

CITY COMMISSION MEETING AGENDA

CITY COMMISSION / MUNICIPAL COURT ROOM
518 MECHANIC, EMPORIA, KS
August 5, 2020 at 1:30 pm

1. Members present: Mayor Giefer

| | |
|-------------------------------|---------------------------------|
| <u>Vice Mayor Gilligan</u> | <u>Commissioner Geitz</u> |
| <u>Commissioner Smith</u> | <u>Commissioner Brinkman</u> |
| <u>City Manager McAnarney</u> | <u>City Clerk Sull</u> |
| <u>Asst. City Mgr. Massey</u> | <u>City Attorney Montgomery</u> |
2. Consent Agenda
3. Public Comment
4. Consider Accepting the Permanent Drainage Easement between the City of Emporia and Sara J. Kelley.
5. Consider Approval of Ordinance and Application to Vacate a portion of County Road K as part of the Airport Runway Extension.
6. Consider Approval of Ordinance and Application for Final Planned Unit Development at 2910 W. Hwy 50.
7. Consider Approval of Ordinance and Request to Rezone 210 S. Lawrence from General Commercial Zoning to Public Use for Potential Development.
8. Consider the Review and Approval of Projects Allocations for Lyon County CARES/Spark Funding.
9. Consider the Approval of an Incentive Compliance Agreement between the City of Emporia and S&S Quality Meats, LLC and Smoots Enterprises LLC II.
10. Report from City Manager on Activities.
11. City Commission Reports and Comments.
12. Executive Session
13. Executive Session



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

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: Consent Agenda

SUBJECT:

Consent agenda:

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

- a. Consider minutes of the Regular Meeting held on July 15 and Special Meeting on July 22, 2020.
- b. Consider ratification of Payroll Ordinance for the period ending on July 17, 2020.
- c. Consider Request to Set Date for 2021 Budget Public Hearing.
- d. Consider Change Order No.2 for the 2018 Water Improvements 1,000,000 Gallon Composite Tank (Warren Way West of Penny Lane) Project No. WP1802.

RECOMMENDATION:

- a. Approve Minutes
- b. Approve Payroll
- c. Approve Date
- d. Approve Change

BACKGROUND SUMMARY:

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 2c

SUBJECT: Request to Set Date for Budget Public Hearing.

RECOMMENDATION: Approve Budget Hearing Date.

BACKGROUND SUMMARY:

The Commission needs to set the public hearing for the 2021 Budget. City Staff recommends August 19, 2020.

The Notice of budget hearing will be published in the Emporia Gazette 10 days prior to the budget hearing.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 2d

SUBJECT: Consider Change Order No.2 for the 2018 Water Improvements 1,000,000 Gallon Composite Tank (Warren Way West of Penny Lane) Project No. WP1802.

RECOMMENDATION: Approve Change Order No. 2 for the 2018 Water Improvements 1,000,000 Gallon Composite Tank Project No. WP1802 to increase the original contract amount by \$13,359.60 for a project total of \$3,077,636.60.

BACKGROUND SUMMARY:

Due to the eight (8) listed field changes that both added to and subtracted from the project scope. The field changes were the result of added/subtracted quantities and materials, changes in franchise utility requirements to serve the water tower from the design plans and added additional electrical/lighting to project.

Attached is a copy of Change Order No. 2, Unit Price Quantity Change Summary, Caldwell's Change Order Request, and supporting documentation (from subcontractors).

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

| | |
|---|----------------------------------|
| Date of Issuance: April 14, 2020 | Effective Date: April 14, 2020 |
| Owner: City of Emporia, Kansas | Owner's Contract No.: WP 1802 |
| Contractor: Caldwell Tanks, Inc. | Contractor's Project No.: 8755 |
| Engineer: BG Consultants, Inc. | Engineer's Project No.: 17-1368E |
| Project: 2018 Water Improvements; 1,000,000 Gallon Composite Tank; Warren Way West of Penny Lane | Contract Name: Same as Project |

The Contract is modified as follows upon execution of this Change Order:

Description: Schedule Extension, Quantity Adjustment, and Electrical Revisions

Attachments: Change Order 2 Attachment: Summary of Changes; PCO #3; and Electrical Change Request #7

| CHANGE IN CONTRACT PRICE | CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i> |
|---|---|
| Original Contract Price: <u>\$ 3,148,312.00</u> | Original Contract Times: Substantial Completion: <u>November 1, 2019</u> Ready for Final Payment: <u>March 1, 2020</u> dates |
| Decrease from previously approved Change Orders No. <u>1</u> to No. <u>1</u> : <u>\$84,035.00</u> | Increase from previously approved Change Orders No. <u>1</u> to No. <u>1</u> : Substantial Completion: <u>26 days</u> Ready for Final Payment: <u>0 days</u> days |
| Contract Price prior to this Change Order: <u>\$ 3,064,277.00</u> | Contract Times prior to this Change Order: Substantial Completion: <u>November 27, 2019</u> Ready for Final Payment: <u>March 1, 2020</u> dates |
| Increase of this Change Order: <u>\$ 13,359.60</u> | Increase of this Change Order: Substantial Completion: <u>91 days</u> Ready for Final Payment: <u>19 days</u> days |
| Contract Price incorporating this Change Order: <u>\$ 3,077,636.60</u> | Contract Times with all approved Change Orders: Substantial Completion: <u>February 26, 2020</u> Ready for Final Payment: <u>March 20, 2020</u> dates |

| | | | |
|--------------------------------|------------------------------|-----------------------------------|--------------|
| RECOMMENDED: | | ACCEPTED: | |
| By: <u>Paul C. Duvigne</u> | By: _____ | By: <u>Maura J. Bowman</u> | By: _____ |
| Engineer (if required) | Owner (Authorized Signature) | Contractor (Authorized Signature) | |
| Title: <u>Project Engineer</u> | Title: _____ | Title: <u>SR. PROJECT MANAGER</u> | Title: _____ |
| Date: <u>April 14, 2020</u> | Date: _____ | Date: <u>5-7-20</u> | Date: _____ |

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

City of Emporia, 2018 Water Improvements, 1,000,000 Gallon Composite Tank, Warren Way West of Penny Lane
 Change Order 2 Attachment: Unit Price Quantity Change Summary

| Item # | Item | Units | Plan Quantity + | | Actual | Net Change | S/Item | \$ Difference |
|--------|--|----------|-----------------------|------------|--------|------------|--------------|---------------|
| | | | Previous Change Order | Quantities | | | | |
| CO2-1 | Gas Line Extension | LS | 0 | 0 | 1 | 1 | \$ 4,430.00 | \$4,430.00 |
| CO2-2 | Gas Line Credit from Kansas Gas | LS | 0 | 0 | 1 | 1 | \$(1,500.00) | -\$1,500.00 |
| CO2-3 | 8" Clean Crushed Gravel w/ Geotextile Fabric | Sq. Yds. | 3363 | 3,252 | -111 | 5 | \$ 16.00 | -\$1,776.00 |
| CO2-4 | Aggregate Ditch Lining (d50=6") | Tons | 10 | 15 | 5 | 5 | \$ 87.00 | \$435.00 |
| CO2-5 | Provide PVC Conduit in lieu of rigid Aluminum in Chlorine Room 001 & Chem Feed Room 002 | LS | 0 | 0 | 1 | 1 | \$(647.85) | -\$647.85 |
| CO2-6 | Tank Grounding System Plan detail - connection together; trench between down comers. | LS | 0 | 0 | 1 | 1 | \$ 895.65 | \$895.65 |
| CO2-7 | Additional U/G conduit for electrical utility primary to an existing pole 500' to the east of where it was shown on the drawing. | LS | 0 | 0 | 1 | 1 | \$ 10,831.80 | \$10,831.80 |
| CO2-8 | Provide and install new exterior light above door to chlorine room. | LS | 0 | 0 | 1 | 1 | \$ 691.00 | \$691.00 |

Change Order Total \$13,359.60

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 3

SUBJECT: Public Comment

RECOMMENDATION:

BACKGROUND SUMMARY:

Citizen Appearance Procedures

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

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 4

SUBJECT: Consider accepting the permanent drainage easement between the City of Emporia and Sara J. Kelley.

RECOMMENDATION: City staff recommends the City Commission accept the permanent drainage easement from Sara J. Kelley.

BACKGROUND SUMMARY:

The City has proposed a storm drainage project that will construct a drainage ditch/swale to better drain the storm sewer in Walnut Grove cul-de-sac. This storm sewer drained under an abandoned railroad track. The owner of the railroad track went bankrupt and left the rail line and drainage under it in disrepair. This project will cut a ditch through that abandoned railroad embankment to better drain the aforementioned storm sewer and cul-de-sac.

Attached is a copy of the permanent drainage easement, and exhibit prepared by GeoTech, Inc., of which conveys the ability to construct and maintain drainage ditch/swale and storm sewer along the described property.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

PERMANENT DRAINAGE EASEMENT

This indenture made the 21st day of July, 2020, between Sara J. Kelley and S J Kelley Trust, hereinafter called First Party and the City of Emporia, Kansas, hereinafter called Second Party.

WITNESSETH, That the said First Party in consideration of One Dollar (\$1.00) and other valuable considerations, receipt of which is acknowledged, do by these presents grant unto the Second Party, its successors and assigns, a perpetual easement in and over the following described real estate situated in the City of Emporia, County of Lyon and State of Kansas, to-wit:

PERMANENT DRAIAGE EASEMENT:

A TRACT FOR THE PURPOSE OF A PERMANENT DRAINAGE EASEMENT IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., CITY OF EMPORIA, LYON COUNTY, KANSAS, AND MORE PARTICULARLY DESCRIBED AS FOLLOW:

COMMENCING AT THE NORTHWEST CORNER OF SAID NW1/4SW1/4;
THENCE N.88° 20' 09"E. (BASIS OF BEARINGS) ON THE NORTH LINE OF SAID NW1/4SW1/4 FOR 728.00 FEET TO THE NORTHWEST CORNER OF A PREVIOUSLY DESCRIBED TRACT AS RECORDED IN BOOK 474 AT PAGE 693 IN THE LYON COUNT REGISTER OF DEEDS OFFICE:
THENCE S.00° 25' 02"W. ON THE WEST LINE OF SAID PREVIOUSLY DESCRIBED TRACT FOR 461.18 FEET TO THE POINT OF BEGINNING;
THENCE N.48° 58' 36"E. FOR 31.03 FEET;
THENCE N.90° 00' 00"E. FOR 65.03 FEET;
THENCE S.43° 27' 07"E. FOR 47.65 FEET;
THENCE S.00° 00' 00"E. FOR 21.81 FEET;
THENCE N.43° 27' 07"W. FOR 57.04 FEET
THENCE S.90° 00' 00"W. FOR 52.97 FEET
THENCE S.48° 58' 36"W. FOR 38.66 FEET TO THE WEST LINE OF SAID PREVIOUSLY DESCRIBED TRACT;
THENCE N.00° 25' 02"E. FOR 20.01 FEET TO THE POINT OF BEGINNING.
SAID TRACT CONTAINS 2193 SQUARE FEET.

See attached Exhibit A

for the purpose of constructing and maintaining Storm Sewer and Drainage within the Drainage Easement on said tracts, along with the right of ingress and egress to and from said tract.

IN WITNESS WHEREOF, The First Party has executed this instrument the day and year first above written.

S. Kelley
Signature
Printed Name: Sara J. Kelley

S. Kelley Trust
Signature
Printed Name: S. J. Kelley Trust

State of Kansas)
) ss:
County of Lyon)

BE IT REMEMBERED, That on this 21st day of July, A.D., 2020, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Sara J. Kelley, who are personally known to me to be the same persons who executed the above instrument of writing and such persons duly acknowledge the execution of the same.

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

Andrea K. Kavila
Notary Public

My Commission Expires September 18, 2022

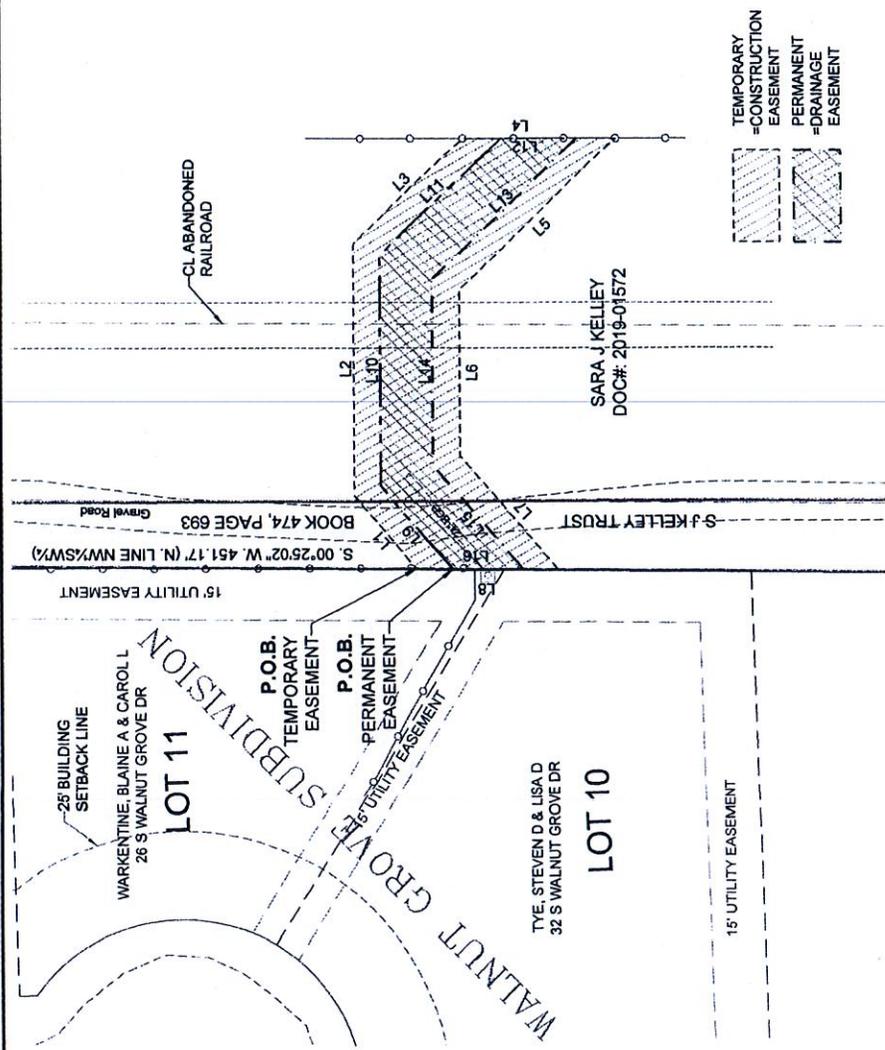




DRAINAGE EASEMENT EXHIBIT
 A TRACT IN THE NW¼ OF THE SW¼ OF SECTION 14, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS,

BASIS OF BEARINGS:
 "KANSAS STATE PLANE, SOUTH ZONE" USING
 GEODI03 & CARLSON SURVEYING SOFTWARE.

| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | N 48°58'36" E | 27.22' |
| L2 | N 90°00'00" E | 71.06' |
| L3 | S 43°27'07" E | 42.96' |
| L4 | S 00°00'00" E | 43.62' |
| L5 | N 43°27'07" W | 61.73' |
| L6 | S 90°00'00" W | 46.94' |
| L7 | S 48°58'36" W | 42.48' |
| L8 | N 00°25'02" E | 40.02' |
| L9 | N 48°58'36" E | 31.03' |
| L10 | N 90°00'00" E | 65.03' |
| L11 | S 43°27'07" E | 47.65' |
| L12 | S 00°00'00" E | 21.81' |
| L13 | N 43°27'07" W | 57.04' |
| L14 | S 90°00'00" W | 52.97' |
| L15 | S 48°58'36" W | 38.66' |
| L16 | N 00°25'02" E | 20.01' |



TEMPORARY
 =CONSTRUCTION
 EASEMENT

PERMANENT
 =DRAINAGE
 EASEMENT

SARA J KELLEY
 DOC#: 2019-01572

CLIENT: CITY OF EMPORIA, KANSAS

| | | | | |
|--|-----------|-----------|----------|----------|
| GeoTech, Inc. 115 W. 5th AVENUE, EMPORIA, KS 66801 (620)342-7491, FAX: (620)342-6722 | PROJECT # | DATE | DRAWN BY | SHEET(S) |
| | 2011-15 | 5/22/2020 | ACD | 1 OF 2 |

DRAINAGE EASEMENT EXHIBIT

A TRACT IN THE NW¼ OF THE SW¼ OF SECTION 14, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS,

TEMPORARY CONSTRUCTION EASEMENT:

A TRACT FOR THE PURPOSE OF A TEMPORARY CONSTRUCTION EASEMENT IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., CITY OF EMPORIA, LYON COUNTY, KANSAS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NW¼/SW¼; THENCE N.88° 20' 09"E. (BASIS OF BEARINGS) ON THE NORTH LINE OF SAID NW¼/SW¼; FOR 728.00 FEET TO THE NORTHWEST CORNER OF A PREVIOUSLY DESCRIBED TRACT AS RECORDED IN BOOK 474 AT PAGE 683 IN THE LYON COUNTY REGISTER OF DEEDS OFFICE; THENCE S.00° 25' 02"W. ON THE WEST LINE OF SAID PREVIOUSLY DESCRIBED TRACT FOR 451.17 FEET TO THE POINT OF BEGINNING; THENCE N.48° 58' 36"E. FOR 27.22 FEET; THENCE N.90° 00' 00"E. FOR 71.06 FEET; THENCE S.43° 27' 07"E. FOR 42.96 FEET; THENCE S.00° 00' 00"E. FOR 43.62 FEET; THENCE N.43° 27' 07"W. FOR 61.73 FEET; THENCE S.90° 00' 00"W. FOR 46.94 FEET; THENCE S.48° 58' 36"W. FOR 42.48 FEET TO THE WEST LINE OF SAID PREVIOUSLY DESCRIBED TRACT; THENCE N.00° 25' 02"E. ON SAID WEST LINE FOR 40.02 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 4386 SQUARE FEET.

PERMANENT DRAINAGE EASEMENT:

A TRACT FOR THE PURPOSE OF A PERMANENT DRAINAGE EASEMENT IN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., CITY OF EMPORIA, LYON COUNTY, KANSAS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NW¼/SW¼; THENCE N.88° 20' 09"E. (BASIS OF BEARINGS) ON THE NORTH LINE OF SAID NW¼/SW¼; FOR 728.00 FEET TO THE NORTHWEST CORNER OF A PREVIOUSLY DESCRIBED TRACT AS RECORDED IN BOOK 474 AT PAGE 683 IN THE LYON COUNTY REGISTER OF DEEDS OFFICE; THENCE S.00° 25' 02"W. ON THE WEST LINE OF SAID PREVIOUSLY DESCRIBED TRACT FOR 461.18 FEET TO THE POINT OF BEGINNING; THENCE N.48° 58' 36"E. FOR 31.03 FEET; THENCE N.90° 00' 00"E. FOR 65.03 FEET; THENCE S.43° 27' 07"E. FOR 47.65 FEET; THENCE S.00° 00' 00"E. FOR 21.81 FEET; THENCE N.43° 27' 07"W. FOR 57.04 FEET; THENCE S.90° 00' 00"W. FOR 52.97 FEET; THENCE S.48° 58' 36"W. FOR 38.66 FEET TO THE WEST LINE OF SAID PREVIOUSLY DESCRIBED TRACT; THENCE N.00° 25' 02"E. FOR 20.01 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 2193 SQUARE FEET.

Reviewed by the County Surveyor this _____ day of _____, 2020. This survey has been reviewed for compliance with K.S.A. 58-2205 and K.S.A. 58-2011 for cadastral only and is in compliance with those provisions. No other warranties are extended or implied.

Certification:

State of Kansas)) ss
County of Lyon)

County Surveyor of Lyon County, Kansas



This is to certify and acknowledge that I, Aaron C. Davis, a licensed Land Surveyor in said County and State, did prepare this report under my direct supervision. Further, that this report and survey does not certify or show, with the client's knowledge, to ownership, easements and restrictions of record, unless otherwise shown or stated. Further, that certain corners may have been determined but not physically monumented as shown.

NOTE: This document is not original unless the seal, signature, and data are blue ink.

CLIENT: CITY OF EMPORIA, KANSAS

| | | | |
|--|------------|-----------|----------|
| GeoTech, Inc. 115 W. 6th AVENUE, EMPORIA, KS 66801 (620)942-7491 FAX (620)942-6722 | PROJECT #: | DRAWN BY: | SHEET(S) |
| | 20114-15 | ACD | 2 OF 2 |

DATE: 5/22/2020

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 5

SUBJECT: An Ordinance and Application to Vacate a portion of County Road K as part of the Airport Runway Extension.

BACKGROUND SUMMARY:

The City would like to vacate a portion of the public right of way to protect the airport runway. A legal notice of the public hearing was published in the paper May 23, 2020, and legal notices were mailed to neighboring property owners. Staff received no verbal or written objections.

The Planning Commission recommended approval of the application 6-0. There were no objections from neighboring property owners or the general public at the public hearing.

RECOMMENDATION:

Staff recommends approval of the application based upon the need to protect City property. No private rights will be affected with this vacation, as there is public access available to all adjacent parties.

ACTION:

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

ATTACHMENTS:

Planning Commission Minutes Excerpt, Map

The Planning Commission met in a regular session on Tuesday, June 16, 2020 with Chairman Thomas presiding. Members Bucklinger, Duncan, Garrett, Moore and Williams were present. Members Just, Sauder and Springeman were absent. (This meeting was held via Zoom and on Facebook Live, due to the restrictions in place because of Covid-19.)

Application 2020-08: A request of the City of Emporia to vacate a portion of County Road K, south of County Road 130, between Sections 3 and 4, in Township 20 South, Range 11, East of the 6th P.M. in Lyon County, Kansas.

Staff confirmed jurisdiction over this application.

No ex parte communication was declared.

STAFF REPORT:

LEGAL DESCRIPTION: Vacate without survey that portion of County Road "K" beginning at a point 981.09 feet south of the Northwest Corner of Section 3, Township 20 South, Range 11 East of the 6th P.M. in Lyon County, Kansas; thence south on the section line between said Sections 3 and 4 for 318.07 feet more or less to the north line of the City of Emporia airport tract as described in Book 358 on Page 986 in the Lyon County Register of Deeds Office and there ending.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

ANALYSIS:

The City of Emporia, in compliance with FAA requirements, acquired property around the airport, which was annexed into the City limits in January 2020. When the property was annexed, the roadway was also annexed. The road around the airport is currently a private road that has been used by the general public but the City desires to protect the airport by blocking this road. This vacation will not need to get approval from the County Commission as it is owed by the City of Emporia.

This item was discussed at the Technical Review Team Meeting on June 4, 2020 and there were no concerns regarding the vacation. The Utility Advisory Board met June 5, 2020 and the UAB recommend approval of the proposed vacation, with no opposition since there are no utilities on this road. The City of Emporia, Evergy, Cable one/Spraklite, and Kansas Gas were in attendance.

RECOMMENDATION:

Staff recommends approval of the application based upon the need to protect City property and no private rights will be affected with this vacation, as there is public access available to all adjacent parties.

Member Williams shared, all the houses down that road had been removed for the extension.

PUBLIC HEARING:

With no further discussion, the Public Hearing was opened.

With no discussion or comment in favor or in opposition, the Public Hearing was closed.

Member Moore motioned to approve Application 2020-08, a request to vacate a portion of County Road K, south of County Road 130, between Sections 3 and 4, in Township 20 South, Range 11, East of the 6th P.M. in Lyon County, Kansas, based upon Staff's recommendation. Member Bucklinger seconded. Motion approved 6-0.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

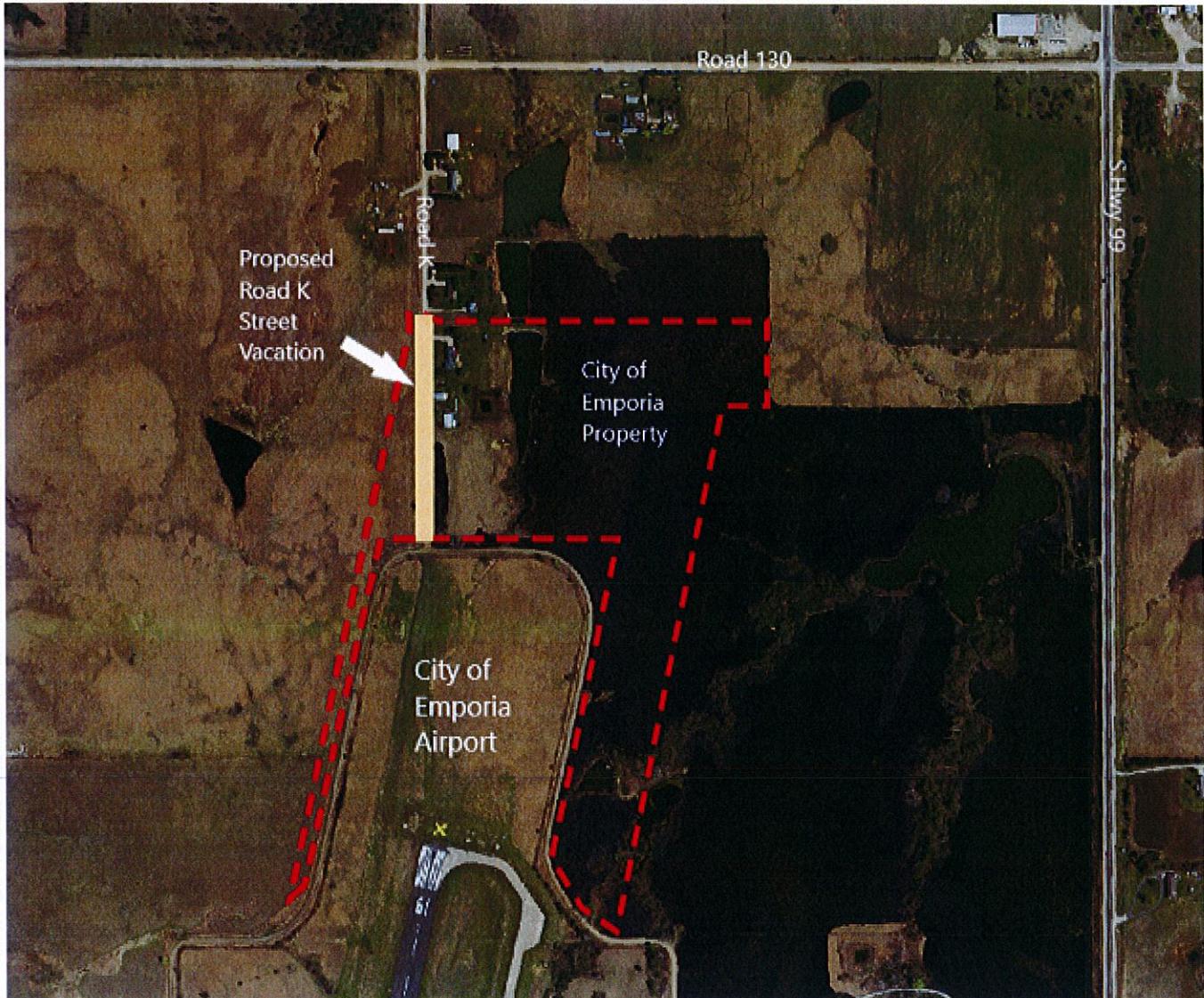
Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

AERIAL/ZONING MAP:

IMAGE 1: AERIAL MAP SHOWING LOCATION



ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

ORDINANCE NO. _____

AN ORDINANCE VACATING A CERTAIN CITY STREET RIGHT OF WAY IN THE CITY OF EMPORIA, KANSAS.

WHEREAS, A Petition was filed by the City of Emporia with the Emporia-Lyon County Metropolitan Area Planning Commission requesting vacation of certain described right of way; and

WHEREAS, A Public Hearing was conducted concerning the request for vacation; and

WHEREAS, no written objection was filed with the City Clerk at the time of or before the Public Hearing by an owner or adjoining owner who would be a proper party to the Petition, but has not joined therein;

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

SECTION 1. The following described public alley right-of-way is hereby ordered vacated and the following utility easement is hereby retained:

Vacate without survey that portion of County Road "K" beginning at a point 981.09 feet south of the Northwest Corner of Section 3, Township 20 South, Range 11 East of the 6th P.M. in Lyon County, Kansas; thence south on the section line between said Sections 3 and 4 for 318.07 feet more or less to the north line of the City of Emporia airport tract as described in Book 358 on Page 986 in the Lyon County Register of Deeds Office and there ending.

SECTION 2. This ordinance shall take effect upon publication in the official city newspaper.

PASSED AND APPROVED this 5th day of August 2020.

DANNY GIEFER, Mayor

ATTEST:

KERRY SULL, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 6

SUBJECT: An Ordinance and Application for Final Planned Unit Development at 2910 W. Hwy 50.

BACKGROUND SUMMARY:

The applicant is requesting a Final Planned Unit Development to allow for standalone onsite storage units made from cargo storage containers as well as inside climate-controlled storage at 2910 W. Hwy 50.

The plan is requesting the use of cargo storage containers, double stacked, to be used as storage units to the north and northwest of the existing building. The applicant will use the existing building for climate-controlled storage. The Planned Unit Developed replaces the need for a Conditional Use Permit or Rezoning to allow for storage units. Cargo containers are allowed outright in Commercial and Industrial Districts. The applicant desires to make these units attractive and will meet all zoning and building code requirements.

The Planning Commission recommended approval of the rezoning application 7-0. There were no objections from neighboring property owners or the general public.

RECOMMENDATION:

Seeking approval of the applications for future development.

ACTION:

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

ATTACHMENTS:

Planning Commission Minutes Excerpt, Map, Site Plan

The Planning Commission met in a regular session on Tuesday, July 21, 2020 with Chairman Thomas presiding. Members Bucklinger, Duncan, Garrett, Just, Sauder and Williams were present. Members Springeman and Moore were absent. (This meeting was held via Zoom and on Facebook Live, due to the restrictions in place because of Covid-19.)

APPLICATION 2020-09. A request of Scott Strahm for approval of a Final Planned Unit Development Application for property on and associated with the address of 2910 W. Hwy 50 and, as authorized by Article 16 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 _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

STAFF REPORT:

LEGAL DESCRIPTION: LOTS 13, 14, AND 28 IN LESTER MATLOCK'S 1ST ADDITION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF.

RECOMMENDATION: Staff recommends approval of the Final PUD request as it is consistent with the ELC Comprehensive Plan for infill development, and there have been no objections from the neighboring property owners.

PUBLIC HEARING:

APPLICATION 2020-09: A request of Scott Strahm for the approval of a Final Planned Unit Development Application for property at and associated with the address of 2910 W. Hwy 50, and as authorized by Article 16 of the Zoning Regulations.

Staff confirmed jurisdiction over this application.

No ex parte communication was declared.

STAFF REPORT:

A request of Scott Strahm for the approval of a Final Planned Unit Development Application for property at and associated with the address of 2910 W. Hwy 50, and as authorized by Article 16 of the Zoning Regulations.

The Planning Commission had approved the preliminary PUD at the May 19, 2020 meeting with conditions that a public hearing be held for the Final PUD in order to make sure there was ample opportunities for feedback from the public. Mr. Foster stated, he has not received any questions or comments from the public, regarding the application. He also stated, there were no significant changes to the plans.

Staff recommends approval of the application based on the compatibility of surrounding uses.

With no further discussion, the Public Hearing was opened.

Mr. Strahm, 1554 Road 175, expressed he was happy with his prior comments and did not need to add anything further.

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

The Public Hearing was closed.

Member Sauder moved to approve Application 2020-08, for a Final PUD at 2910 W. Hwy 50, based upon Staff recommendation and no changes made to the plans. Member Bucklinger seconded. The vote was: Members Thomas, Bucklinger, Sauder, Springeman, Williams, Duncan and Garrett voted aye. Motion approved 7-0.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

AERIAL/ZONING MAP:

IMAGE 1: AERIAL MAP SHOWING LOCATION OF THE PROPOSED PUD IN BLUE



ACTION RECORD

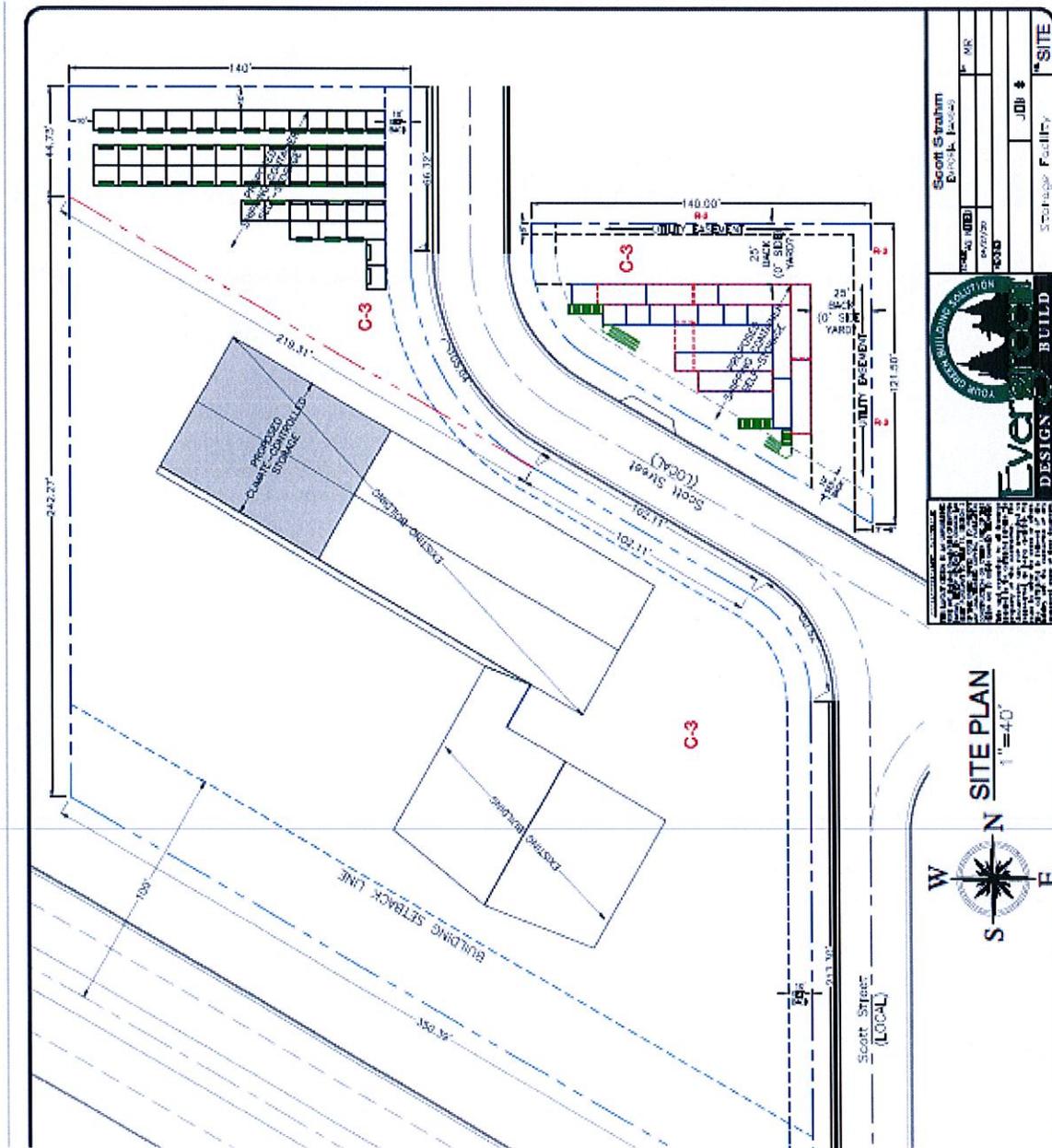
Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

PRELIMINARY PLAN UNIT DEVELOPMENT SITE PLAN:



ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

EXAMPLE OF SIMILAR STORAGE UNITS:



ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE FINAL PLANNED UNIT DEVELOPMENT AMENDING THE DISTRICT ZONING MAP TO DESIGNATE A CERTAIN AREA IN THE CITY OF EMPORIA, KANSAS AS A PLANNED UNIT DEVELOPMENT.

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

Section 1. That a Final Planned Unit Development (hereinafter "PUD") is hereby approved for the following legally described property:

LOTS 13, 14, AND 28 IN LESTER MATLOCK'S 1ST ADDITION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF.

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

PASSED AND APPROVED this 5th day of August 2020.

DANNY GIEFER, Mayor

ATTEST:

KERRY SULL, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 7

SUBJECT:

Approve Ordinance and Request to Rezone of a Parcel of land located at 210 S. Lawrence from C-3, General Commercial Zoning to P, Public Use for Potential Development.

BACKGROUND SUMMARY:

The applicant on behalf of USD 253 is requesting a rezoning of the subject parcel. The current zoning is C-3 General Commercial, which would not be consistent with a public-school building and grounds. A legal notice of the public hearing was published in the paper June 27, 2020 and legal notices were mailed to neighboring property owners. Staff received no verbal or written objections to this request. This item was discussed by the Technical Review Team on July 15, 2020 and no Utility Review Team meeting was required.

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

RECOMMENDATION: Seeking approval of the applications for future development of a new school.

ACTION:

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

ATTACHMENTS:

Planning Commission Minutes Excerpt, Map, Site Plan

The Planning Commission met in a regular session on Tuesday, July 21, 2020 with Chairman Thomas presiding. Members Bucklinger, Duncan, Garrett, Sauder, Springeman and Williams were present. Members Just and Moore were absent. (This meeting was held via Zoom and on Facebook Live, due to the restrictions in place because of Covid-19.)

APPLICATION 2020-09. A request of SBB Engineering LLC and USD 253 Emporia Public Schools rezone property commonly known as 210 S. Lawrence, from C-3 General Commercial Zoning to P, Public District for potential development as authorized under Article 26-1 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 _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

STAFF REPORT:

Applicant: SBB Engineering LLC, USD 253 Emporia Public Schools

Requested Action: Rezoning property from C-3, Commercial to P, Public District

Requested Action: Rezone to meet the needs of USD 253 for a new school building

Purpose: To rezone the property to meet the needs of the applicant.

Location: 210 S. Lawrence, Intersection of S Lawrence Street & Rindom Road.

Existing Land Use: C-3, General Commercial.

Physical Characteristics: Blighted building

Past Applications:

- None

Analysis: The applicant is requesting a rezoning of the subject parcel.

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

APPLICABLE REGULATION:

Section 26-108.

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

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

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

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

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

PUBLIC HEARING:

The applicant is requesting a rezoning of the subject parcel. The current zoning is C-3 General Commercial, which would not be consistent with a public-school building and grounds. A legal notice of the public hearing was published in the paper June 27, 2020 and legal notices were mailed to neighboring property owners. Staff received no verbal or written objections to this request. This item was discussed by the Technical Review Team on July 15, 2020 and no Utility Review Team meeting was required.

Staff recommends approval of the application based on the character and condition of the surrounding neighborhood. The new school will meet the needs of the community and removal of a blighted building will be an improvement.

Member Bucklinger asked if the school building would have been allowed in the current zoned C-3 district. Mr. Foster agreed that it would be able to stay in C-3 but changing to Public use will clean up the zoning.

Member Garrett asked if there were any standing water issues in the area. Mr. Foster explained, to his knowledge there is not an issue. There are flood plain areas to the south of the property but does not affect this property. He shared, there have been storm water studies done and City Engineers office is working on the project. Member Garrett inquired, does Staff foresee any future problems with the requested zoning change. Mr. Foster replied, he does not see any issues but felt the rezoning was appropriate since the property is no longer in an active commercial area.

With no further discussion, the Public Hearing was opened.

Rob Scheib, Assistant Superintendent with Emporia Schools, 26 Bodock Rd, spoke as a representative of the application. He explained the parking lot area will cover much of the space and felt the proposed building would be a beautiful addition.

With no discussion or comment in favor or in opposition, the Public Hearing was closed.

MOTION: Member Sauder moved to approve Application 2020-10 to rezone property commonly known as 210 S. Lawrence St, from C-3 General Commercial Zoning to P, Public District. Member Williams seconded. The vote was: Members Thomas, Bucklinger, Sauder, Springeman, Williams, Duncan and Garrett voted aye. Motion approved 7-0.

Secretary Foster informed the applicant, the recommendation will go before the City Commission Board at a future meeting.

The Public Hearing was closed.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

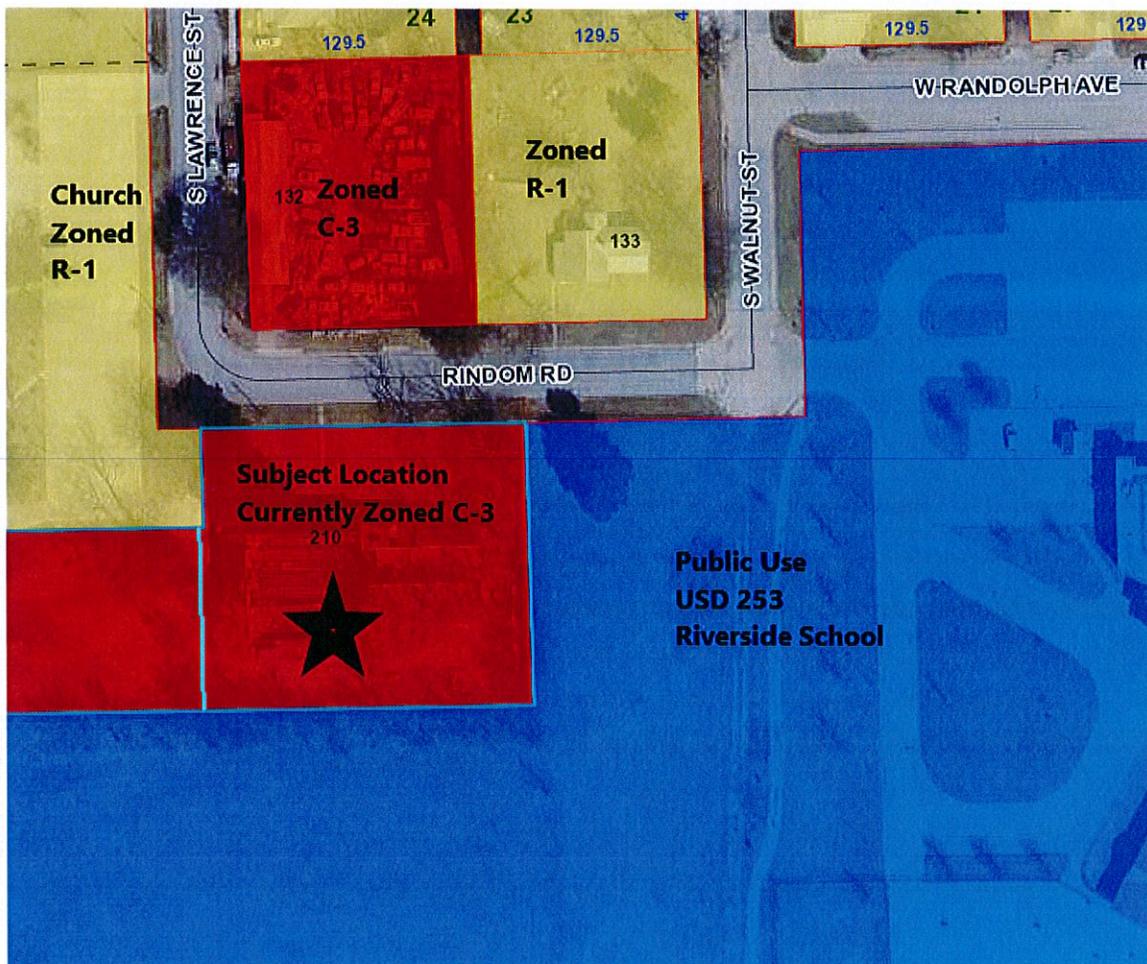
AGENDA ITEM SUMMARY

LEGAL DESCRIPTION:

A tract in the Southwest Quarter of the Northeast Quarter of the Southeast Quarter of Section 16, Township 19 South, Range 11 East of the 6th P.M., Lyon County, Kansas being more particularly described as follows:
Commencing at the Northwest corner of the SW ¼, NE ¼, SE ¼, of said Section 16; thence South S00°33'18"E (Basis of bearings) on the West line of said SW ¼, NE ¼, SE ¼, for 393.50 feet; thence N89°12'59"E parallel with the North line of said SW ¼, NE ¼, SE ¼, for 307.20 feet to the point of beginning; thence continuing N89°12'59" E for 196.46 feet; thence N00°33'18" W for 175.50 feet to the South line of Rindom Street; thence S89°12'59"W for 196.46 feet; thence S00°33'18" E for 175.50 feet to the point of beginning.

AERIAL/ZONING MAP:

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



ACTION RECORD

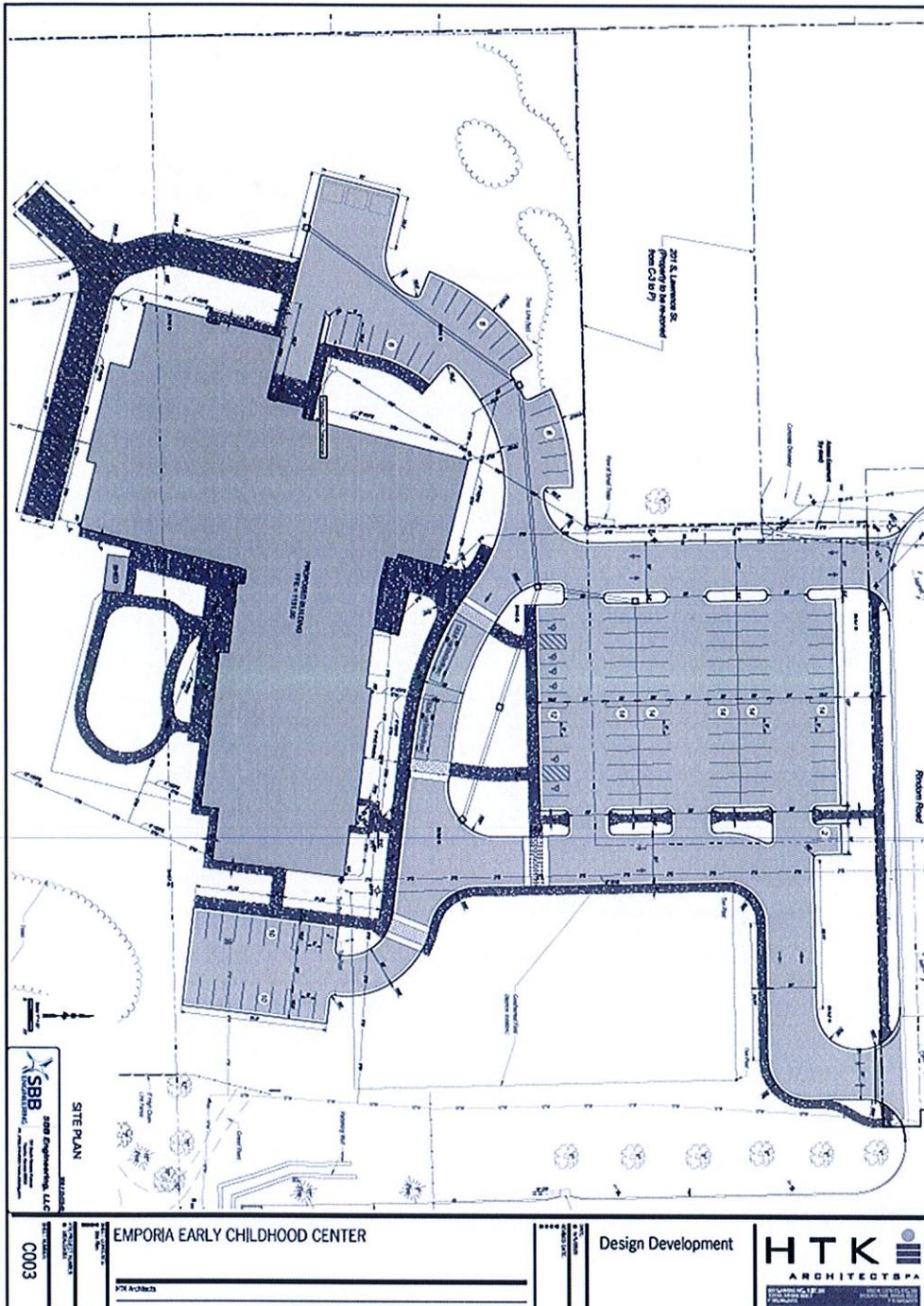
Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

SITE PLAN:



ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

ORDINANCE NO. _____

AN ORDINANCE REZONING A PROPERTY IN THE CITY OF EMPORIA, KANSAS FROM C-3 GENERAL COMMERCIAL ZONING, TO P, PUBLIC USE 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 (commonly known as 210 S. Lawrence Street) is hereby rezoned from C-3 General Commercial Zoning to that of P- Public Use District to wit:

A tract in the Southwest Quarter of the Northeast Quarter of the Southeast Quarter of Section 16, Township 19 South, Range 11 East of the 6th P.M., Lyon County, Kansas being more particularly described as follows:

Commencing at the Northwest corner of the SW ¼, NE ¼, SE ¼, of said Section 16; thence South S00°33'18"E (Basis of bearings) on the West line of said SW ¼, NE ¼, SE ¼, for 393.50 feet; thence N89°12'59"E parallel with the North line of said SW ¼, NE ¼, SE ¼, for 307.20 feet to the point of beginning; thence continuing N89°12'59" E for 196.46 feet; thence N00°33'18" W for 175.50 feet to the South line of Rindom Street; thence S89°12'59"W for 196.46 feet; thence S00°33'18" E for 175.50 feet to the point of beginning.

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

PASSED AND APPROVED this 5th day of August 2020.

DANNY GIEFER, Mayor

ATTEST:

KERRY SULL, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 8

SUBJECT: Consider the Review and Approval of Projects Allocations for Lyon County CARES/Spark Funding.

RECOMMENDATION: Approve Projects

BACKGROUND SUMMARY:

Staff has provided background information to the Commission on potential projects at the last two Study Sessions. The Commission approved a tentative list of projects at the Special Meeting on July 29, 2020, which has been forwarded to the appropriate County officials. Approval of a projects today will allow the County to move forward in preparing their final Direct Aid Plan to the Spark recovery office. It will also provide the Spark County Advisory Committee with the ability to ascertain if there are any unallocated funds to be earmarked for business assistance, economic development, childcare and broadband access.

Besides the projects approved by the Commission there will be a reimbursement submitted to the County for funds expended from March thru the end of July.

Staff will be available to answer questions or clarify the process to the best of our abilities.

Attached is the tentative project list approved by the Commission on July 29, 2020.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

POTENTIAL CARES/ SPARK PROJECTS

CITY OF EMPORIA

7-29-2020 (as approved)

Air Filtration Systems for the Auditorium. FS#2, Library, Parks, Public Works and Golf Course \$175,000

Electrostatic Disinfectant sprayers (4 units) \$10,000

Walk thru temp gates for Auditorium and Library (5 Aud. 2 Lib.) \$25,000

PPE and General Use equipment and supplies including sanitizer, masks, safety shields, air filtration masks for Public Safety personnel and projected COVID personnel costs \$75,000

Touchless faucets, sinks and toilets for the auditorium, FS#2, Library and Golf Course public and staff restrooms \$75,000

No touch doors for library \$90,000

Fiber optic to city lift stations for remote monitoring. \$85,000

TOTAL \$535,000 (Does not include the web update)

Pending

Web page redo for ADA \$30,000 (Tabled until 8-5-20)

Projects Cut

HR Relocation Project \$261,000

PD Lobby Renovation \$200,000

Backup power supply for City Water System

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 9

SUBJECT: Consider the approval of an Incentive Compliance Agreement between the City of Emporia and S&S Quality Meats, LLC and Smoots Enterprises LLC II.

RECOMMENDATION: Authorize the Mayor to sign the Incentive Compliance Agreement between the City of Emporia and S&S Quality Meats, LLC and Smoots Enterprises LLC on behalf of the City.

BACKGROUND SUMMARY:

S&S Quality Meats, LLC and Smoots Enterprises LLC II is planning to construct an approximate 42,000 square foot addition to their facility located at 4700 West Highway 50 in Emporia, Kansas. The company plans to invest approximately \$8,420,000.00 in the expansion and move all of their production from the facility on South Highway 99 to the new facility. This project was reviewed and recommended by the Regional Development Association (RDA) and it is now ready for approval in order to facilitate the issuance of Industrial Revenue Bonds and approve a ten-year tax abatement on the new addition. The tax abatement is contingent on the Company attaining and maintaining certain targeted payroll and employment levels. City staff recommends the approval of the Incentive Compliance Agreement with S&S Quality Meats, LLC and Smoots Enterprises LLC II.

A copy of the Incentive Compliance Agreement is attached for your review.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

INCENTIVE COMPLIANCE AGREEMENT

BY AND BETWEEN THE

CITY OF EMPORIA, KANSAS

AND

S&S QUALITY MEATS, LLC

AND

SMOOTS ENTERPRISES LLC II

THIS INCENTIVE COMPLIANCE AGREEMENT, dated the 5th day of August, 2020, (the "Agreement"), by and between the **CITY OF EMPORIA, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the "City") and **S&S QUALITY MEATS, LLC**, a Kansas limited liability corporation authorized to do business in the State of Kansas; and **SMOOTS ENTERPRISES LLC II** (together, the "Company").

WITNESSETH:

WHEREAS, the Company and the City entered into an Incentive Compliance Agreement dated August 7, 2013 related to a Company project in the City consisting of a refrigerated warehouse, dock and office building for Company's prepared meat business located in the City at 4700 West Highway 50; and

WHEREAS, the Company's current meat processing facility at 1542 Highway 99, Emporia, KS is located in the floodplain and has experienced multiple flood events; and

WHEREAS, the Company requests the City to be a sub-applicant for a Pre-Disaster Mitigation Grant to assist with moving its business out of the flood plain to a new location; and

WHEREAS, the Company has expressed its intention to retain its current employees and construct a new meat processing facility in the City, which project is expected to include the construction of an approximately 42,000 square foot building containing processing and warehouse space and the purchase or transfer of necessary equipment, all to be located on the Project Site adjacent to the Company's existing facility at 4700 W. Highway 50 in the City, as defined herein (the "Project"); and

WHEREAS, the City is authorized and empowered under K.S.A. 12-1740 to 12-1749d, inclusive, (the "IRB Act") to acquire, construct and improve certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-

purchase agreements with any person or firm or entity for such projects and to issue revenue bonds for the financing such facilities; and

WHEREAS, if the City issue bonds under the IRB Act, K.S.A. 79-201a, as amended (the "Exemption Act") allows for and exemption of the Project from ad valorem real property taxation if approved by the City and the Kansas Board of Tax Appeals; and

WHEREAS, pursuant to the foregoing, the City desires to enter into this Agreement with the Company in consideration of the Company's commitment to construct and operate the Project and achieve certain capital investment and employment levels at the Project as more fully described in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Company do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In this agreement, unless otherwise indicated, the following words and terms as used herein shall have the following meanings:

"Agreement" means this Incentive Compliance Agreement between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

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

"Bonds" means the City's Taxable Industrial Revenue Bonds, to be issued in one or more series to assist in the financing of the Project and granting of tax abatement incentives to the Project as described in this Agreement.

"City Expenses" means all reasonable expenses incurred or paid or obligated to be paid by the City in connection with the preparation and negotiation of this Agreement and obtaining the incentives for the Project described herein, including but not limited to reasonable application fees, legal fees, title insurance expenses, reasonable expenses of the Regional Development Association incurred in connection with the Project, real estate and easement acquisition costs, reasonable administrative expenses, travel, publication expense, and costs of issuing the Bonds.

"Company" has the meaning given in the preamble to this Agreement.

"Emporia Location" means the Project Site at 4700 West Highway 50, Emporia, KS and the Project located thereon.

“Excusable Delays” means any delay beyond the reasonable control of the Party affected, caused by damage or destruction by fire or other casualty, power failure, strike, shortage of materials, unavailability of labor, insurrection, riots, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, floods, earthquakes, acts of God and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of all or any portion of the Project in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

“Exemption Act” mean K.S.A. 79-201a, as amended.

“Memorandum of Understanding” means that agreement between the City and the Company setting out their agreements regarding application for a FEMA Pre-Disaster Mitigation Program Grant and responsibility expenses related to such a grant, if awarded.

“Parties” means the City and the Developer (with each referred to individually as a **“Party”**).

“Project” means the project as described in the introduction to this Agreement.

“Project Costs” means all reasonable costs and expenses relating to the Project incurred or paid by the Company or by the City after the date of this Agreement.

“Project Site” means all of the project site in Emporia, Kansas, as legally described by Exhibit A to this Agreement.

“State” means the state of Kansas.

“Target Date” for completion of the Project is on or before December 31, 2022.

“Targeted Construction Costs” means a total of \$8,420,000.00.

“Targeted Annual Payroll Amount” means those amounts specified in Section 2.8 hereof.

“Targeted Employment” means the number of jobs to be maintained at the Project at the times and the numbers specified in Section 2.8 of this Agreement.

ARTICLE II

PROPERTY TAX EXEMPTION INCENTIVE

Section 2.1. Construction of Project, Tax Exemption. In consideration of the grant by the City of the incentives described in this Agreement to assist in the financing of the acquisition, construction, equipping, furnishing and maintenance of the Project, and in consideration of

Company's construction of the Project in the City, and in further consideration of the Exemption Act permitting an exemption from ad valorem real property tax for the Project commencing pursuant to the Exemption Act with the first calendar year after the Bonds are issued, City intends to provide for, subject to the further provisions of this agreement, an exemption from ad valorem taxation of real property for the ten taxable years commencing the year following issuance of the Bonds, as more specifically set forth in Section 2.9 hereof, and Company agrees to make payments in lieu of ad valorem real property taxes in the amount specified and in the manner provided for in this Agreement should employment fall below the threshold specified in Section 2.8.

Subject to the terms of the Bonds and the documents providing for the issuance thereof, including the Lease between the City and the Company, the Company shall be responsible for entering into all contracts for the design and construction of the Project in a manner satisfactory and appropriate for the use of the Company. The Company shall be further responsible for obtaining all approvals, licenses or other consents necessary for the construction and operation of the Project. Company will provide to the City an engineering or architectural design for the Project and will comply with all federal, state and local statutes, ordinances or regulations, including without limitation applicable zoning and building codes and all environmental laws and regulations applicable to the Project.

Section 2.2. Location. The Project includes the acquisition of real estate at the Project Site, being 12.5 acres (5.73 additional acres will be added to the parcel, more or less (Exhibit A).

Section 2.3. Statement of Intention. In further consideration of the incentives provided for herein, including the exemption from ad valorem real property taxes, Company, although recognizing that it cannot foresee future changes in ownership and other corporate decisions and economic and competitive factors which could impact Company's decision to maintain a facility at the Emporia Location beyond the period of the real property tax exemption period provided for in this Agreement, nevertheless states to the City that it is Company's current plan to maintain a significant presence at the Emporia Location beyond the ten year real property tax exemption period. The Company agrees that upon the issuance of a Certificate of Occupancy by the City, Company will occupy the Project and commence operations at the Project.

Section 2.4. Amount of Payments in Lieu of Taxes; Place of Payment. In lieu of general ad valorem real property taxes on the Project, Company shall pay, but only if required under this Agreement, by separate check to the Treasurer of Lyon County, Kansas, or other appropriate officer as required by the laws of the State of Kansas, a payment in lieu of taxes in an amount which is determined under Section 2.8 and 2.9 of this Agreement. Such payments shall be distributed as and/or as a part of the general ad valorem tax collections for all taxing subdivisions in which the Project is located. If payment in lieu of taxes is required hereunder, such amount shall be billed by statement issued by December 10th of each year and shall be paid each year of the ten year exemption as follows: one-half (1/2) on or before December 20 in respect of the payment in lieu of taxes for the then current calendar year, and the remainder for such calendar year on or before May 10 of the following calendar year, or as otherwise required by law.

Section 2.5. Distribution of Payment. The amount of such payment in lieu of taxes will be determined by the Lyon County Clerk and/or City Clerk in the same manner and according

to the same statutory procedure as general ad valorem taxes are determined, using the valuations determined by the Lyon County Appraiser's office under the same laws, rules and procedures for which real property taxes are determined for all taxpayers within the taxing jurisdiction(s), including the right to appeal and challenge the valuations as determined by the Lyon County Appraiser's Office, and in accordance with the requirements of this article. Such payments shall be distributed to all applicable taxing subdivisions in Lyon County as provided in K.S.A. 12-1742.

Section 2.6. Reduction of Payment for Actual Taxes Paid. The annual amount to be paid pursuant to paragraph 2.4 above shall be reduced, but not below zero, by any actual ad valorem tax payments paid in respect of the property constituting the Project by or on behalf of Company in respect of the Project for the current year and any applicable prior years.

Section 2.7. Failure to Make Payment In Lieu of Taxes. Should Company fail to make the payments described above, penalties and/or interest will be assessed against Company by the Lyon County Treasurer in accordance with the applicable laws of the state of Kansas relating to late tax payments. If Company fails to make a payment required by this Agreement and such failure shall continue for one year, the portion of this Agreement providing for the tax exemption may be terminated at the option of the City effective on the date in the year such payment was originally due, and Company agrees that from and after such termination date, it shall pay in full the regular amount of ad valorem real estate property taxes on the property constituting the Project. Company must make all payments in lieu of taxes required by this Agreement; however, Company reserves the right to make such payment under protest pending its timely appeal of the valuation as determined by the Lyon County Appraiser's Office. Any such payment made under protest shall be paid to the County Treasurer with an accompanying letter that states the payment was made by Company under protest of the valuation, or in such other manner as may be required by law to properly perfect such an appeal. If after appeal, the valuation is adjusted downward, Company shall reduce its subsequent payment in lieu by the amount of any overpayment previously made by Company. If the subsequent payment is not sufficiently large to fully credit the overpayment, the credit may be carried forward to subsequent payment(s). Similarly, if after an appeal, the valuation is increased, Company shall pay any additional amount, calculated based on the revised valuation, with its subsequent payment in lieu of taxes.

Section 2.8. Targets for Maintenance of Tax Exemption. Beginning on December 31 in the year commercial operations have begun at the Project and a certificate of occupancy is issued by the City, and throughout the ten year exemption from ad valorem taxation period for the Project, the standards for the total employment and employment payroll to be provided by Company at the Project shall be as specified herein. In calculating the total employment and employment payroll the following special conditions will apply:

- a) To be included for purposes of this Agreement the salaries must be for employees whose normal place of work is Emporia, Kansas, and who are employed for a minimum of thirty (30) hours per week, inclusive of holidays, vacations and sick leave, who receive fringe benefits routinely furnished to employees of S & S Quality Meats. The calculation of total payroll shall be based on gross earnings for federal income tax purposes as applicable to an individual employee.

- b) Company will provide written notice to the City of the date when commercial operations at the facility have commenced, provided that, in the absence of such a notice, Company and City hereby agree that for purposes of this Agreement commercial operation shall be deemed to have commenced when a certificate of occupancy is issued for the Project, subject to mutual agreement between the City and Company that commercial operations will begin on a later date, but in no event later than six months after the date a certificate of occupancy is issued for the Project.
- c) If an employee terminates or leaves employment with the Company and is replaced by a new employee, the salary of the former employee and the new employee may be combined and counted as a single salary for purposes of determining the total payroll for the calendar quarter.
- d) Company agrees to provide at such time or times as the City reasonably requests, documentation of the total number of jobs and total payroll paid by Company at Emporia, Kansas, and in particular, Company agrees to certify to the City Manager, or designee, on or before December 31 of each year following the commencement of commercial operation of the Project, documentation showing the number of jobs at Emporia and the total payroll paid by Company to employees whose normal place of work is Emporia and who are employed for the preceding calendar quarter and an annualized projection of total jobs and total payroll for the calendar year. The figures described in this paragraph shall be supported by the same data which Company files monthly with the Kansas Department of Human Resources for purposes of calculating unemployment taxes.
- e) The average employment and employment payroll figure for a calendar year shall be the average of the data as outlined in paragraph (d).
- f) The required employment and employment payroll figure will be a minimum of the number of employees on December 31 of the year in which the certificate of occupancy is issued, but in no event shall the number be lower than sixty (60) full-time jobs with a payroll of \$2,042,160.00 with an average annual salary of \$34,036.00 during the period of tax abatement.
- (g) The City and Company understand and agree that the exemption for the first year is conditioned upon the construction of the Project and the expenditure of the Targeted Construction Costs not later than December 31, 2022 (the "Target Date"). In the event the Targeted Construction Costs is not achieved by the Target Date the Payment in Lieu of Taxes (PILOT) for the calendar year following Target Date shall be calculated as follows; provided, however, that in no event will the payment in lieu of tax ever exceed 100% of the taxes which would have been due in the absence of the exemption:

$$1 - \frac{\text{Actual Construction Costs}}{\text{Targeted Construction Costs}} \times 100\% \text{ of taxes due in absence of exemption} = \text{PILOT}$$

- (h) The City and Company agree and understand that the exemption for the years 2 through 10 is conditioned upon Company's achievement and maintenance of the annual Targeted Annual Payroll Amount and Targeted Employment set forth in paragraph (f) of this Section 2.8. If Company fails to achieve the applicable targets for any exemption year beginning with the year 2, and as of December 31 of each remaining year of the exemption, a payment in lieu of taxes (PILOT) will be required for the subsequent calendar year which will be calculated as follows, provided, however, that in no event will the payment in lieu of tax ever exceed 100% of the taxes which would have been due in the absence of the exemption. If the Company fails to meet the Targeted Annual Payroll Amount for any exemption year the PILOT will be calculated as follows:

$$\frac{1 - \text{Actual Annual Payroll}}{\text{Targeted Annual Payroll}} \times 100\% \text{ of taxes due in absence of exemption} = \text{PILOT}$$

- (i) The tax abatement shall be contingent upon Company obtaining a certificate of occupancy.

Section 2.9. Approval of Exemption. The provisions, covenants and agreements of Article II of this Agreement are conditioned on and depend on the issuance by the Kansas Court of Tax Appeals of an order exempting the Project from ad valorem taxation in accordance with Kansas law, including the Exemption Act. The City agrees to take all necessary action to assist the Company in obtaining and maintaining the exemption referred to in this Article II, including any filing required with Lyon County, Kansas and the Kansas Board of Tax Appeals; provided, however, the City shall not be liable for any failure by the Kansas Board of Tax Appeals or Lyon County, Kansas to effect or approve the exemption allowed by the Exemption Act or the Abatement Statute. The Company acknowledges that it is the responsible party to obtain and maintain the tax exemption provided for herein.

The Company acknowledges that the requirements of the Exemption Act have been fully explained to the Company and hereby agrees to act in good faith, cooperate with the City, and use its best efforts in any action necessary to obtain and maintain the exemption under the Exemption Act, including providing, on a timely basis, such documentation as may be necessary to obtain and maintain the exemptions granted under the Exemption Act. The Company further acknowledges that the exemption is subject to mandatory annual review by the City and the Kansas Board of Tax Appeals for continued compliance with the Exemption Act, that changes in law and actions of the Company may affect the availability of the exemption initially and in any subsequent year regardless of this Agreement, and that the granting of the exemption by the Kansas Court of Tax Appeals for one portion of the Company does not guarantee the granting of an exemption for any other portion or of any renewal.

ARTICLE III

INCENTIVES

Section 3.1 Industrial Revenue Bonds, Tax Exemption, Sales Tax Exemption. The City intends to issue its City of Emporia, Kansas Taxable Industrial Revenue Bonds, in one or more series, as more fully set forth in the City's Resolution stating its intention to issue the Bonds. The parties agree such bonds shall be used to finance or reimburse costs of constructing the Project. Subject to the provisions of Section 2.9 of this Agreement, and in connection with the Exemption Act, the City will provide for a 100% tax exemption for the Project, for a period of 10-years beginning in the calendar year after the Bonds are issued and as is consistent with laws of the State and terms of this Agreement. The Bonds shall be issued in a sum sufficient to pay the Targeted Construction Costs and authorized costs of issuance.

The City agrees that upon adopting its resolution of intent to issue the Bonds, the City will apply to the Kansas Department of Revenue (KDOR) for a sales tax exemption certificate for the Project, which, if issued by KDOR, may be used by the Company in construction of the Project.

Section 3.2 Project Site. The parties acknowledge that, as of the date of this Agreement, the Project Site is owned by Smoots Enterprises LLC II, is within City limits, is zoned light industrial, and that this Agreement is contingent upon the Company's conveyance of an interest in the Project Site to the City in a condition satisfactory to the parties, as necessary for issuance of the Bonds.

Section 3.3 Annual Appropriations. Notwithstanding anything in this Agreement to the contrary, the cost and expense of the performance by the City of its obligations under this Agreement and the incurrence of any liabilities of the City under this Agreement, including without limitation, the payment of any amounts required to be paid by the City under this Agreement, shall be subject to and dependent upon annual appropriation being made by the City Commission of the City for such purposes. The City reasonably believes that legally available funds in an amount sufficient to meet all of City's obligations hereunder during the term of this Agreement can be obtained. City intends to do all things lawfully within its power to obtain and maintain funds from which the obligations of City under this Agreement may be met, including making provision for such payments to the extent necessary in each annual budget submitted and adopted in accordance with applicable provisions of State law. Notwithstanding any provision or covenant contained in this Agreement the City is not obligated to budget or appropriate moneys to provide for the costs and expense of the performance by the City under this Agreement beyond the end of the fiscal year for which the City has budgeted and appropriated such funds.

Section 3.4 Economic Market Changes. In the event of a failure by Company to meet the Targeted Employment and Payroll requirements specified in the preceding paragraphs, Company shall have the right to demonstrate to the City that such failure was the result of unforeseen economic or market changes and present a plan to the City for achieving the requirements. In such case, the City, in its sole discretion, may postpone or forgive any PILOT required hereunder. In the event Company vacates or abandons the Project at any time during the term of this Agreement, Company and City hereby agree that the PILOT shall become immediately due and payable.

Section 3.5. Conditions Precedent. The following conditions precedent shall occur prior to the obligation of the City under this Agreement to provide for tax exemption:

- a) Company shall provide a copy of a letter of loan commitment from Company's bank or banks for the Project Costs.
- b) Company shall provide a copy of U.S. Small Business Administration authorization for the venture guarantee (SBA 504 Loan).
- c) Company shall provide the City a set of plans and specifications for the Project, and obtain site plan approval from the Emporia Site Plan Review Committee.
- d) Company shall complete substantial construction of the Project prior to December 31, 2021, or as extended by mutual agreement.
- e) Company and City shall execute the Memorandum of Understanding.

Section 3.6 City Expenses. The Company agrees to pay or reimburse the City for all City Expenses as defined herein.

ARTICLE IV

COVENANTS OF THE COMPANY

Section 4.1. General. Company represents that it is a limited liability company duly organized and existing under the laws of the state of Kansas with lawful power and authority to enter into and perform its obligations under this Agreement, acting by and through its authorized officers.

Section 4.2. Plans; Zoning. Company will provide to the City an engineering or architectural design for the Project and will meet all applicable federal, state and local statutes, ordinances or regulations, including without limitation the City's applicable zoning and building codes. The Company shall comply with all zoning regulations.

Section 4.3. Inspection and Audit. The Company agrees that the City and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least 48 hours advance notice and to the Company's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and to review, inspect, audit and copy the books and records of the Company which demonstrate compliance with this Agreement. To the extent permitted under the laws of the state of Kansas governing public records, the City agrees that all information provided under this Section shall be confidential and shall not be disclosed to third parties or used for any purpose other than in performing City's duties with respect to this Agreement or the Project, or enforcing the City's rights or remedies hereunder, under the Lease or with respect to the Project or the Bonds.

ARTICLE V

SALE AND ASSIGNMENT

Section 5.1 Sale and Assignment. The benefits granted by the City to the Company pursuant to this Agreement shall belong solely to the Company and such benefits shall not be transferred, assigned, pledged or in any other manner hypothecated without the express written consent of the City, except for (i) assignments, transfers and conveyances of all or substantially all of Company's rights and duties under this Agreement to a subsidiary or Affiliate which is owned or controlled by the Developer or a majority of its principals, or (ii) collateral assignment of Company's rights under this Agreement to a single financial institution as security for financing the Project as permitted by this Agreement.

ARTICLE VI

EVENTS OF DEFAULT; REMEDIES

Section 6.1. Events of Default. Subject to extensions of time described in Section 6.2, the failure or delay by the Company or the City to perform any material term or provision of this Agreement will be an "Event of Default" under this Agreement. The Party claiming default ("Claimant") shall give written notice to the other Party specifying the nature of the claimed default.

Section 6.2. Remedies on Default. Upon an Event of Default as specified in Section 6.1, for which a remedy is not already provided by this agreement the Claimant shall be given 60 days (or such longer period as the Parties may agree) following written notice to a Party to cure such default. If such default is not subject to cure within 60 days the defaulting party shall initiate action, within the 60 day period, to cure such default and shall pursue such action diligently. When an Event of Default on the part of the City has occurred and be continuing (subject to applicable cure periods) the Company may pursue any remedy at law or in equity, except as provided below. Whenever an Event of Default by the Company shall have occurred and be continuing, subject to applicable cure periods, the City may (1) pursue any remedy at law and in equity, including specific performance, except as otherwise provided herein, (2) withhold issuance of building, occupancy or other required development permits, and/or (3) terminate this Agreement, including, the provisions of Article II of this Agreement relating to tax exemption for the Project. If the tax exemption provisions are terminated, the applicable payment in lieu of taxes shall be 100% of the taxes owed in the absence of the exemption until the Project is returned to the tax rolls. In no event shall the Company or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise, For purposes of this Section, consequential damages shall include, but not be limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred by the non-defaulting Party. Specific performance shall not be available to the City to require the Developer to construct the Project.

Section 6.3 Right and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or

different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 6.4 Inaction Not a Waiver of Default. Any failures or delays by a Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 6.5 Enforced Delay; Extension of Times of Performance.

A. In addition to specific provisions of this Agreement, performance by a Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to delay or default of the other Party or Excusable Delay.

B. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Company.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.1. Severability. If for any reasons any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 7.2. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Kansas.

Section 7.3. Execution in Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 7.4. Term. The term of this Agreement shall begin upon the execution of the Agreement by both parties, and shall terminate when Company shall have discharged all of its obligations hereunder for the payments required with respect to outstanding Payments in Lieu of Taxes as required hereunder.

Section 7.5. Notice. Any notices required to be given under the terms of this Agreement shall be by first class mail, facsimile or overnight delivery to the following addresses:

- (1) With respect to the Company:

S&S Quality Meats, LLC
P.O. Box 629
Emporia, Kansas 66801
ATTN: Dan and Jan Smoots
Ph: 620-342-6354

(2) With respect to the City:

City of Emporia, Kansas
104 E 5th Avenue 2d Floor
Emporia, Kansas 66801
ATTN: City Manager
Ph: 620-343-4250
Fax: 620-343-4254

Section 7.6. Time. Time is of the essence in this Agreement.

Section 7.7. Section Headings. The section headings hereof are for the convenience of reference and shall not be treated as part of this agreement or as affecting the true meaning of the provisions hereof. The reference to section numbers herein shall be deemed to refer to the numbers preceding each section.

Section 7.8. Full Agreement. The preceding constitutes the entire agreement of the parties and no amendment thereof shall be effective unless in writing signed by the parties hereto. No waiver of any covenant or agreement contained herein shall be effective unless in writing and no such waiver shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any other covenant or agreement.

Section 7.9 Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Lyon County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas.

Section 7.10. Income Tax Implications. The City makes no covenants or warranty to the Company regarding the federal or state income tax implications of the incentives provided for herein. The Company assumes and acknowledges full responsibility for the determination of such or any other tax implications.

Section 7.11 Non-liability of Officials, Employees and Agents of the City. No recourse shall be had based upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 7.12 Pre-Disaster Mitigation MOU. The Memorandum of Understanding signed January 20, 2020 is hereby incorporated into this agreement by reference and is attached as Exhibit B.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

CITY OF EMPORIA, KANSAS

(Seal)

By _____
Danny Giefer, Mayor

ATTEST:

Kerry Sull, City Clerk

S&S Quality Meats, LLC

By: _____
Name: Dan Smoots
Title: President and CEO

Smoots Enterprises LLC II

By: _____
Name: Dan Smoots
Title: President and CEO

EXHIBIT A

(Description of Project Site)

OF March, 2020
Lyon County Clerk

DATE RECORDED: 03/19/2020 02:24 PM

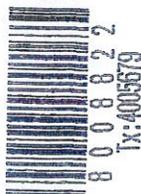
TX #: 4005679

REAL ESTATE FEE 17.00

TECHNOLOGY FEE 3.00

HERITAGE TRUST 1.00

PAGES: 1



WARRANTY DEED

THIS INDENTURE is made this 19th day of March, 2020, Between
Smoots Enterprises II, LLC
GRANTOR(S)

And
S & S Quality Meats, LLC
GRANTEE(S)

For good consideration Grantor(s) convey(s) and warrant(s), to the Grantees, his (their) heirs and assigns the following described real property situated in the State of Kansas, County of Lyon:

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

THE BASIS OF BEARINGS ON THIS DESCRIPTION IS THE SOUTH LINE OF SECTION 12 BEING S. 89°05'28" E. (HIGHWAY 50 TRACT: S. 88°21' E.)

K.S.A. 70-1437 #3

EXCEPT AND SUBJECT TO: Easements & Restrictions apparent & of record.

Smoots Enterprises II, LLC by

Daniel J. Smoots, Member

Janeice E. Smoots, Member

State of Kansas, County of Lyon, SS:

BE IT REMEMBERED, On this 19TH day of March, 2020

Before me, the undersigned, a notary public in and for the County and State aforesaid, came **Smoots Enterprises II, LLC** by **Daniel J. Smoots, Member** and **Janeice E. Smoots, Member** such persons being personally known to me to be the same persons who executed the within instrument of writing and duly acknowledged the execution of the same.

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

Notary Public Eric Thomas





STATE OF KS LYON CO
VICTORIA LOPEZ, REGISTER OF DEEDS

2015-04360

DATE RECORDED: 12/17/2015 02:25:49PM

HTG INDEBT: 0.00 RECEIPT #: 29001

REC FEE: \$ 16.00

TECH FEE: \$ 9.00

HERITAGE FEE: \$3.00

WARRANTY DEED

THIS INDENTURE, made as of this 17th day of December, A.D., 2015 between Smoots Enterprises II, LLC, a limited liability company duly organized under the laws of the State of Kansas, party of the first part, and the City of Emporia, Kansas, a municipal corporation duly organized under the laws of the State of Kansas and located in the County of Lyon and State of Kansas, party of the second part.

WITNESSETH, that the said party of the first part, in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration to it duly paid, the receipt of which is hereby acknowledged, has sold, and by these presents does grant and convey to the said party of the second part, its successors and assigns, all of the following described real estate situated in Lyon County, Kansas, to-wit:

A TRACT IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 19 SOUTH, RANGE 10 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
~~THE SOUTH 945.70 FEET OF THE FOLLOWING DESCRIBED TRACT:~~
COMMENCING AT THE SE CORNER OF THE NE ¼ OF SAID SECTION 12; THENCE N.00°32'25"E. (BASIS OF BEARINGS) ON THE EAST LINE OF SAID SECTION 12 A DISTANCE OF 1199.00 FEET; THENCE N.89°05'08"W. A DISTANCE OF 50.00 FEET TO A ½" IRON PIN AT THE WEST RIGHT OF WAY OF COUNTY ROAD G AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING N.89°05'08"W. A DISTANCE OF 390.00 FEET TO A ½" IRON PIN; THENCE S.00°30'14"W. A DISTANCE OF 150.00 TO A ½" IRON PIN; THENCE N.89°05'08"W. A DISTANCE OF 238.09 FEET TO A ½" IRON PIN; THENCE S.00°32'25"W. A DISTANCE OF 929.77 FEET TO A ½" IRON PIN ON THE NORTHERLY RIGHT OF WAY LINE OF US 50 HIGHWAY; THENCE S.88°05'36"W. ALONG SAID NORTHERLY RIGHT OF WAY LINE FOR A DISTANCE OF 239.51 FEET TO A ½" IRON PIN; THENCE N.89°47'27"W. ALONG SAID NORTHERLY RIGHT OF WAY LINE A DISTANCE OF 336.42

After recording, return to:

TRIPLETT, WOOLF & GARRETSON, LLC
Attn: Mary F. Carson
2959 N. Rock Road, Suite 300
Wichita, Kansas 67226
Telephone: (316) 630-8100

FEET; THENCE N.00°32'25"E. A DISTANCE OF 1293.70 FEET TO A ½" IRON PIN; THENCE S.89°05'08"E. A DISTANCE OF 1203.71 FEET TO A ½" IRON PIN AT THE WEST RIGHT OF WAY OF COUNTY ROAD G; THENCE S.00°32'25"W. ON SAID WEST RIGHT OF WAY FOR A DISTANCE OF 198.00 FEET TO THE TRUE POINT OF BEGINNING.

except and subject to easements, rights of way, and covenants and restrictions of record, with the appurtenances, and all the estate, title and interest of the said party of the first part therein. And the said party of the first part hereby covenants and agrees that at the delivery hereof it is the lawful owner of the premises above granted, and seized of a good and indefeasible estate of inheritance therein, free and clear of all encumbrances and that it will warrant and defend the same in the quiet and peaceable possession of the said party of the second part, its successors and assigns, forever, against all persons lawfully claiming the same.

[Remainder of Page Intentionally Left Blank]

After recording, return to:

TRIPLETT, WOOLF & GARRETSON, LLC
Attn: Mary F. Carson
2959 N. Rock Road, Suite 300
Wichita, Kansas 67226
Telephone: (316) 630-8100

IN WITNESS WHEREOF, the said parties of the first part has executed this deed on the day and year first above written.

SMOOTS ENTERPRISES II, LLC

By [Signature]
Daniel J. Smoots, Managing Member

By [Signature]
Janeice E. Smoots, Managing Member

STATE OF KANSAS)
)
) ss:
COUNTY OF LYON)

BE IT REMEMBERED, that on this 9th day of December, 2015, before me, a Notary Public, in and for the County and State aforesaid, came Daniel J. Smoots and Janeice E. Smoots, each Managing Members of Smoots Enterprises II, LLC, to me personally known to be the same person who executed the foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said corporation.

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

[Signature]
Tracy Eastman
Notary Public - State of Kansas
My Appt. Expires Aug 19, 2019
Notary Public

My Commission Expires:
August 19, 2019

056-201-12-0-00-00-001.00-0
73.5
AC.

056-201-12-0-00-00-008.00-0
1.3
AC.

056-201-12-0-00-00-001.06-0
57
AC.

056-201-12-0-00-00-001.04-0
12.7
AC.

FANESTIL
MEATS

056-201-12-0-00-00-007.00-0
13.1
AC.

ROAD G

W HWY. 50

4700 W. HWY 50

EXHIBIT B

(Memorandum of Understanding)

MEMORANDUM OF UNDERSTANDING

This agreement between the City of Emporia, Kansas (hereinafter referred to as City) and Smoots Enterprises II, LLC d/b/a Fanestil Meats Company (hereinafter referred to as Fanestil) delineates the agreement of the parties regarding application for a FEMA Pre-Disaster Mitigation (PDM) Program Grant and responsibility for project expenses.

1. The Federal PDM Program is designed to assist states, territories, tribes, and communities in implementing a sustained pre-disaster natural hazard mitigation program and reduce risk to the overall population and structures from future hazard events while reducing reliance on federal funding in future disasters.
2. Fanestil has experienced multiple flood events at their meat processing facility located at 1542 South Highway 99. Fanestil desires to request and utilize PDM grant funds to relocate their meat processing facility out of the floodplain with a new facility to be constructed at 4700 West Highway 10.
3. Application for a PDM grant must be submitted by a unit of local government as a subapplicant. City is willing to apply for a PDM Grant as subapplicant on behalf of Fanestil under the conditions of this MOU.
4. The total PDM grant budget to be submitted in the application is \$2,424,060.00. If the grant application is approved, FEMA will fund up to 75% of actual project costs, not to exceed \$1,818,045.00. The parties understand there is no guarantee as to what amount, if any, may be awarded by FEMA.
5. A local cost share of at least 25% of the total project expense is required through the PDM Program. Fanestil agrees to fully fund and pay the local cost share amount, whatever that amount may be; including costs for real estate, environmental testing and remediation, construction, demolition, and any other expenses. City will not be responsible for any cost share amount whatsoever.
6. As part of the PDM Program, the City will acquire the property where the old facility is located at 1542 South Highway 99. Purchase price for the real estate only, net including closing costs is \$2,173,000.00 to be paid to Fanestil. FEMA may grant up to a maximum \$1,629,750.00 for real estate acquisition. The local cost share amount will be a minimum of \$543,250.00. Fanestil will either fund or fully reimburse City for the local match amount for property acquisition.
7. Prior to acquisition of the property by City, environmental testing and possible remediation will be required, including at a minimum a Level II Environmental Site Assessment and environmental surveys for asbestos, lead paint, and mold. Environmental remediation may be required depending on the results of such tests. Based on the grant budget proposal, FEMA may reimburse up to \$30,000.00 for environmental testing and remediation.
 - a. Fanestil will pay for all testing and remediation and will remain fully responsible for any cost not reimbursed by FEMA for all environmental testing and remediation.

- b. City will make timely requests for FEMA reimbursement for testing and remediation expenses, understanding that time is of the essence.
8. The grant budget proposal estimates a minimum cost of \$202,560.00 for demolition of the old facility and reseeded. FEMA may reimburse up to \$151,920.00 for these expenses. The local cost share is expected to be a minimum of \$50,640.00. Fanestil will pay and remain fully responsible for all costs associated with demolition and reseeded not reimbursed by FEMA.
9. Fanestil will pay local match for real estate closing costs estimated at \$8500.00.
10. Should the grant be approved, Fanestil will deposit funds into an escrow account, or provide other financial assurances acceptable to the City, sufficient to pay for local cost share and other required expenses, at this time estimated to not exceed \$757,937.00.
11. This MOU reflects the agreement of the parties for purposes of PDM grant application. If the grant is approved, a more detailed agreement will follow, prior to final grant acceptance. If the grant is denied, this MOU will become inapplicable.

IN WITNESS WHEREOF the parties hereto have set their hands this 20 day of January, 2020.



Mark McAnaney, City Manager
City of Emporia



Dan Smoots, Owner
S&S Quality Meats, LLC
Smoots Enterprises II, LLC



Jan Smoots, Owner
S&S Quality Meats, LLC
Smoots Enterprises II, LLC

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 10

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 August 12th Study Session

- Final Discussion of 2021 Budget & 5-year plan.
- Recycling Contract Discussion.
- Discussion of Housing Study

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 11

SUBJECT: City Commissioners Reports and Comments

RECOMMENDATION:

BACKGROUND SUMMARY:

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

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 12

SUBJECT: Executive Session

RECOMMENDATION:

BACKGROUND SUMMARY:

At this time, the City Commission request an executive session for a preliminary discussion regarding a potential land acquisition.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: August 5, 2020

ITEM NUMBER: 13

SUBJECT: Executive Session

RECOMMENDATION:

BACKGROUND SUMMARY:

At this time, the City Commission request an executive session for consultation with the City Attorney regarding a legal matter.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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