CITY COMMISSION MEETING
AGENDA

CITY COMMISSION / MUNICIPAL COURT ROOM
518 MECHANIC, EMPORIA, KS
June 3, 2020 at 1:30 pm

1. Members present: Mayor Giefer

Vice Mayor Gilligan	Commissioner Geitz
Commissioner Smith	Commissioner Brinkman
City Manager McAnarney	City Clerk Sull
Asst. City Mgr. Massey	City Attorney Montgomery

2. Consent Agenda
3. Public Comment
    a. Proclamation Naming June 2020 as "Zoo Month" in Emporia, Kansas.
4. Consider Approval of the Hamms Agreement.
5. Consider Approval of an Agreement with KDOT for Partial Funding of Street Resurfacing Project No. PV2004 to the City of Emporia, KS.
6. Approve Ordinance and Request to Annex a Parcel of land West of 4700 W. Hwy 50 into the City of Emporia for City utilities.
7. Approve Ordinance and Request to Rezone a Parcel of land West of 4700 W. Hwy 50 from Restricted Commercial Zoning to Light Industrial for Potential Development.
8. Approve Ordinance Authorizing City to match KDHE requirements for Water Fluoridation.
9. Approve Ordinance Authorizing City to Utilize AWWA Standard Polyethylene Tubing.
10. Consider Accepting a Grant from USDA and to Authorize the City Manager to Sign the Appropriate Documents.
11. Report from City Manager on Activities.
12. City Commission Reports and Comments.
13. Executive Session

EMPORIA
City of Emporia

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

AGENDA ITEM SUMMARY

MEETING DATE: June 3, 2020 **ITEM NUMBER: Consent Agenda**

SUBJECT:

Consent agenda:

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

a. Consider minutes of the Regular Meeting held on May 20th, and Special Action Meetings held on May 22nd, and May 27, 2020.
b. Consider ratification of Payroll Ordinance for the period ending on May 22, 2020.
c. Consider Set Bid Time and Date for the Industrial Park III Resurfacing Project No. PV2004.

RECOMMENDATION:

a. Approve Minutes
b. Approve Payroll
c. Approve Time and Date

BACKGROUND SUMMARY:

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

AGENDA ITEM SUMMARY

MEETING DATE: **June 3, 2020** **ITEM NUMBER: 2c**

SUBJECT: Set 2:00 p.m., Tuesday, July 7, 2020, as the time and date to receive bids for the Industrial Park III Resurfacing Project No. PV2004.

RECOMMENDATION: Set bid date and time

BACKGROUND SUMMARY:

The Industrial Park III Resurfacing Project will consist of milling and pavement overlay operations, subgrade & storm sewer improvements, and replacement of failed curb and gutter sections on the streets adjacent to Industrial Park III located in the south east portion of Emporia. The following streets are included in this project:

- South Avenue *(East St. to Weaver St.)*
- Weaver Street *(Logan Ave. to BNSF RR)*
- Logan Avenue *(Warren Way to Weaver St.)*

The project is partially funded with a KDOT Economic Development grant and the remaining amount will be paid out of the City's Federal Fund Exchange account.

Attached is the Invitation to Bid.

(Any questions regarding this item please refer to Agenda Item No. 5)

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

INVITATION TO BID

Sealed bids for the **Industrial Park III Resurfacing Project No. PV2004 (South Ave., Logan Ave., and Weaver St.)** will be received at the office of the City Clerk, City of Emporia, Kansas located upstairs at 104 E. 5th Avenue, up to **2:00 p.m.** on **Tuesday, July 7, 2020, 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, June 30, 2020, at the same location.**

The work for the Street Rehabilitation Project will consist of the approximate quantities:

BASE BID:

Mobilization	1	L.S.
Asphalt Milling (2" Avg Depth)	32694	S.Y.
HMA (Commercial Grade) (Class A)	3934	TON
Asphalt Patching (4" Avg. Depth)	15	TON
Curb & Gutter (2'-6" Combined) (AE) (Remove & Replace)	826	L.F.
Concrete Pavement (9" Reinf.) (AE) (Remove & Replace)	57	S.Y.
Concrete Sidewalk (4" Plain) (AE) (Remove & Replace)	111	S.Y.
ADA Sidewalk Ramp	48	S.Y.
Area Drop Inlet (24"x24")	1	EA.
Storm Sewer (15" RCP)	55	L.F.
Utility Adjustment (Concrete) (Valve Box) (Water)	2	EA.
Utility Adjustment (Concrete) (Manhole) (Sewer)	3	EA.
Utility Adjustment (Valve Box Riser) (Valve Box) (Water)	3	EA.
Utility Adjustment (Manhole Riser) (Manhole) (Sewer)	3	EA.
Pavement Marking (Thermoplastic) (White) (6") (Solid)	231	L.F.
Pavement Marking (Thermoplastic) (Yellow) (4") (Double)	1824	L.F.
Pavement Marking (Thermoplastic) (Yellow) (4") (Broken)	1296	L.F.
Pavement Marking (Thermoplastic) (Yellow) (12") (Diagonal)	42	L.F.
Pavement Marking (Intersection Grade) (White) (24") (STOP Line)	100	L.F.
Pavement Marking (Intersection Grade) (White) (24") (Type II Crosswalk)	128	L.F.
Pavement Marking (Intersection Grade) (White) (Right Arrow)	4	EA.
Pavement Marking (Intersection Grade) (White) (Left Arrow)	2	EA.
Pavement Marking (Intersection Grade) (Railroad Crossing)	1	EA.
Pavement marking Removal	624	L.F.
Temp Seed and Mulch	1	L.S.
Temp Slope Barrier (Silt Fence)	50	L.F.
Inlet Sediment Barrier	10	EA.
Sediment Removal (Set Price)	1	C.Y.
Permanent Seeding, Fertilizer and Mulch	1	L.S.
Traffic Control	1	L.S.
Flagger (Set Price)	1	HR

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 five dollars ($5). 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 2014 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 2014 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 Jeff Lynch, City of Emporia ADA Coordinator at least 48 hours before the event at 620-343-4291 or e-mail jlynch@emporia-kansas.gov.

THE CITY OF EMPORIA, KANSAS
Kerry Sull
City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: June 3, 2020 **ITEM NUMBER: 3**

SUBJECT: Public Comment

RECOMMENDATION:

BACKGROUND SUMMARY:

- Proclamation Designating the month of June 2020 as "Zoo Month" in Emporia, Kansas.
  To accept-Lisa Keith, Director of David Traylor Zoo

Citizen Appearance Procedures

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

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

EMPORIA
City of Emporia

PROCLAMATION

WHEREAS, Zoological Parks and Aquariums of North America serve the needs of both humans and wildlife by bringing them together in a unique setting; and

WHEREAS, they help build awareness, understanding, concern and a sense of stewardship for wildlife and the environment; and

WHEREAS, they provide a vital link to global conservation efforts; and

WHEREAS, their commitment to education fosters and enriches the appreciation of wildlife in over 20 million school children each year; and

WHEREAS, they actively conduct scientific studies to better care for and preserve the diverse wildlife of the earth; and

WHEREAS, they provide important cultural, recreational, and educational experiences for over 175 million people each year.

THEREFORE, BE IT KNOWN; that I, Danny Giefer, Mayor of the City of Emporia, Kansas, do hereby designate the month of June 2020 as

"ZOO MONTH"

and urge all citizens to visit the David Traylor Zoo of Emporia to experience firsthand the wonders of nature and our environment offered by the Zoo.

Done this 3rd Day Of June 2020

ATTEST:

_____
Danny Giefer, Mayor

_____
Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: June 3, 2020 **ITEM NUMBER: 4**

SUBJECT: Consider Extensions of the Agreement/Contract for solid waste disposal with N.R. Hamm Quarry, Inc.

RECOMMENDATION: Approve and sign Addendums for the extension of Agreement to transport and dispose of trash and the transport and processing of recycling from the City of Emporia/Lyon County Transfer Station.

BACKGROUND SUMMARY:

TRASH: The Second Addendum to the original Agreement was modified on July 17, 2008 and would be cancelled. This Third Addendum would modify and supplement the original Agreement for the transport and disposal of trash, signed on March 30, 2000. The new agreement would establish the duration of the new Agreement with Hamm's as January 1, 2021 through December 31, 2026. It also sets terms for cost per ton, termination, payment, base price and fuel surcharge.

RECYCLING: The Addendum would extend the current Agreement/Contract through December 31, 2020.

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

Third Modification and Addendum

This Third Modification and Addendum is intended by the parties hereto to modify and supplement a certain agreement for transport and disposal of solid waste, dated March 30, 2000, entered into by and between the City of Emporia and Board of County Commissioners of Lyon County, Kansas, known as "City/County," and N.R. Hamm Quarry, Inc., known as "Operator;" and cancel and replace a Second Modification and Amendment signed by the parties on July 17, 2008, and establish new terms for the Agreement, to have an effective date of January 1, 2021.

That whereas, the parties hereto entered into the aforesaid agreement on March 30, 2000, and now wish to modify and supplement the same; and

That whereas, the parties hereto entered into a first Modification and Addendum agreement in 2006 and the parties entered into a Second Modification and Addendum cancelling a replacing the Modification and Addendum agreement in 2006, and now the parties desire to cancel and replace said Second Modification and Addendum with this Third Modification and Addendum; and

That whereas, the parties desire to have an effective date of this Third Modification and Addendum to be January 1, 2021, thereby holding in place the provisions of the current Agreement between the parties until that date; and

Now, therefore, in consideration of the mutual covenants and conditions herein contained, it is agreed by the parties as followed:

1. Page 4, Section 12 of the original agreement shall be deleted in full, and substituted in its place and stead shall be the following, to be known as Section 12:

   "12. Duration. The term of the Agreement shall commence on January 1st, 2021 and run through December 31st, 2026 and shall continue thereafter under the same terms for a like period of time unless terminated as provided herein.

   (a) Termination by City County. That this Agreement may be terminated by the City/County by giving notice to the Contractor in writing as prescribed in this Agreement six months in advance of May 1st, 2025, or any anniversary year thereafter during the term of this agreement.

   (b) Termination by Contractor. That this Agreement may be terminated by the Contractor by giving notice to the City/County in writing as prescribed in this Agreement six months in advance of December 31st, 2026, or any anniversary year thereafter during the term of this agreement.

   (c) During the initial five-year term of this Agreement, should the City/County in any year fail to budget sufficient funds to meet the forthcoming year's indebtedness incurred by the City/County pursuant to the provisions of this Agreement then this agreement shall terminate on December 31. In the even the City/County anticipates such failure, it shall notify Contractor by July 1."

2. Page 3, Section 7 of the original agreement shall be deleted in full, and substituted in its place and stead shall be the following, to be known as Section 7:

"7. Payment and Billing. The Contractor shall be compensated on a monthly basis with payment in such amounts as they may be lawfully made.

Base Price. Effective January 1, 2021, Contractor shall be compensated at the rate of Thirty-two dollars and ninety seven cents ($32.97) per ton of MSW inclusive of all applicable taxes. Minimum annual tonnage is 22,000 tons. If actual tonnage is less than 22,000 tons, City/County shall be invoiced at a rate of Thirty two dollars and ninety seven cents ($32.97) per ton for the difference between the actual annual tonnage and the minimum annual tonnage. Monthly payments will be based on billings from the Contractor to be received by the City no later than the 1st of subsequent month with payment to be made by the 15th day of said month. The determination of actual annual tonnage shall be based on a calendar year ending December 31 with a proration for any subsequent calendar year thereafter during the term of this contract which is less than 12 months. Payment of any state tipping fees shall be the responsibility of the Contractor. No separate charge to City/County shall be made for such fees.

Compensation of Contractor shall be adjusted annually beginning on January 1, 2021, and annually for the duration of the agreement in proportion to the Consumer Price Index, items as defined by the U.S. Bureau of Labor and Statistics but shall not be less than the current applicable price. Compensation of Contractor maybe adjusted if Contractor's costs of performance under this agreement are increased as a result of any change in law or any change in insurance premiums which significantly affect the landfill operation or the solid waste industry.

Additionally, said base price shall be subject to the following:

a. If the on-highway diesel price, as published by the U.S. Dept of Energy, Energy Information Administration, is greater than $2.00 per gallon but less than $6.00 per gallon, then the following assumptions and formula for a monthly surcharge shall apply:

Base Diesel Fuel Price: $2.00 per gallon or 200 cents per gallon
Average Monthly Diesel Price: Average monthly diesel price per gallon for Midwest No 2 Diesel Retail Sales by All Sellers (Cents per Gallon) as posted from the Energy Information Administration of the U.S. Department of Energy.
Basis of Fuel Consumption: 5.5 miles per gallon.
Miles per round trip: 174

Thus:

$$\text{Monthly Fee: } = \frac{(\text{No. of trips})\text{x}(\text{Round trip miles})\text{x}(\text{Avg. monthly price - 200¢/gal.})}{5.5 \text{ miles /gal.}}$$

The fee will be calculated by Operator, beginning the month following the execution of this contract, and added to the monthly billing invoice. If the average diesel price exceeds $6.00 per gallon for a period of greater than 30 days, then Hamm has the right to notify the city of fuel pricing and potential solutions. Parties shall have the option of contract termination without penalties should negotiations prove unsuccessful.

2. The Second Modification and Addendum agreement entered into by the parties in 2008 is hereby expressly canceled."

In witness whereof, the parties have signed this Third Modification and Addendum, on the 3rd day of June 2020.

Operator:

N.R.Hamm Quarry, Inc.

By: _____
President

City/County:

Board of County Commissioners
Of City of Emporia/Lyon County, Kansas

By: _____
Chairman

City of Emporia, Kansas

_____
Danny Giefer, Mayor

Attest: _____
Kerry Sull, City Clerk

Attest: _____
, Secretary

Addendum to Recyclables Processing and Marketing Service Agreement

This Addendum to Recyclables Processing and Marketing Service Agreement is intended by the parties hereto to modify and supplement a certain agreement for Recyclables Processing and Marketing Service Agreement, dated June 1, 2015, ("the Agreement") entered into by and between the City of Emporia, Kansas ("City") and N.R. Hamm Quarry, LLC., ("Contractor").

That whereas, the parties hereto entered into the aforesaid agreement on June 1, 2015, and the term of the Agreement is five (5) years, ending on May 31, 2020, with two (2) three-year renewals by mutual agreement of the parties; and

That whereas, there exists significant uncertainty in the recyclables market due to significant global events and international policy changes, and the parties desire to extend the Agreement until December 31, 2020, thereby keeping the current contract in place, while the parties review and negotiate the terms under which the Recyclables Processing and Marketing Service Agreement can be renewed; and

Now, therefore, in consideration of the mutual covenants and conditions herein contained, it is agreed by the parties as followed:

1. Paragraph 2 of the Agreement shall be rewritten to state:

"2. <u>Term of Agreement</u>
The initial term of this contract shall be five (5) years and seven (7) months, commencing on June 1, 2015, *and ending on December 31, 2020*. The parties will work in good faith to establish renewal terms for the Agreement. This Agreement is coupled and associated with the current Hamm-Emporia waste transport and disposal agreement. Both parties agree to meet and resolve any contract issues should the annual single stream tonnage volume be less than 1300 tons in any contract year."

2. All remaining terms of the Agreement shall remain in place.

In witness whereof, the parties have signed this Third Modification and Addendum, on the 3rd Day of June 2020.

Operator:	City/County:
N.R.Hamm Quarry, Inc.	City of Emporia, Kansas
By: _____ President	By: _____ Danny Giefer, Mayor
	Attest: _____ Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: **June 3, 2020** **ITEM NUMBER: 5**

SUBJECT: Consider approval of an Agreement with KDOT for partial funding of Street Resurfacing Project No. PV2004 (KDOT Project No. 56 KA-5730-01) to the City of Emporia, KS.

RECOMMENDATION: It is staff's recommendation to approve the agreement (KDOT Agreement No. 152-20) with KDOT for Economic Development in an amount not to exceed $700,000.

BACKGROUND SUMMARY:

Engineering has applied for and been awarded a grant in an amount of up to $700,000 in Economic Development funds for roadway and drainage improvements around Industrial Park III. The project (PV2004) includes mill and overlay of the asphalt surface, subgrade improvements in some select areas, curb and gutter, valley gutter, and some storm sewer. The agreement provides 75% KDOT matching money to the City's 25% for all eligible expenses. Eligible expenses include actual costs of Preliminary Engineering, Construction, and Construction Engineering for the project. The 75/25 ratios will equal $525,000 KDOT to $175,000 City of Emporia money.

The project includes improvements to Emporia's collector streets & storm sewer system which connect Industrial Park III to US-50 Highway (Weaver Street, from BNSF RR to Logan Ave) and K-99 Highway (South Avenue, Weaver St to East St & Logan Avenue, Weaver St to Warren Way).

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

PROJECT NO. 56 KA-5730-01
CONSTRUCTION
CITY OF EMPORIA, KANSAS

AGREEMENT

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

RECITALS:

A. The City has requested and the Secretary has authorized a construction project, as further described in this Agreement.

B. Pursuant to the laws of Kansas, including K.S.A. 2013 Supp. 68-2314b, the Secretary is authorized to provide assistance to cities for roads and bridges not on the state highway systems, and is further authorized to provide transportation improvement assistance for transportation-sensitive economic opportunities on a local basis.

C. Cities may, under certain circumstances, enter into agreements with the Secretary for the financing and construction of local streets.

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

ARTICLE I

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

1. **"Agreement"** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.

2. **"City"** means City of Emporia, Kansas, with its principal place of business at 111 East 6th Avenue, Emporia, KS, 66801.

3. **"Construction"** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.

4. **"Construction Contingency Items"** means unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

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

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

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

8. **"Design Plans"** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.

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

10. **"Encroachment"** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.

11. **"FHWA"** means the Federal Highway Administration, a federal agency of the United States.

12. **"Hazardous Waste"** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 et seq., Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 et seq., Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 et seq., Hazardous Waste.

13. **"KDOT"** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 Southwest Harrison Street, Topeka, KS, 66603-3745.

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

15. **"Non-Participating Costs"** means the costs of any items or services which the Secretary, acting on his own behalf, reasonably determines are not Participating Costs.

16. **"Notice of Acceptance"** means a written notification from the Secretary that the Secretary has received certification from the City that the Project has been completed in compliance with the Project plans, specifications, and applicable standards and that the Secretary accepts the construction provided for and contemplated by the Agreement as completed in accordance with the requirements of this Agreement.

17. **"Participating Costs"** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.

18. **"Parties"** means the Secretary of Transportation and KDOT, individually and collectively, and the City.

19. **"Preliminary Engineering"** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.

20. **"Project"** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **resurfacing, an asphalt mill and overlay, with sub-grade curb and gutter improvements in spot locations on Weaver Street from US 50 to Logan Avenue, Logan Avenue from Warren Way to Weaver Street, and South Avenue from East Street to Weaver Street in Emporia, KS** and is the subject of this Agreement.

21. **"Project Limits"** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.

22. **"Responsible Bidder"** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services. The bidder must be eligible and listed on KDOT's prequalified list.

23. **"Right of Way"** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.

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

25. **"Simmons"** means Simmons Pet Food, Inc., with its principal place of business located at 316 North Hico, Siloam Springs, Arkansas 72761.

26. **"Utilities" or "Utility"** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar

commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

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

2. **Payment of Costs.** The Secretary agrees to reimburse the City for seventy-five percent (75%) of the total actual costs of Preliminary Engineering, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering, but not to exceed $525,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Construction (which includes the costs of all Construction Contingency Items, and Construction Engineering that exceed $700,000.00. The Secretary shall not be responsible for the total actual costs of Right of Way or Utility adjustments for the Project. When the final payment is processed it will be paid by the Secretary less a maximum $500.00 retainage. The $500.00 retainage will be released once the closeout documents have been received and reviewed by KDOT.

3. **Reimbursement Payments.** The Secretary agrees to make partial payments to the City for amounts not less than $1,000.00 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by the City that the Project is being constructed within substantial compliance of the Design Plans.

4. **Verification of Development is a Condition Precedent to Reimbursement.** The Secretary shall not reimburse the City until the Secretary receives verification from the City that development necessitating the Project is underway. Verification for the Project may consist of evidence of construction, such as a building permit, for the Simmon's facility. Failure to submit verification of development by December 31, 2020, shall result in the Secretary cancelling the Project.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Legal Authority.** The City agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

2. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.

3. **Letting and Administration by City.** The City shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Secretary. The City further agrees to administer the construction of the Project in accordance with the Design Plans, and the documents set forth in Article III, paragraph 4 below, and to administer the payments due the Contractor, including the portion of the cost borne by the Secretary.

4. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP) project memorandums, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions required by the Secretary or by the City with the Secretary's concurrence, A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Access Management Policy, the KDOT Access Management Construction Project Guidelines, and the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), as applicable.

5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 4 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

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

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

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

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

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

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

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

9. **Plan Retention.** The City will maintain a complete set of final Design Plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all the above-mentioned documents to the Secretary.

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

11. **Indemnification by Contractors.** The City agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property

damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

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

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

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

(b) Right of Way Documentation. The City will provide all legal descriptions required for Right of Way acquisition work. Right of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

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

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

(e) Trails and Sidewalks on Right of Way. Intentionally deleted.

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

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

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

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

(b) Status of Utilities. The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the

remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

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

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

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

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

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

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

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

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek

indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project limits.

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

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

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

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

19. **Corrective Work.** Representatives of the Secretary may make periodic inspections of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of state participation. The Secretary does not undertake (for the benefit of the City, the Contractor, the Consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the Contractor's errors, omissions or deviations from the final Design Plans.

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

(a) Temporary Traffic Control. The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the MUTCD, as adopted by the

Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the City's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the City of the determinations made pursuant to this section.

(b) Permanent Traffic Control. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8 2003, and any amendments thereto are incorporated by reference.

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

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

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

22. **Economic Development Determination.** The City shall quantify the impact of the Project on economic development and submit to the Secretary information detailing the number of jobs created, average salary, and other economic benefits generated due to economic development activities associated with the Project. This information shall be submitted within one year of Notice of Acceptance of the Project.

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

24. **Financial Obligation.** The City will be responsible for twenty-five percent (25%) of the total actual costs of Preliminary Engineering, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering up to $700,000.00 for the Project. The City will be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering that exceed $700,000.00 for the Project. Further, the City agrees to be

responsible for one hundred percent (100%) of the total actual costs of Right of Way and Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project.

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

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

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

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

ARTICLE IV

GENERAL PROVISIONS:

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

2. **Compliance with Federal and State Laws.** The City agrees to comply with all appropriate state and federal laws and regulations applicable to the Project.

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

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

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

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

7. **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.

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

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

ATTEST: CITY OF EMPORIA, KANSAS

_____ _____

CITY CLERK (Date) Danny Giefer, Mayor

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

BY: _____

Burt Morey, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

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.

KANSAS DEPARTMENT OF TRANSPORTATION

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

PREAMBLE

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

CLARIFICATION

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

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, 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.

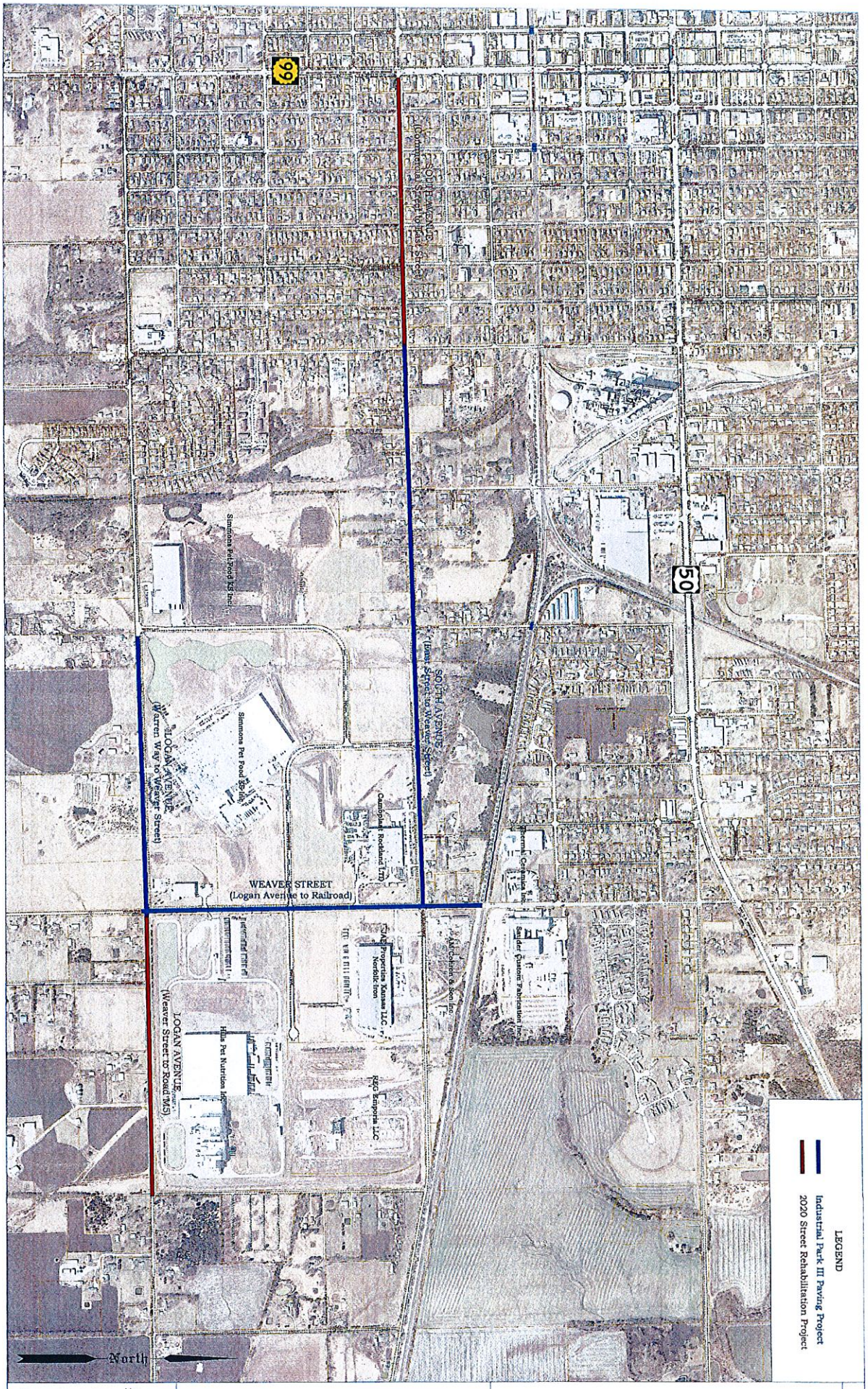
6. **Incorporation of Provisions**: The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take 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. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)



EMPORIA
Engineering Department

INDUSTRIAL PARK 3

STREET RESURFACING
2020 STREET REHABILITATION

SCALE
no scale

AGENDA ITEM SUMMARY

MEETING DATE: **June 3, 2020** **ITEM NUMBER: 6**

SUBJECT: Approve Ordinance and Request to Annex a Parcel of land West of 4700 W. Hwy 50 into the City of Emporia for City utilities.

BACKGROUND SUMMARY:
Dan Smoots is seeking the annexation of a parcel of land to expand the Fanestil Meats processing plant. The Planning Commission approved this request based on staff's recommendation. This annexation is contiguous with the current City of Emporia city limits.

All utilities and easements are in place at this location, and there were no objections from the Technical Review Team or Utility Advisory Board that would interfere with this application. Building plans and drainage concerns are still being finalized.

The Planning Commission unanimously recommended approval of the request on May 20, 2020. There were no objections from neighboring property owners or the general public.

RECOMMENDATION:
Seeking approval as a natural extension of the city limits.

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

ATTACHMENTS:

Planning Commission Minutes Excerpt, Map, Site Plan

The Planning Commission met in a regular session on Tuesday, May 19, 2020 with Chairman Thomas presiding. Members Bucklinger, Duncan, Garrett, Just, Sauder and Williams were present. Members Springeman and Moore were absent. (This meeting was held via Zoom and on Facebook Live, due to the restrictions in place because of Covid19.)

APPLICATION 2020-04: A request of Dan Smoots to annex approximately five-acres of property located at to the west of 4700 W. Hwy 50 into the City of Emporia to connect to city utilities.

Staff confirmed jurisdiction over this application.

No exparte communication was declared.

ACTION RECORD

Action:_____

_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

AGENDA ITEM SUMMARY

STAFF REPORT:

Applicants: Dan Smoots
Requested Action: Annexation
Purpose: To bring these locations into the city
Common Addresses: No dedicated address
Existing Zoning: Restricted Commercial
Existing Land Use: Open land, one parcel has a residential house that will be demolished.
Comprehensive Plan: Industrial Flex
Public Utilities: Present at this location

Analysis: The applicant would like to annex this property in order to expand the existing building. This annexation is contiguous with the city limit line to the east.

The proposed use is consistent with the comprehensive plan. The Utility Advisory Board met May 13, 2020 and discussed the rezoning and annexation request, easements are available and in place to meet current and future needs. The Technical Review Team met May 7, 2020 and discussed the property and applications. There were no concerns noted that would prevent this request. Other departments continue to work on details of this project, related to drainage, and building plans.

RECOMMENDATION: Approve as a normal extension of the community.

PUBLIC HEARING:

The applicant was not present at the meeting.

Member Bucklinger asked if there had been any comments or contact made from surrounding property owners regarding the applications. Mr. Foster replied, his office had not received any comments, feedback or opposition for the applications. He explained the notice for the meeting was published in the paper and letters were sent out to surrounding property owners, per State Statute.

With no further discussion, the Public Hearing was opened.

The applicant had accepted the invitation to the Zoom meeting but did not show present.

Mr. Foster explained, the published legal notice and the mailed notices did contain information that this meeting would be held via Zoom and they could contact him in order to find out how to join the meeting directly, to keep in accordance with the open meeting act. Comments could also have been made directly to him via email or mail.

There were no comments in favor of the applications or against the applications.

The Public Hearing was closed.

Member Sauder moved to approve Application 2020-04, to annex approximately five-acres of property located to the west of 4700 W. Hwy 50 into the City of Emporia based upon Staff's recommendation. Member Williams seconded.

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

Member Just asked if it uncommon for applicants to not show up to the hearings. Member Thomas replied, it's uncommon but it has happened before. Mr. Foster did acknowledge it is recommended for the applicant or someone who represents the applicant to show up for the hearing but with the unusual circumstances there could have been problems with communication.

With no further comments, members voiced their vote. Member Bucklinger – Aye, Member Sauder – Aye, Member Thomas – Aye, Member Williams – Aye, Member Duncan – Aye, Member Just – Aye, Member Garrett – Aye. The motion was approved 7-0.

Member Bucklinger asked if owners of the surrounding properties we notified of the request for the zoning change. Mr. Foster replied that he had sent notification of the hearing and the request.

Member Sauder moved to approve Application 2020-05, to rezone an approximately five-acre portion of the parcel located to the west of 4700 W. Hwy 50 from C-2, Restricted Commercial to I-1, Light Industrial, based upon Staff's recommendation. Member Just seconded. Members voiced their vote. Member Bucklinger – Aye, Member Sauder – Aye, Member Thomas – Aye, Member Williams – Aye, Member Duncan – Aye, Member Just – Aye, Member Garrett – Aye. The motion was approved 7-0.

MOTION: Member Sauder made a motion to approve based on the staff recommendation. Member Williams seconded the motion.

The application was approved 7-0.

LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 19 SOUTH, RANGE 10 EAST OF THE 6th P.M., LYON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 12; THENCE ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 12 S. 89°05'28" E. 1367.36 FEET; THENCE PERPENDICULAR TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 12 N. 00°54'32" E. 103.42 FEET TO THE POINT OF BEGINNING, BEING ON THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 50 AS DESCRIBED IN TRACT 1 OF CASE NO. 25582 IN THE DISTRICT COURT OF LYON COUNTY, KANSAS, ALSO BEING THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO THE CITY OF EMPORIA, KANSAS, AS DESCRIBED ON DOCUMENT NO. 2015-04360; THENCE ALONG THE WEST LINE OF SAID CITY OF EMPORIA TRACT N. 00°32'25" E. 945.70 FEET; THENCE N. 89°05'08" W. 263.30 FEET; THENCE S. 00°32'25" W. 948.94 FEET TO THE NORTH RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 50; THENCE ALONG THE NORTH RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 50 S. 89°47'27" E. (HIGHWAY 50 TRACT: S. 89°03' E.) 263.30 FEET TO THE POINT OF BEGINNING, CONTAINING 5.73 ACRES

ACTION RECORD

Action:_____

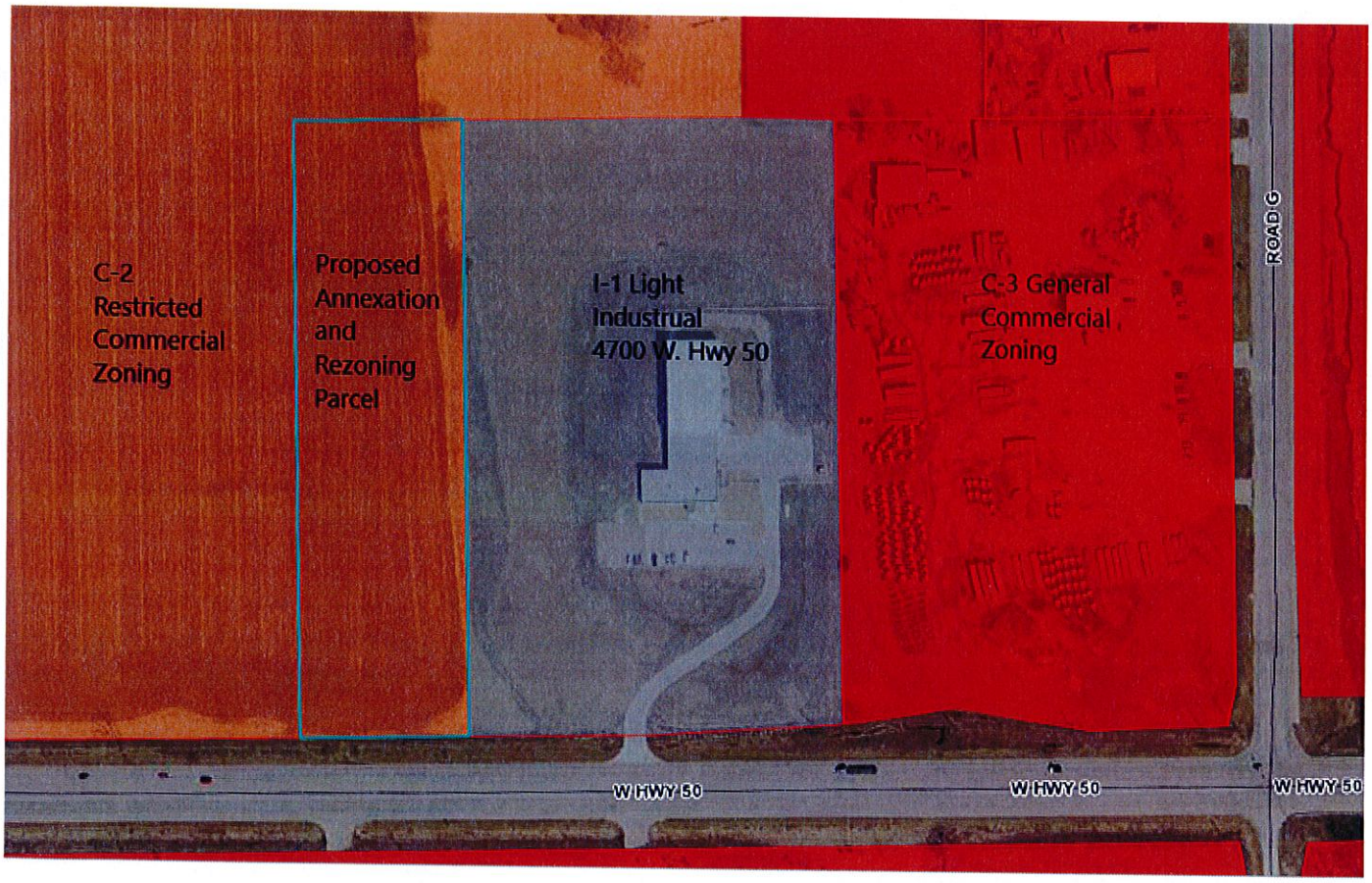
Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

AERIAL/ZONING MAP:

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



ACTION RECORD

Action:_____

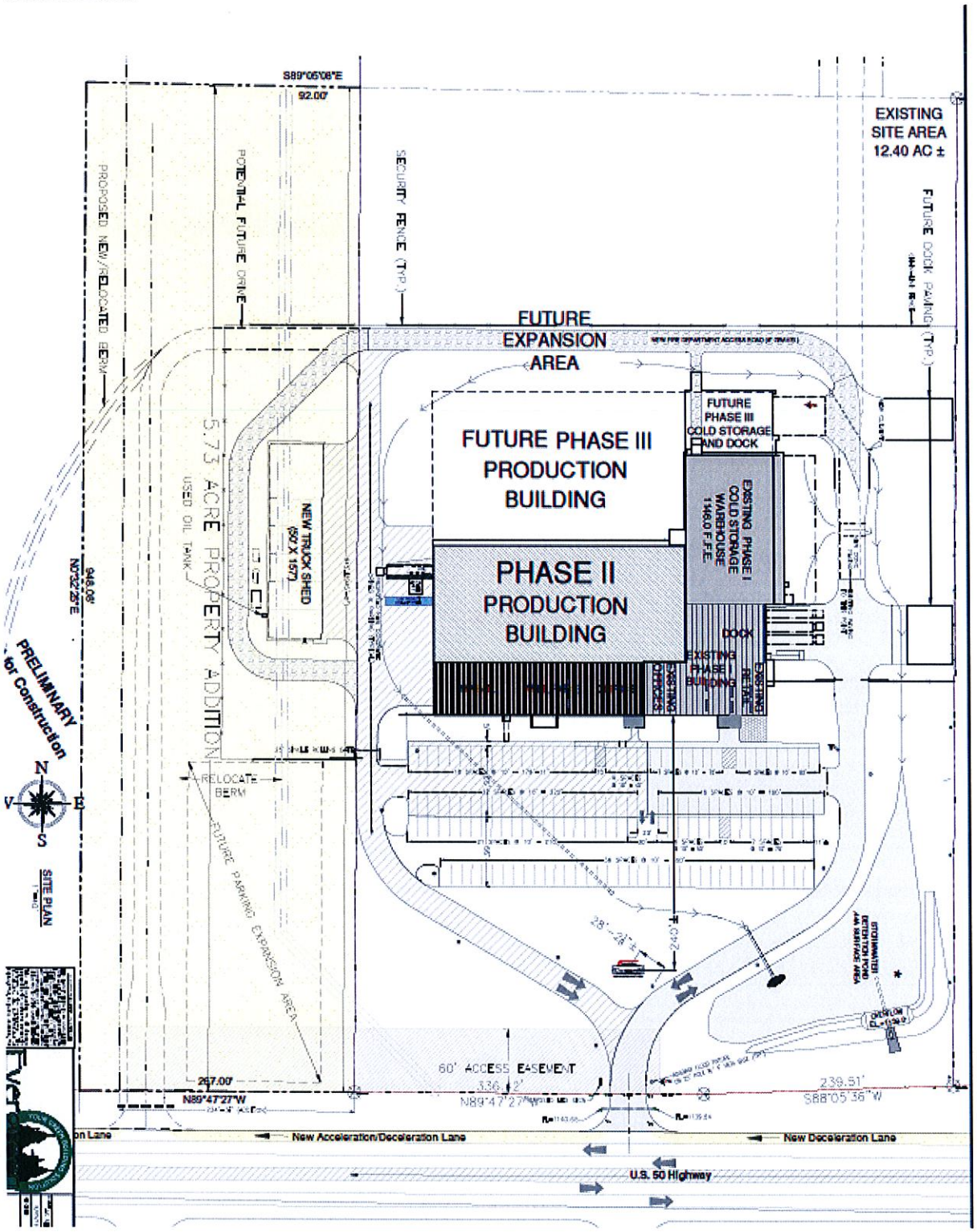
Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

AGENDA ITEM SUMMARY

SITE PLAN:



ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

ORDINANCE NO._____

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF EMPORIA, KANSAS TO INCLUDE CERTAIN DESCRIBED LAND.

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

Section 1. The boundary of the City of Emporia, Kansas is hereby extended to include the following described land and such land is hereby annexed into the City of Emporia, Kansas:

LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 19 SOUTH, RANGE 10 EAST OF THE 6th P.M., LYON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 12; THENCE ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 12 S. 89°05'28" E. 1367.36 FEET; THENCE PERPENDICULAR TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 12 N. 00°54'32" E. 103.42 FEET TO THE POINT OF BEGINNING, BEING ON THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 50 AS DESCRIBED IN TRACT 1 OF CASE NO. 25582 IN THE DISTRICT COURT OF LYON COUNTY, KANSAS, ALSO BEING THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO THE CITY OF EMPORIA, KANSAS, AS DESCRIBED ON DOCUMENT NO. 2015-04360; THENCE ALONG THE WEST LINE OF SAID CITY OF EMPORIA TRACT N. 00°32'25" E. 945.70 FEET; THENCE N. 89°05'08" W. 263.30 FEET; THENCE S. 00°32'25" W. 948.94 FEET TO THE NORTH RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 50; THENCE ALONG THE NORTH RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 50 S. 89°47'27" E. (HIGHWAY 50 TRACT: S. 89°03' E.) 263.30 FEET TO THE POINT OF BEGINNING, CONTAINING 5.73 ACRES

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

PASSED AND APPROVED this 3rd day of June 2020.

_____
DANNY GIEFER, Mayor

ATTEST:

_____
KERRY SULL, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: **June 3, 2020** **ITEM NUMBER: 7**

SUBJECT: Approve Ordinance and Request to Rezone of a Parcel of land West of 4700 W. Hwy 50 from C-2, Restricted Commercial Zoning to I-1, Light Industrial for Potential Development.

BACKGROUND SUMMARY

The applicant is requesting a rezoning of an approximately five-acres parcel west of the existing processing plant. The current zoning is C-2, Restricted Commercial and the applicant is requesting I-1, Light Industrial. The applicant desires to develop this area to expand a meat processing plant.

There was a Technical Review Team Meeting and Utility Advisory Board in early May 2020. No concerns were noted would prevent this rezoning request from moving forward. Proposed easements and utilities are in place. Building plans and drainage concerns are still being finalized.

The proposed use is similar to neighboring properties and the comprehensive plan. The Planning Commission recommended approval of the rezoning application 7-0. **There were no objections from the public for this request.**

RECOMMENDATION: Seeking approval of the applications for future development.

ACTION:

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

ATTACHMENTS:

Planning Commission Minutes Excerpt, Map, Site Plan

The Planning Commission met in a regular session on Tuesday, May 19, 2020, with Chairman Thomas presiding. Members Bucklinger, Duncan, Garrett, Just, Sauder and Williams were present. Members Springeman and Moore were absent.

APPLICATION 2020-05: A request of Dan Smoots to rezone an approximately five-acre portion of the parcel located to the west of 4700 W. Hwy 50 from C-2, Restricted Commercial to I-1, Light Industrial for potential development as authorized under Article 26-1 of the Zoning Regulations.

Staff confirmed jurisdiction over this application.

No exparte communication was declared.

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

AGENDA ITEM SUMMARY

STAFF REPORT:

Applicants: Dan Smoots
Requested Action: Rezoning
Purpose: To expand the existing processing plant
Common Addresses: No dedicated address
Existing Zoning: Restricted Commercial
Existing Land Use: Open land, one parcel has a residential house that will be demolished.
Comprehensive Plan: Industrial Flex
Public Utilities: Present at this location

ANALYSIS: The applicant would like to rezone this property in order to expand the existing building and operations. The proposed use is consistent with the comprehensive plan. The Utility Advisory Board met May 13, 2020 and discussed the rezoning and annexation request, easements are available and in place to meet current and future needs. The Technical Review Team met May 7, 2020 and discussed the property and applications. There were no concerns noted that would prevent this request. Other departments continue to work on details of this project, related to drainage, and building plans.

APPLICABLE REGULATION:
Section 26-108.
Factors to be Considered in a Rezoning: When a proposed amendment would result in a change of the zoning classification of any specific property, the recommendation of the Planning Commission, accompanied by a copy of the record of the hearing, shall contain statements as to the present classification, the classification under the proposed amendment, the reasons for seeking such reclassification, a summary of the facts presented, and a statement of the factors upon which the recommendation of the Planning Commission is based using the following guidelines:

1. Whether the change in classification would be consistent with the intent and purpose of these regulations;
2. The character and condition of the surrounding neighborhood and its effect on the proposed change;
3. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions;
4. The current zoning and uses of nearby properties and the effect on existing nearby land uses upon such a change in classification;
5. Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity;
6. The suitability of the applicant's property for the uses to which it has been restricted;
7. The length of time the subject property has remained vacant or undeveloped as zoned; provided, the use of land for agricultural purposes shall be considered as allowing the land to be vacant or undeveloped;
8. Whether adequate sewer and water facilities and all other needed public services, including transportation, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified;
9. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development;
10. The recommendations of professional staff;

ACTION RECORD

Action:_____

Motion: _____ Second: _____
Abstained: _____ Vote: _____
GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

11. Whether the proposed amendment would be in conformance to and further enhance the implementation of the City's Comprehensive Plan;
12. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification; and,
13. Such other factors as may be relevant from the facts and evidence presented in the application.

RECOMMENDATION: Staff recommends approval of the rezoning request as it is consistent with the ELC Comprehensive Plan.

PUBLIC HEARING:
The applicant was not present at the meeting.

Member Bucklinger asked if there had been any comments or contact made from surrounding property owners regarding the applications. Mr. Foster replied, his office had not received any comments, feedback or opposition for the applications. He explained the notice for the meeting was published in the paper and letters were sent out to surrounding property owners, per State Statute.

With no further discussion, the Public Hearing was opened.

Staff noted that the applicant had accepted the invitation to the Zoom meeting but was not present during the meeting.

Mr. Foster explained, the published legal notice and the mailed notices did contain information that this meeting would be held via Zoom and they could contact him in order to find out how to join the meeting directly, to keep in accordance with the open meeting act. Comments could also have been made directly to him via email or mail.

There were no comments in favor of the applications or against the applications.

The Public Hearing was closed.

Member Sauder moved to approve Application 2020-04, to annex approximately five-acres of property located to the west of 4700 W. Hwy 50 into the City of Emporia based upon Staff's recommendation. Member Williams seconded.

Member Just asked if it uncommon for applicants to not show up to the hearings. Member Thomas replied, it's uncommon but it has happened before. Mr. Foster did acknowledge it is recommended for the applicant or someone who represents the applicant to show up for the hearing but with the unusual circumstances there could have been problems with communication.

With no further comments, members voiced their vote. Member Bucklinger – Aye, Member Sauder – Aye, Member Thomas – Aye, Member Williams – Aye, Member Duncan – Aye, Member Just – Aye, Member Garrett – Aye. The motion was approved 7-0.

Member Bucklinger asked if owners of the surrounding properties we notified of the request for the zoning change. Mr. Foster replied that he had sent notification of the hearing and the request.

ACTION RECORD

Action:_____

_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

AGENDA ITEM SUMMARY

Member Sauder moved to approve Application 2020-05, to rezone an approximately 5-acre portion of the parcel located to the west of 4700 W. Hwy 50 from C-2, Restricted Commercial to I-1, Light Industrial, based upon Staff's recommendation. Member Just seconded. Members voiced their vote. Member Bucklinger – Aye, Member Sauder – Aye, Member Thomas – Aye, Member Williams – Aye, Member Duncan – Aye, Member Just – Aye, Member Garrett – Aye. The motion was approved 7-0.

MOTION: Member Sauder made a motion to approve based on the staff recommendation. Member Williams seconded the motion.

The application was approved 7-0.

LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 19 SOUTH, RANGE 10 EAST OF THE 6th P.M., LYON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 12; THENCE ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 12 S. 89°05'28" E. 1367.36 FEET; THENCE PERPENDICULAR TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 12 N. 00°54'32" E. 103.42 FEET TO THE POINT OF BEGINNING, BEING ON THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 50 AS DESCRIBED IN TRACT 1 OF CASE NO. 25582 IN THE DISTRICT COURT OF LYON COUNTY, KANSAS, ALSO BEING THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO THE CITY OF EMPORIA, KANSAS, AS DESCRIBED ON DOCUMENT NO. 2015-04360; THENCE ALONG THE WEST LINE OF SAID CITY OF EMPORIA TRACT N. 00°32'25" E. 945.70 FEET; THENCE N. 89°05'08" W. 263.30 FEET; THENCE S. 00°32'25" W. 948.94 FEET TO THE NORTH RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 50; THENCE ALONG THE NORTH RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 50 S. 89°47'27" E. (HIGHWAY 50 TRACT: S. 89°03' E.) 263.30 FEET TO THE POINT OF BEGINNING, CONTAINING 5.73 ACRES

ACTION RECORD

Action:_____

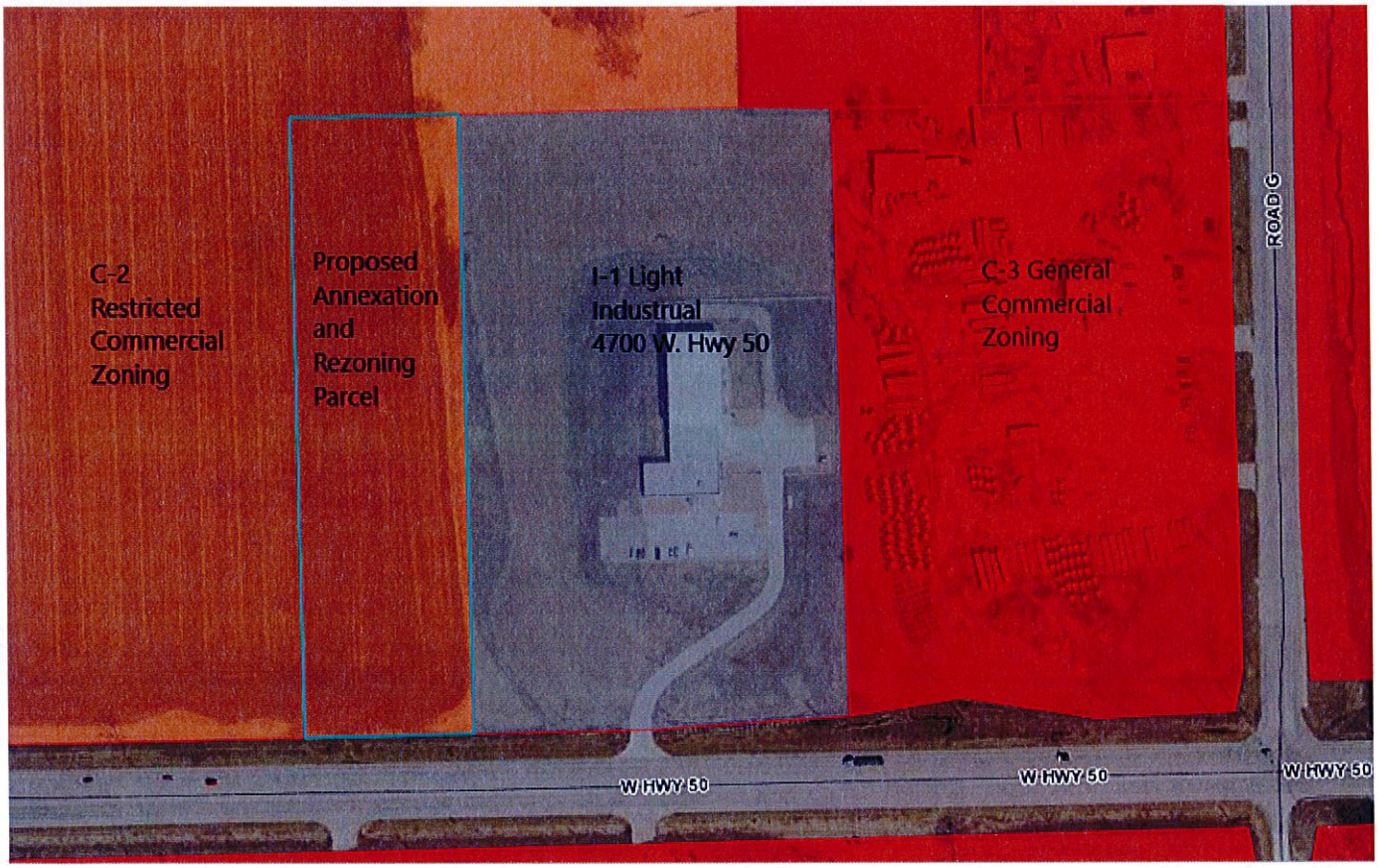
Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

AERIAL/ZONING MAP:

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



ACTION RECORD

Action:_____

_____

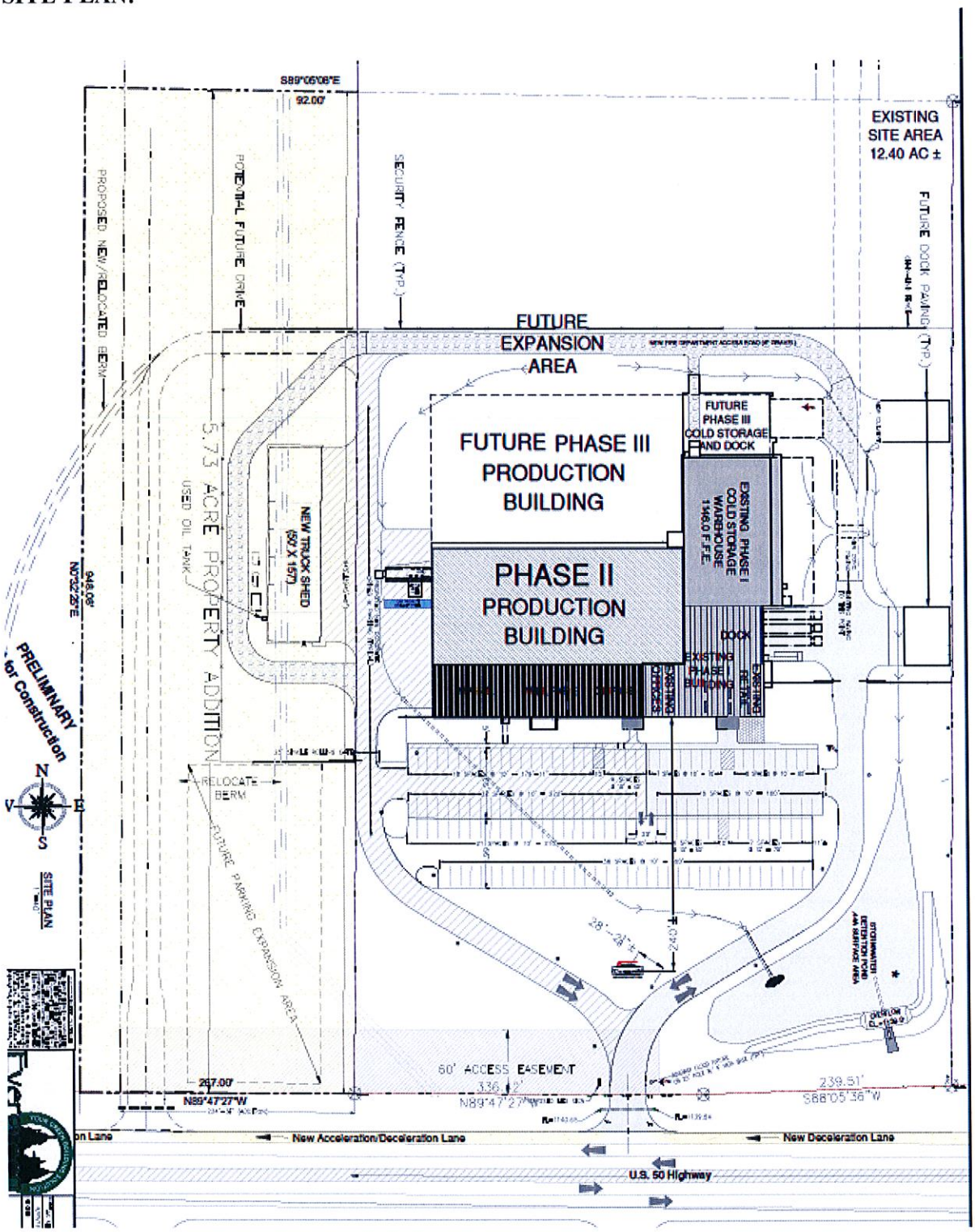
Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

AGENDA ITEM SUMMARY

SITE PLAN:



ACTION RECORD

Action: _____

_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

ORDINANCE NO._____

AN ORDINANCE REZONING A PROPERTY IN THE CITY OF EMPORIA, KANSAS FROM C-2 RESTRICTED COMMERCIAL ZONING, TO I-1, LIGHT INDUSTRIAL ZONING AND AMENDING THE DISTRICT ZONING MAP TO CONFORM WITH SAID ZONING

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

Section 1. The following described a portion of a property is hereby rezoned from C-2 Restricted Commercial Zoning to that of I-1, Light Industrial Zoning to wit:

LEGAL DISCRIPTION:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 19 SOUTH, RANGE 10 EAST OF THE 6th P.M., LYON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 12; THENCE ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 12 S. 89°05'28" E. 1367.36 FEET; THENCE PERPENDICULAR TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 12 N. 00°54'32" E. 103.42 FEET TO THE POINT OF BEGINNING, BEING ON THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 50 AS DESCRIBED IN TRACT 1 OF CASE NO. 25582 IN THE DISTRICT COURT OF LYON COUNTY, KANSAS, ALSO BEING THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO THE CITY OF EMPORIA, KANSAS, AS DESCRIBED ON DOCUMENT NO. 2015-04360; THENCE ALONG THE WEST LINE OF SAID CITY OF EMPORIA TRACT N. 00°32'25" E. 945.70 FEET; THENCE N. 89°05'08" W. 263.30 FEET; THENCE S. 00°32'25" W. 948.94 FEET TO THE NORTH RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 50; THENCE ALONG THE NORTH RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 50 S. 89°47'27" E. (HIGHWAY 50 TRACT: S. 89°03' E.) 263.30 FEET TO THE POINT OF BEGINNING, CONTAINING 5.73 ACRES

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

PASSED AND APPROVED this 3rd day of June 2020.

_____
DANNY GIEFER, Mayor

ATTEST:

_____
KERRY SULL, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: June 3, 2020 **ITEM NUMBER: 8**

SUBJECT: Consider Approval of Ordinance Authorizing City to match KDHE requirements for Water Fluoridation.

RECOMMENDATION: Staff recommends the adoption of the Ordinance.

BACKGROUND SUMMARY:

Staff would like the commission to consider changing wording of the water plant Fluoridation section of the ordinance. This will allow the plant staff to change the amount of fluoride injected into the drinking water when recommendation and limits are changed without having to change the ordinance each time.

Attachments: Ordinance for Fluoridation Water

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 28-27 OF THE CODE OF THE CITY OF EMPORIA, KANSAS PERTAINING TO FLOURIDATION OF WATER SUPPLY AND REPEALING SAID SECTION AS IT EXISTED PRIOR TO THE ADOPTION OF THIS ORDINANCE.

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

Section 1. That Section 28-27 of the Code of the City of Emporia, Kansas is hereby amended to read as follows:

"Sec. 28-27. Fluoridation Of Water Supply:

Upon receiving the consent and approval of the state board of health and until further direction of the governing body, the city is hereby authorized and directed to provide the means and to proceed with the introduction of sufficient fluoride to raise the total fluoride concentration in the finished water to a parts per million that shall not exceed the limit recommended by the United States Public Health Service (USHPS), nor the limit set by the United States Environmental Protection Agency (USEPA) or the Kansas Department of Health and Environment (KDHE), if the limit from KDHE is lower than that of the USPHS or the USEPA, in the water being distributed from the city water treatment facility. (1962 Code § 23-301; Ord. 20-___ § 1, 7-3-2020)"

Section 2. That Section 28-27 of the Code of the City of Emporia, Kansas as it existed prior to the adoption of this ordinance is hereby repealed.

Section 3. This ordinance shall take effect upon its publication in the official City newspaper.

Section 4. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, KS as an amendment thereto and shall be appropriately numbered to conform to the uniform numbering system of the Code.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 3rd day of June 2020.

_____
Danny Giefer, Mayor

ATTEST:

_____
Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: June 3, 2020 **ITEM NUMBER: 9**

SUBJECT: Consider Approval of Ordinance Authorizing City to Utilize AWWA Standard Polyethylene Tubing.

RECOMMENDATION: Staff recommends the adoption of the Ordinance.

BACKGROUND SUMMARY:

Staff would like the commission to adopt an updated ordinance for the Service Pipes section of the city's ordinance. This ordinance applies to the portion of line from the water main to the city's side of the meter. The changes to the ordinance will allow for the use of polyethylene tubing, which will allow for the use of another material for service lines.

Attachments: Ordinance for Polyethylene Tubing

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 28-23 OF THE CODE OF THE CITY OF EMPORIA, KANSAS PERTAINING TO SERVICE PIPES AND REPEALING SAID SECTION AS IT EXISTED PRIOR TO THE ADOPTION OF THIS ORDINANCE.

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

Section 1. That Section 28-23 of the Code of the City of Emporia, Kansas is hereby amended to read as follows:

"Sec. 28-23. Service Pipes:

(a) On streets where paving is ordered, all existing water service pipes of materials other than type "K" copper, polyethylene tubing (AWWA Standard C901-17) or brass piping shall be replaced at the expense of the property owner. When service pipes are run for future use only, the end of the pipe must be securely attached to the tap, plugged at the curb cock and secured inside of a properly installed meter pit/box. service box.

(b) All new connections, including those installed for future use, and all repairs to existing connections from the city water main to the water meter shall be type "K" copper, polyethylene tubing (AWWA Standard C901-17) or brass pipe not less than one (1") inch in internal diameter and up to two (2) inches in diameter. A curb cock shall be installed in the meter pit/box on the main side of the meter for services up to two inches (2") in size. Larger services shall have piping and a shutoff valve installed which meets the specifications of the American Water Works Association and is approved by the director of public works. (1962 Code § 23-107; Ord. 87-31, § 1, 10-7-1987; Ord. 20-___ § 1, 7-3-2020)"

Section 2. That Section 28-23 of the Code of the City of Emporia, Kansas as it existed prior to the adoption of this ordinance is hereby repealed.

Section 3. This ordinance shall take effect upon its publication in the official City newspaper.

Section 4. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, KS as an amendment thereto and shall be appropriately numbered to conform to the uniform numbering system of the Code.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 3rd day of June 2020.

_____
Danny Giefer, Mayor

ATTEST:

_____
Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: **June 3, 2020** **ITEM NUMBER: 10**

SUBJECT: Consider accepting a grant from the United States Department of Agriculture (USDA) in the amount of $83,200.00 and authorizing the City Manager to sign the appropriate documents.

RECOMMENDATION: Accept the grant in the amount of $83,200.00 from the United State Department of Agriculture (USDA) and authorize the City Manager to sign the appropriate documents.

BACKGROUND SUMMARY:
Emporia Main Street has worked for several months on identifying potential funding sources to equip the Fab Lab at their facility located at 727 Commercial. Emporia Main Street and the United States Department of Agriculture (USDA) have worked collaboratively on a grant from the USDA Rural Business-Cooperative Service (RBS) program which will award Emporia Main Street a grant in the amount of $83,200.00. Emporia Main Street will provide the local matching funds in the amount of $30,000.00. The City of Emporia will serve as a conduit for the grant and will be responsible for the successful administration of the grant. City staff has been working with a representative from the USDA for the last 30 days on this project the official grant start date is April 24, 2020.

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

April 24, 2020

City of Emporia
Attn: Mark McAnarney
522 Mechanic St
Emporia, KS 66801

SUBJECT: Letter of Conditions
Rural Business Development Grant
City of Emporia
Grant Amount: $83,200

Dear Mr. McAnarney,

Rural Business-Cooperative Service (RBS) hereby establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. Any changes in project cost, sources of funds, scope of services, and/or any other significant changes in the project or applicant must be reported to and approved by RBS by written amendment to this letter. Any changes not approved by RBS shall be cause to discontinue processing of the application.

This letter is not to be considered as grant approval or as a representation as to the availability of funds. The docket may be completed on the basis of a grant not to exceed $83,200.

The grant will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," and Form RD 4280-2, "Rural Business-Cooperative Service Financial Assistance Agreement," is mailed to you.

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application. BY SIGNING FORM RD 1942-46, "LETTER OF INTENT TO MEET CONDITIONS," YOU ARE HEREBY AGREEING AND ACKNOWLEDGING THAT THIS RURAL BUSINESS DEVELOPMENT GRANT IS A NON-CONTINUING, NON-RENEWABLE GRANT AND ANY APPROVAL OF THIS GRANT IN NO WAY CONSTITUTES AN ASSURANCE THAT FUTURE GRANTS WILL BE AVAILABLE.

If the conditions set forth in this letter, except those to be met at grant closing, are not met within 60 days from the date hereof, Rural Business-Cooperative Service reserves the right to discontinue the processing of the application. This is not appealable.

Grantees expecting funds from other sources for use in completing projects partially financed with RBS funds will present evidence of commitment of funds from other sources. This evidence will be made available before grant closing. The funds provided by the applicant or other sources must be spent proportionally, and if leveraged funds are not utilized proportionally with the grant, the Agency reserves the right to take legal action, including terminating the grant.

The funding period of this grant will begin on the date the grant has been obligated. The projected time frame for completion of this project is 1 year from the signed grant agreement.

USDA is an equal opportunity provider, employer, and lender.

If you wish to file a program discrimination compliant, complete the USDA Program Discrimination Complaint Form, AD 3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your your completed complaint form or letter to U.S. Department of Agriculture, Office of the Assistant Secretary for Civil, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

FEDERAL INTEGRITY ACT

To assure the high standards of honesty, integrity, and impartiality maintained by Agency employees, we need to identify any Agency assistance to be provided to Agency employees, their relatives, or their business or close personal associates. This includes grants to organizations. If you know of any relationship or association you may have with an Agency employee, please provide this information.

1. REQUIREMENT FOR SYSTEM FOR AWARD MANAGEMENT (SAM)

This grant is further conditioned upon your providing the Agency with evidence of your Dun and Bradstreet Data Universal Numbering System (DUNS) number and evidence that you are registered in the System for Award Management (SAM). Your organization is actively registered with an expiration date of 12/10/2020. Please ensure that this account is kept current.

You as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award and all grant funds under this award have been disbursed or de-obligated, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

2. USE OF FUNDS

The proposed grant funds will be used to purchase equipment and furnish a fabrication laboratory. The Project will support the development of small and emerging private business enterprises in rural areas in accordance with the application package as submitted for an enterprise grant project.

Any changes in the proposed use of funds must be submitted in writing to USDA Rural Development and receive prior written approval.

3. APPLICANT CONTRIBUTION

The Grantee along with private support agrees to provide $30,000 in matching funds to be applied to the project. The matching funds will be applied to the project at the same time grant funds are applied on a prorated basis as follows: 26.50% matching funds and 73.50% grant funds. Prior to any release of grant funds, the Grantee will provide documentation sufficient to USDA Rural Development that matching funds have been expended on the approved project.

4. SCOPE OF WORK

Grantee will administer the grant in accordance with the approved Scope of Work. USDA Rural Development comments and required changes, if any, in the Grantee's Scope of Work will be provided by the Grantee.

If the Scope of Work indicates the Grantee will sub-contract for the grant assistance to be provided. The Grantee agrees to not turn the responsibility of the grant project over to the contracting party and will oversee and control the project through completion.

Any changes in the Scope of Work, must be approved in writing by USDA. Should project not be completed by the date indicated in the Scope of Work, Grantee must request in writing, to USDA, and receive approval, for an extension of time to complete the project.

Rural Development may, at its discretion (non-appealable) and under certain conditions, consider a one-time extension of the expiration date of the award of up to 12 months. Grantee must notify Rural Development in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date of the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Please refer to 2 CFR 200.308 for additional requirements.

5. GRANTEE INSURANCE AND BONDING

Grantee must maintain sufficient hazard insurance, workman's compensation insurance and liability insurance, as recommended by Grantee's attorney, to protect the interests of the Grantee and the government. Grantee shall provide satisfactory evidence to USDA Rural Development that all officers of Grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the Grantee and approved by USDA.

6. DISBURSEMENT OF GRANT FUNDS

Grant funds will be disbursed by USDA Rural Development on a **reimbursement** basis not to exceed one reimbursement every 30 days. An original and one copy of Standard Form (SF) 270, "Request for Advance or Reimbursement," will be submitted to USDA Rural Development. The financial management system of the recipient organization shall provide for effective control over and accountability for all funds, property, and other assets.

Grant funds will not be disbursed until all provisions of any phased environmental review process are complete in accordance with USDA Rural Development regulations.

Grant funds will be transferred to the Grantee via Electronic Funds Transfer (EFT). The Grantee will complete and deliver to USDA Rural Development, Form SF-3881, Electronic Funds Transfer Payment Enrollment Form.

It is the intent of the Grantee that all grant funds will be disbursed within one year from the date of this letter or in accordance with the Grantee's approved Scope of Work. In accordance with RD Instruction 4280-E, 4280.451 (b), "any funds not disbursed within 42 months from the date of obligation will be automatically deobligated." This is non-appealable. Copies of paid invoices, receipts, cancelled checks etc., will be required as supporting documentation for the reimbursement.

7. RURAL AREA

You must certify that the Project is located in a rural area as defined by RD Instruction 4280-E and 7.U.S.C. 1991 (a) (13) (a) and (d) et seq., and you must certify that the activities provided under this grant will be benefiting a rural area.
(Written certification from grantee must be in file – Certification of Rural Area is attached)

8. CONFLICT OF INTEREST

Grantee will ceritfy that no conflict of interest exists as outlined in RD Instruction 4280-E, 4280.406

9. DEBARMENT

You must execute Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions," to certify that your organization is not debarred or suspended from Government assistance. You also must obtain a certification on Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," from any person or entity you do business with as a result of this Government assistance that they are not debarred or suspended from Government assistance.

10. DRUG-FREE WORKPLACE

You must execute Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I - For Grantees Other Than Individuals," to certify that you will provide a drug-free awareness program for employees.

11. EQUAL OPPORTUNITY AND NONDISCRIMINATION REQUIREMENTS

The Grantee will comply with Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs, "42 U.S.C. 2000d, Section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, the Age Discrimination Act of 1975 and the Americans with Disabilities Act, Executive Order 13166 and Executive Order 11246. RD Forms 400-1, "Equal Opportunity Agreement" and 400-4, "Assurance Agreement", must be completed by the Grantee. The Grantee will be subject to Agency compliance reviews.

RD Instruction 1970-E, "Rural Development Environmental Justice (EJ) and Civil Rights Impact Analysis (CRIA) Certification" provides guidance on how to implement and integrate environmental justice considerations into all Agency programs' environmental reviews as part of the public involvement process. Form RD 2006-38 "Civil Rights Assessment" is to be completed prior to obligation of grant funds and completion of grant project to assure that the major civil rights impacts of imposed actions are identified and the potential for negative effects are addressed prior to approval of the Agency's financial assistance.

Prior to the obligation of funds, RD Instruction 2006-P (2006.754(a) and (b), requests certifying officials to identify and address major civil rights impacts of proposed policy actions and the potential for negative effects based on race, color, sex, national origin, religion, age, disability, or marital and/or familial status; and to complete Form RD 2006-38 to assure the Agency that a civil rights impact analysis has been completed and the potential effects of each proposed policy action have been considered before the proposed policy action is approved and implemented.

The policies contained in subpart E of part 1901 apply to grantees. As recipients of Federal financial assistance, RBCS grant and loan program recipients are required to comply with the applicable Federal, State and local laws. Title VI of the Civil Rights Act of 1964 prohibits discrimination by recipients of Federal financial assistance. Grant recipients are required to adhere to specific outreach activities. These outreach activities include, contacting community organizations and leaders that include minority leaders, advertising in local newspapers and other media throughout the entire service area, and including the nondiscrimination slogan. "This is an Equal Opportunity Program. Discrimination is prohibited by Federal Law, "in methods that may include, but not be limited to, advertisements, public broadcasts, and printed materials, such as brochures and pamphlets. **All borrowers and applicants must submit and have on file a valid Form RD 400-1, "Equal Opportunity Agreement," and Form 400-4, "Assurance Agreement" (attached).**

By signing Form 400-4, "Assurance Agreement" recipients affirm that they will operate the program free from discrimination. The recipient will maintain the race and ethnic data on the board members and beneficiaries of the program. The recipient will provide alternative forms of communication to persons with Limited English Proficiency.

12. COMPLIANCE REVIEWS

In addition to the "Equal Opportunity and NonDiscrimnation Requirements" stated above, Each grantee must keep and provide data on race, gender, national origin, and any such records, accounts, and other sources of information and facilities as may be pertinent for USDA RBS to determine whether the Grantee has complied or are complying with the regulations. Grantees should have available, for USDA RBS review, racial and ethnic data showing the extent to which members of minority groups are beneficiaries of Federal assistance program. In addition, the compliance review will ensure that equal access to the Program benefits and activities are provided for persons with disabilities and language barriers.

13. NONDISCRIMINATION STATEMENT

The Nondiscrimination Statement set out below shall be posted in all USDA offices and included on all materials produced by USDA and its Agencies for public information, public education, or public distribution. The statement below lists all the prohibited bases for discrimination contained in the USDA Civil Rights Policy Statement. The statement shall be made available in English, in other languages appropriate to the local population served or directly affected by any USDA program or activity, and in alternative means of communication (e.g., Braille, large print, audiotape, etc.). All laws, regulations, Executive Orders, and policies.

a. USDA's Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

b. Exceptions to Including the Full USDA Nondiscrimination Statement

If the size of the material is too small to include the full statement, the material will at a minimum, include the following statement in print in the same size as the text:

"USDA is an equal opportunity provider, employer, and lender."

Where appropriate, a recipient may state:

"This institution is an equal opportunity provider."

Similarly, when an audio or video presentation does not reasonably lend itself to including the full statement, the presentation will, at a minimum include the following statement, presented in a conspicuous and meaningful manner:

"USDA is an equal opportunity provider, employer, and lender."

Alternatively, where appropriate, a recipient may state:

"This institution is an equal opportunity provider."

c. Recipients

The recipient will post the Nondiscrimination Statement in its entirety containing only those protected bases mandated in applicable Federal law. USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, disability, age, reprisal or retaliation for prior civil rights activity. (Not all prohibited bases apply to all programs.)

The full Nondiscrimination Statement must be included on all print and non-print materials (including but not limited to, audio, video, website, brochures, newsletters, by-laws, etc.). If the size of the material is too small to include the full statement, the material will at a minimum, include the following statement in print in the same size as the text:

"This institution is an equal opportunity provider."

Recipients are required to notify applicants with disabilities and LEP persons of their right to free language assistance and accommodations and provide free language assistance and accommodations upon request.

d. And Justice for All Posters

The USDA poster "And Justice for All" will be the primary method utilized to inform customers of their rights. The poster will be used for this purpose except when appropriate substitutes in outdoor areas are necessary. There are three versions of the "And Justice for All" poster: Form AD-475-A is the poster that displays information relevant to your program. The grantee must also post "Equal Opportunity Employment is the Law" poster (attached).

Please note that institutions participating in or administering USDA programs are required to display the appropriate "And Justice for All" poster in their facilities where it can be viewed by customers.

All "And Justice for All" posters must be displayed in a specific size: 11" width x 17" height. The minimum text size that will be used on the "And Justice for All" posters is 14 point. Agency officials can obtain "And Justice for All" posters by contacting the Office of Communications. However, recipients must contact the sponsoring Agencies' Civil Rights Division in order to obtain "And Justice for All" posters.

14. REPORTING

Per RD Instruction 4280-E, 4280.449 and 2 CFR 200.328, forms SF-425, "Federal Financial Report" (attached) and a Project Performance Activity Report (template attached) will be required on a quarterly basis (due 30 working days after end of quarter) until all grant funds have been disbursed. Project reporting will begin when the grant is closed which is the date all parties have executed Form RD 1940-1. A final Project Performance Activity Report will be required after all grant funds have been expended or the term of the grant expires, with the last SF-425. The final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. NO USDA FUNDS WILL BE RELEASED WITHOUT ALL REPORTING REQUIREMENTS BEING UP TO DATE.

Grantee Project Performance Activity Report. The Grantee Project Performance Activity Report shall include, but not be limited to, the following:

a. A comparison of actual accomplishments to the objectives established for that period.

b. Reasons why established objectives were not met, if any.

c. Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established item periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

d. Objectives and timetable established for the next reporting period.

Final Report

A final project performance report will be required with the final Federal Financial Report. The final report must provide the Grantee's assessment and evaluation of the success of the project.

Other Report

RBS may require the Grantee to prepare a report suitable for public distribution describing the accomplishments made through the use of the grant and, in the case where the grant funded the development or application of a "best practice," to describe that "best practice."

"For RBDG where grant funds are used to acquire or improve an asset, such as a business incubator, real estate, or equipment, the grantee will verify and report to RBS the performance measures annually for 3 full grantee's fiscal years after the project completion."

15. AUDITS BASED UPON FEDERAL FINANCIAL ASSISTANCE RECEIVED

An annual audit is required in accordance with the Code of Federal Regulations, 2 CFR 200 Subpart F, 2 CFR 200.500-521 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for federal awards.

Grantees expending $750,000 or more of Federal assistance per year must submit an audit in accordance with the provisions of 2 CFR 200.500-200.521. Grantees that expend less than $750,000 a year in Federal awards are exempt from the Federal audit requirements for that year except as noted in 2 CFR 200.503. Additionally, a Federal Agency, Inspectors General or Government Accountability Office (GAO) may conduct or arrange for additional audits, which are necessary to carry out its responsibilities under Federal statute or regulation. All audit records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office.

16. RESPONSIBILITIES OF THE GRANTEE

1. The Grantee must comply with the requirements set forth in RD Instruction 4280-E and Form RD 4280-2 Rural Business-Cooperative Financial Assistance Agreement.

2. Grantee will certify in writing, that they are in compliance with and will continue to comply with all applicable laws; regulations; Executive Orders; and other generally applicable requirements, including those contained in 2 CFR 200 and 2 CFR 400 in effect on the date of grant approval; and the approved "Letter of Conditions"

3. Grantee must certify in writing as being in compliance with the procurement requirements of 2 CFR Part 200 Subpart D, as required in 2 CFR 200.324 C (2), as well as compliance with all applicable State, Local, and Tribal laws and regulations relating to contracting and procurement as identified in 2 CFR Part 200.318.

17. START OF PROJECT

The Grantee is cautioned that expenditures should not be undertaken for which reimbursement is anticipated under this grant application if the Agency has not given written approval to the grantee prior to the receipt of a full application. It is the Agency's policy not to grant prior written approval for any cost incurred prior to 90 days before the receipt of a full application.

18. PROGRAMMATIC CHANGES

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope or budget the Agency may suspend, terminate, and recover the grant funds.

19. OTHER REQUIREMENTS

The Grantee will be responsible for any additional requirements of federal, state or local governments that may apply in accordance with RD Instruction 4280-E and 2 CFR Part 200.

20. CLOSING INSTRUCTIONS

The above conditions are based on the proposed use of funds as outlined and financing arrangements as stated. The conditions as stated may be modified if the scope or cost of the Project is changed or the financial arrangements are adjusted. Any change or modification of the conditions of the Project must have prior approval by USDA Rural Development.

21. GRANT MONITORING AND SERVICING

Grant will be monitored and serviced in accordance with RD Instruction 4280-E, part 4280.443, Form RD 4280-2, "Rural Business-Cooperative Service Financial Assistance Agreement," and 2 CFR Chapter IV.

If you have any questions concerning this letter, please contact me at this office.

Sincerely,

Nancy Pletcher

Nancy Pletcher
Business Programs Specialist

Enclosures

ENCLOSURES FOR LETTER OF CONDITIONS

- RD 1940-1, "Request for Obligation of Funds"
- RD 1942-46, "Letter of Intent To Meet Conditions"
- SF 425, "Federal Financial Report"
- Procurement Handbook
- SF 270, "Request For Advance or Reimbursement"
- SF-3881, "Electronic Funds Transfer Payment Enrollment Form"
- Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions"
- RBDG Applicant/Grantee Certification
- "And Justice for All" Poster
- "Equal Employment Opportunity is the Law" Poster
- "Sample" Project Performance Report

Form RD 4280-2
(11-15)

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

FORM APPROVED
OMB No. 0570-0067

RURAL BUSINESS-COOPERATIVE SERVICE FINANCIAL ASSISTANCE AGREEMENT

This Agreement, which includes Attachments A and B, for the Project and Amount described below (the "Project Description") and for the Program identified below, is between the Recipient (you) and the United States of America acting through the Rural Business-Cooperative Service (RBS or we).

Type of Award (mark one):
- Cooperative Agreement
- ▪ Grant

Program and CFDA Number (mark one):
- Rural Energy for America Program (REAP) – 10.868
- Rural Economic Development Grant (REDG)–10.854
- ▪ Rural Business Development Grant (RBDG) – 10.351
- Rural Microenterprise Assistance Program (RMAP) – 10.870
- Agricultural Marketing Resource Center (AgMRC) – 10.352
- Appropriate Technology Transfer for Rural Areas (ATTRA) – 10.782
- Delta Health Care Services (DHCS) – 10.874
- Federal-State Research on Cooperatives (RSRC) – 10.350
- Rural Cooperative Development Grant (RCDG) – 10.771
- Rural Development Cooperative Agreement (RDCA) - 0.890
- Socially-Disadvantaged Groups Grant (SDGG) – 10.871
- Value Added Producer Grant (VAPG) – 10.352
- Other

I. GENERAL AWARD INFORMATION

1. Recipient Name & Address City of Emporia 522 Mechanic St Emporia, KS 66801	2. DUNS No. 073035396	3. SAM No. 8AES0
	4. Case No. 18-056-486026579	
5. Federal Award Identification Number (FAIN)	6. Award Date 04/27/20	
7. Performance Start Date	8. Performance End Date	
9. Amount of Federal Funds Obligated for this Action, and Total Amount of Federal Funds Obligated $83,200.00	10. Amount of Matching/Other Funds (if applicable) $30,000.00	
11. Total Project Cost (Budget Approved Amount) $113,200.00	12. Award as Percentage of Total Project Cost 73%	
13. Indirect Cost Rate (if applicable) $0.00	14. Does this award involve Research & Development? ☐ Yes ☒ No	
15.Recipient Contact (Name, Title, Contact Info) Mark McAnarney, City Manager 522 Mechanic St; Emporia, KS 66801 620-343-4251 mmcanarney@emporia-kansas.gov	16. Agency Contact (Name, Title, Contact Info) Nancy Pletcher, Business Programs Specialist 1303 SW First American Place; Topeka, KS 66604 785-271-2733 nancy.pletcher@usda.gov	

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is [0570-0050]. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

II. RESPONSIBILITIES

A. Recipient. The Recipient shall remain in compliance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements for the duration of the Agreement including 2 CFR parts 200, 400, 415, 416, 417, 418, 421, and 422. The most commonly-referenced provisions are identified below.

1. **Financial and Program Management.** You must follow the financial and performance management requirements in 2 CFR §§ 200.300-.309.

   a. **Financial Management.** You must maintain a financial management system in compliance with 2 CFR § 200.302.

   b. **Internal Controls.** You must maintain internal controls in compliance with 2 CFR § 200.303.

   c. **Payments.** You must comply with the payment requirements described in 2 CFR § 200.305. Payment must be requested by using the SF-270, "Request for Advance or Reimbursement" or SF-271, "Request for Reimbursement for Construction Programs" (as applicable). Receipts, hourly wage rate, personnel payroll records, or other documentation must be provided upon request from RBS if the request is for an advance; otherwise, the documentation must be provided at the time of the request. Requests for payment must be sent to the Agency contact listed in Section I.16.

   d. **Revisions of the Work Plan and Budget.** You must complete all elements of the Work Plan in Attachment B in accordance with that Attachment and must use project funds only for the purposes and activities specified in Attachment B - Approved Work Plan and Budget. You must further complete the outcomes shown for each Work Plan items within the time and scope constraints shown in Attachment B. You must report any changes and request prior approvals in accordance with 2 CFR § 200.308.

   e. **Period of Performance.** You may only incur costs chargeable to the award in accordance with 2 CFR § 200.309.

   f. **Bonding.** You must maintain your fidelity bond coverage in the amount of $ 83,200.00 for the Period of Performance of the award. (See 2 CFR § 200.304.)

   g. **Program Income.** You must comply with the requirements of 2 CFR § 200.307. Additionally, if program income is earned during the period of performance, you may use it in accordance with 2 CFR § 200.307(e)(2), provided that you inform us in writing of your intent prior to the award date. However, if you earn program income in excess of what can be used under 2

CFR § 200.307(e)(2) or if you earn unanticipated program income, you must comply with 2 CFR § 200.307(e)(1). Costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

2. **Procurement and Property Standards.** You must follow the procurement standards requirements in 2 CFR §§ 200.310-.326.

3. **Performance and Financial Monitoring and Reporting.** You must follow the requirements in 2 CFR Part 170, including Appendix A, and 2 CFR §§ 200.327-.329, and submit reports as outlined below. Unless otherwise directed in the addendum to this Agreement, the reports are due as indicated below.

   a. **Form SF-425, "Financial Status Report."** Reports are due 30 calendar days after the reporting period ends. A final report is due within 90 days after the Performance End Date specified in Section I.8. of this Agreement or at the completion of your project, whichever date is sooner. Your reporting periods are below (mark one):

   ☐ Semi-Annually: January 1 – June 30 and July 1 – December 31

   ☐ Semi-Annually: April 1 – September 30 and October 1 – March 31

   ☑ Quarterly: January 1 – March 31, April 1 – June 30, July 1 – September 30, October 1 – December 31

   b. **Performance Reports.** Reports are due 30 calendar days after the reporting period ends. A final report is due within 90 days after the Performance End Date specified in Section I.8. of this Agreement or at the completion of your project, whichever date is sooner. Your reporting periods are below (mark one):

   ☐ Semi-Annually: January 1 – June 30 and July 1 – December 31

   ☐ Semi-Annually: April 1 – September 30 and October 1 – March 31

   ☑ Quarterly: January 1 – March 31, April 1 – June 30, July 1 – September 30, October 1 – December 31

4. **Subrecipient Monitoring and Management.** You must monitor and manage any subrecipients in accordance with 2 CFR §§ 200.330-.332.

5. **Record Retention and Access.** You must retain records related to this work performed under this Agreement and allow access to them in accordance with 2 CFR §§ 200.333-.337.

6. **Closeout.** You must comply with the closeout requirements in 2 CFR § 200.343.

7. **Post-Closeout Adjustments and Continuing Responsibilities.** You must continue to comply with the requirements in 2 CFR § 200.344 even after the Period of Performance for this Agreement has ended.

8. **Cost Principles.** You must comply with the provisions in 2 CFR Part 200, most of which are contained in Subpart E.

9. **Audits.** You must comply with the provisions in 2 CFR Part 200, Subpart F.

10. **Civil Rights Compliance.** Unless otherwise provided in the addendum, you must comply with Executive Order 12898, Executive Order 13166- Limited English Proficient, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973 as applicable. Your compliance, shall include collection and maintenance of data on race, sex, and national origin of your membership, ownership, and employees. These data must be available to us for Civil Rights Compliance Reviews. Unless otherwise provided in Attachment A, you must submit to a post-award compliance review conducted after the final disbursement of grant funds have occurred.

11. **Universal Identifier and Central Contractor Registration.** You must comply with 2 CFR Part 25, including Appendix A. Note that the Central Contractor Registration is now available through the System for Award Management at www.sam.gov.

12. **Special Conditions.** You must comply with any special conditions identified in Attachment A – Program Addendum.

B. **Rural Business-Cooperative Service (RBS).** RBS shall remain in compliance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements for the duration of the Agreement. The most commonly-referenced provisions are identified below.

1. **Payments.** We will advance or reimburse funds up to the Award Amount identified in Section I.9 upon the Recipient's proper request according to Section II.A.1.c.

2. **Monitoring and Enforcement.** We will monitor the project to ensure that you are in compliance with the terms of the award. If we find that you are not in compliance, we will enforce the terms of this Agreement using the provisions of 2 CFR §§ 200.338-.342.

C. **Both Parties.** The Recipient and RBS agree to the following:

1. **Invalid Clauses.** The invalidity of any one or more phrases, clauses, sentences, paragraphs, or provisions of this Agreement shall not affect the remaining portions of the Agreement.

2. **Conflict between this Agreement and Other Applicable Regulations or Laws.** If there is a conflict between this Agreement and the applicable Program Regulation, the applicable Program Regulation shall prevail. If there is a conflict between this Agreement and another law or regulation, RBS shall seek a legal opinion to determine which provision applies.

3. **Dates.** When the date fixed for the performance of an act under this Agreement is on a weekend or Federal holiday, then the performance by the close of business on the next Federal work day shall have the same force and effect as if made performed or exercised on the specified date.

The signatories below certify that they have authority to enter into this Agreement.

Approved by an Authorized Representative of the Recipient:

Mark McAnarney

Name (Please Print)

City Manager

Title (Please Print)

Signature

Date

Approved by the United States of America, Rural Business-Cooperative Service by:

David Kramer

Name (Please Print)

Business Programs Director

Title (Please Print)

Signature

Date

Attachment A – Program Addendum
Attachment B – Approved Work Plan and Budget

Attachment A – Program Addendum

Attachment A – Program Addendum

PROGRAM NAME:

☑ Rural Business Development Grant Program (RBDG)
☐ Rural Economic Development Grant Program (REDG)
☐ Rural Microenterprise Assistance Program (RMAP)

AUTHORITY: RBDG (7 USC 1932(c)); REDG (7 USC 940c); RMAP (7 USC 2008s).

APPLICABLE PROGRAM REGULATIONS: RBDG (7 CFR part 4280 subpart E); REDG (7 CFR 4280 subpart A); RMAP (7 CFR part 4280 subpart D).

APPLICABLE FEDERAL REGISTER NOTICE: [INSERT FR REFERENCE]

ADDITIONAL PROGRAMMATIC AWARD PROVISIONS:

RBS and the Recipient agree to the following additional provisions:

Section II, Paragraph A.1.g. is retained and the following language is added:

> Program income funds must be spent prior to grantee or Agency funds whenever possible. Otherwise, a program income account must be established and utilized in the following manner:
>
> [INSERT WHAT PROGRAM INCOME CAN BE USED FOR AS RELATED TO THIS SPECIFIC PROJECT. EXAMPLES MAY INCLUDE BUT ARE NOT LIMITED TO, EQUIPMENT MAINTENANCE AND REPAIRS. THE EXPENDITURE OF THESE FUNDS SHOULD BE PROJECT SPECIFIC]:
>
> There will be no program income.

Real property acquired or improved with Award Funds. (Provide the legal description and/or address of where the real property or other property described in block below is located. Use continuation sheets as necessary.)

Other property (e.g. equipment) acquired with Award Funds. (Describe each item, estimated useful life, and the value of equipment. Use continuation sheets as necessary.)		
Item	**Estimated Useful Life**	**Value**
Design Station Computer Software	5 years	$12,000.00
SLA 3D Printer	7 years	$6,000.00
FDM Full Color 3D Printer	7 years	$5,000.00
4-Axis Bench Top CNC Mill	10 years	$35,000.00
CO2 Laser Engraver (16 x 14)	7 years	$5,000.00
Printer and Associated Supplies	7 years	$19,500.00
Large Format Ink Printer	7 years	$8,000.00
Vinyl/Latex Color Printer/Cutter	7 years	$15,995.00

Section II, Paragraph A.2 is retained and the following language is added:

> In addition, you must list any real property and equipment purchases made with project funds in the tables below. Finally, you must provide status reports on any real property in which we retain an interest, in accordance with 2 CFR § 200.329.

Section II. Paragraph A.5 is retained and the following language is added:

> The Recipient, upon request, will provide non-confidential information resulting from its activities to the general public on an equal basis.

Section II, Paragraph A.13. is added with the following language:

> **Cost Sharing.** You must comply with the requirements of 2 CFR § 200.306. Matching funds must be available at the same time award funds are expected to be spent and expenditures of matching funds will be pro-rated or spent in advance of award funds.

Attachment B – Approved Work Plan and Budget. (The work plan must have time, scope, and outcome entries for each task.)

AGENDA ITEM SUMMARY

MEETING DATE: **June 3, 2020** **ITEM NUMBER: 11**

SUBJECT: Report from the City Manager on City Activities

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

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

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

Tentative Agenda for June 10th Study Session

- Discuss Becker Creek
- Rural Water District #2
- Discuss Request for a Public Hearing to Appeal the SHPO at 713 Commercial Street.
- Discuss Vacation of Road K.
- Discuss Contract with Lifetime.
- Discuss Contract with Emporia Animal Shelter.
- Review CIP

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

AGENDA ITEM SUMMARY

MEETING DATE: June 3, 2020 **ITEM NUMBER: 13**

SUBJECT: Executive Session

RECOMMENDATION:

BACKGROUND SUMMARY:

An Executive Session to discuss proprietary information of private business considering potential future development in Emporia, Kansas.

ACTION RECORD

Action:_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____

COMMISSION MEETING **7:00 P.M.** **MAY 20, 2020**

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, May 20, 2020, with Mayor Giefer presiding and Commissioners Gilligan and Smith present. Commissioners Brinkman and Geitz were present via phone. Also present were City Manager McAnarney, Assistant City Manager Massey, City Clerk Sull and City Attorney Montgomery.

MAYOR AND CITY COMMISSIONERS REPORTS AND COMMENTS

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

1. Monthly Local Retail Sales Tax Receipts Update

	2019	2020	
	$366,524.78	$385,066.14	Increase of $18,541.36 for the month, and
YTD	**1,600,278.26**	**$ 1,634,093.72**	Overall increase of 2.11% from year 2019

2. City Share from County Tax

	2019	2020	
	$ 180,535.84	$193,979.70	Increase of $13,443.36 for month, and
YTD	**$ 787,612.88**	**$** 834,807.27	Overall increase of 5.99% from year 2019

3. Building Permits issued from 4/1/2020 to 4/30/2020 for new construction, remodeling, repairs and demolition.

Total number of building permits issued through Code Services:	75
Total of valuations associated with those building permits:	$3,548,786.00
Total number of dollars collected for Building Permit Fees:	$ 17,562.13
Construct - single family dwellings	4
Demo - single family dwellings	0
Flint Hills Mall CID for April	$ 12,994.08
Year to Date Total	$ 65,701.87

Consent Agenda

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

a. Consider minutes of the Regular Meeting held on May 6, 2020.

b. Consider ratification of Payroll Ordinance for the period ending on May 8, 2020.

c. Consider Adoption of Comprehensive Plan for the City of Emporia Welfare Benefits Plan.

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

CITY COMMISSION
(Public Comment)

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

JONES AQUATIC COMPLEX
(Agreement b/w the City of Emporia & Emporia Recreation Commission)
(2020 Season)

City Manager McAnarney stated due to necessary restrictions to prevent community transmission of COVID-19, listed under the plan to reopen Kansas, Phase 2, outdoor swimming pools (other than backyard pools) will not be allowed to open to the public at this time.

Mayor Giefer stated the Recreation Commission has met and put together guidelines to follow to keep individuals safe when the State and County allow outdoor swimming pools to open. It was the consensus of the Commission to table this item for further discussion.

Commissioner Gilligan made a motion to table this item until May 27, 2020 for further discussion. Commissioner Smith seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; and Mayor Giefer, aye.

ENGINEERING
(Downtown Sanitary Sewer System Improvements Project No. SS1803)
(CDBG Project 18-PF-005 Sanitary Sewer Relining Project)
(Consider Second Contract Amendment Request for Time Extension)

Assistant City Manager Massey, was recognized and addressed the Governing Body. He stated the downtown sanitary sewer system improvements project has been delayed due to the contractor's inability to mobilize and maintain an adequate construction crew due to complications associated with the COVID-19 pandemic. He stated the goals of the project are being successfully met despite the construction delays and engineers anticipate

the project to be completed as planned without sacrificing quality construction. The City is requesting a three (3) month time extension to allow the contractor to complete construction. He stated the city does not anticipate any additional extensions.

Commissioner Gilligan stated the reason for the first extension was due to bad weather and asked if the extensions would impact the CDBG point system for the City.

Assistant City Manger Massey stated it could depending on the reason for the extension. He stated the quality of the work has been good.

Commissioner Smith stated she did not want to see another request for extension of time on this contract.

Following further discussion, Commissioner Gilligan made a motion to authorize the Mayor to submit a Contract Amendment Request to the Kansas Department of Commerce for a time extension on CDBG Project 18-PF-005 Sanitary Sewer Relining Project. Commissioner Smith seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; and Mayor Giefer, aye.

CITY COMMISSION
(City Manager's Report)

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

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

TENTATIVE AGENDA FOR MAY 27th STUDY SESSION

Rural Water District #2

Review CIP

Discuss Appropriation Funds

Hamms Contract Extension

Discuss Contract with Emporia Animal Shelter

EXECUTIVE SESSION

Commissioner Gilligan made a motion to adjourn into Executive Session for consultation with the City Attorney regarding a legal matter from 7:20 p.m. to 7:35 p.m., in the City Commission Meeting Room. Commissioner Smith seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; and Mayor Giefer, aye.

Upon reconvening the meeting in Regular Session, at 7:35 p.m., this same date, in the City Commission Meeting Room, Mayor Giefer stated they had consultation with the City Attorney regarding a legal matter and no action was taken.

EXECUTIVE SESSION

Commissioner Gilligan made a motion to adjourn into Executive Session to discuss proprietary information of an existing business in Emporia, Kansas, from 7:37 p.m. to 7:47, p.m., in the City Commission Meeting Room. Commissioner Smith seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; and Mayor Giefer, aye.

Upon reconvening the meeting in Regular Session, at 7:47 p.m., this same date, in the City Commission Meeting Room, Mayor Giefer stated they had discussed proprietary information of an existing business in Emporia, Kansas and no action was taken.

EXECUTIVE SESSION

Commissioner Smith made a motion to adjourn into Executive Session for preliminary discussion regarding potential land acquisition, from 7:50 p.m. to 7:55 p.m., in the City Commission Meeting Room. Commissioner Gilligan seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Gilligan, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; and Mayor Giefer, aye.

Upon reconvening the meeting in Regular Session, at 7:55 p.m., this same date, in the City Commission Meeting Room, Mayor Giefer stated they

had preliminary discussion regarding potential land acquisition and no action was taken.

Commissioner Gilligan then made a motion to adjourn to Friday, May 22, 2020 at 10:30 a.m. Commissioner Smith seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; and Mayor Giefer, aye.

_____

Danny Giefer, Mayor

ATTEST:

_____

Kerry Sull, City Clerk

ADJOURNED
COMMISSION MEETING **10:00 A.M.** **MAY 22, 2020**

The Governing Body of the City of Emporia, Kansas, met in Adjourned Session, Wednesday, May 22, 2020, in the City Commission Meeting Room with Mayor Giefer present via phone and Commissioners Brinkman and Geitz present via phone. Commissioners Gilligan and Smith were present. Also present were City Manager McAnarney, Assistant City Manager Massey, City Clerk Sull and City Attorney Montgomery.

CITY COMMISSION
(Kansas Department of Commerce)
(CDBG-CV Economic Development/Meals Program)
(Consider Approval of Submission of Grant Application)
(Public Hearing)

City Manager McAnarney stated the Kansas Department of Commerce recently notified the City of a special CDBG-CV economic development grant round. The Kansas Department of Commerce has a special allocation of federal funding for Kansas businesses. The grant funding is on a "first come first serve" for eligibility. The maximum the city can apply for is $300,000.00 in the Economic Development category and up to $100,000.00 in the Meal Program category. He stated the city will need to complete the following necessary items.

1. Approve the project budget form.
2. Authorize the Mayor to sign the grant application.
3. Approve Resolution No. 3629 certifying the city has the legal authority and authorization to apply for the CDBG-CV program and approve the statement of assurances and certifications.
4. Authorize the submittal of the Public Disclosure Report.
5. Approve the Project Budget Form.
6. Approve the Residential Anti-Displacement and Relocation Assistant Plan under Section 104(D) of the Housing and Community Development Act of 1974, as amended.

Mayor Giefer then declared the public hearing opened.

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

Commissioner Smith made a motion to authorize the submission of the grant application with the following actions:

1. Approve the project budget form.
2. Authorize the Mayor to sign the grant application.
3. Approve Resolution No. 3629 certifying the city has the legal authority and authorization to apply for the CDBG-CV program

and approve the statement of assurances and certifications.

4. Authorize the submittal of the Public Disclosure Report.
5. Approve the Project Budget Form.
6. Approve the Residential Anti-Displacement and Relocation Assistant Plan under Section 104(D) of the Housing and Community Development Act of 1974, as amended.

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

Commissioner Gilligan made a motion to adjourn to May 27, 2020, at 11:30 a.m. Commissioner Smith seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; and Mayor Giefer, aye.

_____

Danny Giefer, Mayor

ATTEST:

_____

Kerry Sull, City Clerk

ADJOURNED
COMMISSION MEETING **11:30 A.M.** **MAY 27, 2020**

The Governing Body of the City of Emporia, Kansas, met in Adjourned Session, Wednesday, May 27, 2020, in the City Commission Meeting Room with Vice Mayor Gilligan present and Commissioners Brinkman, Geitz and Smith present. Mayor Giefer was absent. Also present were City Manager McAnarney, Assistant City Manager Massey, City Clerk Sull and City Attorney Montgomery.

JONES AQUATIC CENTER
(Agreement b/w the City of Emporia & Emporia Recreation Commission)
(2020 Season)

City Manager McAnarney stated the Emporia Recreation Commission has operated the Jones Aquatic Complex for the City of Emporia for many years. He stated this is a standard operation agreement for the 2020 Season. Due to the necessary restrictions of the pandemic of COVID-19, the agreement is contingent upon the Jones Aquatic Center opening to the public due to state or local restrictions. The City of Emporia pays for the utilities under this agreement. The Emporia Recreation Commission is hoping to recover all of their hard costs under this agreement and do not charge for administrative services, hiring, payroll, and aquatics complex director time. He stated the Jones Aquatic Complex remains closed to the public at this time and the Emporia Recreation Commission will meet to discuss opening the pool when local restrictions are lifted. The Emporia Recreation Commission has indicated that social distancing and modifications of pool use will be part of the discussion. He stated approval of this agreement will allow the Emporia Recreation Commission to move forward to operate the Jones Aquatic Complex for the 2020 season.

Following further discussion, Commissioner Smith made a motion to approve the agreement with the Emporia Recreation Commission to operate the Jones Aquatic Complex for the 2020 season. Commissioner Brinkman seconded the motion.

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

Commissioner Brinkman then made a motion to adjourn. Commissioner

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

_____

Robert F. Gilligan, Vice Mayor

ATTEST:

_____

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: **June 3, 2020** **ITEM NUMBER: 12**

SUBJECT: City Commissioners Reports and Comments

RECOMMENDATION:

BACKGROUND SUMMARY:

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

ACTION RECORD

Action:_____

_____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ_____ GIEFER_____ GILLIGAN_____ SMITH_____ BRINKMAN_____