MEETING OF THE CITY COMMISSION - AGENDA
WEDNESDAY, APRIL 19, 2023 AT 11:00 AM
CITY COMMISSION CHAMBER

ORDER OF BUSINESS

CALL MEETING TO ORDER Mayor Susan Brinkman

MEMBERS PRESENT

Vice Mayor Becky Smith
Commissioner Danny Giefer
Commissioner Erren Harter
Commissioner Jamie Sauder

PROCLAMATIONS

Proclamation Naming April 22nd Earth Day in Emporia.
To Accept Daphne Mertens, Chair of the Natural Resources Advisory Board

Proclamation Celebrating April 28th as Arbor Day in Emporia.
To Accept Josh Nelson, City of Emporia Horticulturist

Proclamation Recognizing April 23-29 as National Library Week.
To Accept Pauline Stacchini, Executive Director of the Emporia Public Library

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) **Appointment of New Member to the Community Housing/Land Bank Board.**
Presented by: Susan Brinkman, Mayor and Danny Giefer, Commissioner
Recommended Action: Approve Appointment of New Member to the Community Housing.

2) **Appointment of Member to the Natural Resources Advisory Board.**
Presented by: Becky Smith, Commissioner
Recommended Action: Approve Appointment of Member to the Natural Resources Advisory Board.

3) **Amendment to the 2016 Development Agreement Between Emporia Land Development, LLC and the City of Emporia Regarding CID Sales Tax.**

Presented by: Jim Witt, Special Projects Coordinator

Recommended Action: Approve Amendment to the 2016 Development Agreement Between Emporia Land Development, LLC and the City of Emporia Regarding CID Sales Tax.

4) **Award Street Preservation.**

Presented by: Dean Grant, Public Works Director

Recommended Action: Approve Award Street Preservation.

5) **Award 2023 Street Rehabilitation Project**

Presented by: Jim Ubert, City Engineer

Recommended Action: The staff recommends awarding the project to APAC-Kansas, Inc., Shears Division for Base Bid and Zoo Bus Parking Lot Bid for the amount of $1,047,043.93.

6) **Land Lease between the City of Emporia, Kansas, and the United States of America.**

Presented by: Christina Montgomery, City Attorney

Recommended Action: Approve Land Lease between the City of Emporia, Kansas, and the United States of America.

COMMUNICATIONS

Presented by Trey Cocking, City Manager.

1) Financial & Permits
2) March Budget Report
3) 2023 Spring Landfill Days.
4) Community Housing Board/Land Bank Minutes.
5) MUPP Board Meeting Minutes.

CONSENT AGENDA

Presented by Trey Cocking, City Manager.

1) Minutes for the Commission Meeting on April 5, 2023.
2) Ordinance No. 23-10 Authorizing a Beer Garden for the Cinco de Mayo Special Event.
3) Ordinance No. 23-09 Establishing Visit Emporia Common Consumption Area.
4) Ordinance No. 23-08 Establishing Radius Production Common Consumption Area.
5) Resolution No. 3694 to Amendment to Housing Development and RHID Policy.
6) Set Bid Date and Time for Sanitary Sewer and Water Line Improvements to serve Mahtopolis Addition.
7) Zoo Education Parking Lot Change Order No. 1 for Project No. ZO2102
8) KDOT CCLIP FY2024 SP Mill and Overlay on US-50 from Graphic Arts Road to Prairie Street Agreement.

INFORMATIONAL ITEMS

Presented by Trey Cocking, City Manager.

1) Informational Items

GOVERNING BODY COMMENTS

Mayor Susan Brinkman
Vice Mayor Becky Smith
Commissioner Danny Giefer
Commissioner Erren Harter

Commissioner Jamie Sauder

EXECUTIVE SESSION

1) AN EXECUTIVE SESSION FOR THE PRELIMINARY DISCUSSION OF THE ACQUISITION OF REAL PROPERTY. K.S.A. 75-4319(B)(6) IS THE AUTHORITY FOR THIS RECESS INTO THE EXECUTIVE SESSION.
   Recess into Executive Session for the preliminary discussion of the acquisition of real property for 15 minutes, inviting Jim Ubert, City Engineer, and stating at which time the open meeting will resume.

RECESS

Recess to Conference Room 1AB for Study Session

STUDY SESSION AGENDA ITEMS

1) Review the Interim Report of the Task Force on Homelessness.
2) Compensation Study Review.

ADJOURNMENT

PROCLAMATION

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

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

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

NOW, THEREFORE, I, Susan Brinkman, Mayor of the City of Emporia, Kansas, do hereby proclaim Saturday, April 22, 2023, as:

"EARTH DAY"

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

On this 19th Day of April 2023

ATTEST:

____
Susan Brinkman, Mayor

____
Kerry Sull, City Clerk

PROCLAMATION

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

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

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

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

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

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

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

NOW, THEREFORE, I Susan Brinkman, Mayor of the City of Emporia, Kansas do hereby proclaim April 28, 2023, as

ARBOR DAY

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

On this 19th day of April 2023

ATTEST:

Susan Brinkman, Mayor

Kerry Sull, City Clerk

PROCLAMATION

WHEREAS, libraries provide the opportunity for everyone to pursue their passions and engage in lifelong learning, allowing them to live their best life;

WHEREAS, libraries have long served as trusted institutions for all members of the community regardless of race, ethnicity, creed, ability, sexual orientation, gender identity, or socio-economic status;

WHEREAS, libraries strive to develop and maintain programs and collections that are as diverse as the populations they serve and ensure equity of access for all;

WHEREAS, libraries adapt to the ever-changing needs of their communities, continually expanding their collections, services, and partnerships;

WHEREAS, libraries play a critical role in the economic vitality of communities by providing internet and technology access, literacy skills, and support for job seekers, small businesses, and entrepreneurs;

WHEREAS, libraries are accessible and inclusive places that promote a sense of local connection, advancing understanding, civic engagement, and shared community goals;

WHEREAS, libraries are cornerstones of democracy, promoting the free exchange of information and ideas for all;

WHEREAS, libraries, librarians, and library workers are joining library supporters and advocates across the nation to celebrate National Library Week;

NOW, THEREFORE, be it resolved, I, Susan Brinkman, Mayor for the City of Emporia, proclaim April 23-29, 2023 as

National Library Week

and encourage all residents to visit the Emporia Public Library to explore the wealth of resources available.

On this 19^{th} Day of April 2023

ATTEST:

Susan Brinkman, Mayor

Kerry Sull, City Clerk

Commission Action Report

Title:	Appointment of New Member to the Community Housing/Land Bank Board
Agenda Date:	April 19, 2023
Presented By:	Susan Brinkman, Mayor and Danny Giefer, Commissioner

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BACKGROUND:
The Community Housing/Land Bank Board has one opening due to a term expiring, and is seeking to fill it with a qualified candidate.

DISCUSSION:
Applicant Eric Porter was interviewed previously by City Mayor Susan Brinkman and Commissioner Danny Giefer for a position on the Community Housing/Land Bank Board.

There are no other applicants for this board position. At the staff's request, Mayor Brinkman and Commissioner Giefer agreed to approve moving forward with candidate Porter to fill the position of which the term will run through 5/31/2026.

FINANCIAL CONSIDERATIONS:
N/A

RECOMMENDED ACTION:
Appoint Eric Porter to the Community Housing/Land Bank Board

ATTACHMENTS:
City board application

APPLICATION FOR ADVISORY BOARD MEMBERSHIP

RECEIVED
APR 28 2022
BY: ....

DATE: 04/25/2022

NAME:	Eric	A	Porter
	First Name	**MI**	**Last Name**

ADDRESS:	801 Merchant		
	Street		
	Emporia	KS	66801
	City	**State**	**ZIP**

Email: ericp@esbfinancial.com

PHONE: 6204377226

PLACE OF EMPLOYMENT: ESB Financial

HOW LONG HAVE YOU BEEN A RESIDENT OF EMPORIA? 14 years

ADVISORY BOARD(S) YOU ARE INTERESTED IN:
COMMUNITY HOUSING BOARD

BRIEFLY DESCRIBE WHY YOU WOULD LIKE TO PARTICIPATE ON THE
ADVISORY BOARD(S) MENTIONED ABOVE:
Interest in the Land Bank as informed and referred to by Jamie Sauder.

OTHER ACTIVITIES AND INTERESTS:
Board member of Emporia Main Street and Emporia Arts Council. Former Board member of Camp Alexander. Deeply involved with Community Development. Commercial Lender at ESB Financial.

In Lieu of Signature, Click Here

Commission Action Report

Title: Appointment of Member to the Natural Resources Advisory Board

Agenda Date: April 19, 2023

Presented By: Becky Smith, Commissioner and Jamie Sauder, Commissioner

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BACKGROUND:

The Natural Resources Advisory Board (NRAB) has one opening due to a term expiring and is seeking to fill it with a qualified candidate.

DISCUSSION:

Current board member, and Chairperson, Daphne Mertens' term has expired and she has submitted a new application for continuation for a new term. There are no other applicants for this board position. At the staff's request, Commissioners Jamie Sauder and Becky Smith agreed to move forward with recommending Ms. Mertens to fill the position of which the term will run through 12/31/25.

FINANCIAL CONSIDERATIONS:

N/A

OTHER CONSIDERATIONS:

N/A

RECOMMENDED ACTION:

Approve the Appointment of Daphne Mertens to the Natural Resources Advisory Board.

ATTACHMENTS:

City board application

Sue Bryson

From:	noreply@civicplus.com
Sent:	Monday, April 10, 2023 12:26 PM
To:	Sue Bryson; Emporia Info
Subject:	Online Form Submittal: Board Application Form

RECEIVED
APR 1 0 2023
BY: ....

Board Application Form

Select the Board, Commission, or Committee applying for	Natural Resources Advisory Board
Personal Information	
First Name	Daphne
Last Name	Mertens
Sex:	Female
Address1	907 Thompson St.
Address2	*Field not completed.*
City	Emporia
State	Ks
Zip	66801
Home Phone Number	620-437-6096
Business Address	104 E. 8th Avenue
Business Phone Number	620-437-6096
Occupation	Grant Manager, Healthier Lyon County
Email Address	dmertens@crosswindsks.org
Residency Information	
Length of Residency in Emporia	6 years currently, previously 20 years.
Are you a registered voter	Yes
Education and Hobbies	

High School	EHS
College	ESU, bachelors and masters
Trade or Business School	*Field not completed.*
Hobbies	*Field not completed.*

Organization Membership Information

Are you currently serving on other Boards, Commissions, or Committees?	Yes
If yes, which	NRAB- This is an application for a second term. MUPP
Have you served on a Board, Commission, or Committee before?	Yes
If yes, which	NRAB, MUPP, CareArc, Healthier Lyon County, Family Resource Council, Tobacco Free Campus Workgroup, KLC, Health Equity Action Team, Vax to Normal, Continuous Quality Improvement Committee, Chants
Please list organization memberships and positions held	SHAPE America, KAHPERD, Kansas Trails Council, numerous others
Please List Areas of Special Interest	Public and community health, infrastructure, planning
Please Enter Basic Resume Information Below	*Field not completed.*

Commission Action Report

Title: Amendment to the 2016 Development Agreement between Emporia Land Development LLC and the City of Emporia regarding CID sales tax.

Agenda Date: April 19, 2023

Presented By: Jim Witt, Special Projects Coordinator

BACKGROUND:
The City of Emporia previously approved a Development Agreement with Emporia Land Development, LLC, the Developer, on April 26, 2016, which covered both the initial 1% Community Improvement District and the establishment of a Tax Increment Redevelopment District. On September 28, 2022, the Developer filed a petition with the City for an additional 1% CID tax. After the required hearings and publication, the Commission approved the tax on November 2, 2022. The original Development Agreement must be amended to recognize the additional 1% CID tax.

DISCUSSION:
The proposed amendments cover all necessary amendments in the 2016 adopted version which expands the CID tax over this district to 2%. The 2016 tax will remain in place until the 3rd Quarter of the calendar year 2039 and the 2022 tax will remain in place until April of 2045 and take effect on April 1, 2023.

FINANCIAL CONSIDERATIONS:
No direct impact on City Sales Tax. A 2 % administrative fee is assessed for the disbursement of said fund collected under the CID tax.

OTHER CONSIDERATIONS:
No Other Considerations

RECOMMENDED ACTION:
Approve Amendment to the 2016 Development Agreement between Emporia Land Development LLC and the City of Emporia regarding CID sales tax.

ATTACHMENTS:
Amendment to the 2016 Development Agreement between Emporia Land Development LLC and the City of Emporia regarding CID sales tax.
Original Agreement

AMENDMENT TO EMPORIA PAVILIONS TAX INCREMENT REDEVEOPMENT DISTRICT AND COMMUNITY IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT

THIS AMENDMENT TO EMPORIA PAVILIONS TAX INCREMENT REDEVELOPMENT DISTRICT AND COMMUNITY IMPROVEMENT DISTRICT DEVELOPMEMNT AGREEMENT (this "**Amendment**") is entered into as of April ___, 2023, by and between Emporia Land Development, LLC, a Kansas limited liability company (the "**Developer**"), and the City of Emporia, Kansas, a municipal corporation organized under Kansas law (the "**City**"), with Developer and the City each referred to herein as a "**Party**" and collectively as the "**Parties**."

WHEREAS, the Parties entered into that certain Emporia Pavilions Tax Increment Redevelopment District and Community Improvement District Development Agreement dated as of April 26, 2016 (the "**Development Agreement**" or "**Agreement**"), which memorialized certain rights and obligations of each Party in relation to a commercial development in Emporia, Kansas more particularly defined in the Agreement as the "**Project**."

WHEREAS, the Development Agreement establishes the respective rights and duties of the City and Developer as they relate to the Project and sets out terms and conditions relating to the City's reimbursement of Developer for certain TIF Eligible Costs from available property tax increment and reimbursement of Developer for certain CID Eligible Project Costs from CID Sales Tax generated within the CID District, all as defined in the Agreement.

WHEREAS, as described in the Agreement, on June 15, 2016, the governing body of the City approved the creation of the CID District through the adoption of Ordinance No. 16-15 (the "2016 CID Ordinance"). As was contemplated in the CID Petition filed requesting formation of the CID District, the 2016 CID Ordinance approved certain public and private improvements related to the Project and within the CID District (hereinafter the "2016 CID") to be financed with Pay-As-You-Go Reimbursement (as defined herein) from the imposition of an additional 1% sales tax on all taxable sales within the CID District (the "2016 CID Sales Tax") and collection of the 2016 CID Sales Tax is ongoing.

WHEREAS, on September 28, 2022, the Developer filed a Petition with the City seeking the creation of an overlapping CID including the property where the Project is located and requesting an additional 1% CID Sales Tax on the Project, to be levied in connection with the construction of additional improvements constituting part of the Project.

WHEREAS, on November 2, 2022, the City adopted Ordinance No. 22-47, (the "2022 CID Ordinance") creating an overlapping CID for the Project (the "2022 CID"), approving certain improvements related to the Project and within the 2022 CID to be financed with Pay-as You-Go reimbursement from revenue produced by the levy of an additional 1% retailers' sales tax on all taxable sales within the 2022 CID (the "2022 CID Sales Tax").

WHEREAS, the Parties now desire to enter into this Amendment, amending the Development Agreement executed in 2016, to address the 2022 CID Sales Tax and the application of revenue derived from such tax to the financing of the Project (the "Amendment.")

WHEREAS, capitalized terms not otherwise defined, supplemented, or redefined herein shall have the same meaning as provided in the Development Agreement.

NOW THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. The definitions, representations, covenants, and recitations set forth in the foregoing recitals are material to this Amendment are incorporated into and made a part of this Amendment as though they were fully set forth herein. The resolutions and ordinances of the City introduced or adopted by the City Commission which designate the TIF District, the Project Plan approved by the City for the TIF District, the CID Petitions and ordinances creating the CID District, and the provisions of the CID Act and TIF Act (as defined herein and as amended), are incorporated herein and in the Agreement by reference and made a part of this Amendment, and the Agreement, subject in every case to the specific terms thereof.

Section 2. Definitions of Words and Terms. The parties agree Section 1.2 of the Agreement is amended and supplemented as follows:

> Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement and the following meanings:
>
> "CID or CID District" means the 2016 CID and the 2022 CID.
>
> "CID Eligible Project Costs" means any costs of the Project that are eligible for reimbursement under the CID Act and CID Petition, including the eligible categories of expenses set forth on the amended Project Budget attached hereto as Exhibit B and Financing Costs, as defined in the Agreement.
>
> "CID Petition" means (i) the Developer's petition to the City requesting formation of the 2016 CID, filed on April 6, 2016, and attached to the Agreement as Exhibit E, and (ii) the Developer's petition requesting formation of the 2022 CID, filed on September 28, 2022, and attached to this Amendment as Exhibit A.
>
> "CID Sales Tax" means (i) the 1% retailers' sales tax levied by the City upon retail sales in the CID District pursuant to Ordinance No. 16-16 and the CID Act, and (ii) the 1% retailers' sales tax levied by the City upon retail sales in the CID District pursuant to Ordinance No. 22-47 and the CID Act.
>
> "Project Budget" means the budget for the Project, as amended, and attached hereto as Exhibit B, as such Project Budget may be modified from time to time in accordance with Section 3.4 of the Agreement.

"2016 CID" means the community improvement district applicable to the Property created by Ordinance No. 16-16 of the City.

"2022 CID" means the community improvement district applicable to the Property and created by Ordinance No. 22-47 of the City.

Section 3. Term; Creation of Project Funds. Section 3.2 B of the Agreement is amended and supplemented as follows:

B. *CID District*. The term of the CID District shall commence on the date the director of taxation for the State begins collecting the CID Sales Tax within the District and expire on the earlier of (i) a date when all CID Eligible Project Costs have been reimbursed in full, (ii) the date the CID Sales Tax shall expire pursuant to the CID Act or the CID Sales Tax is otherwise terminated and CID Sales Tax Revenue available to reimburse CID Eligible Project Costs is exhausted. During the term of the CID District, the City shall establish and maintain a separate fund and account known as the CID Sales Tax Fund (Pavilions Project). All CID Sales Tax Revenues received by the City shall be deposited into the CID Sales Tax Fund for the purpose of reimbursing the Developer for CID Eligible Project Costs as provided in the CID Act and this Agreement. The City shall have sole control of disbursements from the CID Sales Tax Fund, subject to the City's obligations under this Agreement. The parties acknowledge that the CID statutes provide the term of any CID Sales Tax will not exceed 22 years from the date the CID Sales Tax is first levied, and, if not otherwise terminated under the terms of this Agreement, the 2022 CID Sales Tax will continue to be levied after the statutory termination date of the 2016 Sales Tax.

Section 4. Reimbursement/Cost Payment Process. Section 3.4 A of the Agreement is amended and supplemented as follows:

A. All requests for reimbursement or payment of Project Costs from the Project Funds shall be made in a Certificate of Project Costs in substantially the form attached hereto as Exhibit C, which Certificate shall be signed by the Developer Representative and shall identify the Project Fund or funds from which reimbursement is sought. To the extent funds are available in the Project Funds and the requested reimbursement is an eligible cost payable from such Project Fund, the Developer intends to request and the City intends to reimburse eligible project costs from the CID Sales Tax Fund and from the TIF Revenue Fund. If a particular Project Fund does not contain sufficient funds to pay the amount requested for reimbursement, the City may reimburse such eligible costs from the other Project Fund, if funds are available to do so, and the costs are eligible for payment from such Project Fund. The Developer shall provide itemized invoices, receipts, any lien waivers from vendors, contractors or subcontractors, and evidence of completion of Developer Work, or other information reasonably requested by the City to confirm that such costs were incurred, and are eligible for reimbursement under the TIF Act or CID Act, as applicable, and which, together with previous payments, do not exceed the budgeted amounts shown on the Project Budget as amended from time to time. The Developer may submit electronic documentation, provided that original documents are also delivered to the City by mail or hand delivery or by reputable national overnight mail services (e.g., Federal Express or UPS). Certificates of Project Costs may be submitted not more frequently than once per month and payment of Project Costs shall occur once per month. The Project Budget may be amended from time to time with the City's consent, which shall not be unreasonably withheld or delayed. The City's consent shall not be required to the extent a particular line item in the Project Budget increases by less than 20% from the figure shown on the Project Budget; however, the Developer shall notify the City in writing of increases of less than 20% and submit an amended Project Budget to the City.

Section 5. No Further Modification. Except as specifically modified or supplemented by this Amendment, each and every other term and condition of the Development Agreement shall remain unchanged and in full force and effect without modification with respect to the Project and the development of the Project.

Section 6. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument. Each Party may rely upon facsimile or electronic mail counterparts of this Amendment signed by the other Party with the same effect as if such Party had received an original counterpart signed by such other Party.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

CITY OF EMPORIA, KANSAS
a Kansas municipal corporation

[seal]

By____
Susan Brinkman, Mayor

ATTEST:

By:_________________________________
Kerry Sull, City Clerk

ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss.
COUNTY OF LYON)

Now on this ______ day of April, 2023, before me, a notary public in and for said county and state, came Susan Brinkman and Kerry Sull, Mayor and City Clerk, respectively, of the City of Emporia, Kansas, a Kansas municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

____
Notary Public

My Commission Expires:

____

TWG REF: 1013025

Date of Execution:______________ EMPORIA LAND DEVELOPMENT, LLC

By____
Name: Spencer R. Thomson

Title: Manager

By____
Name: Harold Robert Herman, Jr.

Title: Manager

By____
Name: J. Michael Neighbors

Title: Manager

ACKNOWLEDGEMENT

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Now on this ______ day of April, 2023 before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Spencer R. Thomson, Harold Robert Herman, Jr. and J. Michael Neighbors, each a Manager of Emporia Land Development, who are personally known to me to be the same persons who executed the within instrument on behalf of said entity and who duly acknowledged the execution of the same to be the act and deed of said entity.

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

____
Notary Public

My Commission Expires:

____

TWG REF: 1013025

Exhibit A
2022 CID Petition

PETITION FOR THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT

We, the owners of record of 100% of the property within the proposed community improvement district ("CID") described herein, do hereby request that a CID be created pursuant to K.S.A. 12-6a26 through K.S.A. 12-6a36, inclusive, as amended (the "Act"), in conformance with the following:

(A) The general nature of the proposed project (the "Project") is all phases of the commercial development of approximately 39.07 acres of real property located generally on the north side of 24th Avenue in Emporia, Kansas northeast of the intersection with Industrial Road. The City has previously created a CID in connection with the initial phase of the Project and a 1% CID retailers' sales tax is currently in place and levied in the existing CID. The petitioners seek the creation of an overlapping CID in connection with development of the remainder of the Project. The Project generally consists of construction of a large commercial development, which is planned at full build-out to feature approximately 200,000 square feet of commercial space dedicated to a mix of national and regional retailers, other large and small scale retail, restaurants, and associated commercial uses, and will include planned street improvements and infrastructure improvements (including utilities). The remaining phases of the Project yet to be constructed include the construction of multiple retail buildings for use and occupancy by various national and regional retailers and associated parking, utilities and other infrastructure as well as the development of several outparcels for use by restaurants and other smaller retail businesses as is typically found in shopping centers of a similar type.

(B) The current estimated total cost of the proposed Project including all phases is approximately $42,000,000 with $8,000,000 in costs proposed to be reimbursed to the developer of the Project through CID sales tax revenues. CID sales tax revenues may also be used to reimburse the developer or the City, as applicable, for additional City administrative fees and other City expenses.

(C) The proposed method of financing the Project is 100% from a sales tax imposed pursuant to the Act on a "pay as you go" basis and funds of the developer of the Project. No special assessments are requested to be imposed pursuant to the Act and no bonds or notes are requested to be issued by the City pursuant to the Act.

(D) The proposed amount of the CID sales tax to be levied is 1.00%, which shall be in addition to the existing CID 1.00% sales tax currently levied in the CID in connection with the earlier phases of the Project.

(E) A map showing the boundaries of the proposed CID is attached hereto as **Exhibit A.**

(F) A legal description of the boundaries of the proposed CID is attached hereto as **Exhibit B.**

Petitioner acknowledges that (1) an authorization of the Project requested by this Petition by the governing body of the City shall be deemed an authorization of the Project solely for purposes of K.S.A. 12-6a26 *et seq*. and does not constitute an approval or authorization of the Project by the governing body of the City for purposes of zoning, planning or any other purpose, (2) the City is entitled to rely on the costs estimates provided in this Petition for the purpose of approving such estimates under K.S.A. 12-6a26 *et seq*. without making independent investigation and (3) the implementation of a CID created by the City pursuant to this Petition will be subject to the terms of an amendment to a development agreement, to be entered into between the City and the current owner of the property proposed to be included in the district or its successors or assigns.

Names may not be withdrawn from this Petition by the signers thereof after the governing body commences consideration of this Petition or later than seven (7) days after the filing hereof, whichever occurs first. The signers of this Petition specifically consent to the levy of assessments (if any) described in this Petition without regard to benefits conferred by the project on property owned by each signer.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the petitioner has executed the above petition to create the CID at the date set forth opposite its signature below:

EMPORIA LAND DEVELOPMENT, LLC, a Kansas limited liability company

By: Spencer R. Thomson Dated: September 28, 2022

Name: Spencer R. Thomson

Title: Co-Manager

ACKNOWLEDGMENT

STATE OF MISSOURI)
) ss.
COUNTY OF CLAY)

Be it remembered that on this ___ day of September, 2022, before me, a Notary Public in and for the County and State stated above, came Spencer R. Thomson, known to me personally, who is Co-Manager of Emporia Land Development, LLC, a Kansas limited liability company, and that this instrument was signed and delivered on behalf of the company by said Co-Manager.

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

Dana Michelle Brock
Clay Co / Missouri
Notary Public in and for said County and State

My Commission Expires:

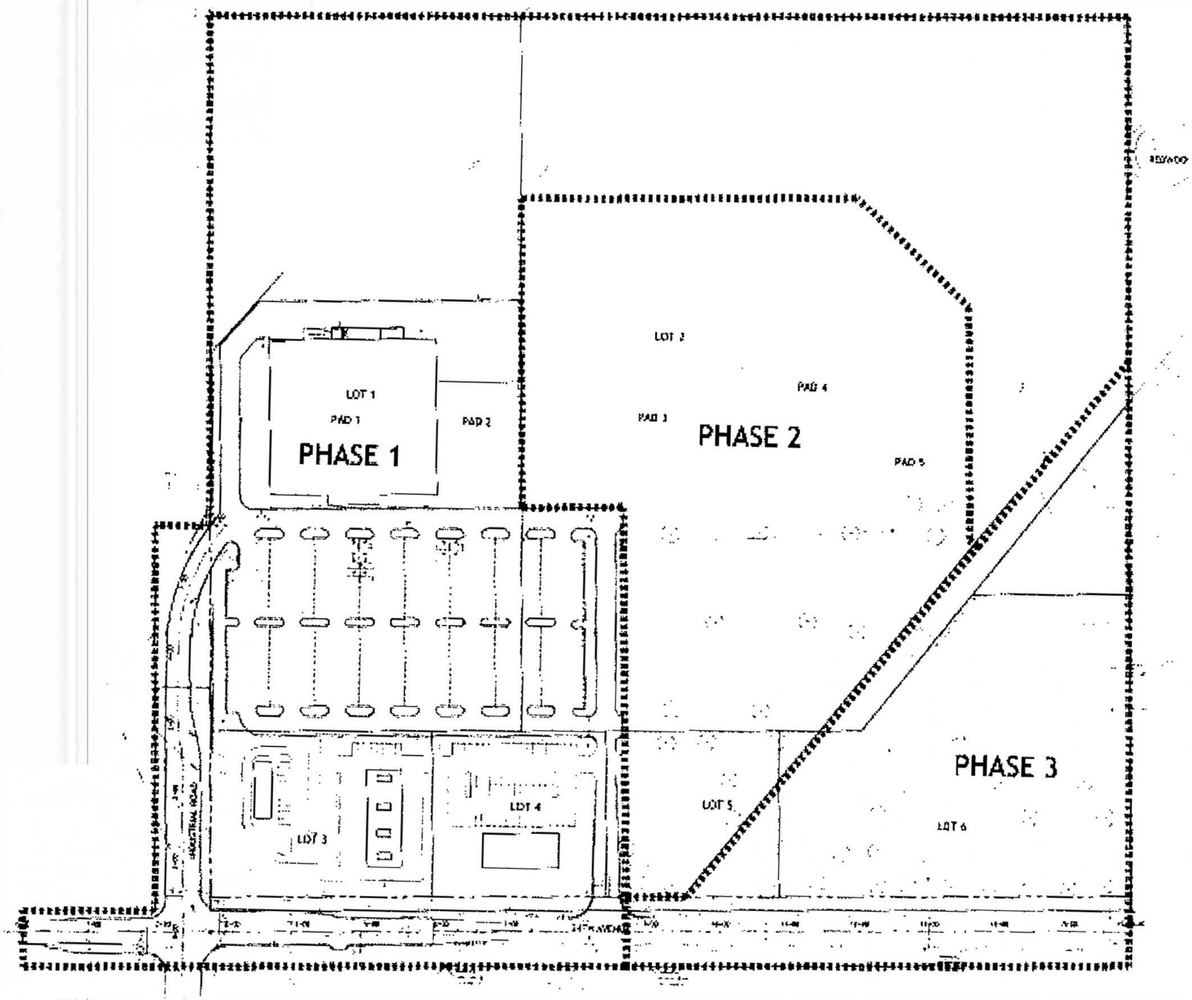
6/2/2026

Print Name: Dana Michelle Brock

DANA MICHELLE BROCK
Notary Public - Notary Seal
Clay County - State of Missouri
Commission Number 22875302
My Commission Expires Jun 2, 2026

{00030895-2 }
TWG REF: 954384

EXHIBIT "A"
MAP OF DISTRICT



{00030895-2 }
TWG REF: 954384

EXHIBIT "B"

LEGAL DESCRIPTION OF DISTRICT

Lots 1, 2 and 3 in Block A; Lot 1 in Block B; Lots 1 and 2 in Block C; Lots 1 and 2 in Block D; Reserve A and Reserve B of Emporia Pavilions First Addition to the City of Emporia, Lyon County, Kansas, according to the Recorded Plat thereof, as the Plat was recorded on June 16, 2017 and recorded as document #2017-02001.

{00030895-2 }
TWG REF: 954384

EXHIBIT B

Amended Project Budget

CATEGORY/DESCRIPTION	TIF ELIGIBLE PROJECT COSTS*	CID ELIGIBLE PROJECT COSTS*
SITE WORK / STREET WORK		
Grading	$ 617,500	$ 617,500
Retaining Wall	$ 171,500	$ 171,500
Storm Drainage/Storm Water Detention Basin	$ 286,175	$ 286,175
Asphalt	$ 2,246,580	$ 2,246,580
Landscaping/Erosion Control	$ 405,000	$ 405,000
Curb and Gutter	$ 306,530	$ 306,530
Sidewalk	$ 192,050	$ 192,050
Rock Allowance	$ 75,000	$ 75,000
Sanitary Sewer	$ 161,160	$ 161,160
Waterline	$ 570,240	$ 570,240
Lighting	$ 200,000	$ 200,000
Demolition/Tree Removal/Utility	$ 272,500	$ 272,500
Traffic Signal	$ 200,000	$ 200,000
Street & Monument Signage/Striping	$ 115,000	$ 115,000
Building Construction	$0	$1,930,765
CONTINGENCY	$ 250,000	$ 250,000
TOTAL	$ 6,069,235	$ 8,000,000

Although the majority of the project costs are eligible to be reimbursed from both TIF revenue and CID revenue, it is understood that no single cost shall be reimbursed more than once. The total amount of reimbursement from both TIF and CID revenue, unless a greater amount is otherwise approved by the City, is estimated to be $8,000,000 (plus interest carry costs) with no more than $6,069,235 (plus interest carry costs) to be reimbursed from TIF.

TWG REF: 1013025

EMPORIA PAVILIONS TAX INCREMENT REDEVELOPMENT DISTRICT AND COMMUNITY IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT

THIS EMPORIA PAVILIONS TAX INCREMENT REDEVELOPMENT DISTRICT AND COMMUNITY IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT ("Agreement") made and entered into on 4-26, 2016, by and between the City of Emporia, a municipal corporation organized according to Kansas law (the "City") and Emporia Land Development, LLC, a limited liability company organized and existing according to Kansas law (the "Developer"). The City and the Developer are hereinafter collectively referred to as the "Parties" and each a "Party."

RECITALS

A. The Developer, or its affiliates, is the owner or contract purchaser of certain real property located on the north side of 24th Street, near the intersection of 24th Street and Industrial Road in Emporia, Kansas consisting of 39.07+/- acres of land, as legally described in the Project Plan (the "Property").

B. The Developer seeks to construct upon the Property a commercial development including a 55,000 square foot Hobby Lobby craft store, and associated development anticipated to include inline retail, restaurant pads, a possible convenience store, common areas and parking areas (the "Project").

C. The Parties agree that construction of the Project is to their mutual benefit.

D. The City has authority to undertake tax increment financing pursuant to the Kansas Tax Increment Redevelopment Act, as set forth in K.S.A. 12-1770 *et seq.* (the "TIF Act") in order to finance, in part, eligible costs of development of the Project.

E. The City has authority to create a community improvement district ("CID"), pursuant to the Kansas Community Improvement District Act, as set forth in K.S.A. § 12-6a26 *et seq.* (the "CID Act"), for the purpose of financing certain public and private improvements related to the Project and as defined in the CID Act.

F. To promote the general and economic welfare of the City and facilitate the construction of the Project, the City has authorized tax increment financing for a portion of the Project and authorized the creation of a CID that includes the Property.

G. On November 18, 2015, the City approved Ordinance No. 15-30, which found that the Property is an "eligible area" as defined in the TIF Act and created a redevelopment district named the 2015 Redevelopment District (the "TIF District") to include the Property, all pursuant to the TIF Act.

H. The Developer presented information necessary and assisted in the preparation of the Emporia Pavilions Tax Increment Financing Redevelopment Project Plan (the "Project Plan") for the Property within the TIF District. The City and Developer presented the Project Plan to the Emporia -Lyon County Metropolitan Planning Commission, and on February 23, 2016 the planning commission found the Project Plan is consistent with the comprehensive plan for development of the City.

I. On 4-26, 2016, the Developer and property owners, submitted a petition (the "CID Petition") to the City requesting the formation of the Emporia Pavilions Community Improvement District, which includes the Property and as legally described in the CID Petition (the "CID District"). A copy of the CID Petition is attached hereto as Exhibit E.

J. On March 2, 2016 the governing body of the City adopted Resolution No. 3579, setting April 20, 2016 for a public hearing to consider the adoption of the Project Plan.

K. On 5-4, 2016 the City adopted Resolution No. 3581, giving notice of a public hearing on 6-15 2016 regarding the advisability of creating the CID District.

L. On April 20, 2016, the governing body of the City approved the Project Plan by the adoption of Ordinance No. 16-20, which provides for Pay-As-You-Go-Reimbursement of eligible Project Costs from the capture of certain real property tax and retailers' sales tax increment within the TIF District.

M. On 6-15, 2016 the governing body of the City approved the creation of the CID District through the adoption of Ordinance No. 16-16 (the "CID Ordinance"). As was contemplated in the CID Petition, the CID Ordinance approved certain public and private improvements related to the Project and within the CID District to be financed with Pay-As-You-Go Reimbursement (as defined herein) from the imposition of an additional 1% sales tax on all taxable sales within the CID District (the "CID Sales Tax").

N. The Parties now desire to enter into this Agreement to formalize the development and financing of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the City and the Developer state, confirm and agree as follows:

ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context requires otherwise, the following rules of construction apply in construing the provisions of this Agreement.

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

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

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

D. All references in this Agreement to designated "Articles," "Section" and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.

E. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

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

G. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into and made a part of this Agreement. The resolutions and ordinances of the City introduced or adopted by the City Commission which designate the TIF District, the redevelopment project plan approved by the City for the TIF District, the creation of the CID District, and the provisions of the CID Act and TIF Act (as defined herein and as amended), are incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof.

Section 1.2. Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement and the following meanings:

"Affiliate" means any entity in which the Developer, individually or as trustee, directly or indirectly, and individually or in the aggregate owns at least 51%.

"Agreement" means this Emporia Pavilions Tax Increment Redevelopment District and Community Improvement District Development Agreement, as amended from time to time.

"Applicable Law and Requirements" means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities.

"Certificate of Project Costs" means a certificate relating to TIF Eligible Project Costs or CID Eligible Project Costs, as the case may be, in substantially the form attached hereto as Exhibit C, which must be submitted to the City to request reimbursement of Project Costs.

"CID Act" means K.S.A. 12-6a26 *et seq*.

"CID Eligible Project Costs" means any costs of the Project that are eligible for reimbursement under the CID Act and CID Petition, including the eligible categories of expenses set forth on the Project Budget attached hereto as Exhibit B and Financing Costs, as defined in this Agreement.

"CID Revenue" means sales tax revenue from the CID Sales Tax.

"CID Sales Tax" means the 1% retailers' sales tax levied by the City upon retail sales in the CID District pursuant to the CID Act.

"CID Sales Tax Fund" means the separate fund established by the City for deposit of the CID Sales Tax received from the State, net of amounts retained by the State pursuant to the CID Act, collected within the CID District, and that is used to reimburse the CID Eligible Project Costs pursuant to the CID Act.

"City" means the City of Emporia, Kansas.

"City Event of Default" means any event or occurrence defined in Section 6.1B of this Agreement.

"City Representative" means the Mayor or City Manager of the City, and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement.

"County" means Lyon County, Kansas.

"Developer" means Emporia Land Development, LLC, a limited liability company organized and existing under the laws of the State of Kansas, and its successors and assigns.

"Developer Event of Default" means any event or occurrence defined in Section 6.1A of this Agreement.

"Developer Representative" means Spencer Thomson or any other Manager of Developer, or such other person or persons designated to act on behalf of the Developer in matters relating to this Agreement as evidenced by a written certificate furnished to the City containing the specimen signature of such person or persons and signed on behalf of the Developer.

"Developer Work" shall have the meaning set forth in Section 2.1.

"Event of Default" means a City Event of Default or a Developer Event of Default as defined in Article VI of this Agreement.

"Excusable Delay" means any delay in the performance of obligations under this Agreement which is beyond the reasonable control and without the fault of the Party affected and which the affected Party may not overcome despite good faith efforts and diligence, caused by damage or destruction by fire or other casualty, strike, war, riot, sabotage, act of public enemies, epidemics, alien invasion, default of another party, freight embargoes, shortage of materials, unavailability of labor, acts of God, including earthquake, adverse weather conditions such as, by way of illustration and not limitation, severe rain, snow or ice storms or below freezing temperatures of abnormal degree or abnormal duration, freezing temperatures that prevent the prudent installation of concrete or similar materials, tornadoes, floods, or other causes beyond the reasonable control or fault of the affected Party, which shall include but not be limited to any pending or threatened litigation interfering with or delaying the construction of all or any portion of the Developer Work, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

"Financing Costs" means those costs approved by the City in compliance with this Agreement, incurred by the Developer in connection with private financing (which may include loans or other indebtedness) to pay TIF Eligible Project Costs or CID Eligible Project Costs, including actual interest costs and fees associated with such private financing or the refunding or refinancing of any such private financing, from the time such costs are incurred until the time such costs are reimbursed from Project Funds. If Developer pays for any TIF Eligible Project Costs or CID Eligible Project Costs with cash or cash equivalents, Financing Costs shall also include interest to the Developer on such cash expenditures at a rate per annum equal to the Developer's actual cost of any borrowed funds used to pay Project Costs, as demonstrated to the City under this Agreement; provided that reimbursable interest on private financing or Developer's cash expenditures shall not exceed the New York Prime Rate Interest Rate, as reported by the Wall Street Journal (Midwest Edition), adjusted monthly, plus 3.0%. Notwithstanding the stated reimbursable interest rate cap stated in the previous sentence, if the interest rate on Developer's private financing exceeds the stated cap, and the Developer demonstrates to the City, and the City, after reasonable and good faith deliberation, determines that the prevailing interest rate on borrowed funds for projects of similar size and location to the Project, is higher than the stated cap, reimbursable interest on private financing or Developer's cash expenditures may exceed the stated cap at a rate equal to the lesser of the Developer's actual cost of borrowed funds used to pay TIF Eligible Project Costs or CID Eligible Project Costs or the prevailing interest rate for similar projects, as determined under this paragraph.

"Governmental Approvals" means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review, environmental regulatory or public health regulatory approvals or permits, or other subdivision, zoning or similar approvals required for the implementation of the Project and consistent with Applicable Law and Requirements and this Agreement.

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

"Pay-As-You-Go Reimbursement" means the reimbursement of TIF Eligible Project Costs with TIF Revenue and CID Eligible Project Costs with CID Revenue, respectively, from the City to the Developer, from time to time as such expenses are documented and funds are available in the TIF Revenue Fund and the CID Sales Tax Fund and as further provided in this Agreement.

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

"Project" has the meaning set forth in the Recitals of this Agreement and includes the acquisition by Developer of the Property and construction of Developer Work pursuant to this Agreement, as described in the Project Plan and as depicted in Exhibit A.

"Project Budget" means the budget for the Project, attached as Exhibit B, as such Project Budget may be modified from time to time in accordance with Section 3.4 hereof.

"Project Costs" means costs and expenses related to the Project identified on the Project Budget attached hereto as Exhibit B.

"Project Funds" means, collectively, the TIF Revenue Fund, and the CID Sales Tax Fund.

"Project Plan" means the Emporia Pavilions Tax Increment Financing Redevelopment Project Plan, attached as Exhibit D hereto, prepared pursuant to the TIF Act and approved by Ordinance No. 16-12 adopted by the City after public hearing on April 20, 2016.

"State" means the state of Kansas.

"TIF Act" means the tax increment finance act contained in K.S.A. 12-1770 et seq.

"TIF Eligible Project Costs" means "redevelopment project costs" as defined in the TIF Act and as set forth in the approved Project Plan, including the eligible categories of expenses set forth on the Project Budget attached hereto as Exhibit B and Financing Costs as defined by this Agreement.

"TIF Revenue" means the incremental increase in ad valorem real property taxes generated in the TIF District above the ad valorem property taxes generated by levy on the base year (current) taxable valuation of the TIF District, and 50% of the City's one percent (1%) Retailers' Sales Tax collected on retail sales in the TIF District and the portion of the one percent (1%) Lyon County Retailers' Sales Tax collected on retail sales in the TIF District and distributed to the City as provided by law, all as available under the TIF Act.

"TIF Revenue Fund" means the Emporia Pavilions 2015 Redevelopment District TIF Revenue Fund, created pursuant to the TIF Act and Section 3.2A hereof.

ARTICLE II
PURPOSE OF AGREEMENT
REPRESENTATIONS AND ACQUISITION OF PROJECT SITE

Section 2.1 Purpose of Agreement. The City acknowledges that completion of the Project is important to the City's economic development goals and further acknowledges the City has authorized cooperation with Developer in the development of the Project.

The Property is located north of 24th Street, near the intersection of 24th Street and Industrial Road in Emporia, Kansas. This Agreement is to facilitate the Project and not for speculation in land holding. The Project Plan and the CID petition propose construction of the following:

- Construction of a 55,000 square foot Hobby Lobby craft store and associated development for related pad sites, including street improvements, utilities, common areas and parking to serve such improvements (the "Phase 1 Improvements");

- Construction of large inline multi-tenant retail buildings, a restaurant pad, related parking and common areas to serve such improvements (the "Phase 2 Improvements"); and

- Construction of additional street improvements, a small inline retail building and related parking in southeast corner of the Property (the "Phase 3 Improvements"). The Phase 1, Phase 2 and Phase 3 Improvements and other related improvements described in this Section shall collectively constitute the "Developer Work" for purposes of this Agreement.

While City and Developer may choose to enter into agreements in the future for additional development or infrastructure improvements, the Parties acknowledge that, as of the date of this Agreement, there are no infrastructure, service agreements or policy expectations of the City by Developer beyond what is described in this Agreement.

Section 2.2 Schedule of Performance of Agreement. The financing and development of the Project as described herein contemplates the Developer will purchase the Property and undertake the Developer Work necessary to complete the Project. Subject to Excusable Delays, it is the intention of the parties that Phase 1 Improvements of the Developer Work (identified in Section 2.1) will begin and be substantially completed as set forth on the Phase 1 Project Schedule set for on Exhibit F. The parties recognize and agree that market and other conditions may affect the Phase 1 Project Schedule and the scope of work within Phase 1 of the Developer Work. The Phase 1 Project Schedule on Exhibit F is subject to change or modification, with the prior consent of the governing body of the City, which shall not be unreasonably withheld.

Section 2.3 Representations of City. The City makes the following representations and warranties which to the best of the City's actual knowledge, are true and correct on the date hereof:

A. *Due Authority*. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, subject to the limitations expressed herein or otherwise imposed by law, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions.

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

C. *No Litigation.* To the best of the City's knowledge, there is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to the Project or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

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

Section 2.4. <u>Representations of the Developer</u>. The Developer makes the following representations and warranties, which to the best of the Developer's actual knowledge, are true and correct on the date hereof:

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

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

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

D. *Developer Financing, No Material Change in Developer Financial Information.* The Developer warrants and represents to City that, to the best of its present knowledge and belief, financing available to the Developer, in conjunction with the TIF Revenue and CID Sales Tax Revenue, will enable the Developer to timely complete the Phase 1 Improvements of the Developer Work as provided in this Agreement. The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer which could affect the Developer's ability to obtain financing and perform obligations pursuant to this Agreement. The Developer understands and agrees the City has relied upon the financial capacity of the Developer and its members in granting City approval to enter into this Agreement.

E. *Approvals.* The Developer has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business and to own or lease and operate its properties as now owned or leased by it. Except for Permitted Subsequent Approvals, the Developer has obtained all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to acquire, construct, equip, operate and maintain the Project. The Developer reasonably believes that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will be obtained in due course.

F. *Compliance with Laws.* To its actual knowledge, the Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

G. *Other Disclosures.* The information furnished to the City by the Developer in connection with the matters covered in this Agreement is true and correct and does not contain any untrue statement of any material fact and does not omit to state any material fact necessary to make any such information not misleading.

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

Section 2.5. Developer Information. Contemporaneously with the execution of this Agreement, and as a precondition to the effectiveness of this Agreement, the Developer shall submit the following documents to the City:

A. A copy of the Developer's Articles of Organization, certified by the Secretary of State of the State of Kansas; and

B. A certified copy of the Operating Agreement of the Developer; and

C. A legal opinion from counsel to the Developer in form and substance acceptable to the City addressing, (i) the due organization of the Developer and the power and authority of the Developer to execute this Agreement, and (ii) the enforceability of this Agreement against the Developer.

Section 2.6. Acquisition of the Project Site. At the time that this Agreement is executed, Developer represents that Developer or an affiliate of the Developer is owner or the contract purchaser of the Property.

ARTICLE III
CONSTRUCTION AND FINANCING
REIMBURSEMENT OF PROJECT COSTS

Section 3.1. Developer Work. The Developer agrees to perform the Developer Work in accordance with all provisions of this Agreement. The Developer may make requests to the City for the reimbursement of Developer for TIF Eligible Project Costs and CID Eligible Project Costs in accordance with Section 3.4 of this Agreement. The Developer Work shall be performed and constructed by the Developer and any public improvements constructed as part of the Developer Work to be conveyed to the City shall be so conveyed upon completion and acceptance by the City of such public improvements. The Developer agrees that the Developer Work will be performed and completed according to Applicable Law and Requirements and as otherwise stated in this Agreement.

Section 3.2. Term; Creation of Project Funds.

A. *TIF Project Plan*. The term of the Project Plan shall commence upon publication of Ordinance No. 16- __and expire on the earlier of (i) the date all TIF Eligible Project Costs have been reimbursed in full, (ii) the date this Agreement is otherwise terminated under its terms, or (iii) a date occurring twenty (20) years after publication of Ordinance No. 16-___. During the term of the Project Plan, the City shall establish and maintain the TIF Revenue Fund (Pavilions Project). All TIF Revenue received by the City shall be deposited into the TIF Revenue Fund for the purpose of reimbursing the Developer for TIF Eligible Project Costs as provided in the TIF Act and this Agreement. The City shall have sole control of disbursements from the TIF Revenue Fund, subject to the City's obligations under this Agreement.

B. *CID District*. The term of the CID District shall commence on the date the director of taxation for the State begins collecting the CID Sales Tax within the District and expire on the earlier of (i) a date when all CID Eligible Project Costs have been reimbursed in full, (ii) the date the CID Sales Tax shall expire pursuant to the CID Act or the CID Sales Tax is otherwise terminated and CID Sales Tax Revenue available to reimburse CID Eligible Project Costs is exhausted. During the term of the CID District, the City shall establish and maintain a separate fund and account known as the CID Sales Tax Fund (Pavilions Project). All CID Sales Tax Revenues received by the City shall be deposited into the CID Sales Tax Fund for the purpose of reimbursing the Developer for CID Eligible Project Costs as provided in the CID Act and this Agreement. The City shall have sole control of disbursements from the CID Sales Tax Fund, subject to the City's obligations under this Agreement.

Section 3.3 Funding of Eligible Project Costs; Priority of Disbursements from TIF Revenue Fund and CID Sales Tax Fund. The City agrees to reimburse the Developer for TIF Eligible Project Costs solely from the TIF Revenue Fund and for CID Eligible Project Costs solely from the CID Sales Tax Fund (collectively, the "Project Funds"), as applicable, on a Pay-As-You-Go Reimbursement basis, as follows:

A. Amounts deposited in the TIF Revenue Fund shall be used to reimburse actual out-of-pocket TIF Eligible Project Costs incurred by the Developer.

B. Amounts deposited in the CID Revenue Fund shall be used to reimburse actual out-of-pocket CID Eligible Project Costs incurred by the Developer

Section 3.4 Reimbursement/Cost Payment Process.

A. All requests for reimbursement or payment of Project Costs from the Project Funds shall be made in a Certificate of Project Costs in substantially the form attached hereto as Exhibit C, which Certificate shall be signed by the Developer Representative and shall identify the Project Fund or funds from which reimbursement is sought. To the extent funds are available in the Project Funds and the requested reimbursement is an eligible cost payable from such Project Fund, the Developer intends to request and the City intends to reimburse eligible project costs 50% from the CID Sales Tax Fund and 50% from the TIF Revenue Fund. If a Project Fund does not contain sufficient funds to pay the amount requested for reimbursement, the City may reimburse such eligible costs from the other Project Fund, if funds are available to do so. The Developer shall provide itemized invoices, receipts, any lien waivers from vendors, contractors or subcontractors, and evidence of completion of Developer Work, or other information reasonably requested by the City to confirm that such costs were incurred, and are eligible for reimbursement under the TIF Act or CID Act, as applicable, and which, together with previous payments, do not exceed the budgeted amounts shown on the Project Budget as amended from time to time. The Developer may submit electronic documentation, provided that original documents are also delivered to the City by mail or hand delivery or by reputable national overnight mail services (e.g., Federal Express or UPS). Certificates of Project Costs may be submitted not more frequently than once per month and payment of Project Costs shall occur once per month. The Project Budget may be amended from time to time with the City's consent, which shall not be unreasonably withheld or delayed. The City's consent shall not be required to the extent a particular line item in the Project Budget increases by less than 20% from the figure shown on the Project Budget; however, the Developer shall notify the City in writing of increases of less than 20% and submit an amended Project Budget to the City.

B. The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certificate of Project Costs is submitted, to examine the supporting documentation and others' records relating to all expenses related to the invoices to be paid to determine that (1) the request constitutes TIF Eligible Project Costs or CID Eligible Project Costs reimbursable from the appropriate Project Funds under this Agreement; (2) the expense was incurred; (3) no Developer Event of Default is outstanding, and no fact or circumstance exists which upon notice and the passage of time, would ripen into a Developer Event of Default; and (4) there is no fraud on the part of the Developer. The City may request and obtain from the Developer and other parties such other information as is reasonably necessary for the City to evaluate compliance with the terms of this Agreement.

C. The City shall have thirty (30) business days after receipt of a Certificate of Project Costs and all other documentation referred to in subsections A and B above to review and respond by written notice to the Developer indicating acceptance of the Certificate, disapproving the Certificate, or documenting any deficiency in such Certificate. If the submitted Certificate and supporting documentation are acceptable the City shall approve the Certificate and make, or cause to be made, direct reimbursement of Project Costs paid by Developer from the appropriate Project Funds, if sufficient funds are available in the appropriate Project Fund, and in the event the Project Fund or Project Funds are at that time insufficient to reimburse the Developer for such Project Costs, the City shall promptly reimburse the Developer on the first (1^{st}) day of each month as funds become available. If the City notifies the Developer of any deficiency or of its disapproval of a Certificate of Project Costs, the Developer shall have the opportunity to cure any deficiency or demonstrate that no deficiency exists and respond in writing to the City. City shall notify Developer within five (5) business days of the receipt of Developer's response of its acceptance of the response or of any remaining deficiency. If an outstanding deficiency remains, the City shall reimburse the Developer for any approved Project Costs described in such Certificate, minus the disputed amount and the balance of the disputed amount shall carry forward until the deficiency is cured or otherwise resolved.

Section 3.5. Limitation on City's Payment Obligations. The City's obligations to reimburse Project Costs under this Agreement shall be limited by the amounts properly deposited in the TIF Revenue Fund and the CID Sales Tax Fund as provided in the TIF Act, the CID Act, other Applicable Law and Requirements, and this Agreement.

Section 3.6. Right to Inspect and Audit. The Developer agrees that, up to one (1) calendar year after the calendar year after a Certificate of Project Costs is submitted to the City for reimbursement, with reasonable advance notice and during normal business hours, the City shall have the right and authority to review, audit, and copy, from time to time, all the Developer's books and records relating to such costs (including, but not limited to, general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, and paid receipts and invoices, which relate to such cost).

Section 3.7 Surplus. If amounts remain in the TIF Revenue Fund or the CID Sales Tax Revenue Fund after reimbursement of all TIF Eligible Project Costs and CID Eligible Costs under this Agreement such funds shall be used as determined by the City for any purpose authorized by the TIF Act, the CID Act (as applicable) or other laws of the State.

Section 3.8 City Administrative Fees. The City will charge and Developer agrees to pay the TIF administrative service fee required by the City's TIF policy, in the amount of 2.0% of the TIF Revenue, which shall be paid to the City from TIF Revenue as received. The City will charge and Developer agrees to pay the CID administrative service fee required by the City's CID policy, in the amount of 2% of the CID Revenue, which shall be paid to the City from CID Revenue as received.

Section 3.9 Retailers' Sales Tax Information. The City will provide a copy of its ordinance levying the CID Sales Tax to the Kansas Department of Revenue (KDOR) to provide for the levy of the CID Sales Tax on retail sales in the CID, beginning on the date the parties agree. The parties agree that a portion of the TIF Revenue consists of existing retailers' sales taxes levied by the City and Lyon County upon retail sales within the TIF Redevelopment District. The Developer agrees to provide the City and KDOR (as required) written notice identifying the current and future tenants and occupants of the CID and TIF Redevelopment District, including names and addresses to facilitate tracking of retailers' sales tax revenue collected in the CID and TIF Redevelopment District, for the purpose of administering accurate reimbursement under this Agreement. The Developer further agrees to use all commercially reasonable efforts, not including legal proceedings, to cause all occupants, purchasers, tenants or any other entity acquiring property or occupancy rights in the TIF Redevelopment District or the CID to provide to the City, simultaneously with submission to KDOR, monthly sales tax returns for the facilities in the Redevelopment District and CID. To the extent it may legally do so, information obtained pursuant to this Section shall be kept confidential by the City in accordance with K.S.A. 79-3657. The City agrees to take all reasonable steps necessary to ensure such information is kept confidential.

ARTICLE IV
GENERAL COVENANTS

Section 4.1. Operation of Project. The Project shall be constructed and operated in compliance with all Applicable Laws and Requirements. The Developer shall secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Developer Work, including but not limited to, obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses, which shall be TIF Eligible Project Costs and CID Eligible Project Costs.

Section 4.2. Taxes, Assessments, Encumbrances and Liens. For that portion of the Project owned by the Developer or any Affiliate, the Developer shall pay or cause to be paid when due all real estate taxes and assessments within the Project. The Developer shall be permitted to contest the validity or amounts of any tax, assessment, encumbrance or lien as permitted by laws of the State of Kansas. The Developer shall promptly notify the City in writing of a protest of real estate taxes or valuation of the Developer's property within the TIF District.

Subject to the Developer's right to contest in good faith any mechanics' liens, as discussed below, the Developer agrees that no mechanics' or other liens shall remain against the Property, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. The Developer shall not be in default under this Agreement if mechanics' or other liens are filed or established and the Developer contests in good faith such mechanics' liens, and in such event may permit the items contested to remain undischarged and unsatisfied during the period of contest and appeal from determination of such contest. The Developer agrees to indemnify and hold harmless the City in the event any liens are filed against the Property as a result of acts of the Developer, its agents or independent contractors, unless such liens are filed as a result of willful misconduct or negligence by the City or its officers, employees or agents.

Section 4.3. Covenant for Non-Discrimination. The Developer agrees, with respect to this Agreement and the Project, that it will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, national origin, ancestry or age and further covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, familial status, marital status, age, handicap, national origin, sexual orientation or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project. The covenant established in this Section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns and any successor in interest to the Project or any part thereof. The covenants contained in this Section shall remain for so long as this Agreement is in effect.

Section 4.4. Indemnification.

A. The Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the "City Indemnified Parties") harmless, from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and attorney's fees incurred or suffered by or claimed against any of the City Indemnified Parties by any person or entity by reason of injury, death, loss or damage to any person, property, or business which arises or is alleged to have arisen due to or in connection with: 1)the Developer's actions in the implementation of the Project or this Agreement, 2) the negligence or willful misconduct of the Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project, or 3) any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, architect, contractor, consultant or other vendor.

B. City agrees to indemnify and hold harmless the Developer against any loss or expense arising out of any liability imposed by any law, federal or state, upon the Developer, but only if such liability is a consequence of action of the City in the performance of any Developer Work related to this Agreement performed by the City. The City's liability for any claims asserted by a person or entity by reason of injury, death, loss or damage to any person, property or business which arises, or is alleged to have arisen, from the negligence or willful misconduct of the City, its officers, agents or employees in connection with the Developer Work performed by the City shall be governed by the Kansas Tort Claims Act and other applicable laws of the State.

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

Section 4.5. Insurance.

A. During the construction of the Project, the Developer shall maintain or cause to be maintained builder's risk insurance on the Property written on a replacement cost basis. During the term of this Agreement the Developer shall maintain commercial general liability insurance insuring against claims for bodily injury, personal injury and property damage in a combined single limit of not less than $1,000,000 per occurrence with a $2,000,000 aggregate, and umbrella/excess liability insurance in the amount of $2,000,000. The commercial umbrella/excess liability insurance shall have the same inception and expirations dates as the underlying general liability insurance policies and shall provide coverage no less broad than in the primary policies.

B. All such policies, or a certificate or certificates of the insurers that such insurance is in full force and effect, shall be provided to the City and, prior to expiration of any such policy, the Developer shall furnish the City with satisfactory evidence that such policy has been renewed or replaced or is no longer required by this Agreement; provided, however, the insurance so required may be provided by blanket policies now or hereafter maintained by the Developer if the Developer provides the City with a certificate from an insurance consultant to the effect that such coverage is substantially the same as that provided by individual policies. All policies evidencing such insurance required to be obtained under the terms of this Agreement shall provide for thirty (30) days prior written notice to the Developer and the City of any cancellation (other than for nonpayment of premium), reduction in amount or material change in coverage.

C. In the event the Developer shall fail to maintain or cause to be maintained the insurance coverage required by this Agreement, the Developer shall promptly notify the City of such event and the City may (but shall be under no obligation to) contract for the required policies of insurance and pay the premium for the same; and the Developer agrees to reimburse the City to the extent of the amounts so advanced, with interest thereon at the statutory rate.

Section 4.6. Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the payment or reimbursement of any Project Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 4.7. Construction of the Project. The Developer shall have the sole responsibility to contract for the design and construction of the Developer Work, subject to Applicable Laws and Requirements.

Section 4.8. Evidence of Completion.

A. Upon substantial completion of a discrete phase of the Developer Work, the Developer shall deliver or cause to be delivered to the City Representative an engineer's certificate certifying that the same has been completed substantially in conformance with the Project Plan and the plans approved by the City, if evidence of such substantial completion thereof has not been previously provided to the City. A certificate of occupancy issued for such improvements may serve as same.

B. For purposes of this Section, "substantial completion" means the point at which the site improvement work or building project, or a designated portion of the site improvement work or building project is sufficiently complete, in accord with the construction contract documents, so that the owner may have beneficial use or may occupy the site improvement work or building project or designated portion thereof for the use for which it is designed and intended, without regard to occupancy permits that may be issuable under applicable law.

Section 4.9. Modifications; Permitted Use. The construction of the Project may be modified or revised by written consent of the City and Developer to provide for other improvements generally consistent with the Project Plan and CID Petition. The parties agree that a retail grocery store or home improvement use on the Property will require written consent of the City as well as compliance with all other Applicable Law and Requirements. Substantial changes as defined by the TIF Act may require amendment of the Project Plan as provided by the TIF Act. Similarly, certain changes may require Developer to submit a new CID Petition, the City to conduct a public hearing and otherwise approve changes as required by the CID Act. The Developer agrees that it will not use the Property for any use other than as a retail shopping area as described in the Project Plan and this Agreement. If the Developer fails to use the Property for a use permitted under this Agreement, the City may, in its sole discretion, (a) amend this Agreement as provided in this Section, or (b) with or without amending the Project Plan or the submission of a CID petition, exercise any remedy granted to the City under this Agreement, including under Section 6.2.

Section 4.10. Public Bidding Not Required. Notwithstanding the fact that certain of the improvements herein, including portions of the Developer Work will be financed or reimbursed in whole or in part with public funding sources and will be deemed public improvements, public bidding for the Project, and any component thereof, will not be required; however, all plans for public improvements shall require approval of City staff and comply with City inspection and testing requirements.

ARTICLE V
ASSIGNMENT; TRANSFER

Section 5.1. Restriction on Transfer and Assignments. The qualifications and identity of the Developer are of particular concern to the City. It is in part because of the Developer's qualifications and identity that the City has entered into this Agreement with the Developer. Therefore, the Developer shall not assign or transfer all or any of its rights or duties under this Agreement nor convey any portion of the Property prior to completion of the Developer Work (except as described below) without the prior written approval of the City (which will not be unreasonably withheld) except for (i) assignments, transfers and conveyances of all or substantially all of Developer's rights and duties under this Agreement and in and to the Property to a subsidiary or affiliate which is owned or controlled by the Developer or a majority of its principals or any entity owned or controlled, directly or indirectly, by the Developer or a majority of its principals, or (ii) for financing purposes as permitted by this Agreement ("Permitted Transfer"). The Parties hereby acknowledge that portions of the Property may be transferred to one or more third parties that intend to develop the transferred Property in a manner generally consistent with the Project Plan and CID Petition, and such transfer shall also be deemed a Permitted Transfer. In the event of a Permitted Transfer, the Developer shall nonetheless promptly provide advance written notice of the same to the City and shall provide evidence satisfactory to the City that the transferee is an entity described above, so that City consent is not required. Notwithstanding the foregoing, no tenant or pad site owner of a portion of the Property shall be bound by any obligation of Developer or any other obligation hereunder solely by virtue of being a tenant or owner of a portion of the Property; provided, however, that no transferee or owner of Property except that Developer shall be entitled to any rights whatsoever or claim upon the proceeds of the Project Funds, except as specifically authorized in writing by the Developer and consented to in writing in advance by the City, which consent may be given or denied in the discretion of the City.

A. *Transfer of Obligations*. In addition to Permitted Transfers as described in the preceding paragraph, the rights, duties and obligations of the Developer under this Agreement, may be assigned, in whole or in part, to another entity with the prior written approval of the City, which approval shall not be unreasonably withheld, following the completion of the Developer Work (prior to such completion, the City may withhold such approval in its sole discretion). Prior to any assignment, the City Attorney shall have verified that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations of the Developer under this Agreement. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer, as applicable, under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is bound. The Developer shall not be relieved from any obligations set forth herein or any liabilities arising hereunder unless and until the City specifically agrees to release the Developer from its obligations under this Agreement. The Developer agrees to record all assignments in the office of the Register of Deeds of Lyon County, Kansas, in a timely manner following the execution of such assignments.

B. *Assumptions of Developer Obligations*. The respective obligations of the City and the Developer under this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns (permitted or approved under this Section) of the respective parties, but shall not be automatically binding on a lender, mortgagee, successor owner or tenant of the Property.

C. *Collateral Assignment*. The restrictions on assignment, transfer and conveyance of the rights, duties and obligations of the Developer under this Agreement shall not apply to any collateral assignment of the Developer's rights to reimbursement from the TIF Revenue Fund or the CID Sales Tax Revenue Fund to secure indebtedness of the Developer to finance the Project; provided that such assignment or transfer shall not grant the assignee or transferee a right to seek direct reimbursement of Project Costs from the City under this Agreement without consent of the City as provided in Section 5.1.A

ARTICLE VI
DEFAULTS AND REMEDIES

Section 6.1. Event of Default.

A. *Developer Event of Default*. Subject to Section 6.4, a "Developer Event of Default" shall mean a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement (other than a covenant or agreement; a default in the performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of thirty (30) days after City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

B. *City Event of Default*. Subject to Section 6.4, a "City Event of Default" shall mean a default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement (other than a covenant or agreement; a default in the performance or breach of which is specifically dealt with elsewhere in this

Section), and the continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 6.2. Remedies Upon a Developer Event of Default.

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

1. The City shall have the right to terminate this Agreement or terminate the Developer's rights under this Agreement.

2. The City may refuse to make any disbursements from the CID Sales Tax Fund or the TIF Revenue Fund until such Event of Default is cured.

3. The City may elect to terminate the CID Sales Tax.

4. The City may pursue any available remedy at law or in equity by suit; action, mandamus, injunction or other proceeding to enforce the duties and obligations of the Developer as set forth in this Agreement; to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default. Such remedies shall be cumulative. Notwithstanding anything in this Agreement to the contrary, the City is prohibited from pursuing, seeking, or obtaining specific performance against the Developer to compel construction of the Project, or any portion thereof, and the Developer shall not be liable for any special, punitive or consequential damages.

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

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

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

Section 6.3. Remedies Upon a City Event of Default.

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

1. The Developer shall have the right to terminate the Developer's obligations under this Agreement;

2. The Developer may pursue any available remedy at law or in equity by suit; action, mandamus, injunction or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement; to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default. Such remedies shall be cumulative. Notwithstanding anything in this Agreement to the contrary, the City shall not be liable for any special, punitive or consequential damages.

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

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

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

Section 6.4. Excusable Delays; Extension of Times of Performance. Neither the City nor the Developer shall be deemed to be in default of this Agreement because of an Excusable Delay and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays and defaults are due to Excusable Delays. Any Party affected by an Excusable Delay shall use diligent effort to remove the cause or condition of the Excusable Delay and shall notify the other Party as soon as it discovers the cause or condition of Excusable Delay.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer, to which each Party shall reasonably agree at the request of another Party.

Section 6.5. Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Lyon County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas sitting in Wichita, Kansas.

ARTICLE VII
GENERAL PROVISIONS

Section 7.1. Development of Project.

A. *Scope*. The Project shall be developed within and subject to Applicable Law and Requirements, the Preliminary and Final Development Plat for the Project, as any of the forgoing may be amended.

B. *Governmental Approvals*. The Project shall be subject to Governmental Approvals from Governmental Authorities having jurisdiction over the Project.

C. *City Approval of Zoning, Planning, Platting*. The City agrees to consider and act on zoning, planning and platting applications submitted by the Developer related to the Project in due course and in good faith.

D. *City and Other Governmental Permits*. Before beginning construction or development of any buildings, structures or other work or improvement related to the Project, the Developer shall, at its own expense, secure or cause to be secured any and all Governmental Approvals (excepting Permitted Subsequent Approvals) applicable to such construction, development or work. The City will cooperate with and provide all usual assistance to Developer in securing such permits and approvals and diligently process, review and consider all such permits and approvals as may be required by law.

E. *Rights of Access*. For the purpose of ensuring compliance with this Agreement, representatives of the City shall have the right of access to the TIF District and CID District, without charge or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, for the inspection of the work being performed in constructing, improving, repairing and installing the Project. Representatives of the City shall comply with all applicable safety rules in so doing. Except in case of emergency, before making such access, representatives of the City shall make a good faith effort to check in with the Developer's on-site manager. The City representatives shall carry proper identification, shall insure their own safety and shall not interfere with construction activity, except in the enforcement of Applicable Laws and Requirements.

F. *Local, State and Federal Laws*. The Developer shall carry out the provisions of this Agreement in conformity with all Applicable Laws and Requirements.

Section 7.2. Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

Section 7.3. Effect of Violation of the Terms and Provisions of this Agreement; No Partnership. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land, if any, have been provided. The City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

Section 7.4. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 7.5. Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution or ordinance of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 7.6. Agreement Controls. The Parties agree that the Project will be implemented as agreed in this Agreement. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of Project Costs and all other methods of implementing the Project. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and are a full integration of the agreement of the Parties.

Section 7.7. Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect for a for a period beginning on the date of this Agreement and not exceeding the maximum period permitted under Section 3.2 of this Agreement.

Section 7.8 City's Right to Deem Projects Abandoned; Termination. If (a) the Developer fails to commence construction of the Phase 1 Improvements of Developer Work within eighteen (18) months from the date of this Agreement, or (b) after substantial completion of Phase 1 Improvements of the Developer Work, the Developer fails to commence a next phase of Developer Work within two (2) years of completing the Phase 1 Improvements, or (c) two (2) years have passed since Developer was fully reimbursed under this Agreement for Project Costs incurred in connection with the last completed phase of the Developer Work, then the City may give written notice to Developer to appear before the City Commission to provide a status report and explanation of the status of the Project.

Thereafter the City may notify the Developer in writing, in the case of the Phase 1 Improvements of Developer Work, that if the Phase 1 Improvements are not begun within six months (or a longer period agreed by the parties) of such notice, the City may deem the entire Project abandoned and terminate this Agreement. In the case where Developer is called to appear before the City Commission after completion of Phase 1 Improvements of the Developer Work to explain a failure to commence the next phase of Developer Work, the City may notify the Developer in writing that unless a new phase of the Developer Work is begun within one (1) year after the date of the notice, the City may deem all incomplete phases of the Developer Work to be abandoned and the City shall have no obligation to reimburse Developer under this Agreement for Project Costs incurred with respect the future phases of the Developer Work the City has deemed abandoned. In the case future incomplete phases of the Developer Work are deemed abandoned under this section, this Agreement shall remain in effect until the earlier of (a) the reimbursement of Developer in full for eligible Project Costs under this Agreement incurred for the completed phases of the Developer Work, (b) the exhaustion of CID Sales Tax Revenue or TIF Revenue collected under the CID Act or TIF Act and this Agreement, or (c) termination of this Agreement by its terms.

Section 7.9. Validity and Severability. It is the intention of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State, and that the unenforceability (or modification to conform to such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 7.10. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 7.11. Tax Implications. The Developer acknowledges and represents that (i) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (ii) the Developer is relying solely upon its own tax advisors in this regard.

Section 7.12. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Manager and for the Developer by any officer of the Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Manager may seek the advice, consent or approval of the City Commission before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section.

Section 7.13. Notice. All notices and requests required pursuant to this Agreement shall be sent as follows:

To the City:

City of Emporia, Kansas
Attn: City Manager
P.O. Box 928, 104 E. 5th St.
Emporia, Kansas 66801-0928

With a copy to:

Triplett, Woolf & Garretson, LLC
Attn: Mary F. Carson
2959 N. Rock Road, Suite 300
Wichita, Kansas 67226

To the Developer:

Harold Robert Herman, Jr.
Emporia Land Development, LLC
c/o Southtown Associates, LLC
36306 East Pink Hill Road
Oak Grove, MO 64075

With a copy to:

Spencer R. Thomson, Esq.
Thomson Walker, LLC
4700 Belleview Avenue, Suite 404
Kansas City, MO 64112

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof.

Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 7.14. Kansas Law. This Agreement shall be governed by and contained in accordance with the laws of the State of Kansas. It is the intent of the Parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101 et seq.) or the Kansas Budget Law (K.S.A. 79-2925). Therefore, notwithstanding anything to the contrary herein, the City's obligations under this Agreement are to be construed in a manner that assures the City is at all times in compliance with the Kansas Cash Basis Law and the Kansas Budget Law.

Section 7.15. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 7.16. Recording of Agreement. The Parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto, or a memorandum of agreement, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Lyon County, Kansas. This Agreement or memorandum thereof shall be recorded by the Developer at Developer's expense, and proof of recording shall be provided to the City.

Section 7.17. Consent or Approval. Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld or unduly delayed.

IN WITNESS WHEREOF, this Agreement is executed by City and Developer effective as to the day and year first above written.

CITY OF EMPORIA, KANSAS
a Kansas municipal corporation

By________________________
______________, Mayor

[seal]

CITY OF EMPORIA, LYON COUNTY, KANSAS SEAL 1870

ATTEST:

By:________________________
Kerry Sull, City Clerk

APPROVED AS TO FORM:

____
Christina Montgomery, City Attorney

"CITY"

ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss.
COUNTY OF LYON)

Now on this 15th day of June, 2016, before me, a notary public in and for said county and state, came ________________ and Kerry Sull, Mayor and City Clerk, respectively, of the City of Emporia, Kansas, a Kansas municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

____
Notary Public

My Commission Expires:

7-25-16

SULEMA G. BRYSON
Notary Public - State of Kansas
My Appt. Expires 7-25-16

Date of Execution: July 15, 2016 EMPORIA LAND DEVELOPMENT, LLC

By J. Michael Neighbors
Name: J. Michael Neighbors
Title: Manager

By Harold Robert Herman Jr
Name: Harold Robert Herman, Jr.
Title: Manager

By Spencer R. Thomson
Name: Spencer R. Thomson
Title: Manager

"DEVELOPER"

ACKNOWLEDGEMENT

STATE OF Missouri)
) ss.
COUNTY OF Jackson)

Now on this 15th day of July NB, 2016, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came J. Michael Neighbors, Manager of Emporia Land Development, LLC, who is personally known to me to be the same persons who executed the within instrument on behalf of said entity and who duly acknowledged the execution of the same to be the act and deed of said entity.

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

Nicole B

Notary Public

My Commission Expires:
11/08/18

NICOLE BECHARD
Notary Public - Notary Seal
STATE OF MISSOURI
Clay County
My Commission Expires Nov. 8, 2018
Commission # 14965893

ACKNOWLEDGEMENT

STATE OF Missouri)
) ss.
COUNTY OF Jackson)

Now on this 15th day of July, 2016, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Harold Robert Herman, Jr, Manager of Emporia Land Development, LLC, who is personally known to me to be the same persons who executed the within instrument on behalf of said entity and who duly acknowledged the execution of the same to be the act and deed of said entity.

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

Notary Public

My Commission Expires:

11/08/18

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ACKNOWLEDGEMENT

STATE OF Missouri)
) ss.
COUNTY OF Jackson)

Now on this 15th day of July, 2016, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Spencer R. Thomson, Manager of Emporia Land Development, LLC, who is personally known to me to be the same persons who executed the within instrument on behalf of said entity and who duly acknowledged the execution of the same to be the act and deed of said entity.

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

Notary Public

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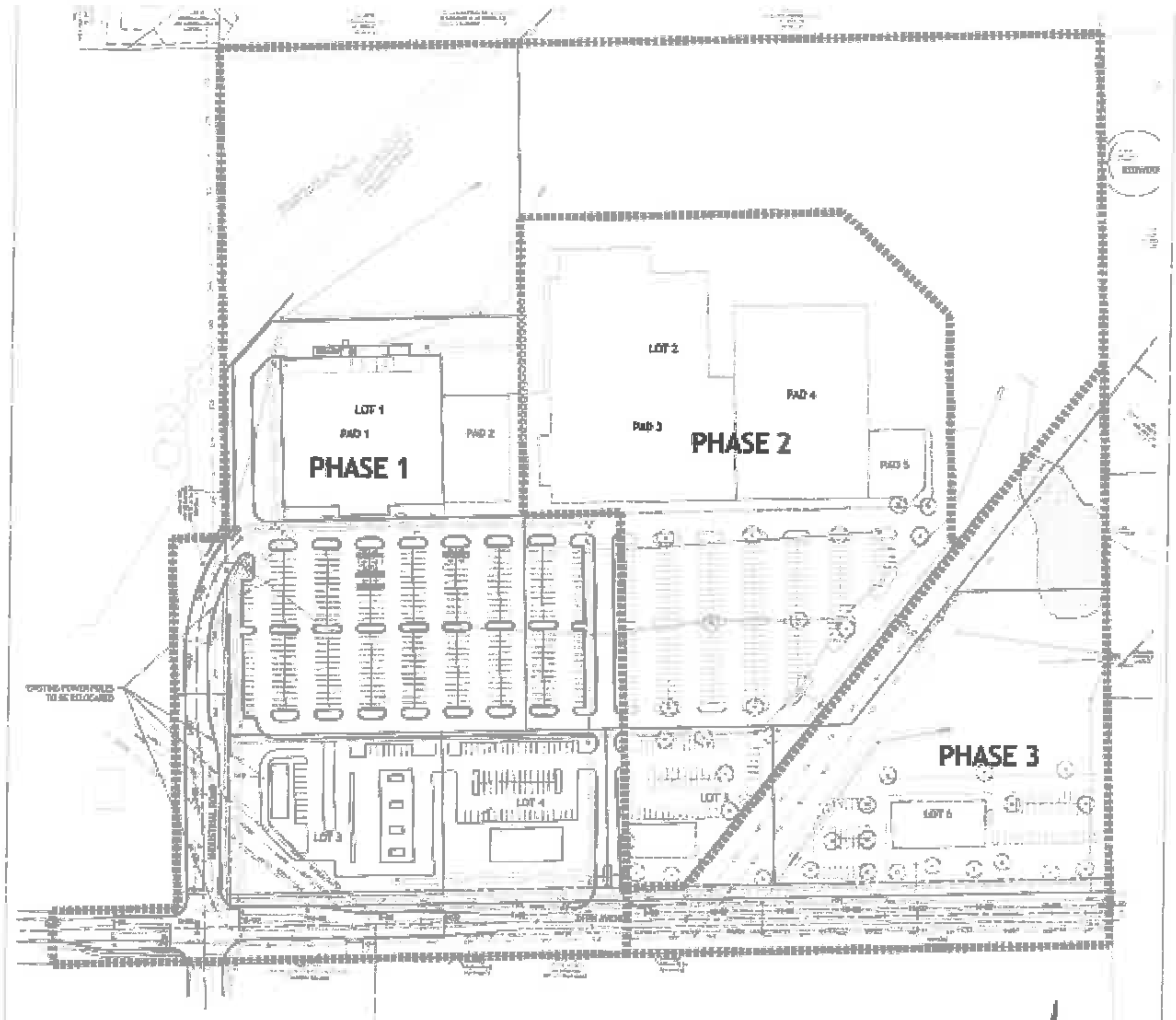
EXHIBITS

Exhibit A	Depiction of Project
Exhibit B	Project Budget
Exhibit C	Certificate of Project Costs
Exhibit D	Project Plan
Exhibit E	CID Petition
Exhibit F	Phase 1 Project Timetable

Exhibit A – Depiction of Project



SITE DATA:

PHASE	AREA (SF)	BUILDING (SF)	PRK STALLS
1	597,672	79,900	498
2	866,725	168,400	330
3	179,891	10,000	64
TOTAL	37.75	258,300	892

SITE DATA:

TOTAL ACREAGE	38.97ac (1,697,533sf)
EXISTING ZONING	P- PUBLIC DISTRICT

TWG REF: 508788
Emporia Development Agreement

Exhibit B – Project Budget[1]

CATEGORY/DESCRIPTION	TIF ELIGIBLE PROJECT COSTS*	CID ELIGIBLE PROJECT COSTS*
SITE WORK / STREET WORK		
Grading	$ 617,500	$ 617,500
Retaining Wall	$ 171,500	$ 171,500
Storm Drainage/Storm Water Detention Basin	$ 286,175	$ 286,175
Asphalt	$ 2,246,580	$ 2,246,580
Landscaping/Erosion Control	$ 405,000	$ 405,000
Curb and Gutter	$ 306,530	$ 306,530
Sidewalk	$ 192,050	$ 192,050
Rock Allowance	$ 75,000	$ 75,000
Sanitary Sewer	$ 161,160	$ 161,160
Waterline	$ 570,240	$ 570,240
Lighting	$ 200,000	$ 200,000
Demolition/Tree Removal/Utility	$ 272,500	$ 272,500
Traffic Signal	$ 200,000	$ 200,000
Street & Monument Signage/Striping	$ 115,000	$ 115,000
CONTINGENCY	$ 250,000	$ 250,000
TOTAL	$ 6,069,235	$ 6,069,235

1 Although project costs are eligible to be reimbursed from both TIF revenue and CID revenue, it is understood that no single cost shall be reimbursed more than once. The total amount of reimbursement from both TIF and CID is limited to the $6,069,235 (plus interest carry costs) approved by the City

Exhibit C

CERTIFICATE OF PROJECT COSTS
2016 REDEVELOPMENT DISTRICT DEVELOPMENT AGREEMENT

To: City Manager; City Engineer
Emporia, Kansas

RE: Emporia Pavilions 2016 Redevelopment District (TIF) and Community Improvement District Development Agreement

Terms used in this Certificate and not otherwise defined here shall have the meanings given them in the Emporia Pavilions Tax Increment Redevelopment District and Community Improvement District Development Agreement dated as of ____ __, 2016 ("Agreement") between the City of Emporia, Kansas and Emporia Land Development, LLC.

In connection with the Agreement, the undersigned Developer Representative hereby certifies as follows:

1. Each item listed in Schedule I hereto is a TIF Eligible Project Cost or CID Eligible Project Cost and was incurred in connection with the Project.

2. These costs shown on Schedule I have been paid by the Developer and are reimbursable under the Agreement from the specific Project Fund identified on Schedule I.

3. Itemized invoices, receipts or other evidence of such costs are enclosed.

4. Each item listed in Schedule I has not previously been paid or reimbursed from money derived from any Project Fund, and no part thereof has been included in any other certificate previously filed with the City.

5. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.

6. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.

7. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement and the approved plans for the work.

8. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.

9. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this ____ day of ________________, 20__.

By: Developer Representative

By______________________________
Name (Printed)____________________
Title_____________________________

Approved for payment this _____ day of ________________, 20__.

By ______________________

____
City _______

Schedule I

(To Be Added)

Exhibit D – Project Plan

(Attached)

Exhibit E – CID Petition

(Attached)

Exhibit F –Phase 1 Project Timetable

EMPORIA PAVILIONS

Project Work	Anticipated Start Date
Complete Purchase Closing on the ground	3rd Quarter 2016
Site Preparation and Grading	4th Quarter 2016
Street Work / Public improvements for 24th Ave and the extension of Industrial Road	4th Quarter 2016
Vertical Construction on Hobby Lobby	2nd Quarter 2017

Commission Action Report

Title: 2023 Street Preservation Project

Agenda Date: April 19, 2023

Presented By: Dean Grant, Director of Public Works

BACKGROUND:
The Street Division opened bids for the 2023 Street Preservation Project on March 28, 2023. Only one bid was received for this project. The bid was from APAC-Kansas, Inc. in the amount of $93,600.00, to crack seal the asphalt.

DISCUSSION:
Award the Street Preservation Project to APAC-Kansas, Inc.

FINANCIAL CONSIDERATIONS:
The project cost is $93,600.00 and will be paid from the Multi-year Fund. This item was budgeted for $200,000.

RECOMMENDED ACTION:
Award the 2023 Street Preservation Project to APAC-Kansas, Inc. for the amount of $93,600.00.

ATTACHMENTS:
APAC-Kansas, Inc Bid
Street Segment List

2023 Street Preservation		
STREET	From	To
1st Avenue	Congress Street	West Street
1st Avenue	East Street	Market Street
2nd Avenue	Sylvan Street	Cottonwood Street
2nd Avenue	State Street	Neosho Street
Aspen Drive	Cul de Sac	South Congress Street
Copley Avenue	South Congress Street	South Rural Street
Copley Avenue	South Mechanic Street	South Commercial Street
Copley Avenue	South Exchange Street	South Mechanic Street
Copley Avenue	South West Street	South Walnut Street
Cypress Drive	Merchant Street	Cul de Sac
Kansas Avenue	South East Street	South Cottonwood Street
Kansas Avenue	South Mechanic Street	South Commercial Street
Market Street	RR Tracks	5th Avenue
Market Street	South Avenue	2nd Avenue
Randolph Avenue	South Constitution Street	South Congress Street
Randolph Avenue	South Mechanic Street	South Commercial Street
Randolph Avenue	Dead End	South Market Street
Rindom Road	South Walnut Street	South Lawrence Street
South Congress Street	Logan Avenue	Kansas Avenue
South Cottonwood Street	Logan Avenue	Potwin Avenue
South Lawrence Street	Rindom Road	South Avenue
South Merchant Street	Cypress Drive	Kansas Avenue
South Pine Street	Dead End	South Avenue
South Walnut Grove	Cul de Sac	South Avenue
South Walnut Street	Rindom Road	South Avenue

Proposal Form

2023 Street Preservation Project

Completion of this proposal form shall be an indication the vendor has read and accepted the terms outlined in the proposal instructions.

Estimated Project Start Date: ______________________

Estimated Number of Days Required to Complete Project: ______________________

Edge Milling			Skim Coat			Crack Seal			Chip Seal			FOG Seal		
Estimated Square Yard to be Edge Milled	Cost Per Square Yard Milled	Total Cost for Edge Milling	Estimated Tonnage of Leveling Course to be Laid	Cost Per Ton Laid	Total Cost for Leveling Course	Estimated Pounds of Crack Seal to be Applied	Cost Per Pound	Total Cost for Crack Seal	Estimated Square Yards of Chip Seal to be Laid	Cost Per Square Yard Laid	Total Cost for Chip Seal	Estimated Square Yards of FOG Seal to be Applied	Cost Per Square Yard Applied	Total Cost for FOG Seal
0			0			15,000	$6.24	$93,600.00	0			0		

Total Project Cost: $ 93,600.00

Firm: APAC-Kansas Inc., Shears Division

Owner's Signature:

Business Address: 302 Peyton

Owner or Manager: David Duncan

Comments:

Commission Action Report

Title: Award 2023 Street Rehabilitation Project PV2302

Agenda Date: April 19, 2023

Presented By: James Ubert, City Engineer

BACKGROUND:

The 2023 Street Rehab Project will consist of milling and pavement overlay operations, replacement of failed curb and gutter sections, construction of the David Traylor Zoo bus parking lot, and select sidewalk/ADA ramp improvements along select various streets.

DISCUSSION:
At 2:00 pm on Tuesday, April 11th, 2023, the City Engineer's Office publicly opened bids on the 2023 Street Rehabilitation Project No. PV2302. The Engineering Office Received a total of two (2) bids for this project. The received bids and Engineer's Estimate are as follows:

Bidder Name	Base Bid	Zoo Bus Parking Lot Bid	Base Bid + Zoo Bus Parking Lot Bid	Add Alternate No. 1	Base, Add Alt + Zoo Parking Lot
APAC-Kansas, Inc., Shears Division	$972,939.82	$74,104.16	$1,047,043.93	$124,231.47	$1,171,275.45
Killough Construction Inc	$1,269,882.53	$73,801.00	$1,343,683.53	$141,869.70	$1,485,553.23
Engineer's Estimate	$865,808.25	$67,280.00	$933,088.25	$112,623.00	$1,045,711.25

FINANCIAL CONSIDERATIONS:
This project is funded out of the Multi-Year Fund and with Federal Fund Exchange Dollars.

RECOMMENDED ACTION:
The staff recommends awarding the project to APAC-Kansas, Inc., Shears Division for Base Bid and Zoo Bus Parking Lot Bid for the amount of $1,047,043.93.

ATTACHMENTS:
Bid tabulation & 2023 Street Rehab Plans PV2302 FINAL PLANS pg. 1

CITY OF EMPORIA, KS

BID TABULATION
FOR 2023 STREET REHABILITATION PROJECT NO. PV2302 (VARIOUS LOCATIONS AROUND CITY)

Location: City of Emporia
Date: 2:00 pm, April 11,2022

			APAC-Shears Kansas Division		Killough Construction Inc		CITY ENGINEER'S ESTIMATE	
Quantity	**Units**	**Description**	**Unit**	**Total**	**Unit**	**Total**	**Unit**	**Total**
1	L.S.	Mobilization	$56,650.55	$56,650.55	$169,000.00	$169,000.00	$35,000.00	$35,000.00
35,253	S.Y.	Asphalt Milling (2" Avg. Depth)	$2.30	$81,081.90	$4.61	$162,516.33	$3.00	$105,759.00
4,256	TONS	HMA (Commercial Grade) (Class A) (2" Avg. Depth)	$98.82	$420,577.92	$116.00	$493,696.00	$110.00	$468,160.00
1,940	L.F.	Curb and Gutter (2'-6" Combined) (AE) (Remove & Replace)	$74.06	$143,676.40	$74.00	$143,560.00	$40.00	$77,600.00
112	S.Y.	Concrete Pavement (8" Reinf.) (AE) (Remove & Replace)	$234.98	$26,317.76	$191.64	$21,463.68	$120.00	$13,440.00
33	L.F.	Concrete Pavement (6" Reinf.) (AE) (Remove & Replace)	$146.82	$4,845.06	$173.70	$5,732.10	$120.00	$3,960.00
497	S.Y.	Concrete Pavement (6" Plain) (AE) (Remove & Replace)	$150.57	$74,833.29	$165.61	$82,308.17	$110.00	$54,670.00
236	S.Y.	Concrete Sidewalk (4" Plain) (AE) (Remove & Replace)	$116.06	$27,390.16	$154.00	$36,344.00	$68.00	$16,048.00
124	S.Y.	ADA Sidewalk Ramp	$408.23	$50,620.52	$404.00	$50,096.00	$250.00	$31,000.00
1	Ea.	Utility Adjustment (Valve Box Riser) (Valve Box) (Water)	$643.86	$643.86	$500.00	$500.00	$250.00	$250.00
3	Ea.	Utility Adjustment (Concrete) (Valve Box) (Water)	$996.34	$2,989.02	$1,000.00	$3,000.00	$850.00	$2,550.00
9	Ea.	Utility Adjustment (Manhole Riser) (Manhole) (Sewer)	$574.55	$5,170.95	$2,500.00	$22,500.00	$350.00	$3,150.00
2,997	Ea.	Pavement Marking (Thermoplastic) (4" Yellow)	$2.15	$6,443.55	$0.85	$2,547.45	$0.95	$2,847.15
1,244	Ea.	Pavement Marking (Thermoplastic) (4" Yellow) (Double)	$3.23	$4,018.12	$1.70	$2,114.80	$1.90	$2,363.60
229	L.F.	Pavement Marking (Thermoplastic) (12" Yellow) (Diagonal)	$15.05	$3,446.45	$6.00	$1,374.00	$5.50	$1,259.50
168	L.F.	Pavement Marking (Thermoplastic) (6" White)	$2.15	$361.20	$4.00	$672.00	$1.50	$252.00
31	L.F.	Pavement Marking (Intersection Grade) (24" STOP Bar)	$27.96	$866.76	$19.00	$589.00	$22.00	$682.00
176	L.F.	Pavement Marking (Intersection Grade) (Type II Crosswalk)	$27.96	$4,920.96	$19.00	$3,344.00	$22.00	$3,872.00
12	L.F.	Pavement Marking (Intersection Grade) (Left Arrow)	$322.58	$3,870.96	$275.00	$3,300.00	$210.00	$2,520.00
2	L.F.	Pavement Marking (Intersection Grade) (Right Arrow)	$322.58	$645.16	$275.00	$550.00	$210.00	$420.00
2	L.F.	Pavement Marking (Intersection Grade) (Straight/Left Arrow)	$645.17	$1,290.34	$425.00	$850.00	$240.00	$480.00
1	L.F.	Pavement Marking (Intersection Grade) (ONLY Symbol)	$645.16	$645.16	$400.00	$400.00	$500.00	$500.00
1	L.S.	Temporary Seeding and Mulch	$846.55	$846.55	$3,200.00	$3,200.00	$1,500.00	$1,500.00

CITY OF EMPORIA, KS

BID TABULATION
FOR 2023 STREET REHABILITATION PROJECT NO. PV2302 (VARIOUS LOCATIONS AROUND CITY)

Location: City of Emporia
Date: 2:00 pm, April 11,2022

			APAC-Shears Kansas Division		Killough Construction Inc		CITY ENGINEER'S ESTIMATE	
Quantity	Units	Description	Unit	Total	Unit	Total	Unit	Total
1	L.S.	Permanent Seeding, Fertilizer and Mulch	$10,198.67	$10,198.67	$6,200.00	$6,200.00	$3,500.00	$3,500.00
1	L.S.	Traffic Control	$16,789.55	$16,789.55	$34,000.00	$34,000.00	$15,000.00	$15,000.00
1	Hr.	Flagger (Set Price)	$25.00	$25.00	$25.00	$25.00	$25.00	$25.00
100	TONS	Asphalt Patching (4" Avg. Depth)	$237.74	$23,774.00	$200.00	$20,000.00	$190.00	$19,000.00
		TOTAL AMOUNT OF BASE BID:		**$972,939.82**		**$1,269,882.53**		**$865,808.25**

CITY OF EMPORIA, KS

BID TABULATION
FOR 2023 STREET REHABILITATION PROJECT NO. PV2302 (VARIOUS LOCATIONS AROUND CITY)

Location: City of Emporia
Date: 2:00 pm, April 11,2022

			APAC-Shears Kansas Division		Killough Construction Inc		CITY ENGINEER'S ESTIMATE	
Quantity	Units	Description	Unit	Total	Unit	Total	Unit	Total
Add Alternate No. 1								
1	L.S.	Mobilization	$8,400.66	$8,400.66	$18,400.00	$18,400.00	$12,000.00	$12,000.00
2,870	S.Y.	Asphalt Milling (2" Avg. Depth)	$2.30	$6,601.00	$4.61	$13,230.70	$3.00	$8,610.00
73	TONS	HMA (Leveling Course) (BM-1) (1" Avg. Depth)	$137.61	$10,045.53	$116.00	$8,468.00	$110.00	$8,030.00
479	TONS	HMA (Commercial Grade) (Class A) (2" Avg. Depth)	$103.93	$49,782.47	$116.00	$55,564.00	$110.00	$52,690.00
158	L.F.	Curb & Gutter (2'-6" Combined) (AE) (Remove & Replace)	$73.89	$11,674.62	$74.00	$11,692.00	$40.00	$6,320.00
10	S.Y.	Concrete Pavement (6" Reinf.) (AE) (Remove & Replace)	$146.80	$1,468.00	$173.70	$1,737.00	$120.00	$1,200.00
33	S.Y.	Concrete Pavement (6" Plain) (AE) (Remove & Replace)	$150.58	$4,969.14	$165.61	$5,465.13	$110.00	$3,630.00
17	S.Y.	Concrete Sidewalk (4" Plain) (AE) (Remove & Replace)	$116.07	$1,973.19	$160.11	$2,721.87	$68.00	$1,156.00
120	L.F.	Crack Filling (>1/2" to <2")	$76.32	$9,158.40	$15.00	$1,800.00	$30.00	$3,600.00
120	L.F.	Stress Relief Interlay Fabric (24" Wide)	$4.25	$510.00	$21.00	$2,520.00	$22.00	$2,640.00
1	Ea.	Utility Adjustment (Valve Box Riser) (Valve Box) (Water)	$643.86	$643.86	$500.00	$500.00	$250.00	$250.00
58	S.Y.	Suface Grading (AB-3) (2" Avg. Depth)	$11.51	$667.58	$49.00	$2,842.00	$18.00	$1,044.00
488	L.F.	Ditch Grading	$3.89	$1,898.32	$8.00	$3,904.00	$6.00	$2,928.00
1	L.S.	Temporary Seeding and Mulch	$5,009.01	$5,009.01	$2,000.00	$2,000.00	$1,000.00	$1,000.00
1	L.S.	Permanent Seeding, Fertilizer and Mulch	$5,009.01	$5,009.01	$4,000.00	$4,000.00	$2,500.00	$2,500.00
1	L.S.	Traffic Control	$6,395.68	$6,395.68	$7,000.00	$7,000.00	$5,000.00	$5,000.00
1	Hr.	Flagger (Set Price)	$25.00	$25.00	$25.00	$25.00	$25.00	$25.00
		TOTAL OF ADD ALTERNATE NO. 1:		**$124,231.47**		**$141,869.70**		**$112,623.00**
Zoo Bus Parking Lot								
1	L.S.	Mobilization	$4,613.64	$4,613.64	$14,800.00	$14,800.00	$5,000.00	$5,000.00

CITY OF EMPORIA, KS

BID TABULATION
FOR 2023 STREET REHABILITATION PROJECT NO. PV2302 (VARIOUS LOCATIONS AROUND CITY)

Location: City of Emporia
Date: 2:00 pm, April 11,2022

			APAC-Shears Kansas Division		Killough Construction Inc		CITY ENGINEER'S ESTIMATE	
Quantity	Units	Description	Unit	Total	Unit	Total	Unit	Total
1	L.S.	Contractor Construction Staking	$2,688.18	$2,688.18	$3,500.00	$3,500.00	$1,500.00	$1,500.00
290	C.Y.	Common Excavation	$52.82	$15,317.80	$15.50	$4,495.00	$16.00	$4,640.00
146	C.Y.	Compaction of Earthwork (Type B) (MR-90)	$11.27	$1,645.42	$8.50	$1,241.00	$12.00	$1,752.00
1,056	S.Y.	Combined Material (AB-3) (5" Compacted)	$11.18	$11,806.08	$10.00	$10,560.00	$18.00	$19,008.00
290	TONS	HMA (Commercial Grade) (Class A) (5" Depth)	$107.06	$31,047.40	$116.00	$33,640.00	$110.00	$31,900.00
165	S.Y.	Earthwork (Grading)	$11.26	$1,857.90	$21.00	$3,465.00	$12.00	$1,980.00
1	Hr.	Traffic Control	$5,127.74	$5,127.74	$2,100.00	$2,100.00	$1,500.00	$1,500.00
		TOTAL OF ZOO BUS PARKING LOT:		**$74,104.16**		**$73,801.00**		**$67,280.00**
		TOTAL OF BASE BID & ZOO BUS PARKING LOT:		**$1,047,043.98**		**$1,343,683.53**		**$933,088.25**
		TOTAL OF BASE BID, ADD ALTERNATE & ZOO BUS PARKING LOT:		**$1,171,275.45**		**$1,485,553.23**		**$1,045,711.25**

STATE	PROJECT NO.	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
KANSAS	PV2302	2023	1	31

STATE OF KANSAS

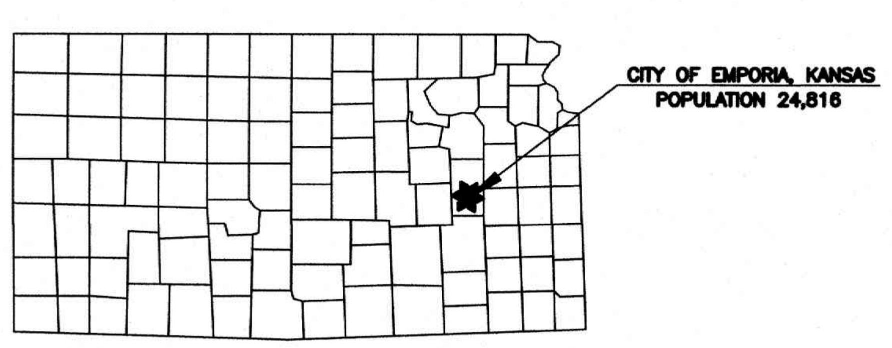
2023 STREET REHAB PROJECT NO. PV2302 (VARIOUS LOCATIONS)

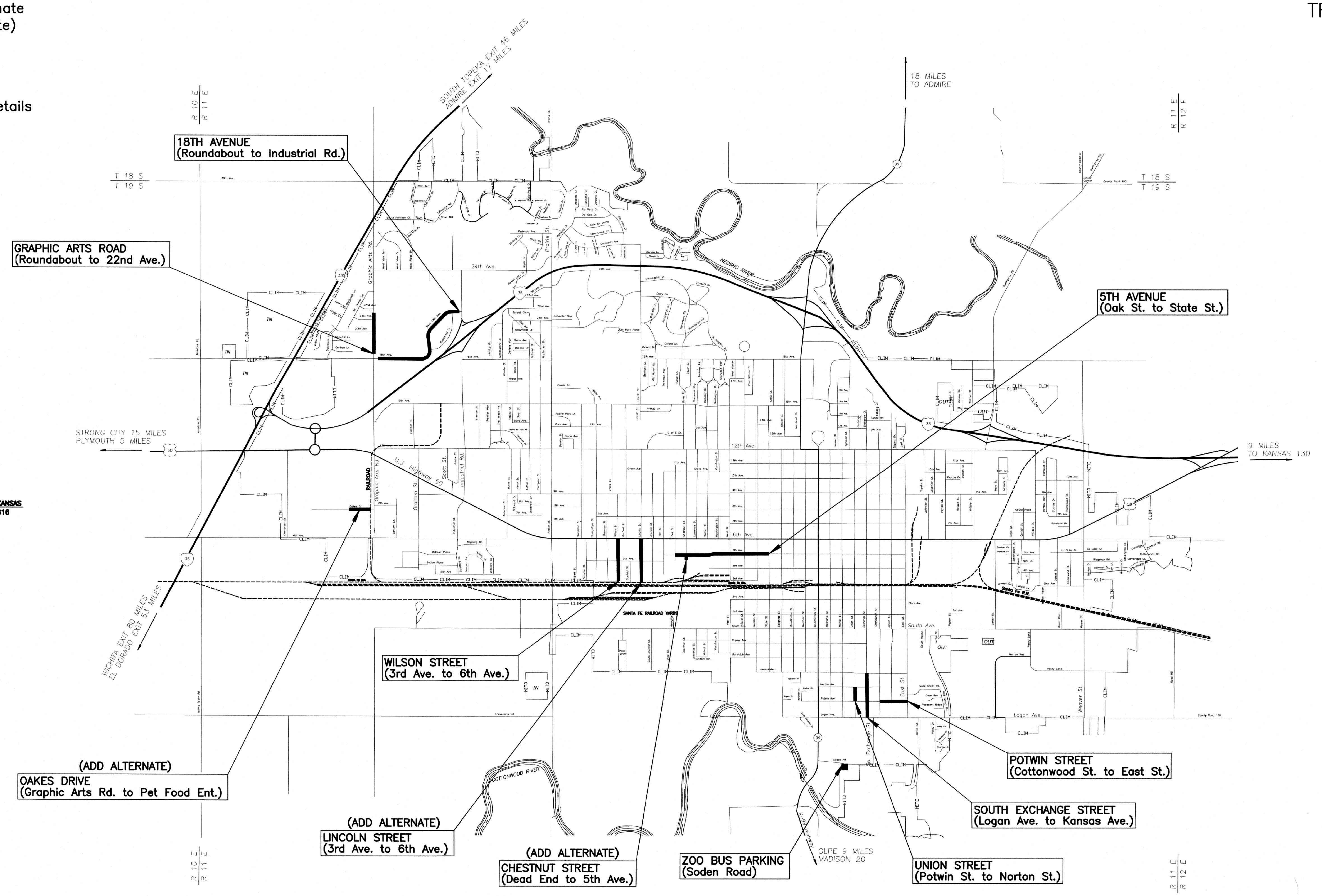
CITY OF EMPORIA, KANSAS
LYON COUNTY

SURFACE MILLING
BITUMINOUS SURFACING
CONCRETE PAVEMENT
CURB AND GUTTER
SIDEWALK AND RAMPS
DITCH GRADING
PAVEMENT MARKING
TRAFFIC CONTROL
SEEDING

INDEX OF SHEETS

ZOO BUS PARKING





NO SCALE
MAP OF
EMPORIA, KS

DESIGN DESIGNATION

AADT (VARIES)

POSTED SPEED LIMIT VARIES THROUGHOUT PROJECT

CONVENTIONAL SIGNS

CORPORATE CITY LIMITS
KTA TOLL HIGHWAY
INTERSTATE DIVIDED HIGHWAY
STATE HIGHWAY
STREET OR PUBLIC ROAD
RAILROAD
PUBLIC WORKS BUILDING
INTERSTATE NUMBERED ROUTE
U. S. NUMBERED ROUTE
STATE NUMBERED ROUTE

FINAL PLANS
DO NOT DESTROY
DATE: 02-24-2023

PLANS PREPARED AND SUBMITTED BY:

JAMES M. UBER
14638
KANSAS
PROFESSIONAL ENGINEER

Emporia Kansas Engineering Department

APPROVED – DATE

CITY ENGINEER
CITY OF EMPORIA

Commission Action Report

Title:	Land Lease between the City of Emporia, Kansas, and the United States of America
Agenda Date:	April 19, 2023
Presented By:	Christina Montgomery, City Attorney

BACKGROUND:
The United States Government has leased the Army Reserve Center property from the City of Emporia for many years. The existing lease has reached the end of its term and the U.S. Government has requested a new lease agreement.

DISCUSSION:
The proposed lease is for a fifty-year term ending December 31, 2073. The U.S. Government will exercise exclusive control of the property during the lease term.

FINANCIAL CONSIDERATIONS:
No property tax will be owed on the property so long as it is used for governmental purposes.

RECOMMENDED ACTION:
Approve Land Lease between the City of Emporia, Kansas, and the United States of America.

ATTACHMENTS:
Land Lease between the City of Emporia, Kansas, and the United States of America.
Map exhibit

LAND LEASE

BETWEEN

CITY OF EMPORIA, KANSAS

AND

THE UNITED STATES OF AMERICA

1. This **LEASE**, under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 18233, hereinafter referred to as the "Lease", made and entered into this ______ day of __________ in the year of 20___

by: the **CITY OF EMPORIA, KANSAS** whose address is: **CITY OF EMPORIA, 111 E. 6TH AVENUE, EMPORIA, KANSAS 66801** and whose interest in the property is that of the owner, hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government.

In consideration for RENT the parties promise and agree as follows:

2. PROPERTY: The **Lessor** hereby leases to the **Government** the following described property:

Exclusive use of a 5.20 acre tract, more or less, of land in located in Lyon County, Kansas, described as follows:

Lots 2 and 3, Buena Vista Addition, to the City of Emporia, Kansas, according to the recorded plat, except that part deeded for highway purposes, being a part of the SE1/4 of Section 11, Township 9 South, Range 11 East of the Sixth Principal Meridian as shown in Exhibit "A", attached and made a part of this agreement.

To be used for the following purpose: Governmental purposes**.**

3. **LEASE TERM:** The Government shall have the right to have and to hold the said premises, or any portion thereof, for the period beginning **1 January 2023** through **31 December 2073.**

4. **RENTAL:** The Government shall pay the Lessor rent at the following rate:

ONE DOLLAR AND NO/100 (1.00) per entire term, the receipt and sufficiency of which is hereby acknowledged.

5. **OWNERSHIP:** The Lessor warrants that it is the rightful and legal owner of the property and has the legal right to enter into this lease. If the title of the Lessor shall fail, or it be discovered that the Lessor did not have authority to lease to the property, the lease shall terminate. The Lessor, the Lessor's heirs, executors, administrators, successors, or assigns agree to indemnify the Government by reason of such failure and to **refund all rentals paid.**

6. **<u>EXCLUSIVE USE</u>:** The Lessor shall not interfere with or restrict the Government, or its representatives in the use and enjoyment of the leased property, nor shall the Lessor erect any fence, wall, partition or any construction upon the leased, property except as otherwise agreed to in writing by the Government.

7. **TERMINATION**:

a. The Government may terminate this lease at any time in whole or in part, by giving thirty (30) days' notice in writing to the Lessor. Said notice shall be the day after the date of mailing, or hand delivery.

b. Termination in whole or in part shall be effective upon written notice, however, the parties may enter into a supplemental agreement to resolve certain issues arising from the tenancy and its termination, in whole or in part.

c. The Lessor has no termination rights.

8. ALTERATIONS/RESTORATION/RELEASE OF LIABILITY:

The Government shall have the right, during the existence of this lease, to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which fixtures, additions, or structures, so placed in, upon or attached to the said premises shall be and remain the property of the Government and may be removed or left in place at the option of the Government**.** The Lessor hereby releases and forever discharges the Government, its officers, employees and/or contractors from any and all liability, claims or demands for site restoration of the leased premises.

9. **DAMAGES:** The Government shall not be responsible for combat or war related damages to the lease premises; the Government shall be liable only for damage resulting from negligence or misconduct of Government personnel. The Government shall not be liable for any loss, destruction, or damage to the premises beyond the control and without the fault of negligence of the , Government including, but not limited to acts of nature, fire, lightning, floods, or severe weather. The parties agree that any settlement of damages by the Government if any, shall be done at termination of the lease.

10. PROPERTY INVENTORY: As of the starting date of this lease, a joint inventory and condition report of all personal property of the Lessor included in this lease, and a joint physical survey and inspection report of the real property shall be made, said reports to reflect the then present condition, and to be signed on behalf of the parties.

11. TAXES: The Lessor accepts full and sole responsibility for the payment of all taxes and other charges of a public nature which may arise in connection with this lease or which may be assessed against the property. This includes registration of the lease and payment of related charges.

12. NOTICE: Any notice under this Lease is to be given in writing and delivered by "Certified Mail, Return Receipt Requested" or registered mail, Express Mail or comparable service, or delivered by hand and delivery, whether accepted or refused, attempted delivery, or marked undeliverable, shall be deemed notice under the terms of this Lease. Any notice given by the Lessor to the Government shall be addressed to: **District Commander, U.S. Army Engineer District, ATTN: Real Estate Division, RE-A Branch, 601 E. 12th Street, Room 602, Kansas City, Missouri 64106-2896.** Any notice given by the Government to the Lessor or his/her agent shall be addressed to: **City of Emporia, Kansas 111 East 6th Avenue, Emporia, Kansas 66801** and e-mail **EmporiaInfo@emporiaks.gov,** or as may from time to time otherwise be directed in writing by the parties. Both Lessor and Government have an obligation to ensure that the other party has their accurate address. Any such notice and correspondence shall include the lease number.

13. LESSOR'S SUCCESSORS: The terms and provisions of this lease and the conditions shall bind the Lessor, and the Lessor's heirs, executors, administrators, successors, and assigns.

14. COVENANT AGAINST CONTINGENT FEES: The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

15. OFFICIALS NOT TO BENEFIT: No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

16. GRATUITIES:

a. The Government may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer, or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

b. In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more that ten times the costs incurred by the Lessor in providing any such gratuities to an such officer or employee.

c. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

17. EXAMINATION OF RECORDS: The Lessor agrees that any duly authorized representatives shall have the right until the expiration of three (3) years after final payment of the agreed rental, have access to and the right to examine any directly pertinent books, documents, papers and records of the Lessor involving transactions related to this lease.

18. MODIFICATION: No Change or modification of this lease shall be effective unless it is in writing and signed by both parties to this lease.

19. THE FOLLOWING ARE ATTACHED AND MADE A PART HEROF:

i: Site Plan, Exhibit A

IN WITNESS WHEREOF, the parties have subscribed their names as of the date first above written.

LESSOR:

____
(Name of the Lessor)

____
(Lessor's Signature)

____
Tax ID Number

THE UNITED STATES OF AMERICA

____
Meredith L. A. Harmon
Chief, Real Estate
Real Estate Contracting Officer

US Army Reserve Center
Emporia, Kansas
Lyon County
DACA415230003200
5.20 Acres

N

0 100 200 400
Feet

Lease Boundary
Public Land Survey

1412 E. 6th Ave
Emporia, KS 66801

EXHIBIT A

Map Created: Lisa Hook 03/01/2023
Network Path: V:\RealEstate\working\Emporia\EmporiaARC.aprx

Commission Action Report

Title: Financials & Permits

Proposed Agenda Date: April 19, 2023

BACKGROUND:

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

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

Monthly Local Retail Sales Tax Receipts Update

	2022	2023	
	$ 458,149.13	$ 542,877.36	**Increase of $84,728.23** for the month, and Overall increase of 13.35% from year 2022.
YTD	**$1,461,762.19**	**$1,656,865.28**	

City Share from County Tax

	2022	2023	
	$ 236,477.70	$ 276,038.36	**Increase of $39,560.66** for the month, and Overall increase of 15.09% from year 2022.
YTD	**$ 754,057.95**	**$ 867,838.02**	

Building Permits issued from 3/1/2023 to 3/31/2023 for new construction, remodeling/repairs and demolition.

Total number of building permits issued through Code Services:	72
Total of valuations associated with those building permits:	$ 5,561,655.00
Total number of dollars collected for Building Permit Fees:	$ 25,013.00
Construct – Single-family dwellings	4
Demo – Single-family dwellings	1

Flint Hills Mall CID for March 2023	$14,976.79
YTD	**$59,702.08**
Pavilions CID for March 2023	$ 4,568.73
YTD	**$22,671.01**

City of Emporia

Unencumbered Cash Report

as of March 31, 2023

	Amount	YTD Budget	Difference
101 General Fund	8,359,310.57	5,748,520.00	2,610,790.57
102 Multi Year Fund	3,328,674.78	5,875,651.15	(2,546,976.37)
103 Insurance Reserve	502,652.80	500,000.00	2,652.80
104 Vacant Property Program	200,878.10	-	200,878.10
201 Library Fund	-	-	-
203 Convention & Tourism Fund	643,924.81	637,939.00	5,985.81
204 Industrial Fund	22,072.32	19,361.00	2,711.32
205 Industrial Dev Sales Tax Fund	1,077,444.43	46,911.00	1,030,533.43
206 Special Alcohol Fund	99,559.37	70,785.00	28,774.37
207 Special Park & Recreation Fund	41,543.81	84,770.00	(43,226.19)
208 Special Street Fund	202,491.99	461,309.00	(258,817.01)
209 Drug Money Forfeitures Fund	76,777.11	72,755.00	4,022.11
210 Storm Water Fund	260,553.97	-	260,553.97
218 Emergency Shelter Grant Fund	6,383.00		6,383.00
224 Fire Public Education	3,102.22		3,102.22
225 Police Grants Fund	3,343.98		3,343.98
251 Emporia Homeowner Repair	(24,515.66)		(24,515.66)
252 2014 Housing Rehab	44,750.01		44,750.01
254 2020 CDBG Rehab Grant	13,822.69		13,822.69
260 Land Bank	73,794.16		73,794.16
301 Bond and Interest Fund	3,185,335.84	2,483,292.00	702,043.84
305 Equipment Reserve Fund	636,654.25	433,471.00	203,183.25
401 Coronavirus Recovery Grant	2,554,590.68		2,554,590.68
406 Internal Improvement Fund	6,008,922.43		6,008,922.43
409 Water Treatment Plant Improvement	(3,564,754.29)		(3,564,754.29)
413 Water Main Improvements	(541,429.67)		(541,429.67)
415 Civic Auditorium Project Fund	167,644.88		167,644.88
423 Airport Improvements Fund	191,555.53		191,555.53
428 Park Improvements Fund	(2,159,486.82)		(2,159,486.82)
441 Paving Projects Fund	(1,442,541.20)		(1,442,541.20)
442 Construction Projects Fund	(261,660.16)		(261,660.16)
444 Waste water Improvement	(2,417,562.88)		(2,417,562.88)
501 Water Utility Fund	723,549.73	(578,818.00)	(37,104.03)
502 Sewer Fund	74,698.90	(366,085.00)	(707,346.23)
503 Solid Waste Fund	3,528,153.30	1,764,354.76	3,240,680.64
601 Worker's Comp Fund	2,216,516.47		2,216,516.47
602 Health Care Fund	2,366,401.76		2,366,401.76
708 Fire Insurance Proceeds	4,178.84		4,178.84
	26,207,332.05		

Unencumbered Cash		
General Use	11,687,985.35	47.00%
Special Revenue	2,549,227.05	10.25%
Utilities	4,326,401.93	17.40%
Internal Service	4,582,918.23	18.43%
Capital Projects	(1,464,721.50)	-5.89%
B&I	3,185,335.84	12.81%
	24,867,146.90	

Budget	
General Use	63,814.20
Special Revenue	1,155,397.05
Utilities	2,496,230.38
Internal Service	4,582,918.23
Capital Projects	(1,464,721.50)
B&I	702,043.84

City of Emporia, Kansas

GENERAL FUND

as of March 31, 2023

GENERAL FUND

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	4,535,363	4,519,095	4,515,233	5,744,854	5,744,854
REVENUE					
Ad Valorem Property Tax	5,112,898	5,636,204	3,025,000	3,324,982	(299,982)
Sales Tax	7,676,241	8,992,800	2,248,200	2,524,703	(276,503)
Franchise Tax	3,041,958	2,814,536	703,632	873,445	(169,813)
Other Taxes	2,063,459	731,188	71,500	142,251	(70,751)
Intergovernmental Taxes	313,974	333,006	70,249	100,092	(29,843)
Licenses & Permits	385,058	267,950	59,667	97,444	(37,777)
Charges for Services	2,123,416	2,105,903	541,706	421,011	120,695
Fines & Fees	434,395	542,300	135,336	120,334	15,002
Use of Property and Money	207,861	161,996	37,947	85,218	(47,271)
Reimbursements	(251,411)	155,756	38,919	255,291	(216,372)
Misc. Rev. - Administrative Transfers	2,772,472	2,591,938	647,970	652,854	(4,884)
Transfer from Solid Waste Fund	0	0	0	0	0
Transfer from Health Insurance Fund		0			0
Operating Revenues	190	200	48	20	28
Nonoperating Revenues	51,743	0		5,941	(5,941)
TOTAL RECEIPTS	23,932,253	24,333,777	7,580,174	8,603,589	(1,023,415)
EXPENDITURES					
Personnel Services	13,406,587	14,681,310	3,388,722	3,329,978	58,744
Vacancy Rate		(280,252)	0		0
Maintenance & Repair	735,874	1,022,467	253,533	331,676	(78,143)
Commodities	1,562,917	1,762,750	450,335	424,864	25,471
Other Charges	246,777	846,818	127,516	104,340	23,176
Capital Outlay	172,847	319,106	319,106	36,431	282,675
Debt Reduction		0			0
Stock	0	0	0	0	0
Transfer to Industrial Development Sales Tax	925,000	925,000	231,249	231,250	(1)
Transfer to Multi Year Fund	3,114,307	3,060,000	765,000	867,838	(102,838)
Transfer to Project accounts	612,833	40,000	0	47,100	(47,100)
Transfer to Equipment Reserve	260,000	264,500	304,500	304,500	0
Utilities	522,093	554,250	138,522	147,648	(9,126)
Communications	104,507	129,500	32,310	33,661	(1,351)
Training and Travel	201,605	214,750	53,664	43,855	9,809
Jail Expenses	67,520	80,000	19,998	21,250	(1,252)
Other Contractual	942,353	1,038,950	262,432	195,648	66,784
Excess Carryover		3,165,514	0		0
Outstanding PO's	0				
TOTAL EXPENDITURES	22,875,220	27,824,663	6,346,887	6,120,039	226,848
Revenue less expenses	1,057,033	(3,490,886)	1,233,287	2,483,549	(1,250,262)
Cash Basis Adjustments/Non-appropriated Balance	152,458	0	0	130,907	
Ending Cash Balance	**5,744,854**	**1,028,209**	**5,748,520**	**8,359,311**	
Base for Reserve calculation	17,790,233	23,216,057	4,727,032	4,632,920	
15% Reserve	2,668,535	3,482,409	709,055	694,938	
Amount over 15% Reserve	3,076,319	(2,454,200)	5,039,465	7,664,373	

Capital Items

	Budget Amount	Purchase Price	
City Wide	$30,000	30,000	Communication Equipment
Police	$25,000		License Plate Reader (LPR)
Police	$38,000		3 Mobile data terminals & 3 Video Cameras
Police	$22,000		10 Body Cameras
Police	$14,000		8 Tasers
Fire	$34,000		Water Rescue & Technical rescue Equipment
Fire	$11,106		Forcible Entry Trng Prop
EMS	$45,000		Monitor/Defibrillator
EMS	$38,000		Mechanical CPR Devices
EMS	$30,000		Replace Power Cots
Shop	$8,000		Transmission Jack
Shop	$4,000		Tough laptop for Shop Use (service data softwa
Park	$20,000	$9,400	72" zero turn (2000)

City of Emporia, Kansas

Multi Year Fund

as of March 31, 2023

			Purchase Order	Expenses	2023 Actual	2023 Budget/estimated
	Beginning unencumbered balance				3,060,010.61	3,060,010.61
REVENUE						
		Sales Tax Proceeds from General Fund			867,838.02	3,060,000.00
		Interest			20,389.38	5,000.00
		Outstanding PO's			324,358.00	-
		Accounts Receivable			500.00	
Total Revenue					1,213,085.40	3,065,000.00
	102-0101-400.0505	2020, 21 & 22 Private/Public partnership		-	-	400,000.00
	102-0101-400.0505	ADA Sidewalks	-	-	-	50,000.00
	102-0101-400.0505	PW Bldg Remodel Old bathroom for a women's locker room			-	100,000.00
	102-0101-400.0265	Miscellenous storm water repairs		-	-	100,000.00
SW1903	102-0101-400.0265	Lakeridge Rd to Bayfront Dr	-	-	-	14,388.05
	102-0201-400.0502	Firing Range House Split with county			-	30,000.00
FS2201	102-0301-400.0502	Overhead Door Replacement Station 2	-	-	-	12,000.00
	102 0601 400 0257	2022 Hazardous Sidewalk		92.03	92.03	100,000.00
PK2101	102-0601-400.1516	Mechanic Parking lots 600-700 Block		850.31	850.31	754,934.60
	102-0601-400.1516	Sidewalk S side 15th Ave Graphic Arts to Hatcher			-	55,000.00
	102-0601-400.1516	Sidewalk S side 15th Industrial to Stanton			-	25,000.00
SK2201	102-0601-400.1516	Sidewalk 12th & Burlingame & 24th Prairie to Lincoln	-	1,490.85	1,490.85	145,241.61
SK2301	102-0601-400.1516	Sidewalk 24th Ave Graphic Arts to Westridge Dr		1,710.72	1,710.72	100,000.00
	102-0601-400.1516	Sidewalk Imp N side 24th Westridge to Industrial	-	-	-	70,000.00
	102-0601-400.1516	Sidewalk Improv. (12th Ave. from Graphic Arts to Industrial Rd.)			-	100,000.00
PV2201	102-0601-400.1516	CCLIP 6th Ave Prairie to Neosho	-	107.20	107.20	-
PV2301	102-0601-400.1516	CCLIP US 50 Mechanic to East limits		493.49	493.49	299,967.84
PV2302	102-0601-400.1516	2023 Street Rehab		5,915.06	5,915.06	860,000.00
	102-0601-400.1516	6th & Prairie intersection Improvments		-	-	-
	102-0601-400.1516	Misc Street Repairs			-	100,000.00
	102-0601-400.1516	Replace School flashing lights - 13 lights 50% match with USD 253			-	80,000.00
PV2206	102-0601-400.0505	Slurry/chip Seal	26,312.70	-	26,312.70	26,347.70
PV2303	102-0601-400.0505	Slurry/chip Seal		18.61	18.61	200,000.00
TS2201	102-0601-400.0505	Camera (loop projectors) 6th & Rural	50,343.85	18,733.86	69,077.71	20,817.75
	102-0601-400.1516	Funston street		170,152.76	170,152.76	170,152.76
GC2301	102-0701-400.0505	Tee Box Iimprovements	425,979.00	2,000.00	427,979.00	429,962.00
PK2103	102-0801-400.0505	Pickleball viewing area improvement	7,258.80	-	7,258.80	8,000.00
	102-0803-400.0505	JAC replace sand in filters			-	20,000.00
ZO2101	102-0806-400.0502	Hay Barn 30'40' 5" concrete floor	-	-	-	3,518.00
ZO2102	102-0806-400.0502	Parking Lot at Zoo	127,864.70	505.20	128,369.90	158,913.64
	102-0806-400.0505	Bus parking at zoo		432.00	432.00	60,000.00
	102-0806-400.0502	Hoof Stock Sheds			-	50,000.00
	102-0806-400.0502	Trumpeter Swan Exhibit - repairs			-	54,000.00
ZO2201	102-0806-400.0505	Fire Alarm & Smoke Detection at Zoo	18,803.60	6,825.50	25,629.10	26,000.00
	102-0806-400.0505	Eagle pond renovation			-	120,000.00
	101-0806-400.0505	Off-exhibit privacy fence & holding area pond repair			-	78,000.00
CV2207	102-0901-400.0505	Downtown concrete - trip hazard correction	-	10,316.00	10,316.00	12,000.00
	102-0901-400.0502	618 Mechanic Roof			-	60,000.00
	102-0901-400.0502	Civic Roof areas K,M & N (Cover asphalt roof with TPO Rubber Material)			-	81,000.00
CV2206	102-0901-400.0502	Replace Steam Lines & update HVAC	0.00	-	0.00	25,000.00
	102-0901-400.0502	Remodel East Foyer & Vestibule door ways			-	50,000.00
	102-0901-400.0502	Sewer Lift Station - Police dept basement			-	110,000.00
	102-0901-400.0502	2022 Replace Steam Lines	-	-	-	85,000.00
	102-0901-400.0502	2nd floor restoom ceiling repairs			-	30,000.00
	102-0901-400.0502	2020 & 21 & 22 ADA Improvements			-	400,000.00
CV2205	102-0901-400.0502	Replace Irrigation system	10,280.13	-	10,280.13	27,090.00
CV2204	102-0901-400.0502	Walk-in Cooler in Room 222			-	25,000.00
	102-0901-400.0502	Replace Windows in Auditorium			-	26,000.00
CV2202	102-0901-400.0502	Elevator Controls	53,050.00	-	53,050.00	121,950.00
	102-0902-400.0502	Electrical update - install panel and light switches			-	60,000.00
LB2201	102-0902-400.0505	ADA improvements Library doors & ADA openers	-		-	120,000.00
LB2202	102-0902-400.0505	Replace Irrigation system	4,884.86		4,884.86	10,000.00
	102-0902-400.0502	HVAC updates			-	30,000.00
	102-1401-400.0502	Remodel Terminal Bathroom			-	60,000.00
EXPENDITURES			724,777.64	219,643.59	944,421.23	6,155,283.95
	Ending Unencumbered Cash balance				3,328,674.78	(30,273.34)
		2022 budgeted projects			3,328,674.78	
					-	

City of Emporia, Kansas

Insurance Reserve

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Original Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	$0	$0	$500,000	$500,000	$0
REVENUE					
Transfer from General	$500,000	$0	$0	$0	$0
Interest		$0		$2,653	($2,653)
TOTAL RECEIPTS	$500,000	$0	$0	$2,653	($2,653)
EXPENDITURES					
Maintenance & Repair		$0			$0
Misc Projects		$0			
TOTAL EXPENDITURES	$0	$0	$0	$0	$0
Ending Cash Balance	**$500,000**	**$0**	**$500,000**	**$502,653**	**($2,653)**

City of Emporia, Kansas

Library Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Original Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	$0	$0	$0	$0	$0
REVENUE					
Ad Valorem Property Tax	$896,105	$977,639	$508,500	$567,390	($58,890)
Back Tax Collection	$21,052	$15,000	$7,500	$9,719	($2,219)
Motor Vehicle Tax	$90,694	$98,842	$16,000	$20,343	($4,343)
Recreational Vehicle Tax	$1,113	$1,073	$400	$149	$251
AdValorem Tax Reduction	($9,766)	($9,500)	($4,750)	($4,265)	($485)
General Fund Contribution		$0			$0
TOTAL RECEIPTS	$999,198	$1,083,054	$527,650	$593,336	($65,686)
EXPENDITURES					
Insurance Refund		$0			$0
Misc Projects		$0			
Appropriation	$999,198	$1,083,054	$527,650	$593,336	($65,686)
TOTAL EXPENDITURES	$999,198	$1,083,054	$527,650	$593,336	($65,686)
Ending Cash Balance	**$0**	**$0**	**$0**	**$0**	**$0**

City of Emporia, Kansas

Convention & Tourism Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	$649,121	$787,753	$787,753	$810,801	$0
REVENUE					
Transient Guest Tax	$771,864	$700,000	$180,000	$217,965	($37,965)
Interest on Investment	$4,093	$750	$186	$3,596	($3,410)
Fence rental	$7,999	$6,000	$0	$0	$0
Return of amount over allowed reserve	$50,630				$0
Repayment of extra funds - Chamber				$0	$0
Accounts Receivable - fence rental	$12,368			$0	$0
TOTAL RECEIPTS	$846,954	$706,750	$180,186	$221,560	($41,374)
EXPENDITURES					
CVB Appropriation	$365,000	$385,000	$180,000	$217,965	($37,965)
Trusler Sports Complex		$0			$0
City cost associated with events	$30,000	$30,000	$0		$0
Civic Auditorium improvements	$50,000	$50,000	$50,000	$50,000	$0
Red Rock's Appropriation	$7,500	$7,500	$0		$0
Main Street Historical District		$0			$0
Emporia Main Street	$56,250	$100,000	$100,000	$100,000	$0
Breckinridge Hotel		$0			$0
Emporia Arts Council Support	$10,000	$10,000	$0		$0
Emporia Granda	$20,000	$30,000	$0		$0
Symphony in the Flint Hills		$0			$0
Unbound Bike Event	$15,000	$15,000	$0		$0
DDO	$25,000	$25,000	$0		$0
Junior World Event		$0			$0
PDGA Professional Disc Golf World	$20,000	$0	$0		$0
Municipal Band Appropriation		$0			$0
ESU Foundation - Welch Staidum Imp		$0			$0
Free for Kansas - Music event	$20,000	$20,000	$0		$0
Dynamic Discs - Jones course improvement	$55,529				$0
Hammond Park Crossings				$20,472	($20,472)
Miscellaneous	$10,995	$0			$0
Special Projects		$822,002	$0		$0
Outstanding PO's	$0			$0	
TOTAL EXPENDITURES	$685,274	$1,494,502	$330,000	$388,437	($58,437)
Ending Cash Balance	**$810,801**	**$1**	**$637,939**	**$643,925**	**$17,062**

Transient Guest Tax Receipts	2019	2020	2021	2022	2023
1ST QUARTER-JANUARY	$172,538.00	$193,559.51	$105,764.76	$184,682.75	$217,964.96
2ND QUARTER-APRIL	$125,683.39	$132,542.30	$135,567.13	$143,987.80	$0.00
3RD QUARTER-JULY	$207,494.60	$80,649.41	$192,642.58	$223,905.58	$0.00
4TH QUARTER-OCTOBER	$207,822.11	$151,949.08	$200,102.99	$219,288.14	$0.00
TOTAL	$713,538.10	$558,700.30	$634,077.46	$771,864.27	$217,964.96

City of Emporia, Kansas

Industrial Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	19,924	19,882	19,899	21,250	0
REVENUE					
Ad Valorem Property Tax	1,077	1,000	500	672	(172)
Back Tax Collections	26	21	13	12	1
Motor Vehicle Tax	111	110	40	25	15
Ad Valorem Tax Reduction	(12)	(16)	(8)	(5)	(3)
Interest on Investment	124	25	6	119	(113)
Miscellaneous					
TOTAL RECEIPTS	1,326	1,140	551	823	(272)
EXPENDITURES					
Travel Expense & Miscellaneous	0	1,185	1,089		1,089
Other charges	0				0
Contractual Services	0	0			0
Special Projects and Reserve Fund	0	19,837			0
TOTAL EXPENDITURES	0	21,022	1,089	0	1,089
Ending Cash Balance	**21,250**	**0**	**19,361**	**22,072**	**(1,361)**

City of Emporia, Kansas

Industrial Development Sales Tax

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	$247,080	$447,328	$253,102	$1,423,879	$0
Revenue:					
Sales Tax Receipts	$925,000	$925,000	$231,249	$231,250	($1)
Interest Income	$5,240	$250	$60	$5,778	($5,718)
Money for Land Purchases	$100,000	$0		$0	$0
Bond Proceeds	$1,000,000	$0	$0	$0	$0
Kansas Gas Rebate - REG		$0			$0
RDA returned money					
Total Revenue	$2,030,240	$925,250	$231,309	$237,028	($5,719)
Expense:					
Appropriation to the RDA	$350,000	$350,000	$87,500	$87,500	$0
Emporia Enterprises	$32,500	$35,000	$0	$0	$0
Miscellaneous	$0	$0		$0	$0
Land Purchase for Industr	$0	$0	$0	$0	$0
Land Purchase	$0	$0	$0	$0	$0
Gas Line Bond Pmt		$0			$0
Land Purchase Bond Pmt		$0		$85,963	($85,963)
Transfer to B&I water proj	$350,000	$350,000	$350,000	$350,000	$0
Soden Rd water main ext	$0	$0	$0	$60,000	($60,000)
Water Valves					$0
Special Projects	$120,941	$637,578	$0	$0	$0
Total Expenses	$853,441	$1,372,578	$437,500	$583,463	($145,963)
Ending Cash Balance	**$1,423,879**	**$0**	**$46,911**	**$1,077,444**	**$140,244**

City of Emporia, Kansas

Special Alcohol Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	89,340	82,664	77,967	103,198	0
REVENUE					
Private Club Liquor Tax	100,043	90,000	22,500	25,546	(3,046)
Interest on Investment	565	75	18	516	(498)
TOTAL RECEIPTS	100,608	90,075	22,518	**26,061**	(3,543)
EXPENDITURES					
Appropriations	86,750	97,200	29,700	29,700	0
Special Projects		75,539	0		0
TOTAL EXPENDITURES	86,750	172,739	29,700	29,700	0
Ending Cash Balance	**103,198**	**0**	**70,785**	**99,559**	**(3,543)**

Appropriations	Receive in 2019	Receive in 2020	Receive in 2021	Receive in 2022	Receive in 2023
Cross Winds	$20,000.00	$20,000.00	$15,000.00	$15,000.00	$15,000.00
Corner House	$55,000.00	$65,000.00	$48,750.00	$65,000.00	$75,000.00
Emporia State University	$5,400.00	$9,000.00	$6,750.00	$6,750.00	$7,200.00
Emporia State University USD #253	$6,500.00	$0.00	$0.00		
Total	$86,900.00	$94,000.00	$70,500.00	$86,750.00	$97,200.00

Receipts	2019	2020	2021	2022	2023
1ST QUARTER - MARCH	$26,806.24	$22,675.47	$17,214.78	$23,976.09	$25,545.76
2ND QUARTER - JUNE	$22,937.76	$21,611.91	$18,634.04	$22,129.19	$0.00
3RD QUARTER - SEPTEMI	$26,000.31	$7,881.01	$25,844.73	$28,544.72	$0.00
4TH QUARTER - DECEMB	$26,705.52	$14,069.40	$24,664.21	$25,393.46	$0.00
TOTAL	$102,449.83	$66,237.79	$86,357.76	$100,043.46	$25,545.76

City of Emporia, Kansas

Special Park Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	$188,630	$168,979	$132,234	$83,362	$0
REVENUE					
Private Club Liquor Tax	$100,043	$90,000	$22,500	$25,546	($3,046)
Donations& Grants		$0	$0	$0	$0
Lake Kahola Proceeds		$0			$0
Trf of funds from project account	$0	$0		$0	$0
Interest on Investment	$598	$150	$36	$495	($459)
TOTAL RECEIPTS	$100,641	$90,150	$22,536	$26,041	($3,505)
EXPENDITURES					
Capital Outlay	$84,868	$70,000	$70,000	$67,859	$2,141
Municipal Band Allocation	$10,000	$15,000	$0	$0	$0
Miscellaneous					$0
Commodities	$14,330	$0		$0	$0
Contractual Services	$0	$0		$0	$0
Other Charges					$0
Transfer to Project Account	$96,711			$0	$0
Outstanding PO's	$0			$0	
Special Projects	$0	$174,129	$0		$0
TOTAL EXPENDITURES	$205,909	$259,129	$70,000	$67,859	$2,141
Ending Cash Balance	**$83,362**	**$0**	**$84,770**	**$41,544**	**($5,646)**

Receipts	2019	2020	2021	2022	2023
1ST QUARTER - MARCH	$26,806.24	$22,675.47	$17,214.77	$23,976.10	$25,545.75
2ND QUARTER - JUNE	$22,937.76	$22,611.90	$18,634.04	$22,129.19	$0.00
3RD QUARTER - SEPTEMBER	$26,000.31	$7,881.00	$25,844.73	$28,544.72	$0.00
4TH QUARTER - DECEMBER	$26,705.53	$14,069.39	$24,664.03	$25,393.46	$0.00
TOTAL	$102,449.84	$67,237.76	$86,357.57	$100,043.47	$25,545.75

Capital Items	Budget Amount	Purchase Price	
Park	$70,000.00	$0.00	11 Foot Rotary Mower (2012)
	70,000.00	0.00	

City of Emporia, Kansas

Special Street Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	517,460	345,323	496,206	289,185	
REVENUE					
Gasoline Tax	655,837	670,000	167,500	167,413	87
Special City-County Tax	77,404	74,826	18,706	19,861	(1,155)
Damages	23,089	5,000	1,248	9,936	(8,688)
Interest on Investment	2,490	500	123	1,748	(1,625)
Transfer of Funds		0			0
Sale of Salvage	33			0	0
Miscellaneous	4,497	0		41,580	(41,580)
TOTAL RECEIPTS	763,350	750,326	187,577	240,537	(52,960)
EXPENDITURES					
Personnel Services	636,316	595,926	137,586	152,694	(15,108)
Vacancy		(11,477)			0
Maintenance & Repair	103,127	89,240	22,296	81,168	(58,872)
Commodities	117,347	145,450	36,348	27,868	8,480
Other Charges	38,629	47,100	7,386	11,927	(4,541)
Capital Outlay	14,875	0		0	0
Transfer of Funds	0	0		0	0
Utilities	27,951	30,550	7,635	8,289	(654)
Communications	1,464	2,350	582	507	75
Training & Travel	8,784	7,500	1,872	3,646	(1,774)
Contractual Services	43,212	42,300	8,769	6,015	2,754
Special Projects	0	146,709	0	0	0
Audit Adjustments	(80)			35,118	(35,118)
Outstanding PO's	0			0	0
TOTAL EXPENDITURES	991,625	1,095,648	222,474	327,230	(104,756)
Net Change in Cash	(228,275)	(345,322)	(34,897)	(86,693)	
Ending Cash Balance	**289,185**	**1**	**461,309**	**202,492**	

Receipts	2019	2020	2021	2022	2023
1st Quarter - Jan Payment	$168,525.42	$173,837.48	$161,594.64	$167,557.74	$167,412.68
2nd Quarter - April Payment	$161,370.99	$163,486.85	$149,245.64	$157,106.42	
Extra Payment- June			$54,671.53		
3rd Quarter - July Payment	$170,138.12	$140,178.69	$172,643.49	$166,060.14	
4th Quarter - Oct Payment	$177,741.69	$164,712.37	$174,419.30	$165,112.70	
Total	$677,776.22	$642,215.39	$712,574.60	$655,837.00	$167,412.68

Capital Item	Budget Amount	Purchase Price

City of Emporia, Kansas

Drug Forfeiture Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	$69,301	$34,819	$72,327	$83,820	
REVENUE					
Receipts from Drug Forfeitures	$52,650	$5,000	$1,248	$0	1,248
Interest on Investment	$487	$50	$12	$431	(419)
Miscellaneous					
TOTAL RECEIPTS	$53,137	$5,050	$1,260	$431	829
EXPENDITURES					
Commodities	$23,264	$5,000	$832	$3,180	(2,348)
Capital Outlay		$0			-
Communications	$0	$0		$0	-
Other Charges				$4,293	(4,293)
Transfer of funds					
Other Contractual	$3,459	$0		$0	-
Travel & Training					-
Maintenance & Repair	$11,895	$0	$0	$0	-
Outstanding PO's	$0			$0	
Special Projects		$34,869	$0		
TOTAL EXPENDITURES	$38,618	$39,869	$832	$7,474	(6,642)
Ending Cash Balance	**$83,820**	**$0**	**$72,755**	**$76,777**	

City of Emporia, Kansas

Storm Water

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	$0	$0	$0	$259,179	
REVENUE					
Transfer from Multi Year	$258,276	$0	$0	$0	-
Interest on Investment	$903	$0	$0	$1,375	(1,375)
Miscellaneous					
TOTAL RECEIPTS	$259,179	$0	$0	$1,375	(1,375)
EXPENDITURES					
Commodities	$0	$0	$0	$0	-
Capital Outlay		$0			-
Communications	$0	$0		$0	-
Other Charges					-
Transfer of funds					
Other Contractual		$0		$0	-
Travel & Training					-
Maintenance & Repair	$0	$0	$0	$0	-
Outstanding PO's	$0			$0	
Special Projects		$0	$0		
TOTAL EXPENDITURES	$0	$0	$0	$0	-
Ending Cash Balance	**$259,179**	**$0**	**$0**	**$260,554**	

City of Emporia, Kansas

Bond & Interest Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	$1,340,014	$1,859,420	$1,328,355	$1,986,995	$0
REVENUE					
Ad Valorem Property Tax	$1,794,007	$1,957,078	$1,040,000	$1,135,788	(95,788)
Back Tax Collection	$42,618	$40,000	$20,000	$19,585	415
Special Assessments	$82,354	$78,252	$40,000	$40,188	(188)
Motor Vehicle Tax	$184,027	$200,054	$61,000	$41,024	19,976
Ad Valorem Tax Reduction	-$19,552	-$20,000	-$10,000	-$8,538	(1,462)
Interest on Investment	$11,808	$951	$237	$16,424	(16,187)
Recreation Center - Pool renovation		$0			0
Recreation Center - Office/Locker Remodel		$0			0
Recreation Center - Ball Diamond Improvem	$47,700	$46,350	$1,200	$0	1,200
Recreation Center - Fitness Room	$50,960	$51,200	$2,500	$0	2,500
Industrial Land Payment - Ind Sales Tax		$0		$85,963	(85,963)
Sale of Bonds	$3,540,000	$0	$0	$0	0
Gas Line Payment - Ind Sales Tax		$0			0
Hanger Payment - General Fund		$0			0
Miscellaneous	$126,975	$0		$0	0
Transfer of Funds from Project Accounts	$97,528	$0	$0	$0	0
TOTAL RECEIPTS	$5,958,424	$2,353,885	$1,154,937	$1,330,433	
EXPENDITURES					
Principal	$1,440,000	$1,891,000	$0	$0	0
Interest Coupons	$204,500	$154,050	$0	$132,092	(132,092)
Transfer of funds	$3,666,943			$0	
Misc projects		$2,167,553	$0		
TOTAL EXPENDITURES	$5,311,443	$4,212,603	$0	$132,092	(132,092)
Ending Cash Balance	**$1,986,995**	**$702**	**$2,483,292**	**$3,185,336**	

City of Emporia, Kansas

Equipment Reserve Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	$0	$334,000	$334,000	$334,000	
REVENUE					
Transfer from other funds	$1,104,627	$417,000	$417,000	$309,500	107,500
Interest on Investment	$0	$0	$0	$7,268	(7,268)
Miscellaneous					
TOTAL RECEIPTS	$1,104,627	$417,000	$417,000	$316,768	100,232
EXPENDITURES					
Leasing Payment		$317,529	$317,529	$14,114	303,415
Outstanding PO's	$770,627			$0	
Special Projects		$433,471	$0		
TOTAL EXPENDITURES	$770,627	$751,000	$317,529	$14,114	303,415
Ending Cash Balance	**$334,000**	**$0**	**$433,471**	**$636,654**	

City of Emporia, Kansas

Water Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
BEGINNING CASH	3,246,908	2,860,168	1,676,012	2,544,564	0
REVENUE					
Sale of Water	6,884,339	6,593,612	1,520,000	1,597,932	(77,932)
Service Charge	103,029	100,000	24,999	22,272	2,727
Penalties	93,424	95,000	23,748	21,913	1,835
Sale of Salvage		0		0	0
Reimbursed Expense	7,827	2,000	684	17,383	(16,699)
Interest on Investment	20,504	6,000	1,500	16,881	(15,381)
Sale of Bonds	1,550,000	0	0	0	0
Trf from Industrial Fund	350,000	350,000	350,000	350,000	0
Trf from Project fund	0	0	0	0	0
Non Operating Revenue	2,530,077	0		0	0
Miscellaneous	7,027	2,100	249	873	(624)
TOTAL RECEIPTS	11,546,227	7,148,712	1,921,180	2,027,255	(106,075)
EXPENDITURES					
Personnel Services	1,050,745	1,109,627	255,900	267,760	(11,860)
Vacancy		(21,507)	0		0
Maintenance & Repair	1,178,812	765,050	187,996	520,437	(332,441)
Commodities	1,441,786	1,234,350	308,559	332,626	(24,067)
Other Charges	268,470	246,320	42,057	52,442	(10,385)
Capital Outlay	119,123	630,000	630,000	0	630,000
Debt Payment	1,496,757	2,060,289	2,041,360	2,041,360	0
Stock	49,206	5,000	1,248	6,124	(4,876)
Transfer to Project Account	4,102,675	45,000	11,250	45,000	(33,750)
Utilities	718,905	578,600	144,642	167,539	(22,897)
Communications	28,025	44,900	11,214	8,914	2,300
Travel & Training	15,702	14,250	3,555	10,080	(6,525)
Contractual Services	838,471	675,800	266,687	255,761	10,926
Administrative Fee 16%	1,131,081	1,086,178	271,542	262,739	8,803
Excess Carryover		1,000,000			
Change in Liabilities	(191,187)	0		(122,513)	122,513
Outstanding PO's	0				
TOTAL EXPENDITURES	12,248,571	9,473,857	4,176,010	3,848,269	327,741
NET CHANGE IN CASH	(702,344)	(2,325,145)	(2,254,830)	(1,821,014)	(433,816)
ENDING CASH BALANCE	**2,544,564**	**535,023**	**(578,818)**	**723,550**	
Principal Bond Payments	(1,210,000)	(1,837,900)	(1,837,900)	(1,837,900)	
Depreciation	1,313,352	1,450,000	362,496	376,217	
Capitalized Assets	(3,516,676)	(630,000)	0	0	
Liabilities					
ADJUSTMENTS	(3,413,324)	(1,017,900)	(1,475,404)	(1,461,683)	
Base for reserve calculation	8,026,773	8,843,857	3,534,760	3,803,269	
20% reserve amount	1,605,355	1,768,771	706,952	760,654	
Amount over 20% reserve	939,209	(1,233,748)	(1,285,770)	(37,104)	

City of Emporia, Kansas

Wastewater Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
BEGINNING CASH	2,351,304	2,234,113	2,010,106	1,986,891	
REVENUE					
Sales/Charges	6,126,631	5,900,000	1,474,998	1,528,046	(53,048)
Extra Strength Surcharge	159,751	111,900	27,972	21,097	6,875
Interest on Investment	13,582	3,000	750	13,552	(12,802)
New System taps	200	1,000	249	2,400	827
Loss on sales of assets	0			0	
Grant money	0	0		0	0
Sale of Bonds	1,430,000	0	0	0	0
Non Operating Revenue	138,935			499,988	
Miscellaneous	148,325	1,000	249	0	249
TOTAL RECEIPTS	8,017,424	6,016,900	1,504,218	2,065,083	(57,899)
EXPENDITURES					
Personnel Services	1,058,591	1,106,158	255,348	270,798	(15,450)
Vacancy	0	(19,806)		0	0
Maintenance & Repair	813,474	385,250	89,298	257,014	(167,716)
Commodities	424,293	259,250	58,044	95,326	(37,282)
Other Charges	170,406	185,850	21,936	16,927	5,009
Capital Outlay	512,842	493,000	493,000	67,050	425,950
Debt Payment	2,681,379	2,881,585	2,615,038	2,624,110	(9,072)
Transfer to Project fund	1,602,732	0	0	0	0
Utilities	615,809	522,500	130,617	158,706	(28,089)
Communications	21,505	29,600	7,386	6,876	510
Travel & Training	13,845	5,500	1,368	6,086	(4,718)
Contractual Services	381,317	232,550	55,875	94,382	(38,507)
Administrative Fee flat	610,000	610,000	152,499	152,500	(1)
Excess Carryover		1,000,000	0		
Change in Liabilities	(524,356)	0		227,501	(227,501)
Outstanding PO's	0				
TOTAL EXPENDITURES	8,381,837	7,691,437	3,880,409	3,977,275	(96,866)
NET CHANGE IN CASH	(364,413)	(1,674,537)	(2,376,191)	(1,912,192)	38,967
ENDING CASH BALANCE	**1,986,891**	**559,576**	**(366,085)**	**74,699**	

Depreciation	1,910,079	2,125,205	531,297	525,534
Principal Bond Payments	(2,130,502)	(2,329,592)	(2,329,592)	(2,329,592)
Capitalized Assets	(1,814,118)	(493,000)	0	0
Change in Liabilities		0		
ADJUSTMENTS	(2,034,541)	(697,387)	(1,798,295)	(1,804,058)
Base for reserve calculation	6,266,263	7,198,437	3,387,409	3,910,226
20% Cash Reserve amount	1,253,253	1,439,687	677,482	782,045
Amount over 20% Cash Reserve	733,638	(880,111)	(1,043,567)	(707,346)

City of Emporia, Kansas

Solid Waste Fund

as of March 31, 2023

	Preceding Year 2022 (Actual)	2023 Budget	2023 Jan - March Budget	2023 YTD Actual	Difference b/w YTD Budget & YTD Actual
BEGINNING CASH	4,002,114	3,479,732	2,441,855	3,555,447	
REVENUE					
Refuse Collection Fees	2,971,094	2,964,876	741,219	749,908	(8,689)
Loss on Sale of Assets		0			0
Interest on Investments	26,458	4,200	1,050	20,334	(19,284)
Trf from Health Ins - Premiums		0			0
Resale of Recyclables	201,913	175,000	43,749	14,474	29,275
Box Container Fees	2,063,528	1,920,000	479,997	503,052	(23,055)
Landfill Fees	562,540	508,000	126,996	124,269	2,727
Transfers		0			0
Miscellaneous	23,247	4,800	123	333	(210)
TOTAL RECEIPTS	5,848,780	5,576,876	1,393,134	1,412,370	(19,236)
EXPENDITURES					
Personnel Services	2,023,281	2,109,909	487,410	494,601	(7,190)
Vacancy		(40,995)			0
Maintenance & Repair	351,646	300,000	70,359	130,165	(59,806)
Commodities	360,177	482,900	119,190	93,755	25,435
Other Charges	137,731	183,930	34,689	43,230	(8,541)
Capital Outlay	72,612	685,000	685,000	2,300	682,700
Transfer to Equipment Reserve	770,627			0	0
Utilities	50,501	54,550	13,629	22,667	(9,038)
Communications	41,954	49,700	12,408	9,833	2,575
Transfer to project	44,000	0			0
Travel & Training	7,606	8,750	2,181	391	1,790
Contractual Services	1,626,387	1,720,900	430,053	471,170	(41,117)
Administrative Fee 16%	895,433	862,860	215,715	220,356	(4,641)
Excess Carryover		2,000,000	0		
Change in Liabilities	(86,508)	0		(48,804)	48,804
Outstanding PO's	0				
TOTAL EXPENDITURES	6,295,447	8,417,504	2,070,634	1,439,663	630,971
NET CHANGE IN CASH	(446,667)	(2,840,628)	(677,500)	(27,294)	(650,207)
ENDING CASH BALANCE	**3,555,447**	**639,104**	**1,764,355**	**3,528,153**	
Principal Payments	0	0	0	0	
Depreciation	292,242	45,000	111,246	90,599	
Capitalized Assets	(6,433)	(685,000)	0	(224,585)	
Change in Liabilities		0			
ADJUSTMENTS	285,809	(640,000)	111,246	(133,986)	
Base for reserve calculation	6,222,835	7,732,504	1,385,634	1,437,363	
20% cash reserve amount	1,244,567	1,546,501	277,127	287,473	
Amount over 20% Cash Reserv	2,310,880	(907,397)	1,487,228	3,240,681	

CITY OF EMPORIA
ACTUAL COMPARED TO BUDGET
as of March 31, 2023
EXPENSES FOR GENERAL FUND DEPARTMENTS

	2023 AMENDED BUDGET	2023 W ENCUMBRANCES	DIFFERENCE B/W ACTUAL & BUDGET	PERCENTAGE RECEIVED/ USED	General Fund Shared Revenue	Shared Budget	Actual Shared Budget	Department Net
						6,279,425	7,152,900	
COMMISSION/MANAGER/CLERK	1,188,803	274,450.75	914,352	23%	5.03%	315,918	359,863	85,412
FINANCE/HUMAN RESOURCES	433,166	112,500.38	320,666	26%	1.83%	115,112	131,124	18,623
INFORMATION SYSTEMS	352,980	117,980.17	235,000	33%	1.49%	93,803	106,851	(11,129)
POLICE PROTECTION	4,619,803	1,253,609.24	3,366,194	27%	19.55%	1,227,690	1,398,463	144,853
ANIMAL CONTROL	242,734	14,775.84	227,958	6%	1.03%	64,505	73,478	58,702
FIRE PROTECTION	3,067,744	703,321.71	2,364,422	23%	12.98%	815,238	928,638	225,316
AMBULANCE SERVICE	3,587,447	671,845.14	2,915,602	19%	15.18%	953,346	1,085,958	414,112
CODE SERVICES	920,456	264,945.22	655,511	29%	3.90%	244,607	278,632	13,686
COURT SERVICES	598,993.00	135,775.03	463,218	23%	2.53%	159,179	181,321	45,546
ENGINEERING	553,513.00	133,406.80	420,106	24%	2.34%	147,093	167,554	34,147
SNOW REMOVAL	60,000.00	12,440.40	47,560	21%	0.25%	15,945	18,163	5,722
GOLF COURSE MAINTENANCE	506,649.00	96,054.72	410,594	19%	2.14%	134,639	153,368	57,313
GOLF SHOP	350,351.00	80,581.50	269,770	23%	1.48%	93,104	106,055	25,473
PARK	1,006,350.00	220,426.94	785,923	22%	4.26%	267,432	304,633	84,206
AQUATIC CENTER	187,450.00	113,777.65	73,672	61%	0.79%	49,814	56,743	(57,035)
ZOO	710,679.00	149,550.44	561,129	21%	3.01%	188,859	215,130	65,580
CIVIC BUILDING OPERATIONS	817,788.00	172,732.99	645,055	21%	3.46%	217,323	247,553	74,820
LIBRARY MAINTENANCE	67,329.00	27,059.60	40,269	40%	0.28%	17,892	20,381	(6,678)
GROUNDS MAINTENANCE	104,820.00	13,550.42	91,270	13%	0.44%	0	31,730	18,180
CONCESSION STAND	80,363.00	54,621.17	25,742	68%	0.34%	21,356	24,327	(30,294)
SHOP MAINTENANCE	136,071.00	6,054.01	130,017	4%	0.58%	36,160	41,190	35,136
STREET LIGHTING	377,400.00	77,302.63	300,097	20%		0	0	
MISC APPROPRATIONS	113,000	80,025.66	32,974	71%		0	0	
AIRPORT	844,711	231,535	613,176	27%	3.57%	224,478	255,703	24,168
PARKING FACILITY	25,800	2,628	23,172	10%	0.11%	6,856	7,810	5,182
TRANSERS	3,985,000	1,099,088	2,885,912	28%		0	0	
CONTINGENCY	-280,252		(280,252)	0%		0	0	0
EXCESS CARRYOVER	3,165,514		3,165,514	0%				
GENERAL FUND	27,824,662	6,120,039	21,704,623	22%	86.60%	5,410,350	6,194,666	
	23,629,514							

CITY OF EMPORIA
ACTUAL COMPARED TO BUDGET
as of March 31, 2023
EXPENSES FOR WATER FUND DEPARTMENTS

	2023 AMENDED BUDGET	2023 ACTUAL WITH ENCUMBRANCES	DIFFERENCE B/W ACTUAL & BUDGET	PERCENTAGE RECEIVED/ USED
DEBT	2,038,782	203,460	1,835,322	10%
ADMINISTRATION	2,528,813	389,234	2,139,579	15%
WATER MAINTENANCE	1,575,015	600,788	974,227	38%
WATER PLANT	4,145,248	1,309,493	2,835,755	32%
WATER STOCK	5,000	6,124	(1,124)	122%
	10,292,858	2,509,099	7,783,759	2

Capital Outlay			
Water Distribution	$5,000		Trailer for min-excavator
Water Plant	$75,000		Actuators for Rapid Mixer
Water Plant	$100,000		Replace one high service pump
Water Plant	$100,000		Bulk storage tanks
Water Plant	$350,000		S Cottonwood to East St from KS to Potwin
	630,000	0	

CITY OF EMPORIA
ACTUAL COMPARED TO BUDGET
as of March 31, 2023
EXPENSES FOR WASTEWATER FUND DEPARTMENTS

	2023 AMENDED BUDGET	2023 W ENCUMBRANCES	DIFFERENCE B/W ACTUAL & BUDGET	PERCENTAGE RECEIVED/ USED
DEBT	2,861,779	294,518	2,567,261	10%
ADMINISTRATION	1,906,048	257,099	1,648,949	13%
SEWER MAINTENANCE	1,470,993	1,900,499	(429,506)	129%
SEWER PLANT	3,084,825	884,226	2,200,599	29%
	9,323,645	3,336,341	5,987,304	2

Capital Outlay			
Sewer Maintenance	$83,000		New Sanitary Sewer camer
Waste Water Plant	$60,000		Replace roof on old shop building
Waste Water Plant	$350,000		Upgrade plant telementry
	493,000	0	

CITY OF EMPORIA
ACTUAL COMPARED TO BUDGET
as of March 31, 2023

EXPENSES FOR SOLID WASTE FUND DEPARTMENTS

	2023 AMENDED BUDGET	2023 W ENCUMBRANCES	DIFFERENCE B/W ACTUAL & BUDGET	PERCENTAGE RECEIVED/ USED
ADMINISTRATION	3,082,732	317,928	2,764,804	10%
COLLECTIONS	2,736,086	701,709	2,034,377	26%
TRANSFER STATION	1,728,919	192,055	1,536,864	11%
RECYCLING CENTER	629,767	142,790	486,977	23%
	8,177,504	1,354,482	6,823,022	1

Capital Outlay

Collections	$360,000		Automated Refuse Truck (2010)
Recycling Center	$25,000		Side by side truckster
Transfer Station	$300,000		Construction to new tipping box area
	$685,000	0	

DATE: April 10, 2023
TO: City Commissioners
FROM: Janet Harrouff
SUBJECT: Budget Comparison

The **General Fund** Income Statement for the three-month period ended March 31, 2023, has been reviewed and the significant budget variations have been explained below.

Revenue:

Ad Valorem Tax: $299,982 higher than YTD budget

Sales Tax: $276,503 higher than YTD Budget
City Wide tax:$173,665 higher
County Wide tax: $102,838 higher

Franchise tax:$169,813 higher than YTD Budget
Electric - $16,170 higher
Gas - $146,943 higher
Cablevision - $7,031 higher

Charges for Services: $120,695 lower than YTD Budget
Ambulance – March report not received $154,693 lower
Golf Course - $31,592 higher
Auditorium concessions - $13,198 higher
Airport Fuel Sales - $9,425 higher

Reimbursements: $216,372 lower than YTD budget
Half of the taxes for demolishing the Hornet Point building was paid.

Expense

Capital Outlay: $282,675 under YTD budget due to not purchasing items yet.

Total revenues for the three-month period ended March 31, 2023, were $1,023,415 over the YTD budget while expenses were $226,848 under the YTD Budget. Therefore, the General Fund experienced operating results of $1,250,262 more favorable than the YTD Budget.

I have reviewed the **Water Fund** Income Statement for the three-month period ended March 31, 2023. The significant budget variations have been explained below.

<u>Revenue</u>
Sale of Water: $77,932 over YTD budget.

<u>Expense</u>

Maintenance & Repair: $332,441 over YTD budget
- Equipment - $133,161 higher
- Main to Meter - $63,613 higher
- Water Main - $121,187 higher
- Streets - $54,776 higher
- Pumping equipment - $32,966 lower

Capital Outlay: $630,000 lower than YTD budget due to not purchasing items yet.

Total revenues for the three-month period ended March 31, 2023, were $106,075 over the YTD budget while expenses were $327,741 lower the YTD Budget. Therefore, the Water Fund experienced operating results of $433,816 more favorable than the YTD Budget.

I have reviewed the **Wastewater Fund** Income Statement for the three-month period ended March 31, 2023. The significant budget variations have been explained below.

<u>Revenue:</u>
Sewer Charges: $53,048 higher than YTD budget

<u>Expenses</u>
Maintenance & Repair: $167,716 higher than YTD Budget
- Equipment - $90,055 higher
- Sewer Mains - $58,755 higher
- Buildings & Structures - $20,164 higher

Capital Outlay: $425,950 lower than YTD budget due to not purchasing items yet.

Total revenues for the three-month period ended March 31, 2023, were $57,899 higher the YTD budget while expenses were $96,866 higher the YTD Budget. Therefore, the Wastewater Fund experienced operating results of $38,967 more favorable than the YTD Budget.

I have reviewed the **Solid Waste Fund** Income Statement for the three-month period ended March 31, 2023. The significant budget variations have been explained below.

<u>Revenue</u>

Collection fees: $8,689 higher than YTD budget

Rolloff: $23,055 higher than YTD budget

Expenses

Capital Outlay $682,700 lower than YTD budget due to items not purchased yet.

Total revenues for the three-month period ended March 31, 2023, were $19,236 higher than YTD budget while expenses were $630,971 lower than the YTD Budget. Therefore, the Solid Waste Fund experienced operating results of $650,207 more favorable than the YTD Budget.

2023 SPRING LANDFILL DAYS

APRIL 29 - MAY 7

LIMIT OF ONE TRIP

Landfill days will be limited to one (1) trip for residents of Lyon County and Chase County.

FIRST 1,000 POUNDS FREE

The first 1,000 pounds are free of charge. Additional materials over 1,000 pounds will be charged at the normal rate as set by Ordinance 23-74.

City of Emporia/Lyon County Transfer Station
3100 W. South Avenue, Emporia

Hours of Operation
8:00 am to 5:00 pm, Monday thru Saturday
1:00 pm to 5:00 pm, Sunday

REGULATIONS

- ✓ Electric bill must be presented at gate
- ✓ Vehicle: passenger car, light truck (one ton or less), or trailers
- ✓ Commercial or Industrial businesses are not eligible.
- ✓ Disposal of tires and appliance containing refrigerant will be charged the normal rate.
- ✓ All loads must be secured or covered to avoid penalty fee.

Emporia Kansas
Public Works Department

620-340-6339 www.emporiaks.gov/sanitation

COMMUNITY HOUSING BOARD MINUTES

P.O. Box 928, Emporia, KS 66801 620-343-4285

REGULAR MEETING 11:00 A.M. Conference Room 1 A/B March 2, 2023
MEMBERS PRESENT: Ogleby, Morris, Cunningham and Lowery. Also present were City staff: Jeff Lynch
MEMBERS ABSENT: Hinkle and Salazar

1) The agenda was reviewed; motion/second to approve by Cunningham/Morris, approved unanimously.

2) Reviewed minutes from the January 5th, 2023 meeting, motion/second by Morris/Ogleby, approved unanimously.

3) Attendance Policy- Lynch brought to the board's attention that our by-laws did not cover attendance, and that we have a member who has a chronic attendance record. Lynch suggested we use the policy similar to two other boards he works with, and can put it into text and bring it to the board at next month's meeting. The proposed policy would include that if a member misses 3 consecutive meetings or 4 total meetings during the year without cause, then the member would be considered for removal.

4) Vacant and Rental Property Registration- Lynch stated we may sometime be asked back to continue discussion with the City Commission and asked if there were any comments or questions about these items. The policy of the current vacant code was discussed and the department that enforces it is the Fire Dept.

5) Vacant Property Improvement Program- The first project under this program has began, at 813 Market St. Rules include work being completed within 4 months, and that it is occupied soon after completion. Lynch stated there are 6-7 more applications for projects.

5) Old Business- Possible discussion with the City Commission for transfer/ development for Urbanside Park has been postponed indefinitely.

6) New Business- none

6) Adjournment at 9:50 a.m.

Next Meeting Scheduled: April 6th, 2023.

Emporia
Kansas

EMPORIA LAND BANK MINUTES

MEETING TIME: 10:00 A.M. **March 2nd, 2023** **City conference Room 1 A/B**

MEMBERS PRESENT: Lowery, Cunningham, Dean, Ogleby, and Morris
MEMBERS ABSENT: Salazar and Hinkle
Also present were- City staff: Jeff Lynch

1) Motion/second to approve agenda by Cunningham/Dean, approved unanimously.

2) Minutes from the January 5th, 2023 meeting were reviewed, motion/second to approve by Cunningham/Ogleby, approved unanimously.

3) Treasurer Report- Lynch reported the current balance is $73,471.58.
   Also, Lynch stated $50,000 is available from the City for justifiable expenses, and $25,000 is available from the Vac. Property Improvement Program
   .

4) Old Business- no items to discuss.

5) New Business
   a. Vacant Property Improvement Program- 25k set aside for land bank use;
      i. 708 Peyton- Cunningham stated there is a property at 708 Peyton listed for sale due to Fannie Mae foreclosure. List price is $64,900, and is available as a "first look" option for those interested in purchasing for owner-occupancy. The first-look deadline is prior to March 26 for offers; after that, developers can submit bids. Members Cunningham and Lowery will take a quick look at the property, then all board may look at it if it is suitable on March 6th at 2:00 p.m. Ogleby stated we should yield to any other owner-occupied buyers.

6) Adjournment was made at 10:35 a.m. Next meeting will be on April 6th, 2023.

EMPORIA LAND BANK MINUTES

MEETING TIME: 4:00 P.M. **March 30th, 2023** **Via Zoom**

MEMBERS PRESENT: Lowery, Cunningham, Dean, Ogleby, Salazar and Morris
MEMBERS ABSENT: Hinkle
Also present were- City staff: Jeff Lynch

The meeting was called to order at 4:00 p.m. by Chairman Lowery.

Motion/second to approve agenda by Cunningham/Morris, approved unanimously.

Member Ogleby moved to recess to Executive Session for15 minutes for a preliminary discussion of the acquisition of real property located in east-central Emporia and resuming open session via Zoom at 4:17 p.m. Seconded by Cunningham, passed 6-0.

.

Resumed open session, recessed again to Executive Session until 4:31 p.m.

Resumed open session. Explained to an attendee that no formal action will be decided today.

Adjournment was made at 4:31 p.m. Next meeting will be on April 6th, 2023.

MUPP Board Minutes
March 14, 2023

In Attendance: Jon Proehl, Daphne Mertens, Andrew Kraft, Seth Snyder, Shane Brunner, Justin Ogleby

1. Call to order at 12:02

2. The MUPPAccount balance is $28,162.04

3. There is 1 city and 1 county opening for the MUPP Board. We are still looking for applicants.
4. Multimodal Transportation/Complete Street Phase II of BCBS Grant:
   Jon said the surveys are complete. Design phase is started on the sidewalks. Next step is field check with KDOT. There are lots of steps to go through to get funding from KDOT. M.O.V is being reviewed by Public Health attorneys before it goes to city.
5. Fairgrounds trail update: Will be crack sealing trail in a few weeks. Benches are purchased and assembled. Waiting on concrete pads to be poured. County might not be able to get to pouring them until fall, but they will try to get them on the schedule asap
6. Bike share program update: No one at the meeting to give update. There are no bikes out currently. John will email Officer Mattis about getting them out.
7. Trail Appreciation Day: No updates. It is good to talk to our legislators about what we are doing here. Andrew Kraft will be leaving the board. Andrew will connect Shane or Daphne to Mike from the Trail in a box.

9. Annual Mupp Proclamations:In coordination with Unbound and the Torch Run, Members from MUPP will accept the proclamation from the city. We are just waiting on the dates. Shane will attend County Proclamation. Shane and Daphne will be at City proclamation. County will be on the 25th. The city's will be on the 3rd or the 24th.

10. Daphne might have a lead on a grant for 9th Ave. Project. Will add it to the agenda in the future.

Next meeting is scheduled for May 9th.
Meeting Adjourned at 12:21

COMMISSION MEETING **11:00 A.M.** **APRIL 5, 2023**

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, April 5, 2023, in the City Commission Meeting Room with Mayor Brinkman presiding and Commissioners Harter, Sauder and Smith present. Commissioner Giefer was absent. Also present were City Manager Cocking, City Clerk Sull and City Attorney Montgomery.

CITY COMMISSION
(Public Comment)

This is the time for the public to make comments.

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

No comments were made at this time.

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

Mayor Brinkman then presented the proclamation.

Roxanne VanGundy, Director of Lyon County Communications Center, was in attendance to accept a proclamation declaring the week of April 9 through 15, 2023 as "National Public Safety Telecommunicators Week" in Emporia. She stated when emergencies occur the prompt response of police officers, sheriff's deputies, firefighters, and paramedics is dependent upon the quality and accuracy of information obtained who telephone the Lyon County Emergency Communications Center. Public Safety Telecommunicators are the first and most critical contact citizens have with emergency services. She stated each Communications Officer has exhibited compassion, understanding and professionalism during the performance of their job in the past year and National public Safety Telecommunicators Week is in honor of the men and women whose diligence and professionalism keep our country and citizens safe.

Mayor Brinkman then presented the proclamation.

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

Mayor Brinkman then presented the proclamation.

ACCOUNTING
(Government Finance Officers Association - GFOA)
(Certificate of Achievement)

Janet Harrouff, Director of Finance, stated the City of Emporia submitting the 2021 Annual Comprehensive Financial report to the Government Finance Officers Association for consideration for the Certificate of Achievement for Excellence in Financial Reporting for the fiscal year ending December 31, 2021. The report has been judged by an impartial panel to meet the high standards of the program, which includes to clearly communicate its financial story and to publish a financial report that is easy to read. The Certificate of Achievement is the highest form of recognition int eh area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. This is the 37th consecutive year the City of Emporia has received the award from 1985 to 2021. Members of the Accounting/Finance Department for the City of Emporia are: Janet Harrouff, Chelsea Tyson and Tess Shepherd.

CITY COMMISSION
(Board Appointment)

Emporia Public Library Board:

It was moved by Mayor Brinkman seconded by Commissioner Smith that Jesse Lobbs and Scott Capes be appointed to the Emporia Public Library Board for terms that expire April 30, 2027. The vote follows: Mayor Brinkman, aye; Commissioner Smith, aye; Commissioner Harter, aye; and Commissioner Sauder, aye.

Consent Agenda

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

a. Approve minutes of the Regular Meeting held on March 15, 2023.

b. Removal of a Member on the Emporia Human Relations Commission.

The vote follows: Commissioner Sauder, aye; Commissioner Harter, aye; Commissioner Smith, aye; and 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:

TENTATIVE AGENDA FOR APRIL 19, 2023 AT 11:00 A.M.

- Proclamation Recognizing April 23 - 29 as National Library Week.
- Proclamation Naming April 22nd as Earth Day.
- Proclamation Celebrating April 28th as Arbor Day.
- Ordinance for Cinco de Mayo Event Beer Garden.
- Ordinance for CCA for Radius Production - 4th Avenue.
- Ordinance for CCA for Visit Emporia.
- Appointment New Member to the Community Housing/Land Bank Board.
- Revised Development Agreement with Emporia Land Development, LLC.
- Amendment to RHID Policy.
- Mechanic Street Parking Lot Improvements Agreements.
- U S Army Reserve Building Lease Agreement.
- Award Street Preservation.
- Award 2023 Street Rehabilitation.
- Set Bid Date and Time for Sanitary Sewer and Water Line Improvements to serve Mahtropolis Addition.
- KDOT CCLIP FY2024 SP Mill and Overlay on US-50 from Graphic Arts Road to Prairie Street Agreement.
- Award 2023 Street Rehabilitation Project.
- Zoo Education Parking Lot Change Order No. 1 for Project No. ZO2102.
- Set Bid Date and Time for Peyton Street Waterline Project No. WM2104.

Study Session:

Review Compensation Study.

Review the Interim Report of the Task Force on Homelessness.

Discuss ESU Design Proposal for the 12th Avenue Elevated Water Tower.

Discuss Mowing Orders and Procedures.

CITY COMMISSION
(Public Comment)

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

No comments were made at this time.

EXECUTIVE SESSION

Commissioner Smith made a motion to recess into Executive Session to discuss confidential matters of a third party regarding for a potential development project resuming the open meeting in the City Commission Meeting Room, this same date, at 11:45 a.m, and to invite Chuck Scott, RDA President and Jim Witt, Special Projects Coordinator. Commissioner Sauder seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Sauder, aye; Commissioner Harter, aye; and Mayor Brinkman, aye.

Upon reconveying the meeting in Regular Session, at 11:45 a.m., this same date in the City Commission Meeting Room, Mayor Brinkman stated they had discussed confidential matters of a third party regarding a potential development project and no action was taken.

Commissioner Harter made a motion to recess the meeting until 12:00 p.m. to Conference Room 1AB. Commissioner Smith seconded the motion. The vote follows: Commissioner Harter, aye; Commissioner Smith, aye; Commissioner Sauder, aye; and Mayor Brinkman, aye.

The following items were discussed at Study Session:

1. Discuss Jones Aquatic Center Agreement.
2. Discuss Future Funding of Emporia Recreation Center.
3. Review City Commission Goals.
4. Review Proposed Revision to RHID Policy.
5. Discuss Commission Liaisons to Boards.

Commissioner Giefer was present via phone.
Study Session Discussion:

Discuss Jones Aquatic Complex Agreement.
Agreement b/w The City of Emporia and Emporia Recreation Commission 2023 Season

Mayor Brinkman stated the Emporia Recreation Commission held a special board meeting with recommendations to the City Commission on the Jones Aquatic Center Management Agreement. Previously, the annual JAC operation and maintenance agreement has been up to an amount not to exceed $47,000.00. The proposed 2023 agreement is for $155,512.00. Representatives from the Emporia Rec Center were present to discuss options for an increase in the annual Jones Aquatic Center Agreement. The proposed increase is for a potential pay adjustment for lifeguards to help with the ability to attract lifeguard staff for the Jones Aquatic Center while having all features of the complex open for the 2023 season.

Following further discussions concerning pay, amenities at the aquatic complex, fees, concessions, budget etc., Commissioner Giefer made a motion to approve the Jones Aquatic Center Operation and Maintenance Agreement in the an amount up to $94,000.00 with requested changes for fees and dates for the 2023 season. Commissioner Sauder seconded the motion. The vote follows: Commissioner Giefer, aye; Commissioner Sauder, aye; Commissioner Harter, aye; Commissioner Smith, aye; and Mayor Brinkman, aye.

Commissioner Sauder then made a motion to adjourn. Mayor Brinkman seconded the motion.

Commissioner Sauder rescinded his previous motion. Mayor Brinkman rescinded her seconded.

Commissioner Sauder made a motion authorizing the Mayor to sign the Jones Aquatic Center Agreement with requested changes. Commissioner Smith seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Smith, aye; Commissioner Harter, aye; and Mayor Brinkman, aye.

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

Susan Brinkman, Mayor

ATTEST:

Kerry Sull, City Clerk

Commission Action Report

Title: Ordinance No. 23-10 Authorizing Beer Garden for Cinco de Mayo Special Event

Agenda Date: April 19, 2023

Presented By: Christina Montgomery, City Attorney

BACKGROUND:

Emporia Main Street and Hispanics of Today & Tomorrow are sponsoring the annual downtown Cinco de Mayo celebration. Turquoise Tavern and event sponsors have requested permission to host a beer garden as part of this special event on May 6, 2023, from 11:00 a.m. to 6:00 p.m. in the 600 and 700 block Commercial Street and half of a block on West 7th Avenue. This location is depicted on the attached map.

DISCUSSION:

Ordinance 23-10 will temporarily exempt city streets, alleys, and sidewalks in the approved location from the standard prohibition on the sale and consumption of alcoholic beverages. The ordinance requires the beer garden to be delineated by city fencing in a location approved by the Chief of Police. Turquoise Tavern will be required to meet city and state requirements for alcohol sales. No one under the age of 21 may possess or consume alcohol within the beer garden, and no alcohol may be consumed in vehicles while on the street at the event.

FINANCIAL CONSIDERATIONS:

The City will pay the cost of ordinance publication in the designated official local newspaper. Turquoise Tavern will rent city fencing adequate to secure the beer garden location. City staff will deliver fencing and provide standard special event services.

RECOMMENDED ACTION:

Approve Ordinance No. 23-10 Authorizing Beer Garden for Cinco De Mayo Special Event

ATTACHMENTS:

Ordinance No. 23-10
Map depicting proposed beer garden

ORDINANCE NO. 23-10

AN ORDINANCE EXEMPTING AN AREA INCLUDING THE 600 BLOCK THROUGH THE 700 BLOCK OF COMMERCIAL STREET AND WEST 7TH AVENUE BETWEEN MERCHANT STREET AND COMMERCIAL STREET IN THE EAST HALF OF THAT BLOCK IN THE CITY OF EMPORIA FROM THE PROHIBITION ON THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES FOR THE CINCO DE MAYO CELEBRATION EVENT MAY 6, 2023

WHEREAS, sponsors of the Cinco de Mayo block party special event and Turquoise Tavern have requested an exemption from the prohibition of sale and consumption of cereal malt beverages (CMB) and/or alcoholic liquor in an area including the 600 block through the 700 block of Commercial Street and West 7th Avenue between Merchant Street and Commercial Street in the east half of that block in connection with the Cinco De Mayo celebration event;

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

SECTION 1. Pursuant to K.S.A. 2011 SUPP. 41-719, as amended, the Governing Body temporarily exempts an area from the 600 block through the 700 block of Commercial Street and West 7th Avenue between Merchant Street and Commercial Street in the east half of that block, with the exact location to be approved by the Chief of Police or designee, from the prohibition on the sale and consumption of enhanced cereal malt beverage (CMB) and alcoholic liquor when it is being sold or consumed in conjunction with the Cinco De Mayo celebration event on May 6, 2023, between the hours of 11:00 a.m. and 6:00 p.m., as authorized by the city manager and subject to any other laws or ordinances regulating the possession, sale and/or consumption of enhanced CMB and alcoholic liquor.

SECTION 2. Sale and consumption shall be allowed within an area delineated by City of Emporia fencing in a manner approved by the Chief of Police or designee which clearly distinguishes the area where alcoholic beverages are permitted. No one under the age of 21 shall possess or consume alcoholic beverages and event sponsors shall be held strictly accountable for any violations. No alcoholic beverages shall be consumed in vehicles while on the street at any special event.

SECTION 3. No person shall remove any alcoholic liquor or enhanced CMB from inside the boundaries of the special event as delineated by signs, posted maps, or other means which reasonably identify the boundaries of the special event.

SECTION 4. Licensees must meet all the requirements for sale of alcoholic beverages by the city and the state.

SECTION 5. This ordinance shall become effective upon publication in the official city newspaper.

PASSED AND APPROVED this 19th day of April 2023.

____
Susan Brinkman, Mayor

ATTEST:

____
Kerry Sull, City Clerk

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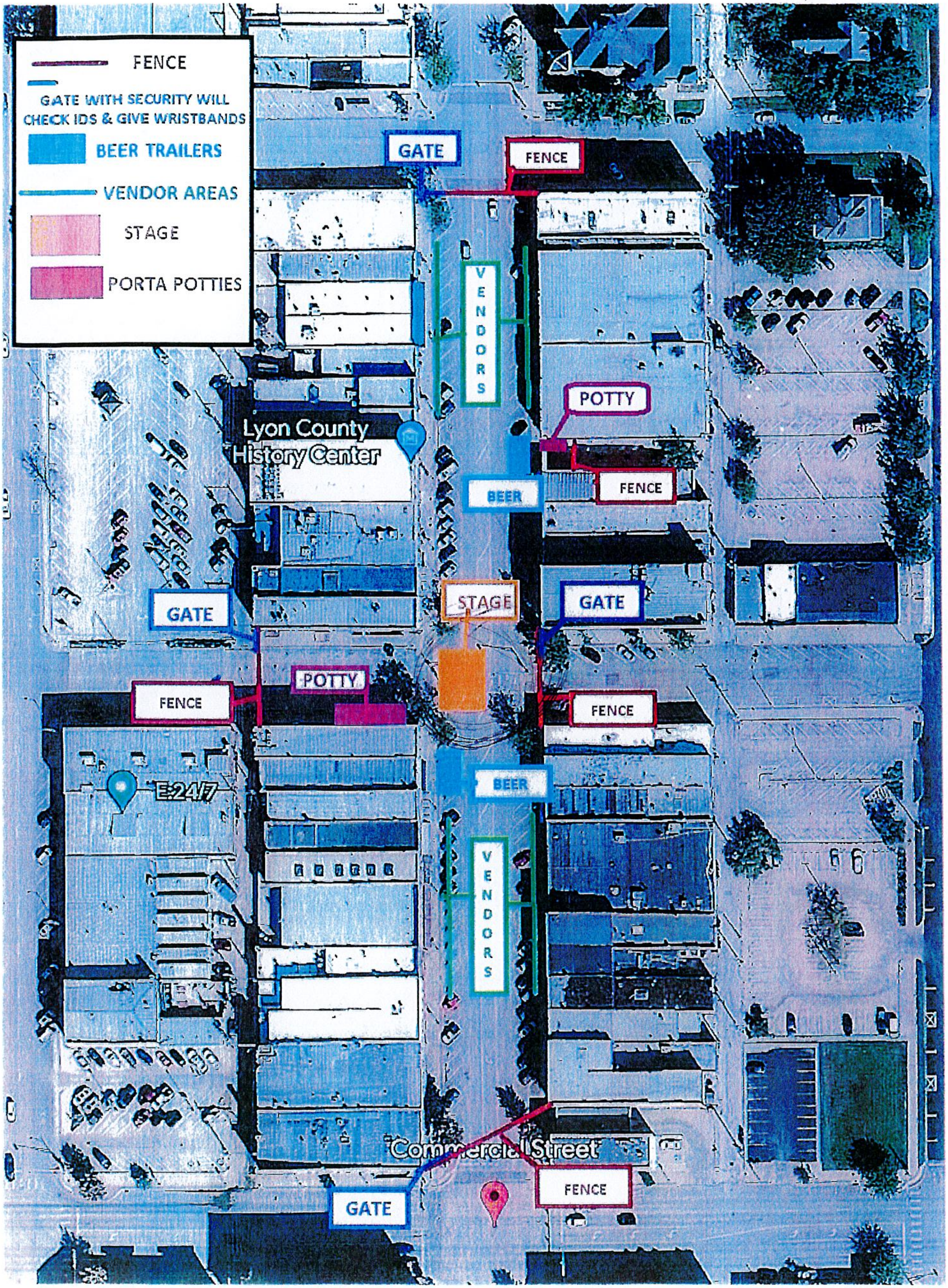
FENCE
GATE WITH SECURITY WILL CHECK IDS & GIVE WRISTBANDS
BEER TRAILERS
VENDOR AREAS
STAGE
PORTA POTTIES
GATE
FENCE
VENDORS
POTTY
Lyon County History Center
BEER
FENCE
STAGE
GATE
GATE
POTTY
FENCE
FENCE
BEER
E-24/7
VENDORS
Commercial Street
FENCE
GATE

Commission Action Report

Title: Ordinance No. 23-09 Establishing Visit Emporia Common Consumption Area

Agenda Date: April 19, 2023

Presented By: Christina Montgomery, City Attorney

BACKGROUND:
Visit Emporia has applied to host a Common Consumption Area (CCA) in the same area where they hosted a CCA last year. Alcohol may be sold and consumed in a CCA when open for a special event. Licensed drinking establishments (DE's) adjacent to the CCA may apply to the state to participate in a CCA. Taverns adjacent to the CCA may apply to the city to participate.

DISCUSSION:
The proposed ordinance establishes a twelve-month common consumption area. A special event permit approved by Emporia Police Department will be required to open the CCA. When open, alcohol and enhanced CMB may be sold and consumed in the CCA between the hours of 12:00 pm and 12:00 am. The CCA permit holder will be held liable for all alcohol violations that occur within the CCA and participating licensed DE's and/or taverns will be held liable for alcohol violations that occur within their licensed premises. The requested CCA area is depicted on the attached map.

FINANCIAL CONSIDERATIONS:
The City will pay the cost of ordinance publication in the designated official local newspaper. City staff will provide standard special event services when the CCA is open.

RECOMMENDED ACTION:
Ordinance No. 23-09 Establishing Visit Emporia Common Consumption Area

ATTACHMENTS:
Ordinance No. 23-09
Map exhibit

ORDINANCE NO. 23-09

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

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

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

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

SECTION 1. Establishment of Common Consumption Area. Pursuant to K.S.A. 41-2659, as amended, the Governing Body hereby establishes a Common Consumption Area (hereinafter referred to as CCA) during special events, excluding any and all areas which are currently or otherwise become subject to a license issued pursuant to the Kansas Liquor Control Act or the Club and Drinking Establishment Act; and approves Visit Emporia as the sponsor of the CCA. The Common Consumption area shall include an area between Sixth Avenue and Eighth Avenue, and between Merchant Street and Commercial Street in the City of Emporia, as illustrated in Exhibit A, incorporated herein by reference. The CCA shall remain in effect until April 18, 2024.

SECTION 2. Special Event Permit Required; Streets; Hours. The CCA shall be open during a special event after application and approval of a special event permit from the Emporia Police Department. The boundaries of the event shall be clearly marked using City of Emporia fencing or other apparent line of demarcation as approved by the Police Chief or designee. Any public street, roadway, alley, or parking lot that lies within the CCA in an area designated for the special event shall be blocked from motorized traffic during the hours in which alcoholic liquor and/or CMB is consumed when required by Kansas state law or by the Chief of Police. The possession and consumption of alcoholic liquor within the CCA during a special event shall only be allowed between the hours of 12:00 p.m. and 12:00 a.m. Sunday through Saturday.

SECTION 3. Permit; Directors of the Division of Alcoholic Beverage Control. The Governing Body hereby authorizes the possession and consumption of alcoholic liquor in the Common Consumption Area during a special event as authorized by the Emporia Police Department with boundaries clearly demarcated provided that a common consumption area permit ("Permit") has been issued to Visit Emporia by the State of Kansas, Director of the Division of Alcoholic Beverage Control ("Director") in accordance with K.S.A. 41-2659 and amendments thereto.

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

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

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

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

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

PASSED AND APPROVED this 19th day of April 2023.

____
Susan Brinkman, Mayor

ATTEST:

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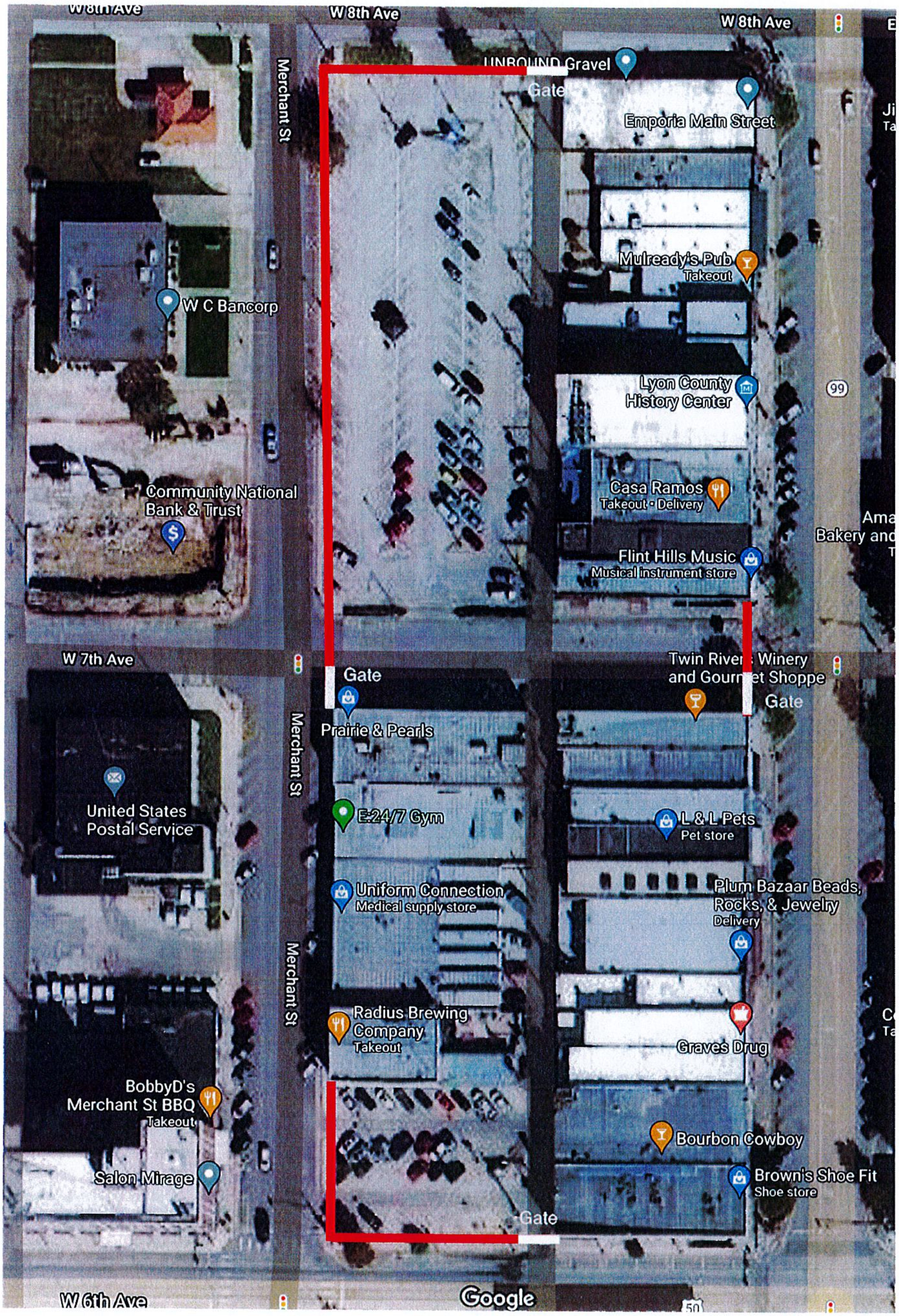
Kerry Sull, City Clerk


W 8th Ave
W 8th Ave
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UNBOUND Gravel
Gate
Emporia Main Street
Merchant St
Mulready's Pub
Takeout
W C Bancorp
Lyon County
History Center
99
Community National
Bank & Trust
Casa Ramos
Takeout · Delivery
Bakery and
Flint Hills Music
Musical instrument store
W 7th Ave
Gate
Twin Rivers Winery
and Gourmet Shoppe
Gate
Prairie & Pearls
Merchant St
United States
Postal Service
E:24/7 Gym
L & L Pets
Pet store
Uniform Connection
Medical supply store
Plum Bazaar Beads,
Rocks, & Jewelry
Delivery
Merchant St
Radius Brewing
Company
Takeout
Graves Drug
BobbyD's
Merchant St BBQ
Takeout
Bourbon Cowboy
Salon Mirage
Brown's Shoe Fit
Shoe store
Gate
W 6th Ave
Google
50

Commission Action Report

Title: Ordinance No. 23-08 Establishing Radius Production Common Consumption Area

Agenda Date: April 19, 2023

Presented By: Christina Montgomery, City Attorney

BACKGROUND:
Radius Production, LLC has applied to host a Common Consumption Area (CCA) in the same area where they hosted a CCA last year. Alcohol may be sold and consumed in a CCA when open for a special event. Licensed drinking establishments (DE's) adjacent to the CCA may apply to the state to participate in a CCA. Taverns adjacent to the CCA may apply to the city to participate.

DISCUSSION:
The proposed ordinance establishes a twelve-month common consumption area. A special event permit approved by Emporia Police Department will be required to open the CCA. When open, alcohol and enhanced CMB may be sold and consumed in the CCA between the hours of 12:00 pm and 12:00 am. The CCA permit holder will be held liable for all alcohol violations that occur within the CCA and participating licensed DE's and/or taverns will be held liable for alcohol violations that occur within their licensed premises. The requested CCA area is depicted on the attached map.

FINANCIAL CONSIDERATIONS:
The City will pay the cost of ordinance publication in the designated official local newspaper. City staff will provide standard special event services when the CCA is open.

RECOMMENDED ACTION:
Ordinance No. 23-08 Establishing Radius Production Common Consumption Area

ATTACHMENTS:
Ordinance No. 23-08
Map exhibit

ORDINANCE NO. 23-08

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

WHEREAS, Radius Production, LLC, desires to sponsor a Common Consumption Area in an area including 4th Avenue street and sidewalks between Merchant Street and Commercial Street and the parking lot south of 405 Commercial Street in the City of Emporia; intended to be used from time to time as a public gathering place for special events where possession and consumption of alcoholic beverages and/or cereal malt beverages (hereinafter referred to as CMB) is authorized during dates and times in which the Common Consumption Area is open, as designated by the Governing Body of the City of Emporia; and

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

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

SECTION 1. Establishment of Common Consumption Area. Pursuant to K.S.A. 41-2659, as amended, the Governing Body hereby establishes a Common Consumption Area (hereinafter referred to as CCA) during special events, excluding any and all areas which are currently or otherwise become subject to a license issued pursuant to the Kansas Liquor Control Act or the Club and Drinking Establishment Act; and approves Radius Production, LLC as the sponsor of the CCA. The Common Consumption area shall be located at an area including 4th Avenue between Merchant Street and Commercial Street and the parking lot south of 405 Commercial Street in the City of Emporia, as illustrated in Exhibit A, incorporated herein by reference. The CCA shall remain in effect until April 18, 2024.

SECTION 2. Special Event Permit Required; Streets; Hours. The CCA shall be open during a special event after application and approval of a special event permit from the Emporia Police Department. The boundaries of the event shall be clearly marked using City of Emporia fencing or other apparent line of demarcation as approved by the Police Chief or designee. Any public street, roadway, alley, or parking lot that lies within the CCA in an area designated for the special event shall be blocked from motorized traffic during the hours in which alcoholic liquor and/or CMB is consumed when required by Kansas state law or by the Chief of Police. The possession and consumption of alcoholic liquor within the CCA during a special event shall only be allowed between the hours of 12:00 p.m. and 12:00 a.m. Sunday through Saturday.

SECTION 3. Permit; Directors of the Division of Alcoholic Beverage Control. The

Governing Body hereby authorizes the possession and consumption of alcoholic liquor in the Common Consumption Area during a special event as authorized by the Emporia Police Department with boundaries clearly demarcated provided that a common consumption area permit (“Permit”) has been issued to Radius Production, LLC by the State of Kansas, Director of the Division of Alcoholic Beverage Control (“Director”) in accordance with K.S.A. 41-2659 and amendments thereto.

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

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

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

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

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

PASSED AND APPROVED this 19th day of April 2023.

____
Susan Brinkman, Mayor

ATTEST:

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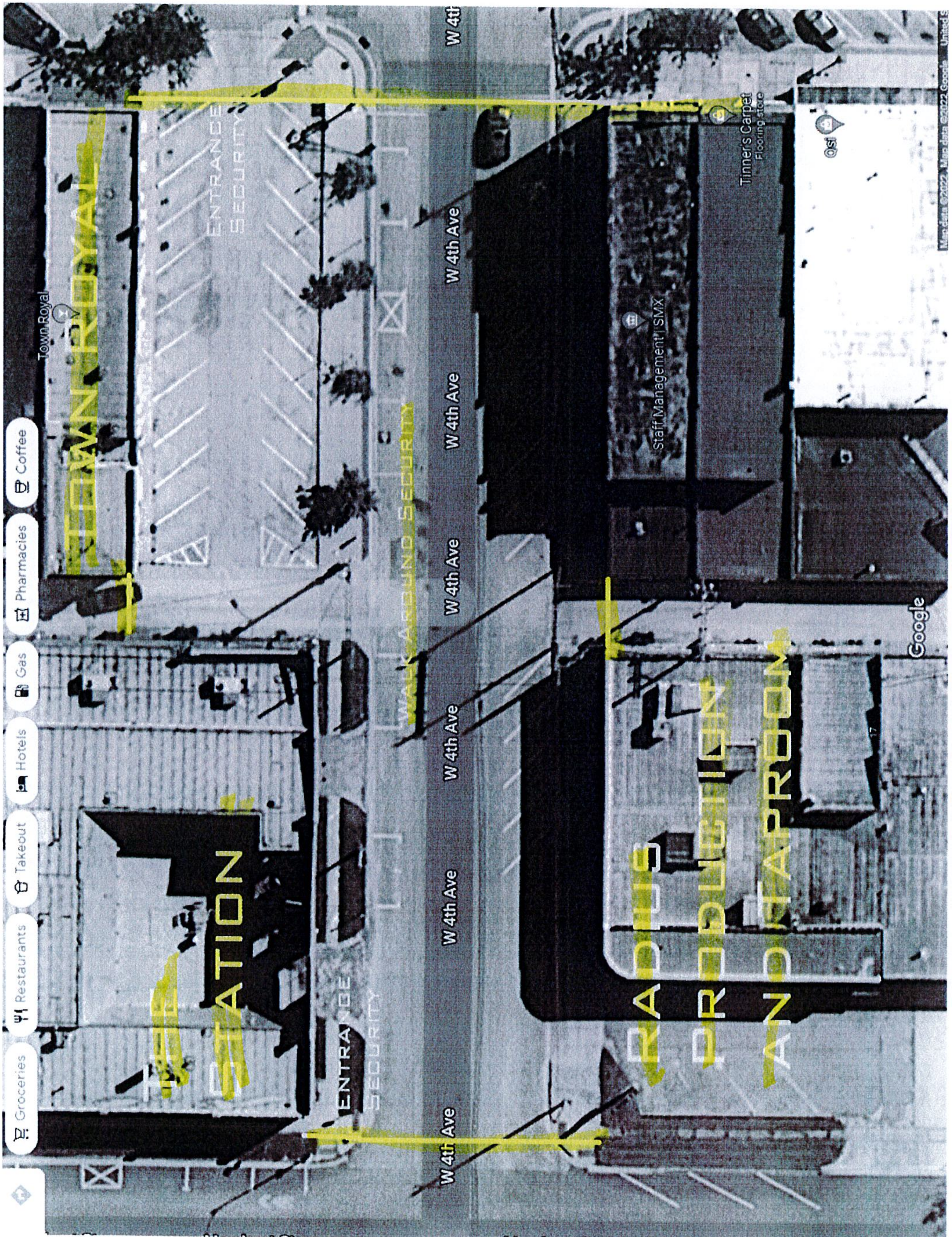
Kerry Sull, City Clerk


Groceries
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ENTRANCE SECURITY
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STATION
ENTRANCE SECURITY
W 4th Ave
Staff Management | SMX
Tinner's Carpet
Flooring store
RADIUS PRODUCTION AND TAPROOM
Google
Map data ©2022 Google

Commission Action Report

Title: Resolution No. 3694 Amendment to Housing Development and RHID Policy

Proposed Date: April 19, 2023

Presented By: Jim Witt, Special Projects Coordinator

BACKGROUND:
This is an amendment to the City's Housing Development and Rural Housing Incentive District Policy. The original policy was adopted on April 21, 2021, via Resolution 3642.

DISCUSSION:
The amendments were discussed at the April 5th Study Session and clarified the City's financial and administrative responsibilities for an RHID process and designation.

FINANCIAL CONSIDERATIONS:
There is no direct fiscal impact to the city but does clarify an applicant for an RHID fiscal and process responsibilities.

OTHER CONSIDERATIONS:
No Other Considerations

RECOMMENDED ACTION:
Approve Resolution No. 3694 Amendment to Housing and RHID Policy.

ATTACHMENTS:
Resolution No. 3694 Amendment to Housing and RHID Policy.
Housing RHID Incentives Revised 04-19-23
Housing RHID Incentives 12-22 potential revisions 4-5

RESOLUTION NO. 3694

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF EMPORIA, AMENDING THE HOUSING DEVELOPMENT AND RURAL HOUSING INCENTIVE DISTRICT POLICY 1-12

WHEREAS, it is the objective of the Governing Body to support the development of housing stock in alignment with identified needs and Governing Body goals;

WHEREAS, the Governing Body has determined that it is necessary to adopt an amended Development Incentive Policy, a copy of which is attached hereto and incorporated herein by reference, to provide guidelines for the application process for Rural Housing Incentive District (RHID) and the housing development incentives.

NOW, THEREFORE, BE IT RESOLVED, that the aforesaid amended Housing Development and Rural Housing Incentive District Policy, as attached hereto, is hereby adopted and, further, the policy shall be inserted into the City of Emporia Policy Manual.

The Resolution shall take effect immediately upon its passage.

APPROVED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS, this 19th day of April 2022.

ATTEST:

____
Susan Brinkman, Mayor

____
Kerry Sull, City Clerk

Subject: Housing Development and Rural Housing Incentive District Policy	Issued by: City Commission Resolution No. 3642	Effective Date: 12/12/2022 4/19/2023

1-12 HOUSING DEVELOPMENT AND RURAL HOUSING INCENTIVE DISTRICT POLICY

A. BACKGROUND

The Emporia City Commission regularly receives requests for City assistance in promoting and developing additional housing units through utilization of Rural Housing Incentive District (RHID) tools, infrastructure funding, and other incentives. The City Commission from time to time sets goals and incentives based on recent studies, such as the most recent Lyon County Housing Study, that identify specific needs and shortages in community housing supply.

B. PURPOSE

It is the purpose of this policy to set forth certain criteria for application and utilization of RHID and other incentives as provided for in Kansas Statutes based on identified community housing needs.

C. POLICY

I. Priority Housing Types

Section 1: Allowable Housing Types

The following owner-occupied housing types shall be allowed to utilize the RHID incentive as provide for in Kansas Statutes:

1. Single family detached residential structures,
2. Single family attached residential structures,
3. Duplex residential structures,
4. Townhouses,
5. Condominiums,
6. Garden/patio homes,
7. Senior living complexes and
8. Any residential structure comparable in density to those outlined above and consistent with adopted building and zoning regulations.

The housing types shall be defined by the adopted building and zoning regulations of the City of Emporia in effect at the time an application for the RHID program is received by the City Manager's office.

Section 2: Exceptions

The City shall consider investor owned multifamily and multistory residential structures as part of a planned integrated development for a strategic purpose meeting a Commission goal. This may include, but is not limited to, targeted income markets, special needs housing, and upper story residential as permitted under the Rural Housing Incentive District.

II. Proposals and Pre-Qualifying Assessment

Proposals for City assistance in the creation of residential subdivisions/buildings shall submit a proposal to the City Manager's office. Proposals shall be based on an identified community need at the time of application, such as those defined in the most recent housing study or other adopted City Commission goals or policies. Proposals shall include the following information:

1. The names of the business entity and its primary owners/partners seeking city assistance.
2. The location of the development on a map which clearly outlines the parcel to be developed.
3. The number of buildable lots to be created.
4. The type of housing units or mixture thereof to be included in the development.
5. The estimated market cost of housing units to be constructed.
6. A third-party analysis including the financial feasibility of the project in retiring the RHID debt and the projected construction pace of development. All housing types noted under Section I (1): Allowable Housing Types shall include a platted lot absorption schedule as part of the third-party analysis. For developments with a target market price below $250,000 per home, the minimum lot absorption schedule shall be the completion of fifty percent (50%) in the first three (3) years of the project. For developments with a target market price over $250,000 per home, the minimum lot absorption schedule shall be the completion of fifty percent (50%) in the first five (5) years of the project.
7. A covenant deed restriction shall be filed with the Register of Deeds and the City Clerk guaranteeing no additional lot splits must be submitted prior to the passage of the ordinance granting RHID status.
8. All proposals shall be accompanied by a $1,000 non-refundable evaluation fee. If the proposal is approved by the City Commission and a development agreement is executed that involves periodic payments or reimbursements from the City, there shall be a 3% administrative fee attached to all property tax transactions involving the reimbursement of RHID funds.
9. All City assistance regarding infrastructure shall utilize the City's public bidding process. Plans and specs for infrastructure improvements must be consistent with adopted City policies and ordinances. Waivers to this requirement may be granted on a case-by-case basis by the City Commission.

III. Phasing and Development Agreements

The City and the developer, if a proposal is accepted by Commission action, shall enter into a negotiated Development Agreement which shall contain, but not be limited to, the following elements:

1. Phasing of development in terms of the number of units to be completed each year and a projected buildout year.
2. A claw-back provision related to any City assistance, if provided, based on agreed upon goals regarding unit completions that are not met. Claw-back provisions are to be negotiated on a project-by-project basis.

3. The City reserves the right to decline the establishment of a district if the target pricing does not meet a recognized need in the community as identified and adopted by the City Commission.
4. The financing method shall be clearly defined in accordance with approved City alternatives as outlined in Section V.
5. If RHID bonds, as authorized by Kansas Statutes, are to be utilized, the applicant shall work with a bond attorney selected by the City of Emporia for the issuance of said bonds. The cost of issuance shall be borne by the developer builder of the RHID project.
6. A development guaranty of twenty five percent (25%) of the total public infrastructure and engineering costs shall be required of the applicant before the city proceeds to issue public financing under the 6A special assessment/RHID, RHID statutory bonds or general obligation bonds alternatives. This amount shall be refunded to the developer once thirty- five percent (35%) of the lots contain a completed residential structure and a Certificate of Occupancy is issued by the City Building Inspection Department. This requirement may be waived by the City Commission.
7. Special assessment utilizing the 6A/RHID alternative shall be calculated and assigned to each lot in an approved subdivision. It shall be the developer's responsibility to inform the buyer of a lot of this assessment and the method they will be administered.

IV. Land/Location

The developer/builder shall be solely responsible for the purchase of the land to be designated as an RHID district**.** Proposed districts shall be located adjacent or within 200 feet of an existing city street or paved street for consideration. For land outside of the existing City limits a petition for annexation consistent with Kansas Statutes shall be made concurrent with the request for the establishment of an RHID.

The City may include the purchase price of the property to be developed in accordance and compliant with state statutes.

Reclamation of floodplain zones as designated by federal programs is not allowed as a RHID eligible expense.

Section 1: Location

All area included within the incorporated city limits as defined by ordinance are eligible for RHID designation after being approved by the Kansas Department of Commerce (KDOC). Existing RHID eligible areas, as approved by KDOC, are attached as Exhibit A.

Designation of an area presently not within the corporate boundaries of the community cannot be declared an RHID district by the city until annexation is completed. Applicants should set aside an additional 6-9 months in their planning timeline to accommodate this situation.

V. FINANCIAL ALTERNATIVES

The following is a nonexclusive listing of some financial alternative available to the City regarding RHID developments and related scenarios to assist in addressing the need for new housing units.

1. Utilize existing policy requiring private financing for all RHID development requests.
2. Issue RHID bonds as permitted under the Kansas Rural Housing Incentive District Statutes in conjunction with local financial institutions.

3. Utilize Kansas Statute 12-6a01-17 to establish a special assessment district and create a Rural Housing Incentive District (RHID). The incremental tax revenue received via the RHID would then be utilized for debt retirement for bonds issued in conjunction with a development, reimburse the city account used to fund the initial construction and reimburse developer/builder eligible expenses.
4. The City may buy a tract of land and finance the acquisition and construction of infrastructure via an RHID district. The City can then plan and develop the tract and enter into any private development agreements necessary to meet the housing goals established by the Commission.
5. Issue General Obligation bonds as provided for in Charter Ordinance #41 for infrastructure and related RHID costs. This alternative shall only be used in RHID districts approved by the Kansas Department of Commerce. If this alternate is utilized through formal action of the Commission and and a new subdivision is required, the applicant/developer shall be responsible for all expenses related to said subdivision up to and including the approval of the preliminary plat and any zoning district amendments or variances needed related to development.

Subject: Housing Development and Rural Housing Incentive District Policy	Issued by: City Commission Resolution No. 3642	Effective Date: 4/21/2021 12/12/2022

1-12 HOUSING DEVELOPMENT AND RURAL HOUSING INCENTIVE DISTRICT POLICY

A. BACKGROUND

The Emporia City Commission regularly receives requests for City assistance in promoting and developing additional housing units through utilization of Rural Housing Incentive District (RHID) tools, infrastructure funding, and other incentives. The City Commission from time to time sets goals and incentives based on recent studies, such as the most recent Lyon County Housing Study, that identify specific needs and shortages in community housing supply.

B. PURPOSE

It is the purpose of this policy to set forth certain criteria for application and utilization of RHID and other incentives as provided for in Kansas Statutes based on identified community housing needs.

C. POLICY

I. Priority Housing Types

Section 1: Allowable Housing Types

The following owner-occupied housing types shall be allowed to utilize the RHID incentive as provide for in Kansas Statutes:

1. Single family detached residential structures,
2. Single family attached residential structures,
3. Duplex residential structures,
4. Townhouses,
5. Condominiums,
6. Garden/patio homes,
7. Senior living complexes and
8. Any residential structure comparable in density to those outlined above and consistent with adopted building and zoning regulations.

The housing types shall be defined by the adopted building and zoning regulations of the City of Emporia in effect at the time an application for the RHID program is received by the City Manager's office.

Section 2: Exceptions

The City shall consider investor owned multifamily and multistory residential structures as part of a planned integrated development for a strategic purpose meeting a Commission goal. This may include, but is not limited to, targeted income markets, special needs housing, and upper story residential as permitted under the Rural Housing Incentive District.

II. Proposals and Pre-Qualifying Assessment

Proposals for City assistance in the creation of residential subdivisions/buildings shall submit a proposal to the City Manager's office. Proposals shall be based on an identified community need at the time of application, such as those defined in the most recent housing study or other adopted City Commission goals or policies. Proposals shall include the following information:

1. The names of the business entity and its primary owners/partners seeking city assistance.
2. The location of the development on a map which clearly outlines the parcel to be developed.
3. The number of buildable lots to be created.
4. The type of housing units or mixture thereof to be included in the development.
5. The estimated market cost of housing units to be constructed.
6. A third-party analysis including the financial feasibility of the project in retiring the RHID debt and the projected construction pace of development. All housing types noted under Section I (1): Allowable Housing Types shall include a platted lot absorption schedule as part of the third-party analysis. For developments with a target market price below $250,000 per home, the minimum lot absorption schedule shall be the completion of fifty percent (50%) in the first three (3) years of the project. For developments with a target market price over $250,000 per home, the minimum lot absorption schedule shall be the completion of fifty percent (50%) in the first five (5) years of the project.
7. A covenant deed restriction shall be filed with the Register of Deeds and the City Clerk guaranteeing no additional lot splits must be submitted prior to the passage of the ordinance granting RHID status.
8. All proposals shall be accompanied by a $1,000 non-refundable evaluation fee. If the proposal is approved by the City Commission and a development agreement is executed that involves periodic payments or reimbursements from the City, there shall be a 3% administrative fee attached to all property tax transactions involving the reimbursement of RHID funds.
9. All City assistance regarding infrastructure shall utilize the City's public bidding process. Plans and specs for infrastructure improvements must be consistent with adopted City policies and ordinances. Waivers to this requirement may be granted on a case-by-case basis by the City Commission.

III. Phasing and Development Agreements

The City and the developer, if a proposal is accepted by Commission action, shall enter into a negotiated Development Agreement which shall contain, but not be limited to, the following elements:

1. Phasing of development in terms of the number of units to be completed each year and a projected buildout year.
2. A claw-back provision related to any City assistance, if provided, based on agreed upon goals regarding unit completions that are not met. Claw-back provisions are to be negotiated on a project-by-project basis.

3. The City reserves the right to decline the establishment of a district if the target pricing does not meet a recognized need in the community as identified and adopted by the City Commission.
4. The financing method shall be clearly defined in accordance with approved City alternatives as outlined in Section V.
5. If RHID bonds, as authorized by Kansas Statutes, are to be utilized, the applicant shall work with a bond attorney selected by the City of Emporia for the issuance of said bonds. The cost of issuance shall be borne by the developer builder of the RHID project.
6. A development guaranty of twenty five percent (25%) of the total public infrastructure and engineering costs shall be required of the applicant before the city proceeds to issue public financing under the 6A special assessment/RHID, RHID statutory bonds or general obligation bonds alternatives. This amount shall be refunded to the developer once thirty- five percent (35%) of the lots contain a completed residential structure and a Certificate of Occupancy is issued by the City Building Inspection Department. This requirement may be waived by the City Commission.
7. Special assessment utilizing the 6A/RHID alternative shall be calculated and assigned to each lot in an approved subdivision. It shall be the developer's responsibility to inform the buyer of a lot of this assessment and the method they will be administered.

IV. Land/Location

The developer/builder shall be solely responsible for the purchase of the land to be designated as an RHID district**.** Proposed districts shall be located adjacent or within 200 feet of an existing city street or paved street for consideration. For land outside of the existing City limits a petition for annexation consistent with Kansas Statutes shall be made concurrent with the request for the establishment of an RHID.

The City may include the purchase price of the property to be developed in accordance and compliant with state statutes.

Reclamation of floodplain zones as designated by federal programs is not allowed as a RHID eligible expense.

Section 1: Location

All area included within the incorporated city limits as defined by ordinance are eligible for RHID designation after being approved by the Kansas Department of Commerce (KDOC). Existing RHID eligible areas, as approved by KDOC, are attached as Exhibit A.

Designation of an area presently not within the corporate boundaries of the community cannot be declared an RHID district by the city until annexation is completed. Applicants should set aside an additional 6-9 months in their planning timeline to accommodate this situation.

V. FINANCIAL ALTERNATIVES

The following is a nonexclusive listing of some financial alternative available to the City regarding RHID developments and related scenarios to assist in addressing the need for new housing units.

1. Utilize existing policy requiring private financing for all RHID development requests.
2. Issue RHID bonds as permitted under the Kansas Rural Housing Incentive District Statutes in conjunction with local financial institutions.

3. Utilize Kansas Statute 12-6a01-17 to establish a special assessment district and create a Rural Housing Incentive District (RHID). The incremental tax revenue received via the RHID would then be utilized for debt retirement for bonds issued in conjunction with a development, reimburse the city account used to fund the initial construction and reimburse developer/builder eligible expenses.
4. The City may buy a tract of land and finance the acquisition and construction of infrastructure via an RHID district. The City can then plan and develop the tract and enter into any private development agreements necessary to meet the housing goals established by the Commission.
5. Issue General Obligation bonds as provided for in Charter Ordinance #41 for infrastructure and related RHID costs. This alternative shall only be used in RHID districts approved by the Kansas Department of Commerce. If this alternate is utilized through formal action of the Commission and and a new subdivision is required, the applicant/developer shall be responsible for all expenses related to said subdivision up to and including the approval of the preliminary plat and any zoning district amendments or variances needed related to development.

Commission Action Report

Title: Mahtropolis Addition, Set Bid Date and Time for Sanitary Sewer and Waterline Improvements

Proposed Agenda Date: April 19, 2023

Presented By: James Ubert, City Engineer

BACKGROUND:

Mahtropolis Addition will create 27 single-family houses along Mahnopoly Ave and Riley Ave. The utility improvements portion of the project consists of sanitary sewer and watermain extensions.

DISCUSSION:

Set Tuesday, May 16, 2023 at 2:00 pm as time and date to receive bids for the Mahtropolis Addition Sanitary Sewer and Waterline Improvements Project.

FINANCIAL CONSIDERATIONS:

RECOMMENDED ACTION:

Approve Mahtropolis Addition, Set Tuesday, May 16, 2023, at 2:00 pm as the bid date and time for Sanitary Sewer and Waterline Improvements

.

ATTACHMENTS:

Invitation to bid.

INVITATION TO BID

Sealed bids for the **Mahtropolis Addition (Riley Ave & Trusler Road) Sanitary Sewer and Waterline Improvements (Project No. HD23MAHT)** 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, May 16th, 2023, and then publicly opened in the Engineering Department's Conference Room located at 522 Mechanic Street. A pre-bid conference will be held at 2:00 p.m. on Tuesday, May 9th, 2023, at the same location.**

The work for the Mahtropolis Addition Sanitary Sewer and Waterline Improvements Project will consist of the approximate quantities:

Sanitary Sewer Bid:

Mobilization	1	LS
Site Clearing	1	LS
Connection to Exisiting Sanitary Main	1	Ea.
Sanitary Sewer (8")	1,360	LF
Standard Sanitary Sewer Manhole (4' Dia.)	8	Ea.
Erosion Control	1	LS
Site Restoration and Seeding with Mulch	1	LS
Service (Wye) Connection	27	Ea.
Service Line	472	LF

Waterline Bid:

Connection to Exisiting	1	Ea
Waterline (8" PVC)	536	LF
Fittings	1	LS
Gate Valve	1	Ea
1" Copper Service Line	508	LF
Fire Hydrant with Valve	2	Ea
Site Restoration and Seeding with Mulch	1	LS

Plans 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 plans and bid documents is thirty dollars ($30), which is nonrefundable. If the Contractor prefers plans and bid documents sent by UPS, there is an additional required fee of ten dollars ($10). Also, the Contractor may request an electronic copy of plans and bid documents for a flat rate fee of twenty dollars ($20). The City of Emporia 2018 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 2018 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 an amount of not less than five percent (5%) of the total amount of the bid. 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.

The Bidder to whom the Contract is awarded will be required to furnish statutory bond in the amount of one hundred percent (100%) of the Contract, and performance and maintenance bond in the amount of one hundred percent (100%) of the Contract; 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 sixty (60) 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 the City of Emporia, City Manager's Office at least 48 hours before the event at 620-343-4250 or e-mail emporiainfo@emporiaks.gov.

THE CITY OF EMPORIA, KANSAS
Kerry Sull
City Clerk

Commission Action Report

Title:	Zoo Education Parking Lot Change Order No. 1 (final) Project No. ZO2102
Agenda Date:	April 19, 2023
Presented By:	James Ubert, City Engineer

BACKGROUND:
The David Traylor Zoo Education parking lot improvements project will provide expanded access and available parking for patrons. During the course of the parking lot improvements, the contractor removed an earth dirt pile that turned out to be a pile or large rocks and debris under a dirty cap. Additionally, due to field changes, there were quantities added and deleted from the project. The contract base concrete bid is $127,864.70, Change Order No. 1 will raise the contract price to $1,762.50 to total $129,627.20.

DISCUSSION:
N/A

FINANCIAL CONSIDERATIONS:
Funding will come from the multi-year fund.

RECOMMENDED ACTION:
Accept Change Order No. 1 (final) for the Zoo Education Center Parking Lot Improvements Project.

ATTACHMENTS:
Change Order No. 1

CHANGE IN PLANS NO. 1
ON CONTRACT WITH BURLINGTON CONSTRUCTION INC. FOR THE CONSTRUCTION OF
ZOO EDUCATION PARKING LOT IMPROVEMENTS
PROJECT NO. ZO2102

Date: April 10, 2023

This change in plans, made in accordance with the provisions of Paragraph 9, GS-4, General Conditions under the above Contract, provides for a change in the contract total due to estimated quantities being different than the actual quantities used in the construction of the Zoo Education Parking Lot Improvements, Project No. ZO2102

QUANTITY	UNIT	ITEM & UNIT PRICE IN WORDS	IN FIGURES	AMOUNT
QUANTITIES ADDED:				
1.0	LS	Extra labor and machine work due to unforseen rock and other debris @ Five Thousand Dollars (Unit Price in Words)	$5,000.00	$5,000.00
		TOTAL ADDED TO PROJECT:		**$5,000.00**

QUANTITY	UNIT	ITEM & UNIT PRICE IN WORDS	IN FIGURES	AMOUNT
QUANTITIES DELETED:				
92.5	L.F.	Combined Curb & Gutter (2'-6" Combined) (AE) @ Thirty-five Dollars (Unit Price in Words)	$35.00	$3,237.50
		TOTAL DELETED FROM PROJECT:		**$3,237.50**
		TOTAL CHANGE ORDER ADDED TO PROJECT:		**$1,762.50**

CONTRACTOR: **Burlington Construction Inc.**

BY: Tom Hugins
OWNER or AUTHORIZED REPRESENTATIVE

APPROVED BY: **THE CITY OF EMPORIA, KS**

BY:____________________
MAYOR

Date:__________

Attest:__________
CITY CLERK

Commission Action Report

Title:	KDOT CCLIP FY2024 SP Mill and Overlay on US-50 from Graphic Arts Road to Prairie Street Agreement
Agenda Date:	April 19, 2023
Presented By:	James Ubert, City Engineer

BACKGROUND:
The City of Emporia application for the mill and overlay project on US-50 was awarded by KDOT on October 12th, 2022.

DISCUSSION:
The mill and overlay project will provide needed maintenance and repair for this portion of US-50/6th Ave.

FINANCIAL CONSIDERATIONS:
KDOT has allocated $400,000.00 for construction and construction engineering. The City will be responsible for all preliminary Engineering, Right of Way, and utility costs, 10% of approved costs up to $400,00.00, and all other costs over that amount.

OTHER CONSIDERATIONS:
None

RECOMMENDED ACTION:
Accept KDOT CCLIP SP Agreement for the mill and overlay on US-50 from Graphic Arts Road to Prairie Street project and authorize the mayor to sign KDOT Agreement 055-23.

ATTACHMENTS:
KDOT Agreement 055-23.

PROJECT NO. 056 U-2465-01
CCLIP (SP) RESURFACING PROJECT
CMS CONTRACT NO. ________________
CITY OF EMPORIA, KANSAS

A G R E E M E N T

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 applied for and the Secretary has approved a CCLIP (SP) Resurfacing Project.

B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City.

C. The City desires to construct a street resurfacing Project on W 6th Avenue (US-50), a City Connecting Link for the State Highway System, in the City.

D. The Secretary desires to enter into an Agreement with the City to participate in the cost of the Project by use of state and local funds.

NOW THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following 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. **"CCLIP (SP) Resurfacing Program"** means a City Connecting Link Improvement Program (CCLIP (SP)) that is a part of the KDOT Local Partnership Program with cities and counties. The state's participation in the cost of construction and construction engineering will be one hundred percent (100%) for cities with a population between 0 to 2,499, ninety-five percent (95%) for cities with a population between 2,500 to 4,999, ninety percent (90%) for cities with a population between 5,000 to 24,999, eighty-five percent (85%) for cities with a population between 25,000 to 49,999, eighty percent (80%) for cities with a population between 50,000 to 99,999, and seventy-five percent (75%) for cities with a population equal to or greater than 100,000, up to a maximum of $300,000.00 per fiscal year of state funds. The CCLIP (SP) Resurfacing Program is for contract maintenance only.

3. **"City"** means the City of Emporia, Kansas, with its place of business at 111 East 6th Avenue, P.O. Box 928, Emporia, KS 66801.

4. **"City Connecting Link"** means a route inside the city limits of a city which: (1) connects a state highway through a city; (2) connects a state highway to a city connecting link of another state highway;

(3) is a state highway which terminates within such city; (4) connects a state highway with a road or highway under the jurisdiction of the Kansas Turnpike Authority; or (5) begins and ends within a city's limits and is designated as part of the national system of Interstate and defense highways.

5. **"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.

6. **"Construction Engineering" or "CE"** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

7. **"Consultant"** means any engineering firm or other entity retained to perform services for the Project.

8. **"Contractor"** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.

9. **"Design Plans"** mean 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.

10. **"Effective Date"** means the date this Agreement is signed by the Secretary or the Secretary's designee.

11. **"Eligible / Participating Bid Items"** means all bid items that pertain to Project resurfacing and striping along the connecting link only. Items eligible for CCLIP (SP) funding include manhole adjustments, milling, overlays, aggregate or paved shoulders (if already existing), concrete pavement, thin bonded concrete overlays, joint repair, slurry seals, bituminous seals, ultra-thin bonded overlay, concrete and asphalt pavement patching, subgrade improvement, reconstruction, traffic control, transporting of salvageable material (millings), striping, traffic signal loops on the state highway and that portion of the traffic signal loops that lie inside the return on side streets, and pavement marking on the connecting link. Video-detection systems are participating, except on side streets; however, such systems will require pre-approval, as well as additional details, and a bill of materials to be included in the final design plans. Resurfacing work is participating out to the curb returns on side streets.

12. **"Encroachment"** means any building, structure, vehicle, parking area, 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.

13. **"Fiscal Year (FY)"** means the state's fiscal year which begins July 1 and ends on June 30 of the following calendar year.

14. **"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.

15. **"Letting" or "Let"** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.

16. **"Non-Eligible / Non-Participating Bid Items"** means items typically non-eligible for CCLIP (SP) funding including but not limited to: bridge deck patching, utility adjustments, curb and gutter, overlay of curb and gutter, adjustment or reestablishment of survey markers, drainage appurtenances, driveways, entrances, sidewalks, sidewalk ramps, construction warranties, traffic loop construction outside the return on a side street, video detection on side streets, and construction outside of the curb and gutter. Work performed outside the Project limits on side streets, or outside the city limits is non-eligible for state participation, items with unit price changes from the let price (other than items with price adjustment specification in the bid documents) and any other items deemed non-eligible by the Secretary.

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. **"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.

19. **"Project"** means mill and overlay, reconstruction, minor patching, joint repair, slurry seal, microsurfacing, and any other pre-approved resurfacing methods for the CCLIP (SP) Resurfacing Program for W 6^{th} Avenue (US-50), from Graphic Arts Road to Prairie Street in Emporia, Kansas, and is the subject of this Agreement.

20. **"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.

21. **"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.

22. **"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.

23. **"Secretary"** means the Secretary of Transportation of the State of Kansas, and his or her successors and assigns.

24. **"Surface Preservation" or "SP"** means a fund category, previously known as KLINK, intended to address deficiencies in or extend the life of the driving surface.

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, storm water, and other similar commodities, including fire and police signal systems which directly or indirectly serve the public.

ARTICLE II

FUNDING:

1. **Funding**. The table below reflects the funding commitments of each Party. The Participating Costs of Construction include all Construction Contingency Items. The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change. The City agrees to notify the Bureau of Local Projects if costs increase more than 10% over the estimate.

Party	Responsibility
Secretary	90% of Participating Costs of Construction and Construction Engineering (CE), not to exceed $400,000.00.
City	10% of Participating Costs of Construction and CE until Secretary's funding limit is reached. 100% of Participating Costs of Construction and CE after Secretary's funding limit is reached. 100% of Cost of Preliminary Engineering (PE), Right of Way, and Utility Adjustments 100% Non-Participating Costs.

ARTICLE III

SECRETARY RESPONSIBILITIES:

1. **Reimbursement Payments.** The Secretary will make such payment to the City as soon as reasonably possible after construction of the Project is completed, after receipt of proper billing, and attestation by a licensed professional engineer employed or retained by the City that the Project was constructed within substantial compliance of the final Design Plans and specifications.

ARTICLE IV

CITY RESPONSIBILITIES:

1. **Limited Scope.** The Project is limited to roadway resurfacing within the Project Limits. The Project roadway resurfacing may include all Eligible items as defined above. Roadway resurfacing does not include such Non-Eligible items as defined above and any other items deemed Non-Eligible or Non-Participating by the Secretary. The City will be responsible for construction of any traffic signal and/or sidewalk improvements that are necessary to comply with Public Right-of-Way Accessibility Guidelines (PROWAG), regardless of whether such improvements are deemed Non-Eligible/Non-Participating bid items by the Secretary for reimbursement purposes.

2. **Secretary Authorization.** The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current CCLIP (SP) Resurfacing Program for this Project.

3. **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, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

4. **Indemnification by Contractors.** The City will 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 of omission of the Contractor, the Contractor's agent, subcontractors, or suppliers. 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.

5. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project in conformity with the current version of Section 13.0 CCLIP of the LPA Project Development Manual.

6. **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 current version of the City's currently approved procedures, if applicable, and administer the payments due the Contractor, including the portion of the cost borne by the Secretary.

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

8. **Responsibility for Adequacy of Design.** The City, and any Consultant retained by the City, shall have sole responsibility for the adequacy and accuracy of the Design Plans, specifications, and estimates. Any review of these items that may be performed by the Secretary or the 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, specifications, and estimates. Such reviews are not done for the benefit of the Consultant, the Contractor, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, or expressed or implied warranty, to any person or entity concerning the adequacy or accuracy of the Design Plans, specifications, and estimates or any other work performed by the Consultant or the City.

9. **Design Schedule and Submission to Secretary.** The City will follow a schedule for design and development of plans that will allow the Project to be Let to contract in the programmed fiscal year; otherwise, the Secretary has the right to withdraw the Secretary's participation in the Project. If the City's Project preliminary plans, specifications, and a cost estimate (PS&E) are submitted to KDOT's Bureau of Local Projects later than May 1 of the programmed fiscal year, at the Secretary's discretion, the Project may be moved into a future fiscal year.

10. **Movement of Utilities.** 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 structures, pole lines, pipelines, meters, and other Utilities, publicly or privately owned, which may be necessary for Construction of the Project in accordance with the final Design Plans. The expense of the removal or adjustment of the Utilities and Encroachments located on public right of way or easement shall be borne by the owner or the City.

11. **Future Encroachments.** The City will prohibit future erection, installation, or construction of encroachments either on or above the Right of Way, and it will not in the future permit the erection of fuel dispensing pumps upon the Right of Way of the City Connecting Link. The City will require any fuel dispensing pumps erected, moved, or installed along the City Connecting Link be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

12. **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 take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.

13. **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 Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and in compliance with PROWAG, and FHWA rules, regulations, and guidance pertaining to the same.

14. **Permanent Traffic Control.** The City must ensure 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, shall conform to the latest version of the MUTCD as adopted by the Secretary.

15. **Access Control.** The City will maintain 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 unless prior approval is obtained from the Secretary.

16. **Final Design Plans.** The final Design Plans will depict the Project Limits. The Eligible/Participating bid items must be shown separated and listed apart from the Non-Eligible/Non-Participating bid items on the final Design Plans, bid documents, and on the detailed billing provided by the City. The City shall have the final Design Plans signed and sealed by a licensed professional engineer. The City will furnish to KDOT's Bureau of Local Projects an electronic set of final Design Plans and specifications. All technical professionals involved in the Project are required to meet the applicable licensing and/or certification requirements as stated in K.S.A. § 74-7001, *et seq*.

17. **Program Administration.** In addition to complying with all requirements contained in Section 13.0 CCLIP of the LPA Project Development Manual:

(a) The City acknowledges that funding for the Project may be cancelled if the City proceeds to advertise, Let, or award a contract for the Project, prior to receipt of notification from

KDOT's Bureau of Local Projects of its completion of the final review of the plans, specifications, and estimates (PS&E).

(b) The City acknowledges that funding for the Project may be cancelled if the City awards the contract for the Project prior to its receipt of an "Authority to Award" notification from KDOT's Bureau of Local Projects.

(c) The City will provide to KDOT's Bureau of Local Projects an electronic copy of the executed contract, the completed tax exemption form (PR-76 or PR-74a) and the City's Notice of Award.

(d) After the contract for the Project is awarded, the City will promptly notify both the Project Manager of KDOT's Bureau of Local Projects and the KDOT Area Engineer to communicate the date the contractor is anticipated to begin work on the Project.

(e) The City acknowledges that any costs for work completed prior to receipt of a Notice of Actual Start Date from the KDOT Area Engineer are ineligible for participation in the Program, will be deemed non-participating costs, and shall be the responsibility of the City.

18. **Discrimination Laws.** The City will: (a) 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 not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) comply with the reporting requirements set out at K.S.A. § 44-1031 and K.S.A. § 44-1116; and (d) include those provisions set forth in (a) through (c) in every contract, subcontract or purchase order so they are binding upon such Contractor, subcontractor or vendor. If the City fails to comply with any applicable requirements of (a) through (d) above or if the City is found guilty of any violation by federal or state agencies having enforcement jurisdiction for those Acts, such violation will constitute a breach of this Agreement. If the Secretary determines the City has violated applicable provisions of the ADA, the violation will constitute a breach of this Agreement. If any violation under this paragraph occurs, this Agreement may be cancelled, terminated, or suspended in whole or in part.

19. **Inspections.** The City will provide the Construction Engineering/inspection necessary to determine substantial compliance with the final Design Plans, specifications, and this Agreement. The City will require at a minimum all personnel, whether City or Consultant to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. If the City executes an agreement for inspection, the agreement must contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

20. **Corrective Work.** Representatives of the Secretary may make periodic inspection 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 the funding participation in the CCLIP (SP) Resurfacing Program. 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 and specifications.

21. **Attestation.** Upon completion of the Project the City shall have a licensed professional engineer employed or retained by the City attest in an email to the KDOT Area Engineer and the Project Manager for KDOT's Bureau of Local Projects, that the Project was completed in substantial compliance with the final Design Plans and specifications.

22. **Final Acceptance.** Prior to issuing final payment to the Contractor, the City must obtain final acceptance of the Project from the KDOT Area Engineer.

23. **Accounting.** Upon request by the Secretary, the City will provide the Secretary an accounting of all actual Non-Participating costs which are paid directly by the City to any party outside of KDOT and costs incurred by the City not to be reimbursed by KDOT for Preliminary Engineering, Utility adjustments, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

24. **Reimbursement Request.** The City will request payment from the Secretary after the City has paid the Contractor in full, and a licensed professional engineer has attested in writing the Project has been completed in substantial compliance with the final Design Plans and specifications.

25. **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, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

ARTICLE V

GENERAL PROVISIONS:

1. **City Connecting Link Maintenance Agreement**. The Parties executed a City Connecting Link Maintenance Agreement regarding portions of W 6^{th} Avenue (US-50) existing within the Emporia city limits which is still valid and in effect as of the Effective Date. Nothing in this Agreement modifies or invalidates the terms of the City Connecting Link Maintenance Agreement.

2. **Existing Right of Way.** The Project will be constructed within the limits of the existing right of way.

3. **Incorporation of Final Plans.** The final Design Plans and specifications are by this reference made a part of this Agreement.

4. **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to this Project.

5. **Project Modification.** Any of the following Project changes require the City to send a formal notice to the Secretary for approval:

a. Fiscal year the Project is to be Let
b. Project length
c. Project location
d. Project scope

Items b, c, and d require an attached map to scale.

It is further mutually agreed during Construction, the City shall notify the Secretary of any changes in the plans and specifications.

6. **Civil Rights Act.** The " **Civil Rights Attachment, Rev. 01.24.2023** pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

7. **Contractual Provisions.** The Provisions found in the current version of the **Contractual Provisions Attachment (Form DA-146a)**, which is attached, are incorporated into, and made a part of this Agreement.

8. **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.

9. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement are binding upon the Secretary and the City and their successors in office.

10. **No Third-Party Beneficiaries.** No third-party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

11. **Headings.** The captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not alter the terms and conditions of any part or parts of this Agreement.

12. **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.

13. **Severability**. If any provision of this Agreement is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

The signature pages immediately follow this paragraph.

IN WITNESS WHEREOF, the Parties have caused this 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

Approved as to form:

KANSAS DEPARTMENT OF TRANSPORTATION

CIVIL RIGHTS ATTACHMENT

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 Attachment shall govern should this 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, it's 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. 100-259), (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)

State of Kansas
Department of Administration DA-146a
(Rev. 07-19)

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 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.

Commission Action Report

Title: Informational Items

Agenda Date: April 19, 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 May 3, 2023.

Commission Meeting :

- Proclamation for Small Business Week.
- Proclamation for PWC Week.
- Proclamation Recognizing National Police Week.
- Proclamation Naming May as Community Action Month.
- Emergency Solutions Grant Applications.
- Public Hearing for Smoots/Fanestil Tax Abatement.
- Approve Ordinance for Smoots/Fanestil Tax Abatement.
- Review Ordinance No. 22-49 Prohibition Camping on Public Property.
- Set Bid Date and Time for Peyton Street Watermain Improvements.
- Mechanic Street Parking Lot Improvements Agreement.
- Selection of Architect for Fire Station Improvements Projects.

Study Session :

Commission Action Report

Title: Executive Session

Agenda Date: April 19, 2023

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

DISCUSSION:
N/A

FINANCIAL CONSIDERATIONS:
N/A

RECOMMENDED ACTION:
Recess into Executive Session for the preliminary discussion of the acquisition of real property for 15 minutes inviting Jim Ubert, City Engineer, and stating at which time the open meeting will resume.

ATTACHMENTS:
NONE

Interim Report of the
Task Force on Homelessness to the
Emporia City Commission
April 11, 2023

Chairperson: Mickey Edwards
Appointees: Lyn Blubaugh, Mickey Edwards, Raymond Rogers, Sgt. Dominic Vortherms, Michelle Williams
Commission Liaison: Susan Brinkman
City Staff: Officer Jaffar Agha, Trey Cocking, Jeff Lynch, Christina Montgomery, Jesse Taylor, Christine Torrens, Sgt. Dominic Vortherms
Other Participants: Renee Hively, Amanda Pock, Pauline Stacchini, Heather Wagner

Purpose: Resolution No. 3686 directs the task force to develop recommendations to address homelessness in the City of Emporia, including:

a. Identifying existing needs of unhoused and at-risk individuals within the community,
b. Analyzing existing resources to address homelessness and providing recommendations for closing gaps in services,
c. Proposing additional strategies to provide temporary and permanent housing solutions for unhoused individuals in the community, and
d. Providing recommendations for legislative action.

Background: Beginning on January 17th, the task force meets every other week. The group began its work by researching existing community resources that assist individuals experiencing homelessness. Early in its work, the task force hosted the homelessness prevention coordinator for Kansas City, Missouri, who spoke about the needs of unhoused and at-risk individuals and the methods being used by KCMO in its strategic plan to end homelessness. A tour of KCMO facilities was completed on March 21st, at which one appointee and several others attended. The task force has reviewed and discussed Ordinance No 22-49, hearing from the City Attorney and Emporia Police Department on its purpose. In addition, many task force appointees and participants have gone on EPD ride-alongs to tour homeless encampments.

Recommendations: It is the preliminary recommendation of this task force that a camping ordinance be maintained, in either its current or some modified version. To that end, the task force recommends the City Commission extend the ordinance through July 8, 2023 in order to allow the task force more time to study the ordinance, formulate long-term solutions, and make further recommendations to the City Commission.

Study Session Report

Title: Compensation Study Results

Agenda Date: April 19, 2023

Presented By: Jo Lynne Herron, Director of HR

Background:
City staff highlighted the need for an updated compensation study, as the previous study was conducted in 2007. Commission authorized an RFP for a compensation study on October 19, 2022. The RFP was published immediately upon approval and The Arnold Group out of Wichita, KS was awarded the project.

Discussion
City staff has been working closely with representatives from The Arnold Group over the last 4 months. Phillip Hayes and Heather Poorman will present findings and recommendations.

Financial Considerations
The presentation will include multiple financial scenarios.

Attachments
All data will be presented in the study session.