

CITY COMMISSION MEETING

AGENDA

CITY COMMISSION / MUNICIPAL COURT ROOM
518 MECHANIC, EMPORIA, KS
April 6, 2016 at 1:30 pm

1. Members present: Mayor Giefer

| | |
|---------------------------------|---------------------------------|
| <u>Vice Mayor Gilligan</u> | <u>Commissioner Mlynar</u> |
| <u>Commissioner Harmon</u> | <u>Commissioner Geitz</u> |
| <u>City Manager McAnarney</u> | <u>City Clerk Sull</u> |
| <u>Asst. City Mgr. Jim Witt</u> | <u>City Attorney Montgomery</u> |
2. Consent Agenda
3. Public Comment
 - a. Proclamation Naming April as National Child Abuse & Neglect Prevention Month.
 - b. Presentation of Award to the Water Treatment Plant from the Kansas Rural Water Association & National Rural Water Association.
4. Accept Bid for Veteran's Memorial Project.
5. Review & Accept Bid for Partial Demolition of 407 Commercial.
6. Approve Agreement with KDOT for 2016 KLINK Project.
7. Accept Bid for 2016 Hazardous Sidewalk Program.
8. Accept Bid for 2016 Slurry Seal Program.
9. Accept Bid Sanitary Sewer Relining Project.
10. Ordinance Request for Beer Gardens
 - a. Dirty Kanza
 - b. Glass Blown Open
11. Amendment to Memorandum of Understanding for Breckinridge.
12. Consider Accepting Ordinance for Zoning Provisions of Food Truck Vendors.
13. Consider Accepting Ordinance for Rezoning of 1002 Whittier Street from Low Density Residential District to High Density District.
14. Consider Accepting Ordinance Amending Zoning at 1325 E. 6th Ave from High Density Residential District to General Commercial District.
15. Report From City Manager on City Activities
16. City Commission Reports and Comments



**If you need accommodations due to a disability to participate in this event, meeting, or activity, or alternative format of written materials contact Patty Gilligan, City of Emporia ADA Coordinator at least 48 hours before the event at 620-343-4291 or email pgilligan@emporia-kansas.gov*

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 2

SUBJECT:

Consent agenda:

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

- a. Consider minutes of the Regular Meeting held on March 16 and Executive Session held on March 23, 2016.
- b. Consider ratification of Payroll Ordinance for the period ending on March 18 and April 1, 2016.
- c. Consider Set Bid Date and Time for Lift Station #6 Update.
- d. Consider Set Bid Date and Time for 2016 Street Rehabilitation Project.

RECOMMENDATION:

- a. Approve Minutes
- b. Approve Payroll
- c. Approve Set Bid Date and Time
- d. Approve Set Bid Date and Time

BACKGROUND SUMMARY:

ACTION RECORD

Action: _____

Motion: _____ Second: _____
Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 2c

SUBJECT: Sanitary Sewer Lift Station No. 6 Upgrade Contract – Set Bid Date and Time

RECOMMENDATION: Staff recommends approval of request to set Bid Date and Time to receive bids.

BACKGROUND SUMMARY

The Commission approved a design contract with BG Consultants, Inc. on January 20, 2016 to provide detailed plans and specifications to upgrade Sanitary Sewer Lift Station No. 6 which is located adjacent to Lincoln Street in Jones Park. The current Lift Station was installed in approximately 1962 and has served in excess of the normally anticipated life-cycle.

The project has reached the stage to request competitive bids for construction and project completion. Funding for this project was established in the 2016 Budget at \$500,000.

The Public Works Department respectfully requests approval to establish Tuesday, May 10, 2016 at 2:00 PM to formally receive bids for the Sanitary Sewer Lift Station No. 6 Upgrade Project.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 2d

SUBJECT: Set 2:00 p.m., Tuesday, April 26, 2016, as the time and date to receive bids for the 2016 Street Rehabilitation Project No. PV1602.

RECOMMENDATION: Set bid time and date.

BACKGROUND SUMMARY:

The 2016 Street Rehabilitation Project will consist of resurfacing streets at multiple locations around the city. Also included with this project in order to leverage the best cost benefit for all projects are the following paving jobs:

Streets included in Base Bid:

- 2nd avenue (S. Market Street – S. Cottonwood Street)
- S. Cottonwood Street (Logan Avenue – South Avenue)
- S Merchant Street (Kansas Avenue – South Avenue)
- W. Randolph Avenue (S. West Street – S. Neosho Street)
- Congress Street (8th Avenue – 12th Avenue)
- Anderson Street (W. Highway 50 – W. 9th Avenue)
- State Street (12th Avenue – 15th Avenue)
- 7th Avenue (Prairie Street – Woodland Street)

The remaining streets are add-alternate to the base bid and include:

- W. Ridge Drive (24th Avenue – W. Ridge Court)
- W. Ridge Court (W. Ridge Drive – Cul-de-Sac)

The project is funded out of the Multi-Year Fund.

Attached is the Invitation to Bid.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

INVITATION TO BID

Sealed bids for the **2016 Street Rehabilitation Project No. PV1602 (Multiple locations around the city)** will be received at the office of the City Clerk, City of Emporia, Kansas located upstairs at 104 E. 5th Avenue, up to **2:00 p.m. on Tuesday, April 26, 2016, and then publicly opened in the Engineering Department's Conference Room located at 522 Mechanic Street. A pre-bid conference will be held at 2:00 p.m. on Tuesday, April 19, 2016, at the same location.**

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

Base Bid:

| | | |
|--|--------|------|
| Asphalt Milling (2" Avg) | 28,863 | S.Y. |
| Asphalt Milling (4" Avg) | 1,456 | S.Y. |
| Asphalt Patching | 204 | S.Y. |
| HMA (Commercial Grade)(Class A) | 2,828 | TON |
| (7") Concrete (Reinf.) Pavement | | S.Y. |
| (6") Concrete (Plain) Remove & Replace | 21 | S.Y. |
| (6") Concrete (Reinf.) Remove & Replace | 35 | S.Y. |
| (4") Concrete Sidewalk Remove & Replace | 373 | S.Y. |
| Concrete Pavement Removal | 3 | S.Y. |
| Curb & Gutter (2'-6" Comb.)(Stand) Remove & Replace | 1,034 | L.F. |
| Curb & Gutter (2'-6" Comb.)(Reinf.) Remove & Replace | 230 | L.F. |
| ADA Sidewalk Ramp | 219 | S.Y. |
| Curb Inlet Protection | 5 | Ea. |
| Sediment Removal (Set Price) | 1 | C.Y. |
| Temporary Slope Barrier | 200 | L.F. |
| Flagger (Set Price) | 1 | Hr. |
| Traffic Control | 1 | L.S. |
| Mobilization | 1 | L.S. |

Plans and bid documents are on file at the office of the City Engineer, 522 Mechanic Street, P.O. Box 928, Emporia, KS 66801 (620-343-4260). The cost for plans and bid documents is twenty-five dollars (\$25), which is nonrefundable. If the Contractor prefers plans and bid documents sent by UPS there is an additional required fee of five dollars (\$5). Also, the Contractor may request an electronic copy of plans and bid documents for a flat rate fee of twenty dollars (\$20). The City of Emporia 2014 Master Set of Specifications (for all projects) is available upon request for a cost of \$20 for a hard copy. A contractor either shall have a current set of City Master Specs or have a signed contractor's acknowledgement on file with the City Engineer's Office that they have read and shall abide by the 2014 Master Set of Specifications on the City Web page in order to bid City of Emporia projects.

Each bid shall be accompanied by a certified check, a cashier's check, or an approved bidder's bond in an amount of not less than five percent (5%) of the total amount of the bid. Any bid bond must be with a surety and guaranty company authorized to do business in the State of Kansas and acceptable to the City as Surety.

The Bidder to whom the Contract is awarded will be required to furnish statutory bond in the amount of one hundred percent (100%) of the Contract, and performance and maintenance bond in the amount of one hundred percent (100%) of the Contract; the bonds to be acceptable to the City of Emporia, Kansas, and conform to the requirements of the Contract documents.

The City of Emporia, Kansas, reserves the right to reject any or all bids and to waive defects in bids. No bids will be withdrawn for a period of sixty (60) days after the time set for opening of bids.

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

THE CITY OF EMPORIA, KANSAS
Kerry Sull
City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 3

SUBJECT: Public Comment

RECOMMENDATION:

BACKGROUND SUMMARY:

- Proclamation Naming April as National Child Abuse & Neglect Prevention Month.
- Presentation of Award to the Water Treatment Plant from the Kansas Rural Water Association & National Rural Water Association.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____



WHEREAS, child abuse and neglect is a serious problem affecting every segment of our community, and finding solutions requires input and action from everyone in our community; and

WHEREAS, children have a right to be safe and to be provided an opportunity to thrive, learn and grow; and

WHEREAS, child abuse can have long-term psychological, emotional and physical effects that can have lifelong consequences for victims of abuse; and

WHEREAS, we must come together as partners so that the voices of our children are heard by all and we are as a community extending a helping hand to children and families in need; and

WHEREAS, by providing safe, stable and nurturing relationships for our children, free of violence, abuse and neglect, we can ensure that Kansas' children will grow to their full potential as the next generation of leaders, helping to secure the future of this state and nation;

WHEREAS, communities must make every effort to promote programs and activities that benefit children and their families;

WHEREAS, we acknowledge that we must work together as a community to increase awareness about child abuse and contribute to promote the social and emotional well-being of children and families in a safe, stable, nurturing environment.

WHEREAS, prevention remains the best defense for our children and families;

THEREFORE, BE IT RESOLVED, I, Danny Giefer, Mayor for the City of Emporia hereby proclaim the month of April 2016 as

National Child Abuse and Neglect Prevention Month

in Emporia, Kansas, and urge all citizens to recognize this month by dedicating ourselves to the task of improving the quality of life for all children and families.

ATTEST:

Danny Giefer, Mayor

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 4

SUBJECT: Consider the award of the base bid in the amount of \$85,000.00 plus Alternate # 1 in the amount of \$15,900.00 for a total of \$100,900.00 to Emporia Construction and Remodeling, Inc. for the Veteran's Memorial Improvement Project.

RECOMMENDATION: Award the base bid in the amount of \$85,000.00 plus Alternate # 1 in the amount of \$15,900.00 for a total of \$100,900.00 to Emporia Construction and Remodeling, Inc.

BACKGROUND SUMMARY:

The City Commission has previously authorized the Veteran's Memorial Park Project in the approximate amount of \$180,000.00. The City has contributed \$90,000.00 from the Special Park Fund into a Project Fund for this project and The Veteran's Memorial Group agreed to raise approximately \$90,000.00 to help pay for the project. The fund raising for the project has gone very well and the Veteran's Group will be able to match funds. In fact, it is anticipated that the names for all eight memorial tablets will be sold in the near future.

Attached is a copy of the bid tabulation and some background information on the project.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

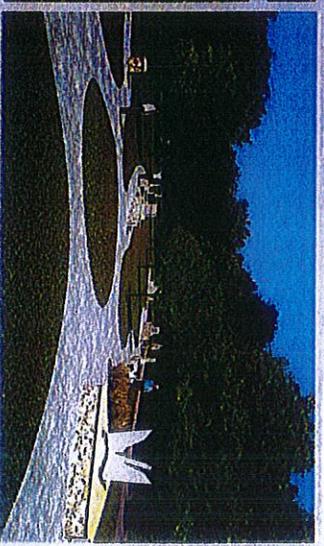
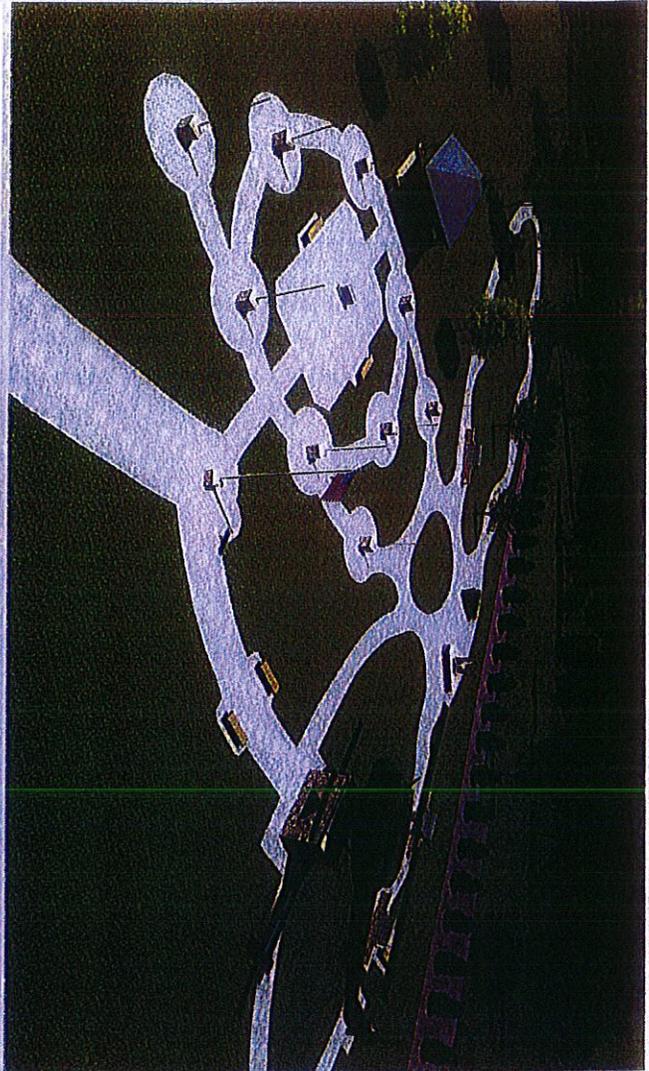
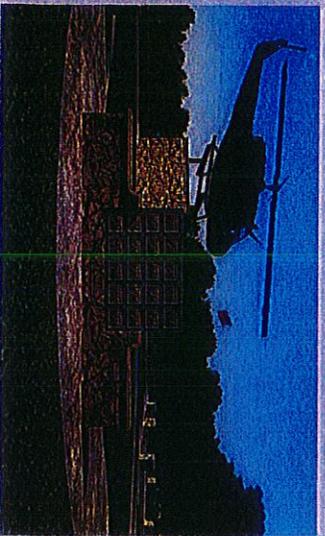
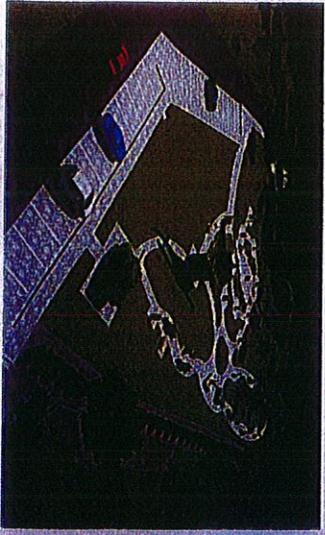
Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

BID TABULATION
for
Veteran's Memorial at Soden's Grove
Emporia, KS

March 25, 2016

| | | | | |
|---|--|--|--|--|
| CONTRACTOR | Mitchell Markowitz Construction Emporia, KS | Emporia Construction & Remodeling Emporia, Ks | | |
| Receipt of Addenda | | none | | |
| Base Bid | | 85,000 | | |
| Time of Completion | | 31-Jul | | |
| Alternate #1 Monuments M7 & M8 | | 15,900 | | |
| | | | | |
| | | | | |
| | | | | |
| Total with all alternates | | 100,900.00 | | |



DATE: 5/15/2014
TIME: 10:25:47 AM
DRAWING: 00
SHEET: 1
OF: 1

EMPORIA

VETERAN'S MEMORIAL
SODEN'S GROVE

KANSAS

EMIG and ASSOCIATES
Architects

Post Office Box 1724 Phone: 620-343-9180
Emporia, Kansas 66801 Fax: 620-343-9193

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 5

SUBJECT: Review and Accept Bid for Partial Demolition of 407 Commercial.

RECOMMENDATION: Accept Bid

BACKGROUND SUMMARY:

The attached bid from Emporia Construction and Remodeling will address Phase 1 of the corrective action necessary for 407 Commercial. The tenant that previously occupied the space has relocated and this Phase of the project will not interfere with any business operation. We have removed the costs for reconnecting utilities to the structure once phase 1 is completed and also will box up the rear of the building with plywood rather than install a new metal door. We anticipate work commencing the week of April 11th. Once this phase is completed we will make a recommendation to the Commission about further actions needed in conjunction with the input from a structural engineer.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

EMPORIA CONSTRUCTION & REMODELING, INC.

306 MARKET EMPORIA, KS 66801
Phone: 620-343-1612 Fax: 620-343-1625

To: **CITY OF EMPORIA**
Attn: Jim Witt, Assistant City Manager
104 E. 5th Avenue
P. O. Box 928
Emporia, KS 66801

Date: March 21, 2016
Phone: 620-343-4255
E-mail: jwitt@emporia-kansas.gov

We propose to furnish and install, in a workmanlike manner, the following work at:

409 Commercial ~ Emporia, Kansas

Remove 5' of the west end. Remove the existing electrical and gas service. Remove the air conditioner condenser. Close up the second floor and install wood plywood siding. The basement stairs will be fitted with a hatch. Electrical service to the upper apartments will not be reconnected, but the first floor will be. The HVAC for the first floor will be hooked back up, however we do not warrant that it will work. The existing boiler will be left in place. The foundation wall at 5' back will be repaired only. ~~A new steel door and frame will be installed.~~ NO painting is included. Engineering, architectural, and permit fees are NOT included. Sales tax, if applicable, is not included.

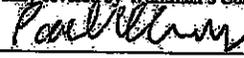
PC 
3-21-16
\$3,200

We Propose hereby to furnish material and labor ~ complete in accordance with above specifications, for the sum of \$ 44,955.00 (Kansas Sales Tax Is NOT Included)

Payment to be made upon completion of work unless otherwise specified.

Terms: Due Upon Receipt

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance. Not responsible for random cracking.

Authorized ECR Signature:  (Paul Challenger, President)

Note: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal -- The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature: _____ Date of Acceptance: _____

Original Please Sign & Return

(Upon receipt of this signed and dated original copy, you will be placed on our work schedule.)
A copy has been enclosed for your records.

Thank you for allowing us to provide this information for you.
Please contact us if you have any questions, or if we may be of further service to you in any way.

Acceptance of Proposal Note: By signing this proposal, you agree to be responsible for all service charges, finance charges, and collection fees accrued on past due account/accounts.

EMPORIA CONSTRUCTION & REMODELING, INC.

306 MARKET EMPORIA, KS 66801
Phone: 620-343-1612 Fax: 620-343-1625

To: **CITY OF EMPORIA**
Attn: Jim Witt, Assistant City Manager
104 E. 5th Avenue
P. O. Box 928
Emporia, KS 66801

Date: March 21, 2016
Phone: 620-343-4255
E-mail: jwitt@emporia-kansas.gov

We propose to furnish and install, in a workmanlike manner, the following work at:

409 Commercial ~ Emporia, Kansas

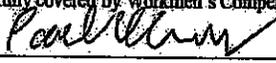
Remove 5' of the west end. Remove the existing electrical and gas service. Remove the air conditioner condenser. Close up the second floor and install wood plywood siding. The basement stairs will be fitted with a hatch. Electrical service to the upper apartments will not be reconnected, but the first floor will be. The HVAC for the first floor will be hooked back up, however we do not warrant that it will work. The existing boiler will be left in place. The foundation wall at 5' back will be repaired only. A new metal door and frame will be installed. **NO painting is included. Engineering, architectural, and permit fees are NOT included. Sales tax, if applicable, is not included.**

We Propose hereby to furnish material and labor ~ complete in accordance with above specifications, for the sum of:
\$ 44,955.00 (Kansas Sales Tax Is NOT Included)

****Payment to be made upon completion of work unless otherwise specified.****

Terms: Due Upon Receipt

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation insurance. Not responsible for random cracking.

Authorized ECR Signature:  (Paul Challenger, President)

Note: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature: _____ Date of Acceptance: _____

Original: Please Sign & Return

(Upon receipt of this signed and dated original copy, you will be placed on our work schedule.)
A copy has been enclosed for your records.

*Thank you for allowing us to provide this information for you.
Please contact us if you have any questions, or if we may be of further service to you in any way.*

Acceptance of Proposal Note: *By signing this proposal, you agree to be responsible for all service charges, finance charges, and collection fees accrued on past due account/accounts.*

ORDER TO VACATE
BY THE BUILDING OFFICIAL
OF THE CITY OF EMPORIA, KANSAS



Case #: 2015-07
Date: February 29, 2016

Concerning Structure(s) Located At:
407 COMMERCIAL STREET, EMPORIA, KS

LEGALLY DESCRIBED AS BEING: Emporia (O.T.), S15, T19S, R11E, Lt 123, Commercial Street, in the City of Emporia, Lyon County, Kansas

OWNER OF RECORD: Jose Luis Gutierrez & the unknown heirs, executors, administrators, devisees, trustees, creditors & assigns of any deceased owners or person of interest in the property known as 407 Commercial Street; their unknown spouses; the unknown officers, successors, trustees, creditors & assigns of any owners or persons of interest in the property known as 407 Commercial Street that are existing, dissolved or dormant corporations; the unknown executors, administrators, devisees, trustees, creditors, successors & assigns of any owners or persons of interest in the property known as 407 Commercial Street that are or were partners or in a partnership; the unknown guardians, conservators & trustees of any owners or persons with an interest in the property known as 407 Commercial Street that are minors or are under any legal disability; & the unknown heirs, executors, administrators, devisees, trustees, creditors & assigns of any person alleged to be deceased.

TENANT: Rosie's Market

WHEREAS, Article XIV of the Building and Construction Regulations adopted by Section 8-3 of the City of Emporia Code, as amended, provides minimum standards for structures and provides for the repair, closing, demolition, or removal of structures which are unfit for human use or habitation.

WHEREAS, after investigation, notification, and upon holding of a hearing as required by Article XIV of the Building and Construction Regulations adopted by Section 8-3 of the City of Emporia Code, as amended, said hearing being held on November 19, 2015, it was found that the structure is unfit for human use or habitation due to failure to: Remove & replace damaged & deteriorated portions of the south & north walls; Remove & replace the west exterior wall; All removal, repair & reconstruction to be done under the direction of a Licensed Structural Engineer, including but not limited to any other associated structural damage.

WHEREAS, after the hearing held on November 19, 2015, an Order to Demolish was issued by the City of Emporia, ordering that the structure located at 407 Commercial Street be demolished and removed from said property on or before January 18, 2016.

WHEREAS, the owner failed to comply with the Order to Demolish, and the structure located at 407 Commercial Street was not demolished by January 18, 2016.

WHEREAS, after notification, and upon holding an additional hearing on February 19, 2016, it has been determined that the owner of the structure located at 407 Commercial Street is unable to comply with the Order to Demolish.

THEREFORE, the City of Emporia orders that all occupants shall vacate the structure located at 407 Commercial Street, on or before April 4th, 2016 so that the City may proceed with repair or demolition of said structure in the interest of public health and safety.

Kory Krause, Building Official
City of Emporia, Kansas
620-343-4274
February 29, 2016

CERTIFICATE OF SERVICE

I do hereby affirm that on this 29th day of February, 2016 the above Order to Vacate was sent via U.S. Mail, Certified postage, to the following:

Jose Luis Guitierrez
1231 Walnut Street
Emporia, KS 66801

Mike Patton
605 Lincoln Street
Emporia, KS 66801

Rosie's Market
407 Commercial Street
Emporia, KS 66801

Kory Krause, Building Official
City of Emporia, Kansas
620-343-4274

COMPLAINT
BEFORE THE BUILDING OFFICIAL
OF THE CITY OF EMPORIA, KANSAS



Case #: 2016-01

Certified Mail

Rosie's Market
407 Commercial Street
Emporia, KS 66801

Jose Luis Gutierrez & the unknown heirs, executors, administrators, devisees, trustees, creditors & assigns of any deceased owners or person of interest in the property known as 407 Commercial Street; their unknown spouses; the unknown officers, successors, trustees, creditors & assigns of any owners or persons of interest in the property known as 407 Commercial Street that are existing, dissolved or dormant corporations; the unknown executors, administrators, devisees, trustees, creditors, successors & assigns of any owners or persons of interest in the property known as 407 Commercial Street that are or were partners or in a partnership; the unknown guardians, conservators & trustees of any owners or persons with an interest in the property known as 407 Commercial Street that are minors or are under any legal disability; & the unknown heirs, executors, administrators, devisees, trustees, creditors & assigns of any person alleged to be deceased.

CONCERNING STRUCTURE(S) LOCATED AT: 407 Commercial Street, Emporia, KS

WHEREAS, after preliminary investigation, it appears to the Building Official of the City of Emporia, Kansas, that the following described structure(s) situated upon the following described tract within the limits of the City of Emporia, Kansas is unfit for human use and habitation; and

WHEREAS, Article XIV of the Building and Construction Regulations adopted by Section 8-3 of the City of Emporia Code, as amended, provides minimum standards for structures and provides for the repair, closing, demolition, or removal of structures which are unfit for human use or habitation;

NOW, THEREFORE, you are hereby notified that a Hearing will be held before the Building Official of the City of Emporia, Kansas on Friday, February 19, 2016 at 3:00 p.m. in the City Conference Room #2 of the Civic Building, 104 E. 5th Avenue, at which time and place, you shall be given the right to file an answer to this complaint and to appear in person regarding said complaint. Should you fail to do so, an order may be issued in accordance with the provisions of Article XIV of the Building and Construction Regulations adopted by Section 8-3 of the City of Emporia Code, as amended.

This complaint relates to the following described structure(s) being located upon the following described tract of land in the City of Emporia, Kansas:

Two story wood frame commercial building; Emporia (O.T.) , S15, T19S, R11E, Lt 123, Commercial Street, in the City of Emporia, Lyon County, Kansas

The basis for the determination that this structure(s) appears to be unfit for human use or habitation is based upon the following observed conditions:

Remove & replace damaged & deteriorated portions of the south & north walls; Remove & replace the west exterior wall; All removal, repair & reconstruction to be done under the direction of a Licensed Structural Engineer, including but not limited to any other associated structural damage.

Kory Krause, Building Official
City of Emporia, Kansas
620-343-4274
February 12, 2016

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 6

SUBJECT: Agreement with KDOT for the 2016 KLINK Project No. 50-56 U-0680-01.

RECOMMENDATION: Authorize Mayor to Sign Agreement.

BACKGROUND SUMMARY:

The attached agreement was prepared by Kansas Department of Transportation for the 2016 KLINK project to be constructed this summer. It is typical of KDOT to have agreements signed by local jurisdictions as a matter of practice defining both parties scope of responsibility when work is being done within corporate limits. In the case of this project, the City is agreeing to complete work within the existing right-of-ways and the roadway approaches involving the mill and overlay, reconstruction, minor patching, joint repair, slurry seal, and microsurfacing of US-50 Highway/6th Avenue from Graphic Arts road to Prairie Street. The current set of plans does require participation above the amount of \$300,000.00 that is reimbursable by KDOT with the cost of the project estimated to be \$250,000.00 on the City's part.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

PROJECT NO. 50-56 U-0680-01
KLINK RESURFACING PROJECT
CMS CONTRACT NO. _____
CITY OF EMPORIA, KANSAS

AGREEMENT

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

RECITALS:

- A. The City has applied for and the Secretary has approved a KLINK Resurfacing Project.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City.
- C. The City desires to construct a street resurfacing Project on US-50, a city connecting link for the State Highway System, in the City.
- D. The Secretary desires to enter into an Agreement with the City to participate in the cost of the Project by use of State Highway funds.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following meanings:

1. **City Connecting Link** - a route inside the city limits of a city which: (1) connects a state highway through a city; (2) connects a state highway to a city connecting link of another state highway; (3) is a state highway which terminates within such city; (4) connects a state highway with a road or highway under the jurisdiction of the Kansas Turnpike Authority; or (5) begins and ends within a city’s limits and is designated as part of the national system of Interstate and defense highways.

2. **KLINK Resurfacing Program** - a city connecting link (KLINK) resurfacing program that is a part of the KDOT Local Partnership Program with cities and counties. The state’s participation in the cost of construction and construction engineering will be seventy-five percent (75%) for cities with a population of less than 10,000 or fifty percent (50%) for cities with a population of 10,000 or greater, up to a maximum of \$300,000.00 per fiscal year of state funds. The KLINK Resurfacing Program is for contract maintenance only.

3. **Project** - mill and overlay, reconstruction, minor patching, joint repair, slurry seal, microsurfacing, and any other pre-approved resurfacing methods for the KLINK Resurfacing Program for **US-50, from Graphic Arts Road to Prairie Street.**

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

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

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

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Reimbursement of Project Costs.** The Secretary agrees to reimburse the City fifty percent (50%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, but not to exceed \$300,000.00, as the Secretary's total share of the cost to construct the Project. The Secretary shall not be responsible for the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering that exceed \$600,000.00. The Secretary shall not be responsible for the total actual costs of preliminary engineering, utility adjustments, or items not participating in the KLINK Resurfacing Program.

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

ARTICLE III

CITY RESPONSIBILITIES:

1. **Limited Scope.** The Project is limited to roadway resurfacing along the Project location. The Project roadway resurfacing may include all eligible items as defined above. Roadway resurfacing does not include such non-eligible items as defined above and any other items deemed non-eligible by the Secretary. The City will be responsible for construction of any traffic signal and/or sidewalk improvements that are necessary to comply with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, regardless of whether such improvements are deemed non-eligible/non-participating bid items by the Secretary for reimbursement purposes.

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

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

4. **Indemnification by Contractors.** The City will require the contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act of omission of the contractor, the contractor's agent, subcontractors (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.

5. **Design, Letting, and Administration.** The City will prepare or contract to have prepared, the design plans, specifications, and cost estimate (PS&E) for the Project, let the contract, and award the contract to the lowest responsible bidder. The City agrees to construct or have constructed the Project in accordance with the final design plans and specifications; inspect or have inspected the construction; administer the Project; and make the payments due the contractor, including the portion of cost borne by the Secretary. The City shall design the Project or contract to have the Project designed in conformity with the current version of Section 16.0 City Connecting Links (KLINK) Resurfacing Program of the LPA Project Development Manual.

6. **Responsibility for Adequacy of Design.** The City and any consultant retained by the City shall have the sole responsibility for the adequacy and accuracy of the design plans, specifications, and estimates. Any review of these items that may be performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the City's and its consultant's duty to provide adequate and accurate design plans, specifications, and estimates. Such reviews are not done for the benefit of the consultant, the construction contractor, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, expressed or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, and estimates or any other work performed by the consultant or the City.

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

8. **Movement of Utilities.** The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipelines, meters, and other utilities, publicly or privately owned, which may be necessary for construction of the Project in

accordance with the final design plans. The expense of the removal or adjustment of the utilities and encroachments located on public right of way or easement shall be borne by the owner or the City.

9. Future Encroachments. The City will prohibit future erection, installation or construction of encroachments either on or above the right of way, and it will not in the future permit the erection of fuel dispensing pumps upon the right of way of the connecting link. The City further agrees it will require any fuel dispensing pumps erected, moved or installed along the connecting link be placed a distance from the right of way line no less than the distance permitted by the National Fire Code.

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

11. 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.

12. Permanent Traffic Control. The City shall conform 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 a public authority, or other agency as authorized by K.S.A. 8-2005, shall 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.

13. Access Control. The City will maintain control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final design plans, unless prior approval is obtained from the Secretary.

14. Final Design Plans. The final design plans will depict the entire Project location. The eligible/participating bid items must be shown separated and listed apart from the non-eligible/non-participating bid items on the final design plans, bid documents, and on the detailed billing provided by the City. The City shall have the final design plans signed and sealed by a licensed professional engineer. The City will furnish to KDOT's Bureau of Local Projects an electronic set of final design plans and specifications. The City further agrees the specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

15. Program Administration. In addition to complying with all requirements contained in Section 16.0 City Connecting Links (KLINK) Resurfacing Program of the LPA Project Development Manual:

(a) The City acknowledges that funding for the Project may be cancelled if the City proceeds to advertise, let, or award a contract for the Project, prior to receipt of notification from KDOT's Bureau of Local Projects of its completion of the final review of the plans, specifications, and estimates (PS&E).

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

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

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

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

16. Discrimination Laws. The City will: (a) comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*)(ADA) and not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; and (d) include those provisions in (a) through (c) in every contract, subcontract or purchase order so they are binding upon such contractor, subcontractor or vendor. If the City fails to comply with any applicable requirements of (a) through (d) above or if the City is found guilty of any violation by federal or state agencies having enforcement jurisdiction for those Acts, such violation will constitute a breach of this Agreement. If the Secretary determines the City has violated applicable provisions of the ADA, the violation will constitute a breach of this Agreement. If any violation under this paragraph occurs, this Agreement may be cancelled, terminated or suspended in whole or in part.

17. Inspections. The City will provide the construction engineering/inspection necessary to determine substantial compliance with the final design plans, specifications, and this Agreement. The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility apparel requirements of the *KDOT Safety Manual*, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement must contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

18. Corrective Work. Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of the funding participation in the KLINK Resurfacing Program. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the contractor's errors, omissions or deviations from the final design plans and specifications.

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

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

21. Accounting. Upon request by the Secretary, the City will provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of KLINK Master -- City Let (Rev. 10-2015)

KDOT and costs incurred by the City not to be reimbursed by KDOT for preliminary engineering, utility adjustments, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

22. Reimbursement Request. The City will request payment from the Secretary after the City has paid the contractor in full, and a licensed professional engineer has attested in writing the Project has been completed in conformance with the plans and specifications.

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

ARTICLE IV

GENERAL PROVISIONS:

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

2. Incorporation of Final Plans. The final design plans and specifications are by this reference made a part of this Agreement.

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

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

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

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

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

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

6. Contractual Provisions. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

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

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

9. **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.

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

11. **Effective Date.** This Agreement will become effective as of the date signed by the Secretary or designee.

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

ATTEST:

THE CITY OF EMPORIA, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

By: _____
Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

KANSAS DEPARTMENT OF TRANSPORTATION

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

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

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. 06-12), 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 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 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 to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out 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) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- 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.

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 7

SUBJECT: Consider awarding a bid for the 2016 Hazardous Sidewalk Project.

RECOMMENDATION: Staff recommends awarding the project to Quality Built Construction

BACKGROUND SUMMARY:

At 2:00 p.m. on Tuesday, March 29, 2016, the City Engineer's Office publicly opened bids on the 2016 Hazardous Sidewalk Project. The City had three bidders out of four plan holders submit a bid. The bids received were intended for setting unit prices for each individual project line item. Bid totals were achieved by multiplying these unit prices with our initial estimated quantities from the list of site work scheduled to date for the 2016 Project. The following are the bids received and the Engineer's Estimate.

| Contractor | Base Bid |
|---|-------------|
| Emporia Construction & Remodeling, Inc. | 47,409.10 |
| Star Construction, Inc. | 48,391.50 |
| Quality Built Construction | 46,257.00 |
| Engineer's Estimate | \$53,015.50 |

The 2016 Hazardous Sidewalk Program is budgeted at \$60,000. Additional locations and quantities will be added to this contract throughout this year. The program also allows the homeowner the option to hire their own bonded contractor to replace their sidewalk at these set unit prices.

Attached is the complete project bid tabulation sheet for the base bid.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

**CITY OF EMPORIA, KS
 BID TABULATION
 FOR CONSTRUCTION OF 2016 HAZARDOUS SIDEWALK PROJECT**

March 29, 2016

| Quantity | Units | Description | Emporia Construction & Remodeling Emporia, KS | | Star Construction Emporia, KS | | Quality Built Construction Osage City, KS | | CITY ENGINEER'S ESTIMATE | |
|-----------------------------|-------|------------------------------------|---|---------------------------|-------------------------------|---------------------------|---|---------------------------|--------------------------|---------------------------|
| | | | Unit | Total | Unit | Total | Unit | Total | Unit | Total |
| 51 | S.F. | 4" Sidewalk (0 SF - 100 SF) | \$6.10 | \$311.10 | \$8.00 | \$408.00 | \$5.00 | \$255.00 | \$9.00 | \$459.00 |
| 1610 | S.F. | 4" Sidewalk (101 SF - 250 SF) | \$5.10 | \$8,211.00 | \$5.20 | \$8,372.00 | \$4.85 | \$7,808.50 | \$5.40 | \$8,694.00 |
| 4,530 | S.F. | 4" Sidewalk (251+ SF) | \$4.75 | \$21,517.50 | \$5.05 | \$22,876.50 | \$4.85 | \$21,970.50 | \$5.25 | \$23,782.50 |
| 990 | S.F. | 6" Sidewalk | \$5.35 | \$5,296.50 | \$5.40 | \$5,346.00 | \$5.70 | \$5,643.00 | \$5.50 | \$5,445.00 |
| 13 | HR | Root Removal | \$35.00 | \$455.00 | \$35.00 | \$455.00 | \$70.00 | \$910.00 | \$45.00 | \$585.00 |
| 138 | L.F. | Curb & Gutter (Remove and Replace) | \$35.00 | \$4,830.00 | \$38.00 | \$5,244.00 | \$35.00 | \$4,830.00 | \$45.00 | \$6,210.00 |
| 24 | S.Y. | Handicap Ramp (Warning Panel) | \$222.00 | \$5,328.00 | \$200.00 | \$4,800.00 | \$180.00 | \$4,320.00 | \$250.00 | \$6,000.00 |
| 8 | S.Y. | Handicap Ramp (No Panel) | \$160.00 | \$1,280.00 | \$100.00 | \$800.00 | \$50.00 | \$400.00 | \$200.00 | \$1,600.00 |
| 30 | L.F. | Saw Cutting | \$6.00 | \$180.00 | \$3.00 | \$90.00 | \$4.00 | \$120.00 | \$8.00 | \$240.00 |
| TOTAL AMOUNT OF BID: | | | | <u>\$47,409.10</u> | | <u>\$48,391.50</u> | | <u>\$46,257.00</u> | | <u>\$53,015.50</u> |

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 8

SUBJECT: Consider bids for the 2016 crack seal and slurry seal program.

RECOMMENDATION: Award bid to Vance Brothers Inc. for the 2016 crack and slurry seal program for a total price of \$174,868.48.

BACKGROUND SUMMARY:

This project will consist of providing all labor and equipment to lay approximately 84,768 square yards of slurry seal, and the appropriate crack seal on City residential streets. This is a routine maintenance item that used to be performed by City Staff, however since 1993 it has been more cost effective to contract out the slurry seal program.

Following is a tabulation and cost break down for this project:

| | Unit cost | Crack Seal | Slurry Seal |
|------------------------|-----------|--------------------------------|---------------------|
| VANCE BROS INC | | \$1.72 | \$1.86 |
| 5201 BRIGHTON | Total | \$17,200.00 | \$157,668.48 |
| KANSAS CITY, MO. 64130 | | | |
| | | ESTIMATED PROJECT TOTAL | \$174,868.48 |

Although we received only one bid for this project Staff is confident that the prices bid are competitive. For comparison listed below are the last four years bids prices:

| Year | Crack Seal | Slurry Seal |
|------|------------|-------------|
| 2013 | \$1.96 | \$1.83 |
| 2014 | \$1.98 | \$1.92 |
| 2015 | \$1.65 | \$1.78 |
| 2016 | \$1.72 | \$1.86 |

The budgeted funds for the residential streets is \$200,000.00.

Staff recommends awarding the project to Vance Brothers.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 9

SUBJECT: Consider Bids for Sanitary Sewer Relining Project.

RECOMMENDATION: Award bid to Insituform for relining 16,202 feet of sewer pipe at a total project cost of \$379,927.60.

BACKGROUND SUMMARY:

This relining project will provide for the reconstruction of approximately 16,202 foot of pipelines and conduits by the installation of a resin-impregnated flexible tube, which is tightly formed to the original conduit. The resin is cured using either hot water under hydrostatic pressure or steam pressure within the tube. The Cured-In-Place Pipe (CIPP) will be continuous and tight fitting. Following is a bid tabulation for the project.

| | Insituform 1614 NE 83 rd St. Kansas City, Mo | SAK 864 Hoff Road O'Fallon, MO |
|--------------------------|---|--------------------------------------|
| Mobilization | Included | Included |
| Cleaning & Televising | Included | Included |
| 15,474' of 8" CIPP | \$362,091.60 | \$404,512.50 |
| 728' of 10" CIPP | \$17,836.00 | \$22,859.20 |
| Total Project | \$379,927.60 | \$427,371.70 |

There is \$400,000.00 in the Sewer Fund (5025003400.0505) of the CIP.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 10a

SUBJECT: Ordinance for Request of Beer Garden at the Dirty Kanza Bicycle Event.

RECOMMENDATION: Mayor Sign Ordinance

BACKGROUND SUMMARY:

Emporia Granada Theater is requesting a temporary exemption from the prohibition of the sale and consumption of alcoholic beverages for the Dirty Kanza event to be held on June 4, 2016. The requested exemption would include the area from the north end of the 600 block to the north end of the 800 block of Commercial Street from 12:00 noon to 12:00 midnight on that date.

The proposed ordinance includes requirements that all alcoholic beverages remain within clearly identified boundaries to be approved by the Chief of Police, that no one under the age of 21 may possess or consume alcohol, and that the Granada must meet all city and state requirements for temporary alcohol sale licensing.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

ORDINANCE NO. _____

AN ORDINANCE EXEMPTING COMMERCIAL STREET INCLUDING THE NORTHERN-600, 700, AND 800 BLOCKS IN THE CITY OF EMPORIA FROM THE PROHIBITION ON THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES FOR THE DIRTY KANZA EVENT JUNE 4, 2016.

WHEREAS, sponsors of the Dirty Kanza event and the Granada Theater have requested an exemption from the prohibition of sale and consumption of cereal malt beverages (CMB) and/or alcoholic liquor on Commercial Street including the Northern-600, 700, and 800 blocks in connection with the Dirty Kanza bicycle special event;

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

SECTION 1. Pursuant to K.S.A. 2011 SUPP. 41-719, as amended, the Governing Body temporarily exempts Commercial Street in the Northern-600, 700, and 800 blocks, with the exact location to be approved by the Chief of Police, from the prohibition on the sale and consumption of cereal malt beverage (CMB) and alcoholic liquor when it is being sold or consumed in conjunction with the Dirty Kanza event on June 4, 2016, between the hours of 12:00 p.m. to 12:00 midnight, as authorized by the city manager and subject to any other laws or ordinances regulating the possession, sale and/or consumption of CMB and alcoholic liquor.

SECTION 2. Sale and consumption shall be allowed within an area delineated by an approved manner which clearly distinguishes the area where alcoholic beverages are permitted both inside the Granada Theater and outside on Commercial Street. No one under the age of 21 shall possess or consume alcoholic beverages and event sponsors shall be held strictly accountable for any violations. No alcoholic beverages shall be consumed in vehicles while on the street at any special event.

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

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

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

PASSED AND APPROVED this 6th day of April, 2016.

Danny Giefer, Mayor

ATTEST:

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 10b

SUBJECT: Ordinance for Request of Beer Garden at the Glass Blown Open Tournament.

RECOMMENDATION: Mayor Sign Ordinance

BACKGROUND SUMMARY:

Emporia Granada Theater is requesting a temporary exemption from the prohibition of the sale and consumption of alcoholic beverages for the Glass Blown Open event to be held on April 30, 2016. The requested exemption would include the 800 and mid-900 blocks of Commercial Street from 2:00 p.m. to 12:00 midnight on that date.

The proposed ordinance includes requirements that all alcoholic beverages remain within clearly identified boundaries to be approved by the Chief of Police, that no one under the age of 21 may possess or consume alcohol, and that the Granada must meet all city and state requirements for temporary alcohol sale licensing.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

ORDINANCE NO. _____

AN ORDINANCE EXEMPTING COMMERCIAL STREET INCLUDING THE 800 AND MID-900 BLK IN THE CITY OF EMPORIA FROM THE PROHIBITION ON THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES FOR THE GLASS BLOWN OPEN EVENT APRIL 30, 2016

WHEREAS, sponsors of the Glass Blown Open event and the Granada Theater have requested an exemption from the prohibition of sale and consumption of cereal malt beverages (CMB) and/or alcoholic liquor on Commercial Street including the 800 and Mid-900 block in connection with the Glass Blown Open disc golf special event;

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

SECTION 1. Pursuant to K.S.A. 2011 SUPP. 41-719, as amended, the Governing Body temporarily exempts Commercial Street in the 800 and Mid-900 block, with the exact location to be approved by the Chief of Police, from the prohibition on the sale and consumption of cereal malt beverage (CMB) and alcoholic liquor when it is being sold or consumed in conjunction with the Glass Blown Open event on April 30, 2016, between the hours of 2:00 p.m. to 12:00 midnight, as authorized by the city manager and subject to any other laws or ordinances regulating the possession, sale and/or consumption of CMB and alcoholic liquor.

SECTION 2. Sale and consumption shall be allowed within an area delineated by an approved manner which clearly distinguishes the area where alcoholic beverages are permitted both inside the Granada Theater and outside on Commercial Street. No one under the age of 21 shall possess or consume alcoholic beverages and event sponsors shall be held strictly accountable for any violations. No alcoholic beverages shall be consumed in vehicles while on the street at any special event.

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

SECTION 3. Licensees must meet all the requirements for obtaining a temporary license for sale of alcoholic beverages by the city and the state.

SECTION 4. This ordinance shall become effective upon publication in the official city newspaper.

PASSED AND APPROVED this 6th day of April, 2016.

Danny Giefer, Mayor

ATTEST:

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 11

SUBJECT: Amendment to MOU for Breckenridge.

RECOMMENDATION: Approve Amendment

BACKGROUND SUMMARY:

The attached documents reflect the existing agreement with the HBH owners, a letter to the City Manager received March 21st requesting an extension to the term of the agreement of nine months and an amendment extending the term for the requested 9 months. The extension letter was a requirement of the existing agreement and the does comply with the process outlined. Staff recommends approval.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____



HISTORIC
BRECKENRIDGE

Hotel - Convention Center

813 GRAHAM STREET

EMPORIA, KS 66801

620-342-6622

Mr. Mark McAnarney,
Emporia City Manager
522 Market
Emporia, KS 66801

RE: Extension of Amended Memorandum of Understanding: Historic Breckenridge
Hotel/Conference Center

Dear Mark:

First of all thank you for your patience with us as we have been working through all of the challenges of a building listed on the National register. The Brownfield reconstruction challenges to convert the school into a hotel/conference center, and the financing challenges in the downtown location in a distressed neighborhood.

The following is an update as to where we are at.

1. As you are aware we have struggled with the National Park Service for over two years on approval of plans both federal and therefore state Historic Tax Credits. We received a denial of our last appeal to N.P.S. on January 13th, 2016 and asked the state to approve the state credits so we could move forward without federal historic tax credits. On January 20th, 2016 the state approved the state tax credits with the removal of our front parking lot, earth berm, and a shortened canopy. (I discussed this with Jim Witt as we had added an additional parking lot on Constitution Street since plans had been originally submitted to the city. At K.S.H.S.'s encouragement and with them taking the lead we filed another appeal to the N.P.S. and had a hearing on that appeal on March 10th, 2016. We are awaiting their response and should have that within the next two to three weeks. Our projections show that the project works without the tax credits but the appraiser values the property significantly more based upon the city incentive package and all of the tax credits of course the bank loans based on the appraisal.
2. At this point in time we are working on loan approvals from Central Bank of Kansas City which is a C.D.E. for New Market Tax Credits, an Emporia Bank (Lyon County State Bank) and First N.B.C. a New Orleans bank that specializes in working with tax credits. We hope to have the loan in place by May 31st, 2016.

3. We have proceeded with the interior demolition with a small crew and are almost complete to be ready to pull the permit and start reconstruction immediately when the tax credits, final approval of incentives with the city and financing is in place.

At this point in time we would ask the city to extend our Memorandum of Understanding nine (9) months from the May 1, 2016 date.

Your consideration will be appreciated.

A handwritten signature in black ink, appearing to read "John J. Mallon". The signature is fluid and cursive, with a long horizontal stroke at the end.

John J. Mallon

AMENDED MEMORANDUM OF UNDERSTANDING

This Amended Memorandum of Understanding ("Memorandum") is made and entered into as of March 18, 2015, by and among the City of Emporia, Kansas ("City") and Historic Breckenridge, LLC ("Owner/Operator") and EHS Historic Building Group LLC ("Developer"). The City and Developer shall be referred to collectively as "Parties" and individually as a "Party".

WHEREAS, Developer or its affiliates are the owners of real property and a building formerly known as Lowther North Intermediate School located at 216 West 6th Avenue in the City (the "Property"), and Developer seeks to redevelop the Property into a hotel and conference center at an estimated total cost of \$11,400,000 (the "Project"); and

WHEREAS, the City and Developer agree construction of the Project is to their mutual benefit and that certain public assistance is necessary to make the Project financially feasible; and

WHEREAS, the City intends to seek approval to provide certain public assistance to the Developer to facilitate construction of the Project; and

WHEREAS, the City and Developer have entered into this Memorandum to state their current mutual understanding with respect to acts the City may take to facilitate the Project and certain public assistance for the Project and other mutual understandings.

In consideration of the foregoing, the Developer and City agree as follows:

1. Public Contribution. The Parties agree that assistance from the public is required to facilitate construction of the Project as further described in Section 2 of this Memorandum (the "Public Contribution"). The Parties acknowledge that before execution of this Memorandum, the City has provided Public Contribution intended to facilitate the Project in the form of street and waterline improvements at a cost of \$409,599 to date. The Parties acknowledge this Memorandum states the preliminary understandings of the Parties and that a final determination of the additional necessary Public Contribution, if any, will be made in an Incentive Compliance Development Agreement ("Development Agreement") between the Parties relating to the Project.

2. Potential Sources for Public Contribution. The Parties acknowledge the following sources for the Public Contribution have been requested and considered and would be, generally acceptable to the City, the Owner/Operator and the Developer, subject to consideration of the full terms and conditions of any such sources before and as part of the execution of a final Development Agreement for the Project, and subject, at all times, to approval of the governing body of the City. The Parties acknowledge that any values stated below are estimates based on reasonable assumptions. The Parties intend that any of the sources listed below may be used to satisfy the Public Contribution.

2.1. Transient Guest Tax Rebate. The Parties acknowledge a portion of the Public Contribution may be realized in the form of a 10-year rebate of transient guest taxes levied and received by the City and generated by the Project. Subject to the final terms of a Development Agreement between the Parties relating to the Project, the Parties

anticipate structuring the Transient Guest Tax Rebate as a rebate of 77% of the transient guest tax generated by the Project and received by the City, minus administrative fees deducted by the state of Kansas before remitting the transient guest tax receipts to the City. The payment of any transient guest tax rebate will be conditioned on the following three items: (i) that the use of all funds being rebated from the Transient Guest Tax be limited in use to the promotion and marketing of the convention center only and that such use shall include all direct costs including printing, travel and personnel related to such marketing and promotion (ii) that the Owner/Operators submit to the City and the Convention and Visitors Bureau ("CVB") an annual plan detailing the anticipated use of transient guest tax rebate funds for marketing and promotion of the convention center portion of the Project and (iii) the Owner/Operator shall also be required to submit to the City and the CVB an annual report identifying results of efforts to market the convention center portion of the Project, which shall include, but not be limited to the number of meetings and conventions solicited, the number of meeting and convention days and nights booked at the Project, average attendance per meeting, number of referrals to other hotels or meeting facilities in the City, and other matters as identified in the final Development Agreement. The required annual marketing plan and annual report shall be submitted no later than January 15th of each year the Development Agreement is in effect. The Parties agree the Transient Guest Tax Rebate may be renewed for a second 10-year or shorter period at the end of the first 10-year period, in the City's discretion. The Transient Guest Tax Rebate will not begin until the City has received transient guest tax revenue generated by the Project. Payments shall be made to the Owner/Operator on a quarterly basis as agreed upon in the final Development Agreement. The City shall also provide a \$35,000 one time grant to the Owner/Operator from the Transient Guest Tax Fund upon issuance of an occupancy permit by the City to be paid within 15 days of the issuance of the permit. Funds from this one time grant shall also be subject to the conditions previously set forth in this Section.

2.2. Community Improvement District Sales Tax. The Parties acknowledge a part of the Public Contribution may be generated from levy of a 2% Community Improvement District sales tax in a community improvement district created to include the Project and formed pursuant to K.S.A. 12-6a26 et seq. ("CID Act"). The City intends to support and provide for creation of a community improvement district pursuant to the CID Act (the "District") and the City's Community Improvement District Policy. The Parties acknowledge the Owner/Operator has filed the initial petition requesting formation of the community improvement district and the process for creating the district is underway. The Owner/Operator and Developer agrees to comply with the City's Policy and the CID Act and perform all duties and pay all out of pocket expenses of the City in accordance with the City Commission action taken on March 20, 2013 which granted a waiver from the standard fees to be applied to a CID application and project.

2.3 Industrial Revenue Bonds – Ad Valorem Tax Exemption. The City intends to cooperate in issuing its Taxable Industrial Revenue Bonds in an amount an amount not to exceed \$11.4 million dollars to finance portions of the Project as subsequently agreed by the Parties. In connection with issuance of such bonds, the City

intends to grant an ad valorem tax exemption to the Owner/Operator of the Project for a 10-year term beginning in the year after such bonds are issued, as permitted by Kansas law, subject to terms of the Development Agreement and approval of such ad valorem tax exemption according to Kansas law, including approval of the Kansas Board of Tax Appeals. All costs of issuance related to the taxable industrial revenue bonds, including fees and expenses of the City's attorneys, shall be the responsibility of the Owner/Operator.

2.4 City Work. The Parties acknowledge the City has proposed undertaking certain construction obligations to facilitate the Project ("City Work"), including (i) the improvements described in Section 1 of this Memorandum (work completed), (ii) installation of street lighting adjacent to the Project, subject to agreement among the Parties over costs estimates for the street lighting on or before August 1, 2015 and approval by the governing body, and (iii) cooperation and assistance to the Developer in applying for a CDBG loan or grant to finance parking facilities for the Project. The Parties agree that an application for a CDBG loan or grant will not occur until Developer has secured permanent financing for the Project. The Parties acknowledge the Developer has already paid a certified consultant for services related to the CDBG loan application for the Project.

3. Development Agreement. The Owner/Operator, Developer and City will cooperate in good faith to negotiate a final Development Agreement to govern the terms and conditions of any Public Contribution assistance approved by the City Commission for the Project.

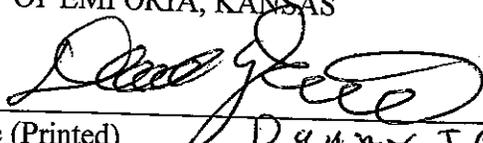
4. Purpose. The sole purpose of this Memorandum is to facilitate the timely processing of the application to create the community improvement district, and the preparation of the documents necessary to complete a program of public financing assistance for the proposed Project, as described in this Memorandum and as further agreed by the Parties. This Memorandum does not commit the City, Owner/Operator and the Developer to enter into any further agreements with each other or with respect to the requested Public Contributions. This Memorandum is not intended to, and nothing contained in this Memorandum shall, create any partnership, joint venture or any other business relationship between the Owner/Operator, Developer and the City. Except as described herein, nothing contained in this Memorandum shall be construed as granting the Owner/Operator and Developer any vested development rights. Execution of this Memorandum by the City does not constitute (i) acceptance of the petition requesting the community improvement district or approval of the community improvement district sale tax, (ii) approval of issuing the industrial revenue bonds, (iii) approval of the requested ad valorem tax exemption, (iv) approval of the Transient Guest Tax Rebate, or (v) an agreement to provide the City Work. Execution of this Memorandum is an agreement to pursue negotiation of additional documents necessary to implement any Public Contribution assistance approved for the Project. Final discretion and approval of the Public Contribution for the Project rests with the City Commission and approval is not guaranteed by the City. City, Owner/Operator and the Developer agree that time is of the essence and each agrees to proceed diligently and in good faith to complete the steps described herein and to negotiate additional documents necessary to implement the Public Contribution.

1. Term. This Memorandum shall become effective upon its execution by all the parties and shall negate the Memorandum of Understanding approved on March 4th, 2016. This agreement shall be in effect until the earliest of (a) execution of a Development Agreement between City, Owner/Operator and the Developer, or (b) May 1, 2016, unless extended by mutual agreement of the parties. The Owner/Operator and the Developer shall notify the City Manager of their request for extension no later than April 1, 2016.

2.

IN WITNESS WHEREOF, City and Developer have caused this Memorandum to be executed as of the day and year first above written.

CITY OF EMPORIA, KANSAS

By 
Name (Printed) Danny J. Gie
Title Vice Mayor

“CITY”

EHS HISTORIC BUILDING GROUP, LLC

By 
Name (Printed) JOHN J. MALLON
Title Managing Member

“OWNER/OPERATOR”

HISTORIC BRECKENRIDGE, LLC

By 
Name (Printed) JOHN J. MALLON
Title Managing Member

“DEVELOPER”

FIRST AMENDMENT TO
AMENDED MEMORANDUM OF UNDERSTANDING

THIS FIRST AMENDMENT TO AMENDED MEMORANDUM OF UNDERSTANDING (this "Amendment"), dated as of April _____, 2016, is entered into by and among the City of Emporia, Kansas ("City") and Historic Breckenridge, LLC ("Owner/Operator") and EHS Historic Building Group LLC ("Developer"). The City and Developer shall be referred to collectively as "Parties" and individually as a "Party".

WHEREAS, the Parties wish to amend that certain Amended Memorandum of Understanding dated March 18, 2015, by and among the Parties hereto (the "MOU") to extend the deadline for execution of a Development Agreement between the City, Owner/Operator and Developer from May 1, 2016 to February 1, 2017;

WHEREAS, Section 1 "Term" of the MOU states "This agreement shall be in effect until the earliest of (a) execution of a Development Agreement between City, Owner/Operator and the Developer, or (b) May 1, 2016, unless extended by mutual agreement of the parties. The Owner/Operator and the Developer shall notify the City Manager of their request for extension no later than April 1, 2016"; and

WHEREAS, in accordance with such Section 1 "Terms", the Owner/Operator and the Developer have requested a nine (9) month extension, and did request that extension prior to April 1, 2016.

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter set forth, the Parties agree as follows:

1. Section 1 "Term" subsection (b) is hereby amended to delete the date of "May 1, 2016" and insert the date "February 1, 2017" in place thereof.
2. This Amendment, when signed and delivered by each of the Parties, shall be effective as to all of the Parties as of the date first above written.
3. As amended by this Amendment, the MOU shall continue in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, this First Amendment to Amended Memorandum of Understanding has been executed and delivered as of the date first above written.

CITY OF EMPORIA, KANSAS

By _____

Name (Printed) _____

Title _____

“CITY”

EHS HISTORIC BUILDING GROUP, LLC

By _____

Name (Printed) _____

Title _____

“OWNER/OPERATOR”

HISTORIC BRECKENRIDGE, LLC

By _____

Name (Printed) _____

Title _____

“DEVELOPER”

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 12

SUBJECT:

APPLICATION 2016-04. A request of City of Emporia to modify the text of the Emporia - Lyon County Metropolitan Planning Area Zoning Regulations, Section 20-6.a.4, concerning Temporary Use Permits to allow the regulation of Mobile Food Venders. The proposed regulations include: hours of operation, fee, location, sanitation, and licensing required to obtain a permit.

RECOMMENDATION:

At their March 22, 2016 regular meeting, the Planning Commission voted 8-0 to recommend approval of the text change based on staff recommendations, specifically that the changes in the temporary use of food vendors would help protect the health, safety and welfare of the community.

BACKGROUND SUMMARY

This item was brought to staff's attention by a few interested and concerned citizens. In researching, staff found there were a lack of regulations in place for mobile food vendors outside of a temporary use permit that only allowed four 10 day permits (maximum of 40 days) per calendar year, with no regulations on location, operation, sanitation, or health permits and licensing.

Mobile Food Vendors offer a unique dining experience, have been known to revive struggling and blighted areas, and can help entrepreneurs establish a business that could turn into a brick and mortar location. Having regulations for Mobile Food Vendors would help protect the health, safety and welfare of the community by verifying that vendors are in compliance with state and local health code requirements.

These revisions to the regulations aim to not circumvent the Zoning Requirements or any other regulations; the regulations would not give the Mobile Food Vendors unfair advantage over traditional merchants; the regulations would not discourage investment in permanent buildings; and would protect neighborhood character. Mobile Food Vendors permits will be used in place of Temporary Use Permits for vendors selling prepared ready to eat items (not produce, or ice cream vendors).

The proposed text change to the Zoning Regulations would be as follows:

SECTION 20-601.a.4. TEMPORARY USES

4. Outdoor temporary sales on private property and not incorporated or in partnership with the existing business located on this property in a commercial or industrial zone, including commercial sales, swap meets or similar activities providing they do not operate for more than ten (10) consecutive days and there are no more than four (4) such sales on any one property in any calendar year.

4a. Mobile Food Vendor, located within industrial and commercial zoning districts are allowed a renewable 30 day permit, with a \$50 fee per 30 days. All Mobile Food Vendors must comply with all state health codes, City of Emporia ordinances, and zoning regulations before a permit is issued. The permit is issued for the mobile food unit, not the location.

ACTION RECORD

Action: _____

Motion: _____ Second: _____
Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

AGENDA ITEM SUMMARY

Hours of operation: Mobile Food Vendor may operate at the primary establishment where they are parked for no more than 12 continuous hours of operation per day.

Utilities and sanitation: All plumbing utilities shall be portable and self contained, with proper treatment and containment for greywater, grease, and wastewater holding and disposal. All safety equipment must be up to date. Electrical or other utility connections must be safe and in compliance with electrical and applicable codes and regulations.

Location: Vendors must be at least 50 feet from an established brick and mortar restaurant, unless there has been prior written approval from the established restaurant. Vendors cannot use public property for sales.

Maintenance: No extra storage trucks, trailers, sheds, containers, or canopies shall be allowed to be located on site of vendors location. Vendor is responsible to keep the location clean and orderly, and provide trash/recycle receptacles, and to clean up all trash, litter, spills within a twenty-foot radius or apparent operating area, whichever is greater.

Signs: One temporary sign is allowed and shall not block traffic or be placed in the public right-of-way.

The zoning administrator may issue a certificate of temporary use upon the payment of the mobile food vendor permit fee, imposed by the fee ordinance, and upon finding that all requirements have been met.

ACTION:

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

ATTACHMENTS:

Planning Commission Minutes Excerpt, Resolution

Excerpt of the March 22, 2016 Planning Commission Meeting Minutes:

The Planning Commission met in regular session on Tuesday, March 22, 2016, with Chair Thomas presiding. Members Bucklinger, Fowler, Miller, Pontius, Sauder, Springeman and Wade were present.

Member Bucklinger asked if the new recommendation would limit the amount of permits that could be obtained since the current regulations for Temporary Use Permits allow only 4 permits at each location, per calendar year. He asked if there were any limits in the new regulation. Secretary Foster responded, he did not see a need to have a limit and he didn't foresee them to become a permanent fixture. The regulations should be in place for the health and safety of the community.

Member Thomas inquired if the new regulations would allow a mobile food truck in different locations in a 12 hour period. Secretary Foster replied that moving to different locations would be allowed. The permit would be not only for the location but the truck itself.

Member Sauder stated that he sees the food trucks as being an entrepreneurial effort by people that want to grow that segment of business.

ACTION RECORD

Action: _____

Motion: _____ Second: _____
Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

AGENDA ITEM SUMMARY

Member Thomas asked if the permit would be required to be displayed. Secretary Foster noted he could include on the application, the permit and state license be displayed.

With no further discussion, the public hearing portion is opened.

With no further discussion, the public hearing portion is closed.

Member Wade moved to approve Application 2016-04, to modify the text of the Emporia - Lyon County Metropolitan Planning Area Zoning Regulations, Section 20-6.c.4, concerning Temporary Use Permits to allow the regulation of Mobile Food Venders, based upon Staff recommendations and with an amendment to the application form that the permit and state license must be displayed. Sauder seconded. Motion approved 8-0.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF EMPORIA, KANSAS, AMENDING ARTICLE 20 OF THE ZONING REGULATIONS FOR THE CITY OF EMPORIA AND THE METROPOLITAN PLANNING AREA OF LYON COUNTY, KANSAS AS ADOPTED BY ORDINANCE NO. 00-08 OF THE CITY OF EMPORIA, KANSAS AND REPEALING THE EXISTING SECTIONS

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

Section 1. That Article 20, Section 20-601.a.4.4.a of the Zoning Regulations for the City of Emporia and the Metropolitan Planning Area of Lyon County, Kansas as adopted by Ordinance No. 00-08 are hereby amended to read as follows:

Article 20 -601.a.4.4.a Mobile Food Vendor, located within industrial and commercial zoning districts are allowed a renewable 30 day permit, with a \$50 fee per 30 days. All Mobile Food Vendors must comply with all state health codes, City of Emporia ordinances, and zoning regulations before a permit is issued. The permit is issued for the mobile food unit, not the location.

Hours of operation: Mobile Food Vendor may operate at the primary establishment where they are parked for no more than 12 continuous hours of operation per day.

Utilities and sanitation: All plumbing utilities shall be portable and self contained, with proper treatment and containment for greywater, grease, and wastewater holding and disposal. All safety equipment must be up to date. Electrical or other utility connections must be safe and in compliance with electrical and applicable codes and regulations.

Location: Vendors must be at least 50 feet from an established brick and mortar restaurant, unless there has been prior written approval from the established restaurant. Vendors cannot use public property for sales.

Maintenance: No extra storage trucks, trailers, sheds, containers, or canopies shall be allowed to be located on site of vendors location. Vendor is responsible to keep the location clean and orderly, and provide trash/recycle receptacles, and to clean up all trash, litter, spills within a twenty-foot radius or apparent operating area, whichever is greater.

Signs: One temporary sign is allowed and shall not block traffic or be placed in the public right-of-way.

The zoning administrator may issue a certificate of temporary use upon the payment of the mobile food vendor permit fee, imposed by the fee ordinance, and upon finding that all requirements have been met.

Section 2. Section 20-601.a.4.4 as existed prior to the adoption of this ordinance are hereby repealed.

Section 3. This ordinance shall become effective upon publication in the official City newspaper.

PASSED AND APPROVED this _____ day of _____, 2016.

DANNY GIEFER, Mayor

ATTEST:

KERRY SULL, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 13

SUBJECT:

APPLICATION 2016-03. Consideration to change the zoning at 1002 Whittier Street from R-1, Low Density Residential District to R-3, High Density District.

RECOMMENDATION:

Planning Commission recommends approval for the zoning change from an R-1 to R-3, based on staff recommendations and a lack of public opposition. Staff recommended approval of the rezoning as it is consistent with the City of Emporia Comprehensive Plan, and would serve as a buffer zone from the neighboring commercial district.

BACKGROUND SUMMARY

The applicant is requesting rezoning from R1, Low Density Residential District to R-3, High Density Residential District, as the developer is proposing a 36 unit apartment on east portion of 1002 Whittier which is vacant land that is approximately 2.4 acres (105,333 sq ft). The proposed use will help the present need for low income tax credits in Emporia as some the current units have expired.

ACTION:

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

ATTACHMENTS:

Planning Commission Minutes Excerpt, Site Plan, Ordinance

The Planning Commission met in regular session on Tuesday, March 22, 2016, with Chair Thomas presiding. Members Bucklinger, Fowler, Miller, Pontius, Sauder, Springeman and Wade were present.

APPLICATION 2016-03. A request of Rite Development, Inc to change the zoning status of the property located at 1002 Whittier St., from R1, Low Density Residential District to R3, High Density Residential District, as authorized by Article 26-1 of the Zoning Regulations.

Staff confirmed jurisdiction over this application.

No ex parte communication was declared.

Staff Report:

The current zoning for the parcel of land is R-1 for Low Density Residential Development. Surrounding this location there are a number of mixed zoning uses, including C-2 for Restricted Commercial District to the north, R-3 High Density Residential to the east, and R1 to the south and west.

The developer is proposing a 36 unit apartment on the vacant land that is approximately 2.4 acres (105,333 sq ft). This includes 80 parking stalls. The proposed use will help the present need for low income tax credits in Emporia as some the current units has expired.

ACTION RECORD

Action: _____

Motion: _____ Second: _____
Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

AGENDA ITEM SUMMARY

The City of Emporia Zoning Department sees the rezoning of this parcel a viable use to meet the needs of the community. This property would serve a buffer zoning if rezoned to R-3 from the neighboring C2 Commercial District. Staff recommends approval of the rezoning as it is consistent with the City of Emporia Comprehensive Plan and would serve as a buffer zone from the neighboring commercial district.

Member Bucklinger asked if the proposed parking stalls are within the required number for parking. Staff responded that he believed it to be in compliance but he has not seen a final site plan on the project.

Being no further questions, the Public Hearing portion was opened.

Public Hearing:

Mr. Dolph Woodman, Wright Development, Republic, Missouri, spoke as the representative for the proposed project. He explained that the residents would be 50 percent below the medium income and this is a tax credit project. All the tenants would go through a background check and they would pay the same amount of rent. There would be 2 and 3 bedroom units, community room and a full-time manager on site at all times. The properties must be kept in compliance for over 20 years. He shared that he had been doing this type of project for 20 years and has many existing properties in Kansas, Missouri and Oklahoma.

Member Sauder asked if the existing home, which is located on the front portion of the property, still be in existence. Mr. Woodman replied, the home will remain but that the future goal would be to purchase that property and possibly the property where the old Burger King had been located. Mr. Bucklinger asked if Mr. Woodman had been contacted by any of the neighbors for that property. He acknowledged he had been contacted by one neighbor.

Member Thomas asked if there had been a traffic count conducted. Mr. Woodman replied that he did not think there had been a traffic study done at this time.

Mr. Glen Knuth, 1002 Whittier St., current owner of the property, spoke in favor of the application. He felt the project would be a great addition to our community and the land is "just sitting there doing nothing".

Mr. Ron and Christy Zlab, 940 Whittier St., resides adjacent to 1002 Whittier St. and was looking for clarification as to what the project would entail. He was concerned about buffering, drainage and boxing in his property.

Mr. Woodman responded to Mr. Zlab's concerns, in regards to his access, he understood that there had been an existing road at one time but had been abandoned. Ms. Zlab replied "it was their understanding that it had to be 50 feet for the road to be opened up but there is only about 43 feet. Their house sits at the front of their property and it's empty behind it. If you make the roadway open again, it will go right by their bedroom windows". Mr. Foster explained that he had spoken with the Zlab's at an earlier time at which they had spoke of the possibility of them developing the back part of their lot. He also had informed them they would have to go through a rezoning request just as Mr. Woodman had. He understood that the Zlab's may feel like their property would be somewhat land locked, but they would still have access from the front of their property. Ms. Zlab did not feel that there would be enough access if the zoning was changed on 1002 Whittier and the development was allowed. Mr. Zlab still questioned the change to the drainage with the changes. Mr. Woodman replied that they would comply with any necessary requirements the city imposes.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

AGENDA ITEM SUMMARY

Mr. Sauder explained that this application is for zoning purposes, not the structure itself. If the zoning change is approved, the developer would have to comply with the regulations and process of getting a building permit.

Being no further comments, the Public Hearing portion was closed.

Member Bucklinger asked if a traffic study would be a part of the process once a building permit is requested. Mr. Foster was not certain but there would be a site plan committee involved with the process.

Member Sauder commented that the area is a mess and it's difficult to get access to the back. Furthermore, suitable building spots are scarce and housing, whether it be a single family dwelling or rental properties are at a premium and felt this project would serve a very important need in the community. This proposed development would be taking land, as Mr. Kuntz stated, has virtually no use and this would be a creative way to utilize the land. The property currently borders on R-1, residential, and C-2, restricted commercial, which would serve as a buffer if the rezoning is allowed.

Member Sauder moved to approve Application 2016-03, to change the zoning status of the property located at 1002 Whittier St., from R1, Low Density Residential District to R3, High Density Residential District, based upon Staff recommendation with an amendment to include a Site Plan Review with a traffic study to be conducted. Member Bucklinger seconded. Motion approved 8-0.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

ORDINANCE NO. _____

AN ORDINANCE REZONING A CERTAIN AREA IN THE CITY OF EMPORIA, KANSAS FROM R1, LOW DENSITY RESIDENTIAL DISTRICT TO R3, HIGH DENSITY RESIDENTIAL DISTRICT AND AMENDING THE DISTRICT ZONING MAP TO CONFORM WITH SAID ZONING.

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

Section 1. The following described property is hereby rezoned from R1, Low Density Residential District to R3, High Density Residential District to wit:

**THAT PART OF THE NORTH HALF OF THE SW1/4 OF SECTION 11, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT A STONE 332 FEET NORTH OF A STONE 656 FEET WEST OF THE SOUTHEAST CORNER OF THE NE1/4 OF THE SW1/4 OF SAID SECTION 11, AND AT ADDISON LIGGET'S NORTHWEST CORNER; THENCE NORTH AT RIGHT ANGLES WITH THE SOUTH LINE OF THE NORTH HALF OF THE SW1/4 OF SAID SECTION 11, 332 FEET; THENCE EAST 656 FEET TO THE EAST LINE OF SAID SW1/4; THENCE SOUTH ON THE EAST LINE OF SAID SW1/4 332 FEET TO ADDISON LIGGET'S NORTHEAST CORNER; THENCE WEST 656 FEET TO THE PLACE OF BEGINNING, EXCEPT THE FOLLOWING: BEGINNING AT A POINT 332 FEET NORTH OF AN IRON PIN AT THE SOUTHWEST CORNER OF THE SE1/4 OF THE NE1/4 OF THE SW1/4 OF SAID SECTION 11; THENCE NORTH 100 FEET; THENCE EAST 189.5 FEET; THENCE IN A SOUTHEASTERLY DIRECTION 17.65 FEET TO A POINT ON A LINE 205 FEET EAST OF THE PLACE OF BEGINNING; THENCE SOUTH ON SAID LINE 91.4 FEET TO A POINT DUE EAST OF THE PLACE OF BEGINNING; THENCE WEST 205 FEET TO THE PLACE OF BEGINNING.**

Section 3. This ordinance shall become effective upon publication in the official city newspaper.

PASSED AND APPROVED this _____ day of _____, 2016.

DANNY GIEFER, Mayor

ATTEST:

KERRY SULL, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 14

SUBJECT:

APPLICATION 2016-01. Consideration to change the zoning at 1325 E. 6th Ave from R-3, High Density Residential District to C-3, General Commercial District

RECOMMENDATION:

Seeking approval for rezoning the subject property from R-3 to a C-3 to make it consistent use with neighboring properties and the comprehensive plan.

BACKGROUND SUMMARY

The conditional use ordinance was passed March 16th while the Rezoning ordinance was not.

The applicant is requesting rezoning from R1, Low Density Residential District to C3, General Commercial District. The applicant has a desire to make the vacant property a useable business. The neighboring properties are mixed use, with C-3 to the east, and R-3 to the south that is used as agricultural land. The property to the north across 6th Ave is zoned I-1.

The Future Land Use Map in the Comprehensive Plan identifies the subject property as commercial and industrial zones. East 6th Avenue is classified as an arterial street, and would allow for any increase in traffic that the proposed business might bring.

ACTION:

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

ATTACHMENTS:

Planning Commission Minutes Excerpt, Site Plan, Ordinance

Excerpt of the February 23, 2016 Planning Commission Meeting:

The Planning Commission met in regular session on Tuesday, February 23, 2016, with Chair Thomas presiding. Members Bucklinger, Fowler, Miller, Sauder, Springeman and Wade were present. Member Pontius was absent.

Application 2016-01. A request of Diane J. Hanshew to change the zoning status of a portion of the property located at 1325 E. 6th Ave, described as the Lots 5, 6 and North 37.03 feet Lot 4, Block 1 of the Springfield Addition, from R-3, High Density Residential District to C3, General Commercial District, as authorized by Article 26-1 of the Zoning Regulations. The applicant is additionally requesting a Conditional Use Permit to allow for Storage unit, as authorized by Section 9-401 of the Zoning Regulations.

Staff confirmed jurisdiction over this application.

No ex parte communication was declared.

ACTION RECORD

Action: _____

Motion: _____ Second: _____
Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

AGENDA ITEM SUMMARY

Staff Report: This application is being made to make this parcel useable and consistent with other properties on E. 6th Avenue. The property is located near commercial and industrial zones and is on an arterial road. Changing the zoning from an R-3 to C-3 would be consistent with surrounding uses and compatible with the Comprehensive Plan. Additionally, the applicant is requesting a Conditional Use Permit to allow for a self storage facility at this location. The lot is currently vacant and is approximately 6500 square feet.

Staff recommends approval for the zoning change for an R-3 to a C-3 as it is a consistent use with neighboring properties and also recommends approval of the Conditional Use Permit to allow a storage facility and request the applicant follows the Zoning Regulation Section 20-1301, Landscape Ordinance Guidelines, to visually soften the storage buildings from 6th Avenue.

Member Bucklinger asked if there are any specific requirements, as to the number or type of storage units allowed, for a CUP. Secretary Foster replied, he did not know of any requirements specifically for a Conditional Use Permit regarding storage units. Member Bucklinger inquired if the various setbacks been determined to be in compliance. Secretary Foster replied, everything is in compliance.

With no further discussion, the public hearing portion is opened.

Public Hearing:

Paul Hanshew and Diane Hanshew, 906 Commercial Street, asked for the Boards consideration to approve to zoning change on the three lots. He explained, part of the lots were taken when the overpass was construction on E. 6th Avenue. They have owned the properties for quite some time and decided to try combining the leftover lots so that it would become a decent sized piece of ground to develop. The properties have been vacant for quite a few years and they would like to see it put to a good use.

With no further comments, the public hearing portion was closed.

Member Sauder moved to approve Application 2016-01, to change the zoning status of a portion of the property located at 1325 E. 6th Ave, described as the Lots 5, 6 and North 37.03 feet Lot 4, Block 1 of the Springfield Addition, from R-3, High Density Residential District to C3, General Commercial District and a Conditional Use Permit to allow for storage units based upon Staff's recommendation and that it fits into the current characteristics of the neighborhood and the zoning of the neighboring lots. Member Wade seconded. Motion approved 7-0.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

ORDINANCE NO. _____

AN ORDINANCE REZONING A CERTAIN AREA IN THE CITY OF EMPORIA, KANSAS FROM R3, HIGH DENSITY RESIDENTIAL DISTRICT TO C3, GENERAL COMMERCIAL DISTRICT AND AMENDING THE DISTRICT ZONING MAP TO CONFORM WITH SAID ZONING.

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

Section 1. The following described property is hereby rezoned from R1, Low Density Residential District C3, General Commercial District to wit:

LOTS 5, 6 AND THE NORTH 37.03 FEET OF LOT 4 OF BLOCK 1 IN SPRING GREEN ADDITION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF

Section 3. This ordinance shall become effective upon publication in the official city newspaper.

PASSED AND APPROVED this _____ day of _____, 2016.

DANNY GIEFER, Mayor

ATTEST:

KERRY SULL, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 15

SUBJECT: Report from the City Manager on City Activities

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

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

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

Tentative Agenda for April 13th Study Session

- Discuss RHID
- Cottonwood River Water Rights Purchases
- Discuss Becker Addition Drainage

City/County Joint Luncheon County Hosts

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____

AGENDA ITEM SUMMARY

MEETING DATE: April 6, 2016

ITEM NUMBER: 16

SUBJECT: City Commissioners Reports and Comments

RECOMMENDATION:

BACKGROUND SUMMARY:

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

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____