



**MEETING OF THE CITY COMMISSION – AGENDA
WEDNESDAY, APRIL 20, 2022 AT 7:00 P.M.
CITY COMMISSION CHAMBER**

ORDER OF BUSINESS

CALL MEETING TO ORDER: Mayor Becky Smith

MEMBERS PRESENT

Vice Mayor Giefer
Commissioner Brinkman
Commissioner Sauder
Commissioner Harter

SWEARING IN OF NEW COMMISSIONER

PROCLAMATIONS

EARTH DAY IN EMPORIA

Presented by Natural Resources Advisory Board & Jeff Lynch, Community Development Coordinator

ARBOR DAY IN EMPORIA

Presented by Josh Nelson, City of Emporia Horticulturist

PUBLIC FORUM

The public is invited to make comments at this time. Please limit comments to two(2) minutes each. Hate speech, profanity, and defamation are not allowed. Please state your name and address prior to making comments.

NEW BUSINESS

1) CHARTER ORDINANCE NO. 40 REPEALING CHARTER ORDINANCE NO. 26.

Presented by Christina Montgomery, City Attorney

RECOMMENDED ACTION: Approve Charter Ordinance

2) VOTE TO RESCHEDULE CITY COMMISSION MEETINGS IN MAY.

Presented by Christina Montgomery, City Attorney

RECOMMENDED ACTION: Approve the Rescheduling of May Commission Meetings.

3) LEASE AND OPERATIONS AGREEMENTS WITH EMPORIA ANIMAL SHELTER.

Presented by Christina Montgomery, City Attorney

RECOMMENDED ACTION: Approve the Agreement

4) RESOLUTION NO. 3669 TO CONSIDER PROJECT PLAN PUBLIC HEARING FOR RED BRICK TAX INCREMENT FINANCING.

Presented by Jim Witt, Special Projects Manager

RECOMMENDED ACTION: Approve Resolution

5) RESOLUTION NO. 3670 TO ESTABLISH A PUBLIC HEARING DATE FOR THE RED BRICK COMMUNITY IMPROVEMENT DISTRICT PETITION.

Presented by Jim Witt, Special Projects Manager

RECOMMENDED ACTION: Approve Resolution

6) RESOLUTION NO. 3671 TO ESTABLISH A PUBLIC HEARING DATE FOR WHITTIER TRACT RHID.

Presented by Jim Witt, Special Projects Manager

RECOMMENDED ACTION: Approve Resolution

7) REQUESTS TO EXCHANGE FEDERAL FUNDS.

Presented by Jim Uberty, City Engineer.

RECOMMENDED ACTION: Approve the Agreement

8) AWARD THE BID FOR THE 2022 HAZARDOUS SIDEWALK PROGRAM.

Presented by Jim Uberty, City Engineer.

RECOMMENDED ACTION: Approve the Award

9) AWARD THE BID FOR THE 2022 STREET REHAB PROJECT.

Presented by Jim Uberty, City Engineer.

RECOMMENDED ACTION: Approve the Award.

COMMUNICATIONS

Presented by Trey Cocking, City Manager.

1. March Financials & Building Permits
2. March Budget Report

CONSENT AGENDA

Presented by Trey Cocking, City Manager.

1. Approve the minutes of the April 6, 2022, City Commission Meeting.
2. Ratification and Approval of the Payroll Ordinances for the periods ending April 8, 2022.
3. Purchas of a Bi-Directional Amplifier(BDA).
4. Approve Agreement with BG Consultants for Highland Street Construction Plans and Construction Engineering Services.
5. Approve Agreement with BG Consultants for Flint Hills Crossing Platting, Construction Plans, & Traffic Impact Study for Phase 1.
6. Approve Jones Aquatic Center Agreement.

RECOMMENDED ACTION: Approve the Consent Agenda as Presented.

INFORMATIONAL ITEMS

Presented by Trey Cocking, City Manager.

1. Agenda Items for April 13, 2022 Study Session.
2. Proposed Prevention of Significant Deterioration (PSD) Air Quality Construction Permit Letter from KDHE.

GOVERNING BODY COMMENTS

Mayor Becky Smith

Vice Mayor Danny Giefer

Commissioner Susan Brinkman

Commissioner Jamie Sauder

Commissioner Erren Harter

EXECUTIVE SESSION:

AN EXECUTIVE SESSION FOR THE PRELIMINARY DISCUSSION OF THE ACQUISITION OF REAL PROPERTY. K.S.A. 75-4319(B)(6) IS THE AUTHORITY FOR THIS RECESS INTO THE EXECUTIVE SESSION.

RECOMMENDED ACTION: Recess into Executive Session for the preliminary discussion of the acquisition of real property for 10 minutes and to invite Jim Ubert, City Engineer, and stating at which time the open meeting will resume.

ADJOURNMENT



PROCLAMATION

WHEREAS, On April 22, 1970, United States Senator Gaylord Nelson of Wisconsin and Denis Hayes organized the first nationwide day devoted to environmental awareness and education that was celebrated by an estimated 20 million Americans; and

WHEREAS, this day of environmental awareness and education is celebrated worldwide in some 180 countries, with the participation of over 4,000 separate organizations; and

WHEREAS, individuals and institutions have a mutual responsibility to seek ecological, economical, and ethical choices that enable the world, as well as our individual communities, to establish and maintain sustainable societies.

NOW, THEREFORE, I, Becky Smith, Mayor of the City of Emporia, Kansas, do hereby proclaim Friday, April 22, 2022, as:

“EARTH DAY”

In Emporia, Kansas and urge all citizens to celebrate Earth Day and to remind each person of their right and responsibility to the wise use of this global home, to heal, preserve and improve the Earth and the quality of life for this and future generations, and to approach every day as an Earth Day.

On this 20th Day of April 2022

ATTEST:

Becky Smith, Mayor

Kerry Sull, City Clerk



PROCLAMATION

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE, I Becky Smith, Mayor for the City of Emporia, Kansas do hereby proclaim April 29, 2022 as

ARBOR DAY

and I urge all citizens to celebrate Arbor Day, to support efforts to protect our trees and woodlands, and to plant trees to promote the well-being of this and future generations.

On this 20th day of April 2022

Becky Smith, Mayor

ATTEST:

Kerry Sull, City Clerk



Commission Action Report

Title: Charter Ordinance No. 40 repealing Charter Ordinance No. 26

Proposed Agenda Date: April 20, 2022

Presented By: Christina Montgomery, City Attorney

BACKGROUND:

Charter Ordinance No. 26 utilized the City's Home Rule authority to exempt the City from certain provisions of state law relating to meetings of the City Commission for Cities of the First Class. The state law provisions referenced in Charter Ordinance No. 26 have since been repealed making Charter Ordinance No. 26 no longer necessary.

DISCUSSION:

Repealing Charter Ordinance No. 26 will allow the City Commission to set a meeting schedule by ordinary ordinance. If Charter Ordinance No. 40 repealing Charter Ordinance No. 26 is approved, it will be published in the official city newspaper for two (2) consecutive weeks and become effective sixty-one (61) days after final publication.

FINANCIAL CONSIDERATIONS:

none

OTHER CONSIDERATIONS:

Approval of a charter ordinance requires a 2/3 majority vote of the City Commission.

RECOMMENDED ACTION:

Approve Charter Ordinance No. 40

ATTACHMENTS:

Proposed Charter Ordinance No. 40

CHARTER ORDINANCE NO. 40

A CHARTER ORDINANCE REPEALING CHARTER ORDINANCE NO. 26 OF THE CITY OF EMPORIA, KANSAS.

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

SECTION 1. Charter Ordinance No. 26 of the City of Emporia, Kansas relating to meetings of the Governing Body is hereby repealed.

SECTION 2. This Charter Ordinance shall be published once each week for two (2) consecutive weeks in the official City newspaper.

SECTION 3. This Charter Ordinance shall take effect sixty-one (61) days after final publication unless a sufficient petition for referendum is filed requiring a referendum be held on the Ordinance as provided in Article XII, Section 5, Subdivision (c)(3), of the Constitution of the State of Kansas, in which case the Ordinance shall be effective if approved by a majority of the electors voting thereon.

PASSED BY THE GOVERNING BODY, not less than two-thirds (2/3) of the members elect voting in favor thereof, this 20th day of April 2022.

Becky Smith, Mayor

Attest:

Kerry Sull, City Clerk



Commission Action Report

Title: Vote to Reschedule City Commission Meetings in May
Proposed Agenda Date: April 20, 2022
Presented By: Christina Montgomery, City Attorney

BACKGROUND:

The City Commission schedule provided in Charter Ordinance No. 26 will remain in effect until Charter Ordinance No. 40 goes into effect. The City Commission may vote to reschedule action meetings whenever the Commission determines that a conflict exists with the regular scheduled meetings.

DISCUSSION:

At the strategic planning session on April 13, City Commission discussed conducting all action meetings at the same time and holding study sessions immediately following action meetings to improve consistency and efficiency. Staff recommends rescheduling the May 4 action meeting to 11:00 a.m. with a study session immediately following and the May 18 action meeting to 11:00 a.m. with a study session immediately following as a trial basis for a potential new permanent schedule. Study sessions would not be held on May 11 or 25.

FINANCIAL CONSIDERATIONS:

none

OTHER CONSIDERATIONS:

none

RECOMMENDED ACTION:

Vote to reschedule the May 4 action meeting to 11:00 a.m. on May 4 and the May 18 action meeting to 11:00 a.m. on May 18 finding that the existing meeting times conflict with the City Commission goals identified during strategic planning.

ATTACHMENTS:

none



Commission Action Report

Title: Animal Shelter Agreements
Proposed Agenda Date: April 20, 2022
Presented By: Christina Montgomery, City Attorney

BACKGROUND:

The Humane Society of the Flint Hills has operated the Emporia Animal Shelter on behalf of the City of Emporia since 2015. The City and HSFH are parties to a Lease Agreement and Operations Agreement which specify the terms of the Emporia Animal Shelter Management.

DISCUSSION:

The proposed agreements for the 2022 year are substantially similar to agreements in previous years. 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. HSFH will be responsible for daily maintenance and cleaning of the facility. The City will be 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.

FINANCIAL CONSIDERATIONS:

The City will pay HSFH \$132,000 per year for a period of two years to operate the Emporia Animal Shelter. This is an increase of 10%.

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Approve Agreements and authorize the Mayor to sign

ATTACHMENTS:

2022 Shelter Operation Agreement
2022 Lease Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT made this 20th day of April 2022 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 two (2) years starting May 1, 2022 and ending April 30, 2024.

(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

Becky Smith, Mayor

Attest:

Kerry Sull, City Clerk

HUMANE SOCIETY OF THE FLINT HILLS

Name:

Title:

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 annual payment of \$132,000.00, the HSFH is hereby delegated and contracted to operate and manage the Emporia Animal Shelter for a period of two (2) years. It is hereby understood and agreed that the contract sum shall be paid in quarterly payments.
2. **Term.** The term of this Agreement shall be for a term beginning on May 1, 2022 and ending on April 30, 2024.
3. **Responsibilities.** The City shall lease to the HSFH by separate lease agreement the Emporia Animal Shelter located at 1216 Hatcher, Emporia, Kansas which shall address maintenance responsibilities, capital improvements, and utilities. The City shall work with HSFH in the event it is deemed necessary to amend or supplement any animal control ordinances to provide for the efficient and economical operation of the animal shelter.

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

- a. Obtain and maintain appropriate shelter licensing from the State of Kansas.
- b. Maintain appropriate shelter care for all domestic animals which come into its custody, including veterinary care when needed.
- c. Maintain appropriate office hours at the animal shelter for receiving animals, releasing redeemed animals, and adoption of animals including at least 30 hours per week in which the shelter is open to the public for walk-in service.
- d. Maintain adequate staffing levels to accomplish the carrying out of the responsibilities under the Agreement.

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

- q. HSFH shall meet quarterly, or at other time of choosing of the City, with the Chief of Police or Police Chief representative, to discuss operations under this Agreement.
4. **Insurance.** HSFH shall procure and maintain during the term of this agreement Workers' Compensation Insurance as prescribed by the laws of the State of Kansas. HSFH shall procure and maintain during the term of this Agreement comprehensive general liability coverage that shall protect HSFH from claims for damages for personal injury, including accidental and wrongful death, as well as from services rendered under this agreement, whether such services be by HSFH or by anyone employed directly or indirectly by them. Such insurance shall provide for limits of not less than \$1,000,000 per occurrence. HSFH shall furnish the City with certificates of insurance to demonstrate that the Society has procured such insurance and that the City has been named as an additional insured therein. Such policies or certificates of insurance shall contain the covenant of the insurance carrier that thirty (30) days written notice shall be given to the City prior to modifications, cancellation, or reduction in coverage of such insurance.
5. **No assignment.** HSFH shall not sell or assign this contract or the powers granted to it, or any interest therein, nor any right, power, or authority to allow or permit any other person or party to have an interest in or use any part of the premises owned by the City and now designated as the City Animal Shelter for any purpose whatsoever without the written consent of the City.
6. **Independent Contractor.** HSFH, its officers, employees, agents, and volunteers shall act in an independent capacity during the term of this Agreement and not as officers, employees, agents, or volunteers of the City.
7. **Termination.** It is mutually understood and agreed by the parties hereto that this Agreement shall continue in effect for two 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 20th day of April 2022.

Humane Society of the Flint Hills, Inc.

Name:

Title:

City of Emporia, Kansas

Becky Smith, Mayor

ATTEST:

Kerry Sull, City Clerk



Commission Action Report

Title: Resolution No. 3669 to Consider the Project Plan Public Hearing on June 1, 2022, for the Proposed Red Brick Tax Increment Financing District in Accordance with Kansas Statutes.

Proposed Agenda Date: April 20, 2022

Presented By: Jim Witt, SPC

BACKGROUND:

The resolution establishes a hearing Date of June 1, 2022, for consideration of a project plan for the Red Brick Tax Increment Financing (TIF) district. This is a required hearing in accordance with Kansas Statutes.

DISCUSSION:

The Project Plan has been reviewed by our bond and incentive attorney Mary Carson as well as the SPOC and does meet the required Statutory requirements. A copy is attached to this agenda item. Notice of the hearing and a copy of the plan has been sent to the USD, County, and planning commission as required by statute.

FINANCIAL CONSIDERATIONS:

None currently.

OTHER CONSIDERATIONS:

The final step in the creation of the TIF will be the adoption of an ordinance creating the TIF and a formal Development Agreement with the Red Brick developer.

RECOMMENDED ACTION:

Pass Resolution and set a hearing date.

ATTACHMENTS:

Resolution
Project Plan

(Published in the *Emporia Gazette* on May 21, 2022)

RESOLUTION NO. 3669

A RESOLUTION STATING THE INTENT OF THE CITY OF EMPORIA, KANSAS TO CONSIDER ADOPTION OF A REDEVELOPMENT PROJECT PLAN WITHIN THE RED BRICK EMPORIA REDEVELOPMENT DISTRICT PREVIOUSLY CREATED BY THE CITY AND PROVIDING FOR NOTICE OF A PUBLIC HEARING ON SUCH MATTERS.

WHEREAS, K.S.A. 12-1770 *et seq.*, as amended (“Act”) authorizes the city of Emporia, Kansas (“City”) to create redevelopment districts, approve redevelopment plans for such districts and provide for financing of eligible costs of such redevelopment by providing pay-as-you go reimbursement; and

WHEREAS, pursuant to Ordinance No. 21-38 passed and approved on November 17, 2021 the City established the Red Brick Emporia Redevelopment District as described therein; and

WHEREAS, a Tax Increment Financing Redevelopment Project Plan (the “Project Plan”) has been prepared pursuant to the Act, which describes the proposed phased development within the Red Brick Emporia Redevelopment District, and includes a description of the facilities and buildings proposed to be constructed in the area and other matters required by the Act; and

WHEREAS, at a meeting held on April 19, 2022 the Emporia - Lyon County Metropolitan Planning Commission found the Project Plan is consistent with the intent of the comprehensive plan for development of the City; and

WHEREAS, pursuant to the Act the City is required adopt this resolution describing its intent to consider adopting the Project Plan and to set a date for a public hearing to consider the adoption of the Project Plan.

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

SECTION 1. The governing body of the City finds and determines that, pursuant to the Act:

(a) A public hearing shall be held as part of the regular meeting of the City Commission on June 1, 2022 at 11:00 a.m., or as soon thereafter as the matter can be heard, in the City Commission meeting room at 518 Mechanic Street, to consider adoption of the Project Plan.

(b) The area to be developed pursuant to the Project Plan is part of the Red Brick Emporia Redevelopment District and includes the following property and adjacent rights-of-way:

A part of the Southeast Quarter of Section 7, Township 19 South, Range 11 East of the 6th PM, Lyon County, Kansas, as shown on the Final Plat of Brownstone Addition to the City of Emporia, Lyon County, Kansas

And

Brownstone Second Addition to the City of Emporia, Lyon County, Kansas, as shown on the Final Plat thereof, being a replat of Lots 2,3,7,8,9 and 10 of Martin-Eagle Subdivision to the City of Emporia, Lyon County, Kansas

The area included in the Project Plan is shown on the map attached to this resolution as **Exhibit A**.

(c) The Project Plan and a map of the area to be redeveloped or developed are available for inspection during regular office hours at the City Clerk's office, 104 East 5th Avenue, from 8:00 a.m. to 5:00 p.m., Monday through Friday. The Project Plan includes a summary of the feasibility study, description of improvements, phasing of the improvements, and other information pertinent to the redevelopment project.

SECTION 2. The City anticipates costs of the redevelopment project described in the Project Plan will be paid by the Developer of the Project Plan and that eligible portions of the project costs will be reimbursed to the Developer on a pay-as-you go basis over time as incremental increases in certain tax revenues are collected in the District.

SECTION 3. This Resolution and **Exhibit A** shall be sent by certified mail with return receipt requested to the Board of Education of Unified School District No. 253, to the Board of County Commissioners of Lyon County, and to each owner or occupant of land in the proposed redevelopment district, not more than 10 days after the date of this resolution. This resolution and **Exhibit A** shall also be published one time in the official city newspaper not less than one week nor more than two weeks before the public hearing date of June 1, 2022.

[Remainder of Page Intentionally Left Blank]

ADOPTED AND APPROVED by the governing body of the City of Emporia, Kansas on April 20, 2022.

CITY OF EMPORIA, KANSAS

[seal]

By _____
Becky Smith, Mayor

ATTEST:

By _____
Kerry Sull, City Clerk

EXHIBIT A – RESOLUTION NO. 3669

(MAP OF PROJECT AREA)



EXCERPT OF MINUTES

The governing body of the City of Emporia, Kansas, met in regular session at the usual meeting place in the City on April 20, 2022, at 7:00 p.m., with the Mayor Becky Smith presiding, and the following members of the governing body present:

The following members were absent:

A Resolution was presented to the governing body entitled:

A RESOLUTION STATING THE INTENT OF THE CITY OF EMPORIA, KANSAS TO CONSIDER ADOPTION OF A REDEVELOPMENT PROJECT PLAN WITHIN THE RED BRICK EMPORIA REDEVELOPMENT DISTRICT PREVIOUSLY CREATED BY THE CITY AND PROVIDING FOR NOTICE OF A PUBLIC HEARING ON SUCH MATTERS.

The Resolution was considered and discussed; and on motion of _____, seconded by _____, the Resolution was adopted by a majority vote of the members present and assigned No. 3669.

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I certify that the foregoing is a true and correct Excerpt of Minutes of the April 20, 2022 meeting of the governing body of the City of Emporia, Kansas.

[seal]

Kerry Sull, City Clerk

Red Brick Emporia, LLC

TAX INCREMENT FINANCING
REDEVELOPMENT PROJECT PLAN

SUBMITTED TO THE GOVERNING BODY OF THE CITY OF EMPORIA, LYON
COUNTY, KANSAS.

TABLE OF CONTENTS

1. Introduction
2. Red Brick Emporia – Redevelopment Project Plan
 - A. Subject Property
 - B. Established Redevelopment District
 - C. Description of Proposed Plan; Contribution to Economic Development
 - D. Financing Plan
 - E. Feasibility Study Summary
3. Project Costs
4. Eligible Costs
5. Project Tax Increment Revenues
6. Summary of Increase in Sales and Taxes
7. Relocation Plan
8. Conclusion

EXHIBIT LIST

- Exhibit A – 1 Map Exhibit of the Subject Property
- Exhibit A – 2 Proposed Site Plan
- Exhibit B – Legal Description of the Subject Property
- Exhibit C – City of Emporia Resolution/Ordinance
- Exhibit D – Revenue Projections

1. Introduction

Red Brick Emporia LLC (“Developer”) is working on a Tax Increment Financing Redevelopment District on approximately 39 acres located generally on the corner of Graphic Arts Road and Hwy 50 Highway, Emporia, Lyon County, Kansas (“District”). In Ordinance No. 21-38, passed by the City on November 17, 2021, the City created the District as a Tax Increment Financing (“TIF”) Redevelopment district, made other findings required by law and approved the District Plan.

Extensive research and feasibility studies have been done to confirm our initial belief of the need of another Travel Plaza in the City of Emporia. Red Brick Emporia and its consultants have over 60 years of knowledge in the travel industry and know the business inside and out. Not only is the Turnpike a major draw for traffic, but Highway 50 is the busiest stretch of trucks in the state of Kansas from Newton to Emporia. We believe that this area is in demand of another Travel Plaza and how it positively impacts the City of Emporia.

Developer and its related entity, Red Brick Investments LLC, began working with City Staff in 2020 to put a vision on the land off the South Roundabout on Hwy 50 and Graphic Arts Road. We set our eyes on a commercial development plan to bring more property tax, sales tax, jobs, and more people to/for the City of Emporia. The Developer brought forth a development plan on the original 32 acres, which after time turned into 39 acres after purchasing land from Eagle Development, LLC on the West Side of our property. The anticipated development brings a Travel Plaza Express (roughly 8,500 square foot store), Hotel (approximately 80 rooms), Food Court (12,000 square feet with 3 or 4 different food/retail tenants), a single Stand-Alone Restaurant (3,500 square feet), and an Upscale RV Park (30-40 parking stalls).

The development will take place in two phases. Phase I will be site work; grading; utilities; street improvements; and, any other improvements needed to make this site pad-site ready. Phase I will also include the “build” construction of the Travel Plaza Express and all common areas and parking needs to service Phase I. Phase II will be the remaining pad-sites and all common area and parking needed to service the remaining pad-sites.

This Project is premised on the need for a combination of public and private financing to attain the shared goals of the City and the Developer furthering this Project Plan. According to the Kansas Tax Increment Financing Act, K.S.A 12-1770 et seq., as amended (the “TIF

Act”), Kansas municipalities are authorized to establish a Redevelopment District and prepare a Redevelopment Project Plan for a TIF Project within such District. It is based on this authority that the Developer submits this Project Plan for the City of Emporia’s consideration.

2. Red Brick Emporia, LLC – Tax Increment Financing Redevelopment Project Plan

A. Subject Property

This Project Plan is located on the property that consists of approximately 39 acres located generally on the Southwest Corner of Graphic Arts Road and Highway 50, Emporia, Lyon County, Kansas. A map, site plan and legal description can be found on **Exhibits A-1, A-2, and Exhibit B**, respectfully.

B. Established Redevelopment District

The Project is within the Redevelopment District as approved by the City’s Governing Body on November 17, 2021, pursuant to Ordinance No. 21-38, a copy of which is attached as **Exhibit C**. This Project Plan is consistent with the district as established and the approved District Plan as described in Ordinance No. 21-38.

C. Description of Proposed Project; Contribution to Economic Development

The Project consists of the construction of multiple large commercial lots, which is planned to build out of the full 39 acres with a Travel Plaza, Hotel(s), Restaurant, Food Court, and RV Park. The Developer anticipates this project to be built out in two phases. This Project Plan is for Phase I. As stated previously, Phase I will include: grading; utilities; street improvements; and other any other improvements needed to make this site pad-site ready. Planned improvements for Phase I will also include constructing the Travel Plaza Express along with common areas needed for the completion of this pad, including but not limited to, parking lot and utilities. Planned improvements for Phase II (which is not included in this Project Plan) include constructing the remaining pad-sites and all common area and parking that is needed to service each individual lot. A copy of the Phase Plan can be found on **Exhibits A-1, A-2.**

The development contemplated in this Project Plan will provide significant economic impacts, including, among other things, increased future tax revenues, redevelopment of the Project is to a higher and better use, increasing employment opportunities, as well as general commerce for residents.

D. Financing Plan

The total estimated cost to complete all anticipated phases of this project, including the construction of buildings is \$50,000,000.00. All funds will be financed through private sources, including private equity and investors/debt. The incremental tax revenues, consisting of the allowable ad valorem tax increment (as allowed by the TIF Act) generated within the District described by this Project Plan, and the Community Improvement District sales tax revenue, described below, are anticipated to reimburse the Developer over time on a “Pay-as-you Go” basis, as they are collected for the maximum time allowed by statutes or until the overall eligible costs allowed by the TIF Act to complete this project are reimbursed, plus such interest paid on private financing as may be agreed to by the City of Emporia and the Developer in the Development Agreement.

A portion of the CID/TIF revenue is anticipated to be used to reimburse the City for paving and related costs incurred by the City, as will be detailed in a Developer Agreement between the City and Developer describing implementation of the Project Plan.

E. Feasibility Study Summary

A business feasibility analysis study has been done by the Developer via SFS Corporation to determine whether this site would be a valuable area for a commercial development or not. This study came back determining this site to be a tremendous opportunity for all parties involved. SFS Corporation specializes in Travel Plaza Development studies to determine the expected projections, including but not limited to, fuel numbers, food numbers, and other factors.

The Developer has requested that TIF financing assistance be available on a “Pay as you Go” basis, where the TIF reimbursable project costs defined by the TIF Act and in this Project Plan, be reimbursed to the Developer as TIF increment is collected on a “Pay as you Go” basis; plus, any additional interest on private financing as may be agreed upon by the City of Emporia and the Developer in the Development Agreement.

In addition to the Tax Increment revenue derived from the Redevelopment District described in this Project Plan, the Developer anticipates applying certain sales tax revenue to reimbursement of eligible costs. To this end, the Developer will submit an application, or petition to the City requesting creation of a Community Improvement District (“CID”) pursuant to K.S.A 12-6a26 et seq. (“CID Act”) to overlap the TIF District. The Developer will submit the initial petition for the CID in tandem with seeking and obtaining approval of the Project Plan described herein. The CID petition will seek imposition of a 2% sales tax on sales within the community improvement district, and revenues from such sales tax will be applied to reimburse the Developer for Project Costs eligible under the CID Act (“CID Eligible Project Costs”). This CID

tax will be a completely new source of revenue within the district and will not require the redirection of any existing taxes. As a result, the reimbursement of Developer for eligible costs described in this Project Plan will pay out much quicker than without the CID.

Developer has studied whether the Project's estimated benefits, TIF revenues and other revenues are expected to pay the TIF eligible costs of the Project. This effort involved using consultants with experience and expertise in design, development, financing, management, leasing, and operation of projects of similar scope and nature. Outside resources were also consulted to compare and verify cost and revenue projections and actual taxing jurisdiction where available.

3. **Project Costs**

The total estimated cost to complete this Project, including land acquisition and site development, is \$50,000,000.00. As determined from contract prices, engineering estimates, contractor's estimates, and/or bids, and estimates made by the City and the Developer, a breakdown of the estimated costs by category can be found below. (See Next Page)

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ESTIMATED TOTAL COSTS

<u>Description</u>		<u>Cost</u>
<u>Acquisition Costs</u>		
Land Acquisition	Thomas Land	\$ 2,426,466.24
Land Acquisition	Eagle Development	\$ 291,852.00
<u>Subtotal</u>		<u>\$ 2,718,318.24</u>

<u>Site Work / Street Work</u>		<u>Cost</u>
Grading Phase I		\$ 727,524.00
Grading Phase II		\$ 272,480.00
Waterlines		\$ 230,000.00
Sanitary Sewer		\$ 268,000.00
Storm Water Detention		\$ 369,869.00
Box Culvert		\$ 521,069.00
Brownstone Blvd / Hwy 50 Connection		\$ 1,026,487.00
Martin Drive		\$ 1,562,800.00
Pad-Site Parking Lots and Utility Connections		\$ 7,600,000.00
<u>Subtotal</u>		<u>\$ 12,578,229.00</u>

<u>Soft Costs</u>		<u>Cost</u>
Engineering		\$ 400,000.00
Market Studies		\$ 20,000.00
Legal Expenses		\$ 15,000.00
Commission Fees		\$ 70,000.00
Interest Payments		\$ 800,000.00
Development Fee / Construction Management		\$ 250,000.00
<u>Subtotal</u>		<u>\$ 1,555,000.00</u>

<u>Totals</u>		<u>Cost</u>
Acquisition Costs		\$ 2,718,318.24
Site Work / Street Work		\$ 12,578,229.00
Soft Costs		\$ 1,555,000.00
Contingency		\$ 500,000.00
<u>Total</u>		<u>\$ 17,351,547.24</u>

4. Eligible Costs

Pursuant to the TIF Act, only “redevelopment project costs” (as defined in the TIF Act and referred to herein as TIF Eligible Project Costs) are eligible for TIF Financing and reimbursement with TIF revenue. Of the total costs listed above, \$17,351,547.24 including interest as may be agreed to by the City and the Developer in the Development Agreement) is sought to be reimbursed to Developer and qualifies under the TIF Act as TIF Eligible Project Costs. The TIF Eligible Project Costs are identified in the previous breakdown.

5. **Project Tax Increment Revenues**

TIF Revenues for the Project generated over a 20-year period, as allowed according to the TIF Act and by the City, and not including CID Sales Tax revenue, are estimated to be more than \$20,000,000.00. See, **Exhibit D**

The Project will generate TIF revenues from the following sources permitted by the Act:

- A. Ad Valorem Tax Increment Revenues. This is the difference between the ad valorem taxes generated by the real property within the TIF District as of the date the TIF district was established, and the future ad valorem taxes which will be generated after the development has taken place.

Upon completion of the Redevelopment Project, the Project Area is estimated to have an assessed value of \$8,635,184 (25% of \$34,540,736). The difference between the base year (year the District created) assessed value (\$9,175 (25% of \$36,701)) and the assessed value at full build out (\$8,635,184 (25% of \$34,540,736)), when multiplied by the applicable mill levy rate (\$8,626,009 x .17272 (applicable mill levy)) subject to TIF, is estimated to create annual TIF increment at stabilization of approximately \$1,489,884.27 which is expected to grow annually thereafter, subject to phasing and other assumptions set forth on Exhibit D. Total tax increment revenue produced over the 20-year term of the Project is estimated to be approximately \$40,077,258.13 of which \$35,088,599.67 is capturable under the TIF Act, excluding interest and financing costs.

6. **Summary of Increased Sales Tax and Property Tax**

Based on this Project Plans' Estimated Project Costs, Estimated Net TIF Proceeds, and private debt/equity and other financial incentives, including the anticipated CID sales tax; the Net TIF proceeds are expected to be available to reimburse eligible costs of the Project, as followed:

- Estimated Project Costs: \$50,000,000.00
- Private Debt/Equity and all other financing sources: \$50,000,000.00
- Estimated TIF Eligible Project Costs for "Pay As You Go" to be reimbursable to the Developer - \$17,351,547.24
- Estimated CID Eligible Project Costs for "Pay As You Go" to be reimbursable to the Developer - \$17,351,547.24

The total reimbursable Project costs that can be financed under the TIF Act is limited to the amount of TIF revenue generated within the Project Area. Thus, the TIF Revenues will always equal or exceed the amount of TIF Eligible Project Costs. As described above and on Exhibit D, the estimated TIF Eligible Project Costs and the present value of the projected TIF Revenue, are expected to be sufficient to pay for the TIF Eligible Project Costs as contemplated under the TIF Act, when supplemented by private debt and equity.

7. Relocation Plan and Effect on Outstanding Special Obligation Bonds

The Developer, currently, is the sole owner or contract purchaser of all property located within this Redevelopment district. These parcels were acquired through negotiated transactions; thus, any funds required for relocation were in this purchase price. No other parties will be displaced or relocated because of this Project Plan.

Only TIF revenues generated within the Project area will be used to implement the Project Plan, there is no anticipated impact on special obligation bonds payable from revenues described in K.S.A. 12-1774(a)(1)(D), and amendments thereto.

8. Conclusion

Based on the foregoing, the City and Developer hereby submit this Project Plan for public hearing and due consideration.

Exhibit A-1 -- Map Exhibit

(See Attached)

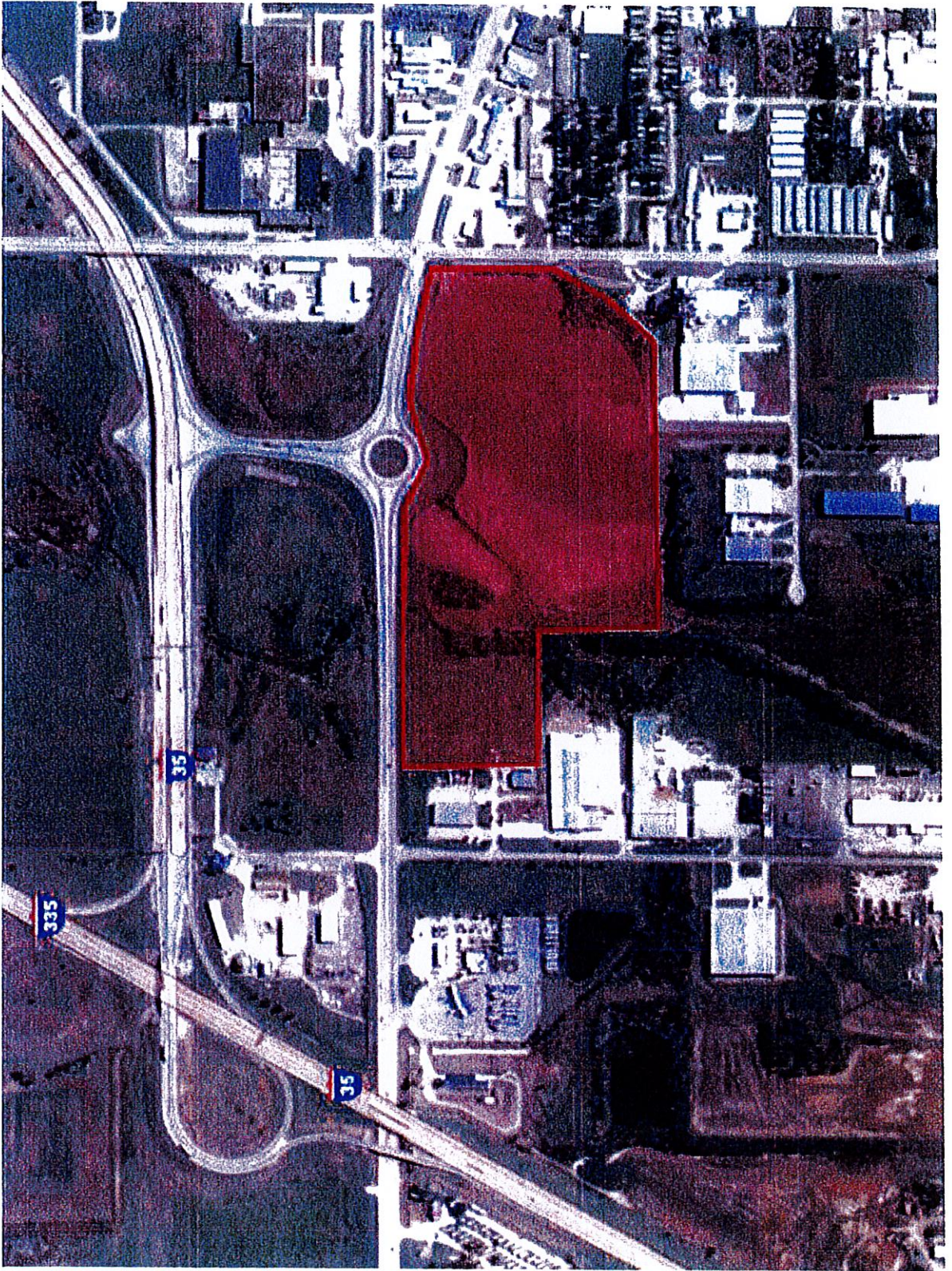


Exhibit A-2 – Proposed Site Plan

(See Attached)

EMPORIA COMMERCIAL DEVELOPMENT

LAND USE PLAN

February 1, 2022



Brownstone 3 Development, LLC

Exhibit B – Legal Description of Subject Property

1

(See Attached Deeds)



ENTERED IN TRANSFER RECORD
IN MY OFFICE THIS 8 DAY
OF APRIL 2021
Lyon County Clerk

STATE OF KS LYON CO
WENDY L. WEISS, REGISTER OF DEEDS
2021-01413
DATE RECORDED: 04/07/2021 11:43 AM
TX #14010360
REAL ESTATE FEE 17.00
TECHNOLOGY FEE 3.00
HERITAGE TRUST 2.00
PAGES: 1

CORPORATION WARRANTY DEED

THIS INDENTURE is made this 15th Day of March, 2021
Between Eagle Development Inc.
a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of
Kansas and having its principal place of business in Lyon County, in the State of Kansas of the first
part, and
Red Brick Investments, LLC
Of Lyon County, in the State of Kansas, of the second part.

WITNESSETH, that said party of the first part, in consideration of the sum of \$1.00 & ovc, the receipt of
which is hereby acknowledged, do by theses presents, Grant, Bargain, Sell and Convey unto said party of
the second part or its successors and assigns, the following described real estate situated in the State of
Kansas, County of Lyon, to-wit:

LOTS 2, 3, 7, 8, 9 AND 10 IN MARTIN EAGLE SUBDIVISION TO THE CITY OF EMPORIA, LYON
COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF.

Together with and subject to covenants, easements and restrictions of record.

TO HAVE AND HOLD THE SAME, together with all and singular the tenements, hereditaments and
appurtenances thereunto belong or in any wise appertaining, forever. And said Grantor for itself, its
successors & assigns, does hereby covenant, promise and agree, to and with said parties of the second
part, that at delivery of these presents it is lawfully seized in its own right, of an absolute and indefeasible
estate of inheritance, in fee simple, of and in all and singular the above granted & described premises,
with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former
and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of what nature
or kind soever;
And that it will warrant and forever defend the same unto said parties of the second part, against said
party of the first part, its successors and assigns, and all every person or persons whomsoever, lawfully
claiming or to claim the same.

IN WITNESS WHEREOF, the said party of the first part has hereunto caused this deed to be signed on
its behalf by its corporate officer thereunto duly authorized so to do, and has caused its corporate seal to
be here unto affixed the day and year first above written.

By: Justin J. Mallon
Justin J. Mallon, Secretary

STATE OF KS, COUNTY OF LYON, SS:

BE IT REMEMBERED, that on this 5th day of MARCH, 2021, before me, the undersigned,
a notary public, in and for the County and State aforesaid, came Justin J. Mallon, Secretary of Eagle
Development Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws
of Kansas, who is personally know to me to be such officer, and who is personally known to me to be
the same person who executed, as such officer, the within instrument of writing on behalf of said
corporation, and such person duly acknowledged the execution of the same to be the act and deed of said
corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed by
official seal the day and year last above mentioned.

Notary Public

Jeffrey B. Williams
JEFFREY B. WILLIAMS
NOTARY PUBLIC
STATE OF KANSAS

EXP. 03-21-2025



ENTERED IN TRANSFER RECORD
IN MY OFFICE THIS 18th DAY
OF September 2020
Lyon County Clerk

STATE OF KS LYON CO
WENDY L. WHISS, REGISTER OF DEEDS
2020-03727
DATE RECORDED: 09/17/2020 03:39 PM
TX #1: 4007527

REAL ESTATE FEE 30.00
TECHNOLOGY FEE 6.00
HERITAGE TRUST 2.00
PAGES: 2

CORPORATION WARRANTY DEED

THIS INDENTURE is made this 17th Day of September, 2020, Between THOMAS TRANSFER & STORAGE CO., INC a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas and having its principal place of business in Emporia, in the State of Kansas of the first part, and RED BRICK INVESTMENTS, LLC of Shawnee County, in the State of Kansas, of the second part.

WITNESSETH, that said party of the first part, in consideration of the sum of \$1.00 & ovc, the receipt of which is hereby acknowledged, do by theses presents, Grant, Bargain, Sell and Convey unto said party of the second part or its successors and assigns, the following described real estate situated in the State of Kansas, County of Lyon, to-wit:

See "Exhibit A" for Legal Description

Together with and subject to covenants, easements and restrictions of record.

TO HAVE AND HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereunto belong or in any wise appertaining, forever, And said Grantor for itself, its successors & assigns, does hereby covenant, promise and agree, to and with said parties of the second part, that at delivery of these presents it is lawfully seized in its own right, of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted & described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of what nature or kind soever;

And that it will warrant and forever defend the same unto said parties of the second part, against said party of the first part, its successors and assigns, and all every person or persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said party of the first part has hereunto caused this deed to be signed on its behalf by its corporate officer thereunto duly authorized so to do, and has caused its corporate seal to be here unto affixed this day and year first above written.

By: Jerid Thomas
Jerid Thomas, President

STATE OF Kansas, COUNTY OF Lyon, SS:

BE IT REMEMBERED, that on this 17th day of September, 2020, before me, the undersigned, a notary public, in and for the County and State aforesaid, came Jerid Thomas, President of THOMAS TRANSFER & STORAGE CO., INC, a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, who is personally know to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed by official seal the day and year last above mentioned.

Notary Public, Janice M. Miller
Janice M. Miller



Exhibit A - Thomas Transfer & Storage Co., Inc. to Red Brick Investments, LLC

A TRACT OF LAND LYING IN THE SE1/4 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 361.71 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 SE1/4 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 774.87 FEET; THENCE N02°18'46"W FOR A DISTANCE OF 526.34 FEET; THENCE N38°08'35"E FOR A DISTANCE OF 233.23 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 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 SE1/4 OF SAID SECTION 7; THENCE BEARING N87°48'06"E ALONG THE NORTH LINE OF SAID SE1/4 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°30'48"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.

ENTERED IN TRANSFER RECORD
IN MY OFFICE THIS 27 DAY
OF August 2021
Deputy
Lyon County Clerk

STATE OF KS LYON CO
WENDY L. WEISS, REGISTER OF DEEDS
2021-03658
REC FEE: 21.00 08/26/2021 12:02 PM
PAGES: 1



KANSAS QUITCLAIM DEED

On this 25 day of August, 2021, the Grantor, Red Brick Investments, LLC,
CONVEYS AND QUITCLAIMS to the Grantee, Red Brick Emporia, LLC, with right of
survivorship the following-described real estate in Lyon County, Kansas:

Lots 2, 3, 7, 8, 9 and 10 in Martin Eagle Subdivision to the City of Emporia,
Lyon County, Kansas, according to the recorded plat thereof.

for the sum of one dollar and other good and valuable consideration.

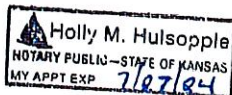
SUBJECT TO: Easements, restrictions and assessments of record, and all the taxes and assessments
that may be levied, imposed, or become payable hereafter.

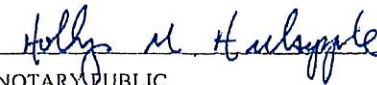
 _____ Red Brick Investments, LLC <u>John E. Brown</u>	 _____ Red Brick Emporia, LLC <u>Doug Hutchinson</u>
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Pursuant to K.S.A. § 79-1437c, a real estate questionnaire is not required due to Exception No.
12 (complete if applicable).

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

This instrument was acknowledged before me on August 25, 2021 by John
Brown and Doug Hutchinson.



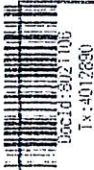


NOTARY PUBLIC

My appointment expires: 7/27/24

ENTERED IN TRANSFER RECORD
IN MY OFFICE THIS 07 DAY
OF August 2021
Wendy L. Weiss Deputy
Lyon County Clerk

STATE OF KS LYON CO
WENDY L. WEISS, REGISTER OF DEEDS
2021-03659
REC FEE: 38.00 06/26/2021 12:02 PM
PAGES: 2



KANSAS QUITCLAIM DEED

On this 25 day of August, 2021, the Grantor, Red Brick Investments, LLC,
CONVEYS AND QUITCLAIMS to the Grantee, Red Brick Emporia, LLC, with right of
survivorship the following-described real estate in Lyon County, Kansas:

All real estate as described on Attachment A.

for the sum of one dollar and other good and valuable consideration.

SUBJECT TO: Easements, restrictions and assessments of record, and all the taxes and assessments
that may be levied, imposed, or become payable hereafter.

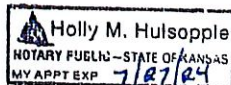
John E. Brown
Red Brick Investments, LLC
John E. Brown

Doug Hutchinson
Red Brick Emporia, LLC
Doug Hutchinson

Pursuant to K.S.A. § 79-1437e, a real estate questionnaire is not required due to Exception No.
12 (complete if applicable).

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

This instrument was acknowledged before me on August 25, 2021 by John
Brown and Doug Hutchinson.



Holly M. Hulsopple
NOTARY PUBLIC

My appointment expires: 7/27/24

QUIT CLAIM DEED ATTACHMENT A

LEGAL DESCRIPTION

A TRACT OF LAND LYING IN THE SE1/4 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 860.00 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 60; THENCE SOUTHEASTERLY ALONG THE SOUTH RIGHT OF WAY OF U.S. HIGHWAY 60 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 SE1/4 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 918.69 FEET TO THE POINT OF BEGINNING; THENCE S88°34'43"W FOR A DISTANCE OF 774.07 FEET; THENCE N02°18'46"W FOR A DISTANCE OF 826.24 FEET; THENCE N38°08'58"E FOR A DISTANCE OF 255.23 FEET; THENCE N02°04'49"E FOR A DISTANCE OF 47.97 FEET TO A POINT ON THE SOUTH RIGHT OF WAY OF U.S. HIGHWAY 60; THENCE SOUTHEASTERLY ALONG THE SOUTH RIGHT OF WAY OF U.S. HIGHWAY 60 FOR A DISTANCE OF 448.77 FEET; THENCE S00°06'15"E FOR A DISTANCE OF 1049.98 FEET TO THE POINT OF BEGINNING, BUT 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 SE1/4 OF SAID SECTION 7; THENCE BEARING N87°48'06"E ALONG THE NORTH LINE OF SAID SE1/4 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. 60 AND THE POINT OF BEGINNING; THENCE BEARING N88°17'29"E ALONG THE U.S. 60 RIGHT OF WAY A DISTANCE OF 182.96 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT WITH A RADIUS OF 5689.65 FEET; THENCE ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 6°57'57", AN ARC DISTANCE OF 688.09 FEET; THENCE BEARING S44°30'48"W A DISTANCE OF 316.03 FEET; THENCE BEARING N87°28'03"W A DISTANCE OF 144.26 FEET; THENCE BEARING N39°09'41"W A DISTANCE OF 299.90 FEET; THENCE BEARING S88°41'55"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 ADJUTING SAID HIGHWAY SHALL HAVE NO RIGHT OR EASEMENT OF ACCESS THERE TO, EXCEPT IN THE AREA DESCRIBED ABOVE AS 144.26 FEET LAYING 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 60 WHICH COMPLIES WITH KDOT DESIGN AND PERMITTING REQUIREMENTS.

Exhibit C – Resolution 9652/Ordinance 21-98 (and related City Minutes)

(See Attached)

(Published in the *Emporia Gazette* on November 23, 2021)

ORDINANCE NO. 21-38

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF
EMPORIA, KANSAS MAKING FINDINGS REGARDING A
REDEVELOPMENT DISTRICT AND ESTABLISHING A
REDEVELOPMENT DISTRICT WITHIN THE CITY

WHEREAS, pursuant to the provisions of K.S.A. 12-1770 *et seq.*, as amended (the "Act"), the City of Emporia, Kansas (the "City") is authorized to establish redevelopment districts within defined areas of the City that are determined by the City's governing body to be "eligible areas" as defined in the Act; and

WHEREAS, the Act defines "eligible area" to include an area in the City designated as an enterprise zone before July 1, 1992 pursuant to K.S.A. 12-17,107 through 12-17,113, before such statutes were repealed, and where the conservation, development or redevelopment of the area is necessary to promote the general and economic welfare of the City; and

WHEREAS, the proposed redevelopment district in the City is in an area that was designated an enterprise zone pursuant to K.S.A. 12-17,107 through 12-17,113 and before July 1, 1992, and is included in the definition of an "enterprise zone" as defined in the Act; and

WHEREAS, the governing body of the City previously adopted Resolution No. 3652 stating its intent and calling public hearing under the provisions of the Act to receive public comment on the advisability of creating the redevelopment district as described in Resolution No. 3652 and further described herein (the "Red Brick Emporia Redevelopment District"); and

WHEREAS, the public hearing was held on this date, after publication and delivery of notice in accordance with the provisions of the Act.

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

Section 1. Eligible Area Legislative Findings. The governing body finds and determines the Red Brick Emporia Redevelopment District is an "eligible area" under the Act because it is an area in the City designated as an enterprise zone before July 1, 1992, pursuant to K.S.A. 12-17,107 through 12-17,113, and the conservation, development or redevelopment of the Red Brick Emporia Redevelopment District is necessary to promote the general and economic welfare of the City.

Section 2. Description of and Creation of Redevelopment District. The legal description of the Red Brick Emporia Redevelopment District is:

A part of the Southeast Quarter of Section 7, Township 19 South, Range 11 East of the 6th PM, Lyon County, Kansas, as shown on the Final Plat of Brownstone Addition to the City of Emporia, Lyon County, Kansas

And

Brownstone Second Addition to the City of Emporia, Lyon County, Kansas, as shown on the Final Plat thereof, being a replat of Lots 2,3,7,8,9 and 10 of Martin-Eagle Subdivision to the City of Emporia, Lyon County, Kansas

The property described above, including adjacent rights-of-way, is designated and created as the Emporia Red Brick Redevelopment District, according to the Act.

A map depicting the general location of the Emporia Red Brick Redevelopment District is attached as **Exhibit A** and incorporated here by this reference. The Emporia Red Brick Redevelopment District does not contain any property not referenced in Resolution No. 3652 providing notice of a public hearing.

Section 3. Redevelopment District Plan. The proposed redevelopment project may include separate project areas, and consists of some or all of the following: a travel plaza and related commercial uses, one or more full service hotels and related hotel uses, restaurants, retail businesses, other commercial development, and associated public and private infrastructure including site work, utilities, storm water and drainage improvements, landscaping, parking facilities and other infrastructure permitted under the Act. The redevelopment district plan is attached to this ordinance as **Exhibit B**. A description of the Red Brick Emporia Redevelopment District and the redevelopment district plan are available for inspection at the City Clerk's office, 522 Meacham Street, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

Section 4. Consequences to Other Governmental Units. No privately owned property subject to ad valorem taxation within the Emporia Red Brick Redevelopment District shall be acquired and redeveloped pursuant to the Act if the Board of County Commissioners of Lyon County, Kansas (the "County") or the Board of Education of Unified School District No. 253 (the "School District") determines by resolution adopted within thirty (30) days following the adoption of this Ordinance that the Emporia Red Brick Redevelopment District will have an adverse effect on the County or the School District, respectively.

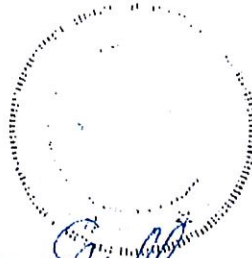
Section 5. Further Action. The Mayor, City Manager, City Clerk and other officials and employees or consultants of the City, including the City Attorney, the City's Financial Advisor and Bond Counsel, are further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Ordinance.

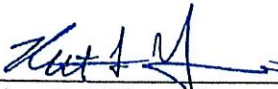
Section 6. Effective Date. This Ordinance, including Exhibit A and Exhibit B, shall become effective upon its passage by the governing body of the City and publication in the official newspaper of the City.

PASSED AND APPROVED by the governing body of the City of Emporia, Kansas on November 17, 2021.

CITY OF EMPORIA, KANSAS

[seal]




Robert F. Gilligan, Mayor

ATTEST:

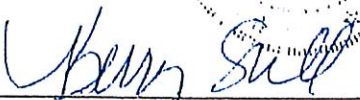
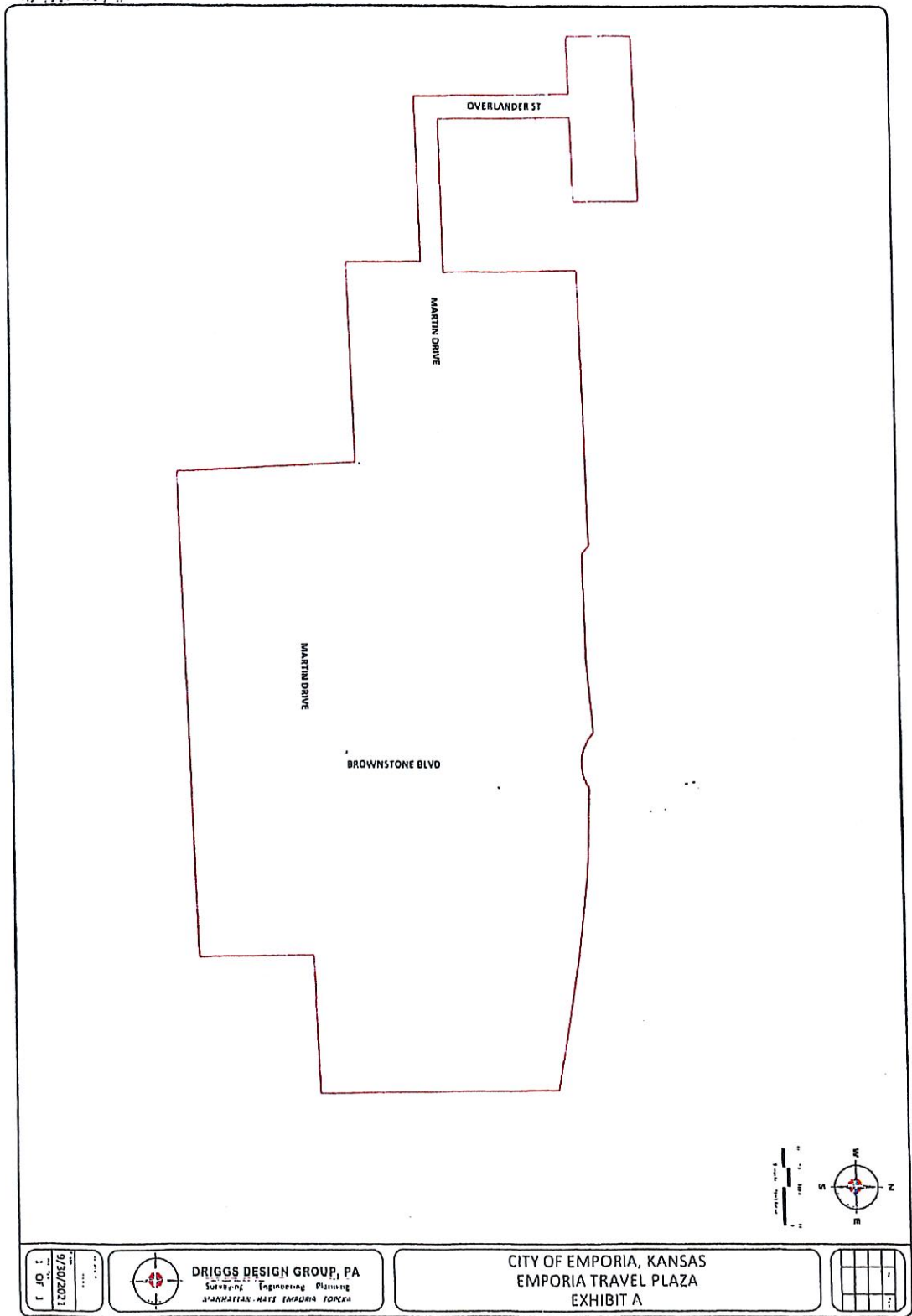

Kerry Sull, City Clerk

EXHIBIT A
(MAP OF THE REDEVELOPMENT DISTRICT)



9/30/2021
1 OF 1

**DRIGGS DESIGN GROUP, PA**
Surveying Engineering Planning
MANHATTAN - HAYS - EMPORIA - TONKA

CITY OF EMPORIA, KANSAS
EMPORIA TRAVEL PLAZA
EXHIBIT A

1	2	3	4	5	6	7	8	9	10
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EXHIBIT B

REDEVELOPMENT DISTRICT PLAN FOR REDEVELOPMENT THROUGH TAX INCREMENT FINANCING RED BRICK EMPORIA PROJECT

EMPORIA, KANSAS

September 2021

SECTION 1. PURPOSE

The City of Emporia, Kansas (the "City") intends to create a redevelopment district within the City. Kansas statutes governing the creation of redevelopment districts and tax increment financing (K.S.A. 12-1770 *et seq.*, and particularly, K.S.A. 12-1771(a)) require preparation of a "redevelopment district plan" (referred to herein as the "district plan") before creation of a redevelopment district. The district plan is the preliminary plan identifying the proposed redevelopment project areas and generally describing the buildings, facilities and improvements proposed to be constructed in such areas.

SECTION 2. DESCRIPTION OF TAX INCREMENT FINANCING

Projects financed through tax increment financing involve the creation of an "increment" in real estate property taxes. The increment is the amount of property taxes paid on the increase in assessed valuation of property in the redevelopment district over the property taxes paid in the redevelopment district before redevelopment occurs. When the aggregate tax rates of all tax jurisdictions are applied to the increased property valuation in the redevelopment district, tax increment is generated and paid to the City (as permitted by the Act, certain taxes levied by school districts are not included in tax increment) to fund, pay or reimburse certain costs of the development project over time as tax increment is collected. The property taxes attributable to the assessed value of the district before redevelopment (the "base valuation"), are distributed to all taxing jurisdictions just as before development of the redevelopment district.

SECTION 3. REDEVELOPMENT DISTRICT

A map showing the boundaries of the proposed redevelopment district is attached as **Exhibit A** to the City's resolution setting a public hearing for considering the creation of the district and the district plan. The proposed redevelopment district is within the city limits of Emporia, Kansas and consists of 39 acres (more or less) of currently undeveloped land located in the City of Emporia and legally described as follows:

A part of the Southeast Quarter of Section 7, Township 19 South, Range 11 East of the 6th PM, Lyon County, Kansas, as shown on the Final Plat of Brownstone Addition to the City of Emporia, Lyon County, Kansas

And

Brownstone Second Addition to the City of Emporia, Lyon County, Kansas, as shown on the Final Plat thereof, being a replat of Lots 2,3,7,8,9

and 10 of Martin-Eagle Subdivision to the City of Emporia, Lyon County,
Kansas

The proposed redevelopment district qualifies as an "eligible area" for tax increment financing because it is an area in the City designated as an enterprise zone before July 1, 1992, pursuant to K.S.A. 12-17,107 to 12-17,113 before such statutes were repealed, and the development of the area is necessary to promote the general and economic welfare of the City.

SECTION 4. REDEVELOPMENT PROJECT

The proposed district is in an area identified by the City as desirable for additional commercial, retail and residential development. The establishment of the proposed redevelopment district will permit the City to aid in financing of eligible costs including land acquisition, infrastructure, site development and to partner with private developers to bring additional retail and other commercial development to the City.

The proposed redevelopment project consists of the acquisition of the site and associated public and private infrastructure including site work, utilities, storm water and drainage improvements, landscaping, parking facilities and other infrastructure and site improvements to permit phased development of a variety of land uses, including but not limited to, a travel plaza and related commercial uses, one or more full service hotels and related hotel uses, restaurants, retail businesses, and general commercial uses. The proposed costs eligible to be financed in this case include costs of land acquisition and the previously mentioned infrastructure, public improvements, and other site improvements, as well as soft costs and costs of financing related to those items. These eligible costs may include costs incurred prior to the time the redevelopment district is created.

SECTION 5. TAX INCREMENT FINANCING

Kansas statutes governing tax increment financing allow such financing to be used for property acquisition, site preparation, utilities, drainage, street improvements, landscape amenities, public outdoor spaces, streetscape amenities and parking facilities in a redevelopment district. The City anticipates using tax increment financing pay a portion of these costs related to the proposed project. The project plan (described in Section 6) and development agreements between the City and private developers will specify details. The anticipated plan contemplates that 100% of the ad valorem tax increment legally permitted to be captured under the Act and attributable to the redevelopment projects from the redevelopment district will be pledged to finance such costs for a period not exceeding 20 years from approval of a project plan, as provided by law. Tax increment financing may be accomplished by issuing the City's special obligation bonds and/or the City's general obligation bonds with such bonds payable over time from the tax increment. Financing may also be structured as "pay as you go" reimbursement over time. The City plans to utilize a "pay as you go" financing structure for the proposed redevelopment project and does not intend to issue bonds.

SECTION 6. PROJECT PLAN

The statutes governing tax increment financing and redevelopment districts require that all proposed redevelopment projects in a redevelopment district be presented to and authorized by the City Commission through its approval of detailed "project plans" applicable to each phase of

development. Each project plan will identify specific project areas within the redevelopment district and will include detailed descriptions of the proposed improvements and methods of financing. Before approving a project plan the City must obtain a financial feasibility study as required by statute. Project plans must be reviewed by the Planning Commission and are submitted to a public hearing after published notice and notification of affected property owners. Before going forward a project plan must be adopted by a two-thirds majority of the City Commission. No tax increment may be applied to a redevelopment project until a project plan is approved.

EXCERPT OF MINUTES

The governing body of the City of Emporia, Kansas met in regular session at the usual meeting place in the City on November 17, 2021, at 7:00 p.m., with Mayor Rob Gilligan presiding, and the following members of the governing body present:

Burkman, Cratz, Enola & Smith

The following members were absent: None

At ___ p.m. Mayor Gilligan opened a public hearing on the creation of a redevelopment district within the City as previously authorized by Resolution No. 3652. All persons present who wished to comment were given the opportunity to do so.

The Mayor closed the public hearing at ___ p.m.

An ordinance was presented to the governing body entitled:

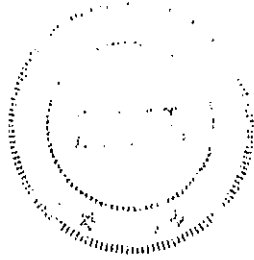
AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF
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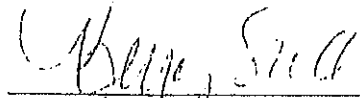
The Ordinance was considered and discussed; and on motion of Burkman, seconded by Enola, the Ordinance was passed by a majority vote of the members present. The ordinance was assigned No. 21-37

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I certify that the foregoing is a true and correct Excerpt of Minutes of the November 17, 2021 meeting of the governing body of the City of Emporia, Kansas.

[seal]





Kerry Sull, City Clerk

The Emporia Gazette
517 Merchant St.
(620) 342-4800

I, Bellina Shank, of lawful age, being duly sworn upon oath, deposes and says that I am the Operations Manager of The Emporia Gazette, a publication that is a "legal newspaper" as that phrase is defined for the city of Emporia, for the County of Lyon, in the state of Kansas, that this affidavit is Page 1 of 5 with the full text of the sworn-to notice set forth on the pages that follow, and that the attachment hereto contains the correct copy of what was published in said legal newspaper in consecutive issues on the following dates:

PUBLICATION DATES:

23 Nov 2021

Notice ID: ELgpd5vltmDCE1yFwmtf

Notice Name: Ord 21-38

PUBLICATION FEE: \$455.68


Operations Manager

VERIFICATION

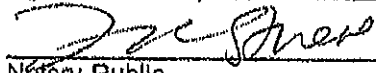
STATE OF KANSAS
COUNTY OF LYON



LISA M. STUEVE
NOTARY PUBLIC
STATE OF KANSAS
My Appl. Exp. 4-10-2023

Signed or attested before me on this

23rd day of November, A.D. 2021.


Notary Public

See Proof on Next Page

Expected print dimensions of advertisement:
Width: 3.33 in., Height: 20.03 in.

Newspaper page size: Width: 10.22 in., Height: 19.00 in.
Publisher may wrap or break notice between pages.

(Published in the Emporia Gazette on November 23, 2021)
ORDINANCE NO. 21-38

**AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF
EMPORIA, KANSAS MAKING FINDINGS REGARDING A
REDEVELOPMENT DISTRICT AND ESTABLISHING A
REDEVELOPMENT DISTRICT WITHIN THE CITY**

WHEREAS, pursuant to the provisions of K.S.A. 12-1770 *et seq.*, as amended (the "Act"), the City of Emporia, Kansas (the "City") is authorized to establish redevelopment districts within defined areas of the City that are determined by the City's governing body to be "eligible areas" as defined in the Act; and

WHEREAS, the Act defines "eligible area" to include an area in the City designated as an enterprise zone before July 1, 1992 pursuant to K.S.A. 12-17,107 through 12-17,113, before such statutes were repealed, and where the conservation, development or redevelopment of the area is necessary to promote the general and economic welfare of the City; and

WHEREAS, the proposed redevelopment district in the City is in an area that was designated an enterprise zone pursuant to K.S.A. 12-17,107 through 12-17,113 and before July 1, 1992, and is included in the definition of an "enterprise zone" as defined in the Act; and

WHEREAS, the governing body of the City previously adopted Resolution No. 3652 stating its intent and calling public hearing under the provisions of the Act to receive public comment on the advisability of creating the redevelopment district as described in Resolution No. 3652 and further described herein (the "Red Brick Emporia Redevelopment District"); and

WHEREAS, the public hearing was held on this date, after publication and delivery of notice in accordance with the provisions of the Act.

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

Section 1. Eligible Area Legislative Findings. The governing body finds and determines the Red Brick Emporia Redevelopment District is an "eligible area" under the Act because it is an area in the City designated as an enterprise zone before July 1, 1992, pursuant to K.S.A. 12-17,107 through 12-17,113, and the conservation, development or redevelopment of the Red Brick Emporia Redevelopment District is necessary to promote the general and economic welfare of the City.

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A part of the Southeast Quarter of Section 7, Township 19 South, Range 11 East of the 6th PM, Lyon County, Kansas, as shown on the Final Plat of Brownstone Addition to the City of Emporia, Lyon County, Kansas

And
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Section 5. Further Action. The Mayor, City Manager, City Clerk and other officials and employees or consultants of the City, including the City Attorney, the City's Financial Advisor and Bond Counsel, are further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Ordinance.

Section 6. Effective Date. This Ordinance, including Exhibit A and Exhibit B, shall become effective upon its passage by the governing body of the City and publication in the official newspaper of the City.

PASSED AND APPROVED by the governing body of the City of Emporia, Kansas on November 17, 2021.

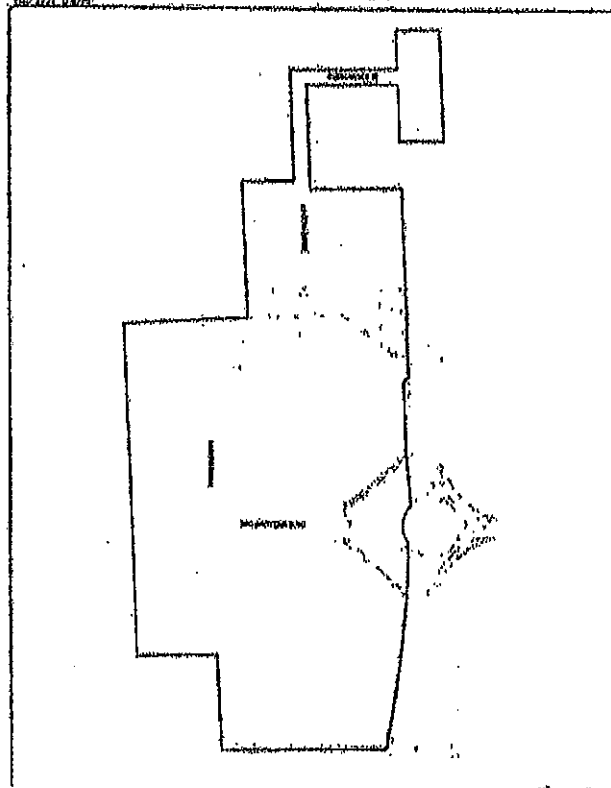
CITY OF EMPORIA, KANSAS

[seal]

Robert E. Gilligan, Mayor

ATTEST:
Kerry Sull, City Clerk

EXHIBIT A



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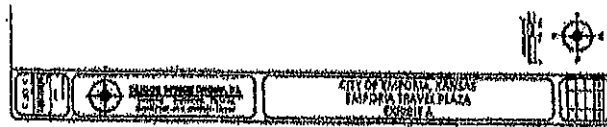


EXHIBIT B
REDEVELOPMENT DISTRICT PLAN FOR REDEVELOPMENT
THROUGH TAX INCREMENT FINANCING
RED BRICK EMPORIA PROJECT
EMPORIA, KANSAS
September 2021

SECTION 1. PURPOSE

The City of Emporia, Kansas (the "City") intends to create a redevelopment district within the City. Kansas statutes governing the creation of redevelopment districts and tax increment financing (K.S.A. 12-1770 *et seq.*, and particularly, K.S.A. 12-1771(a)) require preparation of a "redemption district plan" (referred to herein as the "district plan") before creation of a redevelopment district. The district plan is the preliminary plan identifying the proposed redevelopment project areas and generally describing the buildings, facilities and improvements proposed to be constructed in such areas.

SECTION 2. DESCRIPTION OF TAX INCREMENT FINANCING

Projects financed through tax increment financing involve the creation of an "increment" in real estate property taxes. The increment is the amount of property taxes paid on the increase in assessed valuation of property in the redevelopment district over the property taxes paid in the redevelopment district before redevelopment occurs. When the aggregate tax rates of all tax jurisdictions are applied to the increased property valuation in the redevelopment district, tax increment is generated and paid to the City (as permitted by the Act, certain taxes levied by school districts are not included in tax increment) to fund, pay or reimburse certain costs of the development project over time as tax increment is collected. The property taxes attributable to the assessed value of the district before redevelopment (the "base valuation"), are distributed to all taxing jurisdictions just as before development of the redevelopment district.

SECTION 3. REDEVELOPMENT DISTRICT

A map showing the boundaries of the proposed redevelopment district is attached as Exhibit A to the City's resolution setting a public hearing for considering the creation of the district and the district plan. The proposed redevelopment district is within the city limits of Emporia, Kansas and consists of 39 acres (more or less) of currently undeveloped land located in the City of Emporia and legally described as follows:

A part of the Southeast Quarter of Section 7, Township 19 South, Range 11 East of the 6th PM, Lyon County, Kansas, as shown on the Final Plat of Brownstone Addition to the City of Emporia, Lyon County, Kansas
And
Brownstone Second Addition to the City of Emporia, Lyon County, Kansas, as shown on the Final Plat thereof, being a replat of Lots 2,3,7,8,9 and 10 of Martin-Eagle Subdivision to the City of Emporia, Lyon County, Kansas

The proposed redevelopment district qualifies as an "eligible area" for tax increment financing because it is an area in the City designated as an enterprise zone before July 1, 1992, pursuant to K.S.A. 12-17,107 to 12-17,113 before such statutes were repealed, and the development of the area is necessary to promote the general and economic welfare of the City.

SECTION 4. REDEVELOPMENT PROJECT

The proposed district is in an area identified by the City as desirable for additional commercial, retail and residential development. The establishment of the proposed redevelopment district will permit the City to aid in financing of eligible costs including land acquisition, infrastructure, site development and to partner with private developers to bring additional retail and other commercial development to the City.

The proposed redevelopment project consists of the acquisition of the site and associated public and private infrastructure including site work, utilities, storm water and drainage improvements, landscaping, parking facilities and other infrastructure and site improvements to permit phased development of a variety of land uses including but not limited to a travel plaza and

Expected print dimensions of advertisement:
Width: 3.33 in., Height: 20.03 in.

Newspaper page size: Width: 10.22 in., Height: 19.00 in.
Publisher may wrap or break notice between pages.

partial phased development of a variety of land uses, including but not limited to, a mix of phase one related commercial uses, one or more full service hotels and related hotel uses, restaurants, retail businesses, and general commercial uses. The proposed costs eligible to be financed in this case include costs of land acquisition and the previously mentioned infrastructure, public improvements, and other site improvements, as well as soft costs and costs of financing related to those items. These eligible costs may include costs incurred prior to the time the redevelopment district is created.

SECTION 5. TAX INCREMENT FINANCING

Kansas statutes governing tax increment financing allow such financing to be used for property acquisition, site preparation, utilities, drainage, street improvements, landscape amenities, public outdoor spaces, streetscape amenities and parking facilities in a redevelopment district. The City anticipates using tax increment financing pay a portion of these costs related to the proposed project. The project plan (described in Section 6) and development agreements between the City and private developers will specify details. The anticipated plan contemplates that 100% of the ad valorem tax increment legally permitted to be captured under the Act and attributable to the redevelopment projects from the redevelopment district will be pledged to finance such costs for a period not exceeding 20 years from approval of a project plan, as provided by law. Tax increment financing may be accomplished by issuing the City's special obligation bonds and/or the City's general obligation bonds with such bonds payable over time from the tax increment. Financing may also be structured as "pay as you go" reimbursement over time. The City plans to utilize a "pay as you go" financing structure for the proposed redevelopment project and does not intend to issue bonds.

SECTION 6. PROJECT PLAN

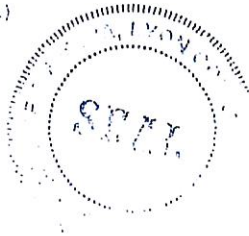
The statutes governing tax increment financing and redevelopment districts require that all proposed redevelopment projects in a redevelopment district be presented to and authorized by the City Commission through its approval of detailed "project plans" applicable to each phase of development. Each project plan will identify specific project areas within the redevelopment district and will include detailed descriptions of the proposed improvements and methods of financing. Before approving a project plan the City must obtain a financial feasibility study as required by statute. Project plans must be reviewed by the Planning Commission and are submitted to a public hearing after published notice and notification of affected property owners. Before going forward a project plan must be adopted by a two-thirds majority of the City Commission. No tax increment may be applied to a redevelopment project until a project plan is approved.

I, Kerry Sull, City Clerk of the City of Emporia, Lyon County, Kansas, do hereby certify that the foregoing is a true and correct copy of Ordinance Number 21-32 passed and approved by the Governing Body at their Regular Meeting held November 17, 2021 and published in the Emporia Gazette on November 23, 2021.

DONE this 30th day of November, 2021, in the City of Emporia, Lyon County, Kansas.


Kerry Sull, City Clerk

(SEAL)



COMMISSION MEETING

7:00 P.M.

NOVEMBER 17, 2021

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, November 17, 2021, with Mayor Gilligan presiding and Commissioners Brinkman, Geitz, Gieffer and Smith present. 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 October for the community:

1. Monthly Local Retail Sales Tax Receipts Update

	2020	2021	
	\$448,883.96	\$420,434.53	Decrease of \$28,429.43 for the month, and
YTD \$ 4,176,093.58		\$4,483,679.47	Overall increase of 7.37% from year 2020

2. City Share from County Tax

	2020	2021	
	\$ 226,975.88	\$ 216,738.30	Decrease of \$10,237.58 for month, and
YTD \$2,127,317.57		\$2,280,456.62	Overall increase of 7.20% from year 2020

3. Building Permits issued from 10/1/2021 to 10/31/2021 for new construction, remodeling, repairs and demolition.

Total number of building permits issued through Code Services:	70
Total of valuations associated with those building permits:	\$10,435,885.00
Total number of dollars collected for Building Permit Fees:	\$ 31,140.25

Construct - single family dwellings	2
Demo - single family dwellings	1

Flint Hills Mall CID for October	\$ 17,715.44
Year to Date Total	\$ 175,542.17

Consent Agenda

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

- a. Consider minutes of the Meetings held on November 3 and the Adjourned Meeting on November 10, 2021.
- b. Consider ratification of Payroll Ordinance for the period ending on November 5, 2021.
- c. Consider the Approval of October Budget.

- d. Consider Set Bid Time and Date to receive bids for the Funston Street & 5th Ave. Paving improvements, Project No. PV2008.

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

CITY COMMISSION
(Public Comment)

This is the time for the public to make comments. No comments were made at this time.

CITY COMMISSION
(Redevelopment Project Plan for Tax Increment Financing)
(Brownstone/Red Brink Investment)
(Public Hearing)

Jim Witt, Special Projects Manager, was recognized and addressed the Governing Body. He stated at a previous Commission Meeting Resolution Number 3652 was passed establishing a public hearing be conducted for a Redevelopment District in accordance with statutory requirements. He stated this project is for the development of a variety of land uses, including but not limited to: a truck plaza and related commercial uses, one or more full service hotels and related hotel uses, restaurants, retail businesses and other commercial development, and associated public and private infrastructure including site work, utilities, storm water and drainage improvement, landscaping, parking facilities and other infrastructure permitted. He stated the proposed district is in an area identified by the City as desirable for additional commercial, retail and residential development. All local taxing entities have been notified. The benefit is mid to long term increase tax revenue for local taxing entities.

Mayor Gilligan then declared the public hearing open.

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

CITY COMMISSION
(Establishing Redevelopment District)
(Brownstone/Red Brick Emporia Redevelopment District)
(Ordinance Number 21-38)

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS MAKING FINDINGS REGARDING A REDEVELOPMENT DISTRICT AND ESTABLISHING A REDEVELOPMENT DISTRICT WITHIN THE CITY, to which the City Clerk assigned Ordinance Number 21-38, was presented to the Governing Body for their consideration.

Jim Witt, Special Projects Manager, was recognized and addressed the Governing Body. He stated this ordinance is the next step in the formation of a Redevelopment District and eventually the designation of a TIF for approximately 39 acres generally located at the intersection of Interstate 35, the Kansas Turnpike and Highway 50. He stated the applicant has met all the statutory and local requirements for establishing the RHID. Local taxing entities have been notified in accordance with the statutory requirements. He stated if there is an objection by one of the entities within thirty (30) days of the hearing a reconsideration of the ordinance shall be conducted. He stated staff was recommending approval of the Red Brick Emporia Redevelopment District.

Commissioner Brinkman made a motion to approve Ordinance Number 21-38, an ordinance establishing the Red Brick Emporia Redevelopment District. Commissioner Giefer seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Geitz, aye; Commissioner Smith, aye; and Mayor Gilligan, aye.

Exhibit D -- Project Revenues

(See Attached)

Revenue Projection Assumptions

Tax Detail		Percent	Property Tax	2021 Mills
Sales Tax	State of Kansas	6.50%	(Not Capturable)	1.500
	Lyon County	1.00%		53.283
	City of Emporia			42.800
				55.143
Total Local		8.50%	School District (USD #253)	20.000
Capturable Sales Tax (CID)		2.00%	School District General	172.724
			Total	151.224
			Capturable	

Property Tax	Base Year Tax Amount (2021)	\$ 36,701.10	Assume a 3% increase every year	1.03
Total Appraised Value (As Constructed)		\$ 34,540,736.00		
Assessed Value - Commercial		\$ 25%		
Total Assessed Value		\$ 8,655,194.00	Total Capturable Mill Levy	151.22
Total Mill Levy		\$ 172.72	Total Capturable Property Tax Amount	\$ 1,805,847.07
Total Property Tax Collected		\$ 1,491,508.52	Total Property Tax Amount	\$ 6,932,919.42
Total Property Tax Collected		\$ 7,918,594.75	Total Capturable Property Tax Amount	\$ 14,970,073.15
Total Property Tax Collected		\$ 17,098,416.35	Total Capturable Property Tax Amount	\$ 24,287,337.12
Total Property Tax Collected		\$ 27,740,345.53	Total Capturable Property Tax Amount	\$ 35,088,599.67
Total Property Tax Collected		\$ 40,077,258.13	Total Capturable Property Tax Amount	\$ 35,088,599.67
			Year 1	Base Year
			Year 5	3% Increase Per Year
			Year 10	3% Increase Per Year
			Year 15	3% Increase Per Year
			Year 20	3% Increase Per Year

Regret Sales	Base Year Sales	\$ 2,500,000.00	Sales Tax Rate	Percent
	Hospitality	\$ 5,500,000.00	State of Kansas	6.50%
	Travel Plaza/IV (Does not include Fuel Sales)	\$ 9,000,000.00	Lyon County	1%
	Retail / Food Sales	\$ 17,000,000.00	City of Emporia	1%
	Year 1 Total Sales		Capturable Sales Tax (CID)	2%
Based upon all sites being fully open				
Assume a 3% increase each year				
Year 5 Total Sales	\$ 19,133,649.77	Total 2% Sales Tax Collected	\$ 1,805,106.18	
Year 10 Total Sales	\$ 20,916,991.21	Total 2% Sales Tax Collected	\$ 3,835,888.60	
Year 15 Total Sales	\$ 22,539,540.04	Total 2% Sales Tax Collected	\$ 6,023,618.01	
Year 20 Total Sales	\$ 24,275,022.24	Total 2% Sales Tax Collected	\$ 8,380,473.92	
Total Sales				
	17,000,000.00	1.03	Year 1	CID Tax Collected
	17,510,000.00	1.03	Year 2	\$ 340,000.00
	18,035,900.00	1.03	Year 3	\$ 360,706.00
	18,576,559.00	1.03	Year 4	\$ 371,572.18
	19,133,649.77	1.03	Year 5	\$ 382,673.00
	19,707,659.26	1.015	Year 6	\$ 394,153.19
	20,003,774.15	1.015	Year 7	\$ 400,065.48
	20,509,523.26	1.015	Year 8	\$ 406,006.47
	20,607,873.11	1.015	Year 9	\$ 412,157.46
	20,916,991.21	1.015	Year 10	\$ 418,339.82
	21,280,746.08	1.015	Year 11	\$ 424,614.92
	21,549,207.27	1.015	Year 12	\$ 430,984.15
	21,872,445.38	1.015	Year 13	\$ 437,448.91
	22,200,532.06	1.015	Year 14	\$ 444,010.64
	22,539,540.04	1.015	Year 15	\$ 450,670.80
	22,871,548.14	1.015	Year 16	\$ 457,430.86
	23,214,616.29	1.015	Year 17	\$ 464,292.33
	23,562,893.53	1.015	Year 18	\$ 471,256.71
	23,916,278.06	1.015	Year 19	\$ 478,325.56
	24,275,022.24	1.015	Year 20	\$ 485,500.44

Total Property Tax Collected	Year 1	1,491,508.52	1.03	Year 1	\$ 1,491,508.52
	Year 2	1,536,248.63	1.03	Year 2	\$ 1,536,248.63
	Year 3	1,582,336.08	1.03	Year 3	\$ 1,582,336.08
	Year 4	1,629,806.17	1.03	Year 4	\$ 1,629,806.17
	Year 5	1,678,700.35	1.03	Year 5	\$ 1,678,700.35
	Year 6	1,729,061.36	1.03	Year 6	\$ 1,729,061.36
	Year 7	1,780,933.20	1.03	Year 7	\$ 1,780,933.20
	Year 8	1,834,361.20	1.03	Year 8	\$ 1,834,361.20
	Year 9	1,889,392.04	1.03	Year 9	\$ 1,889,392.04
	Year 10	1,946,073.80	1.03	Year 10	\$ 1,946,073.80
	Year 11	2,004,456.01	1.03	Year 11	\$ 2,004,456.01
	Year 12	2,064,589.89	1.03	Year 12	\$ 2,064,589.89
	Year 13	2,126,577.38	1.03	Year 13	\$ 2,126,577.38
	Year 14	2,190,323.20	1.03	Year 14	\$ 2,190,323.20
	Year 15	2,256,032.90	1.03	Year 15	\$ 2,256,032.90
	Year 16	2,323,713.89	1.03	Year 16	\$ 2,323,713.89
	Year 17	2,393,425.30	1.03	Year 17	\$ 2,393,425.30
	Year 18	2,465,228.06	1.03	Year 18	\$ 2,465,228.06
	Year 19	2,539,184.90	1.03	Year 19	\$ 2,539,184.90
	Year 20	2,615,360.45	1.03	Year 20	\$ 2,615,360.45
Total Capturable Property Tax Collected	Year 1	1,305,847.07	1.03	Year 1	\$ 1,305,847.07
	Year 2	1,345,022.48	1.03	Year 2	\$ 1,345,022.48
	Year 3	1,385,373.15	1.03	Year 3	\$ 1,385,373.15
	Year 4	1,426,934.35	1.03	Year 4	\$ 1,426,934.35
	Year 5	1,469,742.38	1.03	Year 5	\$ 1,469,742.38
	Year 6	1,513,834.65	1.03	Year 6	\$ 1,513,834.65
	Year 7	1,559,249.69	1.03	Year 7	\$ 1,559,249.69
	Year 8	1,606,027.18	1.03	Year 8	\$ 1,606,027.18
	Year 9	1,654,207.99	1.03	Year 9	\$ 1,654,207.99
	Year 10	1,703,834.23	1.03	Year 10	\$ 1,703,834.23
	Year 11	1,754,949.26	1.03	Year 11	\$ 1,754,949.26
	Year 12	1,807,597.74	1.03	Year 12	\$ 1,807,597.74
	Year 13	1,861,825.67	1.03	Year 13	\$ 1,861,825.67
	Year 14	1,917,680.44	1.03	Year 14	\$ 1,917,680.44
	Year 15	1,975,210.85	1.03	Year 15	\$ 1,975,210.85
	Year 16	2,034,467.18	1.03	Year 16	\$ 2,034,467.18
	Year 17	2,095,501.19	1.03	Year 17	\$ 2,095,501.19
	Year 18	2,158,366.23	1.03	Year 18	\$ 2,158,366.23
	Year 19	2,223,117.22	1.03	Year 19	\$ 2,223,117.22
	Year 20	2,289,810.73	1.03	Year 20	\$ 2,289,810.73
Total Capturable Property Tax Collected	Year 1	\$ 14,970,073.15		Year 1	\$ 14,970,073.15
	Year 2	\$ 15,607,073.12		Year 2	\$ 15,607,073.12
	Year 3	\$ 16,250,073.12		Year 3	\$ 16,250,073.12
	Year 4	\$ 16,908,073.12		Year 4	\$ 16,908,073.12
	Year 5	\$ 17,571,073.12		Year 5	\$ 17,571,073.12
	Year 6	\$ 18,239,073.12		Year 6	\$ 18,239,073.12
	Year 7	\$ 18,912,073.12		Year 7	\$ 18,912,073.12
	Year 8	\$ 19,590,073.12		Year 8	\$ 19,590,073.12
	Year 9	\$ 20,273,073.12		Year 9	\$ 20,273,073.12
	Year 10	\$ 20,961,073.12		Year 10	\$ 20,961,073.12
	Year 11	\$ 21,654,073.12		Year 11	\$ 21,654,073.12
	Year 12	\$ 22,352,073.12		Year 12	\$ 22,352,073.12
	Year 13	\$ 23,055,073.12		Year 13	\$ 23,055,073.12
	Year 14	\$ 23,763,073.12		Year 14	\$ 23,763,073.12
	Year 15	\$ 24,476,073.12		Year 15	\$ 24,476,073.12
	Year 16	\$ 25,194,073.12		Year 16	\$ 25,194,073.12
	Year 17	\$ 25,917,073.12		Year 17	\$ 25,917,073.12
	Year 18	\$ 26,645,073.12		Year 18	\$ 26,645,073.12
	Year 19	\$ 27,378,073.12		Year 19	\$ 27,378,073.12
	Year 20	\$ 28,116,073.12		Year 20	\$ 28,116,073.12

Total Property Tax Collected	Year 1	1,491,508.52	1.03	Year 1	\$ 1,491,508.52
	Year 2	1,536,248.63	1.03	Year 2	\$ 1,536,248.63
	Year 3	1,582,336.08	1.03	Year 3	\$ 1,582,336.08
	Year 4	1,629,806.17	1.03	Year 4	\$ 1,629,806.17
	Year 5	1,678,700.35	1.03	Year 5	\$ 1,678,700.35
	Year 6	1,729,061.36	1.03	Year 6	\$ 1,729,061.36
	Year 7	1,780,933.20	1.03	Year 7	\$ 1,780,933.20
	Year 8	1,834,361.20	1.03	Year 8	\$ 1,834,361.20
	Year 9	1,889,392.04	1.03	Year 9	\$ 1,889,392.04
	Year 10	1,946,073.80	1.03	Year 10	\$ 1,946,073.80
	Year 11	2,004,456.01	1.03	Year 11	\$ 2,004,456.01
	Year 12	2,064,589.89	1.03	Year 12	\$ 2,064,589.89
	Year 13	2,126,577.38	1.03	Year 13	\$ 2,126,577.38
	Year 14	2,190,323.20	1.03	Year 14	\$ 2,190,323.20
	Year 15	2,256,032.90	1.03	Year 15	\$ 2,256,032.90
	Year 16	2,323,713.89	1.03	Year 16	\$ 2,323,713.89
	Year 17	2,393,425.30	1.03	Year 17	\$ 2,393,425.30
	Year 18	2,465,228.06	1.03	Year 18	\$ 2,465,228.06
	Year 19	2,539,184.90	1.03	Year 19	\$ 2,539,184.90
	Year 20	2,615,360.45	1.03	Year 20	\$ 2,615,360.45
Total Capturable Property Tax Collected	Year 1	1,305,847.07	1.03	Year 1	\$ 1,305,847.07
	Year 2	1,345,022.48	1.03	Year 2	\$ 1,345,022.48
	Year 3	1,385,373.15	1.03	Year 3	\$ 1,385,373.15
	Year 4	1,426,934.35	1.03	Year 4	\$ 1,426,934.35
	Year 5	1,469,742.38	1.03	Year 5	\$ 1,469,742.38
	Year 6	1,513,834.65	1.03	Year 6	\$ 1,513,834.65
	Year 7	1,559,249.69	1.03	Year 7	\$ 1,559,249.69
	Year 8	1,606,027.18	1.03	Year 8	\$ 1,606,027.18
	Year 9	1,654,207.99	1.03	Year 9	\$ 1,654,207.99
	Year 10	1,703,834.23	1.03	Year 10	\$ 1,703,834.23
	Year 11	1,754,949.26	1.03	Year 11	\$ 1,754,949.26
	Year 12	1,807,597.74	1.03	Year 12	\$ 1,807,597.74
	Year 13	1,861,825.67	1.03	Year 13	\$ 1,861,825.67
	Year 14	1,917,680.44	1.03	Year 14	\$ 1,917,680.44
	Year 15	1,975,210.85	1.03	Year 15	\$ 1,975,210.85
	Year 16	2,034,467.18	1.03	Year 16	\$ 2,034,467.18
	Year 17	2,095,501.19	1.03	Year 17	\$ 2,095,501.19
	Year 18	2,158,366.23	1.03	Year 18	\$ 2,158,366.23
	Year 19	2,223,117.22	1.03	Year 19	\$ 2,223,117.22
	Year 20	2,289,810.73	1.03	Year 20	\$ 2,289,810.73
Total Capturable Property Tax Collected	Year 1	\$ 14,970,073.15		Year 1	\$ 14,970,073.15
	Year 2	\$ 15,607,073.12		Year 2	\$ 15,607,073.12
	Year 3	\$ 16,250,073.12		Year 3	\$ 16,250,073.12
	Year 4	\$ 16,908,073.12		Year 4	\$ 16,908,073.12
	Year 5	\$ 17,571,073.12		Year 5	\$ 17,571,073.12
	Year 6	\$ 18,239,073.12		Year 6	\$ 18,239,073.12
	Year 7	\$ 18,912,073.12		Year 7	\$ 18,912,073.12
	Year 8	\$ 19,590,073.12		Year 8	\$ 19,590,073.12
	Year 9	\$ 20,273,073.12		Year 9	\$ 20,273,073.12
	Year 10	\$ 20,961,073.12		Year 10	\$ 20,961,073.12
	Year 11	\$ 21,654,073.12		Year 11	\$ 21,654,073.12
	Year 12	\$ 22,352,073.12		Year 12	\$ 22,352,073.12
	Year 13	\$ 23,055,073.12		Year 13	\$ 23,055,073.12
	Year 14	\$ 23,763,073.12		Year 14	\$ 23,763,073.12
	Year 15	\$ 24,476,073.12		Year 15	\$ 24,476,073.12
	Year 16	\$ 25,194,073.12		Year 16	\$ 25,194,073.12
	Year 17	\$ 25,917,073.12		Year 17	\$ 25,917,073.12
	Year 18	\$ 26,645,073.12		Year 18	\$ 26,645,073.12
	Year 19	\$ 27,378,073.12		Year 19	\$ 27,378,073.12
	Year 20	\$ 28,116,073.12		Year 20	\$ 28,116,073.12



Commission Action Report

Title: Resolution No. 3670 to Establish A Public Hearing Date on June 1, 2022, for The Red Brick Community Improvement District and Accept the CID Petition In Accordance With Kansas Statutes.

Proposed Agenda Date: April 20, 2022

Presented By: Jim Witt, SPC

BACKGROUND:

The developer of the Red Brick travel plaza and associated uses has submitted a petition as required by Kansas Statutes for the creation of a Community Improvement District. The request is for a 2% Sales Tax on eligible items sold only within the district. This would include a sales tax on a hotel/motel which is planned at this time.

DISCUSSION:

The petition which is attached to the item has been reviewed and approved by the City's bond attorney. This will be the fourth CID sales tax improvement district in the City if approved.

FINANCIAL CONSIDERATIONS:

None for the City of Emporia.

OTHER CONSIDERATIONS:

None

RECOMMENDED ACTION:

Accept Petition and approve Resolution

ATTACHMENTS:

CID Petition
Resolution

(Published in the *Emporia Gazette* on May 14, 2022, and May 21, 2022)

RESOLUTION NO. 3670

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS GIVING NOTICE OF A PUBLIC HEARING ON THE ADVISABILITY OF CREATING A COMMUNITY IMPROVEMENT DISTRICT IN THE CITY TO BE KNOWN AS THE RED BRICK EMPORIA COMMUNITY IMPROVEMENT DISTRICT

WHEREAS, pursuant to K.S.A. 12-6a26 *et seq.* (“the Act”) the City of Emporia, Kansas (the “City”) is authorized to create a community improvement district (“CID”) within its jurisdiction to fund all or a portion of the cost of a “Project” as defined and authorized under the Act; and

WHEREAS, the Act further authorizes the City to impose a sales tax within the community improvement district on the sale of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailers’ sales tax act, and amendments thereto, in any increment permitted by the Act, and to pledge the revenue received from such tax to pay for the Project or reimburse the cost of the Project as “pay-as-you-go financing” (as defined in the Act); and

WHEREAS, a petition (the “Petition”) was filed with the City on April 8, 2022, proposing (i) the creation of a community improvement district under the Act to be known as Red Brick Emporia Community Improvement District (the “District”), (ii) the construction of the Project as more particularly described in the Petition and this Resolution, and (iii) the imposition of a community improvement district sales tax within the District in the amount of two percent (2.0%) to pay a portion of the costs of the Project; and

WHEREAS, the Petition is signed by Red Brick Emporia, LLC., the owners of record of more than 55% of the land area within the proposed District, and owners collectively of more than 55% by assessed value of the land area within the proposed District (the “Petitioners”); and

WHEREAS, the Act provides that before creating any community improvement district, the governing body of the City shall by resolution direct and order and give notice of a public hearing on the advisability of creating a community improvement district, the construction of the proposed Project and the intent of the City to levy a community improvement district sales tax.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS, AS FOLLOWS:

SECTION 1. Public Hearing. Notice is given that a public hearing will be held before the City Commission on June 1, 2022, at 11:00 a.m., or as soon thereafter as the matter can be heard, in the City Commission meeting room at 518 Mechanic Street, Emporia, Kansas, to consider the advisability of: (i) the City’s creation of the District; (ii) the Project described in the

Petition; and (iii) the imposition of a community improvement district sales tax in the District in an amount of two percent (2.0%),

SECTION 2. Project. The general description of the proposed Project to be constructed within the District is the development and construction of a travel plaza, and upscale RV Park, a hotel and related commercial developments, all generally located on the southwest corner of Graphic Arts Road and US Highway 50, in the area shown on the Final Plat of Brownstone Addition and Brownstone Second Addition to the City of Emporia, Lyon County, Kansas.

SECTION 3. Project Costs; Estimates. Costs to be partially financed from the proposed community improvement district sales tax include, but are not limited to, land acquisition, infrastructure and related items, sidewalks, parking lots, buildings, tenant improvements, utilities, lighting, signage, marketing and advertising, cleaning and maintenance, security, soft costs of the project, costs of financing and the City and Developer's administrative costs and other items permitted to be financed by the Act. The total estimated and probable cost of the Project is \$50,000,000. Total reimbursement from the proposed community improvement district sales tax is estimated to be \$17,351,547. The estimated reimbursement stated in the preceding sentence shall not be deemed a guaranty of or limitation on reimbursement and revenues of the community improvement district sales tax proposed by the Petition may be utilized for costs of the Project in accordance with the Petition, the Act, and any development agreement governing the District.

SECTION 4. Financing; District Only Sales Tax. The Project within the District is proposed to be financed in part, on a pay-as-you-go basis, from revenues received from the levy and collection of a two percent (2.0%) community improvement district sales tax on the sale of tangible personal property sold at retail or on rendering or furnishing of services taxable pursuant to the Kansas retailers' sales tax statutes, only within the proposed District. The entire Project will be financed from a combination of the community improvement district sales tax revenues as permitted by Kansas law, legally available tax increment financing revenue, private equity and private debt.

SECTION 5. Description of District. The legal description of the District is attached to this Resolution as **Exhibit A** and a map of the proposed District is attached as **Exhibit B**.

SECTION 6. Effective Date; Publication and Notice. This resolution shall be effective upon and after its adoption by the governing body. The City Clerk is authorized and directed to give notice of the public hearing by publishing this resolution once a week for two consecutive weeks in the official City newspaper with the second publication occurring at least seven (7) days before the public hearing date. The City Clerk is also authorized and directed to mail a copy of this resolution to all property owners within the proposed District, by certified mail, at least ten (10) days before the public hearing.

PASSED AND APPROVED by vote of the governing body of the City of Emporia,
Kansas on April 20, 2022.

CITY OF EMPORIA, KANSAS

[Seal]

By _____
Becky Smith, Mayor

ATTEST:

By _____
Kerry Sull, City Clerk

EXHIBIT A

(Legal Description of District)

A part of the Southeast Quarter of Section 7, Township 19 South, Range 11 East of the 6th PM, Lyon County, Kansas, as shown on the Final Plat of Brownstone Addition to the City of Emporia, Lyon County, Kansas

And

Brownstone Second Addition to the City of Emporia, Lyon County, Kansas, as shown on the Final Plat thereof, being a replat of Lots 2,3,7,8,9 and 10 of Martin-Eagle Subdivision to the City of Emporia, Lyon County, Kansas

EXHIBIT B

(Map of proposed District)



EXCERPT OF MINUTES

The City Commission of the City of Emporia, Kansas met in regular session, at the usual meeting place in the City on April 20, 2022 at 7:00 p.m., with Mayor Becky Smith presiding, and the following members of the governing body present:

The following members absent:

Among other business, there came on for consideration and discussion the following:

A RESOLUTION OF THE GOVERNING BODY OF THE CITY
OF EMPORIA, KANSAS GIVING NOTICE OF A PUBLIC
HEARING ON THE ADVISABILITY OF CREATING A
COMMUNITY IMPROVEMENT DISTRICT IN THE CITY TO
BE KNOWN AS THE RED BRICK EMPORIA COMMUNITY
IMPROVEMENT DISTRICT

After discussion, upon motion by _____, seconded by
_____, the Resolution was passed by a majority of vote of the members
present.

The Resolution was designated Resolution No. 3670.

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I certify the foregoing is a true and correct Excerpt of Minutes of the April 20, 2022 meeting of the governing body of the City of Emporia, Kansas.

[Seal]

Kerry Sull, City Clerk



**GOODELL STRATTON
EDMONDS & PALMER LLP**
Attorneys at Law • Established 1881

515 S Kansas Ave
Topeka, KS 66603
WWW.GSEPLAW.COM

T 785.233.0593
F 785.233.8870
E gsep@gseplaw.com

April 7, 2022

SENT VIA E-MAIL AND REGULAR MAIL

mfcarson@twgfirm.com

Mary F. Carson
Triplett, Woolf, Garretson, LLC
2959 N. Rock Rd., Suite 300
Wichita, KS 67226

RE: Red Brick Emporia, LLC
Community Improvement District Petition

Dear Ms. Carson:

Attached please find the Community Improvement District Petition for Red Brick Emporia, LLC. Please let me know if the City or you need anything further to move this forward to the next step.

Best Regards,

Catherine L. Walberg
cwalberg@gseplaw.com

CLW/hmh

Enclosure

cc: Jim Witt (jwitt@emporia-kansas.gov)
Darrin Dodge (ddodge@brownstone3.com)

PARTNERS
N. LARRY BORK²
MIRANDA K. CARMONA
CYNTHIA J. SHEPPEARD
DAVID P. O'NEAL
SUSAN L. MAUCH
SAMUEL R. FEATHER

OF COUNSEL
PATRICK M. SALSBUARY

SPECIAL COUNSEL
WESLEY A. WEATHERS¹
TRACY A. COLE
CATHERINE L. WALBERG¹

ASSOCIATES
LANCE R. SMITH
CAMERON S. BERNARD

RETIRED
WAYNE T. STRATTON
ARTHUR E. PALMER

DECEASED
GERALD L. GOODELL (1932-2022)
ROBERT E. EDMONDS (1932-2001)
NATHAN D. LEADSTROM (1976-2020)

¹ALSO ADMITTED IN MO
²ALSO ADMITTED IN MO, NE & OK

PETITION FOR THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT

TO: The Governing Body,
City of Emporia, Kansas

Red Brick Emporia, LLC, the undersigned Petitioner, being the owner of record, whether resident or not, of the following:

1. More than fifty-five percent (55%) of the land area contained within the community improvement district described herein; *and*
2. More than fifty-five percent (55%) by assessed value of the land area contained within the community improvement district described herein

petition the City of Emporia, Kansas (the "City") to create a community improvement district and authorize the proposed projects described in this petition, all as provided by K.S.A § 12-6a26, *et seq.* (the "Act"). Pursuant to the Act, the Petitioner states as follows:

1. MAP AND LEGAL DESCRIPTION OF THE PROPOSED DISTRICT

A map generally depicting the proposed community improvement district (the "District") is attached as **EXHIBIT "A."** The legal description of the District is attached as **EXHIBIT "B."**

2. GENERAL NATURE OF THE PROJECTS

The general nature of the proposed project: Red Brick Emporia (the "Project") is to bring a Travel Plaza Express, Upscale RV Park, Hotel, Restaurants and more. More specifically, the costs of the Project to be financed via community improvement district financing pursuant to this Petition include the acquisition, construction, maintenance, and procurement of certain improvements, costs, and services within the District, which may include, but are not limited to: land acquisition, infrastructure and related items, sidewalks, parking lots, buildings, tenant improvements, utilities, landscaping, lighting, signage, marketing and advertisement, cleaning and maintenance, security, soft costs of the Project, the costs of private financing of the Project, and the City and the Petitioner's administrative costs in establishing and maintaining the District, and any other items permitted to be financed within the District under the Act.

3. ESTIMATED COST

The estimated or probable total cost of the Project is \$50,000,000.00. Total reimbursement from the sales tax proposed by this petition will be approximately \$17,351,547.24 of the total project costs. See the attached **EXHIBIT "C"** for a Project budget.

4. PROPOSED METHOD OF FINANCING

It is proposed that community improvement district revenue requested by this Petition will be made available to finance the cost of the Project through pay-as-you-go financing, as defined in the

Act, and along with private equity and private debt. This Petition does not request the levy of special assessments, or issuance of special obligation or general obligation bonds by the City pursuant to the Act.

5. PROPOSED METHOD AND AMOUNT OF ASSESSMENT

It is not proposed that the Project be financed through the levying of special assessments pursuant to the Act.

6. PROPOSED AMOUNT OF SALES TAX

It is proposed that the Projects be financed in part through the levying of a 2% add-on retailers' sales tax in the District, as authorized by the Act with such retailers' sales tax to commence on an effective date requested by the Petitioner in writing and approved by the City and the Kansas Department of Revenue.

7. NOTICE TO PETITION SIGNATORY

Names may not be withdrawn from this Petition by any signatory after the City begins consideration of this Petition, or later than seven (7) days after the filing of this Petition with the City Clerk, whichever occurs first. If applicable, the signers consent to any assessments to the extent described therein without regard to benefits conferred by the project. However, Petitioner notes that no assessments are contemplated.

[Remainder of Page Intentionally Blank; Separate Signature Page Follows]

IN WITNESS WHEREOF, the Petitioner has executed the above foregoing petition to create the District at the dates set forth opposite its signature below:

RED BRICK EMPORIA, LLC

By: John E. Brown

Name: John E. Brown

Title: CEO/Managing Member

ACKNOWLEDGMENT

STATE OF KANSAS)

) ss.

COUNTY OF Shawnee

Be it remembered that on this 7 day of April 2022, before me, a Notary Public in and for the County and State stated above, came John E. Brown, known to me personally, who is the CEO/Managing Member of Red Brick Emporia, LLC, a Kansas limited liability company, and that this instrument was signed and delivered on behalf of the company by the CEO/Managing Member.

IN WITNESS WHEREOF, I have set my hand and affixed my Notarial Seal on the date written above.

My Commission Expires:

June 17, 2024

Darrin Dodge

Notary Public in and for said County and State

Print Name: Darrin Dodge



EXHIBIT "A"
MAP OF DISTRICT

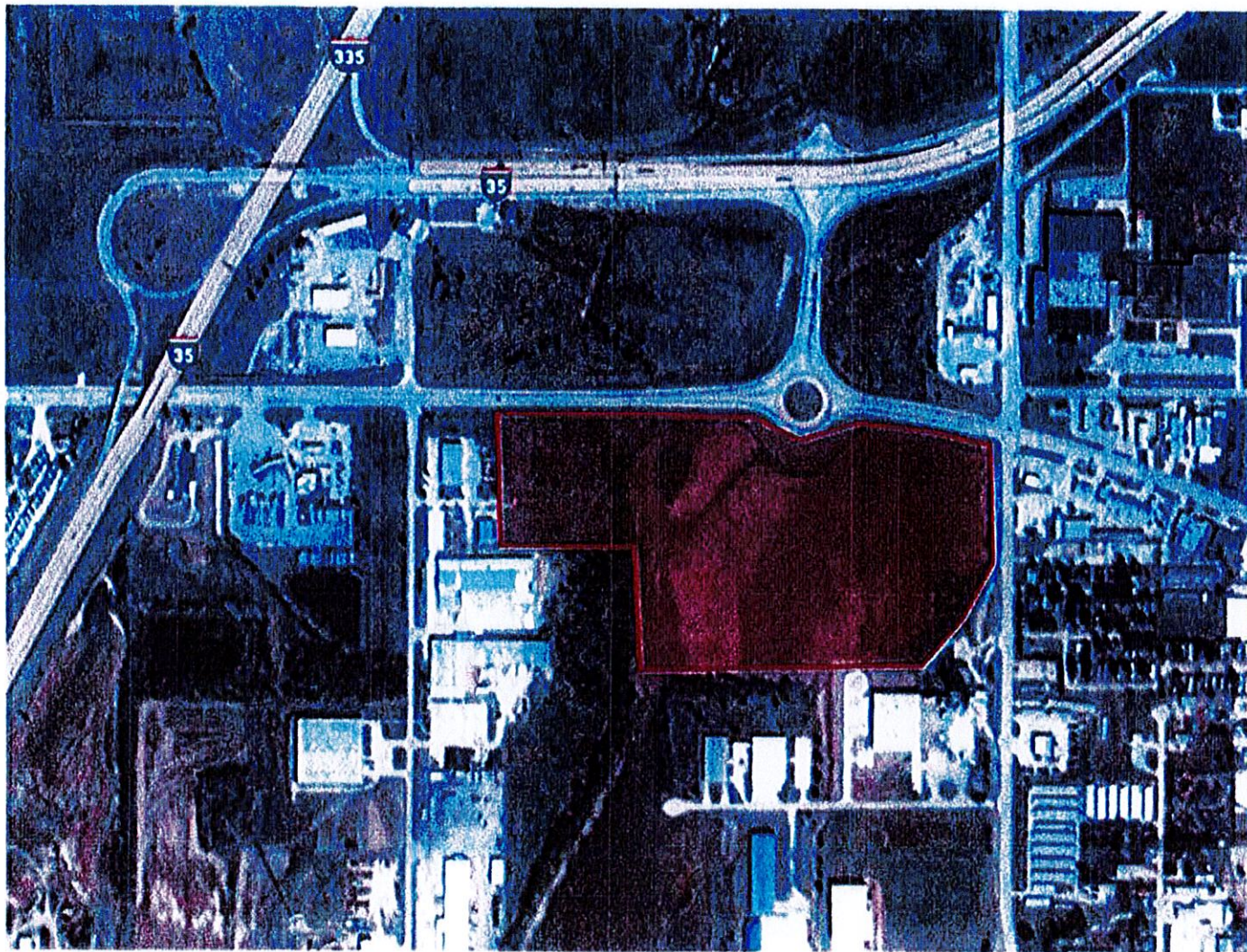


EXHIBIT "B"

LEGAL DESCRIPTION OF DISTRICT



ENTERED IN TRANSFER RECORD
IN MY OFFICE THIS 8 DAY
OF APRIL 2021
Lyon County Clerk

STATE OF KS LYON CO
WENDY L. WISS, REGISTER OF DEEDS
2021-01413
DATE RECORDED: 04/07/2021 11:43 AM
TX #1 4010380
REAL ESTATE FEE 17.00
TECHNOLOGY FEE 3.00
HERITAGE TRUST 1.00
PAGES: 1

CORPORATION WARRANTY DEED

THIS INDENTURE is made this 15th Day of March, 2021

Between Eagle Development Inc.

a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas and having its principal place of business in Lyon County, in the State of Kansas of the first part, and

Red Brick Investments, LLC

Of Lyon County, in the State of Kansas, of the second part.

WITNESSETH, that said party of the first part, in consideration of the sum of \$1.00 & ovc, the receipt of which is hereby acknowledged, do by theses presents, Grant, Bargain, Sell and Convey unto said party of the second part or its successors and assigns, the following described real estate situated in the State of Kansas, County of Lyon, to-wit:

LOTS 2, 3, 7, 8, 9 AND 10 IN MARTIN EAGLE SUBDIVISION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF.

Together with and subject to covenants, easements and restrictions of record.

TO HAVE AND HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereunto belong or in any wise appertaining, forever. And said Grantor for itself, its successors & assigns, does hereby covenant, promise and agree, to and with said parties of the second part, that at delivery of these presents it is lawfully seized in its own right, of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted & described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of what nature or kind soever;

And that it will warrant and forever defend the same unto said parties of the second part, against said party of the first part, its successors and assigns, and all every person or persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said party of the first part has hereunto caused this deed to be signed on its behalf by its corporate officer thereunto duly authorized so to do, and has caused its corporate seal to be here unto affixed the day and year first above written.

By: [Signature]
Justin J. Mallon, Secretary

STATE OF KS, COUNTY OF LYON, SS:

BE IT REMEMBERED, that on this 30th day of MARCH, 2021, before me, the undersigned, a notary public, in and for the County and State aforesaid, came Justin J. Mallon, Secretary of Eagle Development Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed by official seal the day and year last above mentioned.

Notary Public [Signature]

JEFFREY B. WILLIAMS
NOTARY PUBLIC
STATE OF KANSAS
EXP. 03-21-2025

8013519
LX-4007927

ENTERED IN TRANSFER RECORD
IN MY OFFICE THIS 18th DAY
OF September 2020
Lyon County Clerk

STATE OF KS LYON CO
WENDY L. WEISS, REGISTER OF DEEDS
2020-03727
DATE RECORDED: 09/17/2020 03:39 PM
TX #: 4007927
REAL ESTATE FEE 30.00
TECHNOLOGY FEE 6.00
HERITAGE TRUST 2.00
PAGES: 2

CORPORATION WARRANTY DEED

THIS INDENTURE is made this 17th Day of September, 2020, Between
THOMAS TRANSFER & STORAGE CO., INC a corporation duly organized, incorporated and existing
under and by virtue of the laws of the State of Kansas and having its principal place of business in
Emporia, in the State of Kansas of the first part, and RED BRICK INVESTMENTS, LLC of Shawnee
County, in the State of Kansas, of the second part.

WITNESSETH, that said party of the first part, in consideration of the sum of \$1.00 & ovc, the receipt of
which is hereby acknowledged, do by theses presents, Grant, Bargain, Sell and Convey unto said party of
the second part or its successors and assigns, the following described real estate situated in the State of
Kansas, County of Lyon, to-wit:

See "Exhibit A" for Legal Description

Together with and subject to covenants, easements and restrictions of record.

TO HAVE AND HOLD THE SAME, together with all and singular the tenements, hereditaments and
appurtenances thereunto belong or in any wise appertaining, forever. And said Grantor for itself, its
successors & assigns, does hereby covenant, promise and agree, to and with said parties of the second
part, that at delivery of these presents it is lawfully seized in its own right, of an absolute and indefeasible
estate of inheritance, in fee simple, of and in all and singular the above granted & described premises,
with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former
and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of what nature
or kind soever;

And that it will warrant and forever defend the same unto said parties of the second part, against said
party of the first part, its successors and assigns, and all every person or persons whomsoever, lawfully
claiming or to claim the same.

IN WITNESS WHEREOF, the said party of the first part has hereunto caused this deed to be signed on
its behalf by its corporate officer thereunto duly authorized so to do, and has caused its corporate seal to
be here unto affixed the day and year first above written.

By: Jerid Thomas
Jerid Thomas, President

STATE OF Kansas, COUNTY OF Lyon, SS:

BE IT REMEMBERED, that on this 17th day of September, 2020, before me, the undersigned, a
notary public, in and for the County and State aforesaid, came Jerid Thomas, President of THOMAS
TRANSFER & STORAGE CO., INC, a corporation duly organized, incorporated and existing under and by
virtue of the laws of Kansas, who is personally know to me to be such officer, and who is personally
known to me to be the same person who executed, as such officer, the within instrument of writing on
behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and
deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed by
official seal the day and year last above mentioned.

Notary Public Janice M. Miller
Janice M. Miller



Exhibit A - Thomas Transfer & Storage Co., Inc. to Red Brick Investments, LLC

A TRACT OF LAND LYING IN THE SE1/4 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 SE1/4 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°03'35"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 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 SE1/4 OF SAID SECTION 7; THENCE BEARING N87°48'06"E ALONG THE NORTH LINE OF SAID SE1/4 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.

ENTERED IN TRANSFER RECORD
IN MY OFFICE THIS 07 DAY
OF August 2021
Deputy
Lyon County Clerk

STATE OF KS LYON CO
WENDY L. WEISS, REGISTER OF DEEDS
2021-03658
REC #33: 21.00 08/26/2021 12:02 PM
PAGES: 1

KANSAS QUITCLAIM DEED

On this 25 day of August, 2021, the Grantor, Red Brick Investments, LLC,
CONVEYS AND QUITCLAIMS to the Grantee, Red Brick Emporia, LLC, with right of
survivorship the following-described real estate in Lyon County, Kansas:

Lots 2, 3, 7, 8, 9 and 10 in Martin Eagle Subdivision to the City of Emporia,
Lyon County, Kansas, according to the recorded plat thereof.

for the sum of one dollar and other good and valuable consideration.

SUBJECT TO: Easements, restrictions and assessments of record, and all the taxes and assessments
that may be levied, imposed, or become payable hereafter.

John E. Brown
Red Brick Investments, LLC
John E. Brown

Doug Hutchinson
Red Brick Emporia, LLC
Doug Hutchinson

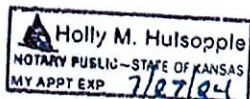
Pursuant to K.S.A. § 79-1437c, a real estate questionnaire is not required due to Exception No.
12 (complete if applicable).

STATE OF KANSAS)

) ss:

COUNTY OF SHAWNEE)

This instrument was acknowledged before me on August 25, 2021 by John
Brown and Doug Hutchinson.



Holly M. Hulsopple
NOTARY PUBLIC

My appointment expires: 7/27/24

ENTERED IN TRANSFER RECORD
IN MY OFFICE THIS 07 DAY
OF AUGUST 2021
Lyon County Clerk

STATE OF KS LYON CO
WENDY L. WELLS, REGISTER OF DEEDS
2021-03659
REC FEE: 39.00 08/23/2021 12:02 PM
PAGES: 2



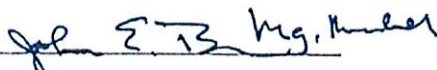
KANSAS QUITCLAIM DEED

On this 25 day of August, 2021, the Grantor, Red Brick Investments, LLC,
CONVEYS AND QUITCLAIMS to the Grantee, Red Brick Emporia, LLC, with right of
survivorship the following-described real estate in Lyon County, Kansas:

All real estate as described on Attachment A.

for the sum of one dollar and other good and valuable consideration.

SUBJECT TO: Easements, restrictions and assessments of record, and all the taxes and assessments
that may be levied, imposed, or become payable hereafter.


Red Brick Investments, LLC
John E. Brown


Red Brick Emporia, LLC
Doug Hutchinson

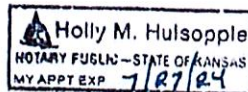
Pursuant to K.S.A. § 79-1437e, a real estate questionnaire is not required due to Exception No.
12 (complete if applicable).

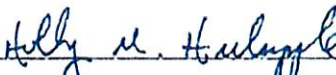
STATE OF KANSAS)

) ss:

COUNTY OF SHAWNEE)

This instrument was acknowledged before me on August 25, 2021 by John
Brown and Doug Hutchinson.




NOTARY PUBLIC

My appointment expires: 7/27/24

QUIT CLAIM DEED ATTACHMENT A

LEGAL DESCRIPTION

A TRACT OF LAND LYING IN THE SE1/4 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 SE1/4 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 N35°08'35"E FOR A DISTANCE OF 253.23 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 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 SE1/4 OF SAID SECTION 7; THENCE BEARING N87°48'06"E ALONG THE NORTH LINE OF SAID SE1/4 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 ADJUTING SAID HIGHWAY SHALL HAVE NO RIGHT OR EASEMENT OF ACCESS THERE TO, 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.

EXHIBIT "C"
ESTIMATED PROBABLE COST OF PROJECT
Project Budget

Description		Cost
<u>Acquisition Costs</u>		
Land Acquisition	Thomas Land	\$ 2,426,466.24
Land Acquisition	Eagle Development	\$ 291,852.00
Subtotal		\$ 2,718,318.24

<u>Site Work / Street Work</u>		Cost
Grading Phase I		\$ 727,524.00
Grading Phase II		\$ 272,480.00
Waterlines		\$ 230,000.00
Sanitary Sewer		\$ 268,000.00
Storm Water Detention		\$ 369,869.00
Box Culvert		\$ 521,069.00
Brownstone Blvd / Hwy 50 Connection		\$ 1,026,487.00
Martin Drive		\$ 1,562,800.00
Pad-Site Parking Lots and Utility Connections		\$ 7,600,000.00
Subtotal		\$ 12,578,229.00

<u>Soft Costs</u>		Cost
Engineering		\$ 400,000.00
Market Studies		\$ 20,000.00
Legal Expenses		\$ 15,000.00
Commission Fees		\$ 70,000.00
Interest Payments		\$ 800,000.00
Development Fee / Construction Management		\$ 250,000.00
Subtotal		\$ 1,555,000.00

Totals		
Acquisition Costs		\$ 2,718,318.24
Site Work / Street Work		\$ 12,578,229.00
Soft Costs		\$ 1,555,000.00
Contingency		\$ 500,000.00
Total		\$ 17,351,547.24



Commission Action Report

Title: Resolution No. 3671 Establishing A Public Hearing Date of June 1st for the Whittier Tract RHID

Proposed Agenda Date: April 20, 2022

Presented By: Jim Witt, SPC

BACKGROUND:

This resolution authorizes the required public hearing for the establishment of a Rural Housing Improvement District (RHID). On December 1st, 2021, the Commission adopted a resolution requesting the eligibility of this property as an RHID. On January 4th, 2022, the Kansas Department of Commerce approved the eligibility of this property.

DISCUSSION:

The developer has submitted a development plan which is attached for Commission review. The plan is a requirement of the Kansas statutes for the establishment of an RHID. The plan has been reviewed by staff and meets the required statutory requirements.

FINANCIAL CONSIDERATIONS:

None currently

OTHER CONSIDERATIONS:

None

RECOMMENDED ACTION:

Approve Resolution to establish the hearing date.

ATTACHMENTS:

Resolution
Development Plan

RESOLUTION NO. 3671

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS DETERMINING THAT THE CITY IS CONSIDERING ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH PROPOSED DISTRICT, ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING ON SUCH MATTER, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH PUBLIC HEARING. (*Whittier Tract Project*)

WHEREAS K.S.A. 12-5241 et seq. (the "Act") authorizes any city incorporated in accordance with the laws of the state of Kansas (the "State") with a population of less than 60,000 with a population to designate rural housing incentive districts within such city; and

WHEREAS, the City of Emporia, Kansas (the "City") has an estimated population of approximately 24,139, is in Lyon County, Kansas (the "County"), which has an estimated population of approximately 32,179, and therefore constitutes a city as said term is defined in the Act; and

WHEREAS, prior to such designation the governing body of such city shall conduct a housing needs analysis to determine what, if any, housing needs exist within its community; and

WHEREAS, after conducting such analysis, the governing body of such city may adopt a resolution making certain findings regarding the establishment of a rural housing incentive district and providing the legal description of property to be contained therein.

WHEREAS, after publishing such resolution, the governing body of such city shall send a copy thereof to the Secretary of Commerce of the State (the "Secretary") requesting that the Secretary agree with the finding contained in such resolution; and

WHEREAS, if the Secretary agrees with such findings, such city may proceed with the establishment of a rural housing incentive district within such city and adopt a plan for the development of housing and public facilities in the proposed district; and

WHEREAS, the Governing Body of the City has performed an amended Housing Needs Analysis dated August 2020 (the "Analysis"), a copy of which is on file in the office of the Community Development Coordinator; and

WHEREAS, the Governing Body of the City has heretofore adopted Resolution No. 3658 which made certain findings relating to the need for financial incentives relating to the construction of quality housing within the City, declared it advisable to establish a Rural Housing Incentive District pursuant to the Act and authorized the submission of such Resolution and Housing Needs Analysis to the Kansas Department of Commerce in accordance with the provisions of the Act; and

WHEREAS, the Secretary of the Kansas Department of Commerce, pursuant to a letter dated January 4, 2022, authorized the City to proceed with the establishment of a Rural Housing Incentive District pursuant to the Act (the "District"); and

WHEREAS, the City has caused to be prepared a plan for the development or redevelopment of housing and public facilities in the proposed District in accordance with the provisions of the Act (the "Plan"); and

WHEREAS, the Plan includes:

1. The legal description and map required by subsection (a) of K.S.A. 12-5245;
2. The existing assessed valuation of the real estate in the proposed District listing the land and improvement values separately;
3. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District;
4. A description of the housing and public facilities project or projects that are proposed to be constructed or improved in the proposed District, and the location thereof;
5. A listing of the names, addresses and specific interests in real estate in the proposed District of the developers responsible for development of the housing and public facilities in the proposed District;
6. The contractual assurances, if any, the Governing Body has received from such developer or developers, guaranteeing the financial feasibility of specific housing tax incentive projects in the proposed District;
7. A comprehensive analysis of the feasibility of providing housing tax incentives in the proposed District as provided in the Act, which shows the public benefits derived from such District will exceed the costs and that the income therefore, together with all public and private sources of funding, will be sufficient to pay for the public improvements that may be undertaken in such District; and

WHEREAS, the Governing Body of the City proposes to continue proceedings necessary to create a Rural Housing Incentive District, in accordance with the provisions of the Act, and adopt the Plan, by the calling of a public hearing on such matters.

THEREFORE, BE IT RESOLVED by the Governing Body of the City of Emporia, Kansas as follows:

Section 1. Proposed Rural Housing Incentive District. The Governing Body hereby declares an intent to establish within the City a Rural Housing Incentive District. The District is proposed to be formed within the boundaries of the real estate legally described in *Exhibit A* attached hereto, and shown on the map depicting the existing parcels of land attached hereto as *Exhibit B*. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District and the existing assessed valuation of said real estate, listing the land and improvement values separately, is attached hereto as *Exhibit C*.

Section 2. Proposed Plan. The Governing Body hereby further declares an intent to adopt the Plan in substantially the form presented to the Governing Body this date. A copy of the Plan shall be filed in the office of the City Clerk and be available for public inspection during normal business hours. A description of the housing and public facilities projects that are proposed to be constructed or improved in the proposed District, are as described herein:

Housing Facilities- The housing facilities will be composed of 27 single family housing units.

Public Facilities- Public improvements will include the construction of infrastructure improvements located within or adjacent to the boundaries of the District, including water, sanitary sewer, and electric improvements. Infrastructure improvements will be constructed concurrently with the project.

Section 3. Public Hearing. Notice is hereby given that a public hearing will be held by the Governing Body of the City to consider the establishment of the District and adoption of the Plan on June 1, 2022 in the City Commission Meeting Room of the Civic Auditorium, 515 Mechanic St., Emporia, Kansas; the public hearing is to commence at 11:00 a.m. or as soon thereafter as the Governing Body can hear the matter. At the public hearing the Governing Body will receive public comment on such matters, and may, after the conclusion of such public hearing, consider the findings necessary for establishment of the District and adoption of the Plan, all pursuant to the Act.

Section 4. Notice of the Public Hearing. The City Clerk is hereby authorized and directed to provide for notice of the public hearing by taking the following actions.

- a. A certified copy of this resolution shall be delivered to:
 - (i) The Board of County Commissioners of Lyon County, Kansas.
 - (ii) The Board of Education of U.S.D. No. 253; and
 - (iii) The Emporia/Lyon County Metropolitan Area Planning Commission
- b. This Resolution, specifically including Exhibits A thru C attached hereto, shall be published at least once in the official newspaper of the City not less than one week or more than two weeks preceding the date of the public hearing.

Section 5. Further Action. The Mayor, City Clerk, city officials and employees, including the City Attorney, are hereby further authorized, and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution.

Section 6. Effective Date: This Resolution shall take effect after its adoption by the Governing Body

Adopted by the Governing this ____ day of _____, 2022

Becky Smith, Mayor

Kerry Sull, City Clerk

Attachment A

Legal Description

LEGAL DESCRIPTION AND MAP OF THE DISTRICT

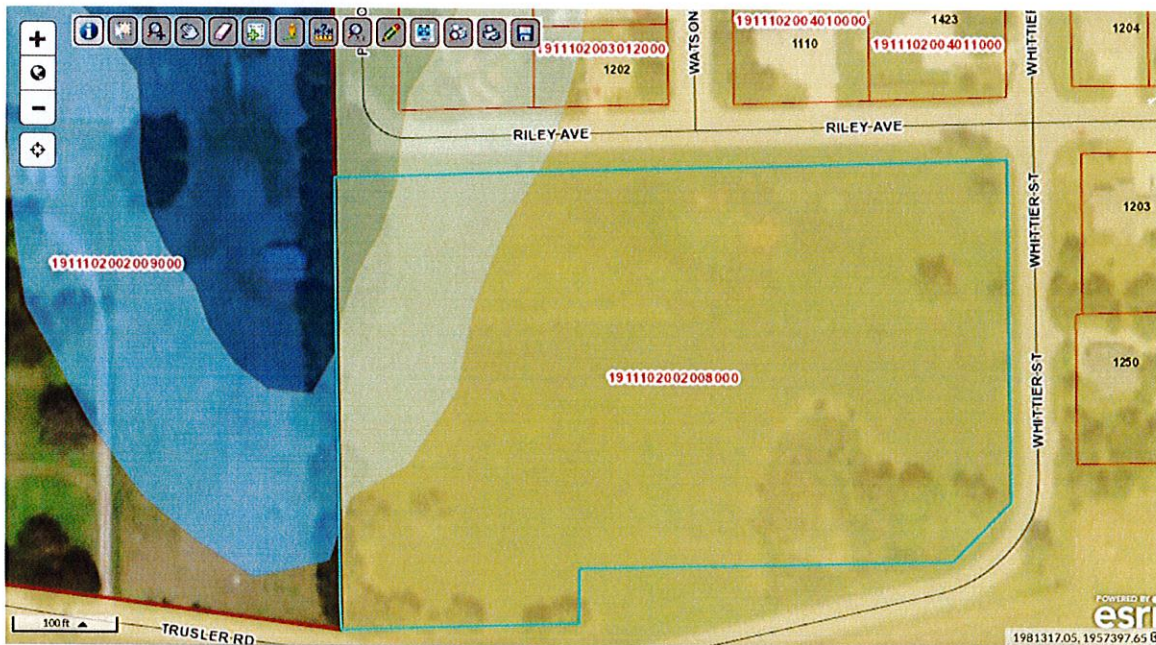
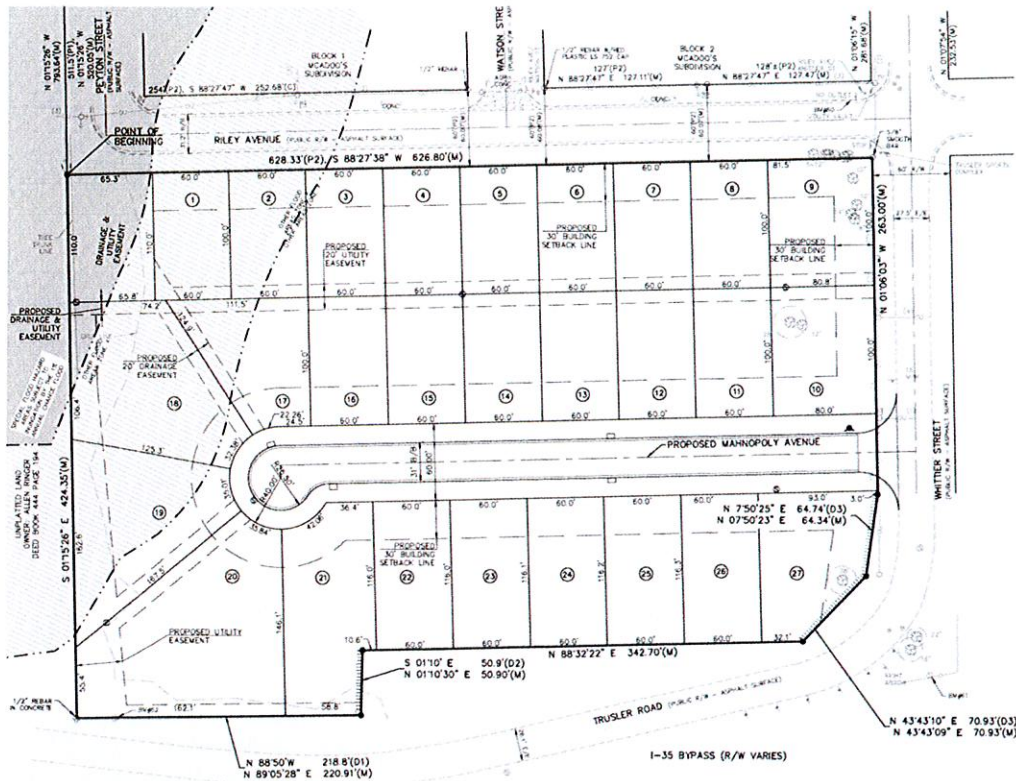
SURVEYED PARCEL: THAT PORTION OF LOTS 5 AND 7 GOODRICH'S SUBDIVISION, LOCATED IN THE CITY THE CITY OF EMPORIA, COUNTY OF LYON, STATE OF KANSAS, RECORDED IN THE REGISTER OF DEEDS OFFICE IN PLAT BOOK PAGE 42, BEING DESCRIBED BY DAVID E. DUNDON, PS 1421 ON MARCH 30, 2022 AS FOLLOWS:

ALL BEARINGS HEREIN ARE BASED ON AN ASSUMED BEARING OF S 01°03'38" E ON THE EAST LINE OF THE EAST 1/2 OF THE NORTHWEST QUARTER, SECTION 11, TOWNSHIP 19 SOUTH, RANGE 11 EAST.

COMMENCING AT THE POINT OF BEGINNING BEING THE SOUTHWEST CORNER OF MCADOO'S SUBDIVISION, RECORDED IN THE REGISTER OF DEEDS OFFICE AS PLAT BOOK 2 PAGE 72; THENCE ON THE WEST LINE OF SAID LOTS 5 AND 7; THENCE ON THE WEST LINE OF SAID LOTS 5 AND 7, S 01°15'26" E 424.35 FEET TO THE NORTHEAST CORNER OF REAL PROPERTY DESCRIBED IN DISTRICT COURT CASE NO. 25582, TRACT NO. 41, LYON COUNTY PROJ. NO. 35-56-I 35-2(1) 127 (ANNA C. GOOD MARCH 18, 1964), BEING THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 35 HIGHWAY; THENCE CONTINUING ON SAID NORTHERLY RIGHT-OF-WAY LINE, N 89°05'28" E 220.91 FEET TO THE WEST LINE OF REAL PROPERTY DESCRIBED PER LYON COUNTY PROJ. NO. 35-56-I 35-2(1) 127. (EMILY CHARLENE BRIM MARCH 20, 1964); THENCE CONTINUING ON SAID NORTHERLY RIGHT-OF-WAY LINE, N 01°10'30" E 50.90 FEET TO THE NORTHWEST CORNER OF SAID REAL PROPERTY; THENCE CONTINUING ON SAID NORTHERLY RIGHT-OF-WAY LINE, N 88°32'22" E 342.70 FEET TO THE SOUTHWEST CORNER OF REAL PROPERTY DESCRIBED IN DISTRICT COURT CASE NO. 25582, TRACT NO. 46, LYON COUNTY PROJ. NO. 35-56-I 35-2(1) 127 (JUANITA PEARL BRIM FEBRUARY 20, 1964); THENCE CONTINUING ON SAID NORTHERLY RIGHT-OF-WAY LINE, N 43°43'09" E 70.93 FEET THENCE CONTINUING ON SAID NORTHERLY RIGHT-OF-WAY LINE, N 07°50'23" E 64.34 FEET TO THE INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE WITH THE WEST RIGHT-OF-WAY LINE OF WHITTIER STREET; THENCE ON SAID WEST RIGHT-OF-WAY LINE, N 01°06'03" W 263.00 FEET TO THE INTERSECTION OF SAID WEST RIGHT-OF-WAY LINE WITH THE SOUTH RIGHT-OF-WAY LINE OF RILEY AVENUE; THENCE ON SAID SOUTH RIGHT-OF-WAY LINE OF RILEY AVENUE, S 88°27'38" W 626.80 FEET TO THE POINT OF BEGINNING;

CONTAINS 244,508 SQUARE FEET, 5.6 ACRES, MORE OR LESS. END OF DESCRIPTION.

Attachment B



Parcel ID	1911102002008000	Alternate ID	1911102003012000	Owner Address	CHR. NEW COVENANT
Sec/Twp/Rng	11-19S-11E	Class	V - Vacant		PO BOX 1421
Property Address	WHITTIER	Acreage	5.5		EMPORIA, KS 66801-1421
	Emporia				
District	005				
Brief Tax Description	GOODRICH SUB DIV, S11, T19S, R11E, ACRES 5.5, PT LITS 5 & 7 BEG SW COR RILEY AVE & WHITTIER ST S320 SW74 W355 S50.9 W220.5 N424.4 E628.33 TO POB				
	(Note: Not to be used on legal documents)				

Attachment C

Owner

Church of the New Covenant
PO Box 1421
Emporia, Kansas 66801- 1421

ASSESSED VALUATION OF TRACT 2021 \$11,272

**DEVELOPMENT PLAN
OF THE CITY OF EMPORIA, KANSAS
MAHTROPOLIS RURAL HOUSING INCENTIVE DISTRICT**

APRIL 2022

INTRODUCTION

The City Commission (the “Governing Body”) of the City Emporia, Kansas (the “City”) has previously adopted Resolution No. 3658 (the “Preliminary Resolution”), which found and determined that:

1. There is a shortage of quality housing of various price ranges in the City despite the best efforts of public and private housing developers.
2. The shortage of quality housing can be expected to persist and that additional financial incentives are necessary in order to encourage the private sector to construct or renovate housing in the City.
3. The shortage of quality housing is a substantial deterrent to the future economic growth and development of the City.
4. The future economic wellbeing of the City depends on the Governing Body providing additional incentives for the construction of/or renovation of quality housing in the City.

Based on these findings and determinations, the Governing Body proposed the establishment of Rural Housing Incentive Districts within the City pursuant to K.S.A. 12-5241 *et seq.* (the “Act”).

Following the adoption of the Preliminary Resolution, a certified copy was submitted to the Secretary of Commerce for approval of the establishment of the Rural Housing Incentive District in the City as required by K.S.A. 12-5244(c). On January 4, 2022, the Secretary of Commerce provided written confirmation approving the establishment of the Rural Housing Incentive District within the City.

DEVELOPMENT PLAN ADOPTION

K.S.A. 12-5245 states that once a city receives approval from the Secretary of Commerce for the development of a rural housing incentive district, the governing body must adopt a plan for the development of housing and public facilities within the proposed district.

DEVELOPMENT PLAN

As a result of the shortage of quality housing, the City proposes this development plan (the “Development Plan”) to assist in the development of quality housing within the City.

(1) ***Legal Description and Map of the District.*** The legal description of Mahtropolis Rural Housing Incentive District (the “District”) and a map of the District are attached as ***Exhibit A*** to this Development Plan.

(2) ***Existing Assessed Valuation of the District.*** The assessed valuation of all real estate within the District for 2021 is \$11,272.00.

(3) ***Owners of Record.*** The names and addresses of the owners of record for the real estate within the District are:

Church of the New Covenant
2300 E 6th Ave.
PO Box 1421
Emporia, KS 66801

(4) ***Description of Housing and Public Facilities Projects.*** The housing and public facilities projects that are proposed to be constructed include the following:

Housing Facilities

The housing facilities will include all infrastructure needed to develop approximately twenty-seven (27) single family homes consisting primarily of 3-4 bedroom, 2-3 bathroom, 2-3 car garage residences to be determined by developer and/or individuals purchasing each lot.

Public Facilities

Public facilities and public improvements will include construction of Infrastructure Improvements located within the boundaries of the District, and all related infrastructure, including Public Improvements which will include construction of infrastructure improvements located within the boundaries of the District, including but not limited to parking, water, sanitary sewer, and electric improvements as outlined in the Development Plan and Agreement. Infrastructure improvements may be constructed prior to or concurrently with the project.

A copy of the Site Plan is attached as ***Exhibit B*** to this Development Plan.

(5) ***Developer's Information.*** The names, addresses and specific interests in the real estate in the District of the developers responsible for development of the housing and public facilities is:

Owner of Real Property:

Church of the New Covenant
2300 E 6th Ave.
PO Box 1421
Emporia, KS 66801

Developer:

Speculative Holdings, LLC
504 SW 2nd St.
Topeka, KS 66603

(6) ***Contractual Assurances.*** Subsequent to the approval of the Development Plan, the Governing Body anticipates entering into a Development Agreement (the “Development Agreement”), with Speculative Holdings, LLC, a Kansas limited liability company engaged in the business of development with its principal office located at 504 SW 2nd St., Topeka, KS 66603 (the “Developer”). The Development Agreement, as supplemented and amended, will include the project construction schedule, a description of projects to be constructed, financial obligations of the developer, and financial and administrative support from the City. The Development Agreement will include contractual assurances, if any, the Governing Body has received from the Developer guaranteeing the financial feasibility of specific housing tax incentive projects in the proposed district.

(7) ***Comprehensive Analysis of Feasibility.*** A comprehensive analysis was conducted to determine whether the public benefits derived from the District will exceed the costs and that the income from the District, together with other sources of revenue, would be sufficient to pay for the public improvements to be undertaken in the District. A copy of the analysis is attached as ***Exhibit C*** to this Development Plan. The analysis estimates the property tax revenues that will be generated from the District, less existing property taxes, to determine the revenue stream available to support reimbursement to the Developer for all or a portion of the costs of financing the public infrastructure. The estimates indicate that the revenue realized from the project would be adequate to pay the eligible costs.

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EXHIBIT A
DEVELOPMENT PLAN
MAHTROPOLIS RURAL HOUSING INCENTIVE DISTRICT

LEGAL DESCRIPTION AND MAP OF THE DISTRICT

SURVEYED PARCEL: THAT PORTION OF LOTS 5 AND 7 GOODRICH'S SUBDIVISION, LOCATED IN THE CITY THE CITY OF EMPORIA, COUNTY OF LYON, STATE OF KANSAS, RECORDED IN THE REGISTER OF DEEDS OFFICE IN PLAT BOOK PAGE 42, BEING DESCRIBED BY DAVID E. DUNDON, PS 1421 ON MARCH 30, 2022 AS FOLLOWS:

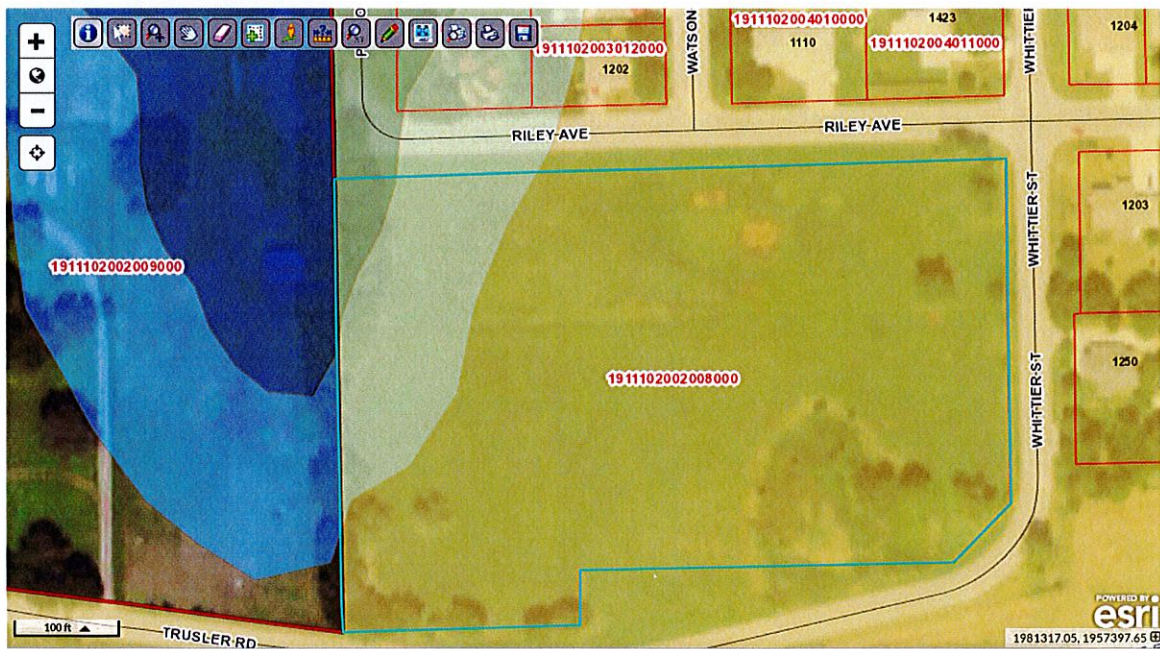
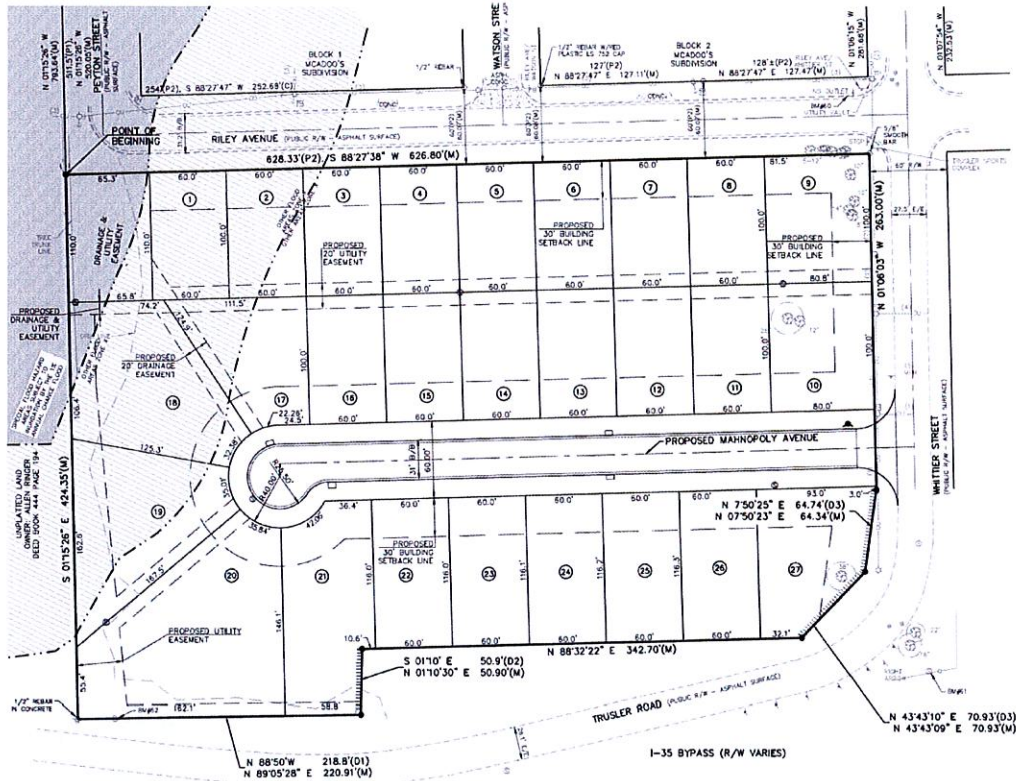
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COMMENCING AT THE POINT OF BEGINNING BEING THE SOUTHWEST CORNER OF MCADOO'S SUBDIVISION, RECORDED IN THE REGISTER OF DEEDS OFFICE AS PLAT BOOK 2 PAGE 72; THENCE ON THE WEST LINE OF SAID LOTS 5 AND 7; THENCE ON THE WEST LINE OF SAID LOTS 5 AND 7, S 01°15'26" E 424.35 FEET TO THE NORTHEAST CORNER OF REAL PROPERTY DESCRIBED IN DISTRICT COURT CASE NO. 25582, TRACT NO. 41, LYON COUNTY PROJ. NO. 35-56-I 35-2(1) 127 (ANNA C. GOOD MARCH 18, 1964), BEING THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 35 HIGHWAY; THENCE CONTINUING ON SAID NORTHERLY RIGHT-OF-WAY LINE, N 89°05'28" E 220.91 FEET TO THE WEST LINE OF REAL PROPERTY DESCRIBED PER LYON COUNTY PROJ. NO. 35-56-I 35-2(1) 127. (EMILY CHARLENE BRIM MARCH 20, 1964); THENCE CONTINUING ON SAID NORTHERLY RIGHT-OF-WAY LINE, N 01°10'30" E 50.90 FEET TO THE NORTHWEST CORNER OF SAID REAL PROPERTY; THENCE CONTINUING ON SAID NORTHERLY RIGHT-OF-WAY LINE, N 88°32'22" E 342.70 FEET TO THE SOUTHWEST CORNER OF REAL PROPERTY DESCRIBED IN DISTRICT COURT CASE NO. 25582, TRACT NO. 46, LYON COUNTY PROJ. NO. 35-56-I 35-2(1) 127 (JUANITA PEARL BRIM FEBRUARY 20, 1964); THENCE CONTINUING ON SAID NORTHERLY RIGHT-OF-WAY LINE, N 43°43'09" E 70.93 FEET THENCE CONTINUING ON SAID NORTHERLY RIGHT-OF-WAY LINE, N 07°50'23" E 64.34 FEET TO THE INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE WITH THE WEST RIGHT-OF-WAY LINE OF WHITTIER STREET; THENCE ON SAID WEST RIGHT-OF-WAY LINE, N 01°06'03" W 263.00 FEET TO THE INTERSECTION OF SAID WEST RIGHT-OF-WAY LINE WITH THE SOUTH RIGHT-OF-WAY LINE OF RILEY AVENUE; THENCE ON SAID SOUTH RIGHT-OF-WAY LINE OF RILEY AVENUE, S 88°27'38" W 626.80 FEET TO THE POINT OF BEGINNING;

CONTAINS 244,508 SQUARE FEET, 5.6 ACRES, MORE OR LESS. END OF DESCRIPTION.

EXHIBIT B DEVELOPMENT PLAN MAHTROPOLIS RURAL HOUSING INCENTIVE DISTRICT

SITE PLAN



Parcel ID	1911102002008000	Alternate ID	n/a	Owner Address	CHR, NEW COVENANT
Sec/Twp/Rng	11-19S-11E	Class	V - Vacant		PO BOX 1421
Property Address	WHITTIER	Acree	5.5		EMPORIA, KS 66801-1421
District	Emporia				
Brief Tax Description	005 GOODRICH SUB DIV. S11. T19S. R11E. ACRES 5.5, PT LOTS 5 & 7 BEG SW COR RILEY AVE & WHITTIER ST S320 SW74 W355 S50.9 W220.5 N424.4 E628.33 TO POB (Note: Not to be used on legal documents)				

EXHIBIT C
DEVELOPMENT PLAN
MAHTROPOLIS RURAL HOUSING INCENTIVE DISTRICT
COMPREHENSIVE FINANCIAL FEASIBILITY ANALYSIS

FEASIBILITY STUDY WHITTIER TRUSLER ADDITION SINGLE FAMILY - EMPORIA

	Assessed Value	Property Class	Mill Levy	Number of Lots	Tax Amount
All Lots	\$ 11,272	11.5%	0.160512	1	\$ 1,809
					\$ -
				-	\$ -
Total Current					\$ 1,809.29

	Estimated Value of Lots	Estimated Value of Buildings to be Constructed	Property Class	Mill Levy	Est. Property Tax	Number of Lots	Total Value
All Lots	\$ 30,000	\$ 190,000	11.5%	0.1390	\$ 3,517	14	\$ 49,238
	\$ 30,000	\$ 220,000	11.5%	0.1390	\$ 3,997	13	\$ 51,956
	\$ -	\$ -	11.5%	0.1390	\$ -	0	\$ -

Grand Total Less Incentive Percent	\$ 101,194
Tax Increment	\$ 99,384
25 Year Rebate Total, 1% Growth	\$ 2,309,814
Revenue Stream Net Present Value	\$ 1,146,790
Total Tax Less State Mills	\$ 101,194
Incentive Percent	100%
*The numbers included are estimates based on 2021 Assessments Mill Levy	0.160512

*The Mill Levy is reduced by 21.5 Mills (State & State School Funding)



Commission Action Report

Title: Request to Exchange Federal Funds Agreement

Proposed Agenda Date: April 20, 2022

Presented By: James Ubert, City Engineer

BACKGROUND:

The City entered into an agreement with the Kansas Department of Transportation (KDOT) that allows us, the Local Public Agency (LPA), to trade all or a portion of our federal fund allocations in the upcoming 2022 year with KDOT in exchange for state transportation dollars. The exchange rate for the 2022 program is \$0.90 of state funds for every \$1.00 of local federal obligation authority exchanged.

DISCUSSION:

The Federal Fund Exchange is a reimbursement program with KDOT. The monies received in the program each year are reimbursement from qualified paving projects from the previous year(s). Therefore, we must continue to spend the monies received to be eligible for future reimbursement.

FINANCIAL CONSIDERATIONS:

The federal aid/Federal Fund Exchange program monies can no longer be banked at KDOT and must be captured each year by the LPA.

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Approve the Request to Exchange Federal Funds under the Federal-Aid Fund Exchange Master Agreement for the year 2022 and authorize the Mayor or City Manager to sign the 2022 attachment to the Master Agreement.

ATTACHMENTS:

Request to Exchange Federal Funds agreement.

KDOT BLP Letter announcing the amount of funding available.

Dwight D. Eisenhower State Office Building
700 S.W. Harrison Street
Topeka, KS 66603-3745
Julie L. Lorenz, Secretary
Tod L. Salfrank, Chief



Phone: 785-296-3861
Fax: 785-296-6946
kdot#publicinfo@ks.gov
<http://www.ksdot.org>
Laura Kelly, Governor

BLP Memo 22-03b

MEMO TO: Board of City Commissioners
City of Emporia

DATE: 4/8/2022

SUBJECT: Federal funds distribution/Federal Fund Exchange 2022

I am pleased to announce that the Kansas Department of Transportation (KDOT) is making federal funds, in the amount of \$340,795.72 available to the City of Emporia for the federal fiscal year 2022 (October 1, 2021 through September 30, 2022). These funds may be used to develop a federal-aid project following the procedures outlined in the KDOT LPA Project Development Manual, or you may exchange them with KDOT under the Federal Fund Exchange Program.

The Federal Fund Exchange program is a voluntary program that allows a local public agency (LPA) to trade all or a portion of its federal fund allocations in a specific federal fiscal year with KDOT in exchange for state transportation dollars. The exchange rate for the 2022 program is \$0.90 of state funds for every \$1.00 of local federal obligation authority exchanged. State funds will be paid on a reimbursement basis as the LPA incurs costs for transportation related projects.

The FFE Program Guidelines and required documents are found at <http://www.ksdot.org/burlocalproj/default.asp>. For your convenience, the amount of funds available to exchange for federal fiscal year 2022 have been entered into the attached Request to Exchange Federal Funds form. **Please remember that the Request to Exchange Federal Funds and the Request for Reimbursement requesting the entire amount of funds available for 2022 must be returned by September 15, 2022.**

We appreciate your participation in the federal-aid/Federal Fund Exchange program for local public agencies. Please contact Kimberly Marotta at 785-368-7458 or KDOT.Lpeplans@ks.gov if you have any questions regarding this program or if you need assistance in completing the Request to Exchange Federal Funds form.

Sincerely,

A handwritten signature in black ink, appearing to read "Tod L. Salfrank".

Tod L. Salfrank, Chief
Bureau of Local Projects

cc: Calvin Reed, P.E., Director, Division of Engineering and Design
Michael J. Moriarty, Chief, Bureau of Transportation Planning



REQUEST TO EXCHANGE FEDERAL FUNDS
under the Federal-Aid Fund Exchange Master Agreement

City of Emporia

Federal Funds to Be Exchanged: \$340,795.72

Exchange Rate for 2022: \$0.90 State Funds/\$1.00 Federal Funds

Available Funds After Exchange: \$306,716.15

The Secretary of Transportation is hereby requested to make available to the city/county State Funds in exchange for the city's/county's allotment of Federal Funds in the amount stated above. The Exchange will be made under the Terms and Conditions as set forth in the city/county's Federal Fund Exchange Master Agreement previously executed between the city/county and the Secretary. This request shall be attached to and become a part of the city/county's Federal Funds Exchange Agreement.

Contact Person: _____ Title: _____

Address: _____

Phone: _____ Email: _____

*Signature** *Date*

Typed or Printed Name

Title

**The representative signing this request must be authorized by law to bind the city/county to an agreement.*



Commission Action Report

Title: Consider Awarding the Bid for the 2022 Hazardous Sidewalk Program.

Proposed Agenda Date: April 20, 2022

Presented By: James Ubert, City Engineer

BACKGROUND:

At 3:00 pm, Tuesday, April 12, 2022, the City Engineer's office publicly opened bids for the 2022 Hazardous Sidewalk Project. The bid received is to be used for setting unit prices for each individual project line item. Bid totals were achieved by multiplying these unit prices with our initial estimated quantities from the list of site work projected for the 2022 Hazardous Sidewalk program. The following are the totals for the bid received and the Engineer's Estimate.

CONTRACTOR	BASE BID
S.R. Coffman Construction, Inc.	\$53,315.00
Engineer's Estimate	\$52,375.00

DISCUSSION:

While the base bid exceeded the Engineer's Estimate by 1.8%, staff recommends awarding the project to the 1 bidder (in light of the current inflation in the economy).

FINANCIAL CONSIDERATIONS:

The 2022 Hazardous Sidewalk Program is budgeted at \$100,000.00. Locations and quantities will be added throughout the year as property owners sign up for participation in the program. The program also allows the homeowner the option to hire their own bonded contractor to replace their sidewalk at these set unit prices.

OTHER CONSIDERATIONS: N/A

RECOMMENDED ACTION:

Staff recommends awarding the contract to S.R. Coffman Construction, Inc. & authorize the Mayor to sign the agreement.

ATTACHMENTS: Bid Tabulation

CITY OF EMPORIA, KS BID TABULATION FOR 2022 HAZARDOUS SIDEWALK PROJECT						
				S.R. Coffman Construction, Inc.		
				CITY ENGINEER'S ESTIMATE		
				Unit	Unit	Total
Quantity	Units	Description				
Base Bid						
50	S.F.	4" SIDEWALK (0-100 SF)	\$30.00	\$1,500.00	\$10.00	\$500.00
1,800	S.F.	4" SIDEWALK (101-250 SF)	\$8.35	\$15,030.00	\$8.50	\$15,300.00
2,000	S.F.	4" SIDEWALK (251+ SF)	\$8.10	\$16,200.00	\$8.00	\$16,000.00
400	S.Y.	6" SIDEWALK	\$8.55	\$3,420.00	\$8.25	\$3,300.00
250	S.F.	6" REINF. SIDEWALK	\$10.16	\$2,540.00	\$9.50	\$2,375.00
50	Hr.	MISC. SITE WORK	\$65.00	\$3,250.00	\$50.00	\$2,500.00
60	L.F.	CURB & GUTTER R&R	\$50.00	\$3,000.00	\$60.00	\$3,600.00
20	S.Y.	HANDICAP RAMP (WARNING PANEL)	\$310.00	\$6,200.00	\$330.00	\$6,600.00
5	S.Y.	HANDICAP RAMP (NO PANEL)	\$275.00	\$1,375.00	\$250.00	\$1,250.00
100	L.F.	SAW CUTTING	\$8.00	\$800.00	\$9.50	\$950.00
TOTAL AMOUNT OF BASE BID:				\$53,315.00		\$52,375.00

Bid Date and Time:
3:00pm, 2/22/2022
at City Engineering



Commission Action Report

Title: Consider Awarding the Bid for the 2022 Street Rehab Project (PV2203).

Proposed Agenda Date: April 20, 2022

Presented By: James Ubert, City Engineer

BACKGROUND:

At 2:00 pm, Tuesday, April 12, 2022, the City Engineer's office publicly opened bids for the 2022 Street Rehab Project (PV2203). The City had 3 bidders out of 3 plan holders submit a bid. The following are the totals for the bid received and the Engineer's Estimate for the Base Bid and Add Alternate.

	APAC-Kansas Inc., Shears Division	Killough Construction, Inc.	Bettis Asphalt & Construction, Inc.	Engineer's Estimate
Base Bid	\$802,009.33	\$881,619.15	\$886,166.51	\$606,403.90
Add Alternate	<u>\$165,825.79</u>	<u>\$165,621.70</u>	<u>\$168,434.39</u>	<u>\$102,475.70</u>
TOTALS	\$967,835.12	\$1,047,240.85	\$1,054,600.90	\$708,879.60

DISCUSSION:

While the base bid exceeded the Engineer's Estimate by 32.3%, the staff recommends awarding the project to the low bidder (due to the current inflationary conditions in the construction economy).

FINANCIAL CONSIDERATIONS:

The 2022 Street Rehab Project was originally budgeted at \$600,000. City Engineering along with the City Treasurer and City Manager's office have revised the budget to \$850,000 to cover the project. The project is funded out of the Multi-Year Fund.

OTHER CONSIDERATIONS: N/A

RECOMMENDED ACTION:

Staff recommends awarding the contract to APAC-Kansas Inc., Shears Division for the Base Bid (ONLY) in the amount of \$802,009.33 & authorize the Mayor to sign the agreement.

ATTACHMENTS: Bid Tabulation

CITY OF EMPORIA, KS									
BID TABULATION									
FOR 2022 STREET REHABILITATION PROJECT NO. PV2203 (VARIOUS LOCATIONS AROUND CITY)									
		Location: City of Emporia		Date: 2:00 pm, April 12, 2022					
		APAC-Kansas Inc., Shears Division		Killough Construction, Inc.		Bettis Asphalt & Construction, Inc.		CITY ENGINEER'S	
Quantity	Units	Description	Unit	Total	Unit	Total	Unit	Total	ESTIMATE
1	L.S.	Mobilization	\$48,492.58	\$48,492.58	\$73,625.00	\$73,625.00	\$85,000.00	\$85,000.00	\$20,000.00
33.911	S.Y.	Asphalt Milling	\$2.47	\$83,760.17	\$2.75	\$93,255.25	\$3.81	\$129,200.91	\$2.05
3,179	S.Y.	Asphalt Milling (5" Avg. Depth)	\$3.30	\$10,480.70	\$6.60	\$20,981.40	\$6.35	\$20,186.65	\$4.05
454	S.Y.	Concrete Edge Milling (1.5" Avg. Depth)	\$12.41	\$5,634.14	\$3.95	\$1,793.30	\$14.69	\$6,689.26	\$4.10
4,298	TONS	HMA (Commercial Grade) (Class A)	\$104.82	\$450,516.36	\$122.50	\$526,505.00	\$102.74	\$441,576.52	\$78.00
3,179	S.Y.	Surface Grading and Compaction	\$4.88	\$15,513.52	\$4.00	\$12,716.00	\$2.25	\$7,152.75	\$16.00
220	S.Y.	Combined Material (AB-3) (6" Compacted)	\$11.94	\$2,626.80	\$19.10	\$4,202.00	\$22.42	\$4,932.40	\$8.00
162	L.F.	Crack Filling (>1/2" to <2")	\$60.92	\$9,869.04	\$11.85	\$1,919.70	\$17.39	\$2,817.18	\$5.00
162	L.F.	Stress Relief Interlay Fabric (24" Wide)	\$7.25	\$1,174.50	\$4.75	\$769.50	\$55.50	\$8,991.00	\$4.00
964	L.F.	Curb and Gutter (2-6" Combined) (AE) (Remove & Replace)	\$58.12	\$56,027.68	\$49.50	\$47,718.00	\$53.03	\$51,120.92	\$40.00
23	S.Y.	Concrete Pavement (6" Plain) (AE) (Remove & Replace)	\$109.09	\$2,509.07	\$96.00	\$2,208.00	\$123.27	\$2,835.21	
280	S.Y.	Concrete Pavement (6" Plain) (AE) (Remove & Replace)	\$103.84	\$29,075.20	\$87.25	\$24,430.00	\$105.20	\$29,456.00	\$75.00
128	S.Y.	Concrete Sidewalk (4" Plain) (AE) (Remove & Replace)	\$93.95	\$12,025.60	\$78.25	\$10,016.00	\$91.56	\$11,719.68	\$68.00
99	S.Y.	ADA Sidewalk Ramp	\$389.29	\$38,539.71	\$350.00	\$34,650.00	\$383.97	\$38,013.03	\$250.00
13	S.Y.	Concrete Removal	\$38.46	\$499.98	\$50.00	\$650.00	\$125.00	\$1,625.00	\$25.00
3	Ea.	Utility Adjustment (Valve Box Riser) (Valve Box) (Water)	\$98.39	\$295.17	\$250.00	\$750.00	\$385.00	\$1,155.00	\$100.00
7	Ea.	Utility Adjustment (Concrete (Valve Box) (Water)	\$663.85	\$4,646.95	\$700.00	\$4,900.00	\$1,275.00	\$8,925.00	\$600.00
9	Ea.	Utility Adjustment (Manhole Riser) (Manhole) (Sewer)	\$209.93	\$1,889.37	\$300.00	\$2,700.00	\$595.00	\$5,355.00	\$225.00
1	Ea.	Utility Adjustment (Concrete) (Manhole) (Sewer)	\$1,077.30	\$1,077.30	\$1,000.00	\$1,000.00	\$2,000.00	\$2,000.00	\$1,000.00
13	Ea.	Inlet Sediment Barrier	\$177.91	\$2,312.83	\$100.00	\$1,300.00	\$275.00	\$3,575.00	\$100.00
1	C.Y.	Sediment Removal (Set Price)	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00
1	L.S.	Temp Seed and Mulch	\$794.15	\$794.15	\$1,000.00	\$1,000.00	\$5,000.00	\$5,000.00	\$100.00
1	L.S.	Permanent Seeding, Fertilizer and Mulch	\$9,102.10	\$9,102.10	\$2,000.00	\$2,000.00	\$5,000.00	\$5,000.00	\$500.00
1	L.S.	Traffic Control	\$15,076.41	\$15,076.41	\$12,470.00	\$12,470.00	\$13,800.00	\$13,800.00	\$10,000.00
1	Hr.	Flagger (Set Price)	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00
TOTAL AMOUNT OF BASE BID:			\$802,009.33	\$881,619.15	\$886,166.51				

CITY OF EMPORIA, KS									
BID TABULATION									
FOR 2022 STREET REHABILITATION PROJECT NO. PV2203 (VARIOUS LOCATIONS AROUND CITY)									
			Location:			City of Emporia			
			Date:			2:00 pm, April 12, 2022			
			Bettis Asphalt & Construction, Inc.			CITY ENGINEER'S			
			ESTIMATE						
Quantity	Units	Description	APAC-Kansas Inc., Shears Division		Killough Construction, Inc.		Bettis Asphalt & Construction, Inc.		
			Unit	Total	Unit	Total	Unit	Total	Total
Add Alternate No. 1									
1	L.S.	Mobilization							
5,794	S.Y.	Asphalt milling (1.5" Avg. Depth)	\$8,734.92	\$8,734.92	\$19,405.00	\$19,405.00	\$14,300.00	\$14,300.00	\$2,500.00
524	TONS	HMA (Commercial Grade) (Class A) (1.5" Avg. Depth)	\$2.47	\$14,311.18	\$3.30	\$19,120.20	\$3.71	\$21,495.74	\$2.05
120	L.F.	Crack Filling (>1/2" to <2")	\$105.58	\$55,323.92	\$122.50	\$64,190.00	\$102.74	\$53,835.76	\$78.00
120	L.F.	Stress Relief Interlay Fabric (24" Wide)	\$60.92	\$7,310.40	\$11.85	\$1,422.00	\$21.45	\$2,574.00	\$5.00
810	L.F.	Curb & Gutter (2'-6" Combined) (AE) (Remove & Replace)	\$6.64	\$796.80	\$4.75	\$570.00	\$55.50	\$6,660.00	\$4.00
103	S.Y.	Concrete Pavement (6" Plain) (AE) (Remove & Replace)	\$58.12	\$47,077.20	\$49.50	\$40,095.00	\$53.18	\$43,075.80	\$40.00
2	S.Y.	Concrete Pavement (4" Plain) (AE) (Remove & Replace)	\$103.84	\$10,695.52	\$96.00	\$9,888.00	\$115.66	\$11,912.98	\$75.00
17	S.Y.	ADA Sidewalk Ramp	\$93.88	\$187.76	\$78.25	\$156.50	\$78.25	\$156.50	\$68.00
4	Ea.	Inlet Sediment Barrier	\$389.30	\$6,618.10	\$350.00	\$5,950.00	\$399.33	\$6,788.61	\$250.00
1	C.Y.	Sediment Removal (Set Price)	\$150.46	\$601.84	\$100.00	\$400.00	\$275.00	\$1,100.00	\$100.00
1	L.S.	Permanent Seeding, Fertilizer & Mulch	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00
1	L.S.	Traffic Control	\$5,342.27	\$5,342.27	\$1,000.00	\$1,000.00	\$2,500.00	\$2,500.00	\$200.00
TOTAL OF ADD ALTERNATE NO. 1:			\$8,790.88	\$8,790.88	\$3,390.00	\$3,390.00	\$4,000.00	\$4,000.00	\$1,000.00
			\$165,825.79	\$165,621.70		\$168,434.39		\$102,475.70	
TOTAL OF BASE BID & ADD ALTERNATE:			\$967,835.12	\$1,047,240.85		\$1,054,600.90		\$708,879.60	



Commission Action Report

Title: March Financials & Building Permits
Proposed Agenda Date: April 20, 2022
Presented By: Trey Cocking, City Manager

BACKGROUND:

This is a time for general information regarding the month of March 2022 to the community.

DISCUSSION:

The following is general information for the month of March 2022 for the community:

1) Monthly Local Retail Sales Tax Receipts Update

	2021	2022	
	\$421,533.71	\$458,149.13	Increase of \$36,615.42 for the month, and
			Overall increase of 14.39% from year 2021
YTD	\$ 1,277,929.20	\$ 1,461,762.19	

2) City Share from County Tax

	2021	2022	
	\$214,110.73	\$236,477.70	Increase of \$22,366.97 for the month, and
			Overall increase of 16.93% from year 2021
YTD	\$ 644,857.43	\$ 754,057.95	

3) **Building Permits issued from 3/1/2022 to 3/31/2022 for new construction, remodeling/repairs, and demolition.**

Total number of building permits issued through Code Services:	167
Total of valuations associated with those building permits:	\$ 5,187,934.00
Total number of dollars collected for Building Permit Fees:	\$ 29,059.88

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

Flint Hills Mall CID for March 2022	\$ 13,132.63
Year to Date Total	\$ 49,199.29

FINANCIAL CONSIDERATIONS:

N/A

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

N/A

ATTACHMENTS:

N/A



Consent Agenda

Proposed Agenda Date: April 20, 2022
Presented By: Trey Cocking, City Manager

ITEMS:

1. Approve the minutes of the April 6, 2022, City Commission Meeting.
2. Ratification and Approval of the Payroll Ordinances for the periods ending April 8, 2022.
3. Consider Purchase of a Bi-Directional Amplifier(BDA).
4. Approve Agreement with BG Consultants for Highland Street Construction Plans and Construction Engineering Services.
5. Approve Agreement with BG Consultants for Flint Hills Crossing Platting, Construction Plans, & Traffic Impact Study for Phase 1.
6. Approve Jones Aquatic Center Agreement.

RECOMMENDED ACTION:

Approve the Consent Agenda as presented.

COMMISSION MEETING

1:30 P.M.

APRIL 6, 2022

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, April 6, 2022, with Mayor Smith presiding and Commissioners Brinkman, Giefer, Gilligan and Sauder present. Also present were City Manager Cocking, Assistant City Manager Massey, City Clerk Sull and City Attorney Montgomery.

**CITY COMMISSION
(Public Comment)**

This is the time for the public to make comments.

The public is invited to make comments at this time. Please limit comments to two (2) minutes each. Hate speech, profanity, and defamation are not allowed. Please state your name and address proper to making comments.

Ashley Davis, representing SOS and Bev Long, representing Kansas Children's Service League, were in attendance to accept a proclamation declaring the month of April as "National Child Abuse and Neglect Prevention Month" in Emporia. They stated child abuse and neglect are serious problems affecting every segment of our community, and finding solutions requires input and action from everyone in our community. Child abuse can have long-term psychological, emotional, and physical effects that can have lifelong consequences for victims of abuse. By providing safe, stable and nurturing relationships for our children, free of violence, abuse and neglect, we can ensure that Kansas' children will grow to their full potential as the next generation of leaders. Working together as a community, we can increase awareness about child abuse and contribute to promoting the social and emotional well-being of children and families in a safe, stable, nurturing environment. The citizens of Emporia were urged to recognize this month by dedicated to the task of improving the quality of life for all children and families.

Mayor Smith then presented the proclamation.

Roxanne VanGundy, Director of Lyon County Communications Center, was in attendance to accept a proclamation declaring the week of April 10 through 16, 2022 as "National Public Safety Telecommunicators Week"

in Emporia. She stated when emergencies occur the prompt response of police officers and firefighters is dependent upon the quality and accuracy of information obtained who telephone the Lyon County Emergency Communications Center. Public Safety Telecommunicators are the first and most critical contact citizens have with emergency services. She stated each Communications Officer has exhibited compassion, understanding and professionalism during the performance of their job in the past year and National Public Safety Telecommunicators Week is in honor of the men and women whose diligence and professionalism keep our county and citizens safe.

Mayor Smith then presented the proclamation.

Jeff Lynch, Community Development Coordinator and Roxanne VanGundy of the Emporia Human Relations Commission, were in attendance to accept a proclamation declaring the month of April as "*Fair Housing Month*" in Emporia. They stated the City of Emporia is committed to the mission and intent of Congress to provide fair and equal housing opportunities for all. Equal housing opportunity is a condition of life in our city that can and should be achieved. This year's observance will promote fair housing practices throughout the City.

Mayor Smith than presented the proclamation.

CITY COMMISSION
(Appoint City Commissioner)

City Manager Cocking stated Commissioner Gilligan announced he is relinquishing his position on the City Commission. Staff then advertised the Commission's open position and began accepting applications for the vacated position until April 1, 2022.

City Attorney Montgomery reviewed the procedure relating to filling the vacancy on the City Commission. A list of applicants was presented to the Commission. The list of candidates is as follows:

Ian R. Boyd

Denise L. Gilligan

Erren J. Harter

Jermy W. Hinkle
Travis T. Hitt
Joshua D. Jensen
Dennis J. Kear
Marc D. Magathan
Jay A. Vehige

She stated the Governing Body may accept the list of candidates, reject the list of candidates or call for more nominations.

Commissioner Sauder made a motion to accept the list of candidates to fill the vacancy. Commissioner Giefer seconded the motion. The vote follows: Commissioner Sauder, aye Commissioner Giefer, aye; Commissioner Brinkman, aye; and Mayor Smith, aye. Commissioner Gilligan abstained.

City Manager Cocking stated each candidate will have four (4) minutes to introduce themselves and present remarks stating their interest in serving on the Commission.

City Attorney Montgomery stated after presentations the Commission may proceed directly to vote on filling the vacancy with Commissioner Gilligan abstaining from the vote.

Presentations were given by Denise Gilligan, Erren Harter, Jermy Hinkle, Travis Hitt, Joshua Jensen, Marc Magathan and Jay Vehige. The Commission then proceeded to the vote as follows:

Commissioner Brinkman voted for Denise Gilligan
Commissioner Giefer voted for Erren Harter
Commissioner Sauder voted for Erren Harter
Mayor Smith voted for Erren Harter

City Attorney Montgomery stated Erren Harter would be sworn in to fill the vacancy as City Commissioner at the next regular meeting held April 20, 2022.

CITY COMMISSION
(Major Economic Development Program Grant Applications)

City Manager Cocking stated the City Commission adopted a Resolution creating the Economic Development Grant Program to aid in the selection of a portion of the City's ARPA funds to aid in the

community to improve overall economic well-being of the community. Committee members were appointed by each Commissioner and members met to discuss the grant applications. The following is the unanimous recommendation for the one-time portion of the City's ARPA funding:

Flint Hill Tech College, E-Sports Program	- \$100,000.00
Emporia Main Street, Christmas Lights	- \$ 75,000.00
Emporia Childcare, Increase wages & additional staff	- \$150,000.00
Trolley House Distillery, New Vodke Line	- \$ 0.00
Flint Hills Tech College, Early Childhood Program	- \$ 63,000.00
Imaginarium, STEM Start-up	- \$ 12,000.00
Area Agency on Aging, Upgrade to Friendship Center	- \$ 0.00
Emporia State University	
E-Sports	- \$150,000.00
Disc Golf	- \$ 50,000.00
Corky's Cupboard	- \$ 50,000.00
Housing Scholarship	- \$100,000.00

He stated the Committee also requested that Emporia State University and Flint Hills Technical College work together to collaborate on E-Sports. The disbursement of ARPA funds reimbursement are subject to a grant agreement for each entity.

Commissioner Gilligan made a motion to approve the Major Economic Grant Committee recommendations for a portion of the City's ARPA funding as listed. Commissioner Sauder seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Giefer, aye; and Mayor Smith, aye.

**INDUSTRIAL REVENUE BONDS
(Whittier Place II, LP)**

**(Authorize the Issuance of Taxable Industrial Revenue Bonds Series 2022)
(Ordinance Number 22-11)**

AN ORDINANCE AUTHORIZING THE CITY OF EMPORIA, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES A, 2022 (WHITTIER PLACE II, LP) IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,000,000.00 TO FINANCE (1) PURCHASING, ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING A RESIDENTIAL APARTMENT BUILDING, CONTAINING 24 APARTMENTS AND LOCATED AT 1300 WHITTIER PLACE LANE AND ALL THINGS RELATED THERETO, AND (2) CERTAIN COSTS OF ISSUANCE OF SUCH BONDS; AUTHORIZING EXECUTION OF BOND DOCUMENTS RELATING TO ISSUANCE, PAYMENT AND PURCHASE OF THE SERIES A, 2022 BONDS, to which the City Clerk assigned Ordinance Number 22-11, was presented to the Governing Body for their consideration.

City Attorney Montgomery was recognized and addressed the Governing Body. She stated the City of Emporia adopted a resolution declaring an intent to issue taxable industrial revenue bonds for the purpose of purchasing, acquiring, constructing furnishing and equipping two residential apartment buildings, each containing 24 apartments and located at 1300 Whittier Place Lane. She stated the approval of the bond ordinance is the final step in the issuance of the bonds for one of the buildings. This ordinance will authorize the City of Emporia to issue Taxable Industrial Revenue Bonds, Series A, 2022 on behalf of Whittier Place II, LP in a sum not to exceed \$3,000,000.00. A separate IRB issuance is expected for the second building at a future date. She stated the bonds and interest are not an indebtedness of the City and will not create financial liability for the City. Staff is recommending approval of the issuance of the Industrial Revenue Bonds for Whittier Place II, LP.

Commissioner Giefer made a motion to approve Ordinance Number 22-11, an ordinance authorizing the issuance of Industrial Revenue Bonds on behalf of Whittier Place, II LP not to exceed \$3,000,000.00. Commissioner Sauder seconded the motion. The vote follows: Commissioner Giefer, aye; Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Gilligan, aye; and Mayor Smith, aye.

SOLID WASTE
(Equipment Purchase - John Deere 710L Backhoe)
(Transfer Station)

Dean Grant, Public Works Director, was recognized and addressed the Governing Body. He stated the Transfer Station currently has a John Deere backhoe that was purchased in 2018 and is in need of repairs of approximately \$60,000.00. The repair costs are approximately 30% of the cost of a new machine and the backhoe is at more than 91% of its depreciated life (5000 hours). Staff has priced the purchase of a new backhoe through SourceWell for the best price and stated the cost of the new machine is \$205,085.00 and would be paid for from the Solid Waste Fund. The trade-in value on the current backhoe is \$52,000.00, however,

staff feels that the machine may have a higher value if sold on Purple Wave. Staff is recommending the purchase of a new John Deere 710L backhoe for the purchase price of \$205,085.00 with a trade in value or sold price of a minimum \$52,000.00.

Commissioner Giefer made a motion to approve the purchase of a new John Deere 710L backhoe through SourceWell for \$205,085.00 with a trade-in value or sold price on the current backhoe for a minimum of \$52,000.00. Commissioner Sauder seconded the motion. The vote follows: Commissioner Giefer aye; Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Gilligan, aye; and Mayor Smith, aye.

**DAVID TRAYLOR ZOO
(Zoo Education Center Renovation/Construction)
(Request for Qualifications RFQ - General Contractor)**

Lisa Keith, Zoo Director and Erren Harter, representing EFOZ, were recognized and addressed the Governing Body. They stated EFOZ completed its first multi-million dollar "OASIS" Campaign raising more than \$4.8 million to improve the David Traylor Zoo. One of those projects is to renovate and expand the Zoo Education Center. The new expansion of 5000 square feet building will give the Zoo Education Center to opportunity for 2 indoor classrooms and 1 outdoor classroom, a bank of restrooms for men, women and a family restroom. In addition, expanded office space, storage, support space as well as a gathering lobby. The outdoor classroom pavilion would be open-air of 1000 square feet. They stated the estimated cost of the project is \$1.7 million, currently \$1.75 million has been secured by EFOZ. They stated they are asking the City Commission to consider allowing RFQ to seek a qualified General Contractor to work with a preselected architect to provide both pre-construction phase and construction phase services for the renovation and addition to the existing education center.

Commissioner Gilligan made a motion to approve the Request for Qualifications (RFQ) services for General Contractor for the David Traylor Zoo Education Center Renovation/Construction Project. Commissioner Giefer seconded the motion. The vote follows: Commissioner

Gilligan, aye; Commissioner Giefer, aye; Commissioner Brinkman, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

**PARK DEPARTMENT
(Reeble Park)
(Pickleball Court Erosion Control)**

Kevin Hanlin, Director of Public Lands, was recognized and addressed the Governing Body. He stated the completion of the new pickleball courts in Reeble Park at 1801 Rural Street left a lot of unsettled dirt on steep slopes. Erosion control measures were taken at the time by installing the seed with an erosion control mat on top. Unfortunately, late year storms damaged the erosion control mat beyond use. The storm also brought extreme erosion to the soil that removed most of the seeding and on the steeper areas around the court complex. There are drainage issues on the West side of the courts that have resulted in water shedding off onto the neighbor's property. He stated staff has contacted two local companies for estimates and only Scott's Lawn and Landscaping responded. He stated an estimate to correct the drainage on all side of the complex the rock area on the East side of court will remain as it, install irrigation and install grass sod is estimated at \$35,000.00. He stated staff is recommending approval of the contract for erosion control in the amount of \$35,000.00.

Commissioner Brinkman questioned why an irrigation system would be installed instead of looking for a bid of natural grasses or plants that require little to no extra watering.

Following further discussion, Commissioner Gilligan made a motion to approve Scott's Lawn and Landscaping for area erosion control, grading, irrigation system and sod at an estimated cost of \$35,000.00 at the Pickleball Courts in Reeble Park. Commissioner Sauder seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Sauder, aye; Commissioner Giefer, aye; Mayor Smith, aye; Commissioner Brinkman, nay.

PLANNING AND DEVELOPMENT
(MAPC Excerpts of Regular Meeting Held March 15, 2022)
(Application No. 2022-03 - Request of Travel Center Realty, LLC)
(Conditional Use Permit at 4215 W. Hwy 50)

Consider an Application PC CUP 2022-03 Requesting a Conditional Use Permit for a Light Maintenance Truck Facility Located at 4215 West HWY 50.

Chair Thomas asked if proper notice had been given and if the City had jurisdiction on the item. **Givens** confirmed that proper notice was provided to the newspaper and the property owners within 200ft of the property and that the City had jurisdiction.

Chair Thomas asked if any Commissioners needed to recuse themselves or report any ex-parte communications. No commissioners needed to recuse themselves due to a conflict of interest and no ex parte communications were reported.

Givens gave the staff report:

Application #: PC CUP 2022-03

Applicants: Travel Center Realty, LLC

Requested Action: Recommend the Approval of a Conditional Use Permit for a Light Maintenance Truck Facility

Purpose: Applicants desire to construct a light maintenance truck facility as a compliment to the existing travel plaza / truck stop.

Address: 4215 West HWY 50

Legal description: Beginning at a point 81.9 feet South and 225 feet West of the Northeast corner of the Southwest Quarter (SW1/4) of Section Seven (7), Township Nineteen (19) South, Range 11 East of the 6th P.M., Lyon County, Kansas, thence Westerly along the South right-of-way line of U.S. Highway 50 South for a distance of 646.2 feet, thence Easterly parallel with the South line of said right of way 646.2 feet, thence North 600 feet to the place of beginning.

Lot Size: 2.96 acres disturbed area - 30.0-acre total area

Existing Zoning: C-2 Restricted Commercial

Future Zoning in ELC Comp. Plan: Commercial

Surrounding Zoning:

North- Public Use District

East- I-1 Light Industrial

South- I-1 Light Industrial

West - C-3 General Commercial - I-1 Light Industrial

Surrounding Actual Uses:

North- Kansas Turnpike Authority Emporia Station
East - Truck Repair Facility / Manufacturing Facilities
South- Warehouse Facility
West- Truck Stop/Travel Plaza with Restaurant/Truck Wash

Analysis: The applicants are proposing to develop a light maintenance truck facility that would include 4 bays for trucks and trailers to be serviced as well as associated office, storage, and other space. The development would share a drive with the existing travel plaza and a new approach would be allowed for access to Overlander Rd.

Considerations: 26-109. Factors to be Considered for a Conditional Use Permit:

Because of particular conditions associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are permitted as conditional uses when their proposed location is supplemented by additional requirements so as to make the use requested compatible with the surrounding property, the neighborhood and the zoning jurisdiction.

In approving a conditional use, the minimum requirements set out in these regulations for the underlying district must be met unless otherwise reduced by specific reference in the approval of the Governing Body. The requirements may be made more stringent if there are potentially injurious effects which may be anticipated upon other property or the neighborhood or which may be contrary to public health, safety or welfare.

The Planning Commission may recommend approval of a Conditional Use that is expressly authorized to be permitted in a particular zoning district, and the Governing Body may approve such Conditional Use, using the following factors as guidelines: **Staff Commentary in Bold**

1. Whether approval of the conditional use would be consistent with the intent and purpose of these regulations; **The intent of commercial zoning districts is to provide for areas of compatible commercial and service businesses. This proposed development would be compatible in both size of development and scope of the work that is being proposed.**

2. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood; **The proposed development would be complimentary to the existing truck stop and truck wash, and would be consistent with the neighboring property, especially the truck repair facility adjacent to the development.**

3. Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided; **The applicant has advised staff that the proposed service facility would be mostly for existing users of the travel plaza, and would not necessarily increase the amount of traffic that currently uses the facility. Traffic is a concern in the area, but any increased traffic due to this development would be negligible.**

4. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected; **No changes have occurred in the area, but rather the ability to provide a service not available at this time on the property. Truck traffic in general has increased and will continue to increase, especially with the expansion of logistic centers along the I-35 corridor.**

5. The length of time the subject property has remained vacant or undeveloped as zoned; (the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped); **The property has remained vacant since the travel plaza was developed in 1998. The location of the proposed facility would still allow for development on prime space at the corner of Overlander Rd. and W. HWY 50.**

6. Whether the applicant's property is suitable for the proposed conditional use; **The property is of sufficient size for the proposed development and with the proposed tie-in with the existing travel plaza, the property is extremely suited for a development of this type.**

7. The recommendations of professional staff; **Based on all evidence in hand, staff would recommend the approval of the conditional use.**

8. Whether the proposed conditional use would be in conformance to and further enhance the implementation of the City's Comprehensive Plan; **The proposed development is in**

compliance with the Comprehensive Plan in that it uses existing space that does not require the extension of any infrastructure, expands on and promotes existing businesses, and helps to create jobs and services in the community.

9. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed conditional use; **The only loss to public health, safety, and general welfare would be if truck traffic in the area were to see a significant increase, but based on the applicant's statement that the facility would be marketed to existing users of the travel plaza, and not a stand-alone draw, the increase in truck traffic should be minimal, and providing an opportunity for trucks to have maintenance at the facility could result in an increase in truck safety as issues could be addressed quicker and in a more timely fashion.**

10. Whether the proposed conditional use, if it complies with all the conditions upon which the approval is made contingent, will not adversely affect the property in the area affected; **Staff does not anticipate any adverse conditions from the development of this project.**

11. For uses as solid waste disposal facilities, including sanitary landfills, construction and demolition landfills and transfer stations, whether the proposed conditional use is consistent with the adopted Solid Waste Management Plan of Lyon County, and amendments thereto; and **N/A**

12. Such other factors as may be relevant from the facts and evidence presented in the application.

Neighborhood Communications: At the time of writing this report, staff has been in communication with several property owners in the area, and none have stated objections to the project.

Recommendation: Staff recommends the Planning Commission forward a recommendation to approve the Conditional Use Permit to the Governing Body based on the findings that the project is consistent with the intent and purpose of the zoning regulations, will not have an adverse impact on the surrounding area and the use is consistent with neighboring uses and based on the following conditions;

The project is developed in accordance with an approved site plan,

The project meets all applicable zoning and building code regulations,

Any additional conditions the Planning Commission or City Commission deem necessary to protect the public health, safety, and general welfare.

Attachments: Aerial Map / Current Zoning Map / Future Land Use Map

Commissioner **Bucklinger** asked **Givens** what does light mean when referring to Light Maintenance Truck Facility? **Givens** said that it would be light maintenance, like changing tires.

The Public Hearing is open.

Cameron Cooper of Kimley-Horn 6750 Poplar Avenue, Suite 600, Memphis TN 38138 (representing the applicants) said it is a 4-bay building; one of the bays will be a lobby and storage, the other 3 bays will function to service tractor trailers.

Commissioner **Weaver** asked **Cooper** how he would define light? **Cooper** said that the main services will be changing tires, oil, lube, and minor repairs (e.g. replace starters, belts, and tensioners). There is an increase in transportation demand and the need for more preventative maintenance in more places.

The public hearing was closed.

Commissioner **Barnes** said it seems like a valuable use of the property and will help the safety on the highway.

Commissioner **Barnes** made a motion to recommend approval of Application PC CUP 2022-03 for a Conditional Use Permit for a Light Maintenance Truck Facility to the Governing Body. Commissioner **Duncan** seconded. **Approved 5-1**, Commissioner **Colson** dissents.

Justin Givens, Zoning Enforcement Officer, was recognized and addressed the Governing Body. He stated this was a request from the Travel Center Realty, LLC at 4215 W. Hwy 50 for a Conditional Use Permit for a light maintenance truck facility as a compliment to the existing travel plaza truck stop. The facility would provide limited repairs and service to large trucks, semis, and

trailers. He stated the proposed project would be in keeping with the existing uses within the area and would be complementary to the current truck stop. A public hearing was held and no person spoke in opposition to the proposed development. A property owner within the notification area expressed concerns about the amount of truck traffic that is currently parking on Overlander Street and those concerns were addressed by city staff and that this project would increase the paved area that trucks may have to park as an alternative to parking in the street. At their March 15, 2022 regular meeting, the Planning Commission approved Application No. 2022-03 requesting a Conditional Use Permit for a light maintenance truck facility located at 4215 W. Hwy 50 with a vote of 5 - 1. He stated staff is recommending approval of the CUP.

PLANNING AND DEVELOPMENT

**(Application No. 2022-03 - Request of Travel Center Realty, LLC)
(Conditional Use Permit at 4215 W. Hwy 50)
(Ordinance Number 22-12)**

AN ORDINANCE ISSUING A CONDITIONAL USE PERMIT FOR A CERTAIN DESCRIBED AREA IN THE CITY OF EMPORIA, KANSAS, to which the City Clerk assigned Ordinance Number 22-12, was presented to the Governing Body for their consideration.

Commissioner Brinkman made a motion to approve Ordinance Number 22-12, an ordinance issuing a Conditional Use Permit to allow a light truck maintenance facility at 4215 W. Hwy 50. Commissioner Giefer seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Gilligan, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

PLANNING AND DEVELOPMENT

(Application No. 2022-01 - Request of Bluesky Dvlp. & CM2 Dvlp.)

(Rezone Property Along Michelle Street)

(From R-1, Low Density Residential Dist. & C-3 General Comm. Dist.)

Justin Givens, Zoning Enforcement Officer, was recognized and addressed the Governing Body. He stated this was a request from Bluesky Development and CM2 Development to rezone property located along Michelle Street from R-1 Low Density Residential District and C-3 General Commercial District to R-3 High Density Residential District. He stated the proposed rezoning would facilitate the development of between 15 - 20 single-family attached units. The proposed development consists of 5.6 acres of undeveloped land that is currently zoned C-3 General Commercial and R-1 Low Density Residential Districts. The applicants originally applied for R-3, High Density Zoning, but upon discussion with the Planning Commission, it was agreed upon that R-2, Medium Density Zoning was more appropriate for the location and scope of the proposed project. The change from R-3 to R-2 would eliminate the potential for apartment in the area and the developers will have to work with the City to mitigate the increase in stormwater for their property as well as additional stormwater that runs across their property. He stated since the change in zoning was approved by the Planning Commission, the applicants requested a change for the zoning on the north side of the property to be R-3 High Density Zoning instead of the R-2 Low Density Residential District. The change on the north side of property would allow the applicants to put a 4-Plex instead of duplexes to help address the stormwater issues for their property and in the area.

Commissioner Gilligan made a motion to return the application to the Planning Commission for further consideration of a zoning change for the north side of the applicants property. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

**CITY COMMISSION
(Board Appointments)**

Emporia Public Library:

It was moved by Commissioner Brinkman seconded by Commissioner Gilligan that Dawn Moews be reappointed to the Emporia Public Library Board and Caron Daugherty be appointed to the Emporia Public Library Board for terms that expire April 20, 2026. The vote follows: Commissioner Brinkman, aye; Commissioner Gilligan, aye; Commissioner Giefer, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

Consent Agenda

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

- a. Consider minutes of the Regular Meeting held on March, 16, 2022.
- b. Consider ratification of Payroll Ordinances for the period ending on March 25, 2022.
- c. Consider 2022 Kansas Parks & Wildlife Parks and Tourism Annual Operations and Maintenance Assurance Agreement.
- d. Consider CDBG Rehab Grant Extension Request.
- e. Approve Ordinance No. 22-13 for Common Consumption Area for Emporia Main Street, Inc.
- f. Approve Ordinance No. 22-14 for Common Consumption Area for Visit Emporia.
- g. Approve Ordinance No. 22-15 for Common Consumption Area for Radius Production, LLC.
- h. Approve Ordinance No. 22-16 for Beer Garden at David Traylor Zoo for Party for the Plant on April 23, 2022.

The vote follows: Commissioner Sauder aye; Commissioner Giefer, aye; Commissioner Brinkman, aye; Commissioner Gilligan, aye; and Mayor Smith, 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 April 13th Study Session at 11:30 a.m.

- City Financial Update.
- Discuss Carnegie Library Study.
- Discuss Las Casitas Park Mural.
- Discuss Animal Shelter/Humane Society.
- Discuss JAC Annual Contract.

Strategic Planning from 1:30 p.m to 3:30 p.m.

**CITY COMMISSION
(Public Comment)**

This is the time for Mayor and City Commissioners to make comments and reports to the public. No comments were made at this time.

EXECUTIVE SESSION

Commissioner Gilligan made a motion to adjourn into Executive Session to discuss confidential matters of a third party and to invite Special Projects Manager Jim Witt, and newly appointed commissioner Erren Harter from 2:53 p.m. to 3:08 p.m., in the City Commission Meeting Room. Commissioner Giefer seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Giefer, aye; Commissioner Brinkman, aye; Commissioner Sauder, aye; and Mayor Smith, aye.

Upon reconvening the meeting in Regular Session at 3:08 p.m., this same date, in the City Commission Meeting Room, Mayor Smith stated they had discussed confidential matter of a third party and no action was taken.

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

Becky Smith, Mayor

ATTEST:

Kerry Sull, City Clerk



Commission Action Report

Title: Bi-Directional Amplifier (BDA)
Proposed Agenda Date: April 20, 2022
Presented By: Edward Owens, Chief of Police

BACKGROUND:

The BDA will amplify our 800 radios within our building. Our officers, while in the department, have a difficult time with reception.

DISCUSSION:

Safety issues for officers without communication

FINANCIAL CONSIDERATIONS:

Purchase will be out of forfeiture fund

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Commission approval for purchase

ATTACHMENTS:

TFM Quote for BDA



www.tfmcomm.com
Acct Rep: TROY FLAIR

Sales Quotation

Quotation #: 210970



TFM Comm Inc
125 SW Jackson St.
Topeka, KS 66603-3311

Telephone: (785) 233-2343
Fax : (785) 234-6848

Date: 4/15/2022
Quote Valid For :
30 Days

To: EMPORIA POLICE DEPT

CITY HALL
EMPORIA KS 66801-0000
Telephone: 620-341-3653
Fax:
Contact: SCOTT PRICE

QTY:	ITEM #:	DESCRIPTION:	UNIT PRICE	TOTAL
1.00	*NSI	SURECALL G4 80DB BDA PS AMP	4,750.00	4,750.00
250.00	LMR600	COAX 1/2" FLEX LOW LOSS FR	2.55	637.50
300.00	LMR600	COAX 1/2" FLEX LOW LOSS	2.55	765.00
14.00	EZ-600-NMC-2-D	NM CLAMP 1/2" CONNECTOR	35.00	490.00
6.00	*TFMJUMPER	COX JUMPERS	49.50	297.00
4.00	TFM-HDW	SPLITTERS/TAP N-TYPE FM	129.00	516.00
4.00	TFM-HDW	INDOOR DOME ANTENNA 700/800	55.00	220.00
1.00	TFM-HDW	OUT DOOR DONOR ANTENNA 700/800	125.00	125.00
1.00	TFM-HDW	OD ANTENNA MOUNTING HDW	55.00	55.00
1.00	TFM-HDW	700/800 COAX ARRESTOR	89.00	89.00
1.00	*LABOR	TECH LABOR INSTALLATION	3,950.00	3,950.00

Subtotal: 11,894.50
Sales Tax: 0.00

Quotation Total: 11,894.50

Equipment: 800 BDA
Installation: DISPATCH FLOOR
Terms: NET-30

Quote Notes:

(BUDGETARY QUOTE ONLY PRICES ARE SUBJECT TO CHANGE DUE TO MARKET AVAILABILITY & DEMAND)

Customer is responsible for all applicable sales tax and/or incurred shipping charges. It is the sole responsibility of the customer to have a valid FCC license for all two-way radio equipment.

CUSTOMER IS RESPONSIBLE FOR ALL FCC AND FREQUENCY COORDINATION FEES

The information in this quotation is PROPRIETARY & CONFIDENTIAL for use by TFMComm Inc and the Client referred to within.

LEASE or INSTALLMENT PURCHASE CONTRACT: \$ _____ per MO. for _____ months.

Accepted By: Print: _____ Signed: _____
Customer P/O: _____ Date: _____ Title: _____



Commission Action Report

Title: Highland Street Improvements BG Consultant – Client Agreement

Proposed Agenda Date: April 20, 2022

Presented By: Jim Ubert, City Engineer

BACKGROUND:

The City submitted a Kansas Department of Commerce (KDOC) Community Development Block Grant (CDBG) in January 2022 that was selected and funded. The project included utility improvements (water and sanitary sewer) along portions of the project with street and drainage improvements along Highland (12th Ave to 16th Ave) Street.

DISCUSSION:

The overall project is for \$1.5 million of improvements. The design scope and fees in the attached agreement are consistent with the previously approved CDBG Grand Award from KDOC.

FINANCIAL CONSIDERATIONS:

The CDBG Grant funds up to \$750,000 of the \$1,500,00 project. The city will issue bonds for the project.

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Approve the BG Consultant – Client Agreement and authorize Mayor to sign.

ATTACHMENTS:

Consultant – Client Agreement for 2022 Highland Street Improvements.



AGREEMENT CONSULTANT-CLIENT

THIS AGREEMENT made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and City of Emporia, KS, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

2022 Highland Street Improvements
Construction Plans and Construction Engineering Services
Emporia, Kansas

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 “Additional Services” means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.
- 1.2 “Agreement” means this contract and includes change orders issued in writing.
- 1.3 “CLIENT” or “Client” means the agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “Consultant” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 “Engineering Documents” or “Architectural Documents” or “Survey Documents” means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

- 1.7 “Consulting Services” or “Engineering Services” or “Architectural Services” or “Survey Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 “Services” is a description of the required work as shown in **Exhibit 1**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 **SCOPE OF SERVICES:** The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

2.2 GENERAL DUTIES AND RESPONSIBILITIES

- 2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name:	Bruce Boettcher
Address:	2508 W. 15 th Ave.
	Emporia, KS 66801
Phone:	620.343.7842

- 2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT’s profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.
- 2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the Client.
- 2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker’s compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance and (iv) Professional liability insurance with a coverage in an amount not less than \$5,000,000 general aggregate and \$3,000,000 per occurrence.
- 2.2.5. **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm’s work. The Client will pay the Geotechnical firm separately from this Agreement.

- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT's direct control, CONSULTANT's role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT's design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.
- 2.2.11. **No Fiduciary Duty:** The CONSULTANT shall perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The CONSULTANT shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. CONSULTANT makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with CONSULTANT's services. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified. The CONSULTANT shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

- 3.1.1. **Communication:** The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. Our review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that Consultant is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: Jim Ubert
Address: 522 Mechanic St.
Emporia, KS 66801
Phone: 620.343.4260

- 3.1.8. **Billing Contact:** In this section, the CLIENT will identify the billing contact and address. The CONSULTANT will submit invoices according to this contract to the CLIENT's billing contact at the address shown:

Name: Jim Ubert
Address: 522 Mechanic St.
Emporia, KS 66801
Phone: 620.343.4260

SECTION 4 – PAYMENT

4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to **Exhibit 2** of this Agreement. The Lump Sum Fee for this project is a total of \$122,000.00 Dollars plus reimbursable expenses as outlined in **Exhibit 2** and for the Scope of Services as shown in **Exhibit 1** of this Agreement. Payment of the Lump

Sum Fee and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.

- 4.1.2. **Maximum Total Fee and Expense for Construction Engineering Services:** The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the rates indicated in the attached Fee Schedule; Exhibit 2 and the actual reimbursable expenses permitted under this Agreement and incurred on the Project, but not to exceed a maximum fee of \$124,900.00 Dollars. This fee is based on the scope of Services outlined in Exhibit 1 of this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.3. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of BG Consultants, Inc. standard hourly rate schedule in effect at the time of services, unless stated otherwise in a properly executed addendum to this contract for Additional Services. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.4. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.5. **Reimbursable Expenses:** An estimate of reimbursable expenses plus ten (10) percent shall be included in the total estimate of cost for this project and as shown in **Exhibit 2**. Total estimated cost is calculated as Lump Sum plus reimbursable expenses plus ten (10) percent. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.
- 4.1.6. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.7. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall state the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.8. **Timing of Services:** CONSULTANT will perform the Services according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT, delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays. CONSULTANT will endeavor to start its services on the anticipated start date and continue to endeavor to

complete its services according to the schedule indicated in Exhibit 2. The start date, completion date and any milestone for project delivery are approximate only and CONSULTANT reserves the right to adjust its schedule and all of those dates at its sole discretion for delays caused by the CLIENT, Owner or third parties.

- 4.1.9. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.
- 4.1.10. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, and an hourly or lump sum fee adjustment. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the mutually agreed adjustment to the CONSULTANT's fee. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.11. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on failure of CLIENT to make payments or any material breach by the CLIENT.

If the CLIENT fails to make payments to the CONSULTANT in accordance with this Agreement or fails to meet its other material responsibilities under this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the CONSULTANT's option, cause for suspension of performance of services under this Agreement. If the CONSULTANT elects to suspend services, the CONSULTANT shall give seven (7) days' written notice to the CLIENT before suspending services. In the event of a suspension of services, the CONSULTANT shall have no liability to the CLIENT for delay or

damage caused the CLIENT because of such suspension of services. Before resuming services, the CONSULTANT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTANT's services. The CONSULTANT's fees for the remaining services and the time schedules shall be equitably adjusted.

5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.

5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

5.2 DISPUTE RESOLUTION

5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

5.3.1. All documents prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's professional service, and CONSULTANT shall retain ownership and property interest therein, including all copyrights. Upon payment for services rendered, CONSULTANT grants CLIENT a license to use instruments of CONSULTANT's professional service for the purpose of constructing, occupying, or maintaining the project. Reuse or modification of any such documents by CLIENT, without CONSULTANT's written permission, shall be at CLIENT's sole risk, and CLIENT agrees to indemnify, defend, and hold CONSULTANT harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by CLIENT or by others acting through CLIENT.

5.4 INDEMNIFY AND HOLD HARMLESS

5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand, or cause of action to the extent caused by: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.

5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG Consultants, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.

5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.

5.5 ENTIRE AGREEMENT

5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

5.6 APPLICABLE LAW

5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

5.7 ASSIGNMENT OF AGREEMENT

5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

5.8 NO THIRD PARTY BENEFICIARIES

5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

5.9 LIMITATION OF LIABILITY

5.9.1. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the amount of collectable insurance from BG Consultants, Inc. Professional Liability Insurance. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.

5.9.2. It is agreed to by the parties to this Agreement that the CONSULTANT's services in connection with the Project shall not subject CONSULTANT's employees, officers, or directors to any personal liability or legal exposure for risks associated with the Project. Therefore, the CLIENT agrees that the CLIENT's sole and exclusive remedy for any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Kansas corporation, and not against any of the CONSULTANT's individual employees, officers or directors.

5.10 COMPLIANCE WITH LAWS

- 5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.11 TITLES, SUBHEADS AND CAPITALIZATION

- 5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.12 SEVERABILITY CLAUSE

- 5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.13 FIELD REPRESENTATION

- 5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.14 HAZARDOUS MATERIALS

- 5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

- 5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

- 5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this _____ day of _____, 20__.

CONSULTANT:

CLIENT:

BG Consultants, Inc.

City of Emporia, KS

By: _____

By: _____

Printed Name: Bruce Boettcher

Printed Name: _____

Title: Vice President

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1
SCOPE OF SERVICES

Project: Highland Street System Improvements
Owner: City of Emporia, Kansas
Engineer: BG Consultants, Inc.

The Professional Services to be performed under this section are as follows:

A. PRELIMINARY ENGINEERING:

1. Consult with CLIENT and Staff to coordinate each major section of the project development and design. These meetings may be formal council meetings and/or informal staff meetings, as deemed necessary by the CLIENT related to the proposed improvements.
2. CONSULTANT will perform a topographic survey of the PROJECT. The survey will locate above ground topographic features in the existing rights-of-way and will establish horizontal and vertical control.
3. Assist CLIENT with the solicitation and selection of a geotechnical firm to investigate underground field conditions. The CLIENT will contract directly with the geotechnical firm. Geotechnical services are not included in this contract.
4. Consult with the CLIENT and regulatory agencies concerning the construction documents and requirements covering specific items of design.
5. **Design Highland Street Improvements – 12th Ave. to 16th Ave. as outlined in PER dated 10/27/21 and EOPC dated 10/27/21 (BG project # 21-1402E - attached).**
6. Prepare preliminary and final opinion of probable construction cost for the CLIENT.
7. Prepare preliminary plans to be reviewed by the CLIENT and (if needed) the Kansas Department of Transportation (KDOT), and the Kansas Department of Health and Environment (KDHE).

8. After review of the preliminary plans by the CLIENT, KDHE and KDOT, prepare final plans and specifications for the proposed construction work.
9. CONSULTANT will prepare a Project Manual containing bidding documents, construction contract documents, and technical specifications for the PROJECT.

B. CONSTRUCTION ENGINEERING:

1. Bid Letting Services: Provide assistance of bid letting and contract preparation to assist the CLIENT in the open bidding process and selection of a contractor.
 - a. Answer questions from contractors regarding the final plans. If necessary, issue requested addenda.
 - b. If requested by the CLIENT, attend and chair a pre-bid meeting to explain conditions or designs and to answer questions regarding the plans.
 - c. Attend the bid letting, tabulate bids and provide a recommendation for award.
2. Construction Engineering & Resident Project Representative: Provide Resident Project Representative (RPR) services as outlined and defined in Exhibit A (attached).
 - a. Review the contractor's submittals and submit written opinion of plan and specification compliance.
 - b. Perform construction engineering and RPR services for the work being performed by contractor.
 - c. Compile logs for site visits and project monitoring.
 - d. Coordinate construction observation activities with the CLIENT.
 - e. Prepare project performance certifications as required.
 - f. Prepare "Record Drawings" from construction installation "As Built" information provided by the contractor.

C. SUPPLEMENTAL/ADDITIONAL SERVICES

1. Items listed in this section, as requested by the CLIENT, will require additional work by the CONSULTANT outside of the agreements scope of services.
2. Establishment of Right-of-Way or Easements required for the project.

3. Provide Right-of-Way, Permanent Easements and/or Temporary Easements descriptions, if needed.
4. Administration for obtaining appraisals or filing easements and the cost thereof.
5. Changes in the general scope, extent, or character of the project or its design, including but not limited to changes in size, complexity, schedule, character of construction or method of financing; and revising previously accepted studies, reports, or design documents when such revisions are required by changes in laws, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies/reports/documents or designs or due to any other causes beyond the CONSULTANT'S control.

End Exhibit 1

EXHIBIT 2
COST AND SCHEDULE

Professional services set forth in Exhibit 1 Section A **Preliminary Engineering** items 1 through 9 the LUMP SUM FEE of **\$122,000.00**. Billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. Reimbursable expenses will not be billed unless requested and authorized by the CLIENT.

Services will be performed in an effort to meet City funding requirements including the following milestones:

The fee included within this contract is based upon the preliminary engineering being accomplished within **ten calendar months** from the Notice To Proceed with work.

Construction Engineering services set forth in Section B items 1 through 2, the HOURLY FEE of **\$124,900.00**. Billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. Reimbursable expenses will not be billed unless requested and authorized by the CLIENT.

The fee included within this contract is based upon construction being accomplished within **90 working** days. Construction duration beyond this duration may result in additional fees. Additional fees associated with construction duration would require CLIENT approval, as appropriate, and would be identified in a supplement to this agreement.

Additional Services set forth in Exhibit 1, Section C will be billed hourly, as requested by the CLIENT, at standard hourly rates. All billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. The out-of-pocket expenses, material and mileage directly related to the CONSULTANT'S performance of this agreement shall be included in the Not To Exceed fee.

Total Estimated Fees = \$246,900.00

End Exhibit 2

EXHIBIT 3
SPECIAL PROVISIONS

1. CLIENT acknowledges existing storm water conveyance features may be present within and/or adjacent to the PROJECT area which have insufficient capacity and may not be included in the PROJECT design scope of services. CLIENT acknowledges that the CONSULTANT's hydrologic and hydraulic analysis services are limited to the storm water conveyance features included in the PROJECT design scope of services.
2. Figure 4 Highland Street Improvements aerial (attached)
3. EOPC of Highland Street Improvements dated 10/27/21 (attached)
4. Construction Engineering & Resident Project Representative Services: Exhibit A (attached)
5. Attached is 2022 Standard Hourly Rates for BG Consultants, Inc. (attached).
6. BG Consultants, Inc. Certificate of Insurances
7. The Consultant shall operate within all known CDBG guidelines, specifically:
 - a. Title VI Civil Rights Act of 1964
 - b. Section 109 Certifications
 - c. Section 504 Certifications
 - d. Age Discrimination Act of 1975
 - e. Fair Housing Amendments Act of 1988
 - f. Executive Order 11063 Certifications
 - g. Kansas Act Against Discrimination
 - h. Executive Order 11246 Certifications
 - i. Section 3 Certifications
 - j. Title VIII of the Civil Rights Act of 1968 as amended by the Housing Act of 1974
 - k. Section 503 of the Rehabilitation Act of 1973 as amended
 - l. 24 CFR 85 as modified by CFR 570 Subpart J
 - m. Title I of the Housing & Community Development Act of 1974 as amended
 - n. Section 519 Public Law 101-44 (The 1990 HUD Appropriation Act)
 - o. Cranston-Gonzales National Affordable Housing Act (Section 906 & 912)

End Exhibit 3



2022 BG CONSULTANTS STANDARD HOURLY RATES

<u>POSITION</u>	<u>STANDARD PER HOUR 2022</u>
PRINCIPAL III	\$280.00
PRINCIPAL II	\$245.00
PRINCIPAL I	\$222.00
ENGINEER/ARCHITECT V	\$200.00
ENGINEER/ARCHITECT IV	\$177.00
ENGINEER/ARCHITECT III	\$167.00
ENGINEER/ARCHITECT II	\$156.00
ENGINEER/ARCHITECT I	\$135.00
INTERN ENGINEER/GRADUATE ARCHITECT IV	\$153.00
INTERN ENGINEER/GRADUATE ARCHITECT III	\$146.00
INTERN ENGINEER/GRADUATE ARCHITECT II	\$136.00
INTERN ENGINEER/GRADUATE ARCHITECT I	\$117.00
TECHNICIAN IV	\$140.00
TECHNICIAN III	\$124.00
TECHNICIAN II	\$110.00
TECHNICIAN I	\$99.50
TECHNICIAN	\$74.00

SENIOR CONSTRUCTION OBSERVER	\$140.00
CERTIFIED CONSTRUCTION OBSERVER	\$114.00
CONSTRUCTION OBSERVER	\$100.00
SENIOR PROJECT SURVEYOR	\$180.00
PROJECT SURVEYOR	\$150.00
ASSISTANT PROJECT SURVEYOR	\$125.00
FIELD SUPERVISOR	\$110.00
FIELD SURVEYOR II	\$89.00
FIELD SURVEYOR I	\$76.00
CLERICAL II	\$74.00
CLERICAL I	\$59.00

- Note:
- 1) The hourly rates shown above are effective for services through December 31st of the contract year and are subject to revision annually.
 - 2) For any Federal Wage and Hour Law nonexempt personnel, overtime will be billed at 1.5 times the hourly labor billing rates shown.
 - 3) Expert Witness and Depositions will be charged at 1.5 times the hourly labor billing rates shown.

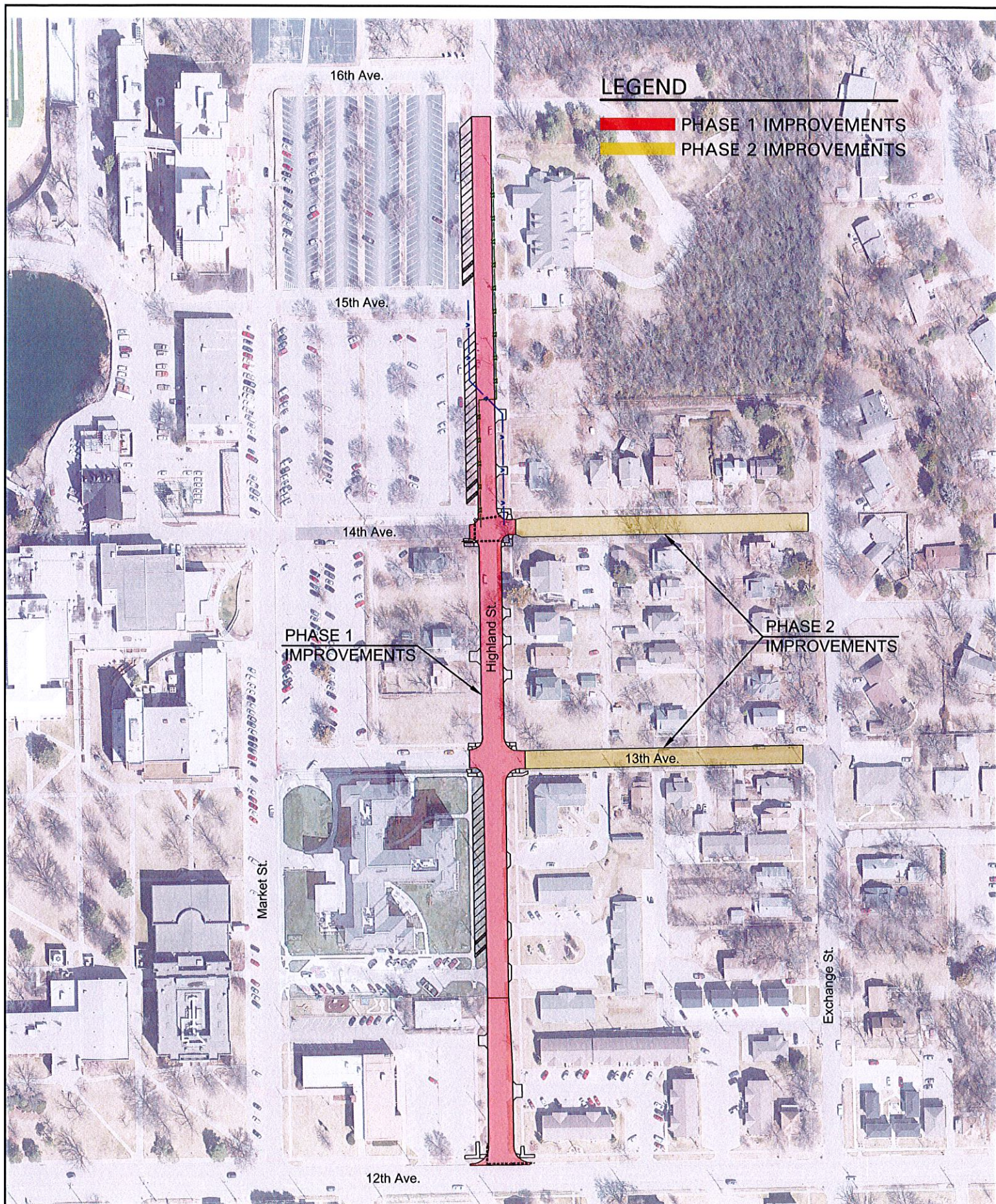


Figure 4 - Highland Street Improvements
City of Emporia



Engineer's Opinion of Probable Project Costs
Highland Street Improvements
City of Emporia, Kansas

SCOPE: Widening of Street Width (31' b-b) & Full Replacement w/HMA Surfacing on AB-3 Base (4 blocks)
Highland Street

No. Description	Qty.	Units	Unit Price	Total Price
1. Mobilization	1	Lump Sum	\$ 65,000.00	\$ 65,000.00
2. Clearing and Grubbing	1	Lump Sum	\$ 10,000.00	\$ 10,000.00
3. Contractor construction staking	1	Lump Sum	\$ 25,000.00	\$ 25,000.00
4. Pavement Removal	5,600	Sq. Yds.	\$ 9.00	\$ 50,400.00
5. Unclassified Excavation	2,000	Cu. Yds.	\$ 15.00	\$ 30,000.00
6. Removal of Existing Structures	1	Lump Sum	\$ 8,000.00	\$ 8,000.00
7. HMA - Commercial Grade (Class A)(2" Top Lift)	520	Tons	\$ 90.00	\$ 46,800.00
8. HMA - Commercial Grade (Class A)(7" Base)	2,100	Tons	\$ 90.00	\$ 189,000.00
9. Curb & Gutter (2'-6" Combined) (AE) (Remove & Replace)	2,250	Lin. Ft.	\$ 50.00	\$ 112,500.00
10. Combined Material AB-3 (5" Compacted)	5,500	Sq. Yds.	\$ 12.00	\$ 66,000.00
11. Concrete Pavement (7" Reinf) (AE)	1,150	Sq. Yds.	\$ 85.00	\$ 97,750.00
12. Curb & Gutter (2'-6" Combined) (AE) (Remove & Replace)	550	Lin. Ft.	\$ 50.00	\$ 27,500.00
13. Combined Material AB-3 (5" Compacted)	1,200	Sq. Yds.	\$ 12.00	\$ 14,400.00
14. Concrete Pavement (6" Reinf) (AE)	1,500	Sq. Yds.	\$ 75.00	\$ 112,500.00
15. Curb & Gutter (2'-6" Combined) (AE)	880	Lin. Ft.	\$ 30.00	\$ 26,400.00
16. Combined Material AB-3 (5" Compacted)	1,575	Sq. Yds.	\$ 12.00	\$ 18,900.00
17. Concrete Pavement (6" Reinf) (AE)	300	Sq. Yds.	\$ 75.00	\$ 22,500.00
18. Combined Material AB-3 (5" Compacted)	330	Sq. Yds.	\$ 12.00	\$ 3,960.00
19. Concrete Sidewalk (4" Plain) (AE) (Remove & Replace)	150	Sq. Yds.	\$ 65.00	\$ 9,750.00
20. ADA Sidewalk Ramp	17	Each	\$ 1,200.00	\$ 20,400.00
21. Type 22 Curb Inlet (4'x5') (Precast) (Remove & Replace)	6	Each	\$ 4,250.00	\$ 25,500.00
22. Storm Sewer Manhole (4'x4') (Precast) (Remove & Replace)	2	Each	\$ 4,500.00	\$ 9,000.00
23. Storm Sewer (15") RCP	300	Lin. Ft.	\$ 80.00	\$ 24,000.00
24. Flowable Fill	150	Cu. Yds.	\$ 80.00	\$ 12,000.00
25. Connection to Existing Structure	3	Each	\$ 1,500.00	\$ 4,500.00
26. Utility Adjustment	11	Each	\$ 1,000.00	\$ 11,000.00
27. Waterline Replacement (10" PVC)	360	Lin. Ft.	\$ 140.00	\$ 50,400.00
28. Fire Hydrant Remove and Replace	1	Each	\$ 5,500.00	\$ 5,500.00
29. Service Assembly and Connection	2	Each	\$ 2,500.00	\$ 5,000.00
30. Sanitary Sewer Line CIPP	600	Lin. Ft.	\$ 50.00	\$ 30,000.00
31. Sanitary Sewer Point Repair	2	Each	\$ 5,000.00	\$ 10,000.00
32. Sanitary Sewer Connection Replacement	6	Each	\$ 1,500.00	\$ 9,000.00
33. Pavement Marking	1	Lump Sum	\$ 12,000.00	\$ 12,000.00
34. Permanent Signage	1	Lump Sum	\$ 10,000.00	\$ 10,000.00
35. Temp Seed and Mulch	1	Lump Sum	\$ 5,000.00	\$ 5,000.00
36. Erosion Control	1	Lump Sum	\$ 15,000.00	\$ 15,000.00
37. Permanent Seeding, Fertilizer and Mulch	1	Lump Sum	\$ 8,000.00	\$ 8,000.00
38. Traffic Control & Temp. Access	1	Lump Sum	\$ 15,440.00	\$ 15,440.00

Construction Subtotal = \$1,218,100.00

Construction Total = \$1,218,100.00

+ Engineering Design Services = \$ 122,000.00

+ Construction Observation & Admin., and Bidding (90 Working Days) = \$ 124,900.00

+ Grant Administration = \$ 35,000.00

GRAND TOTAL = \$ 1,500,000.00



FUNDING SUMMARY

	COST	PERCENT MATCH
TOTAL PROJECT COST =	\$ 1,500,000.00	
CDBG Grant Funding =	\$ 750,000.00	
City's Cost Share =	\$ 750,000.00	100.0%

EXHIBIT A

Portions of:

Exhibit A – Construction Engineering Services and Resident Project Representative.
EJCDC® E-500 (modified excerpts), Agreement Between Owner and Engineer for Professional
Services.

SECTION A – CONSTRUCTION ENGINEERING SERVICES

A1.01 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Section B. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Section B.
 3. *Pre-Construction Conference:* Participate in and chair a pre-construction conference prior to commencement of Work at the Site.
 4. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
 5. *Original Documents:* Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including

Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

6. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
7. *Baselines and Benchmarks*: establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
8. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

- c. The visits described above shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner
9. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
10. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
11. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
12. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
13. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
14. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner and prepare Change Orders and Work Change Directives as requested.
15. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
16. *Shop Drawings, Samples, and Other Submittals:* Review and take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews or other action will not extend to means, methods, techniques, sequences, or procedures

of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

17. *Substitutes and "Or-equal"*: Evaluate and provide recommendation to the owner as the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. Review of substitutes "or equals" shall be in accordance with the General Conditions of the Construction Contract.
18. *Inspections and Tests*:
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents and performed by OTHERS. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be observed, tested, or approved by OTHERS.
 - c. Pursuant to the terms of the Construction Contract, require special observations or testing of the Work by OTHERS, whether or not the Work is fabricated, installed, or completed.
19. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, recommend approval to owner in whole, or deny it in part and recommend approval to owner in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
20. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions

precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed evaluations of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
21. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.01.A.16. Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.
 22. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 23. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
 - a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Owner.

- b. The Engineer shall prepare Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing 2 copies of such Record Drawings to Owner.
- 24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to provide opinion as to whether the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- 25. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract then Construction Phase services may be rendered at different times in respect to the separate contracts. Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative Services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.02 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 - 1. Together with Owner, visit the Project to observe apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of known damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of defective Work and needed repairs.
 - 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of known damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
 - a. Notify known regulatory agencies of the completion of the project
 - b. Two (2) sets of As-Built Drawings
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

SECTION B – Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

D1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.01, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but

not including Contractor's safety meetings), and prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with known Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of known Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that known Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of known Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval by OTHERS.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups by OTHERS.
- b. Observe that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including those to be performed by public or known agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or known agencies having jurisdiction over the Work, record the results of these inspections by OTHERS, and report to Engineer.

11. *Records:*

- a. Maintain at the Site files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, contractor approved Shop Drawing and Sample submittals, and Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, general daily activities, decisions, observations in general, and observations as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.

- f. Upon completion of the Work, furnish original set of RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports provided by OTHERS.
- c. Inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, observe that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the recommendation of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to observe completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Final Completion documentation.

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

End of Exhibit A



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/14/2022

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

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

PRODUCER Calvin Eddy Kappelman Insurance 1011 Westdale Rd. Lawrence KS 66049-2638		CONTACT NAME: Lora Howard PHONE (A/C, No, Ext): (785) 843-2772 FAX (A/C, No): (785) 843-1583 E-MAIL ADDRESS: lhoward@cekinsurance.com	
INSURED BG Consultants, Inc. 4806 Vue Du Lac Place Manhattan KS 66503		INSURER(S) AFFORDING COVERAGE INSURER A: Twin City Fire In Company INSURER B: Hartford Accident & Indemnity INSURER C: Trumbull Insurance Company INSURER D: INSURER E: INSURER F:	
		NAIC # 29459 22357 27120	

COVERAGES

CERTIFICATE NUMBER: 21-22

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☒ PRO-JECT ☐ LOC OTHER:			37SBABZ4463	11/30/2021	11/30/2022	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			37UECZT5678	11/30/2021	11/30/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Uninsured Motorist \$ 1,000,000
	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			37SBABZ4463	11/30/2021	11/30/2022	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			37WECAJ4RYX	11/30/2021	11/30/2022	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Emporia PO Bos 928 111 E 6th Ave Emporia KS 66801	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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CERTIFICATE OF LIABILITY INSURANCE

Page 1 of 1

DATE (MM/DD/YYYY)
07/01/2021

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

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

PRODUCER
Willis Towers Watson Midwest, Inc.
c/o 26 Century Blvd
P.O. Box 305191
Nashville, TN 372305191 USA

CONTACT NAME: Willis Towers Watson Certificate Center
PHONE (A/C, No, Ext): 1-877-945-7378 **FAX (A/C, No):** 1-888-467-2378
E-MAIL ADDRESS: certificates@willis.com

INSURER(S) AFFORDING COVERAGE **NAIC #**
INSURER A: Berkley Insurance Company 32603

INSURED
BG Consultants, Inc.
4806 Vue Du Lac
Manhattan, KS 66503

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

COVERAGES

CERTIFICATE NUMBER: W21523916

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$
	CLAIMS-MADE	OCCUR				DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$
	POLICY	PRO-JECT	LOC			PRODUCTS - COMP/OP AGG \$
	OTHER:					\$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO					BODILY INJURY (Per person) \$
	OWNED	SCHEDULED				BODILY INJURY (Per accident) \$
	AUTOS ONLY	AUTOS				PROPERTY DAMAGE (Per accident) \$
	HIRED	NON-OWNED				\$
	AUTOS ONLY	AUTOS ONLY				\$
	UMBRELLA LIAB					EACH OCCURRENCE \$
	EXCESS LIAB	CLAIMS-MADE				AGGREGATE \$
	DED	RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					PER STATUTE OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)			☐	N/A	E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability		AEC-9045781-03	07/10/2021	11/30/2022	Per Claim \$3,000,000
						Aggregate \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Sample COI

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Commission Action Report

Title: Flint Hills Crossing BG Consultant – Client Agreement

Proposed Agenda Date: April 20, 2022

Presented By: Jim Ubert, City Engineer

BACKGROUND:

The Flint Hills Crossing is a 72-acre development at the Northwest corner of the existing I-35/US-50 Highway off-ramp and Graphic Arts Road. The public infrastructure improvements planned are along what will become a city collector street. The design agreement from BG is for those improvements along this City collector street.

DISCUSSION:

N/A

FINANCIAL CONSIDERATIONS:

The City entered into the Flint Hills Crossing Improvement District Community Development Agreement for the development and adjacent city infrastructure in July 2021. That agreement created a cost share between the development CIDD and the City. The design agreement scope and fees are consistent with the previously approved CIDD agreement, paid out of bond issuance.

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Approve the BG Consultant – Client Agreement and authorize Mayor to sign.

ATTACHMENTS:

Consultant – Client Agreement for Flint Hills Crossing development.



AGREEMENT CONSULTANT-CLIENT

THIS AGREEMENT made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and City of Emporia, KS, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

DeBauge & Krueger Development – Phase I
Platting, Construction plans, and Traffic Impact Study for Phase I Improvements
Emporia, KS

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 “Additional Services” means any Services requested by the CLIENT which are not covered by Exhibit I of this Agreement.
- 1.2 “Agreement” means this contract and includes change orders issued in writing.
- 1.3 “CLIENT” or “Client” means the agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “Consultant” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 “Engineering Documents” or “Architectural Documents” or “Survey Documents” means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit I attached hereto.

- 1.7 “Consulting Services” or “Engineering Services” or “Architectural Services” or “Survey Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 “Services” is a description of the required work as shown in **Exhibit 1**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 **SCOPE OF SERVICES:** The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

2.2 GENERAL DUTIES AND RESPONSIBILITIES

- 2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name:	<u>Bruce Boettcher</u>
Address:	<u>2508 W. 15th Ave.</u>
	<u>Emporia, KS 66801</u>
Phone:	<u>620.343.7842</u>

- 2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT's profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.
- 2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the Client.
- 2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker's compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance and (iv) Professional liability insurance with a coverage in an amount not less than \$5,000,000 general aggregate and \$3,000,000 per occurrence.
- 2.2.5. **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm's work. The Client will pay the Geotechnical firm separately from this Agreement.

- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT's direct control, CONSULTANT's role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT's design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.
- 2.2.11. **No Fiduciary Duty:** The CONSULTANT shall perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The CONSULTANT shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. CONSULTANT makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with CONSULTANT's services. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified. The CONSULTANT shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

- 3.1.1. **Communication:** The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. Our review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that Consultant is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: Jim Ubert
Address: 522 Mechanic
Emporia, KS 66801
Phone: 620.343.4260

- 3.1.8. **Billing Contact:** In this section, the CLIENT will identify the billing contact and address. The CONSULTANT will submit invoices according to this contract to the CLIENT's billing contact at the address shown:

Name: Jim Ubert
Address: 522 Mechanic
Emporia, KS 66801
Phone: 620.343.4260

SECTION 4 – PAYMENT

4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to **Exhibit 2** of this Agreement. The Lump Sum Fee for this project is a total of \$240,888.00 Dollars plus reimbursable expenses as outlined in **Exhibit 2** and for the Scope of Services as shown in **Exhibit 1** of this Agreement. Payment of the Lump

Sum Fee and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.

- 4.1.2. **Maximum Total Fee and Expense – Construction Engineering:** The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the rates indicated in the attached Fee Schedule; Exhibit 2 and the actual reimbursable expenses permitted under this Agreement and incurred on the Project, but not to exceed a maximum fee of \$182,243.00 Dollars. This fee is based on the scope of Services outlined in Exhibit 1 of this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.3. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of BG Consultants, Inc. standard hourly rate schedule in effect at the time of services, unless stated otherwise in a properly executed addendum to this contract for Additional Services. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.4. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.5. **Reimbursable Expenses:** An estimate of reimbursable expenses plus ten (10) percent shall be included in the total estimate of cost for this project and as shown in **Exhibit 2**. Total estimated cost is calculated as Lump Sum plus reimbursable expenses plus ten (10) percent. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.
- 4.1.6. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.7. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall state the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.8. **Timing of Services:** CONSULTANT will perform the Services according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT, delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays. CONSULTANT will endeavor to start its services on the anticipated start date and continue to endeavor to

complete its services according to the schedule indicated in Exhibit 2. The start date, completion date and any milestone for project delivery are approximate only and CONSULTANT reserves the right to adjust its schedule and all of those dates at its sole discretion for delays caused by the CLIENT, Owner or third parties.

- 4.1.9. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.
- 4.1.10. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, and an hourly or lump sum fee adjustment. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the mutually agreed adjustment to the CONSULTANT's fee. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.11. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on failure of CLIENT to make payments or any material breach by the CLIENT.

If the CLIENT fails to make payments to the CONSULTANT in accordance with this Agreement or fails to meet its other material responsibilities under this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the CONSULTANT's option, cause for suspension of performance of services under this Agreement. If the CONSULTANT elects to suspend services, the CONSULTANT shall give seven (7) days' written notice to the CLIENT before suspending services. In the event of a suspension of services, the CONSULTANT shall have no liability to the CLIENT for delay or

damage caused the CLIENT because of such suspension of services. Before resuming services, the CONSULTANT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTANT's services. The CONSULTANT's fees for the remaining services and the time schedules shall be equitably adjusted.

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.
- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

- 5.3.1. All documents prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's professional service, and CONSULTANT shall retain ownership and property interest therein, including all copyrights. Upon payment for services rendered, CONSULTANT grants CLIENT a license to use instruments of CONSULTANT's professional service for the purpose of constructing, occupying, or maintaining the project. Reuse or modification of any such documents by CLIENT, without CONSULTANT's written permission, shall be at CLIENT's sole risk, and CLIENT agrees to indemnify, defend, and hold CONSULTANT harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by CLIENT or by others acting through CLIENT.

5.4 INDEMNIFY AND HOLD HARMLESS

- 5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand, or cause of action to the extent caused by: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.

5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG Consultants, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.

5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.

5.5 ENTIRE AGREEMENT

5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

5.6 APPLICABLE LAW

5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

5.7 ASSIGNMENT OF AGREEMENT

5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

5.8 NO THIRD PARTY BENEFICIARIES

5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

5.9 LIMITATION OF LIABILITY

5.9.1. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the amount of collectable insurance from BG Consultants, Inc. Professional Liability Insurance. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.

5.9.2. It is agreed to by the parties to this Agreement that the CONSULTANT's services in connection with the Project shall not subject CONSULTANT's employees, officers, or directors to any personal liability or legal exposure for risks associated with the Project. Therefore, the CLIENT agrees that the CLIENT's sole and exclusive remedy for any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Kansas corporation, and not against any of the CONSULTANT's individual employees, officers or directors.

5.10 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.11 TITLES, SUBHEADS AND CAPITALIZATION

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.12 SEVERABILITY CLAUSE

5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.13 FIELD REPRESENTATION

5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.14 HAZARDOUS MATERIALS

5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this _____ day of _____, 20__.

CONSULTANT:

CLIENT:

BG Consultants, Inc.

City of Emporia, KS

By: _____

By: _____

Printed Name: Bruce Boettcher

Printed Name: _____

Title: Vice President

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1
SCOPE OF SERVICES

Client: City of Emporia, KS

Engineer: BG Consultants, Inc.

Project Scope: Prepare preliminary and final plats, construction plans, and Traffic Impact Study for Phase I Development of the DeBauge/Krueger Property.

- I. Topographic Survey
 1. Research existing right-of-way and easements for the parcel.
 2. Topographic survey of the property where needed for the design of the street, storm sewer, waterline and sanitary sewer. The survey will also locate the existing property pins and use them to create the project control. Utility locations will be called in to Dig Safe and existing utility locations will be surveyed where needed.
 3. Preparation of a base map which shows the identified features from the topographic survey and existing contours on a 1 foot interval.
- II. Preliminary Plat
 1. Meet with Planning Department staff for pre-submittal meeting and to determine any additional requirements required for the preliminary plat.
 2. Prepare and submit Preliminary Plat. The actual lots in the subdivision may vary but it is anticipated in the preliminary plat to be one lot for unit one development. One for the Quick Trip facility and the rest of the 70 acres remains unplatted.
 3. Prepare preliminary design and supporting documents for street, storm sewer, sanitary sewer, and potable waterline improvements as outlined in City subdivision regulations.
 4. Make revisions as required by City Planning Staff and copies as needed for approval process.
- III. Final Plat
 1. Meet with Planning Department staff for pre-submittal meeting.
 2. Prepare and submit Final Plat.
 3. Make revisions as required by City Planning Staff and copies as needed for approval process.
 4. The property boundary will be monumented and the individual lots will be pinned as part of this scope.
- IV. Traffic Impact Study
 1. Utilize previous Phase 1 preliminary planning document from project number 19-1186E dated April 16, 2021 (attached).
 2. Prepare a traffic impact study referencing KDOT Access Management Policy.
 3. Based on CLIENT provided development plan with planned square footage of proposed land uses, CONSULTANT will estimate the potential future traffic

demand of the PROJECT. CONSULTANT will use the ITE's Trip Generation Manual to estimate trips generated by the PROJECT.

4. Perform traffic engineering services to estimate the following:
 - a. Existing traffic conditions and street characteristics of the streets abutting the PROJECT.
 - b. Proposed site characteristics of the PROJECT impacting traffic patterns.
 - c. Estimate of trips generated by the proposed PROJECT.
 - d. Opening-day traffic operations of the PROJECT.
 - e. Estimate of 10-year and 20-year traffic operations of the PROJECT.
 5. Prepare a report summarizing CONSULTANT's traffic analysis, assumptions, estimates and transportation infrastructure recommendations.
 6. CONSULTANT will attend one (1) meeting with CITY and KDOT Staff to discuss the PROJECT prior to completion of the final Traffic Impact Study report.
- V. Construction Plans (Layout based upon approximately one unit & one lot)
1. Develop a set of Street (approx. 1,300 LF), Storm Sewer, Sanitary Sewer and Water Line construction plans to include:
 - Title sheet
 - General notes, general layout, project control
 - Street plan/profile sheets
 - Waterline plan/profile sheets (as needed)
 - Sanitary Sewer plan/profile sheets (as needed)
 - Storm sewer plan/profile sheets (as needed)
 - SWP3 plan
 - Detail sheets
 - Cross sections
 2. Construction Cost Estimates
 - a. Prepare opinion of probable construction costs to be submitted to the CLIENT at preliminary plan and final plan preparation.
 3. Construction plans will be submitted to the City for review and approval.
 4. Project Manual (Construction Contract and Project Specifications)
 - a. CONSULTANT will prepare a Project Manual under this Scope of Services.
 - b. CONSULTANT will design the project as a competitive bid process by the CLIENT.
 - c. CONSULTANT will design the project to utilize the known local codes and regulations.
 5. Utility Coordination
 - a. Prepare utility plans after Field Check and submit the utility plans to each utility owner with utility infrastructure within the project limits.
 - b. Be available via telephone to discuss the project design with utility companies during the utility coordination and relocation phase.
 6. Assist Client with RFP for geotechnical services to be directly contracted by Client.
 7. A notice of intent for the SWP3 will be prepared for submittal to KDHE.

8. A Sanitary Sewer Extension Permit will be prepared and submitted to KDHE.
9. Meet with City Staff as needed to discuss the construction plans.

VI. BID PHASE SERVICES –

1. Answer questions from contractors regarding the final plans. If necessary, issue requested addenda.
2. If requested by the CLIENT, attend a pre-bid meeting to overview conditions or designs and to answer questions regarding the plans.
3. Attend the bid letting, tabulate bids and provide a recommendation for award.

VII. CONSTRUCTION ENGINEERING PHASE SERVICES –

1. Provide general administration of the construction contract including Resident Project Representative (full time) to provide construction observation and Construction Engineering Services (part time) Exhibit A.
2. Participate and chair the preconstruction conference.
3. Process contractor equipment and material submittals in accordance with project documents.
4. Process applications for payment and project change orders in accordance with project documents.
5. Process completion paperwork including substantial completion and final completion certificates.

SUPPLEMENTAL/ADDITIONAL SERVICES -

1. Items listed in this section, as requested by the CLIENT, will require additional work by the CONSULTANT outside of the agreements scope of services.
2. Under no circumstances will the Consultant direct or supervise construction.
3. Under no circumstances will the Consultant provide Project Management to include scheduling contractors or coordinating work and activities.
4. Under no circumstances will the Consultant direct or supervise the installation, management or responsible for the SWPPP or BMP for the project.
5. Consultant is not including any CLOMR or LOMR services. No floodplain modifications are anticipated.
6. No environmental or hazardous materials investigations, reports or evaluations are included in the professional services.
7. Changes in the general scope, extent, or character of the project or its design, including but not limited to changes in size, complexity, schedule, character of construction or method of financing; and revising previously accepted studies, reports, plats, or design documents when such revisions are required by changes in laws, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies/reports/documents or designs or due to any other causes beyond the CONSULTANT'S control.
8. Revisions to the proposed right-of-way (street) layout after the notice to proceed to begin design will require additional services for redesign.
9. Plans for a detention pond are not anticipated and have not been included.
10. Design of commercial lots will be completed by others.

End Exhibit 1

PCL XL error

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Commission Action Report

Title: Jones Aquatic Center Agreement
Proposed Agenda Date: April 20, 2022
Presented By: Christina Montgomery, City Attorney

BACKGROUND:

The Emporia Recreation Commission has operated the Jones Aquatic Center on behalf of the City of Emporia for a number of years. Each year the City and ERC enter into an operations agreement specifying the terms for the upcoming seasons.

DISCUSSION:

The proposed 2022 Jones Aquatic Center Agreement has identical terms to the 2021 agreement. ERC will be responsible for daily operations and staffing. The City will pay for utilities and major repairs. At the end of the season, the City will pay any deficit in JAC operations expenses up to \$47,000. This Agreement has been approved by the ERC Board.

FINANCIAL CONSIDERATIONS:

The City's financial obligation for the Jones Aquatic Center in 2022 will remain the same as it was in 2021.

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Approve Agreement and authorize the Mayor to sign

ATTACHMENTS:

2022 Jones Aquatic Center Agreement

JONES AQUATIC CENTER AGREEMENT
Between
THE CITY OF EMPORIA, KANSAS
And
THE EMPORIA RECREATION COMMISSION

THIS AGREEMENT made this 20th day of April 2022, by and between the CITY OF EMPORIA, KANSAS, a municipal corporation, hereinafter referred to as "CITY," and THE EMPORIA RECREATION COMMISSION, organized and existing under the statutes of Kansas, hereinafter referred to as "the ERC."

WITNESSETH:

WHEREAS, the CITY constructed and owns the Jones Aquatic Center, 4202 West 18th Avenue, Emporia, Kansas; and

WHEREAS, the ERC administers recreation programs for the City and for USD 253; and

WHEREAS, the Jones Aquatic Center is a part of the recreational program administered and operated by the ERC; and

WHEREAS, the CITY and the ERC now desire to formalize the agreement with respect to the administration, operation and maintenance of the Jones Aquatic Center;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Upon the following terms and conditions, the CITY and ERC agree that the ERC shall be responsible for the daily operations of the Jones Aquatic Center (JAC) each year between Memorial Day to Labor Day, with exact dates authorized by the City.

2. The JAC shall be used and occupied by the ERC exclusively for community recreation and competitive purposes with responsibility to organize and promote use of the swimming pool and other facilities. In the use of the premises, the ERC shall comply with all statutes, ordinances and regulations of public authorities applicable to the aquatic center complex.

3. During possession of the aquatic center, the ERC shall be responsible for routine maintenance and up-keep of the aquatic center, security, staffing and the day-to-day operations. The ERC shall notify the CITY when major repairs are needed. Major repairs shall consist of the failure or interruption of a major system which would exceed \$1000 for repair or replacement. The ERC shall maintain a maintenance log of all

repairs and improvements, major or minor, performed which information will be shared with the CITY.

The CITY shall be responsible for providing pool chemicals needed for the operation of JAC. The CITY shall be responsible for upkeep and maintenance of the grounds, driveway, parking and landscaping for JAC. The City shall maintain the pool pumping, heating and filtering equipment and establish the optimum operating levels.

4. The ERC shall not undertake any alterations, additions or improvements of the JAC without the approval of the CITY.

5. The CITY shall be responsible for the water, sewer, refuse, electric and natural gas utility charges utilized by it at the JAC during the months of June, July and August. The ERC shall be responsible for hiring, training, and compensation of full and part time workers at the JAC. The ERC shall be responsible for concession sales and staffing.

6. The CITY shall maintain general liability and casualty insurance on the equipment, buildings and grounds. The ERC shall maintain liability insurance for the operation of the facility.

7. The ERC shall recommend to the CITY the annual fee structure for the operation of the JAC. The City Commission shall consider the recommended fee structure and annual calendar for JAC. The ERC agrees to maintain an accounting of all costs and expenses for staffing and operation of the Jones Aquatic Center, and all receipts and income attributable to the aquatic center. After the conclusion of the season, on or about October 1, the ERC shall submit a final accounting. If the final accounting results in a positive balance, such amount shall be retained by the ERC. If the final accounting results in a negative balance, the City will be responsible to make up the deficit up to an amount not to exceed \$47,000.00

8. The CITY and the ERC are subject to limits of liability according to K.S.A. 75-6104 et seq. Each party to this Agreement hereby agrees to indemnify and hold harmless the other party from claims for damages for injuries to persons or to property occasioned by the alleged negligent conduct of the party's own employees, officers or agents, arising from the operations under this Agreement.

9. If the ERC shall fail to comply with any of the terms of this Agreement, and such period shall continue for a period of thirty (30) days after notification, then in that event, the CITY may at its option, declare this agreement to be null and void. This shall not be taken to limit or prohibit any other remedies available to the CITY.

10. The waiver of the CITY of or the failure of the CITY to take any action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or a subsequent breach of

the parties as regards the cooperation in the operation of the aquatic center. This Agreement may be amended or supplemented by subsequent written documents signed by the parties.

12. This Agreement for a term beginning March 1, 2022 to December 31, 2022 and is renewable upon the mutual agreement of the parties.

IN WITNESS WHEREOF the parties hereto have executed this Agreement, the date and year first above written.

CITY OF EMPORIA, KANSAS

Becky Smith, Mayor

ATTEST:

Kerry Sull, City Clerk

EMPORIA RECREATION COMMISSION
By its Board of Commissioners



Chairman
EMPORIA RECREATION COMMISSION



Commission Action Report

Title: Informational Items
Proposed Agenda Date: April 20, 2022
Presented By: Trey Cocking, City Manager

BACKGROUND:

This is an opportunity for the City Manager 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.

DISCUSSION: At the time this Agenda was prepared, the following items were in the works for the tentative Agenda of April 27, 2022, Study Session:

- Continued HomeServe Discussion.
- Enterprise Leasing
- Discuss the 12th Avenue Elevated Storage Tank Logo.
- Mini Excavator Lease for underground utilities.

Future Commission Luncheons:

- RDA & Emporia Enterprises City/County Luncheon on 05/04/22 at 11:30 a.m. in the Little Theatre.
- Natural Resources Advisory Board Luncheon on 05/11/22 at noon in the Little Theatre.
- Emporia Library Board Luncheon on 05/25/22 at noon in Library Conference Room.

FINANCIAL CONSIDERATIONS:

N/A

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

N/A

ATTACHMENTS:

N/A

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 400
Topeka, KS 66612-1367



Phone: 785-296-1535
Fax: 785-559-4264
www.kdheks.gov

Janet Stanek, Secretary

Laura Kelly, Governor

April 6, 2022

Source ID No. 1110046

P.O. Box 928
Emporia KS 66801

SUBJECT: Proposed Prevention of Significant Deterioration (PSD) Air Quality Construction Permit Modification

Dear Ms. Sull:

Enclosed is a copy of a PSD air quality construction permit modification public notice that will be published in the Kansas Register on April 14, 2022. This notice solicits comments regarding a proposed air quality PSD construction permit modification for Evergy Inc. – Emporia Energy Center. The source is located in Lyon County.

Please direct any questions or comments regarding this permit to me at 785-291-3271.

Sincerely,

A handwritten signature in black ink that reads "Rumela Bhadra".

Rumela Bhadra, Ph.D., P.E.
Professional Engineer
Air Permitting Section

RB:pr
Enclosure
c: SEDO
CSD000581.1

Notice Concerning Proposed Kansas Air Quality
Construction Permit Modification

Notice is hereby given that the Kansas Department of Health and Environment (KDHE) is soliciting comments regarding a revision to a previously issued air quality construction permit modification. **Evergy Inc. – Emporia Energy Center (Evergy)** applied for an air quality construction permit in accordance with the provisions of K.A.R. 28-19-300 to add **alternative NO_x monitoring methods** at their **fossil fuel power generation stations** located **1685 Road 200, Emporia, Lyon County, Kansas 66801**.

The permit is to be issued in accordance with the provisions of K.A.R. 28-19-350, *Prevention of Significant Deterioration* (PSD) which adopt the federal standards, procedures and requirements of 40 CFR 52.21 by reference. These air quality regulations apply to major stationary emission sources located in areas designated as “attainment” under the federal Clean Air Act (CAA). Attainment areas are areas where the air quality meets or is better than the national ambient air quality standards (NAAQS).

The PSD regulations require evaluation of emission reduction techniques to identify the best available control technology (BACT) for each regulated pollutant, including GHG, for which the emission rate exceeds the PSD significant level. The change in emissions from modifying the PSD construction permit will not exceed the PSD significant level, thus a new BACT analysis was not necessary. Since modifying the PSD construction permit will not exceed the PSD significance level, the project will have no significant impact on the ambient air quality.

No assessment of visibility impacts at a Class I Area was performed by the facility because there are no Federal Class I areas located within 300 km of the proposed facility. The facility did not conduct a visibility impact analysis for a local Class I area because the proposed modification does not exceed the PSD significance level and is not expected to impact visibility.

A public comment period has been established to allow citizens the opportunity to express any concerns they may have about this proposed permitting action. The public comment period is to begin on **April 14, 2022** and end on **May 16, 2022**. All comments should be submitted in writing to **Rumela Bhadra**, KDHE/Bureau of Air, 1000 SW Jackson, Suite 310, Topeka, KS 66612-1366 or presented at the public hearing.

Any member of the public may request to hold a public hearing to receive comments on the proposed issuance of the draft air quality construction permit. Written request to hold a public hearing should be sent to the attention of **Rumela Bhadra**, KDHE/Bureau of Air, 1000 SW Jackson, Suite 310, Topeka, KS 66612-1366 or by FAX to (785) 559-4256 and must be received by noon on **May 16, 2022**.

A copy of the proposed permit, permit application, all supporting documentation, and all information relied upon during the permit application review process are available for public review for a period of 30 days from the date of publication during normal business hours (8:00 AM to 5:00 PM) at the KDHE, Bureau of Air (BOA), 1000 SW Jackson, Suite 310, Topeka, KS 66612-1366. Also, a copy of the proposed permit only can be reviewed, at the **KDHE Southeast District Office, 308 W. 14th Street, Chanute, Kansas 66720**. To obtain or review the proposed permit and supporting documentation, contact **Rumela Bhadra (785) 291-3271**, at the central office of the KDHE and to review the proposed permit only, contact **Doug Cole (620) 431-2390** at the **Southeast District Office**. The standard departmental cost will be assessed for any copies requested. The proposed permit, accompanied with supporting information, is available, free of charge, at the KDHE BOA Public Notice website, <https://www.kdhe.ks.gov/413/Public-Notices>.

Janet Stanek, Secretary
Kansas Department of Health and Environment



Commission Action Report

Title: Executive Session

Proposed Agenda Date: April 20, 2022

BACKGROUND:

At this time, the City Commission request an executive session to discuss potential land acquisition for 10 minutes and to invite Jim Ubert, City Engineer.

DISCUSSION:

N/A

FINANCIAL CONSIDERATIONS:

N/A

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Conduct Executive Session

ATTACHMENTS:

N/A