



**MEETING OF THE CITY COMMISSION - AGENDA
WEDNESDAY, FEBRUARY 15, 2023 AT 11:00 AM
CITY COMMISSION CHAMBER**

ORDER OF BUSINESS

CALL MEETING TO ORDER Mayor Danny Giefer

MEMBERS PRESENT

Vice Mayor Susan Brinkman
Commissioner Erren Harter
Commissioner Jamie Sauder
Commissioner Becky Smith

PROCLAMATIONS

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) Resolution No. 3693 Establishing the Procedure for Selection and Replacement of Mayor and Vice Mayor.

Presented by: Christina Montgomery, City Attorney

Recommended Action: Approve Resolution No. 3693 Establishing the Procedure for Selection and Replacement of Mayor and Vice Mayor.

2) Request from Mayor Giefer to Vacate Position as Mayor.

Presented by: Trey Cocking, City Manager

Recommended Action: Approve Request from Mayor Giefer to Vacate Position as Mayor.

3) Selection of Vice Mayor.

Presented by: Trey Cocking, City Manager

Recommended Action: Approve Selection of Vice Mayor.

4) Ordinance 23-01 Pertaining to the Human Relations Commission/Accessibility Advisory Committee.

Presented by: Christina Montgomery, City Attorney

Recommended Action: Approve Ordinance 23-01 Pertaining to the Human Relations Commission/Accessibility Advisory Committee.

5) Supplemental No. 1 to Agreement No. 157-21 with KDOT for Project No. 56 KA-6154-01 Road Improvements along 18th Ave/County Rd. 180 (Rd. G to Rd. F5).

Presented by: Jim Ubert, City Engineer

Recommended Action: Approve Supplemental No. 1 to Agreement No. 157-21 with KDOT for Project No. 56 KA-6154-01 Road Improvements along 18th Ave/County Rd. 180 (Rd. G to Rd. F5) and authorize the Mayor to sign.

COMMUNICATIONS

Presented by Trey Cocking, City Manager.

- 1) Financials and Permits

CONSENT AGENDA

Presented by Trey Cocking, City Manager.

- 1) Minutes for the Commission Meeting on February 1, 2023.
- 2) Set Bid Time and Date for the 2023 Hazardous Sidewalk Program.
- 3) Set Bid Time and Date for RFQ of Fire Station Projects.

INFORMATIONAL ITEMS

Presented by Trey Cocking, City Manager.

- 1) Informational Items

GOVERNING BODY COMMENTS

Mayor Danny Giefer

Vice Mayor Susan Brinkman

Commissioner Erren Harter

Commissioner Jamie Sauder

Commissioner Becky Smith

EXECUTIVE SESSION

- 1) AN EXECUTIVE SESSION FOR DISCUSSIONS RELATING TO DATA RELATED TO FINANCIAL AFFAIRS OR TRADE SECRETS OF CORPORATIONS, PARTNERSHIPS, TRUSTS, AND INDIVIDUALS RELATED TO POTENTIAL ECONOMIC DEVELOPMENT PROJECTS. K.S.A. 75-4319(B)(4) IS THE AUTHORITY FOR THIS RECESS INTO EXECUTIVE SESSION.

Recess into an Executive Session to discuss confidential matters of a third party for a potential development project for 15 minutes and stating at which time the open meeting will resume.

ADJOURNMENT

NO-STUDY SESSION THIS MEETING



Commission Action Report

Title: Resolution No. 3693 Establishing the Procedure for Selection and Replacement of Mayor and Vice Mayor

Proposed Agenda Date: February 15, 2023

Presented By: Christina Montgomery, City Attorney

BACKGROUND:

The City Commission annually selects from its membership a mayor and vice mayor. The City of Emporia does not currently have a formalized process for selection or replacement of the mayor and vice mayor. City staff recommends adoption of a procedure prior to considering a request from Mayor Giefer to step back as mayor.

DISCUSSION:

Resolution No. 3693 will establish a procedure for annual selection, vacation, removal, and replacement for the positions of mayor and vice mayor. The City Commission will choose a mayor and vice mayor at each annual business meeting in January. A mayor or vice mayor wishing to vacate this position may submit a letter to the city clerk. A mayor or vice mayor who is unable or unwilling to fulfill their duties as mayor may be removed by majority vote of the other members of City Commission. A member who vacates or is removed from position as mayor or vice mayor will retain their position as city commissioner.

If the mayor vacates or is removed, the vice mayor will serve as mayor for the remainder of the year, and the Commission will elect a new vice mayor. If the vice mayor vacates or is removed, the Commission will elect a new vice mayor.

RECOMMENDED ACTION:

Adopt Resolution No. 3693 Establishing the Procedure for Selection and Replacement of Mayor and Vice Mayor.

ATTACHMENTS:

Resolution No. 3693.

RESOLUTION NO. 3693

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS ESTABLISHING THE PROCEDURE FOR SELECTION AND REPLACEMENT OF MAYOR AND VICE MAYOR.

WHEREAS, the Governing Body of the City of Emporia annually selects from its membership a mayor and vice mayor; and

WHEREAS, it has been the tradition of the city commission to select as mayor the city commissioner who served as vice mayor during the previous year; and

WHEREAS, it has further been the tradition of the city commission in the year immediately following a general election to select the commissioner who received the highest number of votes as vice mayor and to select the commissioner who receives the second highest number of votes as vice mayor in the second year after a general election; and

WHEREAS, the Governing Body of the City of Emporia has determined that it is necessary and prudent to adopt a procedure for selection and replacement of mayor and vice mayor.

NOW, THEREFORE, BE IT RESOLVED, that the following procedures shall be followed for the selection of Mayor and Vice Mayor:

1. Initial Selection.
 - a. At the annual business meeting held in January of each year, the Governing Body shall elect from its membership a mayor and vice mayor to serve during the ensuing year.
 - b. The mayor shall preside over meetings of the Governing Body. The vice mayor shall preside in the absence of the mayor.
2. Vacation.
 - a. Should any mayor or vice mayor wish to vacate their position as mayor or vice mayor while continuing to serve as city commissioner, such mayor or vice mayor shall submit a letter to the city clerk stating such request.
 - b. Any such letter received by the city clerk shall be presented to the Governing Body at the next regularly scheduled meeting. The Governing Body shall vote to approve or reject the request.
 - c. Vacation of mayor or vice mayor position shall not impact an individual member's rights or responsibilities as a member of the governing body.
3. Removal.
 - a. If the mayor or vice mayor is unable or unwilling to satisfactorily fulfill their duties as mayor or vice mayor, the remaining members of the Governing Body may, by majority vote, remove a member from the position of mayor or vice mayor for the current year.
 - b. Removal as mayor or vice mayor shall not impact an individual member's rights or responsibilities as a member of the governing body.

4. Replacement.

- a. Should the current mayor vacate or be removed from position as mayor, the vice mayor shall serve as mayor for the remainder of the year and the Governing Body shall elect from its membership a new vice mayor.
- b. Should the current vice mayor vacate or be removed from position as vice mayor, the Governing Body shall elect from its membership a new vice mayor to serve for the remainder of the year.

This Resolution shall take effect immediately upon its passage.

APPROVED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS, this 15th day of February 2023.

Danny Giefer, Mayor

Attest:

Kerry Sull, City Clerk



Commission Action Report

Title: Request from Mayor Giefer to Vacate Position as Mayor

Proposed Agenda Date: February 15, 2023

Presented By: Christina Montgomery, City Attorney

BACKGROUND:

Pursuant to newly adopted Resolution No. 3693, a mayor wishing to vacate their position as mayor will submit a letter to the City Clerk. The City Commission will vote to approve or reject the request. The vote will not impact the mayor's status as a City Commissioner.

DISCUSSION:

Mayor Danny Giefer has submitted a letter to the City Commission and City Clerk expressing a desire to vacate his position as mayor and retain his position as City Commissioner. Copies of that letter are attached.

If Mayor Giefer's request to vacate is approved, Vice Mayor Brinkman will automatically advance to the position of mayor.

RECOMMENDED ACTION:

Approve request from Mayor Giefer to vacate position as mayor.

ATTACHMENTS:

Letter from Mayor Danny Giefer



February 15, 2023

My fellow City Commissioners and City Manager Trey Cocking:

Effective today, I will be stepping back from my position as Mayor of the City of Emporia for health reasons. The mayor's position requires day-to-day personal contact with many individuals, which I will be unable to do. I will retain my position as City Commissioner and also a board member of Emporia Enterprise. I can perform my duties remotely when I am unable to attend in person in these positions.

Thank You,

Danny Giefer
Mayor



Commission Action Report

Title: Selection of Vice Mayor

Proposed Agenda Date: February 15, 2023

Presented By: Christina Montgomery, City Attorney

DISCUSSION:

After vacation by the mayor and advancement of the vice mayor, a new vice mayor must be elected from the members of the Governing Body to serve for the remainder of the year.

RECOMMENDED ACTION:

Vote to select vice mayor.



Commission Action Report

Title: Ordinance 23-01 Pertaining to the Human Relations Commission/Accessibility Advisory Committee

Proposed Agenda Date: February 15, 2023

Presented By: Christina Montgomery, City Attorney

BACKGROUND:

On June 15, 2020, the United States Supreme Court held in the case of *Bostock v. Clayton County, Georgia* that sexual orientation and gender identity are protected classes under Title VII of the Civil Rights Act of 1964. City staff and members of the Emporia Human Relations Commission have requested the City to update City Code to reflect the Supreme Court's decision.

DISCUSSION:

The current City Code Chapter 13, Article 2 describes the responsibilities and parameters of the Human Relations Commission and includes Code Sections 13-16 through 13-29. These sections discuss protected classes in various locations, generally listing "race, religion, color, age, national origin, ancestry, familial status, or disability." The ordinance proposal adds "sexual orientation and gender identity" in each area where the protected classes are listed.

FINANCIAL CONSIDERATIONS:

N/A

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Approve Ordinance 23-01 Pertaining to the Human Relations Commission/Accessibility Advisory Committee

ATTACHMENTS:

Ordinance 23-01

ORDINANCE NO. 23-01

AN ORDINANCE OF THE CITY OF EMPORIA, KANSAS PERTAINING TO THE HUMAN RELATIONS COMMISSION/ACCESSIBILITY ADVISORY COMMITTEE AMENDING SECTIONS 13-16 THROUGH 13-23 AND 13-27 OF THE CODE OF THE CITY OF EMPORIA, KANSAS.

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

Section 1. That sections 13-16 through 13-23 and 13-27 of the Code of the City of Emporia, Kansas, are hereby amended to read as follows:

“Sec. 13-16. Statement Of Policy Of The Human Relations Commission/Accessibility Advisory Committee:

It is hereby declared that the practice or policy of discrimination against persons by reason of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability is a matter of concern to the city of Emporia, since such discrimination threatens not only the rights and privileges of the inhabitants of this city, but also menaces the institutions and foundations of a free democratic society. It is hereby declared to be the policy of the city, in exercise of its police power for the protection of the public safety, public health, and general welfare, for the maintenance of business and good government, and for the promotion of the city's trade and commerce, to promote and foster goodwill, cooperation and conciliation among all groups and segments of the population, and to eliminate and prevent within its boundaries discrimination, segregation and separation because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability. It is further declared to be the policy of the city to assure equal opportunities and encouragement to all persons within this city to secure and hold, without discrimination, employment in any field of work or labor for which such person is otherwise properly qualified; to assure equal opportunity for all persons within this city to full and equal public accommodations and the full and equal use and enjoyment of the services, facilities, privileges and advantages of all agencies; and equal opportunity for all persons within this city to full and equal housing, are civil rights of every citizen without distinction on account of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability. Reasonable and lawful means will be utilized to achieve this purpose. To protect these rights, it is hereby declared to be the purpose of this article to establish and to provide a city human relations commission including the accessibility advisory committee. The human relations commission/accessibility committee shall also advise the City Manager concerning accessibility issues pertaining to city programs and property.

(Ord. 04-19, §1, 7-7-2004; Ord. 18-38, § 1, 10-3-2018; Ord. 23-01 § 1, 2-15-23)

Sec. 13-17. Definitions:

As used in this article, the following words and phrases shall have the meanings indicated. This article prohibits discrimination based upon sex, and accordingly, the personal pronouns and gender of nouns used in this article shall not be constructed as limiting the provisions of this article to one or to the other sex.

ADA Coordinator: The person appointed by the city commission to serve as the responsible employee to ensure compliance with the Americans with disabilities act.

Accessibility: The degree of usability and design that allows for the use of a facility, program, and/or service as effectively and for the same purpose by a person with a disability as by a person without a disability.

Affirmative Action Program: A positive program designed to ensure that a good faith effort will be made to employ applicants and to treat employees equally without regard to their race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability. An affirmative action program shall include, where applicable, but not be limited to, the following: recruitment, recruitment advertising, employment, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, other forms of compensation, other terms or conditions of employment, selection for training, and apprenticeship. An affirmative action program shall include goals, methodology and a timetable for implementation of the program. Submission of an affirmative action program to the director shall be required only as:

- (1) A provision of a conciliation agreement or order in the event of failure of conciliation;
- (2) As required in this article, the words "applicants" and "employees" as used in this definition shall include minority and women business enterprise subcontractors in contracts addressed in this article.

Age: The chronological age of a person who is at least eighteen (18) or more years but less than seventy (70) years of age.

Aggrieved Person: Any person who claims they are being or have been injured by an unlawfully discriminatory act or practice; and/or believes they will be injured by an unlawfully discriminatory act or practice that is about to occur.

Chairperson: The chairperson, as elected, of the human relations commission created by this article.

City: The City of Emporia, Kansas.

Commission: The human relations commission as created by section 13-18 of this article.

Commissioner: A member of the human relations commission as created by section 13-18 of this article.

Compensatory Damages: Actual damages such as will compensate the injured party for the injury sustained by simply making good or replacing the loss caused by the wrong or injury.

Complainant: Any person claiming to be aggrieved by any unlawful act or practice described or included by reference in this article.

Conciliation: The attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the director or the director's designee. Investigating commissioners will review and sign any written conciliation agreement.

Conciliation Agreement: A written agreement setting forth the resolution of the issues as stated following conciliation.

Contract: As used herein, is any contract entered into by the city or any of its subordinate agencies.

Contractor: Any individual, partnership, corporation, association or other entities entering into a contract with the city and who is an "employer" as herein defined.

Day: Calendar day. In computing a number of days, the day of the act from which the period begins to run shall not be included, but the last day of the period is to be included unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

Director: The Community Services Officer appointed by the city to act as the director of the Emporia human relations commission. Duties include, but are not limited to, case filing, processing, investigating, and conciliating; public relations; record keeping; education and training; community outreach; and administration of city programs related to housing.

Disability: With respect to an individual means the condition of a person, whether congenital or acquired by accident, injury or disease resulting in:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual.

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment by the person or entity alleged to have committed the unlawful discriminatory practice.

(4) Disability does not include current, illegal use of a controlled substance as defined in section 102 of the federal controlled substance act (21 USC 802), in housing discrimination. In employment and public accommodation discrimination, disability does not include an individual who is currently engaging in the illegal use of drugs where possession or distribution of such drugs is unlawful under the controlled substance act (21 USC 812), when the covered entity acts on the basis of such use.

Dwelling: Any building, structure or portion thereof which is occupied as, or designated or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Employee: Any person who works for wages or other compensation in service of any employer but does not include any individual employed by such individual's parents, spouse, or child, or in the domestic service of any person.

Employer: Any person employing one or more persons, and any person acting directly or indirectly for an employer as herein defined, and includes labor organizations, nonsectarian corporations, and organizations engaged in social service work. For purposes of this article, employer shall not include the city of Emporia or any of its agencies, officials or employees.

Employment Agency: Includes any person or governmental agency undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employees.

Facility: All or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property including the site where the building property, structure, or equipment is located as required by state and federal law, as may be amended from time to time. It includes both indoor and outdoor areas where human constructed improvements, structures, equipment, or property have been added to the natural environment.

Familial Status: Having one or more individuals less than eighteen (18) years of age domiciled with:

- (1) A parent or another person having legal custody of such individual; or
- (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.
- (3) The protections against discrimination afforded individuals on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

Family: As used herein, includes a single individual.

Financial Institution: Any person regularly engaged in the business of lending money or guaranteeing loans on housing accommodations or real property.

Fraternal Or Social Organization: Means and includes organizations founded and operated primarily for social purposes and shall neither mean nor include organizations founded or maintained primarily for trade or professional purposes.

Governing Body: The city commission of Emporia, Kansas.

Hearing: All the proceedings before any hearing board convened pursuant to any provisions of this article.

Hearing Examiner: The examiner appointed by the city to conduct a hearing or to proceed with any matter before the commission.

Hotel: Every building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay, primarily to transient guests, and in which four (4) or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a cabin, camp, tourist cabin, bed and breakfast inn, motel or other type of lodging unit.

Housing:

- (1) Any building or portion thereof, whether such building or portion is constructed or is to be constructed, which is used or intended for use as the residence or sleeping place of one or more persons.

(2) The term "housing accommodations" shall not mean or include the rental of a dwelling, or a portion thereof, containing accommodations for no more than two (2) families, one of which is occupied by the owner or his family at the time of rental; or the rental of less than four (4) rooms in a one-family dwelling to another person or persons by the owner or occupant of such accommodations in which one or more members of one's family reside.

Investigating Commissioners: The members of the commission appointed to act as the commission's representatives on all matters and conciliations involving the processing of filed complaints prior to public hearing stage.

Occupational Qualifications: Those qualifications which can be shown to be demonstrably valid to the normal operation or performance of a particular job, business or enterprise.

Owner: Shall mean and include the owner, leaser, sublesser, assignee, manager, agent, or other person, firm or corporation having the right to sell, rent or lease any housing accommodation of real property within the corporate limits of the jurisdiction.

Pain, Suffering And Humiliation Damages: Damages incidental to the act of discrimination which are the natural and proximate consequences of the wrong.

Person: One or more individuals, partnerships, associations, organizations, corporations, governmental subdivisions, public bodies, legal representatives, trustees, trustees in bankruptcy, receivers, fiduciaries, mutual companies or incorporated organizations.

Probable Cause: The presence of reasonable grounds for belief in the existence of facts that would violate the provisions of this article.

Program Or Service: All of the operations of a department, agency, instrumentality of a state or local government or other covered entity.

Public Accommodations: Any person who caters or offers goods, services, facilities and accommodations to the public. Public accommodations include, but are not limited to, any lodging establishment or food service establishment, as defined by KSA 36-501 and amendments thereto; any bar, tavern, hotel, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake, gymnasium, mortuary or cemetery which is open to the public; or any public transportation facility. Public accommodations do not include a religious or nonprofit fraternal or social association or corporation.

Real Estate Broker: Any person who, for a fee or other valuable consideration, sells, purchases, exchanges, rents, negotiates, offers or attempts to negotiate the sale, purchase, exchange or rental of housing accommodations or real property of another person.

Real Estate Salesman Or Agent: Any person employed by a real estate broker to perform, or to assist in the performance of, any or all of the functions of a real estate broker.

Reasonable Accommodation:

(1) In the context of employment, making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part time or modified work schedules; reassignment to a vacant position; acquisition or modification of examinations,

training materials or policies; provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(2) In the context of housing, those reasonable measures which may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

Respondent: Any person alleged to have committed any unlawful act or violation of this article.

Restaurant: Any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tearoom, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

Self-Evaluation: A public entity's evaluation of its current policies and practices for the purpose of identifying and correcting any that are not consistent with relevant legislation.

Sexual Harassment: Unwelcome sexual behavior, advances, requests for sexual favors; offensive, severe, and/or frequent remarks about a person's sex, or other verbal, visual, or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual, interferes with their work performance, or creates an intimidating, hostile, or offensive work environment.

Statutes Of Limitations: Laws that establish deadlines for the institution of various kinds of legal actions, the ordinance regarding the Emporia human relations commission specifies one hundred eighty (180) days.

Subcontractor: Any individual, partnership, corporation, association, or other entity, or any combination of the foregoing which shall undertake, by virtue of a separate contract with a "contractor" as defined herein, fulfill all or any part of any contractor's obligation under a contract, or who shall exercise any right granted to a franchise holder, and who is an "employer" as herein defined.

Third Party Charge: A charge filed by anyone authorized by law to claim others have been victims of discrimination (i.e., commissioner's charge, agency charge, charge filed on behalf of another as authorized by statute).

To Rent: To lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Transition Plan: An outline of change necessary to meet access requirements in programs, activities, and services.

Willful: Intentional or deliberate.

Withdrawal: The act initiated by party filing the charge, which discontinues the complaint process. (Ord. 04-19, § 1, 7-7-2004; Ord. 08-09, § 1, 6-4-2008; Ord. 18-38, § 2, 10-3-2018; Ord. 23-01 § 1, 2-15-23)

Sec. 13-18. Human Relations Commission/Accessibility Advisory Committee Created; Composition:

(a) Creation; Membership: There is hereby created a commission to be known as the human relations commission to serve the citizens of Emporia in the administration and furtherance of the policy established herein. The commission shall consist of ten (10) members, who shall be appointed by the governing body. It is the policy of the city that the commission be representative of the many diverse groups within the community, whether such groups be defined by occupation, race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, disability, or other criteria. To this end, the governing body shall, in making such appointments as may from time to time be necessary, attempt to establish and preserve this diversity among members of the commission to the fullest extent practicable. Three (3) members shall have personal experience and/or professional expertise in the area of disability access that may include: facilities planning and design, disability policy and law, education, employment issues, assistive technology, and/or independent living. It is encouraged that one member of the committee be a representative from Emporia State University.

(b) Residence; Appointment To Fill Vacancy; Compensation: Members of the commission shall reside within the boundaries of Lyon County, Kansas. Any member who moves his or her residence outside the area shall automatically cease to be a member, and a vacancy shall thereby be created. Appointment of new members to fill vacancies shall be made by the governing body. The members of the commission shall serve without compensation.

(c) Meetings; Quorum; Attendance: The commission shall meet regularly once each month, at a place and time decided by the commission, for the purpose of adopting regulations and conducting such other business as may come before it. Special meetings may be called by the chairperson or by a majority of the commission then presently serving. A majority of the presently serving members of the commission shall constitute a quorum for the purpose of conducting the business thereof. The human relations commission may, by majority vote of the commission, recommend to the governing body that a member's term be terminated and a new member be appointed to fill any unexpired term, whenever a member fails to comply with the attendance requirements of the commission's bylaws.

(d) Term: The term of office of each member of the commission shall be three (3) years and until his or her successor is appointed. Members of the commission shall serve no more than two (2) successive three (3) year terms in addition to any unexpired term to which they may have been appointed. Members may be eligible for reappointment after one year.

(e) Officers: The commission shall elect from among its members a chairperson and vice chairperson. The vice chairperson shall act as the chairperson during the absence or incapacity of same. The term of office for the chairperson, and vice chairperson shall be for one year, and no person shall serve more than two (2) consecutive years in the same office. The chairperson and vice chairperson may resign from office at any time during their terms and may do so without resigning from membership on the commission.

(f) Removal Of Member: No member or members of the commission shall attempt to act on any matter over which the commission has jurisdiction unless and until the commission has given prior approval to such action. Any member of the commission may be removed by the mayor with the consent of the governing body for inefficiency, neglect of duty or misconduct or malfeasance in office; no such removal shall be effective until the member proposed to be removed has been furnished a written statement of the charges and an opportunity to be heard thereon by the governing body.

(g) Hearing Examiner: It shall be the responsibility of the commission to assist in the selection of a hearing examiner to be employed by the city of Emporia for the purpose of conducting hearings for the human relations commission. The city of Emporia shall employ at least one hearing examiner to conduct hearings. In addition, the city may employ hearing examiners pro tem when necessitated by the incapacity or disqualification of the regular hearing examiner. Such hearing examiners shall be admitted to practice law before the supreme court of the state of Kansas. (Ord. 04-19, § 1, 7-7-2004; Ord. 12-19, 6-20-2012; Ord. 18-38, § 3, 10-3-2018; Ord. 23-01 § 1, 2-15-23)

Sec. 13-19. Powers And Duties:

The commission shall have the following functions, powers, duties and responsibilities:

(1) The commission shall act in an advisory capacity and its function shall be to further amicable relations among the various segments of the population which comprise the city; to help preserve and further the good name of the city for tolerance and fairness and to promote better relations among its people; to help make it possible for each citizen regardless of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability, to develop talents and abilities without limitations; and to aid in permitting the community to benefit from the fullest realization of its human resources.

(2) The commission shall advise the governing body on problems affecting human and intergroup relations; make studies, surveys and investigations to provide accurate data for orderly and constructive community development and recommend such measures as are deemed necessary to carry out the objectives for which the commission has been created; consult with and obtain cooperation and coordinate efforts on the part of all agencies, both private and public, such as local businesses, schools, law enforcement agencies, welfare organizations, youth and other similar groups, which function in the field of human relations; utilize the resources of individuals and groups toward the improvement of intergroup relations; enlist all potential community forces in an effort to make more secure and to extend democratic rights, opportunities and practices; and influence and encourage community support for educational programs and appropriate legislation designed to:

a. Combat those misconceptions, prejudices and untruths which tend to set group against group; and

b. Reduce tensions created by ignorance and bigotry, and eliminate discriminatory practices arising from prejudice.

The commission shall further endeavor to create harmonious relationships among the various persons and agencies within the city.

(3) The commission may establish or create advisory and/or conciliatory committees to study the problems of youth, low income, aged, and disabled persons. These advisory and/or conciliatory committees shall report directly to the commission. The commission may recommend to the governing body human relations policies, procedures and programs. Such advisory and/or conciliatory committees shall be composed of representative citizens serving without compensation. The commission may itself make the studies and perform the acts authorized by this subsection. It shall, by voluntary conference with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination. The commission may adopt and promulgate suitable rules and regulations to carry out the provisions of this article. Such rules and regulations shall be approved by the governing body.

(4) The commission, with the approval of the governing body, may accept contributions from any person or governmental unit to assist in the effectuation of this article and may enlist the cooperation, including financial assistance, of private, charitable, religious, labor, civic or benevolent organizations for the purposes of this section. All funds shall be received and disbursed in the name of the city of Emporia, Kansas.

(5) The commission may actively promote the purpose of, and distribute information about, this article through public appearances, speaking engagements, news media, publications and other means, and may issue such publications and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability.

(6) The commission with the approval of the governing body, may enter into contracts, agreements or memoranda of agreement with the Kansas human rights commission, the federal equal employment opportunity commission, the United States justice department, and the department of housing and urban development in order to carry out any assignments made through these agencies to the commission. The commission, with the consent of the governing body, may make application to any person, organization, city, county, state or federal governmental unit or agency for funds to make effective the purposes of this article. All funds so obtained shall be received and disbursed in the name of the city of Emporia.

(7) The commission shall receive, initiate, investigate, and attempt to conciliate all complaints alleging discrimination, segregation, or separation in employment, public accommodations and housing as established in this article. Further, the commission, through the hearing examiner, shall hold hearings with respect to any complaint or other subject matter which it is authorized to investigate or review under this article. In furtherance of this duty, the commission and/or hearing examiner may:

- a. Make request to the party or parties under investigation for factual data required to properly investigate complaints, practices or discrimination patterns;
- b. Request attendance of a witness or witnesses;
- c. Have the power to administer oaths and take the testimony of any person under oath;
- d. Request the production for examination of books, paper and other evidence or possible sources of evidence relative to any relevant matter under consideration by the commission.

In case of the refusal of any person to comply with this section, the commission shall make such facts known to the governing body who may in turn direct the legal department of the city to take appropriate legal action to request the district court of Lyon County, Kansas, to order such production or relevant evidence.

(8) The commission shall review and advise the city on acceptability of its contract compliance and affirmative action programs.

(9) The commission shall regularly advise the governing body, through distribution of its agenda, minutes, memoranda, reports and other pertinent documents, of the items of business before the commission, the ongoing status of such items and the disposition of such items. The commission shall in any event render annually to the governing body a full written report of its activities and recommendations.

(10) The Commission shall act in an advisory capacity to the governing body with respect to disability issues, including:

a. Advise the governing body, the city's designated ADA coordinator, and other city personnel in identifying and addressing existing and emerging barriers to the full participation of people with disabilities in community facilities, programs, and services.

b. Review, at the direction of the governing body, city policies to ensure accessibility for people with disabilities.

c. Facilitate the gathering of information regarding access barriers in the community and to disseminate this information among the governing body and city personnel on that topic.

d. Recommend and/or prepare accessibility studies and activities to the governing body regarding accessibility issues in Emporia, including development of self-evaluation and transition plans, and other strategies to improve accessibility within the community. (Ord. 04-19, § 1, 7-7-2004; Ord. 18-38, § 4, 10-3-2018; Ord. 23-01 § 1, 2-15-23)

Sec. 13-20. Services Officer:

The Community Services Officer shall be an employee of the city assigned to provide administrative assistance to the commission. The Officer shall coordinate the processing and investigation of complaints with the investigating commissioners. The director shall further provide technical assistance to the commissioners when necessary, attend all meetings of the commission or investigating commissioners and serve as secretary thereto, and shall provide necessary documents and reports, such as agendas, minutes, and schedules of commission meetings to the commission. The director shall also be responsible for compliance with the Kansas open meetings law with respect to all meetings of the commission.

In addition to any powers and responsibilities heretofore conferred in the director, the director shall have the power and responsibility to:

(1) Seek to eliminate and prevent discrimination in employment because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability by employers, labor organizations, employment agencies, or other persons, and to take

other actions against discrimination because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability as provided herein;

(2) Effectuate the purposes of this chapter first by conference, conciliation, and persuasion so that persons may be guaranteed their civil rights and good will be fostered;

(3) Work cooperatively with and seek cooperation from, and upon request, make technical assistance available to all city government departments and agencies;

(4) Receive, investigate, initiate, and attempt to conciliate complaints alleging discrimination in employment, housing and public accommodations because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability;

(5) Pursue the goals of affirmative action implementation within municipal government and external to municipal government through continued dialogue and technical assistance, and education;

(6) In conducting an investigation, the director or his staff shall have access to all reasonable times to premises, records, documents, and other evidence or possible sources of evidence, and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation;

(7) Request that the city attorney apply to the district court of Lyon County, Kansas, for enforcement of any conciliation agreement by seeking specific performance of such agreement.

(8) The Community Services Officer of the city will act as liaison between the city and the commission. The liaison shall be responsible for compliance with the public meeting laws; preparation of meeting notices; agenda and minutes; maintenance of files and preparation of correspondence. The liaison shall provide any information that is reasonably requested by the committee, but shall not engage in research or preparation of reports without the prior approval of the city manager. (Ord. 04-19, § 1, 7-7-2004; Ord. 18-38, § 5, 10-3-2018; Ord. 23-01 § 1, 2-15-23)

Sec. 13-21. Unlawful Acts Or Practices – Employment:

It shall be an unlawful employment practice:

(1) For the employer, because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability of any person to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity.

(2) For a labor organization, because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

(3) For any employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or membership or to make any inquiry in connection with prospective employment or membership, which expresses, directly or indirectly, any limitation, specification or discrimination with respect to race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability, or any intent to make such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

(4) For any employer, employment agency or labor organization to discharge, expel or otherwise discriminate against any person because such person has opposed any practices or acts forbidden under this chapter or because such person has filed a complaint, testified or assisted in any proceeding under this article.

(5) For any employment agency to refuse to list and properly classify for employment or to refuse to refer any person for employment or otherwise discriminate against any person because of such person's race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability; or to comply with a request from an employer for a referral of applicants for employment if the request expresses, either directly or indirectly, any limitation, specification, or discrimination as to race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability, unless such request is accompanied by a demonstrably valid occupational qualification.

(6) For an employer, labor organization, employment agency, or school which provides, coordinates or controls apprenticeship, on the job, or other training or retraining programs to maintain a practice of discrimination, segregation or separation because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability, in admission, hiring, assignment, upgrading, transfer, promotion, layoff, dismissal, apprenticeship or other training or retraining program, or in any other terms, conditions, or privileges of employment, membership, apprenticeship or training; or to follow any policy or procedure which, in fact, results in such practices without a valid business necessity.

(7) For any person, whether an employer or employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts or practices forbidden under this article, or attempt to do so.

(8) For an employer, labor organization, employment agency or joint labor-management committee to:

a. Limit, segregate or classify a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

b. Participate in a contractual or other arrangement or relationship, including a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee or an organization providing training and apprenticeship programs that has the effect of subjecting a qualified applicant or employee or employee with a disability to the discrimination prohibited by this article;

c. Utilize standard criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control;

d. Exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

e. Not make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such employer, labor organization, employment agency or joint labor-management committee can demonstrate that the accommodation would impose an undue hardship on the operation of the business thereof;

f. Deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

g. Use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used, is shown to be job related for the position in question and is consistent with business necessity; or

h. Fail to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than the reflecting the impaired sensory, manual or speaking skills of such employee or applicant (except where such skills are the factors that the tests purports to measure).

(9) It shall not be an unlawful employment practice to fill vacancies in such a way as to eliminate or reduce imbalance with respect to race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability. (Ord. 04-19, § 1, 7-7-2004; Ord. 23-01 § 1, 2-15-23)

Sec. 13-22. Unlawful Acts Or Practices – Public Accommodation Practices:

It shall be an unlawful public accommodation practice for any "person", as defined herein being the owner, operator, lessee, administrator, manager, agent or employee of any place of public accommodation:

(1) To refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this article because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability, except where a distinction because of sex is necessary because of the intrinsic nature of such accommodation.

(2) For any person, whether or not specifically enjoined from discriminating under any provisions of this chapter, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

(3) Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with, a religious organization, association or society, from limiting its offerings of goods, services, facilities, and accommodations, to persons of the same religion, or from giving preference to such persons, provided that such offerings above mentioned are not, in fact, offered for commercial purposes.

(4) Nor shall anything in this article prohibit a nonprofit private club, in fact not open to the public, which, incident to its primary purpose or purposes, provides certain "public accommodations" herein defined, for other than commercial purposes, from limiting such accommodations to its members, or giving preference to its members and guests of its members. (Ord. 04-19, § 1, 7-7-2004; Ord. 23-01 § 1, 2-15-23)

Sec. 13-23. Unlawful Acts Or Practices – Discriminatory Housing Practices:

(a) It shall be an unlawful housing practice for any person:

(1) To refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale or rental of, or otherwise make unavailable or deny, real property to any person because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of real property, or in the provision of services or facilities in connection therewith, because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability.

(3) To make, print, publish, disseminate or use, or cause to be made, printed, published, disseminated or used, any notice, statement, advertisement or application, with respect to the sale or rental of real property that indicates any preference, limitation, specification or discrimination based on race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability, or an intention to make any such preference, limitation, specification or discrimination.

(4) To represent to any person because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability that any real property is not available for inspection, sale or rental when such real property is in fact so available.

(5) For profit, to induce or attempt to induce any person to sell or rent any real property by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability.

(6) To deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting real property, or to discriminate against him in the terms or

conditions of such access, membership or participation because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability.

(7) To discriminate against any person in his use or occupancy of real property because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability of the people with whom such person associates.

(b) It shall be unlawful for any bank, building and loan association, insurance company, financial institution or other person, firm or enterprise, whose business consists in whole or in part in the making of real estate loans, to:

(1) Deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining real property because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability of:

a. Such person;

b. Any person associated with such person in connection with such loan or financial assistance or associated with him in connection with the purposes of such loan or other financial assistance; or

c. The present or prospective owners, lessees, tenants or occupant of the real property in relation to which such loan or other financial assistance is to be made or given.

(2) Discriminate against any person in the fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability of:

a. Such person;

b. Any person associated with such person in connection with such loan or financial assistance or associated with him in connection with the purposes of such loan or other financial assistance; or

c. The present or prospective owners, lessees, tenants or occupant of the real property in relation to which such loan or other financial assistance is to be made or given.

(3) Use a form of application for financial assistance, or to make any inquiry, or make or keep any record in connection with any such application which indicates, directly or indirectly, an intention to make any preference, limitation, specification or discrimination because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability.

(c) It shall be an unlawful practice for any person:

(1) To engage in any form of threats or reprisals, or to engage in, or hire, or conspire with others, to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass, or to cause physical harm or economic loss to any person attempting to exercise or enforce the rights protected by this section;

(2) To aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory housing practices defined in this section.

(d) The preceding paragraphs notwithstanding, it shall not be deemed a violation of this section to or for, nor shall anything in this section be deemed to prohibit the following:

(1) A religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rent, or occupancy of real property which it owns or operates for other than a commercial purpose, to persons of the same religion, or from giving preference to such persons, unless such membership in such religion is restricted on account of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability.

(2) A nonprofit private club in fact not open to the public, which as incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(3) Nothing in this section shall apply to rooms or units in buildings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other if the owner actually maintains and occupies one of such living quarters as his residence.

(4) Nothing in this section shall prohibit the establishment or operation of a housing project, whether it be multiple- family housing or single-family housing, for senior citizens or for families whose head of household is a senior citizen. However, discrimination, segregation, or separation of such senior citizen housing on the basis of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability is prohibited as defined elsewhere in this section.

(5) Nothing in this section shall require the owner of housing/real property to make physical changes to said real property to make it accessible to said disabled persons for the purposes of assignment or rental thereof, except as otherwise required by state or federal laws, regulations or orders. (Ord. 04-19, § 1, 7-7-2004; Ord. 23-01 § 1, 2-15-23)

Sec. 13-27. Public Contracts:

(a) Contract Provisions - Work Performance: Every contract for, or on behalf of, the city of Emporia or any agency thereof, for construction, alteration or repair of any public building or public work for the acquisition of materials, equipment, supplies or services, shall contain provisions by which the contractor and any subcontractors agree that the contractor and subcontractor shall observe the provisions of this article and shall not discriminate against any person in the performance of work under the present contract because of race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability. except by reason of a demonstrably valid occupation qualification or business justification.

(b) Contract Provisions - Employment: In all contracts entered into by the city or any of its agencies or departments, there shall be included a provision that during the performance of the

contract, the contractor will not discriminate against any employee or applicant for employment in the performance of said contract and every contractor shall include similar provisions in all subcontracts under their contract with the city.

(c) Affirmative Action: Any contractor entering into a contract with the city and his subcontractors shall take affirmative action to ensure that employees are treated equally without regard to their race, color, religion, age, national origin, ancestry, familial status, sex, sexual orientation, gender identity, or disability. Such affirmative action shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruiting or recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor and subcontractor shall agree to post, in conspicuous places available to employees and applicants for employment, notices to be provided by the director setting forth provisions of this article. The contractor and his subcontractors shall provide all affirmative action information and necessary documents to implement compliance with the requirements of all federal, state, and local laws and ordinances. It shall be no excuse that the employer has a collective bargaining agreement with any union providing for exclusive referral or approval systems. The failure of the contractor or subcontractors to comply with the requirements of this article shall be grounds for cancellation, termination, or suspension of the contract, in whole or in part, by the governing body with the contractor or subcontractors until satisfactory proof of intent to comply shall be submitted to, and accepted by, the governing body.

(d) Exemptions: The provisions of this article shall not apply to:

(1) Contractors or suppliers who would not be considered as an "employer" as defined in section 13-17 of this chapter;

(2) Contracts and subcontracts not exceeding twenty thousand dollars (\$20,000.00);

(3) Call, type or purchase order agreements which do not exceed twenty thousand dollars (\$20,000.00) in total per calendar year. Provided, vendors, contractors and suppliers who will supply or expect to supply the city with goods or services exceeding twenty thousand dollars (\$20,000.00) during the subsequent calendar year shall not be exempt from the requirements of this article.

Provided the above exemptions shall not conflict with applicable state or federal laws. (Ord. 04-19, § 1, 7-7-2004; Ord. 23-01 § 1, 2-15-23)"

Section 2. That sections 13-16 through 13-23 and 13-27 of the Code of the City of Emporia, Kansas as they existed prior to the adoption of this ordinance are hereby repealed.

Section 3. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, KS as an amendment thereto and shall be appropriately numbered to conform to the uniform numbering system of the Code.

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

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this
15th day of February 2023.

Susan Brinkman, Vice Mayor

ATTEST:

Kerry Sull, City Clerk



Commission Action Report

Title: Supplemental No. 1 to Agreement No. 157-21 with KDOT for Project No. 56 KA-6154-01 Road Improvements along 18th Ave/County Rd. 180 (Rd. G to Rd. F5)

Proposed Agenda Date: February 15th, 2023

Presented By: Jim Ubert, City Engineer

BACKGROUND:

The Secretary of Transportation and the City entered into Agreement 157-21 dated June 30, 2021 for the construction of 18th Avenue/County Rd. 180 from Rd. G to Rd. F5 for improvements coinciding with Evergy's new service center at the southwest corner of 18th Ave and Rd. G.

DISCUSSION:

N/A

FINANCIAL CONSIDERATIONS:

Agreement 157-21 was for \$1,900,000 for the construction of this project. 2022 construction costs saw a large one (1) year spike in prices due to many factors. The project was awarded to Killough Construction for a base bid of 2,403,034.38 in August 2022. Due to the low bid exceeding the Engineer's Estimate, City Engineering staff requested KDOT increase its cost share \$100,000 to their cap at \$2M for this type of project.

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Approve Supplemental No. 1 to Agreement No. 157-21 and authorize the Mayor to sign.

ATTACHMENTS:

Supplemental No. 1 and Agreement No. 157-21.

PROJECT NO. 56 KA-6154-01
ROAD IMPROVEMENTS (CONSTRUCTION)
CITY OF EMPORIA, KANSAS

AGREEMENT

This Agreement is between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Emporia, Kansas** (“City”), collectively, the “Parties.”

RECITALS:

- A. The City has requested and Secretary has authorized a roadway improvements construction project, as further described in this Agreement.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets utilizing state funds.
- C. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for state aid, such work is required to be done in accordance with the laws of Kansas.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“City”** means the City of Emporia, Kansas, with its place of business at 104 E 5th Avenue, Emporia, KS 66801.
- 3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
- 4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
- 5. **“Construction Engineering” or “CE”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

6. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
11. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
12. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261, *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280, *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430, *et seq.*, Hazardous Waste.
13. **“KDOT”** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
14. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
15. **“MUTCD”** means the latest version of the Manual on Uniform Traffic Control Devices as adopted by the Secretary.

16. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, reasonably determines are not Participating Costs.
17. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
18. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
19. **“Preliminary Engineering” or “PE”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
20. **“Project”** means all phases and aspects of the roadway improvements (Construction) endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **grading, surfacing, culvert replacement, drainage improvements, pavement marking and seeding on Road 180, from Road G west for approximately ¼ mile along the north side of Emporia Industrial Park to Road F5, in Emporia, Kansas,** and is the subject of this Agreement.
21. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
22. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services. The bidder must be eligible and listed on KDOT’s prequalified list.
23. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
24. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and his or her successors and assigns.
25. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

FUNDING:

1. **Funding.** The table below reflects the funding commitments of each Party. The Total Actual Costs of Construction include Construction Contingency Items. The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change.

Party	Responsibility	Total Projected Contribution (\$)
Secretary	100% of Total Actual Costs of Construction, not to exceed \$1,900,000.00.	1,900,000.00
City	0% of Total Actual Costs of Construction until Secretary's funding limit is reached. 100% of Total Actual Costs of Construction after Secretary's funding limit is reached. 100% of Cost of Preliminary Engineering (PE), Construction Engineering (CE), Right of Way, and Utility Adjustments. 100% Non-Participating Costs.	
Total Estimated Project Cost		1,900,000.00

ARTICLE III

SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire rights of way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel such that the City may obtain participation of state funds in the cost of the Project.

2. **Reimbursement Payments.** The Secretary agrees to make partial payments to the City for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by the City that the Project is being constructed within substantial compliance of the Design Plans.

3. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement at the end of its current fiscal year. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.

ARTICLE IV

CITY RESPONSIBILITIES:

1. **Legal Authority.** By his or her signature on this Agreement, the signatory certifies that he or she has legal and actual authority as representative and agent for the City to enter into this Agreement on its behalf. The City agrees to adopt all necessary ordinances or resolutions and to take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.
2. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.
3. **Letting and Administration by City.** The City shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Secretary. The City further agrees to administer the construction of the Project in accordance with the Design Plans, and the documents set forth in Article IV, paragraph 4 below, and to administer the payments due the Contractor, including the portion of the cost borne by the Secretary.
4. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions required by the Secretary or by the City with the Secretary's concurrence, A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Access Management Policy, the KDOT Access Management Construction Project Guidelines, and the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), as applicable.
5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 4 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer, who is responsible for the preparation of the geological investigations or studies. All technical professionals involved in the Project are required to meet the applicable licensing requirements as stated in K.S.A. § 74-7001, *et seq.*
6. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 4 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any

contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 4 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

(a) Completion of Design. Language requiring completion of all plan development stages no later than the current Project schedule's due dates, exclusive of delays beyond the Consultant's control.

(b) Progress Reports. Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

(c) Third Party Beneficiary. Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

"Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

7. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or Secretary's representatives is not intended to and shall not be construed to be an undertaking of the City's and its Consultant's duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

8. **Performance Bond.** The City further agrees to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

9. **Plan Retention.** The City will maintain a complete set of final Design Plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints,

drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all the above-mentioned documents to the Secretary.

10. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the City will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, subcontractors or its consultants. The City shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

11. **Indemnification by Contractors.** The City agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

12. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

13. **Right of Way.** The City agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by City. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) **Right of Way Documentation.** The City will provide all legal descriptions required for Right of Way acquisition work. Right of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel. The City agrees copies of all documents, including recommendations and

coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) **Relocation Assistance.** The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the City will undertake the relocation for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. §§ 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1, *et seq.* The Secretary will provide information, guidance, and oversight to the City for any relocations required by the Project.

(d) **Non-Highway Use of Right of Way.** Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. Any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

14. **Removal of Encroachments.** The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

15. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed no less than the distance permitted by the National Fire Code from the Right of Way line.

16. **Utilities.** The City agrees to the following with regard to Utilities:

(a) **Utility Relocation.** The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

(b) **Status of Utilities.** The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of

the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) Indemnification. To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

17. **Hazardous Waste.** The City agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and local government standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project limits.

18. Inspections. The City is responsible to provide Construction Engineering for the Project in accordance with the documents identified in Article III, paragraph 4 above.

(a) By City Personnel. City personnel who are fully qualified to perform the inspection services in a competent and professional manner may be utilized by the City to inspect the Project, in which case the City shall provide the Secretary with a list of such personnel who will act as the assigned inspectors and their certifications.

(b) By a Consultant. If the City does not have sufficient qualified engineering employees to accomplish the Construction Engineering on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary services. However, any Consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the FHWA, and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications.

(c) Protective Clothing. The City will require at a minimum all City personnel and all Consultant personnel performing Construction Engineering comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. If the City executes an agreement for Construction Engineering, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

19. Corrective Work. Representatives of the Secretary may make periodic inspections of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of state participation. The Secretary does

not undertake (for the benefit of the City, the Contractor, the Consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the Contractor's errors, omissions or deviations from the final Design Plans.

20. **Traffic Control.** The City agrees to the following with regard to traffic control for the Project:

(a) **Temporary Traffic Control.** The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the MUTCD, as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the City's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the City of the determinations made pursuant to this section.

(b) **Permanent Traffic Control.** The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. § 8-2005, must conform to the latest version of the MUTCD as adopted by the Secretary.

(c) **Parking Control.** The City will control parking of vehicles on the City streets throughout the length of the Project covered by this Agreement. On street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) **Traffic Movements.** The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary.

21. **Access Control.** The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans and in accordance with the KDOT Access Management Policy, unless prior approval is obtained from the Secretary.

22. **Prior Costs Incurred.** The City shall be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the Secretary.

23. **Audit.** The City will participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the City for items considered Non-Participating Costs, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

24. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

25. **Maintenance.** When the Project is completed and final acceptance is issued, the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

26. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE V

GENERAL PROVISIONS:

1. **Incorporation of Final Plans and Attachments.** The final Design Plans, specifications, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for Construction Engineering services (if applicable) and other Special Attachments are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are made a part of this Agreement.

2. **Compliance with Federal and State Laws.** The City shall comply with all applicable federal, state, and local laws and regulations, executive orders, and ordinances governing the projects undertaken pursuant to this Agreement.

3. **Civil Rights Act.** The "Special Attachment No. 1, Rev. 09.20.17," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

4. **Contractual Provisions.** The provisions found in the most current version of the "Contractual Provisions Attachment (Form DA-146a)," which is attached hereto, are hereby incorporated into this Agreement and made a part thereof.

5. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not deemed to control or affect the meaning or construction or the provisions herein.

6. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the City, and their successors in office.

7. **No Third-Party Beneficiaries.** No third-party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a Party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

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

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF EMPORIA, KANSAS


CITY CLERK 6-19-21
(Date)


Rob Gilligan, Mayor

(SEAL)



Agreement No. 157-21
Project No. 56 KA-6154-01

Kansas Department of Transportation
Secretary of Transportation

BY:  06/30/2021
Burt Morey, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

Form Approved
By <u>HDA 06.25.2021</u>
Legal Dept. KDOT

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor 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 Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at 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) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency ("LEP").

CLARIFICATION

Where the term "contractor" appears in the following "Nondiscrimination Clauses", the term "contractor" is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration ("FTA") or the Federal Aviation Administration ("FAA") as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration ("FTA"), or Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

PROJECT NO. 56 KA-6154-01
ROAD IMPROVEMENT (CONSTRUCTION)
CITY OF EMPORIA, KANSAS

S U P P L E M E N T A L A G R E E M E N T N o . 1

This Agreement, made and entered into effective the date signed by the Secretary or designee, is by and between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Emporia, Kansas** (the “City”), **collectively**, the “Parties.”

RECITALS:

- A. Secretary and the City entered into Agreement No. 157-21 dated June 30, 2021, for the construction and maintenance of city streets utilizing state funds (the “Original Agreement”).
- B. Parties now mutually desire to supplement the Original Agreement to reflect an increase in the state funding available for the Project.

NOW, THEREFORE, the Parties agree as follows:

- 1. On page 4 of the Original Agreement, Article II, paragraph 1, be replaced in its entirety to read:

1. **Funding.** The table below reflects the funding commitments of each Party. The Total Actual Costs of Construction include Construction Contingency Items. The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change.

The total estimated Construction cost is \$2,403,034.00.

Party	Responsibility	Total Projected Contribution (\$)
Secretary	100% of Total Actual Costs of Construction, not to exceed \$2,000,000.00.	2,000,000.00
City	0% of Total Actual Costs of Construction until the Secretary’s funding limit is reached. 100% of Total Actual Costs of Construction after the Secretary’s funding limit of \$2,000,000.00 is reached. 100% of Preliminary Engineering (PE), Construction Engineering (CE), Right of Way, Utilities, and Non-Participating Costs.	

- 2. **Counterparts.** This Supplemental Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one in the same Agreement.

THIS SUPPLEMENTAL AGREEMENT shall not be construed to alter, modify, or void the terms, provisions or conditions of the Original Agreement, which is incorporated into this Supplemental Agreement by reference, except as herein specifically provided.

IN WITNESS WHEREOF, the Parties have caused this Supplemental Agreement to be signed by their duly authorized officers.

ATTEST:

THE CITY OF EMPORIA, KANSAS

CITY CLERK

(Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

BY: _____
Greg M. Schieber, P.E. (Date)
Interim Deputy Secretary and
State Transportation Engineer



Commission Action Report

Title: Financials & Permits

Proposed Agenda Date: February 15, 2023

BACKGROUND:

The following is general information for the month of January 2023 for the community:

Monthly Local Retail Sales Tax Receipts Update

	2022	2023	
	\$464,937.29	\$516,306.92	Increase of \$51,369.63 for the month, and
			Overall increase of 11.05% from year 2022.
YTD	\$464,937.29	\$516,306.92	

City Share from County Tax

	2022	2023	
	\$238,095.92	\$265,044.38	Increase of \$26,948.46 for the month, and
			Overall increase of 10.17% from year 2022.
YTD	\$238,095.92	\$265,044.38	

Building Permits issued from 1/1/2023 to 1/31/2023 for new construction, remodeling/repairs, and demolition.

Total number of building permits issued through Code Services:	52
Total of valuations associated with those building permits:	\$12,367,951.00
Total number of dollars collected for Building Permit Fees:	\$ 26,530.75
Construct – Single-family dwellings	0
Demo – Single-family dwellings	2

Flint Hills Mall CID for January 2023	\$20,376.67
YTD	\$20,376.67

Pavilions CID for January 2023	\$10,873.62
YTD	\$10,873.62

COMMISSION MEETING

11:00 A.M.

FEBRUARY 1, 2023

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, February 1, 2023, in the City Commission Meeting Room with Vice Mayor Brinkman presiding and Commissioners Harter, Sauder and Smith present. Mayor Giefer was absent. Also present were City Manager Cocking, City Clerk Sull and City Attorney Montgomery was present via phone.

**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 prior to making comments.

No comments were made at this time.

**PROCLAMATION
(Emporia State University Day)**

Vice Mayor Brinkman reviewed the proclamation for "Emporia State University Day" stating Emporia State University will commence to celebrate it's 160th anniversary on Founders's Day, February 17, 2023 and urged all Emporian to join together, going forward hand in hand, as we celebrate the founding of Emporia State University.

**ENGINEERING
(Water Intake Improvements of the Neosho River)
(Kansas Ready Mixed Concrete Association)
(Project Award)**

Jim Ubert, City Engineer, was recognized and addressed the Governing Body. He stated at the 2022 Kansas Ready Mixed Concrete Association Awards Program in Olathe, Kansas, City of Emporia staff were presented with a plaque for the Water Intake Improvements Project on the Neosho River. The project was completed in the summer of 2022. The project was designed and inspected by BG Consultants. He stated the City of Emporia along with projects from Sterling, Victoria, and Hutchinson were awarded this

distinction at the 56th Annual KAPA-KRMCA convention on January 12, 2023. He stated all state entries will be automatically entered into the American Concrete Institute Concrete Construction Awards Program for consideration later in the year.

SEWER MAINTENANCE
(CDBG Lift Station Improvements Project No. 21-PF-020)
(Contract Amendment Request #1 - Time Extension)

Garrett Nordstrom, Governmental Assistance Services, was recognized and addressed the Governing Body. He stated a six (6) month time extension for the CDBG Lift station improvements project is being requested. The construction has been delayed due to supply chain issues, which are beyond the control of the City and the contractor. He stated the contractor has assured that the project will be completed by August 31, 2023. He stated a time extension letter to the Kansas Department of Commerce and a Contract Amendment/Request form are required for an additional six months for the project to be completed. He stated this was an administrative matter and the budget would remain the same.

Commissioner Smith made a motion to approve the contract amendment/request No. 1 for 2021 CDBG Lift Station Water Intake Improvements Time Extension of Six Months. Commissioner Harter seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Harter, aye; Commissioner Sauder, aye; and Vice Mayor Brinkman, aye.

RECEIPT OF PROCLAMATION
(Emporia State University Day)

Bella Price, ASG President for Emporia State University, was in attendance to accept a proclamation recognizing February 17, 2023 as "Emporia State University Day" in Emporia.

Vice Mayor Brinkman then presented the proclamation.

CITY COMMISSION
(Authorize Application to Kansas Housing Resources Corporation)
(Kansas Housing Investor Tax Credit for Mahnopoly, LLC)
(Resolution Number 3691)

Jim Witt, Special Projects Coordinator, was recognized and addressed the Governing Body. He stated the Kansas Housing Investment Tax Credit program was created to allocate \$62 million dollars to the state housing programs in order to address the housing supply issue in Kansas. The applications are due to the Kansas Housing Resource Corporation which administers the state housing programs on February 17, 2023. The application is prepared by the applicants themselves assisted on an as-needed basis by city staff. He stated the Mahnopoly application is for tax credits to support the construction of 9 single-family units in the Mahtropolis subdivision. He stated no city funds are involved in the Kansas HITC program. He stated staff recommends approval of the resolution of support for Mahnopoly, LLC Kansas HITC Credits.

Commissioner Smith made a motion to approve Resolution Number 3691 a resolution authorizing the submittal of an application to KHRC for Mahnopoly, LLC Kansas HITC Credits. Commissioner Sauder seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Sauder, aye; Commissioner Harter, aye; and Vice Mayor Brinkman, aye.

CITY COMMISSION
(Authorize Application to Kansas Housing Resources Corporation)
(Kansas Housing Investor Tax Credit for Capitol Holdings, LLC)
(Resolution Number 3692)

Jim Witt, Special Projects Coordinator, was recognized and addressed the Governing Body. He stated the Kansas Housing Investment Tax Credit program was created to allocate \$62 million dollars to state housing programs in order to address the housing supply issue in Kansas. The application is due to the Kansas Housing Resource Corporation on February 17, 2023. The application is prepared by the applicant themselves assisted on a as-needed basis by city staff. The Capitol Holdings, LLC application will assist in the construction of four (4) duplexes at 1023 and 1025

Merchant Street. No city funds are involved in the Kansas HITC program. He stated staff is recommending approval of resolution of support for Capitol Holdings, LLC Kansas HITC credits.

Commissioner Smith made a motion to approve Resolution Number 3692 a resolution authorizing the submittal of an application to KHRC for Capitol Holdings, LLC Kansas HITC Credits. Commissioner Harter seconded the motion. The vote follows:

Commissioner Smith, aye; Commissioner Harter, aye; Commissioner Sauder, aye; and Vice Mayor Brinkman, aye.

**CITY COMMISSION
(Board Appointment)**

Emporia Human Relations Commission:

It was moved by Commissioner Smith seconded by Commissioner Harter that Amy Gajda be appointed to the Emporia Human Relations Commission to fill an unexpired term that expires on June 1, 2025. The vote follows: Commissioner Smith, aye; Commissioner Harter, aye; Commissioner Sauder, aye; and Vice Mayor Brinkman, aye.

Consent Agenda

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

a. Approve minutes of the Regular Meeting held on January 18, 2023.

The vote follows: Commissioner Smith, aye; Commissioner Harter, aye; Commissioner Sauder, aye; and Vice Mayor Brinkman, aye.

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

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.

At the time this Agenda was prepared, the following items were in the works for the tentative Agendas of February 15, 2023 meetings.

- Housing Grant from the Kansas Housing Resources Corporation to the City of Emporia.
- Minor Plat for Kwik Shop Addition.
- Approve New Water Meters.

Study Session:

No study session scheduled.

Commissioner Smith made a motion to recess the meeting until 11:30 p.m. to Conference Room 1AB. Commissioner Sauder seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Sauder, aye; Commissioner Harter, aye; and Vice Mayor Brinkman, aye.

The following items were discussed at Study Session:

1. 2022 Year End Summary.
2. Hammond Park Culverts Stormwater Improvements Project.
3. Skateboard Park Survey.
4. Fireworks Stands Permit Fees.

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

Susan Brinkman, Vice Mayor

ATTEST:

Kerry Sull, City Clerk



Commission Action Report

Title: Set Bid Date and Time for 2023 Hazardous Sidewalks Improvements Project

Proposed Agenda Date: February 15th, 2023

Presented By: Jim Ubert, City Engineer

BACKGROUND:

This is the annual hazardous sidewalk program. With this bid, prices will be set and a contractor selected for the 2023 Hazardous Sidewalk Project.

DISCUSSION:

N/A

FINANCIAL CONSIDERATIONS:

This project will be funded out of the Multi Year Fund.

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Set Bid Date and Time for March 7th, 2023, at 2:00 pm.

ATTACHMENTS:

Invitation to Bid

INVITATION TO BID

Sealed bids for the **2023 Hazardous Sidewalk Project** will be received at the office of the City Clerk, City of Emporia, Kansas located at 104 E. 5th Avenue, up to **2:00 p.m. on Tuesday, March 7th, 2023**, and then publicly opened in the Engineering Department's Conference Room located at 522 Mechanic Street. A non-mandatory pre-bid conference will be held at 2:00 p.m. on Tuesday, February 28th, 2023, at the same location.

The work will consist of all Hazardous Sidewalk replacement at locations assigned by the City for the Calendar Year 2023. Contractor will receive a Purchase Order as requests are received and will have 60 calendar days from the date of the Purchase Order to complete the work at the site or sites indicated. Unit prices will be per Purchase Order and not based on total project quantity:

<u>BID ITEM</u>	<u>ESTIMATED QUANTITY</u>
4" Sidewalk (0 SF –100 SF)	50 SF
4" Sidewalk (101 SF – 250 SF)	1,800 SF
4" Sidewalk (251 SF +)	2,000 SF
6" Sidewalk	400 SF
6" Reinforced Sidewalk	250 SF
Miscellaneous Site Work	50 HR
Curb & Gutter (Remove & Replace)	60 LF
Handicap Ramp (Warning Panel)	20 SY
Handicap Ramp (No Panel)	5 SY
Saw Cutting	100 LF

Specifications and bid documents are on file at the office of the City Engineer, 522 Mechanic Street, P.O. Box 928, Emporia, KS 66801 (620-343-4260). The cost for specifications and bid documents is twenty dollars (\$20), which is nonrefundable. If the Contractor prefers plans and bid documents sent by UPS there is an additional required fee of five dollars (\$5). Also, the Contractor may request an electronic copy of specifications and bid documents for a flat rate fee of twenty dollars (\$20). The City of Emporia Master Set of Specifications (for all projects) is available upon request for a cost of \$20 for a hard copy. A contractor either shall have a current set of City Master Specs or have a signed contractor's acknowledgement on file with the City Engineer's Office that they have read and shall abide by the Master Set of Specifications on the City Web page in order to bid City of Emporia projects.

Each bid shall be accompanied by a certified check, a cashier's check, or an approved bidder's bond in the flat rate amount of \$1,000. Any bid bond must be with a surety and guaranty company authorized to do business in the State of Kansas and acceptable to the City as Surety. It will be the intent of the City to no longer add large sections of downtown sidewalk to this program unless agreed to by the contracted contractor.

The Bidder to whom the Contract is awarded will be required to furnish a statutory bond for twenty thousand dollars (\$20,000) and a performance and maintenance bond for twenty thousand dollars (\$20,000); the bonds to be acceptable to the City of Emporia, Kansas, and

conform to the requirements of the Contract documents.

The City of Emporia, Kansas, reserves the right to reject any or all bids and to waive defects in bids. No bids will be withdrawn for a period of thirty (30) days after the time set for opening of bids.

If you need accommodations due to a disability to participate in this event, meeting, or activity, or alternative format of written materials contact Jeff Lynch, City of Emporia ADA Coordinator at least 48 hours before the event at 620-343-4291 or e-mail jlynch@emporiaks.gov

THE CITY OF EMPORIA, KANSAS

Kerry Sull
City Clerk

REQUEST FOR QUALIFICATIONS FOR
ARCHITECTURE & ENGINEERING SERVICES
CITY OF EMPORIA FIRE STATION PROJECTS

February 15, 2023

Proposals due: March 29, 2023

Point of contact for questions:

Submit to:

Kerry Sull, City Clerk
ksull@emporiaks.gov

Deliver to:

Kerry Sull
City Manager's Office
104 E 5th Ave, PO Box 928 Emporia, KS

Mail to:

Kerry Sull, City Clerk
City Manager's Office
PO Box 928
Emporia, KS 66801

Introduction: The City of Emporia is seeking qualifications from professionally qualified architectural firms who possess knowledge, skills, and experience in the design of fire stations to provide full design services for a new Fire Station 1, remodeling of Fire Station 2, and conversion of the existing fire department space for other city purposes. Due to the complexity of public safety operations, experience in planning design and construction of these types of facilities is an essential criterion for selection.

Project Delivery System: The City of Emporia is currently seeking proposals from construction firms and intends to enter into a contract for Construction Manager at Risk (CMAR) services with a Guaranteed Maximum Price (GMP) for the construction work required.

Project Budget: The total project construction cost is budgeted as a \$10 Million project. Delivering the completed project within this budget is a high priority. It is important that the City of Emporia, design team, and CMAR (collectively the "Project Team") work cooperatively and successfully to keep the final cost of the construction within this fixed budget.

RFQ Schedule: The City will make every effort to adhere to the following schedule:

Issue Request for Proposal	February 15
Deadline to submit questions	March 15
Deadline to submit Phase I proposals	March 29
Short listed firms announced	April 12
Interview selected firms	By April 26
Recommendation from the selection committee to the City Commission	May 3

Rejection of Proposals: The City of Emporia reserves the right, in its sole and complete discretion, to reject any or all proposals or cancel this RFQ, at any time prior to the time a contract is fully executed, for any reason. The City of Emporia is not liable for any costs the proposer ("Proposer") incurs in preparation and submission of its Proposal, in participating in the RFQ process or in anticipation of award of the contract.

Modification or Withdrawal of Submission: Any submission may be withdrawn or modified by written request of the respondent, provided such request is received by the City of Emporia at the above address prior to the date and time set for receipt of submissions.

Pre-proposal Conference: The City of Emporia will hold a pre-proposal conference. Interested proposers are encouraged to attend.

Cost of Proposal Preparation: The cost of preparing a response to this RFQ will not be reimbursed by the City of Emporia.

Questions & Answers: Any questions regarding this RFQ must be submitted by e-mail to ksull@emporiaks.gov no later than the date indicated on the RFQ Schedule. Answers to the questions will be posted as an Addendum to the RFQ.

Addenda to the RFQ: If the City of Emporia deems it necessary to revise any part of this RFQ before the Proposal response date or respond to questions, the City of Emporia will post an addendum to its website and send the Addendum to known interested parties. It is the proposer's responsibility to periodically check the website for any added information.

Submitting Proposals: To be considered, Proposals must arrive at the City of Emporia on or before the time and date specified in the RFQ Schedule. Submit six (6) bound paper copies and one digital copy in PDF format in a sealed envelope or carton marked on the outside with the words "Architectural Services for the City of Emporia Fire Station Projects". The envelope or carton should be mailed or delivered to:

Submit to:

Kerry Sull, City Clerk
ksull@emporiaks.gov

Deliver to:

Kerry Sull
City Manager's Office
104 E 5th Ave, PO Box 928 Emporia, KS

Mail to:

Kerry Sull, City Clerk
City Manager's Office
PO Box 928
Emporia, KS 66801

Any proposal received after the time described in the RFQ Schedule will be marked "Received Late" and will be discarded.

Proprietary Information: If a submission includes any proprietary data or information, such data or information must be specifically identified as such on every page on which it is found. Data or information so identified will be used by the City of Emporia solely for the purposes of evaluating submissions and conducting contract negotiations, provided all proposers understand and acknowledge that submissions made in response to this RFQ may become matters of public record pursuant to state law applicable to public entities and respondents shall be deemed fully aware of that possibility upon submission of a proposal.

Scope of Services: The following summary is intended to provide a general overview of the expectations of the services that the Architect will provide to the City of Emporia.

- Prepare design schedule and review with the Project Team. Update periodically.
- Space needs assessment and architectural program for the new Fire Station 1, and reprogramming of the existing Fire Station 1 and remodel and expansion of Fire Station 2.
- Site evaluation and site planning.
- Architecture, interior, and planting design.
- Engineering for Civil, Structural, Plumbing, Mechanical, Electrical, Low Voltage, and Fire Protection systems.

- Coordinate with utility companies.
- Coordination with City of Emporia and/or city's vendors for audio-visual, telecommunications, data, hardware, security, and dispatch systems.
- Furniture and fitness equipment selection and layout.
- Coordinate with Authorities Having Jurisdiction (AHJ) to preplan for planning/zoning approval and permitting.
- Submit documents as required to the AHJs. Assist the Construction Manager in obtaining permits.
- Coordinate with the selected CMAR for periodic estimates and selection of building systems and materials.
- Assist the City of Emporia as necessary to obtain separate services as required for geotechnical studies, site survey, environmental studies, special inspections, and traffic study if required.
- Presentation to the City Commission at various stages.
- Assist with the trade contractor bidding process, answer questions, and issue addenda as necessary.
- Attend periodic on-site construction progress meetings, and in general provide coordination to address questions that may arise.
- Review submittals, schedules, and Applications for Payment.

Services not required:

- Acoustical consultant
- LEED consulting/LEED certification
- Energy audit
- Commissioning
- As-constructed record drawings

Form of City – Architect Agreement

The City of Emporia intends to utilize AIA Document B101 – 2017 Standard Form of Agreement Between City and Architect as the basis for an agreement.

Insurance Requirements:

Professional Liability Insurance- The Respondent shall have a minimum of \$2,000,000 liability insurance written by an insurer authorized to transact in the State of Kansas.

Selection Process:

Phase I: A selection team of city staff will evaluate the submitted qualifications in accordance with the instructions prescribed in this Request for Qualifications. A "short list" of 3-4 qualified firms selected by the evaluation team will be invited to proceed to Phase II of the selection process and will be invited to make interview presentations. Following Phase II, the selection team will make a recommendation to the City Commission. The Commission will make the final decision on selection of the architectural firm.

Phase I Qualifications Submittal Requirements: Proposals should be in an 8 1/2-inch by 11-inch bound package. Photos of past projects and other graphics may be provided to help illustrate qualifications. For the purposes of the page limits indicated below a page is defined as one side of one sheet of paper

with no smaller than 10-point font. Printing may be single- or double-sided at the proposer's discretion. Proposers are encouraged to provide submissions that are easily readable.

1. Cover Letter (2 pages maximum): Provide the legal name and address of the firm. Acknowledge acceptance of the terms indicated in this Request for Proposal. Indicate whether this entity performed the projects that are provided as experience. If the experience is that of a different legal entity, explain. Summarize your understanding of the project scope. Provide a brief overview of your firm's experience and philosophy regarding design of Fire Stations and the benefits you believe the City of Emporia would receive from selecting your firm.
2. Document providing the following information (1 page):
 - a. Name of Firm
 - b. Address and telephone number of the office providing services for this project.
 - c. Form of Business Organization (corporation, partnership, etc.)
 - d. Is your business owned by a minority or woman.
 - e. Year founded
 - f. Primary individual to contact with telephone and email
 - g. Claims and lawsuits. Brief narrative indicating if there are any current judgements, claims, arbitrations, proceedings, or suits pending or outstanding against your organization or its principals/officers.
3. Relevant Project Experience (maximum 10 pages): Show experience with similar fire station projects and with the Construction Manager at Risk delivery method. Describe a minimum of five (5), projects that are similar in size, and scope constructed within the past ten (10) years. Provide information on each project that will allow the selection team to evaluate your work against the selection criteria noted in this RFQ. Indicate for each project the following minimum information:
 - a. Name of project, location, and construction date.
 - b. Client contact information.
 - c. Project information
4. Proposed Team Experience (maximum 10 pages): Include an organization chart and resumes for the project team. Include at a minimum resume for Principal in Charge, Project Manager, and lead engineers. Other key personnel to be assigned to the project may also be included at the proposer's discretion.
5. Project Approach and Management Capabilities (maximum 4 pages): Describe your firm's design approach for this fire station project. Describe special resources or capabilities your firm could employ on the project which would enhance the value your firm would bring to the project.
6. Other information: (maximum 3 pages): This section is not required. However, at the proposer's option, additional information that may be helpful to the selection committee can be provided here.

Scoring Criteria (Phase I):

	Points
Cover letter information	5
Relevant Project Experience	15
Proposed Team Experience	15
Project Approach and Management Capabilities	10
Financial and other information	5
Total	50

Phase II: Upon receipt of Phase I proposals, the selection team will select a short list of up to three (3) firms to be asked to proceed to Phase II. These firms will be invited to participate in an interview presentation to the team. The order of interviews will be determined by random selection. Upon completion of the interviews, firms will be ranked, and the selection team will make a recommendation to the City Commission for award of a contract. At the time of the announcement of the short list, more information will be provided to short listed firms regarding the desired timing, location, structure, and content of interview presentations.



Commission Action Report

Title: Informational Items

Proposed Agenda Date: February 15, 2023

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 the accomplishments of the organization.

DISCUSSION:

At the time this Agenda was prepared, the following items were in the works for the tentative Agendas of the Up Coming meetings on March 1, 2023.

Commission Meeting :

- Emporia Main Street Common Consumption Area.
- Beer Garden for GBO Block Party Event.
- Set Bid Time and Date for Bio Solid Disposal.
- Set Bid Time and Date for Chip Seal.
- Fanestil Contract

Study Session :

- Discuss Rates
- Discuss Mowing Orders & Procedure.
- Discuss New Water Meters.



Commission Action Report

Title: Executive Session

Proposed Agenda Date: February 15, 2023

BACKGROUND:

AN EXECUTIVE SESSION FOR DISCUSSIONS REGARDING DATA RELATED TO FINANCIAL AFFAIRS OR TRADE SECRETS OF CORPORATIONS, PARTNERSHIPS, TRUSTS, AND INDIVIDUALS FOR POTENTIAL ECONOMIC DEVELOPMENT PROJECTS. K.S.A. 75-4319(B)(4) IS THE AUTHORITY FOR THIS RECESS INTO EXECUTIVE SESSION.

DISCUSSION:

N/A

FINANCIAL CONSIDERATIONS:

N/A

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Recess into Executive Session to discuss confidential matters of a third party regarding a potential economic development project for 15 minutes and stating at which time the open meeting will resume.

ATTACHMENTS:

N/A