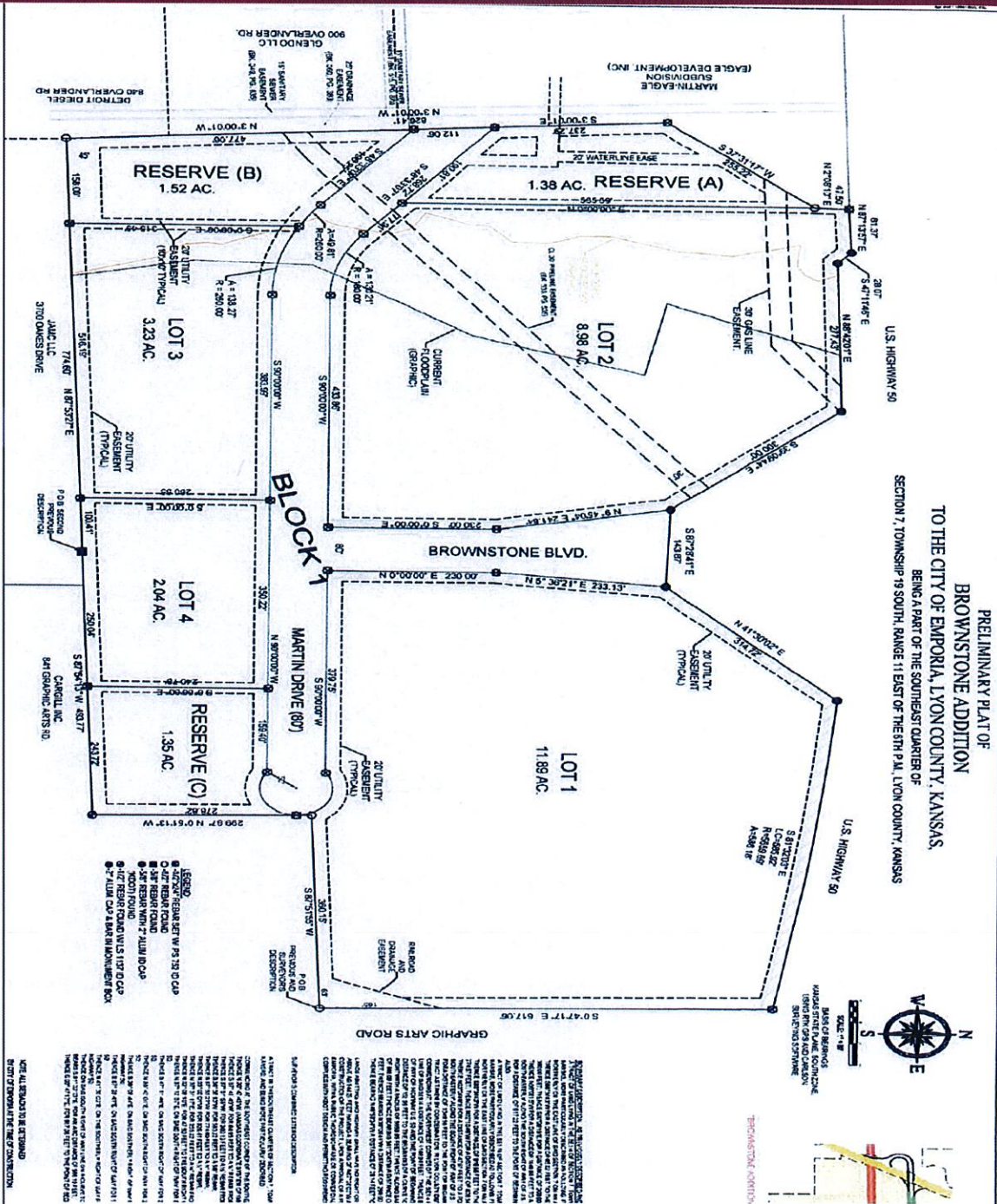
ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY



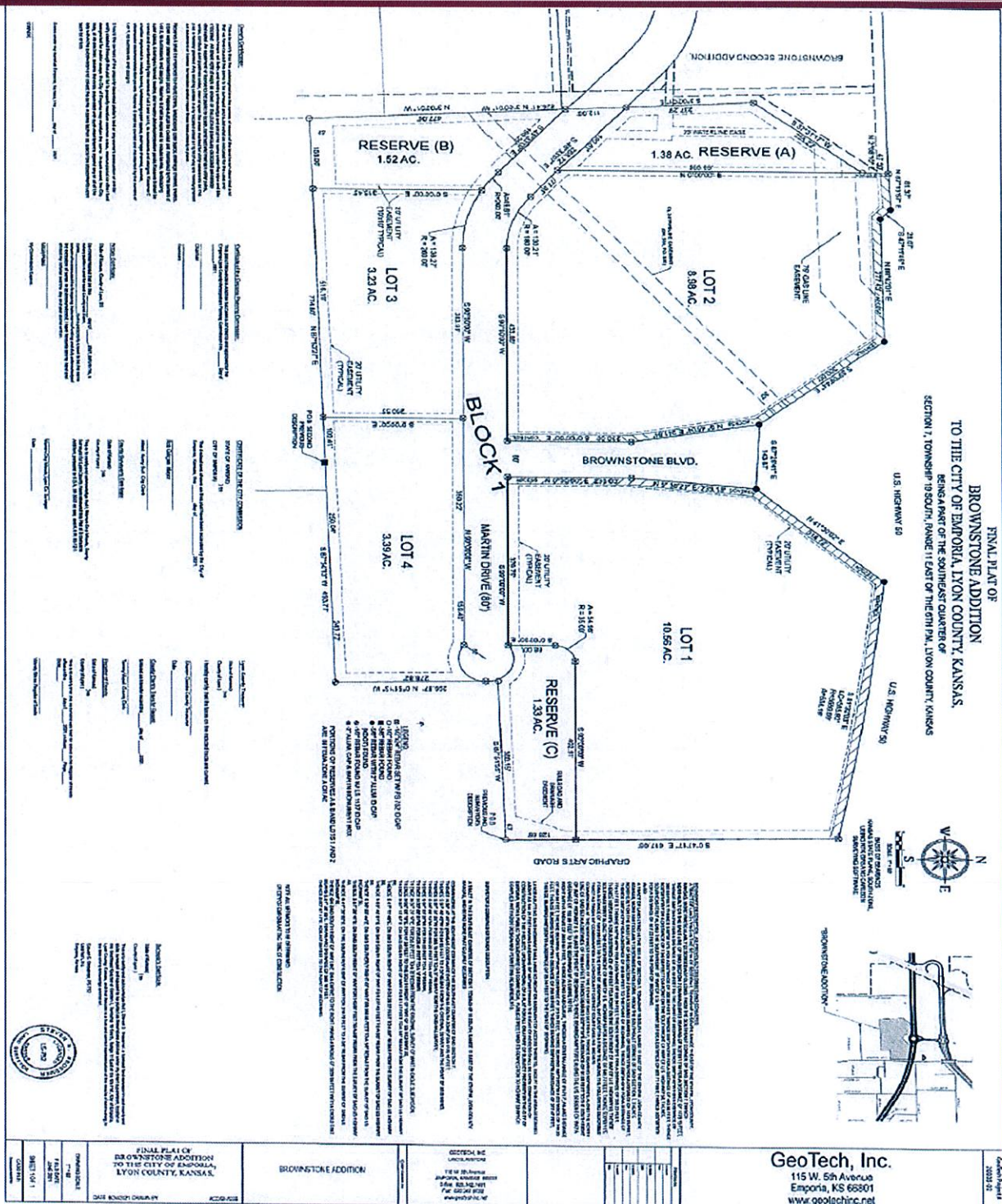
ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____			Vote: _____	
GEITZ	GIEFER	GILLIGAN	SMITH	BRINKMAN

AGENDA ITEM SUMMARY



ACTION RECORD

Action:

Motion:

Second:

Abstained:

Vote:

GEITZ

GIEFER

GILLIGAN

SMITH

BRINKMAN

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 2021

ITEM NUMBER: 6

SUBJECT: Consider a bid for the Funston Street & 5th Ave Paving Improvements Project No. PV2008.

RECOMMENDATION: Staff recommends rejecting bid as it is over the engineer's estimate and budget. The Engineer's Office will review the scope of the project, look to make revisions, and bring back to the City Commission to set a bid date and time in the beginning of the 2022 year.

BACKGROUND SUMMARY:

At 2:00 p.m. on Tuesday, August 24th, 2021, the City Engineer's Office publicly opened a bid on the Funston Street & 5th Ave Paving Improvements Project No. PV2008. The City had one (1) bidder 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.	\$595,677.73
Engineer's Estimate	\$449,045.00

Due to the bid received being 33% over our Engineer's estimate and project budget, staff recommends rejecting the bid. Staff will review the scope and project design for ways to get the project within the Engineer's estimate and proposed budget. Staff further recommends bringing the project back to the City Commission to set bid date and time in the beginning of the 2022 year, after the review of scope and potential project revisions.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

**CITY OF EMPORIA, KS
BID TABULATION
FOR CONSTRUCTION OF FUNSTON ST & 5TH AVE CONSTRUCTION PROJECT PV2008**

Bids opened 2:00 p.m. on August 24th, 2021 at City of Emporia Engineering Office

August 26, 2021

			APAC - Kansas, Inc.		CITY ENGINEER'S	
			Emporia, KS		ESTIMATE	
Quantity	Units	Description	Unit	Total	Unit	Total
1	L.S.	Mobilization	\$60,700.00	\$60,700.00	\$35,000.00	\$35,000.00
1	L.S.	Contractor Construction Staking	\$25,000.00	\$25,000.00	\$7,500.00	\$7,500.00
1	L.S.	Removal of Existing Structures	\$16,750.51	\$16,750.51	\$3,000.00	\$3,000.00
1	C.Y.	Foundation Stabilization (Set Price)	\$40.00	\$40.00	\$40.00	\$40.00
1,229	C.Y.	Common Excavation	\$40.44	\$49,700.76	\$20.00	\$24,580.00
63	C.Y.	Pavement Removal	\$72.41	\$4,561.83	\$50.00	\$3,150.00
2	Ea.	Storm Sewer Manhole (Precast)	\$5,316.00	\$10,632.00	\$4,250.00	\$8,500.00
5	Ea.	Inlet (Type 22 Curb) (Precast)	\$4,464.00	\$22,320.00	\$4,500.00	\$22,500.00
27	L.F.	Storm Sewer (12" RCP)	\$95.64	\$2,582.28	\$45.00	\$1,215.00
55	L.F.	Storm Sewer (15" RCP)	\$76.92	\$4,230.60	\$55.00	\$3,025.00
656	L.F.	Storm Sewer (18" RCP)	\$52.08	\$34,164.48	\$70.00	\$45,920.00
8	L.F.	Storm Sewer (6" PVC)	\$74.40	\$595.20	\$50.00	\$400.00
105	C.Y.	Compaction of Earthwork (Type B) (MR-90)	\$7.20	\$756.00	\$5.00	\$525.00
543	C.Y.	Compaction of Earthwork (Type A) (MR 5-5)	\$19.80	\$10,751.40	\$6.00	\$3,258.00
1	MGAL	Water (Grading) (Set Price)	\$6.00	\$6.00	\$6.00	\$6.00
1	MGAL	Water (Aggregate Base) (Set Price)	\$6.00	\$6.00	\$6.00	\$6.00
921	TONS	Combined Material (AB-3) (5" Compacted)	\$43.68	\$40,229.28	\$25.00	\$23,025.00
1,825	L.F.	Curb and Gutter (2" - 4" Combined) (AE)	\$34.71	\$63,345.75	\$30.00	\$54,750.00
1,445	TONS	HMA (Commercial Grade) (Class A)	\$97.15	\$140,381.75	\$90.00	\$130,050.00
415	S.Y.	Concrete Pavement (6" Uniform) (Reinforced) (AE)	\$87.97	\$36,507.55	\$70.00	\$29,050.00
204	S.Y.	Concrete Pavement (8" Uniform) (Reinforced) (AE)	\$111.50	\$22,746.00	\$95.00	\$19,380.00
3	Ea.	Mailbox (Relocation)	\$565.00	\$1,695.00	\$240.00	\$720.00
272	S.Y.	Sidewalk Constuction (4") (AE)	\$69.83	\$18,993.76	\$55.00	\$14,960.00
29	S.Y.	ADA Sidewalk Ramp	\$264.71	\$7,676.59	\$250.00	\$7,250.00
200	L.F.	Temporary Slope Barrier (Silt Fence)	\$10.50	\$2,100.00	\$6.00	\$1,200.00
5	Ea.	Temporary Inlet Sediment Barrier	\$234.68	\$1,173.40	\$200.00	\$1,000.00
1	C.Y.	Sediment Removal (Set Price)	\$35.00	\$35.00	\$35.00	\$35.00

**CITY OF EMPORIA, KS
BID TABULATION
FOR CONSTRUCTION OF FUNSTON ST & 5TH AVE CONSTRUCTION PROJECT PV2008**

Bids opened 2:00 p.m. on August 24th, 2021 at City of Emporia Engineering Office

August 26, 2021

			APAC - Kansas, Inc.		CITY ENGINEER'S	
			Emporia, KS		ESTIMATE	
Quantity	Units	Description	Unit	Total	Unit	Total
1	L.S.	Seeding, Fertilizer and Mulching	\$3,004.04	\$3,004.04	\$4,000.00	\$4,000.00
1	L.S.	Traffic Control	\$14,992.55	\$14,992.55	\$5,000.00	\$5,000.00
TOTAL AMOUNT OF BASE BID:				<u>\$595,677.73</u>		<u>\$449,045.00</u>

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 2021

ITEM NUMBER: 7

SUBJECT: Consider accepting Southern Star Central Gas Pipeline Inc encroachment agreement.

RECOMMENDATION: Staff recommends approving Southern Star Central Gas Pipeline encroachment agreement and authorize Mayor to sign.

BACKGROUND SUMMARY:

The City of Emporia Engineering Department is designing a roadway and drainage project along Road F (US-50 to Road 180), City Project No. PV1907, KDOT Project No. 56 KA-5281-01. This proposed project will have grading that will encroach into the adjacent Southern Star Central gas pipeline easement on Park IV addition property. The agreement allows said construction within that easement.

Attached is the agreement and supporting documents.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

STATE OF KANSAS

Tract 35980, 36221

COUNTY OF LYON

Line: Q-024

ENCROACHMENT AGREEMENT

THIS AGREEMENT, entered into by and between **SOUTHERN STAR CENTRAL GAS PIPELINE, INC.**, (formerly Williams Gas Pipelines Central, Inc., Williams Natural Gas Company, Northwest Central Pipeline Corporation and Cities Service Gas Company), a Delaware corporation, whose mailing address is P.O. Box 20010, Owensboro, Kentucky 42304, hereinafter referred to as "Company", and **The City of Emporia**, whose mailing address is 111 E. 6th Ave, Emporia, Kansas 66801, hereinafter referred to as "Owner".

WHEREAS, Company is the current owner/holder of a valid and subsisting right-of-way(s), easement(s), lease(s), agreement(s) and/or similar rights located in the Southwest Quarter (SW/4) of Section One (1) and the Northeast Quarter (NE/4) of Section Twelve (12), Township Nineteen (19), Range Ten East (10E), Lyon County, Kansas pursuant to the instrument recorded with the Register of Deeds in Lyon County, Kansas and as more fully described on **Exhibit A** (the "Pipeline Easement(s)") for the installation, modification and/or operation of Pipeline Facilities defined, without limitation, as being pipelines currently existing on or in the Pipeline Easement(s), together with all substitutions or replacements thereto and together with all appurtenances thereto, including but not limited to compressor stations, pump stations, valves, meters, tanks, fittings, connections, corrosion control and pressure detection devices, wires, cables, pig traps, and any other appurtenances associated with the pipelines.

WHEREAS, Owner is in possession of leases and/or easement rights and/or owns (the "Owner's Tracts") a portion of which cover the parcels listed on **Exhibit B** (the "Property") for the development, construction, operation, maintenance, repair and replacement of a Road to be located in Emporia, Lyon County, Kansas (the "Project").

Encroachment Agreement between Southern Star Central Gas Pipeline, Inc. & City of Emporia located in the SW/4 Section 1 and the NW/4 Section 12 Township 19S, Range 10E, Lyon County, Kansas T35980 and T36221.

WHEREAS, Owner has or shall construct certain improvements upon, over or under the Pipeline Easements as part of its Project and as specifically described on **Exhibit C** attached hereto and made a part hereof (collectively referred to herein as the "Encroachments").

WHEREAS, under the terms of this Agreement, Company is willing to permit said encroachments and,

NOW THEREFORE, Company grants Owner a limited right to encroach upon the Pipeline Easements, subject to the terms and conditions set forth herein; and Owner, in consideration of this limited right of Encroachments, agrees to the following covenants and obligations set forth herein:

1. Owner specifically acknowledges Company's need for access to its facilities and recognizes its rights under the Pipeline Easements, which, are to remain in full force and effect notwithstanding this Agreement. As consideration for this Agreement, any cost to Owner or damage to the Encroachments resulting from Company's need to maintain, operate, repair or replace any portion of the Pipeline Facilities, including, but not limited to, costs for the maintenance, replacement or repair of any portion of the Encroachments, will be the sole responsibility of Owner and Company will not, under any circumstances, be responsible for loss or damage to the Encroachments.
2. Owner will cause to be furnished to Company contemporaneously with the execution of this Agreement, detailed plans, including a certified survey, for the construction of the Encroachments upon, over or under the Pipeline Easements. The plans shall be deemed incorporated herein by reference and made a part of this Agreement. Owner agrees that any review or approval by Company of any plans and/or specifications relating to the Encroachments or the identity of any contractors, subcontractors and materialmen is solely for Company's benefit, and without any representation or warranty whatsoever to Owner with respect to the adequacy, correctness or efficiency thereof or otherwise and it is understood that such Company's approval does not absolve Owner of any liability hereunder. Further, Owner, in connection with the construction, maintenance and/or removal of the Encroachments, agrees to observe and fully comply with all laws, rules and regulations of the United States, the State of Kansas, and all agencies and political subdivisions thereof. Owner agrees and acknowledges that all work on the easement shall be performed in a workman like manner.
3. This Agreement shall be terminable by Company in the event of Owner's material noncompliance with the requirements, conditions or specifications of this Agreement and the continuation thereof for a period of thirty (30) days following written notice to Owner or immediately after such written demand by Company if such non-compliance will result in Company's reasonable opinion to a substantial risk to health or safety. Should Company terminate this Agreement, Owner will relocate and/or remove the Encroachments at no expense or risk to Company.

4. No permanent structures, including without limitation landscaping, irrigations systems and signage not explicitly approved by this Agreement shall be allowed within Company's easement.
5. Owner agrees and understands that its work and encroachments are to strictly adhere to Company's Land Use and Developers Handbook located on-line at <https://www.southernstar.com/safety/pipeline-safety/>.
6. Owner will restrict all equipment traffic over the Company's pipeline until the pipeline has undergone a load study conducted and approved by Company. In order for that study to be conducted, Owner agrees to submit to Company (at sscencroachments@southernstar.com) a comprehensive list of equipment to be used on the pipeline easement. Owner understands that it shall be financially responsible for any and all outside engineering services required for Company to perform the Load Study and for complying with the requirements of said Load Study.
7. Indemnity/Hold Harmless/Insurance.
 - (A) To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Company and Company's affiliated companies, partners, shareholders, employees and agents (collectively, "indemnitees") for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and reasonably incurred out of pocket expenses (including, without limitation, court costs, reasonable attorneys' fees and costs of investigation) (collectively, "liabilities") of any nature, kind or description of any indemnitee directly or indirectly arising out of, resulting from or related to (in whole or in part): (i) Owner's occupation and use of the existing pipeline easement area; (ii) construction, use, state of repair or presence of the encroachments; or (iii) any act or omission of Owner or Owner's officers, agents, employees, or contractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over, even if such liabilities arise from or are attributed to, in whole or in part, to the negligence of any indemnitee. The only liabilities with respect to which Owner's obligation to indemnify the indemnitees does not apply are liabilities wholly caused by the sole negligence or willful misconduct of an indemnitee.
 - (B) Owner acknowledges that having the encroachments, whether permitted or not, on the existing Pipeline Easements provides some risk that the encroachments may be damaged in the course of Company's operations or activities. Therefore, notwithstanding any other provision in this agreement, to the fullest extent permitted by law, Owner releases the indemnitees from any loss, damage and/or claim from loss or damage to their property, including the encroachments, that

Owner may have against the indemnitees resulting from the activities of Company in the ordinary course of its operations, provided that such release shall not apply to any loss, damage or claim wholly caused by the gross negligence or willful misconduct of an indemnitee.

8. Owner shall notify or cause Company to be notified, at least forty-eight (48) hours prior to the performance of any construction or excavation work upon the Pipeline Easement. Owner covenants and agrees to notify or cause its representative to notify the appropriate state one-call center as required by law no less than forty-eight (48) hours prior to the commencement of excavation in or near the existing pipeline easement area. Company shall have the absolute right to perform any work upon, over or under the Pipeline Easements it reasonably deems necessary for the maintenance or operation of its facilities without prior notice to Owner.
9. During the exercise of its easement rights to construct, maintain and operate the pipeline and appurtenances, in the event Company or its contractors destroy or damage the encroachments herein permitted, including without limitation landscaping and/or irrigation systems, all such damages to said permitted items and all costs thereof shall be the sole responsibility of Owner, its successors and assigns, unless such loss, or cost or expense is directly and solely caused by the gross negligence or willful misconduct of Company, its agents, contractors and/or subcontractors.
10. During the exercise of its easement rights to construct, maintain and operate the pipeline and appurtenances, in the event Company or its contractors restrict or block access to the Encroachment or any of its facilities, Company will not be responsible for providing an alternate source of access, liable for the loss of any and all income and/or any and all damages caused by such activities.
11. Prior to commencement of construction of the above referenced work and Encroachment(s), Owner or Owner's contractor, shall provide Company certificates of insurance expressly naming Company as an additional insured and evidencing coverage in the amount of one million dollars (\$1,000,000.00) general liability, one million dollars (\$1,000,000.00) auto liability, and one million dollars (\$1,000,000.00) workers compensation and employers' liability insurance for the construction area described herein, and containing thirty (30) days prior written notice of cancellation. Certificates of Insurance and this signed Agreement will be submitted to the following address:

Southern Star Central Gas Pipeline, Inc.
Attn: Rhonda Thompson
4700 State Route 56
P.O. Box 20010
Owensboro, KY 42304

12. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.
13. In the event it shall become necessary for either party to commence litigation to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and attendant expenses in conjunction with such litigation.
14. Owner warrants that it is the current owner of the real property and/or the holder of the easement right(s) described herein and has the right, title and capacity to enter into this Agreement.
15. Under no circumstance shall Company be required to relocate a Pipeline Facility.
16. Owner agrees to abide by the Company's guidelines, procedures and requirements for working in and around Company's easement(s) and/or facilities and failure to do so will be considered a breach of this Agreement.
17. The terms of this Agreement shall constitute covenants running with the land and will be binding upon and inure to the benefit of the parties hereto, or their successors and assigns. The obligations of Owner herein shall survive the termination of this Agreement.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, we hereunto set our hands and seals on the day and year indicated below our signatures.

COMPANY:

SOUTHERN STAR CENTRAL GAS PIPELINE, INC.

Shawn Patterson, Vice-President and
Chief Operations Officer

Date: _____

Owner:

CITY OF EMPORIA

Rob Gilligan
Mayor of Emporia

Date: _____

CORPORATE ACKNOWLEDGEMENT

COMMONWEALTH OF KENTUCKY

COUNTY OF DAVIESS

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on this _____ day of _____, 20____, personally appeared Shawn Patterson, who being by me duly sworn, did say that he is the Vice President and Chief Operations Officer of Southern Star Central Gas Pipeline, Inc., a corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said Shawn Patterson acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

Notary Public

My Commission Expires _____, 20____.

LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

STATE OF KANSAS

COUNTY OF LYON

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on this _____ day of _____, 20__, personally appeared, Rob Gilligan, known to me to be identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free act and deed of said, Limited Liability Company, for the use and purpose set forth.

Notary Public

My Commission Expires: _____, 20_____.

Exhibit A

Tract # 35980

By virtue of that certain Right of Way Agreement located in the Southwest Quarter (SW/4) of Section One (1), Township Nineteen (19) South, Range Ten (10) East Lyon County, Kansas. Granted by Glen G. Crofoot and Doris Crofoot, his wife, to Williams Natural Gas Company on August 26, 1987, recorded on November 6, 1987 in Book 437 on page 59 in the Register of Deeds Office of Lyon County, Kansas.

Tract # 35981

By virtue of that certain Right of Way Agreement located in the Northwest Quarter (NW/4) of Section Twelve (12), Township Nineteen South (19) Range Ten East (10) Lyon County Kansas. Granted by William Colwell president of Colwell Enterprises, Inc. to Williams Natural Gas Company on August 24th 1987, recorded on November 6th 1987 in Book 437 page 91.

Encroachment Agreement between Southern Star Central Gas Pipeline, Inc. & City of Emporia located in the SW/4 Section 1 and the NW/4 Section 12 Township 19S, Range 10E, Lyon County, Kansas T35980 and T36221.

FINAL PLAT OF
PARK IV
A SUBDIVISION OF THE NW¼ OF
SEC. 12, T19S, R10E
LYON COUNTY, KANSAS.

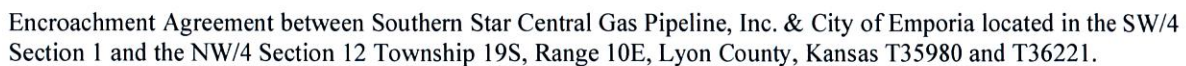
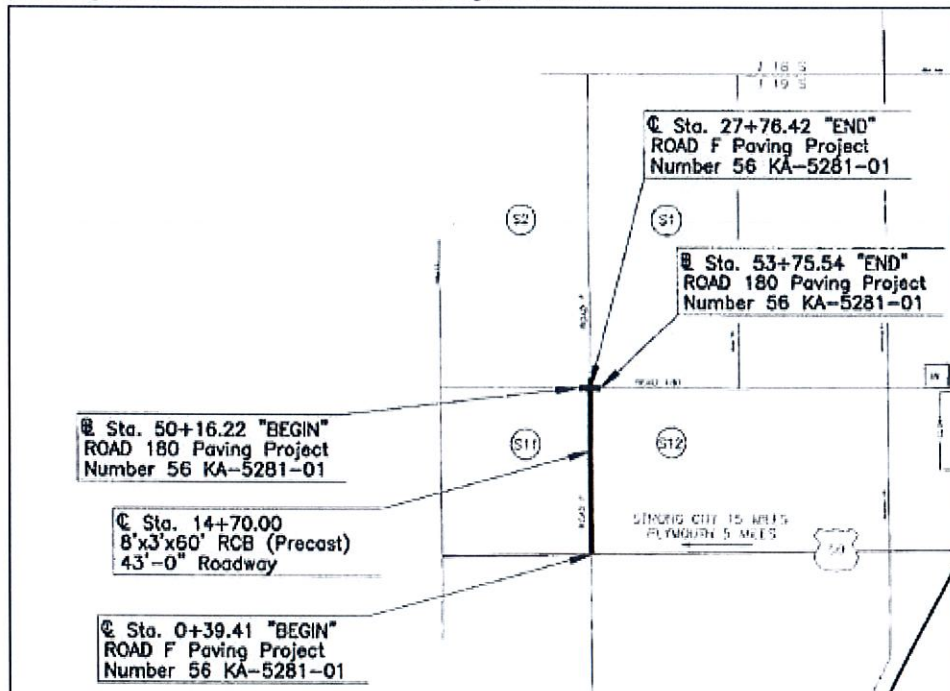


Exhibit C

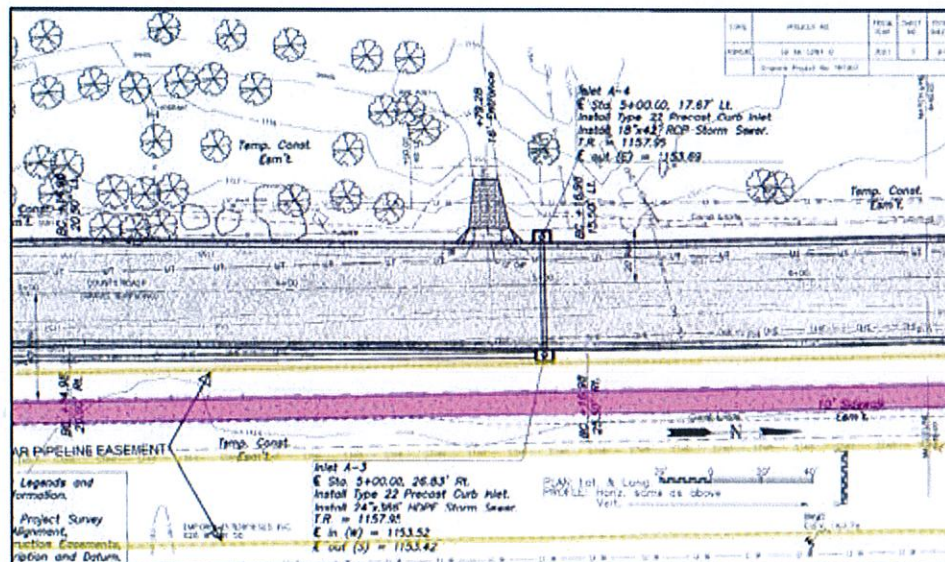
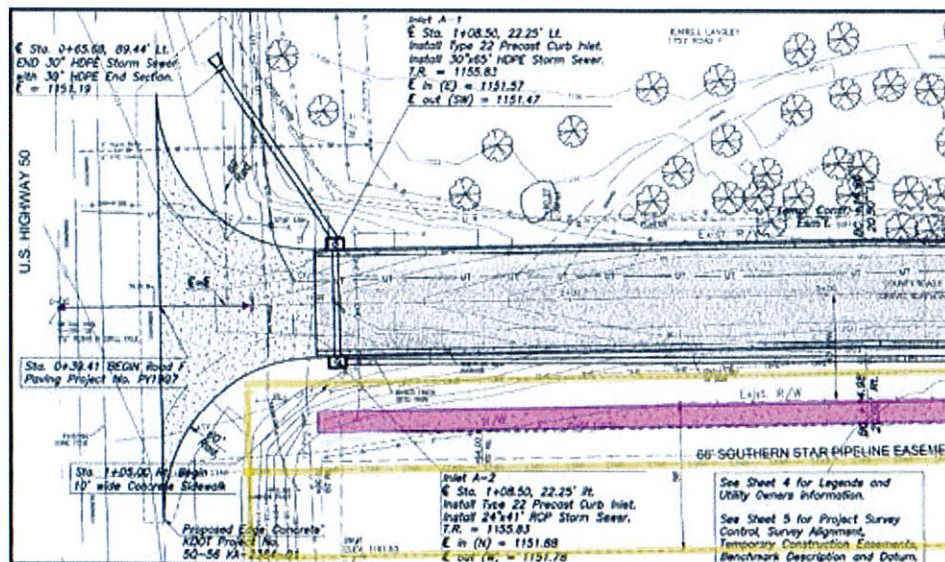
Encroachment Assessment

LINE LETTER	Q-024 (8")
NAME / DESCRIPTION	STATE OF KANSAS ACCESS MANAGEMENT CONSTRUCTION PROJECT KDOT PROJECT NO. 56 KA-5281-01 INDUSTRIAL PARK IV ROAD IMPROVEMENTS ROAD F (FROM US-50 HIGHWAY TO ROAD 180) CITY OF EMPORIA, KANSAS LYON COUNTY
LEGAL DESCRIPTION	SW/4 of S1-T19S-R10E & NW/4 of S12-T19S-R10E LYON COUNTY, KANSAS
ENGINEER	MIKE DEGRAEVE
DATE	AUGUST 3, 2021

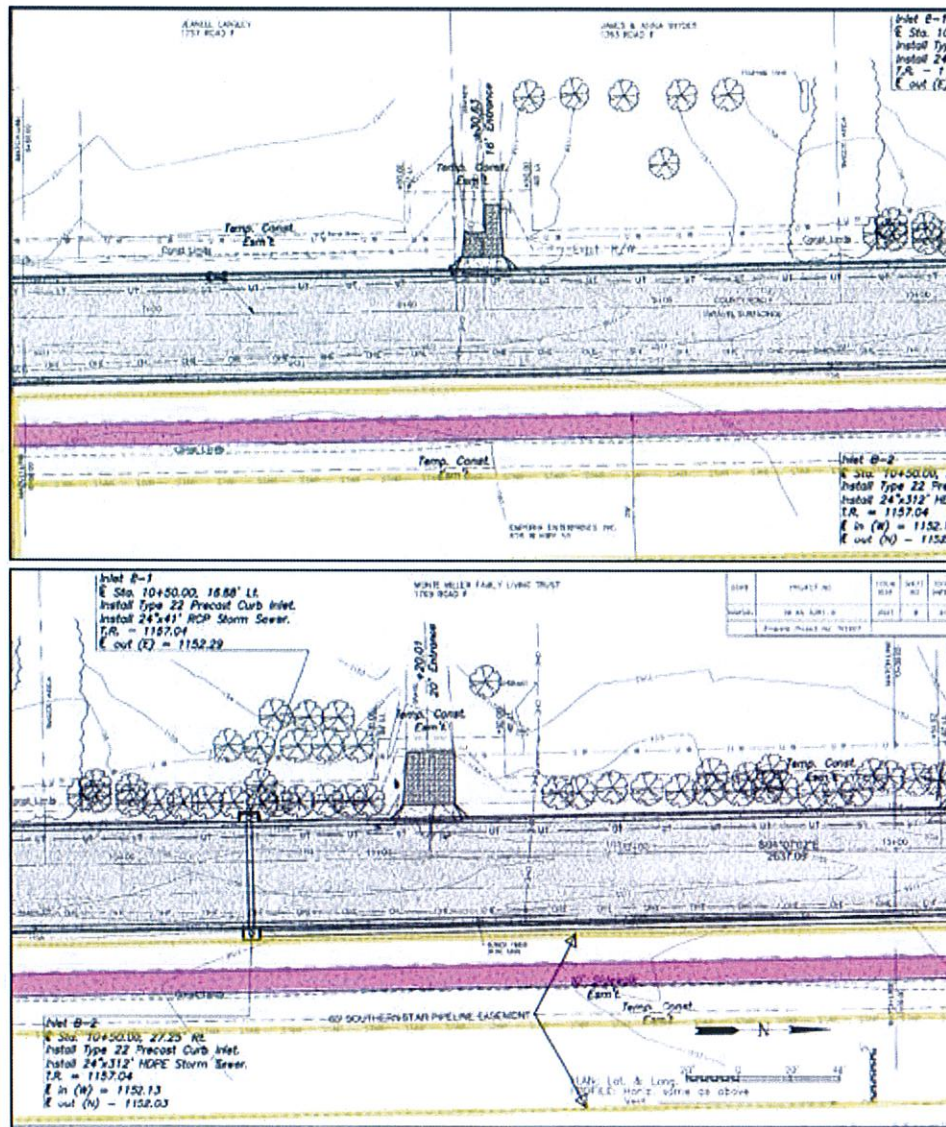
Improvements on Southern Star's rights-of-way includes grading, a concrete field entrance, a storm inlet Structure (Sta. 14+70), a precast safety end treatment (Sta. 22+51.70), a drainage ditch (approximate Sta. 20+00 to Sta. 25.50.79), a 10' wide concrete sidewalk with easement, a 24-inch RCP storm water pipe with inlet structure (Inlet D-2, Sta. 52+37.72), and the concrete intersection of County Road F & Road 180 as shown on the plans below.



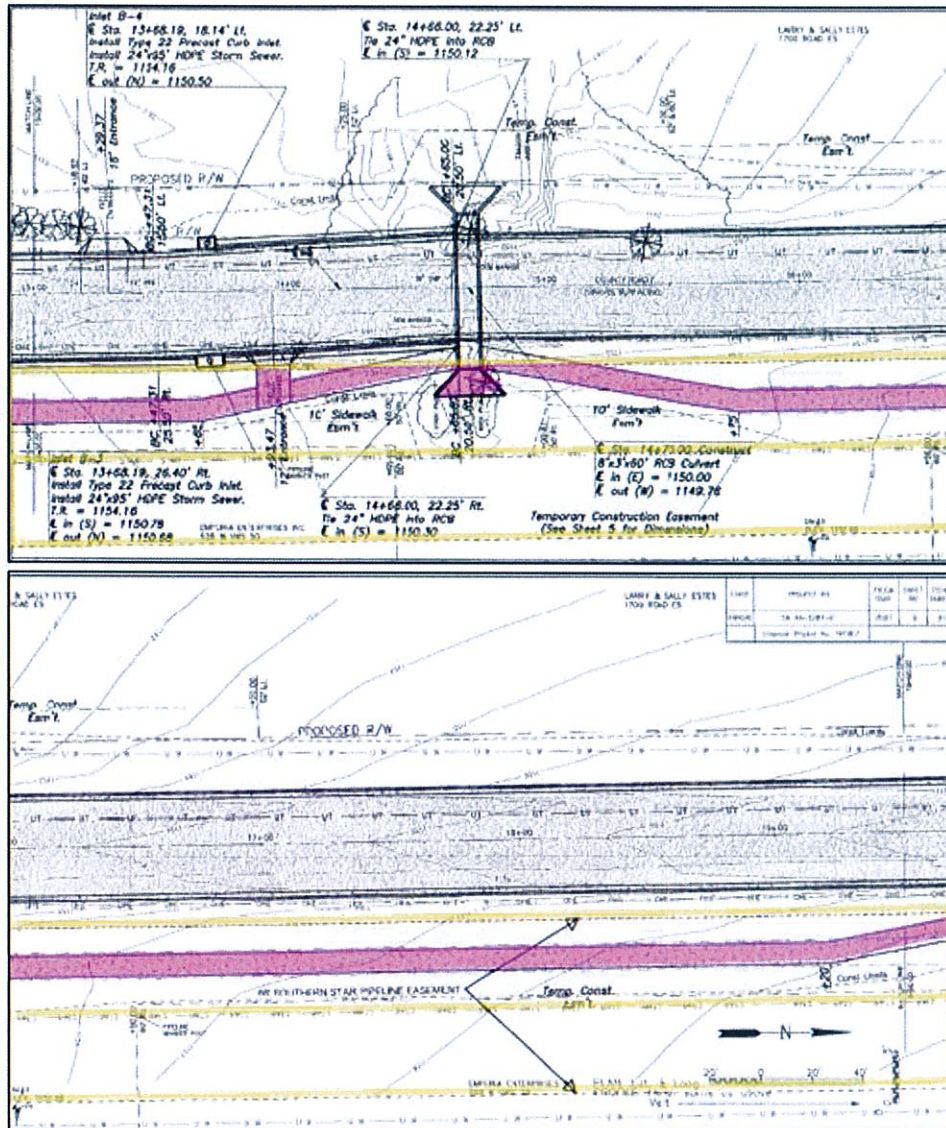
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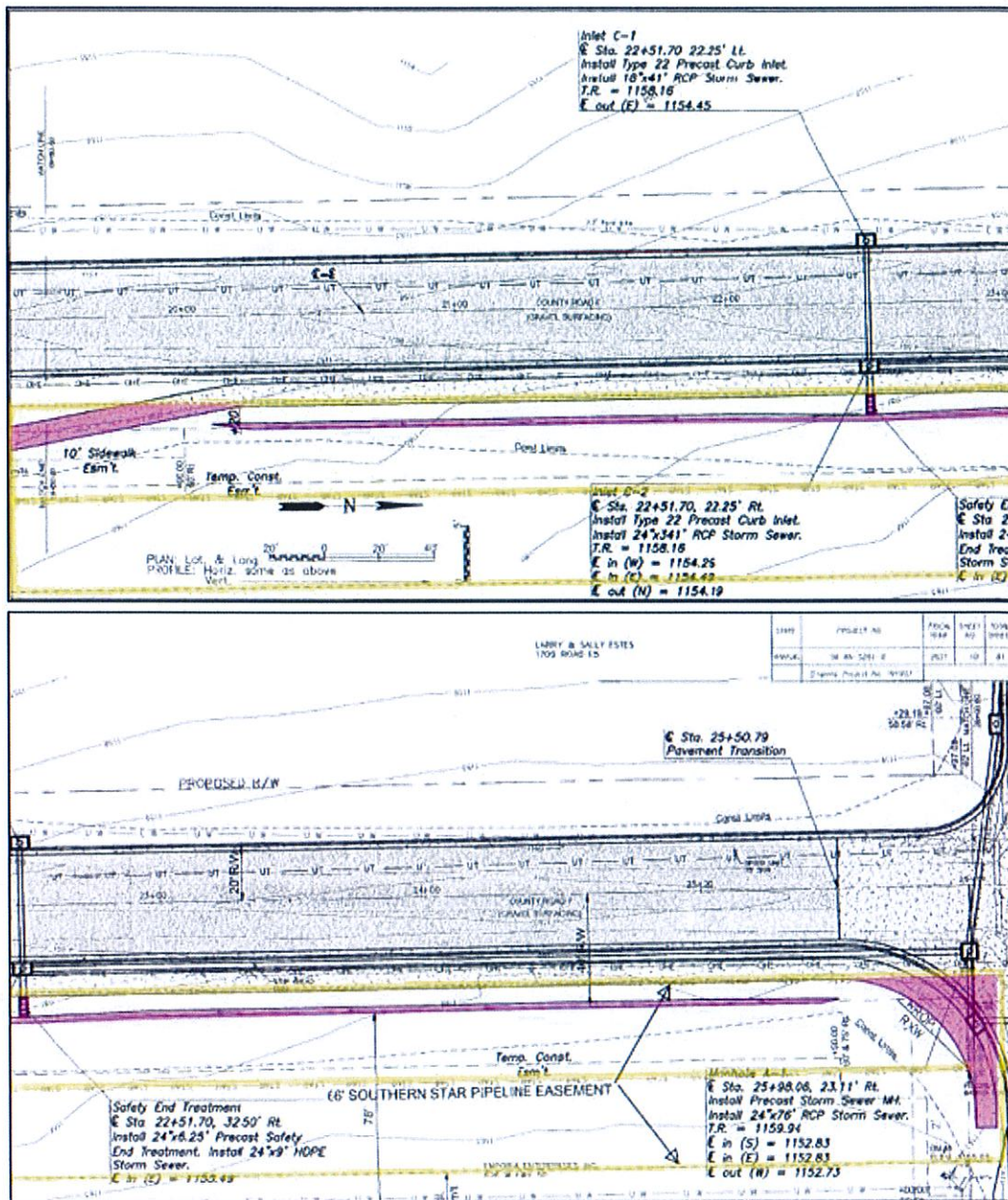
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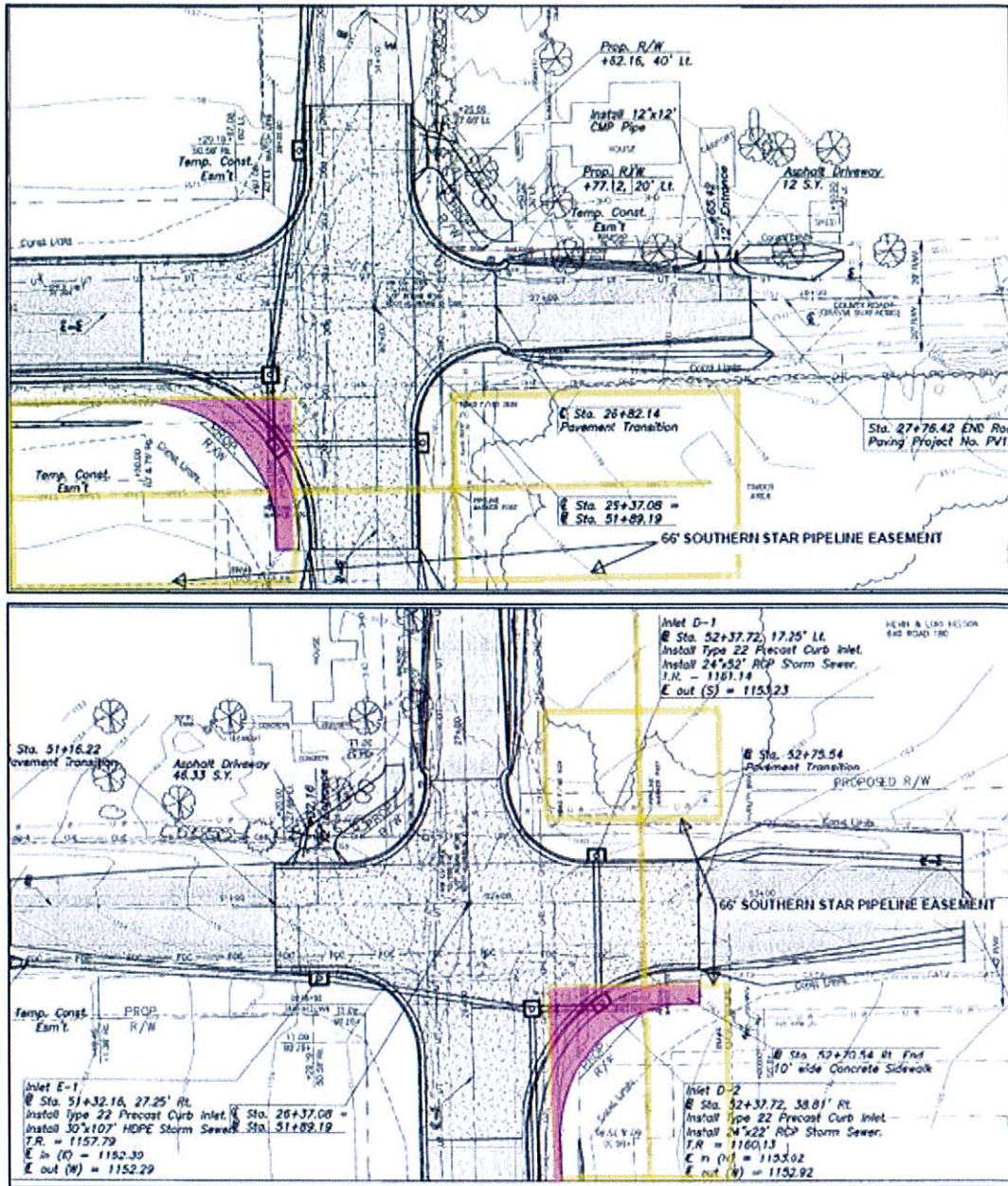
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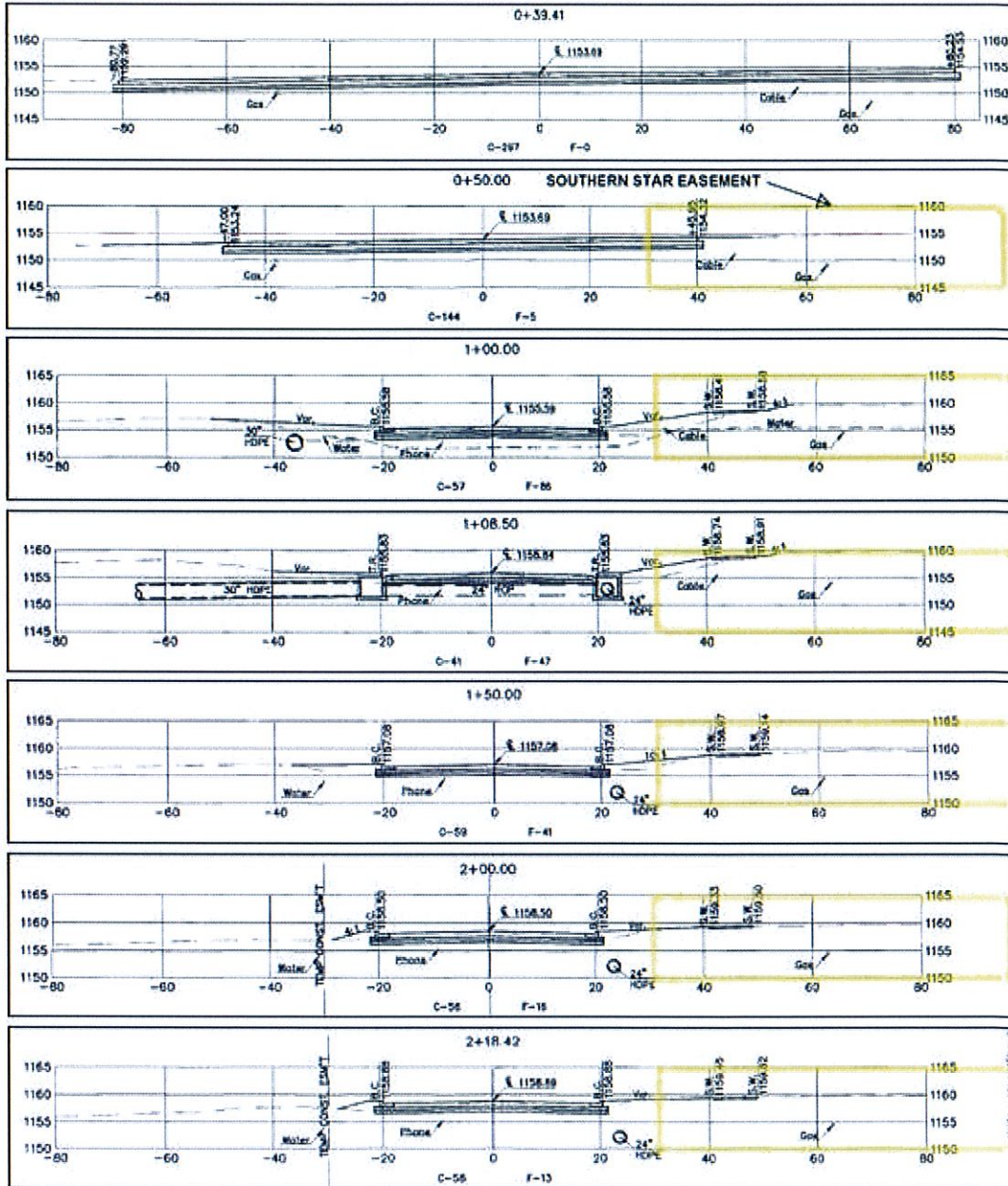


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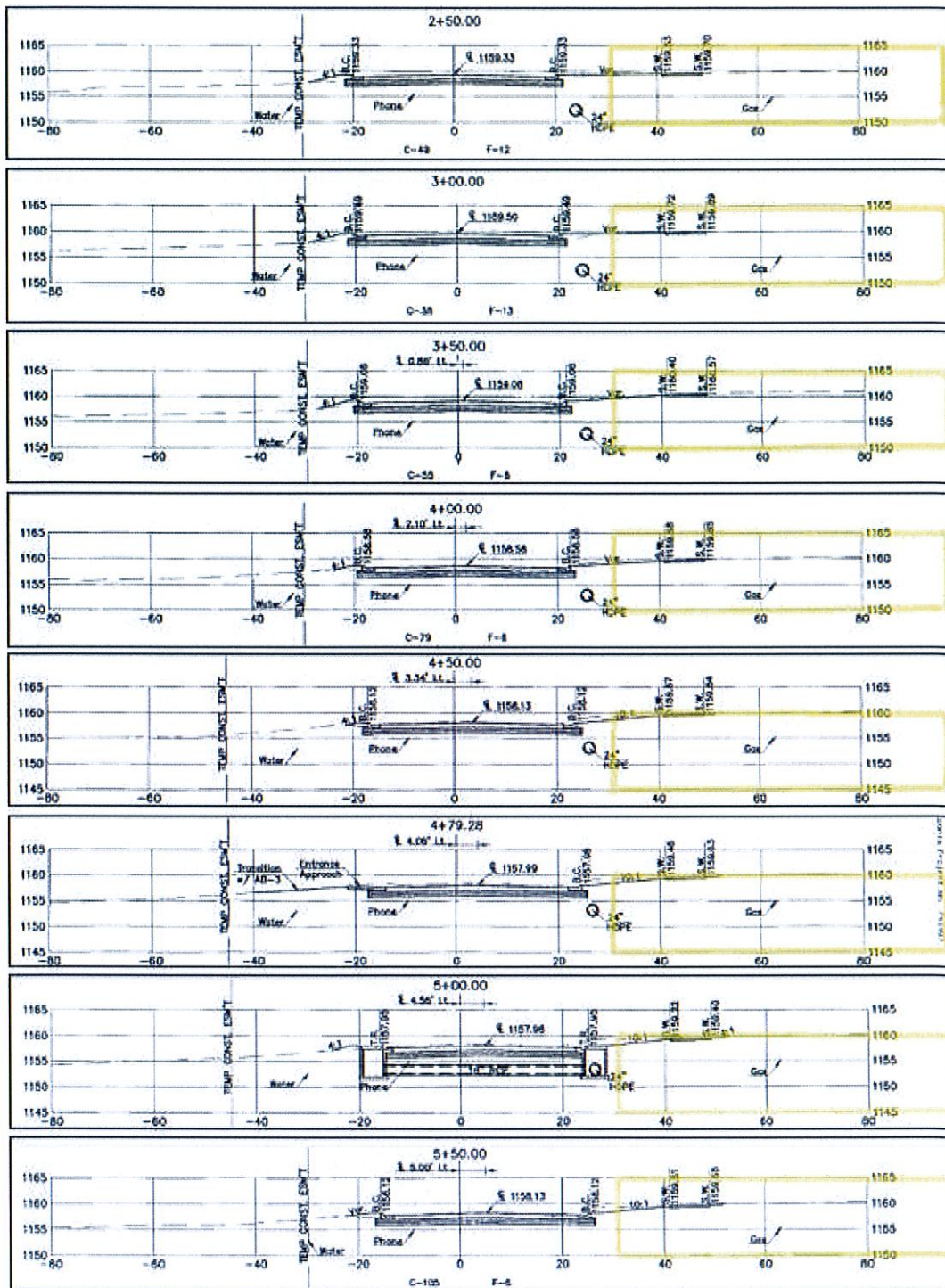


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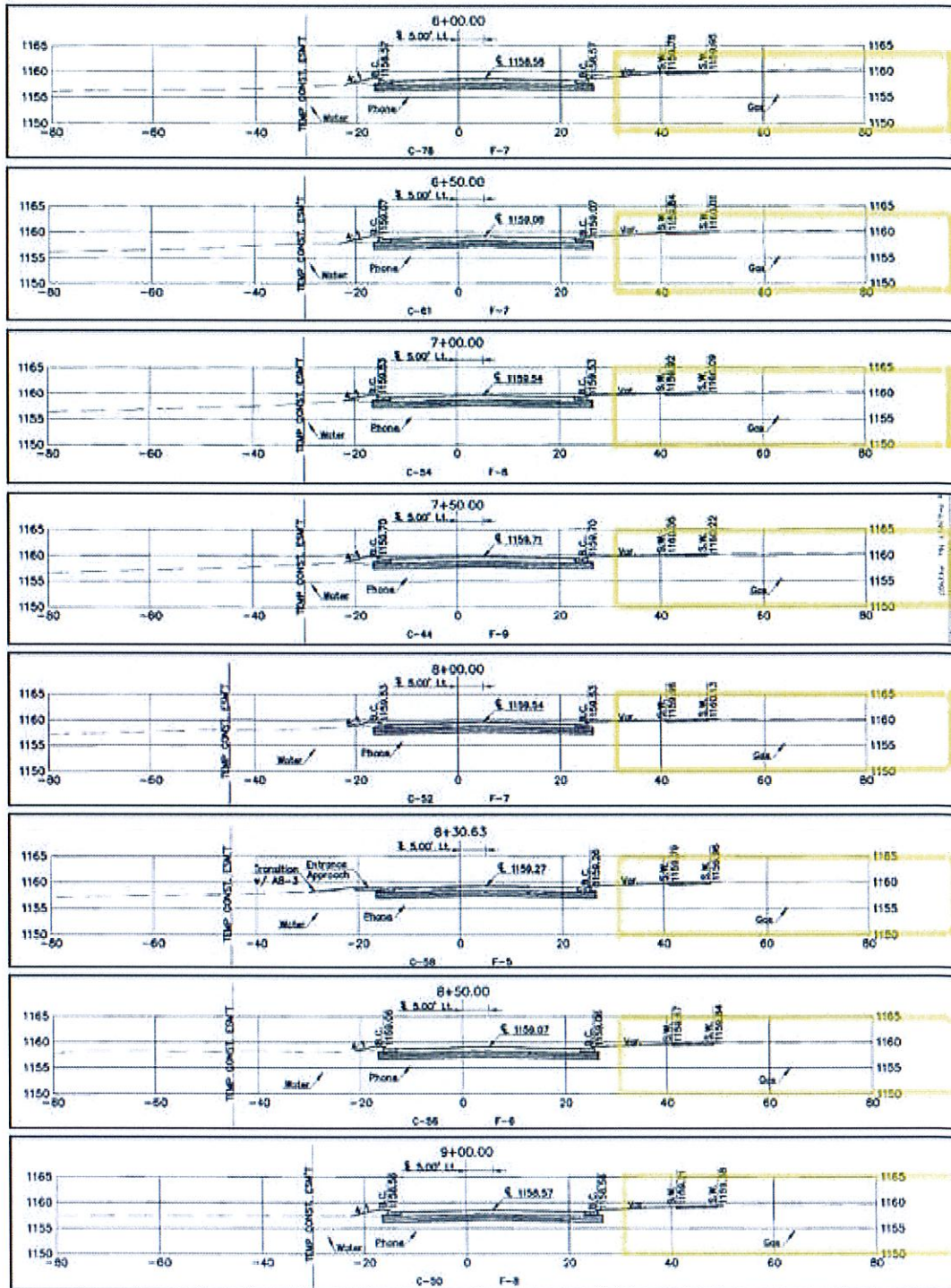
ROAD F "CROSS SECTIONS"



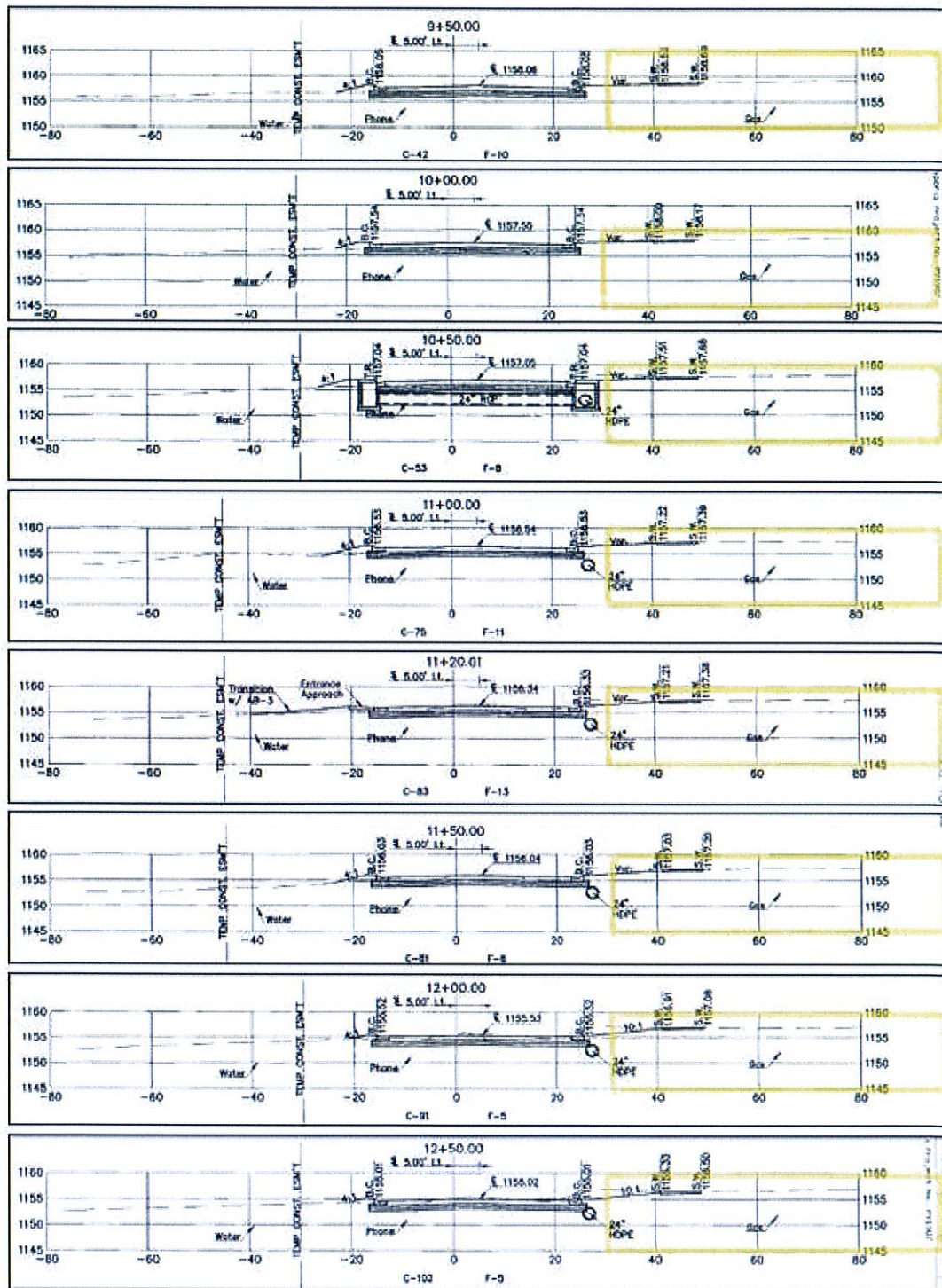
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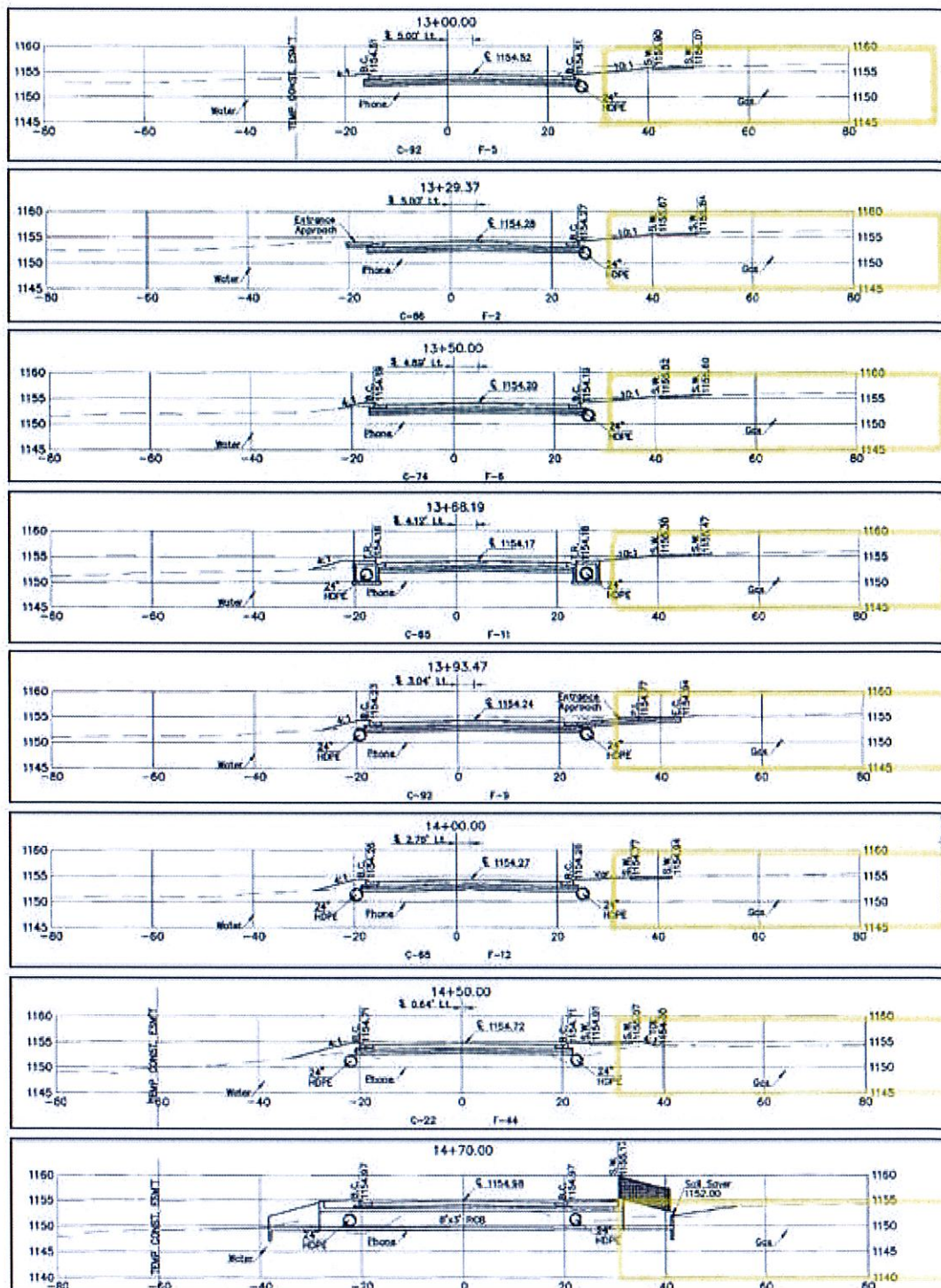
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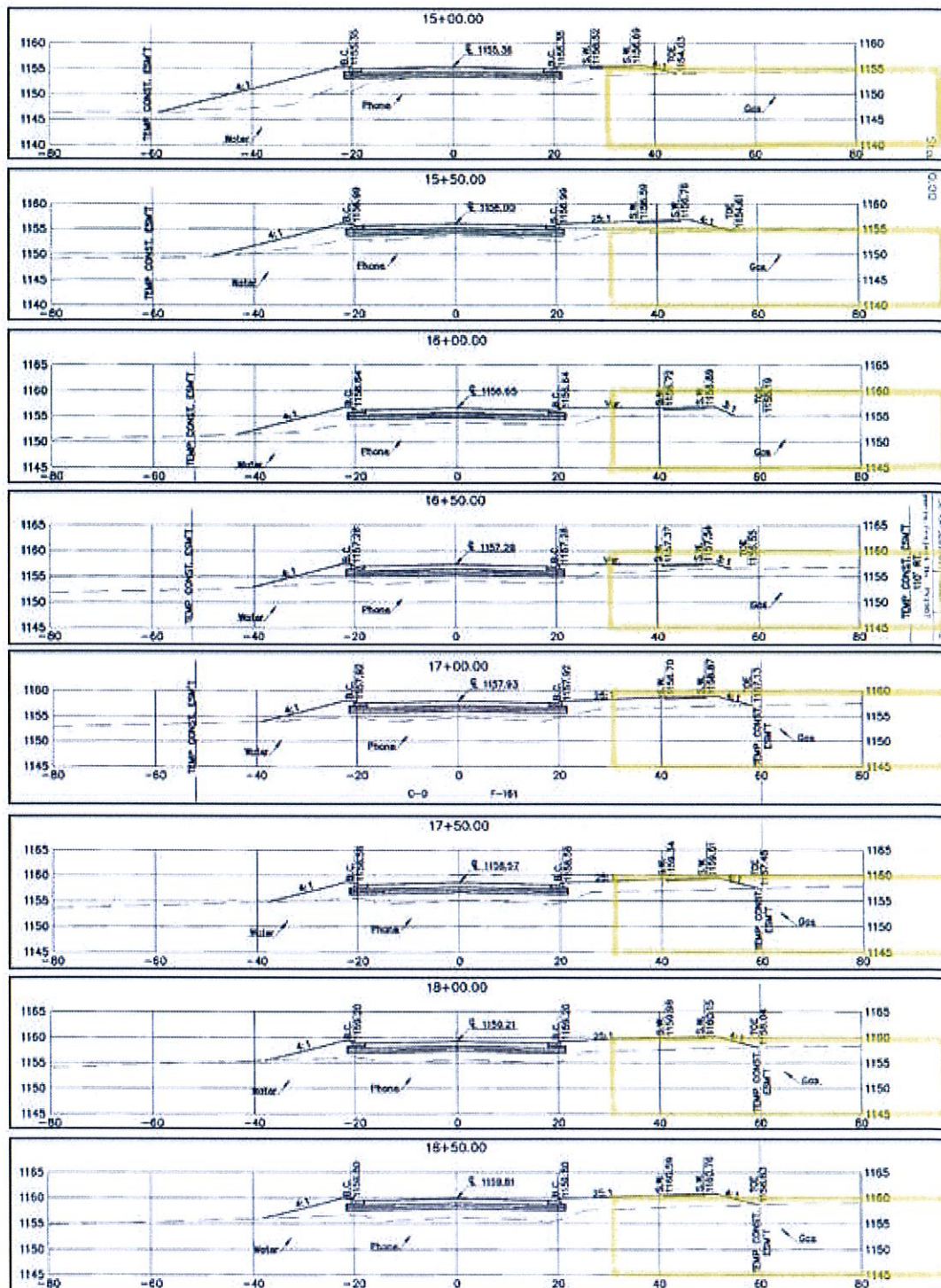
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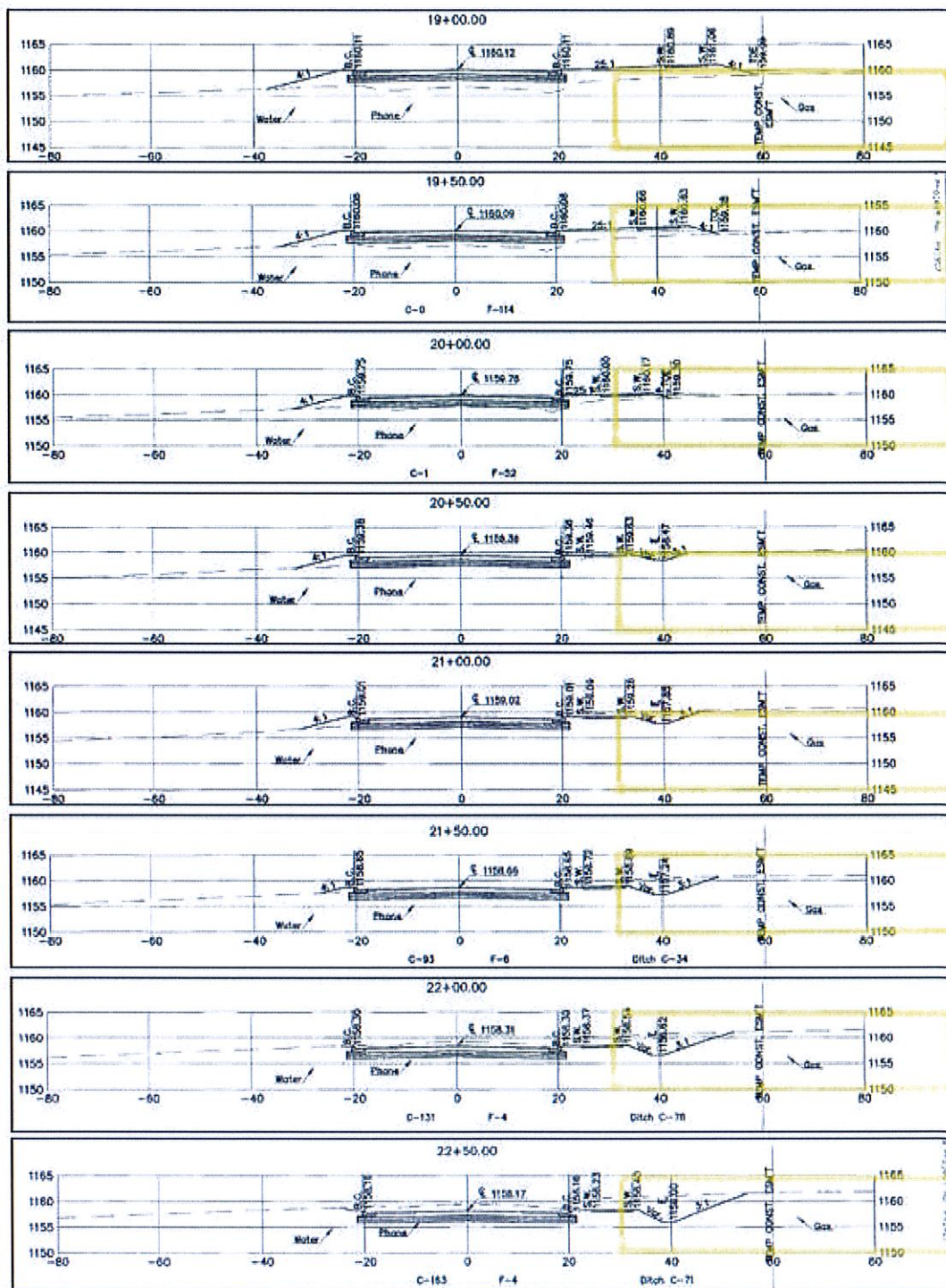
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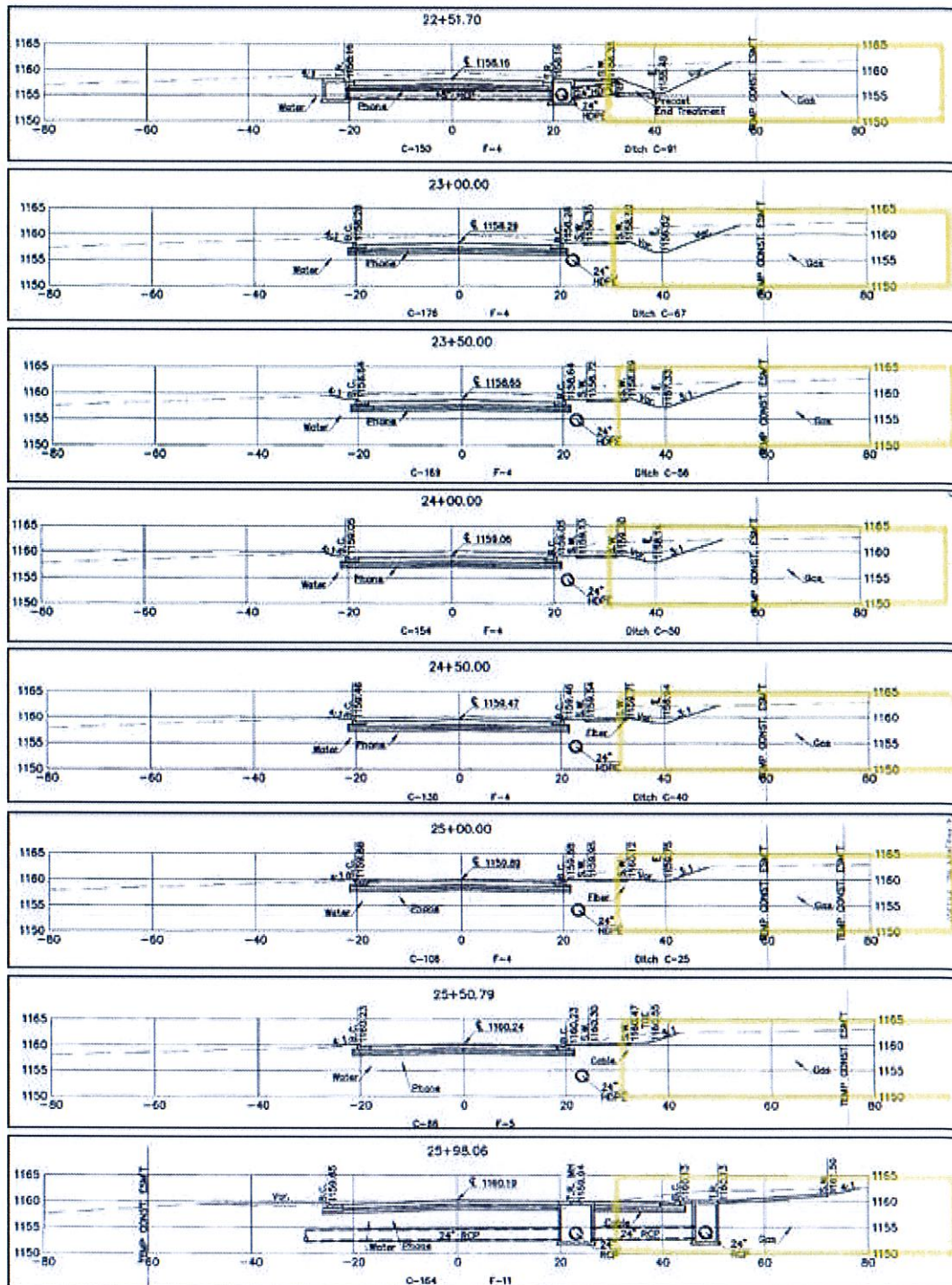


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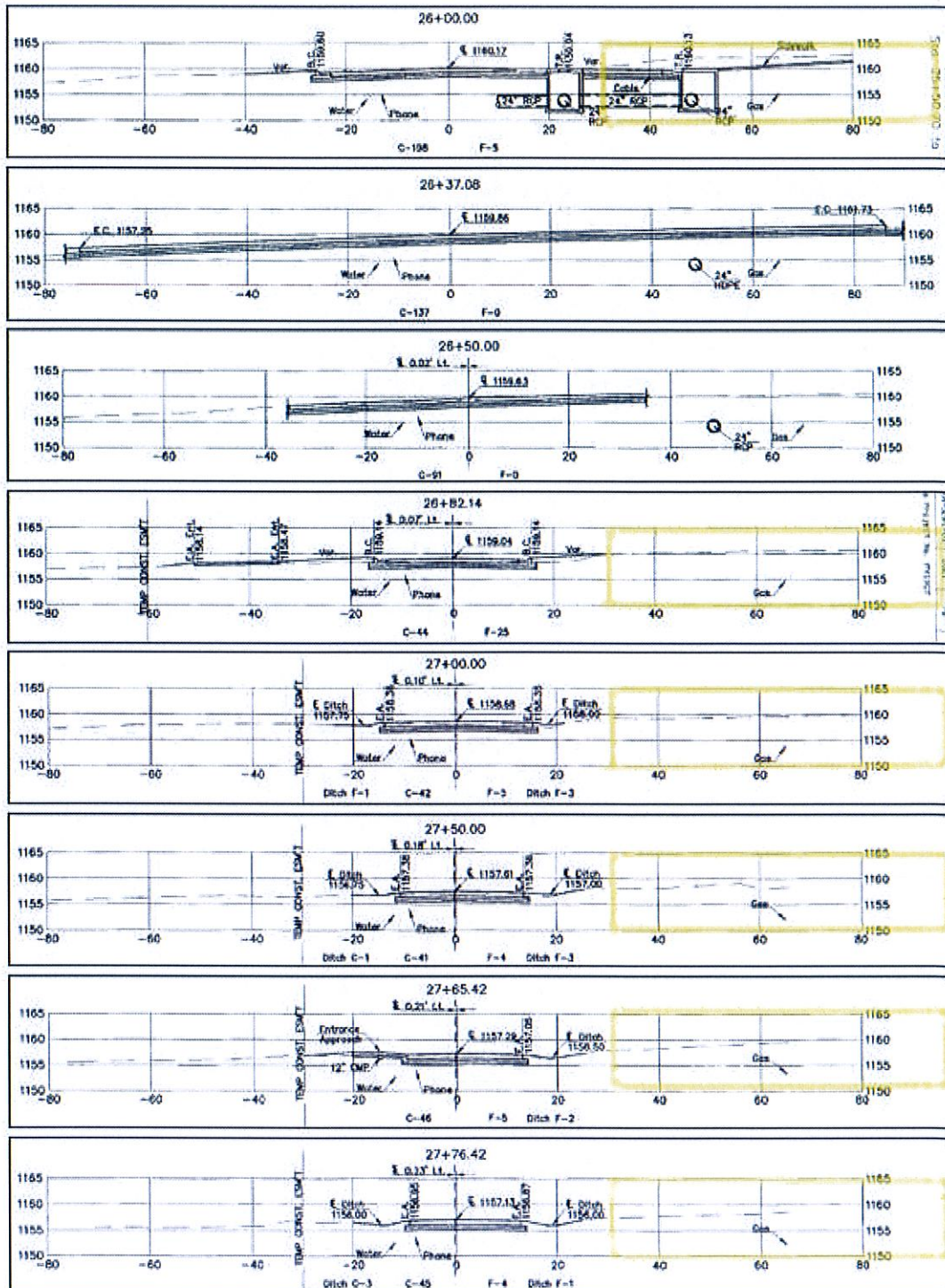


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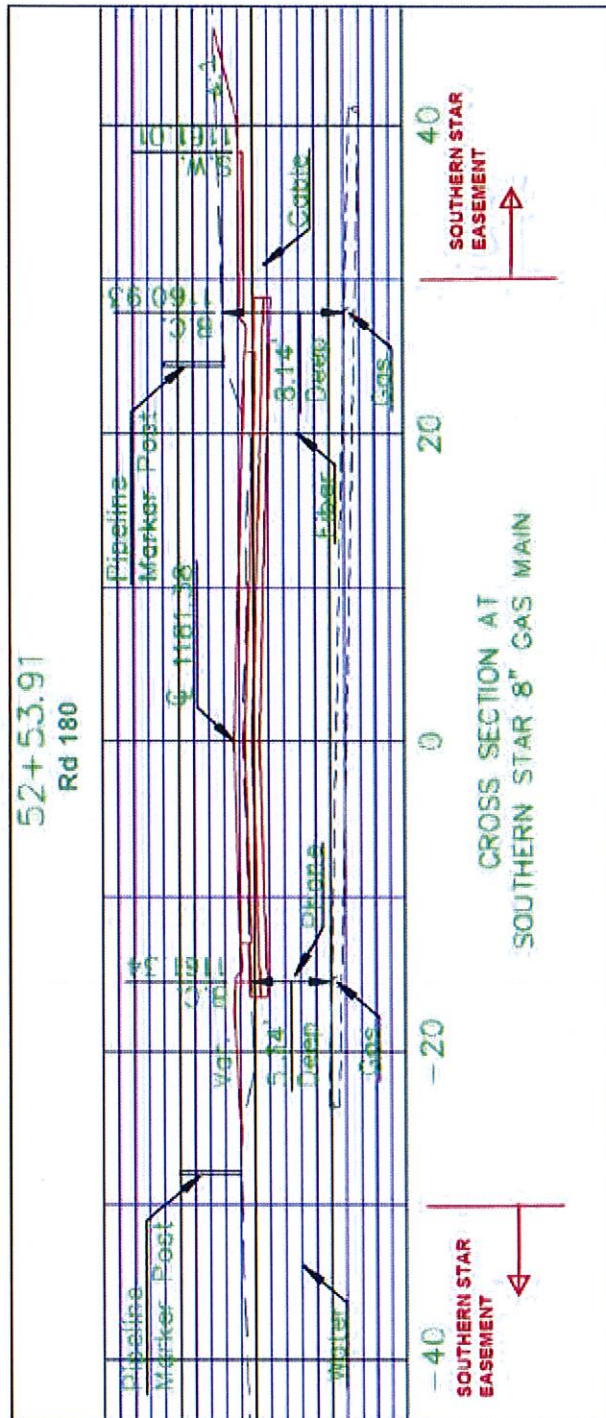




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Encroachment Agreement between Southern Star Central Gas Pipeline, Inc. & City of Emporia located in the SW/4 Section 1 and the NW/4 Section 12 Township 19S, Range 10E, Lyon County, Kansas T35980 and T36221.

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 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 six years under an operations agreement with the City. HSFH desires to renew the agreement under substantially similar terms for an eight-month period. The agreement calls for a base fee of \$80,000 paid to HSFH.

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 eighty thousand dollars (\$80,000.00), the HSFH is hereby delegated and contracted to operate and manage the Emporia Animal Shelter for a period of eight (8) months. It is hereby understood and agreed that the contract sum shall be paid in quarterly payments.
2. **Term and Renewal.** The term of this Agreement shall be for a term beginning on September 1, 2021 and ending on April 30, 2022.
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 harbinger 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 1st day of September, 2021.

Humane Society of the Flint Hills, Inc.

Name:

Title:

City of Emporia, Kansas

Robert F. Gilligan, Mayor

ATTEST:

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 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 an eight-month period. 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 1st day of September 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 eight (8) months starting September 1, 2021 and ending April 31, 2022.

(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:

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 2021

ITEM NUMBER: 10

SUBJECT: Consider Ordinance Amending City Code Section 25-21 to Adopt the 48th Edition of the Standard Traffic Ordinances for Kansas Cities.

RECOMMENDATION: Approve Ordinance

BACKGROUND SUMMARY:

The League of Kansas Municipalities publishes the Standard Traffic Ordinances for Kansas Cities incorporating the most recent legislative changes which affect City ordinances. The 2021 48th edition includes changes to the following sections:

Section 10.1	Funeral Procession - new
Section 31	Fleeing or Attempting to Elude a Police Officer
Section 40.2	Passing a Stationary Authorized Utility or Telecommunications Vehicle
Section 106	Transportation of Alcoholic Beverage (New Editor's Note)
Section 119	Parades and Processions
Section 126.1.1	Display of License Plate
Section 179	Spilling Loads on Highway
Section 201	Penalties Citation added
Section 201.1	Failure to Comply with a Traffic Citation

All STO amendments specific to the City of Emporia passed in previous years will remain in effect.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

ORDINANCE NO. 21-____

AN ORDINANCE ADOPTING THE STANDARD TRAFFIC ORDINANCE AND AMENDMENTS THERETO, AMENDING SECTION 25-21 OF THE CODE OF THE CITY OF EMPORIA, KANSAS, AND REPEALING SAID SECTION AS IT EXISTED PRIOR TO THE ADOPTION OF THIS ORDINANCE.

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

Section 1. That Section 25-21 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:

“Section 25-21. Adopted; Amendments and Deletions:

(a) *Adopted:* There is hereby incorporated by reference, for the purpose of regulating traffic within the corporate limits of the City, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities", 48th Edition, 2021, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three (3) copies of said Standard Traffic Ordinance shall be marked or stamped "Official Copy as Adopted by Section 25-21 of the Code of the City of Emporia, Kansas", with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change, and to which shall be attached a copy of this Ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The Police Department, Municipal Judge and all administrative departments of the City charged with enforcement of the Ordinance shall be supplied, at the cost of the City, such number of official copies of such Standard Traffic Ordinance similarly marked, as may be deemed expedient.

(b) *Amendments and Deletions:* The Standard Traffic Ordinance for Kansas Cities, 48th Edition, 2021, is hereby amended in the following respects:

(1) Section 2 shall be amended by the addition of subparagraph (c) as follows:

“(c) Articles 7, 8, 9, 10, 11, 13 and 14 of The Standard Traffic Ordinance for Kansas Cities, 46st Edition, 2018, shall be applied to private drives, private parking areas and private streets within the corporate limits of the City of Emporia, Kansas, only if requested in writing by the owner of the property and authorized by the Governing Body with appropriate signage stating, ‘THE TRAFFIC ORDINANCES OF THE CITY OF EMPORIA, KANSAS, AS AMENDED, ARE ENFORCED UPON THIS PROPERTY PURSUANT TO CITY CODE SEC. 25-21’.”

(2) Sections 30.4 and 105 are hereby deleted.

(3) Section 85(b)(1) is amended to read as follows:

"(1) In front of or within five (5) feet of a public or private driveway."

- (4) Section 85(c) is amended by adding new subparagraph (3) to read as follows:

"(3) At any place where the curb has been painted yellow."

- (5) Section 88 is amended by adding new subparagraph (c) to read as follows:

"(c) Advertising or promoting the sale of merchandise, wares or goods, the selection of any public official, or any public or private event."

- (6) Section 126 is hereby deleted.

- (7) Section 103 is amended to read as follows:

"No person, except an authorized emergency vehicle operated by Emporia Fire Department, shall operate any motor vehicle on the streets, alleys, or roadways of the City while wearing headphones which in any way interfere with hearing of traffic noise or warning devices or signals."

- (8) Section 114.2 is amended by adding the following subparagraph:

"(d) Micro utility trucks may be operated upon the public highways, streets, roads and alleys within the corporate limits of the city. No micro utility truck shall be operated on any public highway, street, road or alley unless such vehicle shall comply with the equipment requirements under the provisions of article 17, chapter 8 of the Kansas Statutes Annotated. Every person operating a micro utility truck on the public highways, streets, roads and alleys of the city shall be subject to all of the duties applicable to a driver of a vehicle imposed by law. A violation of this section shall be deemed an ordinance traffic infraction. No person shall operate a micro utility truck on any public highway, street, road or alley within the corporate limits of the city unless such person has a valid driver's license. Upon an entry of a plea of guilty or no contest or upon being convicted of such violation, the penalty imposed shall be in accordance with Section 201, 2019 Standard Traffic Ordinance, and amendments thereto, or such other similar provision as the city may then have in effect."

- (9) Section 114.4 is amended by adding the following subparagraph:

“(d) A golf cart may be operated upon the public highways, streets, roads and alleys within the corporate limits of the city. Every person operating a golf cart on the public highways, streets, roads and alleys of the city shall be subject to all of the duties applicable to a driver of a vehicle imposed by law. A violation of this section shall be deemed an ordinance traffic infraction. No person shall operate a golf cart on any public highway, street, road or alley within the corporate limits of the city unless such person has a valid driver’s license. Upon an entry of a plea of guilty or no contest or upon being convicted of such violation, the penalty imposed shall be in accordance with Section 201, 2019 Standard Traffic Ordinance, and amendments thereto, or such other similar provision as the city may then have in effect.”

- (10) Section 114.5 is amended by adding the following subparagraph:

“(e) Work-site utility vehicles may be operated upon the public highways, streets, roads and alleys within the corporate limits of the city. No work-site utility vehicle shall be operated on any public highway, street, road or alley unless such vehicle shall comply with the equipment requirements under the provisions of article 17, chapter 8 of the Kansas Statutes Annotated. Every person operating a work-site utility vehicle on the public highways, streets, roads and alleys of the city shall be subject to all of the duties applicable to a driver of a vehicle imposed by law. A violation of this section shall be deemed an ordinance traffic infraction. No person shall operate a work-site utility vehicle on any public highway, street, road or alley within the corporate limits of the city unless such person has a valid driver’s license. Upon an entry of a plea of guilty or no contest or upon being convicted of such violation, the penalty imposed shall be in accordance with Section 201, 2019 Standard Traffic Ordinance, and amendments thereto, or such other similar provision as the city may then have in effect.”

Section 2. PENALTY FOR SCHEDULED FINES.

- (a) It is unlawful for any person to violate any of the provisions of this ordinance.
- (b) The judge of the Municipal Court shall in the manner prescribed by K.S.A. 12-4305 and Article 20 of the Standard Traffic Ordinance for Kansas Cities establish a schedule of fines for violation of any section of this ordinance classified as an ordinance traffic infraction. Such fines shall be imposed upon a voluntary entry of appearance and upon a plea of guilty or no contest to a complaint alleging such violation and payment of the fine and any court costs.

Section 3. That Section 25-21 of the Code of the City of Emporia, Kansas as it existed prior to the adoption of this ordinance is hereby repealed.

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

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

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas,
this 1st day of September, 2021.

Robert F. Gilligan, Mayor

ATTEST:

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 2021

ITEM NUMBER: 11

SUBJECT: Consider the approval of the items required for a Kansas Department of Commerce Loan Application under the Economic Development category.

RECOMMENDATION: Approve the items necessary to submit an Economic Development grant application under the Kansas Department of Commerce Small Cities Program.

BACKGROUND SUMMARY:

The City of Emporia is submitting a grant application for parking lot improvements for the Simmons Pet food facility in Emporia, Kansas. The company has created many jobs and plans to create more. The grant application will provide up to \$750,000.00 for improvements. The City will need to adopt the following:

1. Authorize the City to submit the grant application and authorize the Mayor to sign all appropriate documents.
2. Approve the Anti-Displacement Resolution. The projects do not involve any displacement.

A copy of the item is attached for your review.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

(Minimum required by all applicants for funding – must be submitted with application)

**Residential Anti-displacement and Relocation Assistance Plan
under Section 104(d) of the
Housing and Community Development Act of 1974, as Amended**

The (City/County) Emporia will replace all occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted to a use other than as low- moderate-income housing as a direct result of activities assisted with funds provided under the Housing and Community Development Act of 1974, as amended, as described in 24 CFR Part 570.488.

All replacement housing will be provided within three years of the commencement of the demolition or rehabilitation relating to conversion. Before obligating or expending funds that will directly result in such demolition or conversion, the (City/County) Emporia will make public and submit to the Kansas Department of Commerce the following information in writing:

1. A description of the proposed assisted activity;
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low- and moderate-income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as Section 104(d) replacement dwelling units;
5. The source of funding and a time schedule for the provision of Section 104(d) replacement dwelling units; and
6. The basis for concluding that each Section 104 (d) replacement dwelling unit will remain a low- and moderate-income dwelling unit for at least ten years from the date of initial occupancy.

The (City/County) Emporia will provide relocation assistance, as described in Section 570.488 to each low- and moderate-income household displaced by the demolition of housing or by the conversion of a low- and moderate-income dwelling to another use as a direct result of assisted activities.

Consistent with the goals and objectives of activities assisted under the act, the (City/County) Emporia will take the following steps to minimize the displacement of persons from their homes:

Based on initial review of project, the following occupied dwellings (by address) will be demolished with grant funds (should contain proposed demolitions):

Demolition will not be part of this project.

As chief elected official of [(City/County) Emporia], I hereby certify that the above plan was officially adopted by (City/County) city of Emporia on the 1st day of September, 2021.

Date: _____

Signature – Chief Elected Official: _____

THE CITY/COUNTY OF EMPORIA, KANSAS

RESOLUTION NO. _____

RESOLUTION CERTIFYING LEGAL AUTHORITY
TO APPLY FOR THE 2021 KANSAS
SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
FROM THE KANSAS DEPARTMENT OF COMMERCE
AND AUTHORIZING THE MAYOR
TO SIGN AND SUBMIT SUCH AN APPLICATION

WHEREAS, The City/County of EMPORIA, Kansas, is a legal governmental entity as provided by the laws of the STATE OF KANSAS, and ✓

WHEREAS, The City/County of EMPORIA, Kansas, intends to submit an application for assistance from the 2021 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

THE APPLICANT hereby certifies that the City/County of EMPORIA, Kansas, is a legal governmental entity under the status of the laws of the STATE OF KANSAS and thereby has the authority to apply for assistance from the 2021 KANSAS SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

THE APPLICANT hereby authorizes the MAYOR/COMMISSIONER of EMPORIA, Kansas, to act as the applicant's official representative in signing and submitting an application for the assistance to the 2021 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

THE APPLICANT hereby dedicates \$491,348.13 in cash funds toward this project and \$-0- in in-kind material and/or labor for same.

APPROVED BY THE GOVERNING BODY OF THE CITY/COUNTY OF EMPORIA, KANSAS, this 1st day of September, 2021.

APPROVED _____
MAYOR/COMMISSIONER

ATTEST _____

(SEAL)

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 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.

At the time this Agenda was prepared, the following items were in the works:

Tentative Agenda for September 8th Study Session at 10:00 a.m.

- Update on Disc Golf in Emporia.
- Discuss Updates on the Clean Air Ordinance.
- Discuss Redevelopment Project on 700 Block of Commercial Street.
- FEMA Discussion.
- Discuss New Electronic Sign for the Emporia Public Library.

Joint Luncheon w/Emporia Library Board In the Emporia Library Conference Rm.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 2021

ITEM NUMBER: 13

SUBJECT: City Commissioners Reports and Comments

RECOMMENDATION:

BACKGROUND SUMMARY:

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

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 2021

ITEM NUMBER: 14

SUBJECT: Executive Session.

RECOMMENDATION:

BACKGROUND SUMMARY:

At this time; the City Commissioners request a 15-minute Executive Session for consultation with the City Attorney regarding a legal matter.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: September 1, 2021

ITEM NUMBER: 15

SUBJECT: Executive Session.

RECOMMENDATION:

BACKGROUND SUMMARY:

At this time; the City Commissioners request a 10-minute Executive Session for a preliminary discussion related to land acquisition and to invite City Engineer Jim Ubert.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

COMMISSION MEETING

7:00 P.M.

AUGUST 18, 2021

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, August 18, 2021, with Mayor Gilligan presiding and Commissioners Geitz, Giefer and Smith present. Commissioner Brinkman was absent. Also present were City Manager McAnarney, Assistant City Manager Massey, City Clerk Sull and City Attorney Montgomery.

MAYOR AND CITY COMMISSIONERS REPORTS AND COMMENTS

This is the time for the Mayor and City Commissioners to make comments and reports to the public. **The following is general information for the month of July for the community:**

1. Monthly Local Retail Sales Tax Receipts Update

	2020	2021	
	\$431,070.55	\$461,611.41	Increase of \$30,540.86 for the month, and
YTD	\$ 2,849,196.54	\$3,124,879.55	Overall increase of 9.68% from year 2020

2. City Share from County Tax

	2020	2021	
	\$ 214,478.17	\$ 233,186.28	Increase of \$18,708.11 for month, and
YTD	\$1,454,977.35	\$1,578,109.85	Overall increase of 8.46% from year 2020

3. **Building Permits issued from 7/1/2021 to 7/31/2021 for new construction, remodeling, repairs and demolition.**

Total number of building permits issued through Code Services:	72
Total of valuations associated with those building permits:	\$ 1,993,583.00
Total number of dollars collected for Building Permit Fees:	\$ 12,287.50
Construct - single family dwellings	1
Demo - single family dwellings	1
Flint Hills Mall CID for July	\$ 18,804.40
Year to Date Total	\$ 120,756.99

Consent Agenda

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

- Consider minutes of the Meeting held on August 4, 2021.
- Consider ratification of Payroll Ordinance for the period ending on August 13, 2021.
- Consider the Approval of July Budget.
- Consider Request to Set Date for Notice of Hearing to Exceed Revenue Neutral Rate and 2022 Budget Hearing.

- e. Consider Set Bid Date and Time for the Public Works Center Pavement Improvements.

The vote follows: Commissioner Giefer, aye; Commissioner Smith, aye; Commissioner Smith, aye; and Mayor Gilligan, aye.

**CITY COMMISSION
(Public Comment)**

This is the time for the public to make comments.

Ben Lienemann, 828 Road K, was recognized and addressed the Governing Body. He stated his concerns of the 2022 budget salary discussion.

**CITY COMMISSION
(Consider Approval of Incentive Compliance Agreement)
(Emporia Land Development, LLC - Emporia Pavilions)**

Jim Witt, Special Projects Coordinator, was recognized and addressed the Governing Body. He stated this is an Incentive Compliance Agreement (ICA) related to a forgivable loan for the expansion of the Pavilions retail center. The \$100,000.00 forgivable loan is to be used for site development work related to the construction of 50,500, square feet of new retail space at an approximate cost of \$7,000,000.00. He stated the 50,500 square feet shall be occupied by three (3) retail users with construction to begin in 2021 and continue into 2022. The term of the forgivable loan is 5 years beginning on the date each individual retail space received their Certificate of Occupancy from the City on or before October 1, 2022. The pay back provision is based on a square foot pro-rated share of the original loan amount. Staff recommended approval of the Incentive Compliance Agreement for Emporia Pavilions.

Commissioner Geitz made a motion to approve the Incentive Compliance Agreement for Emporia Pavilions. Commissioner Giefer

seconded the motion. The vote follows: Commissioner Geitz, aye; Commissioner Giefer, aye; Commissioner Smith, aye; and Mayor Gilligan, aye.

**EMPORIA MUNICIPAL AIRPORT
(Consider Approval of Contract with HW Lochner)
(Airport Runway 51' Extension)**

Dean Grant, Public Work Director, was recognized and addressed the Governing Body. He stated the airport received a grant from the Kansas Department of Transportation for the design of a 51' extension. The grant reimburses the City for 95% of the design costs. Total design cost for the extension design is \$153,800.00 and the City's share is 5% of the cost, which is \$7,690.00. He stated staff is recommending approval of the contract to design the Airport Runway 51' Extension with HW Lochner in the amount of \$153,800.00.

Commissioner Geitz made a motion to approve the contract to design the airport runway 51' extension with HW Lochner in the amount of \$153,800.00. Commissioner Giefer seconded the motion. The vote follows: Commissioner Geitz, aye; Commissioner Giefer, aye; Commissioner Smith, aye; and Mayor Gilligan, aye.

**CITY COMMISSION
(Consider Bids of Vacant Lots)
(902 Neosho Street and 1626 LaSalle Street)**

Jeff Lynch, Community Development Coordinator, was recognized and addressed the Governing Body. He stated there has been interest from the public in purchasing and developing new homes on two (2) vacant lots currently owned by the City. The lots are located at 902 Neosho Street and 1626 LaSalle Street. He stated both lots were acquired for future development and previous grant funding used to development homes has been exhausted and the City has no immediate plans for the lots. He stated bids from the same bidder include \$10,000.00 for 902

Neosho Street and \$8,500.00 for 1626 LaSalle Street. The bidder is an active real estate agent and housing developer in the community. The bidder states that construction of homes on both of the lots will be completed within six (6) months of purchase date as weather permits. He stated the proceeds from the sale of both lots could be utilized for other housing activities such as demolition and development of currently dilapidated property. He stated staff is recommending the sale of vacant lots at 902 Neosho Street and 1626 LaSalle St.

Commissioner Geitz stated the proceeds should go to Land Bank to utilize the funds.

Commissioner Smith made a motion to accept the bids for the sale of vacant lots at 902 Neosho Street for \$10,000.00 and 1626 LaSalle Street for \$8,500.00. Commissioner Giefer seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Giefer, aye; Commissioner Geitz, aye; and Mayor Gilligan, aye.

PLANNING AND DEVELOPMENT

(MAPC Excerpts of Regular Meeting Held 5-18-21)

(Application No. 2021-15 - Request of City of Emporia)

(Annex Parcel of Land Located at 600 Road 180 into City Limits)

Excerpts of Planning Commission Minutes from May 18, 2021.

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.

2021-15: Annexation Request for 600 Road 180 to bring the property into the city limits of Emporia.

Staff confirmed jurisdiction over this application.

No exparte communication was declared.

BACKGROUND SUMMARY

SECTION 3-3 ANNEXATION 3-301. Land hereafter annexed into the City of Emporia shall retain the zoning district status received in Lyon County unless procedures are followed to amend the zoning status.

2014 State Statute 12-520

<http://kslegislature.org/li> 2014/b2013 14/statute/012 000 0000
chapter/012 005 0000 article/012 005 0020 section/012 005 0020
k/

RECOMMENDATION:

Approve as a normal extension of the community.

ANALYSIS:

Applicants: Evergy

Requested Action: Annexation

Purpose: To bring location into the city limits

Address: 600 Road 180

Size: approximately 19 acres

Existing Zoning: Agricultural

Existing Land Use: Agricultural

Physical Characteristics: Undeveloped land

Comprehensive Plan: None

Public Utilities: Water and sewer will be available.

Analysis: The applicant would like to annex this property in order to expand industrial growth in the future.

City staff have discussed the requested annexation, there were no concerns noted that would prevent this request. There is a Memo of Understanding concerning the water, sewer connections and paving of Road 180. A property needs to be annexed into the City to connect to water and sewer. Annexations do not require a legal publication, and can be added agenda at any time.

In accordance with 2014 State Statute 12-520 as long as one of the following is met the City can annex without County approval. This location does not meet the requirements so it will require County Commission approval.

State Statute 12-520:

(1) The land is platted, and some part of the land adjoins the city.

(2) The land adjoins the city and is owned by or held in trust for the city or any agency thereof.

(3) The land adjoins the city and is owned by or held in trust for any governmental unit other than another city except that no city may annex land owned by a county without the express permission of the board of county commissioners of the county other than as provided in subsection (f).

(4) The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than 50%.

(5) The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of 21 acres shall be annexed for this purpose.

(6) The tract is so situated that 2/3 of any boundary line adjoins the city, except no tract in excess of 21 acres shall be annexed under this condition.

(7) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.

Member Bucklinger, asked what the indented use of this location would be?

Mr. Foster noted this location has been platted and rezoned already, this annexation would allow the connection of city utilities.

No other questions for staff.

Public Comment:

JR Glenn, 818 South Kansas, Topeka.

Building a new service center at this location. Have Memo of Understanding with the Commission, as part of it, we agreed to annexation.

Opposition:

Melissa McAlester, Americus

Wanted to be sure that neighbors had the opportunity to express concerns.

Rebuttal:

JR Glenn, express that the neighbors were notified for the past rezoning.

Motion:

Member Duncan made a motion to approval, based on staff recommendation, MOU, and letter of agreement. Member Weaver seconded.

Member Garrett noted that there had been two public hearings for this location.

Motion approved 7-0

Jeff Lynch, Community Development Coordinator, was recognized and addressed the Governing Body. He stated this was a request of the City of Emporia. He stated Everygy is seeking the annexation of an approximately 20 acre parcel of land. The annexation is not contiguous with City of Emporia and has received the Board of County Commissions approval. This annexation will annex a portion of Road 180 into the City limits. He stated under the Memorandum of Understanding city utilities

will be available, and there were no objections from the Technical Review Team that would interfere with this application. At their May 18, 2021 regular meetings, the Planning Commission voted unanimously to approve this request.

PLANNING AND DEVELOPMENT
(Application No. 2021-15 - Request of City of Emporia)
(Annex Parcel of Land Located at 600 Road 180 into City Limits)
(Ordinance Number 21-30)

AN ORDINANCE ANNEXING AND INCORPORATING CERTAIN LAND WITHIN THE BOUNDARIES OF THE CITY OF EMPORIA, KANSAS PURSUANT TO AND IN ACCORDANCE WITH THE PROVISION OF K.S.A. 12-520c, to which the City Clerk assigned Ordinance Number 21-30, was presented to the Governing Body for their consideration.

Commissioner Geitz made a motion to approve Ordinance Number 21-30, an ordinance annexing a parcel of land located at 600 Road 180 into City limits. Commissioner Giefer seconded the motion. The vote follows: Commissioner Geitz, aye; Commissioner Giefer, aye; Commissioner Smith, aye; and Mayor Gilligan, aye.

CITY COMMISSION
(Request from Bourbon Cowboy-Susan Brinkman)
(Appeal State of Kansas Historic Preservation Office - SHPO)
(605 Commercial Street)
(Public Hearing)

Jeff Lynch, Community Development Coordinator, was recognized and addressed the Governing Body. He stated this is a request of Bourbon Cowboy and Susan Brinkman to appeal the State Historic Preservation Office decision regarding the proposed painting of a mural/sign on the building exterior of 605 Commercial Street. SHPO determined that historic brick is designed to be a breathable material that is capable of releasing water vapor and by covering unpainted brick with paint, the historic material will potentially be damaged. He stated State statute K.S.A. 75-2724 gives the governing body the authority to reaffirm or overrule the decision of the Kansas State Historic Society. The City Commission must find that all

feasible and prudent alternatives to minimize the harm to the property have been considered in order to override SHPO's recommendation.

Mayor Gilligan then declared the public hearing opened.

Alex Polzin, representing A&A Signs, addressed the Governing Body speaking in favor of mural. He stated the building is in great shape and care will be taken so there is no harm to the building. He stated they will not be covering the entire wall with paint. SHPO had concerns about water vapor issues and not having any water transfer. This mural will only cover a small area of the building.

City Attorney Montgomery asked are there any other feasible or prudent alternates that would achieve this mural with a different type of paint.

Alex replied the paint that will be used is a very high quality masonry paint that is very vibrant in color.

City Attorney Montgomery asked if there are any other feasible alternatives that would not damage the historic property of the building?

Alex replied this paint can be removed and will not damage the building. He stated he uses high quality acrylic paint that will last for many years and will not cause any damage to the historic building.

As no one else wished to address the Governing Body, Mayor Gilligan then declared the public hearing closed.

Commissioner Smith made a motion to overrule the determination of the State Historic Preservation Office and approve the project based on a determination that there is no feasible and prudent alternative to the proposal and that the project includes all possible planning to minimize harm to the historic property. Commissioner Giefer seconded the motion. The vote follows: The vote follows: Commissioner Smith, aye; Commissioner Giefer, aye; Commissioner Geitz, aye; and Mayor Gilligan, aye.

**CITY COMMISSION
(Consider Letter of Support)
(Extension of Lyon County 1-Cent Sales Tax)**

City Manager McAnarney stated the Lyon County Commission has requested the City Commission support their renewal of the 1-cent county-wide sales tax. He stated the county will be seeking renewal of the sales tax on the upcoming election.

Mayor Gilligan stated the city receives approximately \$2,000,000.00 a year as revenue stream for investment in community infrastructure projects.

Commissioner Smith made a motion authorizing the Mayor to sign a letter or support supporting the extension of the Lyon County Sales tax in the amount of 1-cent. Commissioner Giefer seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Giefer aye; Commissioner Geitz, aye; and Mayor Gilligan, aye.

**CITY COMMISSION
(City Manager's Report)**

This is a verbal report that announces upcoming events, recognizes employees for outstanding contribution and provides the public information that may be of a general interest. The following information was presented at the meeting:

At the time this Agenda was prepared, the following items were in the works:

TENTATIVE AGENDA FOR AUGUST 25TH STUDY SESSION

Final Discussion of 2022 Budget.

Discuss Redevelopment Project on 700 Block of Commercial Street.

EXECUTIVE SESSION

Commissioner Geitz made a motion to adjourn into Executive Session to discuss attorney/client privilege from 7:28 p.m. to 7:38 p.m., in the City Commission Meeting Room. Commissioner Giefer seconded the motion. The vote follows: Commissioner Geitz, aye; Commissioner Giefer, aye; Commissioner Smith, aye; and Mayor Gilligan, aye.

Upon reconvening the meeting in Regular Session, at 7:38 p.m., this same date, in the City Commission Meeting Room, Mayor Gilligan stated they had discussed attorney/client privilege and no action was taken.

Commissioner Giefer then made a motion to adjourn. Commissioner Smith seconded the motion. The vote follows: Commissioner Giefer, aye; Commissioner Geitz, aye; Commissioner Smith, aye; and Mayor Gilligan, aye.

Robert F. Gilligan, Mayor

ATTEST:

Kerry Sull, City Clerk