

CITY COMMISSION MEETING

January 1, 0001 at 12:00 AM

CITY COMMISSION / MUNICIPAL COURT ROOM
518 MECHANIC, EMPORIA, KS

Agenda

Meeting Items

1. Members Present:
2. Mayor and City Commission Reports and Comments.
3. Consent Agenda
4. Public Comment
5. Appoint Member to the Human Relations Commission.
6. Reappoint Member to the Community Housing Board/Emporia Land Bank Board.
Consider Authorizing Select Realtor for Marketing of Homes located at 306 and 310 S.
7. Congress
Street.
8. Consider Awarding Bid for Watermain Project No. WMI 904.
9. KDOT CCLIP Consult Agreement with Preliminary Engineering Design Service for
Project No. PV 1909.
10. Consider Review and Adoption of Resolution for 2019 Solid Waste Management Plan.
11. Consider Adoption of Landfill Fee Ordinance.
12. Consider Ordinance Amending City Code Sec. 16-266 Pertaining to Face Masks.
13. Report from City Manager on Activities
14. Executive Session



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

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 2

SUBJECT: Mayor and City Commissioners Reports and Comments

RECOMMENDATION:

BACKGROUND SUMMARY

This is a time for the Mayor and City Commissioners to make comments and reports to the Public.
The following is general information for the month of September for the community:

1) Monthly Local Retail Sales Tax Receipts Update

	2019	2020	
	\$460,147.53	\$421,140.53	Decrease of \$39,007.00 for the month, and
YTD	\$ 3,699,831.85	\$ 3,727,209.62	Overall increase of 0.74% from year 2019

2) City Share from County Tax

	2019	2020	
	\$229,667.58	\$209,875.66	Decrease of \$19,791.92 for the month, and
YTD	\$ 1,827,432.99	\$ 1,900,338.69	Overall increase of 3.99% from year 2019

3) Building Permits issued from 9/1/2020 to 9/30/2020 for new construction, remodeling / repairs and demolition.

Total number of building permits issued through Code Services:	77
Total of valuations associated with those building permits:	\$ 2,588,233.00
Total number of dollars collected for Building Permit Fees:	\$ 14,850.00
Construct - single family dwellings	1
Demo - single family dwellings	0

Flint Hills Mall CID for September	\$ 18,401.18
Year to Date Total	\$ 153,959.46

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 3

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 Meeting held on October 5th and Special Action Meeting on October 14, 2020.
- b. Consider ratification of Payroll Ordinance for the period ending on October 9, 2020.
- c. Consider the Approval of September Budget.
- d. Consider Change Order No. 1 for the Industrial Park III Resurfacing & Drainage Improvement Project No. PV2004, KDOT Project No. 56 KA-5730-01.
- e. Consider Change Order No. 1 for the 2020 Street Rehabilitation Project No. PV2001 (Various locations around the City).
- f. Consider Approval of Memorandum of Agreement with Lyon Co. Regarding SPARK Funds.

RECOMMENDATION:

- a. Approve Minutes
- b. Approve Payroll
- c. Approve Budget
- d. Approve Change
- e. Approve Change
- f. Approve MOA

BACKGROUND SUMMARY:

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 3d

SUBJECT: Consider Change Order No. 1 for the Industrial Park III Resurfacing & Drainage Improvement Project No. PV2004, KDOT Project No. 56 KA-5730-01 (South Ave., Logan Ave., and Weaver St.).

RECOMMENDATION: Approve Change Order No. 1 for the Industrial Park III Resurfacing & Drainage Improvement Project No. PV2004, KDOT Project No. 56 KA-5730-01 (South Ave., Logan Ave., and Weaver St.) for the 12" asphalt over 6" AB-3 subgrade option at the price of \$142,704.88. This will add a portion of Weaver Street from US 50 to 6th Ave. to the project (that needs repair).

BACKGROUND SUMMARY:

This project is funded from a \$700,000.00 KDOT Economic Development Grant and Federal Fund Exchange money. The project contract amount is increased from \$585,516.23 to \$728,221.11

Attached is the Change Order No. 1 and Proposal from APAC-Kansas, Inc., Shears Division.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

CHANGE ORDER NO. 1
ON CONTRACT WITH APAC-KANSAS, INC., SHEARS DIVISION FOR THE CONSTRUCTION OF
INDUSTRIAL PARK III RESURFACING & DRNG IMPROVEMENTS, KDOT PROJ. NO. 56 KA5730-01, CITY PROJ. NO. PV 2004
(SOUTH AVE., LOGAN AVE., & WEAVER ST.)

Date: October 21, 2020

This change in plans, made in accordance with the provisions of Paragraph 9, GS-4, General Conditions under the above Contract, provides for a change in the contract total due to a portion of Weaver Street (US-50 Hwy to 6th Ave) being added to the project for the agreed amount as shown below along with an additional 20 working days to the contract.

<u>QUANTITY</u>	<u>UNIT</u>	<u>ITEM & UNIT PRICE IN WORDS</u>	<u>IN FIGURES</u>	<u>AMOUNT</u>
QUANTITIES ADDED:				
1	LS	Mobilization @ (Unit Price in Words)	\$3,049.26	\$3,049.26
1157	SY	pavement Removal @ (Unit Price in Words)	\$14.96	\$17,308.72
290	CY	Common Excavation @ (Unit Price in Words)	\$14.83	\$4,300.70
1157	SY	Combined Material (AB-3) (6: Compacted) @ (Unit Price in Words)	\$10.35	\$11,974.95
173	SY	Asphalt Milling)2: Avg. Depth) @ (Unit Price in Words)	\$10.51	\$1,818.23
21	TON	HMA (2" Overlay) (Commercial Grad) (Class A) @ (Unit Price in Words)	\$80.99	\$1,700.79
858	TON	HMA (12") (Commercial Grad) (Class A) @ (Unit Price in Words)	\$82.72	\$70,973.76
125	LF	Storm Sewer (24" RCP) @ (Unit Price in Words)	\$154.04	\$19,255.00
2	EA	Stomr Sewer (24" RC) (End Section) @ (Unit Price in Words)	\$397.78	\$795.56

QUANTITIES ADDED:

QUANTITY UNIT

20	CY	Flowable Fill (Low Strength)		
	@	_____	157.1	3142
		(Unit Price in Words)		
1	LS	Traffic Control	\$8,385.91	\$8,385.91
	@	_____		
		(Unit Price in Words)		

TOTAL CHANGE ORDER ADDED TO PROJECT:

\$142,704.88

CONTRACTOR: APAC-KANSAS, INC., SHEARS DIVISION

BY: Cody Williams CODY WILLIAMS
OWNER or AUTHORIZED REPRESENTATIVE

APPROVED BY: THE CITY OF EMPORIA, KS

BY: _____
MAYOR

Date: _____

Attest: _____
CITY CLERK

PROPOSAL and CONTRACT



APAC-Kansas, Inc., Shears Division

302 Peyton, Emporia, KS 66801

Phone: 620-342-2047, Fax: 620-343-8118

Industrial Park III Resurfacing Project

Weaver Street Change Order

To

City of Emporia

Date

10/9/2020

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
101	Mobilization	1.00	LSU	3,049.26	3,049.26
102	Pavement Removal	1,157.00	SY	14.96	17,308.72
103	Common Excavation	290.00	CY	14.83	4,300.70
104	Combined Material (AB-3) (6" Compacted)	1,157.00	SY	10.35	11,974.95
105	Asphalt Milling (2" Avg. Depth)	173.00	SY	10.51	1,818.23
106	HMA (2" Overlay) (Commercial Grade)(Class A)	21.00	TON	80.99	1,700.79
107	HMA (12")(Commercial Grade)(Class A)	858.00	TON	82.72	70,973.76
108	Storm Sewer (24" RCP)	125.00	LF	154.04	19,255.00
109	Storm Sewer (24" RC)(End Section)	2.00	EA	397.78	795.56
110	Flowable Fill (Low Strength)	20.00	CY	157.10	3,142.00
111	Traffic Control	1.00	LSU	8,385.91	8,385.91
	Asphalt Total				\$142,704.88
201	Mobilization	1.00	LSU	4,400.37	4,400.37
202	Pavement Removal	1,330.00	SY	14.96	19,896.80
203	Common Excavation	222.00	CY	14.83	3,292.26
204	Combined Material (AB-3)(6" Compacted)	1,330.00	SY	10.35	13,765.50
205	Concrete Pavement (8" Reinforced)(AE)	1,330.00	SY	88.89	118,223.70
206	Storm Sewer (24" RCP)	125.00	LF	141.69	17,711.25
207	Storm Sewer (24" RC)(End Section)	2.00	EA	397.78	795.56
208	Flowable Fill (Low Strength)	20.00	CY	157.10	3,142.00
209	Traffic Control	1.00	LSU	10,077.38	10,077.38
	Concrete Total				\$191,304.82

NOTES:

-Asphalt Work Duration: about 3 weeks

-Concrete Work Duration: about 5-6 weeks

-Epoxy Rebar was included in the concrete option, however I was given a note from the Concrete Subcontractor that plans do not show any joint sealing / caulking, so that was not included.

-Bm-2 25% RAP Base with Comm Grade CLASSA Surface.

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 3e

SUBJECT: Consider Change Order No. 1 for the 2020 Street Rehabilitation Project No. PV2001 (Various locations around the City).

RECOMMENDATION: Approve Change Order No. 1 for the 2020 Street Rehabilitation Project No. PV2001 decreases the total amount of the contract by \$ 24,389.19

BACKGROUND SUMMARY:

Attached are the change order quantities for the 2020 Street Rehabilitation Project No. PV2001. The original bid amount was \$957,191.95. This Change Order for \$34,913.24 would decrease the final contract dollar amount to \$922,278.71.

Attached is the Change Order No. 1.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

**CHANGE IN PLANS NO. 1
ON CONTRACT WITH KILLOUGH CONSTRUCTION, INC. FOR THE
CONSTRUCTION OF 2020 STREET REHABILITATION PROJECT NO. PV2001
(VARIOUS LOCATIONS AROUND THE CITY)**

Date: October 14, 2020

This change in plans, made in accordance with the provisions of Paragraph 9, GS-4, General Conditions under the above Contract, provides for a change in the contract total due to estimated quantities being different than the actual quantities used in the construction of the 2020 Street Rehabilitation Project No. PV2001 (Various Locations Around The City).

BASE BID			UNIT PRICE	TOTAL
<u>QUANTITY</u>	<u>UNIT</u>	<u>ITEM & UNIT PRICE IN WORDS</u>	<u>IN FIGURES</u>	<u>AMOUNT</u>
QUANTITIES ADDED: BASE BID				
3338.00	S.Y.	Asphalt Milling (2" Avg. Depth) @ One Dollar and Seventy-six Cents (Unit Price in Words)	\$1.76	\$5,874.88
6.00	Ton	Asphalt Patching (4" Avg. Depth) @ One Hundred seventy-one Dollars & sixty Cents (Unit Price in Words)	\$171.60	\$1,029.60
272.00	L.F.	Curb & Gutter (2'-6" Combined) (AE) (Remove & Replace) @ Forty Dollars (Unit Price in Words)	\$40.00	\$10,880.00
5.00	S.Y.	Concrete Pavement (9" Rein.) (AE) (Remove & Replace) @ One Hundred thirty-one Dollars & eighty Cents (Unit Price in Words)	\$131.80	\$659.00
32.00	S.Y.	Concrete Pavement (4" Plain) (AE) (Remove & Replace) @ Seventy-four Dollars & forty-five Cents (Unit Price in Words)	\$74.45	\$2,382.40
1.00	L.S.	Curb Inlet Lid (4' x 5') (Precast) (Remove & Replace) @ Six Thousand Four Hundred Dollars (Unit Price in Words)	\$6,400.00	\$6,400.00
1.00	L.S.	Replace Inlet Throats @ One Thousand Four Hundred Seventy Dollars (Unit Price in Words)	\$1,470.00	\$1,470.00
1.00	L.S.	Reset Manhole Top @ One Thousand Two Hundred twelve Dollars and fifty cents (Unit Price in Words)	\$1,212.50	\$1,212.50
1.00	Ea.	Utility Adjustment (Valve Box Riser) (Valve Box) (Water) @ One Hundred Fifty Dollars (Unit Price in Words)	\$150.00	\$150.00

<u>QUANTITY</u>	<u>UNIT</u>	<u>ITEM & UNIT PRICE IN WORDS</u>	<u>IN FIGURES</u>	<u>AMOUNT</u>
QUANTITIES ADDED: BASE BID				
1.00	L.S.	Mobilization <u>@ Two Hundred Dollars</u>	\$200.00	\$200.00
31.00	Hrs.	(Unit Price in Words) Flagger (Set Price) <u>@ Twenty-five Dollars</u> (Unit Price in Words)	\$25.00	\$775.00
Total Added: (Base Bid)				\$31,033.38
QUANTITIES DELETED: BASE BID				
601.00	Ton	HMA (Commercial Grade) (Class A) <u>@ Seventy-two Dollars and Fifty Cents</u> (Unit Price in Words)	\$72.50	\$43,572.50
5.00	S.Y.	Concrete Pavement (6" Plain) (AE) (Remove & Replace) <u>@ Eighty-seven Dollars and Eighty Cents</u> (Unit Price in Words)	\$87.80	\$439.00
9.00	S.Y.	ADA Sidewalk Ramp <u>@ Two Hundred Eleven Dollars and Seventy Cents</u> (Unit Price in Words)	\$211.70	\$1,905.30
1.00	Ea.	Curb Inlet Lid (4' x 5') (Precast) (Remove & Replace) <u>@ Two Thousand Five Hundred Dollars</u> (Unit Price in Words)	\$2,500.00	\$2,500.00
4.00	Ea.	Utility Adjustment (Concrete) (Valve Box) (Water) <u>@ Five Hundred Fifty Dollars</u> (Unit Price in Words)	\$550.00	\$2,200.00
6.00	Ea.	Utility Adjustment (Concrete) (Manhole) (Water) <u>@ One Thousand Dollars</u> (Unit Price in Words)	\$1,000.00	\$6,000.00
34.00	L.F.	Pavement Marking (Thermoplastic) (White) (6" Solid) <u>@ Three Dollars</u> (Unit Price in Words)	\$3.00	\$102.00
24.00	L.F.	Pavement Marking (Thermoplastic) (White) (6" Broken) <u>@ Three Dollars</u> (Unit Price in Words)	\$3.00	\$72.00
15.00	L.F.	Pavement Marking (Thermoplastic) (Yellow) (4" Solid) <u>@ Two Dollars</u> (Unit Price in Words)	\$2.00	\$30.00
2.00	L.F.	Pavement Marking (Thermoplastic) (Yellow) (4" Double) <u>@ Three Dollars</u> (Unit Price in Words)	\$3.00	\$6.00
1.00	Ea.	Pavement Marking (In. Grade) (White) (Left Arrow) <u>@ Three Hundred Dollars</u> (Unit Price in Words)	\$300.00	\$300.00

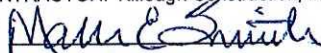
<u>QUANTITY</u>	<u>UNIT</u>	<u>ITEM & UNIT PRICE IN WORDS</u>	<u>IN FIGURES</u>	<u>AMOUNT</u>
QUANTITIES DELETED:				
1.00	Ea.	Pavement Marking (In. Grade) (White) (Straight Arrow) <u>@ Two Hundred Twenty-five Dollars</u> (Unit Price in Words)	\$225.00	\$225.00
1.00	L.S.	Temporary Seed and Mulch <u>@ One Thousand Dollars</u> (Unit Price in Words)	\$1,000.00	\$1,000.00
50.00	L.F.	Temporary Slope Barrier (Slit Fence) <u>@ Five Dollars</u> (Unit Price in Words)	\$5.00	\$250.00
1.00	Ea.	Inlet Sediment Barrier <u>@ One Hundred Dollars</u> (Unit Price in Words)	\$100.00	\$100.00
1.00	C.Y.	Sediment Removal (Set Price) <u>@ Thirty-five Dollars</u> (Unit Price in Words)	\$35.00	\$35.00
Total Deleted: (Base Bid)				<u>\$58,736.80</u>
TOTAL DELETED FROM PROJECT: (Base Bid)				<u>\$27,703.42</u>
QUANTITIES ADDED: ADD ALTERNATE NO. 1				
117.00	S.Y.	Asphalt Milling (2" Avg. Depth) <u>@ Five Dollars</u> (Unit Price in Words)	\$5.00	\$585.00
423.00	Ton	HMA (Commercial Grade) (Class A) <u>@ Seventy-two Dollars and Fifty Cents</u> (Unit Price in Words)	\$72.50	\$30,667.50
26.00	Ton	Asphalt Patching (4" Avg. Depth) <u>@ One Hundred Seventy-one Dollars and Sixty Cents</u> (Unit Price in Words)	\$171.60	\$4,461.60
3.00	S.Y.	Concrete Pavement (9" Reinf.) (AE) (Remove & Replace) <u>@ One Hundred Thirty-one Dollars and Eighty Cents</u> (Unit Price in Words)	\$131.80	\$395.40
19.00	Hrs.	Flagger (Set Price) <u>@ Twenty-five Dollars</u> (Unit Price in Words)	\$25.00	\$475.00
17.00	Ton	AB-3 <u>@ Twenty-eight Dollars and Fifty Cents</u> (Unit Price in Words)	\$28.50	\$484.50
Total Added: (Add Alternate No. 1)				\$37,069.00

<u>QUANTITY</u>	<u>UNIT</u>	<u>ITEM & UNIT PRICE IN WORDS</u>	<u>IN FIGURES</u>	<u>AMOUNT</u>
QUANTITIES DELETED: ADD ALTERNATE NO. 1				
366.00	Ton	HMA (Leveling Course) (BM-1) (1" Avg. Depth) @ Forty Dollars and Seventy-five Cents (Unit Price in Words)	\$90.75	\$33,214.50
1.00	L.S.	Temporary Seed & Mulch @ One Thousand Dollars (Unit Price in Words)	\$1,000.00	\$1,000.00
50.00	L.F.	Temporary Slope Barrier (Silt Fence) @ Five Dollars (Unit Price in Words)	\$5.00	\$250.00
Total Deleted: (Add Alternate No. 1)				<u>\$34,464.50</u>
TOTAL ADDED TO PROJECT: (Add Alternate No. 1)				<u>\$2,604.50</u>
QUANTITIES ADDED: ADD ALTERNATE NO. 2				
3.00	L.F.	Curb & Gutter (2'-6" Combined) (AE) @ Thirty Dollars (Unit Price in Words)	\$30.00	\$90.00
27.00	S.Y.	Concrete Pavement (4" Plain) (AE) @ Fifty-four Dollars and Forty-five Cents (Unit Price in Words)	\$54.45	\$1,470.15
1.00	L.S.	ADA Sidewalk Ramp @ Two Thousand Four Hundred Twenty-six Dollars and Sixty-eight cents (Unit Price in Words)	\$2,426.68	\$2,426.68
1231.00	S.F.	Rebar for (2) Entrances @ Seventy-five Cents (Unit Price in Words)	\$0.75	\$923.25
1.00	L.S.	Lower Electric Conduit @ Five Hundred Thirty Dollars (Unit Price in Words)	\$530.00	\$530.00
86.00	S.Y.	Asphalt Milling (2" Avg. Depth) @ Five Dollars (Unit Price in Words)	\$5.00	\$430.00
Total Added: (Add Alternate No. 2)				<u>\$5,870.08</u>

<u>QUANTITY</u>	<u>UNIT</u>	<u>ITEM & UNIT PRICE IN WORDS</u>	<u>IN FIGURES</u>	<u>AMOUNT</u>
QUANTITIES DELETED: ADD ALTERNATE NO. 2				
3.00	S.Y.	Concrete Pavement (6" Plain) (AE) @ Seventy Dollars and Eighty Cents (Unit Price in Words)	\$70.80	\$212.40
160.00	Ton	HMA Overlay (4" Avg. Depth) @ Ninety Dollars and Forty-five Cents (Unit Price in Words)	\$90.45	\$14,472.00
200.00	L.F.	Temporary Slope Barrier (Silt Fence) @ Five Dollars (Unit Price in Words)	\$5.00	\$1,000.00
Total Deleted: (Add Alternate No. 2)				<u>\$15,684.40</u>
TOTAL DELETED FROM PROJECT: (ADD ALTERNATE 2)				<u>(\$9,814.32)</u>
TOTAL DELETED FROM PROJECT: (Base Bid)				<u>\$27,703.42</u>
TOTAL ADDED TO PROJECT: (Add Alternate No.1)				<u>\$2,604.50</u>
TOTAL DELETED FROM PROJECT: (Add Alternate No.2)				<u>(\$9,814.32)</u>
TOTAL CHANGE ORDER DELETED FROM COMPLETE PROJECT:				<u>(\$34,913.24)</u>

CONTRACTOR: Killough Construction, Inc.

BY:



APPROVED BY: THE CITY OF EMPORIA, KS

BY:

MAYOR

Date: _____

Attest: _____
CITY CLERK

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 3f

SUBJECT: Consider Approval of Memorandum of Agreement with Lyon County Regarding SPARK Funds.

RECOMMENDATION: Approve Memorandum of Agreement

BACKGROUND SUMMARY:

The attached Memorandum of Agreement was developed by the Kansas Office of Recovery for use by counties and awardees to assure compliance with Spark guidelines. Staff has reviewed this document and is satisfied that we are and will continue to meet all federal and state requirements regarding Spark funds.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

CORONAVIRUS RELIEF FUND MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement" or "MOA") is made by and between **Lyon County, Kansas** (the "County") and the Awardee indicated below to set out the parties' mutual understanding as to the use of funds provided by the County to the Awardee.

RECITALS

WHEREAS, The State of Kansas is facing both a public health and economic crisis – the pandemic and public health emergency of COVID-19 – which has resulted in illness, quarantines, school closures, and temporary and permanent closures of businesses resulting in lost wages and financial hardship to Kansas citizens, including citizens in the County; and

WHEREAS, the federal government, pursuant to section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") created the Coronavirus Relief Fund ("CRF") and provided moneys to the State of Kansas for expenditures necessary because of the public health emergency, including expenditures to promote public health and education and provide economic support for small businesses and others affected by business interruption; and

WHEREAS, the County passed a Resolution on August 8, 2020 ("the Resolution") in which it agreed to accept CRF funds from the State and to use and distribute those funds in a manner that complies with the terms of the CARES Act and the Resolution, and the State of Kansas provided the County with CRF funds; and

WHEREAS the Awardee submitted an application and/or request for CRF funds for expenditures necessary due to the public health emergency, that application was approved by the County, and the County seeks to provide CRF funds to the Awardee subject to the terms of this Agreement;

Therefore, the parties understand and agree as follows:

1. CARES Act. The County and Awarded understand and agree that pursuant to the CARES Act, as codified in 42 U.S.C. § 801, CRF funds may only be used for costs that:

- a) are necessary expenditures incurred due to the public health emergency with respect to Coronavirus Disease 2019 (COVID-19);
- b) were not accounted for in the budget most recently approved as of March 27, 2020; and
- c) were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020 (the "Covered Period").

2. The Application. Awardee's application and request for CRF Funds, as approved by the County, is attached hereto ("the Application") and incorporated herein. The parties agree that the expenditures described in the Application are necessary due to the public health emergency with respect to COVID-19 and were not expenditures that were included in Awardee's original budget as of March 27, 2020. Awardee agrees that it will use the CRF funds provided under this Agreement in a manner that is substantially consistent with the Application. Awardee further agrees that all such expenditures will comply with all applicable provisions of the CARES Act and any and all reasonable and lawful guidance issued by the United States Department of the Treasury as it relates to use of the CRF funds.

3. Payment. The County will promptly transmit to Awardee the amount of \$525,258.46 (the "CRF Funds") after receipt of this Agreement executed by Awardee.

4. Limitation on Use of Funds. Awardee represents and warrants that the Application does not seek funds for expenses for which the Awardee has already received reimbursement (including insurance) and that it will not use the CRF Funds for any expenditure for which it has received or will receive any other federal funding, including any other funding provided by the CARES Act. If Awardee receives other reimbursement for any expense for which the County has provided CRF Funds to Awardee, Awardee shall repay the County the amount of that expense within fourteen (14) days.

5. Reporting. Awardee acknowledges and agrees that CRF Funds are subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance (2 C.F.R. Part 200), 2.C.F.R. § 200.303 and §§ 200.330 through 200.332 and subpart F and that the applicable Catalog of Federal Domestic Assistance (CFDA) number is 21.019.

6. Expenditures. Awardee shall comply with all of its applicable procurement rules and shall exercise all due care in administering CRF Funds, keeping in mind the nature of the public health emergency and federal restrictions on the use of CRF Funds.

a) Purchases. Awardee shall maintain copies of invoices, purchase orders, receipts and other documentation sufficient to demonstrate the items purchased, their purchase price, date of order and delivery, and the use of the item(s) purchased.

b) Payroll. Awardee shall maintain records that are sufficient to support salary expenditures for any and all individual employees charged to CRF Funds, if any, including documentation indicating demonstrating the duties being performed by that employee for the relevant time period and their relationship to the public health emergency. In accordance with the Application and federal guidance, Awardee shall ensure that no more than 100% of an employee's time is charged to reimbursed programs. Awardee acknowledges that payroll expenditures should be limited to those employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

c) Administrative Costs. CRF Funds will not be used for any administrative or overhead costs and will instead be used entirely for direct COVID-19 related costs, except (1) costs specifically related to the administration of CRF funding by subrecipient, and (2) costs for additional personnel or outside contractors hired or contracted for the specific purposes of administering a program utilizing CRF Funds. CRF Funds may not be used for payroll costs for employees whose positions were budgeted as of March 27, 2020.

d) Travel. Costs incurred for travel shall be considered reasonable, allowable, and allocable only to the extent they do not exceed on a daily basis the maximum per diem, lodging, and mileage rates in effect on the day of travel as set forth in travel regulations of the State of Kansas.

7. Record Retention. Awardee shall create, maintain, and preserve sufficient records of its expenditures to demonstrate compliance with the requirements of the CARES Act, and Awardee shall provide such records to the County promptly upon written request by the County. Such records shall be maintained not less than five (5) years after the termination of this agreement.

8. Reporting. Awardee will submit to the County sufficient information regarding its use of the CRF Funds that the County may meet its reporting obligations, including the reporting expectations of the United States Department of the Treasury as set forth in Memoranda OIG-CA-20-021 and OIG-CA-20-025. Awardee's reports will be in the form reasonably requested by the County and shall provide such further information as may be reasonably requested by the County. Awardee shall provide a final report, including an accounting for all expenditures of CRF Funds, on or before the date of expiration of this Agreement.

9. Unspent Funds. Under current law, CRF Funds for which no expenditure is incurred during the Covered Period must be returned to the United States Department of the Treasury. CRF Funds for which no qualified expenditure has been or is planned to be incurred by October 15, 2020, or for which delivery or performance cannot occur before December 30, 2020, shall be returned to the County on or before November 1, 2020.

10. Transparency. All Awardee reports regarding implementation of the Application and use of the CRF Funds under this Agreement will be made publicly available by the County.

11. Termination of Agreement. The County may terminate this Agreement, in whole or in part, if Awardee has failed to comply with the conditions of the Agreement, the Application, or subsequent amendments. In the event of termination by the County, any portion of the CRF Funds not expended or encumbered at the time of termination shall be returned to the County within seven (7) days. If the Agreement is terminated by the County, Awardee shall provide a final report within 45 days after receiving notice of termination.

12. Audit. As provided in 42 U.S.C. § 801(f), the Inspector General of the Department of the Treasury is authorized to determine whether CRF payments have been used for eligible purposes. CRF Fund payments that are deemed to have been used for ineligible purposes are treated as a

debt owed to the federal government, and for which the County may be liable to the State of Kansas. Authorized representatives of the County, the State of Kansas, and the Inspector General of the United States Department of the Treasury shall have access to all books, accounts, records, reports, files, papers, things, or property belonging to, or in use by Awardee pertaining to the administration of this Agreement and the receipt and expenditure of CRF Funds as may be necessary to make audits, examinations, excerpts, and transcripts for a period of five (5) years after the termination of this Agreement. Awardee agrees to be responsible for any debt incurred to the State of Kansas due to ineligible expenditures of CRF Funds.

13. Term. This Agreement shall be in effect through October 15, 2021, but Awardee's obligations set forth in paragraphs 7 (Record Retention) and 12 (Audit) shall continue beyond the termination or expiration of this Agreement.

14. Notice. All notices, demands, requests or other communications which may be required or desired to be given by either party shall be in writing and shall be made by personal delivery or by United States mail, postage prepaid. Notice shall be presumed to have been received within three days of mailing. Notices to Awardee shall be provided to the name and address listed below. Notices to County shall be provided to:

Dan Williams
430 Commercial Street
Emporia, Kansas 66801

15. Modification. Any amendment to this Agreement will not be effective without the express written agreement of all parties, except that in the event of changes in any applicable Federal statutes, regulations, or guidance regarding the use of CRF funds, this Agreement shall be deemed to be amended when the statutory requirements for use of CRF funds are changed or when required to comply with any law or guidance so amended. Such deemed amendments shall be effective as of the effective date of the statutory or regulatory change or the date the guidance is issued.

16. Representative's Authority to Contract. By signing this contract, the representative of Awardee represents that such person is duly authorized by Awardee to execute this contract on behalf of Awardee and that Awardee agrees to be bound by the provisions thereof.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. Jurisdiction and venue for any suit arising out of or related to this Agreement shall be in Kansas district court located in the County.

18. Counterparts. The MOA may be executed in one or more counterparts, each of which shall constitute an original of the MOA, and that facsimile and/or pdf scanned copies of signatures shall be as effective and binding as original signatures.

19. Certification. By signing below, Awardee's representative certifies that he or she has ready the Awardee's Application, that the information and statements provided in the Application are true and correct to the best of my knowledge, that the expenses and costs identified in the Application are eligible for CRF funds, and by my signature on this document, acknowledge my understanding that any intentional or negligent misrepresentation or falsification of any of the information in this document or the Application could subject me to liability under the Kansas False Claims Act and Federal False Claims Act as well as criminal penalties, including but not limited to fine or imprisonment or both under Title 18, United States Code, Sec. 1001, et seq. and state law.

COUNTY

AWARDEE

Lyon County

City of Emporia

430 Commercial Street

104 East 5th

Emporia, Kansas 66801

Emporia, Kansas, 66801

Dan Williams, Controller

Danny Giefer, Mayor

Date: _____

Date: October 21, 2020

Exhibit A – Awardee's Application for CRF Funds,
AS APPROVED BY THE COUNTY

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 5

SUBJECT: Request to Appoint a Member to the Emporia Human Relations Commission.

RECOMMENDATION: Appoint Teresa Taylor-Williams to the Human Relations Commission.

BACKGROUND SUMMARY:

The Human Relations Commission currently has four openings. One application has been received from Teresa Taylor-Williams. Ms. Taylor-Williams' application has been reviewed by staff and meets eligibility requirements.

Attached is her application for your review and consideration.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

APPLICATION FOR ADVISORY BOARD MEMBERSHIP



DATE: 09/17/2020

NAME: Teresa K Taylor-Williams
First Name MI Last Name

ADDRESS: 918 East Street, #6
Street
Emporia KS 66801
City State ZIP

Email: ttaylorw@emporia.edu

PHONE: 620-341-5481

PLACE OF EMPLOYMENT: Emporia State University

HOW LONG HAVE YOU BEEN A RESIDENT OF EMPORIA? one year

ADVISORY BOARD(S) YOU ARE INTERESTED IN:
HUMAN RELATIONS COMMISSION

**BRIEFLY DESCRIBE WHY YOU WOULD LIKE TO PARTICIPATE ON
THE**

ADVISORY BOARD(S) MENTIONED ABOVE:

I work in the field of Diversity for ESU, and I am an advocate for the underserved and underrepresented populations. I am a woman of color, a mother, a widow, a grandmother, a student, and a professional. I've only lived in Emporia a year, but I have a keen interest in being involved in the communities I live in.

OTHER ACTIVITIES AND INTERESTS:

Family, travel, professional development.

In Lieu of Signature, Click Here

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 6

SUBJECT: Request to Appoint a Member to the Community Housing Board/ Land Bank.

RECOMMENDATION: Appoint Melissa Ogleby to a second term to the Community Housing Board/ Emporia Land Bank.

BACKGROUND SUMMARY:

The Community Housing Board/ Land Bank currently has two openings. One application has been received from Melissa L. Ogleby, who is currently a member of the board and is up for reappointment. Ms. Ogleby's application has been reviewed and meets the eligibility requirements.

Attached is her application for your review and consideration.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

RECEIVED
OCT 12 2020
By

NAME:	Melissa	L	ogleby
	First Name	MI	Last Name

ADDRESS:	1119 Rural St		
	Street		
	Emporia	KS	66801
	City	State	ZIP

Page 24 of 70

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 7

SUBJECT: Consider Select Realtor to sell the City-owned homes at 306 and 310 S. Congress St.

RECOMMENDATION: Approve selection of Aaron Sewell to sell City-owned homes at 306 and 310 S. Congress St. and authorize the Mayor to execute all related documents

BACKGROUND SUMMARY:

Proposals were solicited and a total of six were received from Realtors to sell the most recent two houses built through the housing infill program. The proposals are attached, and the chart below summarizes the proposals submitted.

Name	Company	Principal Place of Business	Commission Rate	Number of Closings in Past 12 Months
K.B. Thomas, Jr.	American Real Estate	Emporia	4%	7
Aaron Sewell	Ek Real Estate	Emporia	4.75%	70
Lynn Cunningham	Ek Real Estate	Emporia	5%	38
Jamie Sauder	Coldwell Banker	Emporia	6%	40
Carmen Mackey	Tri County Real Estate	Lebo	4%	50
Matt Lowery	Keller Williams Realty	Olathe	4%	2

City Staff recommends selection of Aaron Sewell with Ek Real Estate. Mr. Sewell proposed the second lowest commission rate of the Emporia businesses and has the highest number of closings in the past 12 months.

City staff will review all forthcoming related documents prior to forwarding to the Mayor for signatures.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____



REQUEST FOR PROPOSAL

September 23, 2020

Dear Realtor,

The City of Emporia is requesting proposals for the services of selling real estate currently owned by the City. These are newly constructed homes located at **306 & 310 S. Congress St.**

In order to be considered, please fill out the following information and submit this form in person or by email **NO LATER THAN Wednesday, September 30th at 1:00 p.m.**

In person: 521 Market St. (Community Development Office)

By email: jlynch@emporia-kansas.gov

Please fill out completely; refer to attached flyer for more info. on houses and program

Name Aaron Sewell Real Estate Agency: EK Real Estate

E Mail: AASewell@msn.com Phone Number: 620-366-0793

Total sales commission to be charged to seller (% or flat fee): See Attached e-mail

Current number of listings you now have: 9 Active + 6 Pending

Number of closings you have had in the last 12 months: 70 Transactions

List any unique marketing strategies or techniques your company utilizes to sell properties:

See Attached e-mail

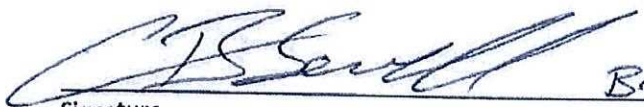
Describe any conflicts of interest you may have with listing these properties:

NONE

Conditions:

- House must be listed in the multi-list service for duration of contract;
- At least one open house must be conducted within 3 weeks of contract at a popular day/time;
- Contract term maximum of 3 months to start;
- Realtor/agents must be willing and able to work with the City's housing infill program to provide incentive for buyers meeting the income requirements (unrestricted open market sales are also acceptable, where income is not limited);
- In the event multiple qualified proposals are received that are equal the City shall award the contract by rotation or a random drawing;
- The City reserves the right to reject any and all proposals

I hereby agree to the above conditions if chosen to serve as seller of said real estate.


Signature _____ Title Owner

9-26-2020
Date

Thank you for your interest in listing our property!



REQUEST FOR PROPOSAL

September 23, 2020

Dear Realtor,

The City of Emporia is requesting proposals for the services of selling real estate currently owned by the City. These are newly constructed homes located at **306 & 310 S. Congress St.**

In order to be considered, please fill out the following information and submit this form in person or by email **NO LATER THAN Wednesday, September 30th at 1:00 p.m.**

In person: 521 Market St. (Community Development Office)

By email: jlynch@emporia-kansas.gov

Please fill out completely; refer to attached flyer for more info. on houses and program

Name Matt Lowery Real Estate Agency: Keller Williams Real Estate

E Mail: mlowery@kw.com Phone Number: (620) 481-7033

Total sales commission to be charged to seller (% or flat fee): 4% (1.5% to listing agent / 2.5% to selling agent)

Current number of listings you now have: 0

Number of closings you have had in the last 12 months: 2 (I primarily focus on working as an appraiser)

List any unique marketing strategies or techniques your company utilizes to sell properties:

Listing will provide continued use of virtual reality tour currently being provided to the city and online marketing through social media and Keller Williams tools to interface with other services (i.e. Google Maps).

Describe any conflicts of interest you may have with listing these properties:

I am chairman of the Emporia Housing Board and Emporia Land Bank. These positions motivate me to cut my typical listing fee 50% but may require me to recuse myself from business pertaining to the listings.

Conditions:

- House must be listed in the multi-list service for duration of contract;
- At least one open house must be conducted within 3 weeks of contract at a popular day/time;
- Contract term maximum of 3 months to start;
- Realtor/agents must be willing and able to work with the City's housing infill program to provide incentive for buyers meeting the income requirements (unrestricted open market sales are also acceptable, where income is not limited);
- In the event multiple qualified proposals are received that are equal the City shall award the contract by rotation or a random drawing;
- The City reserves the right to reject any and all proposals

I hereby agree to the above conditions if chosen to serve as seller of said real estate.

Matthew Lowery

dotloop verified
09/24/20 4:23 PM CDT
HZNE-ZPCL-LN0H-WDVG

Realtor / Cetified
Residential Appraiser

09/24/2020

Signature

Title

Date

Thank you for your interest in listing our property!



REQUEST FOR PROPOSAL

September 23, 2020

Dear Realtor,

The City of Emporia is requesting proposals for the services of selling real estate currently owned by the City. These are newly constructed homes located at **306 & 310 S. Congress St.**

In order to be considered, please fill out the following information and submit this form in person or by email **NO LATER THAN Wednesday, September 30th at 1:00 p.m.**

In person: 521 Market St. (Community Development Office)

By email: jlynch@emporia-kansas.gov

Please fill out completely; refer to attached flyer for more info. on houses and program

Name KB Thomas Jr Real Estate Agency: American Real Estate

E Mail: kbtd77@gmail.com Phone Number: 342 9504 757 8469

Total sales commission to be charged to seller (% or flat fee): 4% 2% Buyer's Agent

Current number of listings you now have: 4

Number of closings you have had in the last 12 months: 17 2% Listing agent

List any unique marketing strategies or techniques your company utilizes to sell properties: Zillow - Premier Broker

Houses will be advertised everyday - First Time

Describe any conflicts of interest you may have with listing these properties: Home buyer Seminar

None but EK and Farm & Home have active

Conditions: Housing Development and Emporia Real Estate build new homes. (I am your man) no conflicts

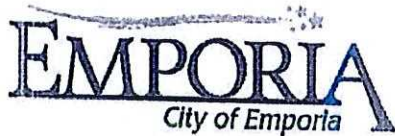
- House must be listed in the multi-list service for duration of contract;
- At least one open house must be conducted within 3 weeks of contract at a popular day/time;
- Contract term maximum of 3 months to start;
- Realtor/agents must be willing and able to work with the City's housing infill program to provide incentive for buyers meeting the income requirements (unrestricted open market sales are also acceptable, where income is not limited);
- In the event multiple qualified proposals are received that are equal the City shall award the contract by rotation or a random drawing;
- The City reserves the right to reject any and all proposals

I hereby agree to the above conditions if chosen to serve as seller of said real estate.

KB Thomas Jr Broker
Signature Title

Sept 30, 2020
Date

Thank you for your interest in listing our property!



REQUEST FOR PROPOSAL

September 23, 2020

Dear Realtor,

The City of Emporia is requesting proposals for the services of selling real estate currently owned by the City. These are newly constructed homes located at 306 & 310 S. Congress St.

In order to be considered, please fill out the following information and submit this form in person or by email NO LATER THAN **Wednesday, September 30th at 1:00 p.m.**

In person: 521 Market St. (Community Development Office)

By email: jlynch@emporia-kansas.gov

Please fill out completely; refer to attached flyer for more info. on houses and program

Name Carmen Y. Mackey, Broker Real Estate Agency: Tri County Real Estate

carmenymackey@gmail.com

E Mail: _____ Phone Number: 620-341-0838

Total sales commission to be charged to seller (% or flat fee): 4% of sale price

Current number of listings you now have: 13

Number of closings you have had in the last 12 months: 50

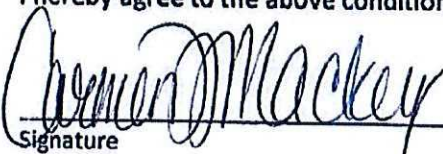
List any unique marketing strategies or techniques your company utilizes to sell properties:

Describe any conflicts of interest you may have with listing these properties:

Conditions:

- House must be listed in the multi-list service for duration of contract;
- At least one open house must be conducted within 3 weeks of contract at a popular day/time;
- Contract term maximum of 3 months to start;
- Realtor/agents must be willing and able to work with the City's housing infill program to provide incentive for buyers meeting the income requirements (unrestricted open market sales are also acceptable, where income is not limited);
- In the event multiple qualified proposals are received that are equal the City shall award the contract by rotation or a random drawing;
- The City reserves the right to reject any and all proposals

I hereby agree to the above conditions if chosen to serve as seller of said real estate.



Signature

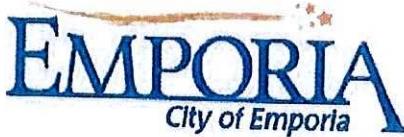
Broker/Owner

Title

9/29/2020

Date

Thank you for your interest in listing our property!



REQUEST FOR PROPOSAL

September 23, 2020

Dear Realtor,

The City of Emporia is requesting proposals for the services of selling real estate currently owned by the City. These are newly constructed homes located at **306 & 310 S. Congress St.** In order to be considered, please fill out the following information and submit this form in person or by email **NO LATER THAN Wednesday, September 30th at 1:00 p.m.**

In person: 521 Market St. (Community Development Office)

By email: ilynn@emporia-kansas.gov

Please fill out completely; refer to attached flyer for more info. on houses and program

Name Lynn A. Cunningham Real Estate Agency: EK Real Estate

E Mail: EKsellSKSC@gmail.com Phone Number: 208-610-7503

Total sales commission to be charged to seller (% or flat fee): 540 per home

Current number of listings you now have: 3 Active

Number of closings you have had in the last 12 months: 38

List any unique marketing strategies or techniques your company utilizes to sell properties:

Facebook, open Houses, Group listing Appointments
Describe any conflicts of interest you may have with listing these properties:

None

Conditions:

- House must be listed in the multi-list service for duration of contract;
- At least one open house must be conducted within 3 weeks of contract at a popular day/time;
- Contract term maximum of 3 months to start;
- Realtor/agents must be willing and able to work with the City's housing infill program to provide incentive for buyers meeting the income requirements (unrestricted open market sales are also acceptable, where income is not limited);
- In the event multiple qualified proposals are received that are equal the City shall award the contract by rotation or a random drawing;
- The City reserves the right to reject any and all proposals

I hereby agree to the above conditions if chosen to serve as seller of said real estate.

Lynn A. Cunningham Realtor Associate Baker, GRT 9-28-20
Signature Title Date

Thank you for your interest in listing our property!



REQUEST FOR PROPOSAL

September 23, 2020

Dear Realtor,

The City of Emporia is requesting proposals for the services of selling real estate currently owned by the City. These are newly constructed homes located at **306 & 310 S. Congress St.** In order to be considered, please fill out the following information and submit this form in person or by email **NO LATER THAN Wednesday, September 30th at 1:00 p.m.**

In person: 521 Market St. (Community Development Office)

By email: jlynch@emporia-kansas.gov

Please fill out completely; refer to attached flyer for more info. on houses and program

Name JAMIE SAUER Real Estate Agency: COLDWELL BANKER
E Mail: 620-481-1433 Phone Number: JAMIE.SAUER@CBKRE.COM

Total sales commission to be charged to seller (% or flat fee): 6%
Current number of listings you now have: 6
Number of closings you have had in the last 12 months: 40

List any unique marketing strategies or techniques your company utilizes to sell properties:

WE WILL HAVE BOTH HOMES PROFESSIONALLY STAGED IN ADDITION TO TRADITIONAL MARKETING

Describe any conflicts of interest you may have with listing these properties:

NONE

Conditions:

- House must be listed in the multi-list service for duration of contract;
- At least one open house must be conducted within 3 weeks of contract at a popular day/time;
- Contract term maximum of 3 months to start;
- Realtor/agents must be willing and able to work with the City's housing infill program to provide incentive for buyers meeting the income requirements (unrestricted open market sales are also acceptable, where income is not limited);
- In the event multiple qualified proposals are received that are equal the City shall award the contract by rotation or a random drawing;
- The City reserves the right to reject any and all proposals

I hereby agree to the above conditions if chosen to serve as seller of said real estate.

Signature

Title

Date

Thank you for your interest in listing our property!

From: Aaron Sewell [mailto:aasewell@msn.com]
Sent: Saturday, September 26, 2020 11:46 AM
To: Jeff Lynch <jlynch@emporia-kansas.gov>
Subject: Listing Proposal - City of Emporia New Builds

Jeff, please find the attached proposal for marketing listing services on the 2 properties on congress street.

Commission agreement as follows: 4.75% total commission from seller to be split 50/50 between listing agent and selling agent.

Marketing Strategy and Uniqueness: EK Real Estate is the market leader in both total annual transaction volume and total units closed within Lyon County. What this means for you is that my company brings more buyers and sellers together in a given year than anyone else locally. In addition to this strong individual production from all our 20 plus agents I will also feature the two listings as follows: Exposure on the Sunflower MLS, Exposure on dozens of websites including the big boys like Zillow -Trulia - homes.com - Realtor.com and Facebook, Have my agents host open houses as needed to drive traffic, Network with local loan officers, Provide flyers and marketing materials at the properties, Publish ad in the local Gazette real estate guide, Create a full video tour.

Thanks for the opportunity. If I am selected, I can send you the listing agreements electronically to sign.

Sincerely,

Aaron B. Sewell

Ek Real Estate

-- Real Estate Broker
-- Co-Owner

1201 W 6th Ave.
Emporia, KS 66801

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 8

SUBJECT: Consider awarding a bid for the Watermain Project Elm St. (6th Ave. to Newman Hospital), 9th Ave. (Elm St. to Lawrence St.) Project No. WM1904.

RECOMMENDATION: Staff recommends awarding the project to Carlson Utility, LLC for a total base bid amount of \$ 603,636.00.

BACKGROUND SUMMARY:

At 2:00 p.m. on Tuesday, October 13, 2020, the City Engineer's Office publicly opened a bid on the Watermain Project Elm St. (6th Ave. to Newman Hospital), 9th Ave. (Elm St. to Lawrence St.) Project No. WM1904. The City had five bidders out of ten plan holders submit a bid. The following is the bid received and the Engineer's Estimate.

Contractor	Base Bid
Carlson Utility, LLC	\$ 603,636.00
Middlecreek Corporation	\$ 731,387.50
Orr Wyatt Streetscapes	\$ 732,103.40
Nowak Construction Company, Inc.	\$ 748,877.80
Smoky Hill, LLC	\$ 899,271.00
Engineer's Estimate	\$ 667,247.00

The staff recommends awarding the project to Carlson Utility, LLC for the Base Bid amount of \$ 603,636.00.

The project is funded with the a KDHE Water Loan.

Attached is the complete project bid tabulation sheet.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

**CITY OF EMPORIA, KS
BID TABULATION
FOR CONSTRUCTION OF WATERMAIN PROJECT ELM ST. (6TH AVE. TO NEWMAN HOSPITAL) 9TH AVE. (ELM ST. TO LAWRENCE ST.)**

Project NO. WM1904 KDOT KDHE Project NO. KPWSLF 2968

October 13, 2020

Quantity	Units	Description	Carlson Utilities		Middlecreek Corp.		Orr Wyatt		Nowak Construction		Smoky Hill		Engineer's	
			Topoka, KS	Total	Peabody, KS	Total	Raytown, MO	Total	Goddard, KS	Total	Salina, KS	Total	Unit	Total
1	L.S.	Mobilization	\$9,000.00	\$9,000.00	\$70,000.00	\$70,000.00	\$16,200.00	\$16,200.00	\$15,885.00	\$15,885.00	\$62,000.00	\$62,000.00	\$25,000.00	\$25,000.00
1	L.S.	Construction Staking	\$6,500.00	\$6,500.00	\$6,000.00	\$6,000.00	\$4,320.00	\$4,320.00	\$2,715.00	\$2,715.00	\$6,000.00	\$6,000.00	\$3,000.00	\$3,000.00
6	L.F.	3" Water Main (DIP) (In Place)	\$105.00	\$630.00	\$70.00	\$420.00	\$108.00	\$648.00	\$285.00	\$1,710.00	\$63.00	\$378.00	\$100.00	\$600.00
10	L.F.	6" PVC Water Main (C-900) (In Place)	\$70.00	\$700.00	\$80.00	\$800.00	\$97.00	\$970.00	\$120.50	\$1,205.00	\$12.00	\$120.00	\$80.00	\$800.00
6	L.F.	8" PVC Water Main (C-900) (In Place)	\$90.00	\$480.00	\$90.00	\$540.00	\$108.00	\$648.00	\$201.00	\$1,206.00	\$75.00	\$450.00	\$100.00	\$600.00
344	L.F.	12" PVC Water Main (C-900) (In Place)	\$115.00	\$39,560.00	\$95.00	\$32,680.00	\$232.00	\$79,808.00	\$128.50	\$44,204.00	\$98.00	\$33,712.00	\$90.00	\$30,960.00
2,827	L.F.	12" Water Main (Certa-Lok C-900/RJ) (In Place)	\$83.00	\$234,641.00	\$127.00	\$359,029.00	\$117.70	\$332,737.90	\$136.50	\$385,885.50	\$123.00	\$347,721.00	\$130.00	\$367,510.00
1	Ea.	3" Gate Valve with Valve Box	\$8,255.00	\$8,255.00	\$1,470.00	\$1,470.00	\$1,295.00	\$1,295.00	\$1,005.00	\$1,005.00	\$1,640.00	\$1,640.00	\$1,000.00	\$1,000.00
1	Ea.	8" Gate Valve with Valve Box	\$1,475.00	\$1,475.00	\$1,200.00	\$1,200.00	\$2,160.00	\$2,160.00	\$2,111.00	\$2,111.00	\$2,640.00	\$2,640.00	\$1,600.00	\$1,600.00
13	Ea.	12" Butterfly Valve with Valve Box	\$2,900.00	\$37,700.00	\$4,226.00	\$54,938.00	\$4,320.00	\$56,160.00	\$3,805.00	\$49,465.00	\$4,600.00	\$59,800.00	\$2,600.00	\$33,800.00
1	Ea.	6"x6" Tapping Tee with Valve	\$3,600.00	\$3,600.00	\$3,644.00	\$3,644.00	\$5,290.00	\$5,290.00	\$3,619.00	\$3,619.00	\$4,180.00	\$4,180.00	\$2,500.00	\$2,500.00
1	Ea.	10"x10"x10" Tapping Tee with Valve	\$5,900.00	\$5,900.00	\$4,944.00	\$4,944.00	\$6,480.00	\$6,480.00	\$6,234.00	\$6,234.00	\$6,640.00	\$6,640.00	\$5,000.00	\$5,000.00
1	Ea.	10"x8"x10" Tee	\$875.00	\$875.00	\$830.00	\$830.00	\$1,188.00	\$1,188.00	\$1,005.00	\$1,005.00	\$1,565.00	\$1,565.00	\$800.00	\$800.00
2	Ea.	12"x6"x12" Tee	\$875.00	\$1,750.00	\$890.00	\$1,780.00	\$1,188.00	\$2,376.00	\$955.00	\$1,910.00	\$1,635.00	\$3,270.00	\$1,000.00	\$2,000.00
5	Ea.	12"x12"x12" Tee	\$1,550.00	\$7,750.00	\$870.00	\$4,350.00	\$1,620.00	\$8,100.00	\$1,186.00	\$5,930.00	\$2,840.00	\$14,200.00	\$1,500.00	\$7,500.00
1	Ea.	12"x12" Cross	\$1,575.00	\$1,575.00	\$1,074.00	\$1,074.00	\$2,700.00	\$2,700.00	\$1,709.00	\$1,709.00	\$3,090.00	\$3,090.00	\$2,500.00	\$2,500.00
1	Ea.	6"x90 Degree Bend	\$375.00	\$375.00	\$238.00	\$238.00	\$755.00	\$755.00	\$402.00	\$402.00	\$1,160.00	\$1,160.00	\$400.00	\$400.00

CITY OF EMPORIA, KS
BID TABULATION
FOR CONSTRUCTION OF WATERMAIN PROJECT ELM ST. (6TH AVE. TO NEWMAN HOSPITAL) 9TH AVE. (ELM ST. TO LAWRENCE ST.)
Project NO. WM1904 KDOT KDHE Project NO. KPWSLF 2968

October 13, 2020

Quantity	Units	Description	Carlson Utilities Topeka, KS		Middlecreek Corp. Peabody, KS		Orr Wyatt Raytown, MO		Nowak Construction Goddard, KS		Smoky Hill Salina, KS		Engineer's Estimate	
			Unit	Total	Unit	Total	Unit	Total	Unit	Total	Unit	Total	Unit	Total
1	Ea.	8"x90 Degree Bend	\$550.00	\$550.00	\$286.00	\$286.00	\$875.00	\$875.00	\$502.50	\$502.50	\$1,220.00	\$1,220.00	\$500.00	\$500.00
2	Ea.	12"x90 Degree Bend	\$925.00	\$1,850.00	\$496.00	\$992.00	\$1,295.00	\$2,590.00	\$905.00	\$1,810.00	\$1,685.00	\$3,370.00	\$800.00	\$1,600.00
4	Ea.	12"x45 Degree Bend	\$850.00	\$3,400.00	\$488.00	\$1,952.00	\$1,295.00	\$5,180.00	\$779.00	\$3,116.00	\$1,600.00	\$6,400.00	\$700.00	\$2,800.00
1	Ea.	6"x3" Reducer	\$325.00	\$325.00	\$198.00	\$198.00	\$755.00	\$755.00	\$301.50	\$301.50	\$1,115.00	\$1,115.00	\$350.00	\$350.00
1	Ea.	6"x4" Reducer	\$350.00	\$350.00	\$210.00	\$210.00	\$780.00	\$780.00	\$301.50	\$301.50	\$1,115.00	\$1,115.00	\$375.00	\$375.00
1	Ea.	12"x6" Reducer	\$550.00	\$550.00	\$280.00	\$280.00	\$970.00	\$970.00	\$502.50	\$502.50	\$1,210.00	\$1,210.00	\$425.00	\$425.00
3	Ea.	12"x8" Reducer	\$650.00	\$1,950.00	\$312.00	\$936.00	\$1,025.00	\$3,075.00	\$536.00	\$1,608.00	\$1,225.00	\$3,675.00	\$450.00	\$1,350.00
1	Ea.	12"x10" Reducer	\$750.00	\$750.00	\$341.00	\$341.00	\$1,080.00	\$1,080.00	\$603.00	\$603.00	\$1,230.00	\$1,230.00	\$525.00	\$525.00
2	Ea.	14"x12" Reducer	\$950.00	\$1,900.00	\$608.00	\$1,216.00	\$1,835.00	\$3,670.00	\$654.50	\$1,309.00	\$1,980.00	\$3,960.00	\$600.00	\$1,200.00
5	Ea.	8" Cap	\$550.00	\$2,750.00	\$161.00	\$805.00	\$430.00	\$2,150.00	\$261.50	\$1,307.50	\$800.00	\$4,000.00	\$400.00	\$2,000.00
4	Ea.	12" Cap	\$700.00	\$2,800.00	\$240.00	\$960.00	\$700.00	\$2,800.00	\$352.00	\$1,408.00	\$800.00	\$3,600.00	\$600.00	\$2,400.00
2	Ea.	14" Cap	\$800.00	\$1,600.00	\$384.00	\$768.00	\$1,080.00	\$2,160.00	\$502.50	\$1,005.00	\$1,300.00	\$2,600.00	\$700.00	\$1,400.00
84	L.F.	Sanitary Sewer Concrete Encasement	\$150.00	\$12,600.00	\$130.00	\$10,920.00	\$108.00	\$9,072.00	\$129.50	\$10,878.00	\$300.00	\$25,200.00	\$100.00	\$8,400.00
855	L.F.	Service Connection (1") (Type K Copper)	\$75.00	\$64,125.00	\$51.00	\$43,605.00	\$52.00	\$44,460.00	\$45.60	\$38,988.00	\$98.00	\$83,790.00	\$20.00	\$17,100.00
33	L.F.	Service Connection (2") (Type K Copper)	\$75.00	\$2,475.00	\$59.00	\$1,947.00	\$88.00	\$2,904.00	\$109.50	\$3,613.50	\$110.00	\$3,630.00	\$30.00	\$990.00
6	Ea.	Fire Hydrant Assembly (5 Bur)	\$4,500.00	\$27,000.00	\$4,800.00	\$28,800.00	\$5,500.00	\$33,000.00	\$5,982.00	\$35,992.00	\$4,500.00	\$27,000.00	\$4,500.00	\$27,000.00
6	Ea.	Removal of Existing Fire Hydrant	\$500.00	\$3,000.00	\$900.00	\$5,400.00	\$540.00	\$3,240.00	\$419.00	\$2,514.00	\$1,000.00	\$6,000.00	\$500.00	\$3,000.00
400	C.Y.	Flowable Fill	\$110.00	\$44,000.00	\$105.00	\$42,000.00	\$108.00	\$43,200.00	\$110.50	\$44,200.00	\$160.00	\$64,000.00	\$120.00	\$48,000.00

**CITY OF EMPORIA, KS
BID TABULATION
FOR CONSTRUCTION OF WATERMAIN PROJECT ELM ST. (6TH AVE. TO NEWMAN HOSPITAL) 9TH AVE. (ELM ST. TO LAWRENCE ST.)**

Project NO. WM1904 KDOT KDHE Project NO. KPWSLF 2968

October 13, 2020

Quantity	Units	Description	Carlson Utilities Topeka, KS		Middlecreek Corp. Peabody, KS		Orr Wyatt Raytown, MO		Nowak Construction Goddard, KS		Smoky Hill Salina, KS		Engineer's Estimate	
			Unit	Total	Unit	Total	Unit	Total	Unit	Total	Unit	Total	Unit	Total
99	L.F.	Curb and Gutter (2'-6" Combined) (AE) (Remove & Replace)	\$110.00	\$10,890.00	\$70.00	\$6,930.00	\$37.00	\$3,663.00	\$96.50	\$9,553.50	\$150.00	\$14,850.00	\$50.00	\$4,950.00
287	S.Y.	Concrete Pavement (10') (AE) (Remove & Replace)	\$150.00	\$43,065.00	\$85.00	\$24,403.50	\$97.00	\$27,848.70	\$146.00	\$41,916.60	\$200.00	\$57,420.00	\$100.00	\$28,710.00
4	S.Y.	Concrete Pavement (6") (AE) (Remove & Replace)	\$125.00	\$550.00	\$65.00	\$286.00	\$97.00	\$426.80	\$183.00	\$805.20	\$200.00	\$880.00	\$80.00	\$352.00
29	S.Y.	Concrete Sidewalk (4") (AE) (Remove & Replace)	\$100.00	\$2,850.00	\$50.00	\$1,425.00	\$68.00	\$1,938.00	\$127.00	\$3,619.50	\$200.00	\$5,700.00	\$60.00	\$1,710.00
50	L.F.	Temporary Slope Barrier (Silt Fence)	\$6.00	\$300.00	\$7.00	\$350.00	\$5.40	\$270.00	\$8.05	\$402.50	\$10.00	\$500.00	\$6.00	\$300.00
12	Ea.	Temporary Inlet Sediment Barrier (Set Price)	\$100.00	\$1,200.00	\$100.00	\$1,200.00	\$100.00	\$1,200.00	\$100.00	\$1,200.00	\$100.00	\$1,200.00	\$100.00	\$1,200.00
1	C.Y.	Sediment Removal (Set Price)	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00
1	L.S.	Temporary Seeding	\$2,000.00	\$2,000.00	\$700.00	\$700.00	\$2,160.00	\$2,160.00	\$905.00	\$905.00	\$7,000.00	\$7,000.00	\$1,500.00	\$1,500.00
1	L.S.	Permanent Seeding (Fertilizer & Mulch)	\$4,000.00	\$4,000.00	\$2,500.00	\$2,500.00	\$2,160.00	\$2,160.00	\$7,138.00	\$7,138.00	\$10,000.00	\$10,000.00	\$3,500.00	\$3,500.00
1	L.S.	Traffic Control	\$6,000.00	\$6,000.00	\$8,000.00	\$8,000.00	\$8,600.00	\$8,600.00	\$6,837.00	\$6,837.00	\$10,000.00	\$10,000.00	\$20,000.00	\$20,000.00
TOTAL AMOUNT OF BID:				\$603,636.00		\$731,387.50		\$732,103.40		\$748,877.80		\$899,271.00		\$667,247.00

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 9

SUBJECT: This is KDOT's standard agreement with for Preliminary Engineering (PE) Design Services (Cost Plus Net Fee Agreement) for intersection improvements at 6th Avenue (US-50 Highway) and Prairie Street. (KDOT Project No. 50-56 KA-5412-01) (City Project No. PV1909)

RECOMMENDATION: KDOT has already approved the agreement, staff recommends City Commission approval.

BACKGROUND SUMMARY:

Commission has previously approved the selection of the consulting engineer (BG Consultants) for the KDOT CCLIP Intersection Improvement project. KDOT's standard agreement with the Consultant and the City is under consideration. The project will make intersection improvements at the southwest and northeast corners of the intersection, utility adjustments/improvements, miscellaneous sidewalk, and traffic signal upgrades/improvements. While the intersection will see traffic signal and turning radius improvements, the project does NOT change the roadway classification of Prairie Street (from US-50 Highway to the 12th Avenue), which currently is NOT a truck route.

This agreement is a 90/10 cost share with KDOT and has a total project (engineering + construction) budget of \$660,000 (City share up to \$60,000). City share to be paid out of Multi Year Fund.

Attached is the Contract for Preliminary Engineering (PE) Design Services by Consultant (Cost Plus Net Fee Agreement).

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

PROJECT NO. 50-56 KA-5412-01
INTERSECTION IMPROVEMENT
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 Secretary has authorized a intersection improvement project, as further described in this Agreement.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City.
- C. The City desires to construct the Project.
- D. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such state aid, such work is required to be done in accordance with the laws of Kansas.

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

ARTICLE I

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

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“City”** means the City of Emporia, Kansas, with its place of business at 104 E. 5th Avenue, Emporia, KS 66801.
- 3. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
- 4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
- 5. **“Construction Engineering”** 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. **“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.
12. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
13. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
14. **“Non-Participating Costs”** means the costs of any items or services which the Secretary reasonably determines are not Participating Costs.
15. **“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.
16. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
17. **“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.
18. **“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: **intersection improvements at US-50 and Prairie Street in Emporia, Kansas**, and is the subject of this Agreement.

19. **"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.
20. **"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.
21. **"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.
22. **"Secretary"** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.
23. **"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 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.
2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the Construction of the Project in accordance with the final Design Plans and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the City.
3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act 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.
4. **Payment of Costs.** The Secretary agrees to be responsible for ninety percent (90%) of the total actual costs of Preliminary Engineering, Right of Way, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering, but not to exceed \$600,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering that exceed \$666,666.00 for the Project. The Secretary shall not be responsible for the total actual costs of Utility adjustments or Non-Participating Costs for the Project.

5. **Final Billing.** After receipt of the final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the City is responsible and shall then transmit the complete and final billing to the City.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Secretary Authorization.** The Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project are hereby by the City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of state aid for this Project.

2. **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.

3. **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 design criteria appropriate for the Project in accordance with the current AASHTO A Policy on Geometric Design of Highways & Streets, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions.

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

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 3 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 3 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 3 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 as issued by KDOT, 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 the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the City's and its Consultant's duty to provide adequate and accurate Design Plans 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. 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.

9. 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 KDOT. 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 such that the City may obtain participation of state funds in the cost of the Project. 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 KDOT Right of Way. With regard to any bike or pedestrian paths or sidewalks ("Trail/Sidewalk") constructed pursuant to the Design Plans, the City agrees as follows:

- (i) City Responsible for Repairs and Providing Alternative Accessible Routes. The City agrees that the primary purpose of KDOT Right of Way is for the construction and maintenance of US-50. If the construction or maintenance of US-50 reasonably requires the Trail/Sidewalk on KDOT Right of Way to be damaged or removed, the City shall be responsible for all repairs to the Trail/Sidewalk made necessary as a result of US-50 construction or maintenance. In the event the Trail/Sidewalk on KDOT Right of Way is temporarily closed or removed for any reason and for any length of time, the City will be wholly responsible for providing an alternative accessible path and for compliance with all laws and regulations relating to accessibility.
- (ii) Interference with KDOT Right of Way. If the Secretary, in the Secretary's sole judgment, determines that continued use of the Trail/Sidewalk is or will interfere with KDOT use of its Right of Way or is otherwise rendered impractical, inconvenient, or unsafe for use by the traveling public, the City will remove the Trail/Sidewalk and restore the KDOT Right of Way location to its original condition prior to the Construction of the Trail/Sidewalk.
- (iii) Incorporation of Trail/Sidewalk into Local Transportation System. The City agrees to take all steps necessary to designate the Trail/Sidewalk component of the Project as an integral part of its local transportation system, being primarily for transportation

purposes and having only incidental recreational use for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135.

- (iv) **Maintenance.** When the Project is completed and final acceptance is issued, the City, at its own cost and expense, will maintain, including snow removal if required by law, the Trail/Sidewalk on KDOT Right of Way and 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 a reasonable period and will prosecute the work continuously until it is satisfactorily completed. Any notification by the State Transportation Engineer, however, is not intended to and shall not be construed to be an undertaking of the City's absolute duty and obligation to maintain the Trail/Sidewalk.

- (f) **Use of City Right of Way.** The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final Design Plans, for the purpose of constructing the Project.

10. **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.

11. **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 a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

12. **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 all 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 law, 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 laws. Except where the Utility adjustments are Participating Costs for the Project, the expense of the removal or adjustment of only privately owned Utilities located on private Right of Way shall be borne by the City and the Secretary in the same proportion as other approved Construction costs as stipulated elsewhere in this Agreement.

13. **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 City and County 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.

14. **Inspections.** The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved Construction Engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City or the Consultant. The Secretary does not undertake for the benefit of the City, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The City will require at a minimum all City personnel and all Consultant personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services between the Secretary and the City and/or the Consultant must contain this requirement as a minimum. The City may require additional clothing requirements for adequate visibility of personnel.

15. **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 Manual on Uniform Traffic Control Devices (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 and shall be subject to the approval of the Secretary.

(c) **Parking Control.** The City shall prohibit parking of vehicles on the city connecting link and on the acceleration and deceleration lanes of all connecting streets and highways and on additional portions of the connecting streets and highways as the Secretary may deem necessary to permit free flowing traffic throughout the length of the Project covered by this Agreement.

(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.

16. **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, unless prior approval is obtained from the Secretary.

17. **Financial Obligation.** The City will be responsible for ten percent (10%) of the total actual costs of Preliminary Engineering, Right of Way, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering, up to \$666,667.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering that exceed \$666,667.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

18. **Remittance of Estimated Share.** The City shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The City will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

19. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

20. **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.

21. **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.

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

ARTICLE IV

GENERAL PROVISIONS:

1. **Incorporation of Design Plans.** The final Design Plans for the Project are by this reference made a part of this Agreement.

2. **City Connecting Link.** The Parties have in the past entered into an agreement covering routine maintenance of the city connecting link and it is the Parties' intention that the agreement for routine maintenance shall remain in full force and effect and the mileage set out in the city connecting link maintenance agreement is not be affected by this Agreement. If necessary, the Parties will execute a new city connecting link maintenance agreement to include 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.

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

ATTEST:

THE CITY OF EMPORIA, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

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

CONTRACTUAL PROVISIONS ATTACHMENT

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

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

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

KANSAS DEPARTMENT OF TRANSPORTATION

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

PREAMBLE

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

CLARIFICATION

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

ASSURANCE APPENDIX A

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

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

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

ASSURANCE APPENDIX E

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

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

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 10

SUBJECT: Consider Review and Adoption of Resolution for 2019 Solid Waste Management Plan.

RECOMMENDATION: Sign the Resolution adopting the Solid Waste Management Plan for the year 2019.

BACKGROUND SUMMARY:

The Solid Waste Management Planning Committee met on Tuesday, October 13, 2020 to review last year's Plan. The Committee unanimously approved the 2019 plan with a few minor changes. Minutes from the meeting are attached. Each Commission within Lyon and Chase County must now adopt the plan in order to gain approval from the Kansas Department of Health and Environment, Bureau of Waste Division.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

RESOLUTION NO. ____

**A RESOLUTION RELATNG TO THE ANNUAL REVIEW OF THE SOLID WASTE
MANAGEMENT PLAN OF CHASE COUNTY, LYON COUNTY, AND THE CITY OF
EMPORIA**

WHEREAS, the Solid Waste Management Planning Committee met October 13, 2020 at the City Water Treatment Plant with members of the Committee being present for the purpose of the annual review of the Solid Waste Management Plan which Lyon County is required by statute to have; and

WHEREAS, the Solid Waste Management Plan Annual Review for Chase County, Lyon County, and the City of Emporia was adopted with amendments as set out by the Solid Waste Management Planning Committee minutes of October 13, 2020; and

WHEREAS, the City Commission reviewed the proposed Solid Waste Management Plan and the minutes of the Solid Waste Management Planning Committee meeting at the October 14, 2020 study session;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS that the City of Emporia Solid Waste Management Plan attached hereto with the amendments approved by the Solid Waste Management Planning Committee is hereby adopted as the Solid Waste Management Plan for Chase County, Lyon County, and the City of Emporia by the Emporia City Commission upon publication.

APPROVED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS this ____ day of _____, 2020

Danny Giefer, Mayor

ATTEST:

Kerry Sull, City Clerk

SOLID WASTE MANAGEMENT PLANNING COMMITTEE MEETING
OCTOBER 13, 2020 AT THE EMPORIA CITY WATER PLANT MEETING ROOM

The meeting was opened at 7:00 p.m. by Chairperson Ann Mayo. There were seven [7] persons in attendance. The attendance sheet is attached at the end of these minutes.

1) **Approval of Minutes from the October 24th, 2019 Meeting:**

Chairperson Mayo noted the following corrections:

- a) Page 2 under (e) next to last sentence: “n” should be “if *no* arsenic”
- b) Page 2 under (h) next to last sentence: “Big” should be *Bid*
- c) Page 3 under (5): SWPM should be *SWMP*
- d) Page 4 on 4th line from the top: “du” should be *due*. It should be noted that the Interlocal Agreement will not allow the reduction in membership. Keith Senn commented that the agreement does not require a quorum attending the meeting for voting purposes.

Keith Senn moved to approve the minutes of the October 24th, 2019 meeting as corrected. Derek Wells seconded the motion, and the motion passed unanimously.

2) **Introductions:**

No introductions were necessary as all present had attended these meetings in the past.

3) **Election of Committee Members [Chair, Secretary, etc.]:**

Chairperson Mayo asked for nominations for Secretary. Gary Watts moved for Chip Woods to continue to serve as Secretary. Derek Wells seconded the motion, and it passed unanimously.

Chairperson Mayo asked for nominations for Chair. Keith Senn moved for Ann Mayo to continue to serve as Chair if she was willing. Gary Watts seconded the motion, and it passed unanimously.

4) **Review and discussion of Solid Waste Activity:**

Keith Senn presented the *Solid Waste Management Plan Meeting Overview For the Year 2019*.

Sanitation Collections:

- a) The Department collected 27,542.89 tons of trash from residents, commercial businesses and industries in Emporia in 2019, which is an increase of 2,084.24 tons from 2018. This accounted for approximately 84.18% of the total trash intake at the City of Emporia/Lyon County Transfer Station. Additionally, 1,966.11 tons of construction demolition and 19.50 tons of brush were collected by the Roll-Off Service.
- b) Purchases for the Collections Department included
 - 1) 8 roll-off containers (2-30 yard, 2-30 yard and 4-40 yard) purchased at a cost of \$40,756.00 from Kelly Equipment that was delivered 6-12-19.
 - 2) A LET2 Crane Carries with a Pak-Mor rear load packer body was purchased from Downing Sales and Service at a cost of \$193,072.00. (Bid opening 7-23-19; Awarded 8-07-19; Delivered 2-17-2020)

- 3) A 2020 Ford F-150 was purchased from John North Ford; Awarded 10-16-19; Delivered 12-19-19.

Transfer Station

a) The Transfer Station received a combined total of 55,878.63 tons of materials in 2019, which is an increase of 681.25 tons from 2018. Comparison of 2019 tonnages to 2018 tonnages indicates increases in materials, including trash, brush, processed tires, oil and compost. A total of 32,261.43 tons of Municipal Solid Waste was shipped in 1,409 semi loads to Hamm's Landfill in 2019 compared to 31,527.32 tons in 1,374 loads in 2018.

b) There was no increase in Hamm's Landfill shipping costs in 2019. The base shipping rate for 2019 remained at \$32.36 per ton. The average price per ton for trash to the Hamm's Landfill in 2019, including the fuel surcharge, was \$33.68 per ton compared to \$33.90 per ton in 2018. The Transfer Station did not charge a fuel surcharge to its customers in 2019. The current Hamm's contract expires on December 31, 2020.

c) A 5% increase in Transfer Station Rates went into effect January 1, 2019.

d) KDHE inspected the Transfer Station, Construction Demolition Landfill, Tire Mono-fill or other permitted areas on 7-25-19. The inspection resulted in no violations. There was no inspection of the brush area in 2019. The old sanitary landfill was inspected on 6-19-19 without any violations.

d) Approximately 6,180.08 tons of trees and brush were accepted throughout the year (515 tons per month average). This was an increase of 2,236.42 tons from 2018. Staff utilized a combination of open burning and an Air Curtain Burner to dispose of the materials throughout the year. An Opacity test was conducted on the Air Curtain Burner by Terracon on November 19, 2019. KDHE issued the required Class 1 Emission Source Operating Permit on November 5, 2018 that expires 11-24-2023.

e) BG Consultants began planning for the construction and relocation of the Tire Mono-fill to the west of the current site on 5-15-2019. The plan was submitted to KDHE. On March 4, 2019 KDHE advised the area submitted was a pre-approved area. Bruce Boettcher commented that they had requested a letter from KDHE that is was a pre-approved area, but all he got back was an e-mail.

f) BG Consultants was hired to conduct a re-test of 6 monitoring wells that were discovered to exceed the maximum contaminant level of 10 micrograms per liter of arsenic beginning in 2014. On August 24, 2019 staff from BG collected samples from the 3 monitoring wells (3B, 6, 8A) containing high arsenic levels. KDHE also took split samples at that time. Samples were analyzed by Pace Labs. The City will be allowed to return to a 5-year sampling schedule as described in the Interlocal Agreement when the test results are non-detectable. The next event for all 13 wells would be in 2024.

f) Staff began placing materials in Phase 4 of Cell #6 of the current CD Landfill. Phase 2 continues to be closed as a result of a file in November of 2015. Closure of Cell 1 & 3 began in June. GeoTech took elevations on 6-13-19. The first lift of closure was completed on 6-21-19 and tested by Terracon. The first lift of closure was applied to Cell #3 as well as the second lift of Cell #1 on 9-10-19. The second lift on Cell #3 was applied on 10-28-19.

g) A springtime "Free Landfill Days" event was held April 28-May 6, 2019. During this period 1,193 customers deposited 177.07 tons of trash and 54.93 tons of construction

demolition materials. Customers included Strong City and Cottonwood Falls in Chase County.

h) Major equipment purchases for 2019 included a 2019 973K Cat Track Loader for a purchase price of \$404,280.00 from Foley Equipment of Topeka/Manhattan; Specification meeting 1-10-19; Pre-bid 1-30-19; Awarded 2-20-19; Delivered 7-24-19; Recalled for pump issues in October 2019; Repaired and returned 2-6-2020.

i) Upgrades and Repairs to the facilities included: A new lift station was purchased from Smith and Loveless and installed by Ed Hickman; Delivered 7-30-19 and installed 8-21-19. A Custom constructed swinging door was purchased from Rich Door Company and was fabricated for the north end of the semi-trailer load area; Installed 8-6-19.

Recycling

a) The Recycling Center continued to provide drop-off recycling services to residents of Lyon and Chase County in 2019. The Center processed and shipped 1,160.29 tons of cardboard and a small amount of shredded office paper in 2019. Paper Recycling markets were lower throughout the year. The average price per ton for all materials (including paper and iron) in 2019 was \$55.28 compared to \$103.73 in 2018. Ferrous metal recycling accounted for 109.89 tons and oil tonnage totaled 6.90 tons. The costs avoided by not shipping this tonnage as trash was approximately \$39,068.80.

b) The City of Emporia bi-weekly Curbside Recycling program generated 1,053.39 tons of material in 2019. Other recycling sources (County and City Trailers, County(s) residents and private haulers) added 390.53 tons of materials to the program. 1,384.97 tons of recyclable materials were shipped to Hamm's in 2019. Cost to the City for shipping 86 loads and sorting of materials by Hamm's totaled \$79,965.90.

c) The County recycling trailer program continued to service 6 Lyon County cities, 4 Chase County cities and the Kahola Lake Community. In 2019 the program generated 123.88 tons of recyclable materials. This tonnage represents a slight decrease of 0.07 tons from 2018.

d) There were no major equipment purchases or facility repairs at the Recycling Center in 2019.

Chairperson Mayo asked if there is a possibility of losing the Curbside Recycling program.

Keith Senn said that it is possible. It costs more to ship recycling materials than trash. The City may possibly charge for the program. They are waiting for the new proposal from Hamm's.

Chairperson Mayo asked if they are tracking employee costs due to COVID.

Keith Senn said that so far it has not been an issue as they have other equipment operators in other departments. He said that they can run the 4 routes with 3 trucks, but it does have an impact on the operators.

Chairperson Mayo commented that this might be something to include in the report next year.

5) Solid Waste Management Plan Updates and Changes:

Chairperson Mayo said that we will go through the Plan by Sections for any comments.

Section 1: Page 1-3: Chairperson Mayo questioned commented that the bold heading **1.f Future Population Growth and Areas of Populations** should be moved to the next page.

Section 6: Page 6-4: Keith Senn pointed out that in **Year 2019** it should state a 973K Cat track loader.

Section 8: Page 8-1: Chairperson Mayo asked if the salaries were the current rates. Keith Senn said that salaries are only updated during the 5-Year Plan, and that the City is looking at salary rates.

Page 8-2: Chairperson Mayo commented that wording under **Operation** needs to be revised. The curbside recycling service was explored and accepted by the Natural Resources Advisor Board. The operation includes a slight increase...

Section 9: Page 9-2: Chairperson Mayo noted that the heading is for a 5-Year Budget but there is only four years listed. Keith Senn said that he has the 2015 information that he can add.

6) **Adopt Solid Waste Management Plan with corrections discussed in tonight's meeting or reschedule for later date.**

Chairperson Mayo asked the Committee to adopt the Plan as corrected. Gary Watts made a motion to approve the Plan as corrected. Keith Senn seconded the motion, and it received a unanimous vote.

7) **Items from the floor (new business/old business):**

There was no old business or new business.

8) **Discuss Illegal Dumping Issue:**

Chip Woods commented that this is still an issue that costs the county \$12,000.00 to \$15,000.00 per year. The curve on Road 150 east of K-99 remains a favorite area, but it is a problem throughout the county.

Chairperson Mayo asked if there was still a program through KDHE for providing cameras for hot spots. Keith Senn said that he thought the program was still available.

Chairperson Mayo thanked the committee members for their attendance and their input. She said that she appreciated their comments and suggestions, and for taking the time to attend tonight. She also thanked Keith Senn, Derek Wells, Tim Delcamp and Chip Woods for their work on the committee. She recognized Gary Watts for his dedication for always attending these meetings and for his input.

Chairperson Mayo adjourned the meeting at 8:00 p.m.

Respectfully Submitted;

Warren Chip Woods
Secretary

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 11

SUBJECT: Consider Adoption of Landfill Fee Ordinance.

RECOMMENDATION: Staff Recommend the Adoption of the Landfill Fees Ordinance.

BACKGROUND SUMMARY:

The Ordinance proposal includes the addition of a fee for disposal of brush and trees from commercial companies and an increase in the per ton fee to accept processed tires. The fee for commercial brush and tree disposal will be \$10.00/ton, with a \$10.00 minimum charge. The fee for processed tires will increase from \$7.25/ton to \$25.00/ton, with a \$10.00 minimum charge. Both fees will allow the transfer station to better cover the expenses associated with the services being provided. Staff recommends the commission adopt the updated Landfill Fees Ordinance.

Attachment:

Updated Landfill Fees Ordinance

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF EMPORIA, KANSAS PERTAINING TO LANDFILL FEES; AMENDING CITY CODE SECTION 23-74

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

Section 1. That Section 27-24 of the Code of the City of Emporia, Kansas, is hereby amended as follows:

“Sec. 23-74. Fees:

(a) The following shall be the schedule of charges:

(1)	Mixed loads:		
	Minimum (up to 500 pounds)	\$	10.00
	After the first 500 pounds (per 10 pounds)		0.242
	Per ton		48.45
(2)	Construction demolition:		
	Minimum (up to 760 pounds)		10.00
	After 760 pounds (per 10 pounds)		0.131
	Per ton		26.33
(3)	Box pick up:		
	Trees and brush, per ton		45.83
	CD waste, per ton		63.27
	Trash, per ton		96.01
	Roll-off unit charge:		
	10 and 20 cubic yard container, per week		87.27
	30 and 40 cubic yard container, per week		116.37
(4)	Administrative charge for change in sanitation service		25.00
(5)	White goods that contain refrigerant or other chemicals that required removal, minimum charge per item		30.55

(6)	Special wastes, minimum per ton, plus associated administrative and handling costs			76.56

(7)	Tires:			
	a.	20 inches or smaller, each		3.36
	b.	21 inches to 24.5 inches, each		6.56
	c.	Larger than 24.5 inches		Accepted only if split
	d.	Tires already processed (split along circumference) will be accepted at the \$7.25 \$25.00 per ton rate (minimum)-with a minimum charge of \$10.00		
(8)	Trees and Brush (no treated wood or construction material):			
		Commercial Loads: Minimum (up to 1 ton)		10.00
		Commercial Loads: Per ton		10.00
		Non-Commercial loads		0.00
(9)	Out of county, accepted only upon written approval of solid waste manager and at a minimum rate of \$71.10 per ton mixed loads and \$39.50 per ton construction and demolition waste.			

(b) Industrial waste materials must receive an authorization permit from the Kansas department of health and environment and Hamm's Quarry before they may be properly disposed of. Industrial waste which has this authorization and is determined acceptable by the city at the transfer station will be assessed the special waste fee of sixty eight dollars and forty seven cents (\$68.47) per ton plus associated administrative handling costs.

(c) A "packer type truck" is a truck that is equipped with a compaction unit designed for the purpose of compressing solid waste materials. A fee of forty five dollars and forty two cents (\$45.42) per ton is hereby established to recover the cost to the city for the disposal of this waste.

(d) Loads brought by motor vehicle for disposal at the landfill must be securely covered so as to prevent the covering or load from becoming loose, detached or in any manner escaping from the vehicle. Fees for unsecured loads shall be a minimum of thirteen dollars (\$13.00) or double the amount of charges per subsection (a) of this section, whichever is greater.

(e) The fees designated herein shall be subject to review by the governing body and may be changed by ordinance. (1962 Code § 18-205; Ord. 1110, § 1, 9-1-1982; Ord. 91-1, § 3, 1-2-1991; Ord. 91-10, § 1, 4-17-1991; Ord. 94-21, § 3, 4-6-1994; Ord. 96-22, § 1, 7-17-1996; Ord. 98-3, §

1, 2-4-1998; Ord. 00-28, § 1, 5-17-2000; Ord. 01-06, § 1, 3-7-2001; Ord. 01-34, § 1, 9-5-2001; Ord. 03-07, § 3, 2-26-2003; Ord. 04-15, § 1, 6-2-2004; Ord. 05-15, § 1, 4-20-2005; Ord. 06-03, § 6, 2-1-2006; Ord. 09-30, §§ 2, 3, 10-21-2009; Ord. 17-49, § 1, 12-20-2017; Ord. 18-41, § 1, 11-7-2018; Ord. 20-_____, § 1, 10-21-20)

Section 2. That the provisions of this ordinance as amended shall be included and incorporated in the code of the City of Emporia, Kansas.

Section 3. Effective Date. This ordinance shall take effect upon publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 21st day of October, 2020.

Danny Giefer, Mayor

ATTEST:

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 12

SUBJECT: Consider Ordinance Amending City Code Sec. 16-266 Pertaining to Face Masks.

RECOMMENDATION: Approve Ordinance

BACKGROUND SUMMARY:

City Code Sec. 16-266 requiring individuals to wear face masks or other face coverings in certain circumstances is scheduled to expire October 21, 2020 at 11:59 p.m. This ordinance proposal extends the expiration date to November 21, 2020 at 11:59 p.m. All other mask or face covering requirements pursuant to Sec. 16-266 would remain the same.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

ORDINANCE NO. 20-_____

AN ORDINANCE OF THE CITY OF EMPORIA, KANSAS REQUIRING INDIVIDUALS TO WEAR MASKS OR OTHER FACE COVERINGS IN CERTAIN CIRCUMSTANCES AND AMENDING CITY CODE SECTION 16-266

WHEREAS, the governing body of the City of Emporia prioritizes the protection of the health, safety, welfare and economic well-being of residents and visitors of the City of Emporia; and

WHEREAS, the spread of COVID-19 in the City of Emporia has resulted in illness, quarantines, school closures, and temporary closure of business resulting in lost wages and financial hardship; and

WHEREAS, the United States Departments of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 7,894,768 cases of illness and more than 216,025 deaths as a result of the illness across the United States; and

WHEREAS, the World Health Organization declared a pandemic on March 11, 2020; and

WHEREAS, a State of Disaster emergency was proclaimed for the State of Kansas on March 12, 2020; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-10 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, as of this date, in Kansas there have been 69,155 reported positive cases of COVID-19 spread including deaths; and

WHEREAS, after a steady trend of decreasing metrics, recent weeks have seen the numbers of COVID-19 cases, hospitalizations, and deaths spike in Kansas and across the nation; and

WHEREAS, this trend of increased COVID-19 spread is a danger to the health and safety of residents and visitors to the City of Emporia, and also presents a serious threat to reopening and reviving the City's economy; and

WHEREAS, wearing a mask in public is the easiest and most effective way to protect each other and keep our businesses open and our economy running; and

WHEREAS, the City of Emporia must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also

simultaneously safely, strategically, and incrementally reopening business and facilitating economic recovery and revitalization; and

WHEREAS, the City of Emporia approved Ordinance 20-24 on August 5th, 2020 extended by Ordinance 20-28 on September 16, 2020 requiring individuals to wear masks or other face coverings in certain circumstances, with an expiration date of October 21, 2020 at 11:59 p.m.; and

WHEREAS, for the aforementioned and other reasons, the governing body of the City of Emporia is acting pursuant to its constitutional home rule authority to provide for the health, safety, welfare, and economic well-being of residents and visitors of the City of Emporia by amending Section 16-266 of the Code of Ordinances of the City of Emporia, Kansas and extending the requirement that masks or other face coverings be worn as described in the ordinance until October 21, 2020.

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

Section 1. That Section 16-266 of the Code of Ordinances of the City of Emporia, Kansas, is hereby amended to read as follows:

“Sec. 16-266 Mask or other Face Coverings in Certain Circumstances.

(a) Mask or other face coverings; definitions. The following words or phrases when used in this article shall have the following meanings:

- (1) "Mask or other face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Ideally, a mask or other face covering has two or more layers. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.
- (2) "Public space" means any indoor or outdoor space or area that is open to the public; this does not include private residential property or private offices or workspaces that are not open to customers or public visitors."

(b) Mask or other face coverings; when required; exemptions.

- (1) All persons in the city shall cover their mouths and noses with masks or other face coverings when they are in the following situations:
 - (A) While inside any indoor public space and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity;
 - (B) Obtaining services from the healthcare sector in settings, including but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or

dental office, veterinary clinic, or blood bank, unless directed otherwise by an employee thereof or a health care provider;

- (C) Riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle; or,
- (D) While outdoors in public spaces and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity.

(2) All businesses, organizations and non-profit associations in the City of Emporia must require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering as follows:

- (A) Employees, when working in any space visited by customers or members of the public and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity;
- (B) Employees, when working in any space where food is prepared or packaged for sale or distribution to others;
- (C) Customers, members, visitors, or members of the public, when in a facility managed by the business or organization and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity; or
- (D) Employees, when in any room or enclosed area where other people (except for individuals who reside together) are present and are unable to maintain a 6-foot distance except for infrequent or incidental moments of closer proximity.

(3) The following individuals are exempt from wearing masks or other face coverings in the situations described in subsections (b)(1) and (b)(2):

- (A) Persons age five years or under—children age two years and under in particular should not wear a face covering because of the risk of suffocation;
- (B) Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering—this includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
- (C) Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication;

- (D) Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines;
 - (E) Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;
 - (F) Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided they maintain a 6- foot distance between individuals (not including individuals who reside together or are seated together) with only infrequent or incidental moments of closer proximity;
 - (G) Athletes who are engaged in an organized sports activity that allows athletes to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity;
 - (H) Persons who are engaged in an activity that a professional or recreational association, regulatory entity, medical association, or other public-health-oriented entity has determined cannot be safely conducted while wearing a mask or other face covering;
 - (I) Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary; and,
 - (J) Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law.
- (4) It shall be an affirmative defense to any prosecution under subsection (a) or (b) that the person in violation is an individual listed under subsection (c)."

(c) Mask or other face coverings; penalties; enforcement.

- (1) Any person, business or organization violating the provisions of this Section of the Code of the City of Emporia shall be guilty of an infraction. The person or persons responsible for any business or organization that does not comply with subsection(b)(2) includes a sole proprietor, or any officer, partner, member, manager, director, or other supervisor for the business or organization, who may be held jointly and severally responsible for such violation with respect to any enforcement of the violation.
- (2) A violation of this section shall be punished by a fine of twenty five (\$25.00) dollars upon a first conviction, by a fine of fifty (\$50.00) dollars upon a second conviction, and by fine of one hundred dollars (\$100.00) dollars upon a third or subsequent conviction, plus court costs.

- (d) Mask or other face coverings; effective term. The provisions of Section 16-266 through Section 16-268 of the city code shall be in effect until 11:59 p.m. on November 21, 2020."

Section 2. That the provisions of this ordinance as amended shall be included and incorporated in the code of the City of Emporia, Kansas.

Section 3. Effective Date. This ordinance shall take effect upon publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 21st day of October, 2020.

Danny Giefer, Mayor

ATTEST:

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 13

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.

Tentative Agenda for October 28th Study Session

- Discuss Contract with Main Street
- Recycling Contract Discussion

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: October 21, 2020

ITEM NUMBER: 14

SUBJECT: Executive Session

RECOMMENDATION:

BACKGROUND SUMMARY:

At this time, the City Commission request an Executive Session for proprietary information of a business.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____