

CITY COMMISSION MEETING

AGENDA

CITY COMMISSION / MUNICIPAL COURT ROOM
518 MECHANIC, EMPORIA, KS
September 21, 2016 at 7:00 pm

1. Members present: Mayor Gilligan

<u>Vice Mayor Mlynar</u>	<u>Commissioner Geitz</u>
<u>Commissioner Harmon</u>	<u>Commissioner Giefer</u>
<u>City Manager McAnarney</u>	<u>City Clerk Sull</u>
<u>Asst. City Mgr. Jim Witt</u>	<u>City Attorney Montgomery</u>
2. Mayor and City Commission Reports and Comments.
3. Consent Agenda
4. Public Comment
 - a. Proclamation Naming October 2nd as Walk to End Alzheimer's Day.
 - b. Proclamation for Manufacturing Days on October 6th & 7th in Emporia.
 - c. Proclamation Declaring October as Texting & Driving-It Can Wait Month.
 - d. Proclamation Naming First Week in October as Fire Prevention Week.
5. Consider Approval of Agreement with Smartnet for Reference Station.
6. Request to Authorize Agreement with Emporia Land Development, LLC for Emporia Pavilions TIF & CID Project.
7. Amendment to Downtown Parking Ordinance to Change Designated Parking on the eastside of Merchant, between the 700-800 Block.
8. Report from City Manager on City Activities.
9. 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 Shelly Kelley, City of Emporia ADA Coordinator at least 48 hours before the event at 620-343-4291 or email skelley@emporia-kansas.gov*

AGENDA ITEM SUMMARY

MEETING DATE: September 21, 2016

ITEM NUMBER: 2

SUBJECT: Mayor and City Commissioners Reports and Comments

RECOMMENDATION:

BACKGROUND SUMMARY

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

The following is general information for the month of August for the community:

1) Monthly Local Retail Sales Tax Receipts Update

2015	2016	
\$384,400.99	\$363,657.34	Decrease of \$20,743.65 for the month, and Overall increase of 1.17% from year 2015

2) City Share from County Tax

2015	2016	
\$194,119.42	\$181,145.54	Decrease of \$12,973.88 for the month, and Overall decrease of 0.13% from year 2015

3) Building Permits issued from 8/1/2016 to 8/31/2016 for new construction, remodeling / repairs and demolition.

Total number of building permits issued through Code Services:	38
Total of valuations associated with those building permits:	\$718,874.00
Total number of dollars collected for Building Permit Fees:	\$5,464.25
2 new single family dwellings	
1 new duplex	
2 tear down - single family dwellings	

Flint Hills Mall CID for June	\$14,978.74
Year to Date Total	\$17,712.07

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: September 21, 2016

ITEM NUMBER: 3

SUBJECT:

Consent agenda:

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

- a. Consider minutes of the Regular Meeting held on August 17, 2016.
- b. Consider ratification of Payroll Ordinance for the period ending in August 16, 2016.
- c. Consider the Approval of July Budget.
- d. Consider Change Order No. 2 for the Warren Way Paving Project No PV1402.

RECOMMENDATION:

- a. Approve Minutes
- b. Approve Payroll
- c. Approve Budget
- d. Approve Change Order

BACKGROUND SUMMARY:

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: September 21, 2016

ITEM NUMBER: 3d

SUBJECT: Consider Change Order No. 2 for the Warren Way Paving Project No PV1402.

RECOMMENDATION: Approve Change Order No. 2 for the Warren Way Paving Project No. PV1402 adding \$2,119.52 to the project.

BACKGROUND SUMMARY:

Listed below are the change order quantities for the 2016 Warren Way improvements Project. The revised contract amount was \$1,060,057.95. This Change Order for \$2,119.52 would increase the final contract dollar amount to \$1,062,177.47. This project was funded from the 441 Fund and the Kansas Department of Transportation grant of \$500,000.00. The change order is to be funded by transferring \$ out of the Holiday Drive at 18th Ave Project which was funded in the Multiyear Fund.

Quantities Deleted:

1. Foundation Stabilization (Set Price) –
This change represents an underrun of 1.00 C.Y. for Foundation Stabilization. The project did not require foundation stabilization.
2. Rock Excavation (Set Price) –
This change represents an underrun of 1.00 C.Y. for Rock Excavation. The project did not require rock excavation.
3. Water (Grading) (Set Price) –
This change represents an underrun of 1.00 MGAL for Water (Grading). Due to rain showers during the period of grading, the optimum moisture was obtained.
4. Sediment Removal (Set Price) –
This change represents an underrun of 1.00 C.Y. for Sediment Removal. The project did not require sediment removal.

The total amount deleted from the project is \$118.50.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

**CHANGE IN PLANS NO. 2
ON CONTRACT WITH MIES CONSTRUCTION INC. FOR THE
CONSTRUCTION OF WARREN WAY EXTENSION PAVING PROJECT NO. PV1402**

Date: September 6, 2016

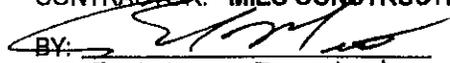
This change in plans, made in accordance with the provisions of Paragraph 9, GS-4, General Conditions under the above Contract, provides for a change in the contract total due to estimated quantities being different than the actual quantities used in the construction of the Warren Way Extension Paving Project No. PV1402.

<u>QUANTITY</u>	<u>UNIT</u>	<u>ITEM & UNIT PRICE IN WORDS</u>	<u>UNIT PRICE IN FIGURES</u>	<u>TOTAL AMOUNT</u>
QUANTITIES DELETED:				
1.00	C.Y.	Foundation Stabilization (Set Price) <u>@ Forty Dollars</u> (Unit Price in Words)	\$40.00	\$40.00
1.00	C.Y.	Rock Excavation (Set Price) <u>@ Thirty-seven Dollars and Fifty Cents</u> (Unit Price in Words)	\$37.50	\$37.50
1.00	MGAL	Water (Grading) (Set Price) <u>@ Six Dollars</u> (Unit Price in Words)	\$6.00	\$6.00
1.00	C.Y.	Sediment Removal (Set Price) <u>@ Thirty-five Dollars</u> (Unit Price in Words)	\$35.00	\$35.00
Total Deleted:				<u>\$118.50</u>

<u>QUANTITY</u>	<u>UNIT</u>	<u>ITEM & UNIT PRICE IN WORDS</u>	<u>UNIT PRICE IN FIGURES</u>	<u>TOTAL AMOUNT</u>
QUANTITIES ADDED:				
63.00	MGAL	Water (Aggregate Base) (Set Price) @ Three Hundred Seventy-eight Dollars @ ^{Six Dollars} Three Hundred Seventy-eight Dollars (Unit Price in Words) <i>9-7-16</i>	\$6.00	\$378.00
41.74	Tons	Combined Material (AB-3) @ Three Hundred Seventy-eight Dollars @ ^{Twenty-three} Three Hundred Seventy-eight Dollars (Unit Price in Words) <i>9-7-16</i>	\$23.00	\$960.02
12.00	L.F.	Storm Sewer Pipe (36") (HDPE) @ Seventy-five Dollars (Unit Price in Words)	\$75.00	\$900.00
Total Added:				<u>\$2,238.02</u>

TOTAL ADDED TO PROJECT **\$2,119.52**

CONTRACTOR: **MIES CONSTRUCTION INC.**

BY: 
 Earl Mies, President

Date: 9-7-16

APPROVED BY: THE CITY OF EMPORIA, KS

BY: _____
 MAYOR

Attest: _____
 CITY CLERK

AGENDA ITEM SUMMARY

MEETING DATE: September 21, 2016

ITEM NUMBER: 4

SUBJECT: Public Comment

RECOMMENDATION:

BACKGROUND SUMMARY:

- Proclamation Naming October 2nd as Walk to End Alzheimer's Day. *-to accept Ruth Wheeler.*
- Proclamation for Manufacturing Days on October 6th & 7th in Emporia. *-to accept Kent Heermann.*
- Proclamation Declaring October as Texting & Driving-It Can Wait Month. *- to accept Brandy Nance & Brook Bailey representatives from ESU.*
- Proclamation Naming First Week in October as Fire Prevention Week. *-to accept Reason Bradford, City of Emporia Fire Marshal.*

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ HARMON _____ MLYNAR _____



PROCLAMATION

WHEREAS, Alzheimer's disease is a progressive degenerative disease of the brain causing memory loss and impaired thinking, judgment and behavior. It is the sixth leading cause of death for older adults in the United States and is the most common form of dementia; and

WHEREAS, Alzheimer's disease affects not only individuals, but also their families, friends, and communities. Those suffering from Alzheimer's require additional care, often provided by loved ones; and

WHEREAS, With the aging of the Baby Boomer generation, an estimated 16 million Americans will have Alzheimer's disease by 2050; and

WHEREAS, there is currently no cure for the disease, but the Alzheimer's Association offers vital help and support in the form of education, free services, and support programs. Services include a 24-hour information and referral Helpline, family care planning and support groups and access to the Medic Alert and Safe return systems; and

WHEREAS, again this year, the Heart of America Chapter of the Alzheimer's Association is sponsoring a Walk to End Alzheimer's in Emporia, Kansas; and

WHEREAS, The City of Emporia applauds the efforts of the Alzheimer's Association and its volunteers to raise funds and promote awareness in the fight against Alzheimer's; and

WHEREAS, working together, we can conquer this disease and ensure a brighter, healthier future for generations to come.

NOW, THEREFORE, I, Robert F. Gilligan, Mayor of the City of Emporia, Kansas do here by proclaim Sunday, October 2, 2016 as

“Walk to End Alzheimer’s Day”

In Emporia

On This 21st Day of September, 2016

ATTEST:

Robert F. Gilligan, Mayor

Kerry Sull, City Clerk



PROCLAMATION

WHEREAS, Manufacturing Day has been recognized as an effective way to expand knowledge about value manufacturing brings to the Kansas economy and to showcase high-skilled, high-paying manufacturing jobs; and

WHEREAS, manufacturing is an important driver of the Emporia, Kansas region; and

WHEREAS, Emporia, Kansas is home to more than 38 manufacturing companies with a total annual payroll of \$116,635,000 or 33% of the total in Emporia and Lyon County; and

WHEREAS, these manufacturing companies provide more than 24% of the total employment in Emporia and Lyon County; and

WHEREAS, manufacturing employees require more education, training and skill development from our higher education institutions such as Emporia State University and Flint Hills Technical College; and

WHEREAS, the Regional Development Association of East Central Kansas, the Emporia Area Chamber of Commerce, Flint Hills Technical College, Emporia State University and the Emporia School District USD #253 are collaborating with manufacturers, educational institutions and other partners to celebrate the success of the manufacturing industry and manufacturing companies in Emporia and Lyon County, Kansas; and

WHEREAS, the Kansas Manufacturing Extension partnership, the National Association of Manufacturers, the Manufacturing Institute and the Manufacturers Council of the Emporia Area Chamber of Commerce have designated October 7, 2016 as National Manufacturing Day to begin a season of celebration in support of the manufacturing community and of public education about the industry;

NOW, THEREFORE, I Robert F. Gilligan, Mayor for the City of Emporia, Kansas do hereby proclaim October 6th and 7th, 2016 as

“MANUFACTURING DAYS”

in Emporia.

Done this 21st day of September 2016

ATTEST:

Robert F. Gilligan, Mayor

Kerry Sull, City Clerk



Proclamation

WHEREAS, public safety, including the reduction of fatalities and injuries resulting from motor vehicles, are goals shared by the City of Emporia, Lyon County and the State of Kansas; and

WHEREAS, the National Highway Traffic Safety Administration states that in 2014, 3,179 people were killed and 431,000 were injured in motor vehicle crashes involving distracted drivers; and

WHEREAS, the National Highway Traffic Safety Administration states that at any given daylight moment across America, approximately 660,000 drivers are using cell phones or manipulating electronic devices while driving; and

WHEREAS, a university study found that college students face a crash risk eight times greater when texting than when not texting; and

WHEREAS, the Virginia Tech Transportation Institute states that texting while driving is six times more likely to cause a vehicle accident than driving while intoxicated; and

WHEREAS, a study by the Virginia Tech Transportation Institute states that sending or receiving a text takes a driver's eyes off the road for an average of 4.6 seconds, the equivalent of driving blind at 55-mph for the length of an entire football field; and

WHEREAS, AT&T Kansas states that 7 in 10 people engage in smartphone activities while driving. Nearly 4 in 10 smartphone users tap into social media while driving, 3 in 10 surf the net and 1 in 10 video chat; and

WHEREAS, AT&T Kansas has launched a campaign using the hashtag #ItCanWait, encouraging driver to take the pledge to not text and drive; and

WHEREAS, the "Texting & Driving-It Can Wait" program can literally save lives throughout our city, state and country.

NOW, THEREFORE, be it resolved I, Robert F. Gilligan, the Mayor for the City of Emporia do hereby declare October 2016 as

"Texting & Driving — It can Wait Month"

in Emporia and we encourage all citizens to commit to refraining from texting while driving by taking the pledge.

On this 21st day of September, 2016

ATTEST:

Robert F. Gilligan, Mayor

Kerry Sull, City Clerk



PROCLAMATION

WHEREAS, the city of Emporia, Kansas is committed to ensuring the safety and security of all those living in and visiting Emporia; and

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are where people are at greatest risk from fire; and

WHEREAS, U.S. fire departments responded to 369,500 home fires in 2014, according to the National Fire Protection Association (NFPA); and

WHEREAS, U.S. home fires resulted in 2,745 civilian deaths in 2014, representing the majority (84 percent) of all U.S. fire deaths;

WHEREAS, in one-fifth of all homes with smoke alarms, the smoke alarms are not working; and

WHEREAS, three out of five home fire deaths result from fires in properties without smoke alarms (38 percent) or with no working smoke alarms (21 percent); and

WHEREAS, working smoke alarms cut the risk of dying in reported home fires in half; and

WHEREAS, many Americans don't know how old the smoke alarms in their homes are, or how often they need to be replaced; and

WHEREAS, all smoke alarms should be replaced at least once every ten years; and

WHEREAS, the age of a smoke alarm can be determined by the date of its manufacture, which is marked on the back of the smoke alarm;

WHEREAS, Emporia's first responders are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and

WHEREAS, Emporia's residents are responsive to public education measures and are able to take personal steps to increase their safety from fire, especially in their homes; and

WHEREAS, the 2016 Fire Prevention Week theme, "Don't Wait – Check the Date! Replace Smoke Alarms Every 10 Years" effectively serves to educate the public about the vital importance of replacing the smoke alarms in their homes at least every ten years, and to determine the age of their smoke alarms by checking the date of manufacture on the back of the alarms.

THEREFORE, I, Robert F. Gilligan Mayor of Emporia do hereby proclaim
October 9-15, 2016, as

Fire Prevention Week

throughout this city. I urge all the people of Emporia to find out how old the smoke alarms in their homes are, to replace them if they're more than 10 years old, and to participate in the many public safety activities and efforts of Emporia's fire and emergency services during Fire Prevention Week 2016.

ATTEST:

Robert F. Gilligan, Mayor

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: September 21, 2016

ITEM NUMBER: 5

SUBJECT: Consider an agreement with Smartnet to take over maintenance of the City's reference station located on the City Hall building.

RECOMMENDATION: Recommend Commission accept and the Mayor sign the attached agreement.

BACKGROUND SUMMARY:

The host agreement is for the purpose allowing Smartnet to take over maintenance of reference station located on the roof of the City Hall building. The reference station provides electronic information to users of the global navigation satellite system for the purposes of establishing coordinates when doing surveying work in the field. Smartnet agrees to install the latest equipment and maintain it at no cost the City in exchange for two licenses to be used by the City staff for the purposes doing surveying work. This agreement would essentially remove any need by the City to maintain the reference station in the future. In the event the City does not wish to continue with the agreement, then 60 days after written notice is given Smartnet will abandon use of the reference station.

Attached is the proposed Host Agreement.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

**SMARTNET NORTH AMERICA REFERENCE NETWORK
REFERENCE STATION HOST AGREEMENT**

LEICA Geosystems Inc. and Host wish to contract for Host to participate in the SmartNet GNSS Reference Network on the terms and conditions set forth in the Agreement (all as defined below).

Accordingly, in consideration of the mutual agreements contained herein, each of Leica Geosystems, Inc. and Host acknowledges that it has received and reviewed this Agreement and agrees to be bound by the same.

Host	<u>City of Emporia KS</u>
Station Name:	<u>KSEM – Emporia KS</u>
Effective Date:	<u>August 30, 2016</u>

1. **Definitions.** Certain terms used and not otherwise defined in this Agreement have the following definitions or meanings:

“**GNSS**” means global navigation satellite system

“**Agreement**” means this agreement together with the standard SmartNet Terms & Conditions and any agreed upon Appendices

“**Leica**” means Leica Geosystems, Inc., a Delaware corporation.

“**Network**” means the Reference Network marketed under the brand SmartNet, a real-time GNSS network anticipated to provide spatial information to a diverse user community in proximity to the Site.

“**Party**” or “**Parties**” means either Leica or Host, individually, or both Leica and Owner, collectively.

“**Reference Station**” means the Leica GNSS reference station and associated or ancillary equipment located at the Site.

“**Site**” means the real property and improvements of the Host where the Reference Station is located.

“Term” means the period commencing with the Effective Date identified on the first page of this Agreement and continuing thereafter, unless terminated in accordance with the provisions of Section 4.

2. **Host Obligations.** Host hereby grants to Leica and its employees, agents, designees and/or contractors (hereinafter “Licensee”) right of ingress and egress to the Site to install, maintain, repair and/or operate the Reference Station during regular business hours, if the Site is an occupied edifice, and at any reasonable time if unoccupied. No ownership, leasehold or other rights to the Site shall vest in Licensee by virtue of this Agreement. Host agrees and licenses Licensee to erect the Reference Station in a place on the Site and to a standard consistent with the standards for the Network as established by Leica from time to time. Host also agrees to (i) provide access to and maintain an internet connection for the Reference Station and (ii) provide power.

3. **Network License.** As full and valid consideration for the obligations to Host set forth herein, Leica grants Host access for two GNSS RTK Rover to the Network pursuant to the terms and conditions set forth in the standard SmartNet Terms & Conditions, incorporated herein by reference. The access will remain in effect during the term of this Agreement.

4. **Termination.**

- a. Either Party may terminate this Agreement immediately by delivery of notice to Host at any time if the other Party materially breaches this Agreement.
- b. Either Party may terminate this Agreement for any reason or no reason upon 60 days’ written notice.

5. **Notices.** All notices, authorizations, directions, consents, and other communications to, upon, and between the parties shall be in writing and shall be deemed to have been duly made, delivered and received when delivered personally or by nationally recognized courier service or when mailed by certified mail, postage prepaid and return receipt requested, or when transmitted, and receipt confirmed, by facsimile or electronic transmission to each Party at the address, facsimile number or electronic address set forth under the name of that Party on the first page of this Agreement or to either Party at such other post office address, facsimile number or electronic address as that Party may specify by notice to the other Parties.

6. **No Joint Venture or Partnership.** This Agreement shall not be deemed nor construed to create a joint venture or partnership between Host and Leica, nor shall this Agreement be deemed or construed as making either Party the agent or representative of the other Party. Neither Party shall have the authority to bind the other Party in any respect.

7. **Modifications.** This Agreement may not be modified, waived, amended, discharged, terminated or supplemented, or otherwise changed, except by a document executed by an authorized representative of each Party.

8. **Non-Waiver of Rights and Breaches.** Except as provided in Paragraph 10, no failure or delay of any Party in the exercise of any right given to such Party hereunder shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. The waiver by a party of any default of any other Party hereunder shall not be deemed to be a waiver of any such subsequent default or other default of any party. No action or forbearance by any Party contrary to the provisions of this Agreement shall be construed to constitute a waiver of any of the express provisions hereof.

9. **Successors and Assigns.** Either Party may assign this Agreement (a) to one or more affiliates in connection with an internal corporate reorganization or restructuring (in which case the Party shall remain liable for its obligations hereunder notwithstanding such assignment) or (b) to a third party in connection with the sale of substantially all of a Party's assets to, or the merger of the Party into, a third party.

10. **Limitation of Remedies.** Neither Party shall seek, and each hereby irrevocably waives, monetary damages, whether direct, consequential, indirect, or punitive, as a consequence, or arising from, this Agreement or its breach. This Paragraph does not waive or affect either Party's remedies in cases of fraud or intentional torts. **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFIT OR LOST OPPORTUNITY.**

11. **Construction.** Each Party acknowledges that it has participated in the negotiation of this Agreement, had the opportunity to consult with legal counsel prior to executing the Agreement, and that no provision of this Agreement shall be construed against or be interpreted to the disadvantage of any Party hereto by any court or other governmental or judicial authority by reason of such Party having or deemed to have structured, dictated or drafted such provision.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, with such counterparts together constituting one and the same instrument. Alternatively, the Parties acknowledge and agree that this Agreement may be, for convenience, executed in duplicate originals, each of which is intended to be and is as valid as its counterpart original.

13. **Invalidity.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated.

LEICA GEOSYSTEMS, INC.

HOST

Signature:	_____	Signature:	_____
Printed Name:	<u>Wendy Watson</u>	Printed Name:	_____
Title:	<u>Director of SmartNet NA</u>	Title:	_____
Date:	_____	Date:	_____
Address:		Address:	_____
	5051 Peachtree Corners Circle		_____
	Suite 250		_____
	Norcross, GA 30092		_____
Attention:	<u>Connie McFarland</u>	Attention:	_____
Fax Number:	<u>770-447-0710</u>	Fax Number:	_____
Email Address:	<u>connie.mcfarland@leicaus.com</u>	Email Address:	_____

SITE LOCATION

Station Name	<u>KSEM – Emporia KS</u>
Site Address	<u>522 Mechanic Street</u>

Site City	<u>Emporia</u>
Site State/Province	<u>Kansas</u>
Site Zip/Postal Code	<u>66801</u>
Site Phone Number	<u>620-343-4269</u>

For general questions or issues, you may also contact us at support@smartnetna.com

AGENDA ITEM SUMMARY

MEETING DATE: September 21, 2016

ITEM NUMBER: 6

SUBJECT: Authorize the Mayor to execute a consent to assignment of the Development Agreement between the City and Emporia Land Development, LLC to Country Club Bank, as collateral for the loan Country Club Bank will make to Emporia Land Development for construction of the project.

RECOMMENDATION: Mayor Sign Agreement

BACKGROUND SUMMARY:

The City has received written notice from Emporia Land Development, LLC, the Developer under a Development Agreement with the City regarding the Emporia Pavilions TIF and CID project, that the Developer will assign its rights under the Development Agreement, including the right to receive reimbursement under the Development Agreement from TIF and CID revenues, to Country Club Bank. The assignment is collateral for the construction loan Country Club Bank is making to Developer to complete the project. This type of collateral assignment is common in these transactions and is permitted by Article V of the Development Agreement. The assignment does require the consent of the City, and the Developer and lender bank have requested the City's consent. The Developer requests the City Commission approve a motion consenting to the collateral assignment and authorizing the Mayor to execute a document evidencing the City's consent.

A copy of the relevant pages is attached for your review. Mary Carson, the developer's attorney and an attorney for the financial institution were involved in the framing of this agenda item for your consideration. Ms. Carson has recommended approval of this consent. Further questions should be directed to the Assistant City Manager.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

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

ARTICLE V ASSIGNMENT; TRANSFER

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

A. *Transfer of Obligations.* In addition to Permitted Transfers as described in the preceding paragraph, the rights, duties and obligations of the Developer under this Agreement, may be assigned, in whole or in part, to another entity with the prior written approval of the City, which approval shall not be unreasonably withheld, following the completion of the Developer Work (prior to such completion, the City may withhold such approval in its sole discretion). Prior to any assignment, the City Attorney shall have verified that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations of the Developer under this Agreement. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the

obligations of the Developer, as applicable, under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is bound. The Developer shall not be relieved from any obligations set forth herein or any liabilities arising hereunder unless and until the City specifically agrees to release the Developer from its obligations under this Agreement. The Developer agrees to record all assignments in the office of the Register of Deeds of Lyon County, Kansas, in a timely manner following the execution of such assignments.

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

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

ARTICLE VI DEFAULTS AND REMEDIES

Section 6.1. Event of Default.

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

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

ASSIGNMENT OF PLANS, ASSESSMENTS, ENTITLEMENTS AND INTANGIBLES

FOR VALUE RECEIVED, Emporia Land Development, LLC, a Kansas limited liability company, having an address of 4700 Belleview Avenue, Suite 404, Kansas City, Missouri, 64112 ("**Borrower**"), does hereby sell, assign, pledge, transfer and set over unto **Country Club Bank**, One Ward Parkway, Kansas City, Missouri 64112 (together with its successors and assigns, "**Lender**"), all of its right, title and interest in and to the following, whether now owned or hereafter acquired:

- a) all plans, specifications, drawings, and surveys (collectively, the "**Plans**") pertaining to the ownership, development project of a shopping center (hereinafter called the "**Project**") on Borrower's real property located in Emporia, Lyon County, Kansas (hereinafter, the "**Premises**");
- b) all appraisals, assessments, impact studies, economic models, and financial projections pertaining to the Project and/or the Premises (collectively, the "**Assessments**");
- c) all building permits, entitlements, governmental and quasi-governmental approvals and authorizations, zoning classifications, zoning variances, permitted use classifications, licenses, permits, plats, plat applications, site plans, phasing agreements, and certificates pertaining to the Project and/or the Premises, including but not limited to those documents identified on Exhibit A, attached hereto and incorporated herein by reference and that certain Emporia Pavilions Tax Increment Redevelopment District and Community Improvement District Development Agreement by and between Borrower and the City of Emporia (the "**City**") dated April 26, 2016, a complete copy of which is attached hereto as Exhibit A-1 and incorporated herein by reference (collectively, the "**Entitlements**"); and
- d) all trade-names and other general intangibles pertaining to the Project and/or the Premises (collectively, the "**Intangibles**").

The Plans, Assessments, Entitlements and Intangibles are assigned as collateral security for certain indebtedness owed by Borrower to Lender, as evidenced by a certain Construction Loan Agreement executed by Borrower and Lender on or about even date herewith ("**Loan Agreement**").

Borrower agrees that Lender does not assume any of Borrower's obligations or duties concerning the Plans, Assessments, Entitlements or Intangibles, including, but not limited to any obligation to any governmental or quasi-governmental entity that has conditionally issued Borrower any Entitlement, unless and until Lender shall have given to such entities written notice that it has affirmatively exercised its right to complete or cause the completion of the Project upon or after the occurrence and continuation of an "**Event of Default**" (as defined in the Loan Agreement) beyond the applicable cure period (if any) under the Loan Agreement or any other "Loan Document" defined in the Loan Agreement (collectively, "**Loan Documents**"). In the event Lender does not personally undertake to complete the Project, such obligations and duties may be assumed by the person so undertaking to complete the Project as designated by Lender, and Lender shall have no liability whatsoever for the performance of any such obligation or duty. For the purpose of completing the Project, Lender may reassign its right, title and interest in the Plans, Assessments, Entitlements and Intangibles to any persons in Lender's reasonable discretion, but without any consent required from Borrower, and any such reassignment shall be valid and binding upon Borrower as fully as if it had expressly approved the same.

Upon the occurrence of an Event of Default, Borrower hereby irrevocably authorizes Lender to demand, receive and enforce Borrower's rights with respect to the Plans, Assessments, Entitlements and Intangibles, to make payments under the Plans and Assessments, and to give appropriate receipts, releases and satisfactions for and on behalf of and in the name of Borrower, or at the option of Lender in the name of Lender, with the same force and effect as Borrower could do if this Assignment had not been made.

Borrower hereby represents and warrants to Lender that no previous assignment of its interest in the Plans, Assessments, Entitlements or Intangibles has been made, Borrower has full right, title and authority to make this Assignment, all consents required for this Assignment have been obtained, including but not limited to the consent of all necessary third parties, and proper notice has been provided to and consent has been received from the City under the Development Agreement as attached hereto as **Exhibit B**. Borrower agrees not to further assign, sell, pledge, mortgage or otherwise transfer or encumber its interest in the Plans, Assessments, Entitlements and Intangibles so long as this Assignment is in effect.

This Assignment is presently effective, absolute and unconditional. Notwithstanding the foregoing, Lender agrees that it shall have no right under this Assignment to enforce Borrower's rights with respect to the Plans, Assessments, Entitlements and/or Intangibles unless an Event of Default has occurred. Upon the occurrence of any such Event of Default, Lender may, without affecting any of its other rights or remedies against Borrower under any other Loan Document, exercise its rights under this Assignment or in any other manner permitted by law, and in addition, Lender shall have and possess, without limitation, any and all rights and remedies of a secured party under the Kansas Uniform Commercial Code or otherwise as provided by law.

BORROWER HEREBY AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, LAWSUITS, JUDGMENTS, AND ACTUAL OUT OF POCKET COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES) TO WHICH LENDER MAY BECOME EXPOSED, OR WHICH LENDER MAY INCUR, IN EXERCISING ANY OF ITS RIGHTS UNDER THIS ASSIGNMENT EXCEPT TO THE EXTENT THE FOREGOING ARISES FROM, IS CAUSED BY OR IS THE RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER OR ANY OF ITS CONTRACTORS, SUBCONTRACTORS OR CONSULTANTS.

Subject to the aforesaid limitation on further assignment by Borrower, this Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns and successors in interest of Borrower, Lender and all third parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed effective as of this ____ day of September, 2016.

BORROWER:

EMPORIA LAND DEVELOPMENT, LLC,
a Kansas limited liability company

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

Signature Page

Assignment of Plans, Assessments, Entitlements and Intangibles

EXHIBIT A

Entitlements

Exhibit A

Assignment of Plans, Assessments, Entitlements and Intangibles

EXHIBIT A-1

Copy of Development Agreement

Exhibit A

Assignment of Plans, Assessments, Entitlements and Intangibles

EXHIBIT B

Consent to Assignment by the City of Emporia

By execution hereof, the City of Emporia acknowledges it has received a copy of that certain Assignment of Plans, Assessments, Entitlements and Intangibles from Emporia Land Development, LLC, a Kansas limited liability company ("Borrower") to Country Club Bank dated September 15, 2016 (the "Assignment"), and hereby consents to the Assignment as it relates to that certain Emporia Pavilions Tax Increment Redevelopment District and Community Improvement District Development Agreement by and between Borrower and the City of Emporia dated April 26, 2016 (the "Development Agreement"), in accordance and compliance with Article V of the Development Agreement. Further, in accordance and compliance with Article V, Section 5.1.C, in the event Country Club Bank exercises its right under the Assignment and the Development Agreement by providing notice to the City of Emporia thereof, the City of Emporia hereby consents to allow Country Club Bank to seek direct reimbursement of Project Costs from the City of Emporia related to the Development Agreement without further consent of the City of Emporia.

CITY OF EMPORIA, KANSAS

By: _____
_____, Mayor

[seal]

ATTEST:

By: _____
_____, _____

APPROVED AS TO FORM:

By: _____
_____, _____

Exhibit A

Assignment of Plans, Assessments, Entitlements and Intangibles

AGENDA ITEM SUMMARY

MEETING DATE: September 21, 2016

ITEM NUMBER: 7

SUBJECT: Amendment to Downtown Parking Ordinance to Change Designated Parking on the eastside of Merchant, between the 700-800 Block.

RECOMMENDATION: Mayor Sign Ordinance

BACKGROUND SUMMARY:

BLI has requested a change to the designated parking on Merchant Street between 7th Avenue and 8th Avenue to allow vehicles to park there for at least 8 hours. The Joint Traffic Safety Committed voted 5-3 in favor of changing the parking on that block on July 18, 2016. City Staff has prepared an ordinance proposal which would change the parking designation on the east side of the street on the 700 block of Merchant Street to 24-hour parking, leaving the parking on the west side of the street at 2-hour parking, as previously designated.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF EMPORIA, KANSAS PERTAINING TO PARKING;
AMENDING SECTION 25-85 PARKING IN THE DOWNTOWN DISTRICT.**

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

Section 25-85 of the Code of the City of Emporia, Kansas, is hereby amended as follows:

“Sec. 25-85. Parking In The Downtown District:

Location	Beginning Location	Ending Location	Parking Regulation
Commercial Street	South Avenue	1st Avenue	8 hours west side
Commercial	Railroad tracks	South	24 hours both sides
Commercial	4th	Railroad tracks	2 hours both sides
Commercial	5th	4th	2 hours both sides
Commercial	6th	5th	2 hours both sides
Commercial	7th	6th	2 hours both sides
Commercial	8th	7th	2 hours west side
Commercial	9th	8th	2 hours both sides
Commercial	10th	9th	2 hours both sides
Commercial	11th	10th	2 hours both sides
Commercial	12th	11th	1 hour both sides
Market	6th	5th	Northernmost and southernmost 6 stalls reserved for civic auditorium; middle 2 stalls 2 hours
Mechanic	5th	4th	2 hours and 4 stalls reserved for sheriff west side; no parking east side
Mechanic	6th	5th	2 hours southern and northern stalls west side reserved for motorcycles middle stalls west side 2 hours and 3 stalls reserved for police east side
Mechanic	7th	6th	2 hours both sides
Merchant	4th	3rd	24 hours both sides
Merchant	5th	4th	2 hours both sides
Merchant	6th	5th	2 hours both sides

Merchant	7th	6th	15 minutes northernmost 7 stalls west side; 2 hours southernmost stalls west side; 2 hours east side
Merchant	8th	7th	2 hours west side; 24 hours east side
Merchant	9th	8th	2 hours both sides
Parking lot at NE corner of Market and 5th			24 hours all stalls
Parking lot at NE corner of Mechanic and 4th			24 hours all stalls
Parking lot at NE corner of 5th and Merchant			24 hours all stalls
Parking lot at NE corner of 6th and Merchant			2 hours all stalls
Parking lot at NE corner of 7th and Merchant			2 hours easternmost stalls; 24 hours remaining stalls; permit parking allowed
Parking lot at NW corner of Commercial and 4th			2 hours all stalls
Parking lot at SE corner of Market and 6th			Northeasternmost 3 stalls reserved for city; 24 hours remaining stalls
Parking lot at SE corner of Mechanic and 5th			24 hours all stalls
Parking lot at SE corner of Mechanic and 7th			24 hours all stalls; reserved 3 stalls at northwest corner of lot for commercial vehicles
Parking lot at SW corner of Mechanic and 7th			2 hours westernmost stalls; 24 hours remaining stalls
Parking lot at SW corner of Mechanic and 8th			10 hours northernmost stalls; 24 hours remaining stalls
Parking lot on Mechanic between 6th and 5th			1 hour northernmost stalls; 2 hours remaining stalls; permit parking allowed
4th Avenue	Commercial Street	Mechanic Street	2 hours both sides

4th	Merchant	Commercial	2 hours both sides
5th	Commercial	Mechanic	1 hour both sides
5th	Market	Union	Reserved for city vehicles
5th	Mechanic	Market	15 minutes north side; 1 hour south side
5th	Merchant	Commercial	2 hours both sides
6th	Commercial	Mechanic	1 hour both sides
6th	Market	Union	24 hours both sides
6th	Mechanic	Market	24 hours both sides
6th	Merchant	Commercial	2 hours north side; 30 minutes south side
7th	Commercial	Mechanic	2 hours both sides
7th	Mechanic	Market	24 hours south side
7th	Merchant	Commercial	2 hours both sides
8th	Commercial	Mechanic	2 hours both sides
8th	Merchant	Commercial	2 hours both sides
9th	Merchant	Commercial	24 hours north side; 2 hours south side
10th	Commercial	Mechanic	24 hours north side
10th	Merchant	Commercial	24 hours both sides
11th	Commercial	Mechanic	Westernmost 2 stalls 30 minutes and rest 2 hours south side
11th	Merchant	Commercial	2 hours north side; 24 hours south side

(Ord. 11-08, 2-2-2011; Ord. 12-10, 5-2-2012; Ord. 12-13, 5-16-2012; Ord. 16-_____, 9-7-2016)

PASSED AND APPROVED this 21st day of September, 2016.

Robert F. Gilligan, Mayor

ATTEST:

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: September 21, 2016

ITEM NUMBER: 8

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 September 28th Study Session

- Discuss Increase in Trans Guest Tax
- Wastewater Treatment Plant Update
- Discuss Changes in MUPP Board Bylaws

Joint Luncheon w/Emporia Main Street

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: September 21, 2016

ITEM NUMBER: 9

SUBJECT: Executive Session

RECOMMENDATION:

BACKGROUND SUMMARY:

City Commission Request an Executive Session to discuss attorney client privilege.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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