

CITY COMMISSION MEETING AGENDA

CITY COMMISSION / MUNICIPAL COURT ROOM
518 MECHANIC, EMPORIA, KS
July 15, 2020 at 7:00 p.m.

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. Mayor and City Commission Reports and Comments.
3. Consent Agenda
4. Public Comment
5. Appoint Member to the Flint Hills Technical College Advisory Board.
6. Consider Approval of Water Supply Agreement with Rural Water District #2 Coffey County.
7. Consider awarding a bid for the Industrial Park III Resurfacing & Drainage Improvements Project No. PV2004.
8. Consider Accepting the Agreement for KDOT CCLIP US-50 Intersection Improvements Project No. PV1909, KDOT Project No. 50-56 KA-5412-01.
9. Consider Accepting Project Engineer Agreement with BG Consultants, Inc. for KDOT CCLIP US-50 Improvements Project No. PV1909, KDOT Project No. 50-56 KA-5412-01.
10. Report from City Manager on City Activities.
11. Executive Session
12. 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 Jeff Lynch, City of Emporia ADA Coordinator at least 48 hours before the event at 620-343-4285 or email jlynch@emporia-kansas.gov*

AGENDA ITEM SUMMARY

MEETING DATE: July 15, 2020

ITEM NUMBER: 2

SUBJECT: Mayor and City Commissioners Reports and Comments

RECOMMENDATION:

BACKGROUND SUMMARY

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

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

1) Monthly Local Retail Sales Tax Receipts Update

	2019	2020	
	\$402,590.85	\$393,788.13	Decrease of \$8,802.72 for the month, and
YTD	\$ 2,413,729.26	\$ 2,418,125.99	Overall increase of 0.18% from year 2019

2) City Share from County Tax

	2019	2020	
	\$193,377.71	\$203,615.11	Increase of \$10,237.40 for the month, and
YTD	\$ 1,185,663.61	\$ 1,240,499.18	Overall increase of 4.62% from year 2019

3) Building Permits issued from 6/1/2020 to 6/30/2020 for new construction, remodeling / repairs and demolition.

Total number of building permits issued through Code Services:	95
Total of valuations associated with those building permits:	\$ 1,467,915.00
Total number of dollars collected for Building Permit Fees:	\$ 12,848.75
Construct - single family dwellings	1
Demo - single family dwellings	1

Flint Hills Mall CID for June	\$ 14,753.12
Year to Date Total	\$ 94,321.42

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: July 15, 2020

ITEM NUMBER: 3

SUBJECT:

Consent agenda:

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

- a. Consider minutes of the Meeting held on July 1, 2020.
- b. Consider ratification of Payroll Ordinance for the period ending on July 3, 2020.
- c. Consider the Approval of June Budget.

RECOMMENDATION:

- a. Approve Minutes
- b. Approve Payroll
- c. Approve Budget

BACKGROUND SUMMARY:

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: July 15, 2020

ITEM NUMBER: 4

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: July 15, 2020

ITEM NUMBER: 5

SUBJECT: Consider the Appointment to the FHTC Advisory Board.

RECOMMENDATION: Appoint Member to the FHTC Advisory Board.

BACKGROUND SUMMARY:

Currently the Flint Hills Technical College Advisory Board has one opening. There is one applicant and staff request the Commission appoint Brian L. Potter to the FHTC Advisory Board.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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



APPLICATIONS FOR BOARDS & COMMISSIONS

 [Applicants](#)

 [Trash](#)



APPLICATION FOR ADVISORY BOARD MEMBERSHIP

DATE: 06/25/2020

NAME: Brian L Potter
First Name MI Last Name

ADDRESS: 1793 225th Road
Street
Strong City KS 66869
City State ZIP

Email: rbpotter.1991@gmail.com

PHONE: 6203402669

PLACE OF EMPLOYMENT: Simmons Petfood, Inc.

HOW LONG HAVE YOU BEEN A RESIDENT OF EMPORIA? NA - 30 years working in Emporia

ADVISORY BOARD(S) YOU ARE INTERESTED IN:
FHTC Advisory Board

BRIEFLY DESCRIBE WHY YOU WOULD LIKE TO PARTICIPATE ON THE ADVISORY BOARD(S) MENTIONED ABOVE:

Flint Hills Technical College works closely with manufacturers in the area to ensure work needs are being met with the educational opportunities they offer. I feel I can contribute to furthering the positive impact they have on the community, future workers, and business needs of the area.

OTHER ACTIVITIES AND INTERESTS:

Senior Director Simmons Petfood Inc.
Board Member - Cottonwood Falls United Methodist Church
Head Softball Coach - Chase County High School
Christian Business Men's Connection - Member

AGENDA ITEM SUMMARY

MEETING DATE: July 15, 2020

ITEM NUMBER: 6

SUBJECT: Consider Approval of Water Supply Agreement with Rural Water District #2 Coffey County.

RECOMMENDATION: Approve Agreement and Authorize Mayor to Sign.

BACKGROUND SUMMARY:

Rural Water District #2 Coffey County has signed a Water Supply Agreement as discussed at the June 24, 2020 study session. The contract provides for purchase of water by the water district at a minimum of 2 million gallons and a maximum of 4 million gallons per month. Water use in excess of 4 million gallons incurs a 10% penalty. The purchase rate is established by City Code Section 28-43. The term of the contract is 10 years. The agreement provides that the City has discretion to approve the sale of water to a major water consuming business locating within the water district territory. Either party may request to reopen the agreement due to a material change in circumstances. Staff recommends approval of the contract.

ACTION RECORD

Action: _____

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

AGREEMENT

THIS AGREEMENT made and entered into this 15th day of July 2020, by and between the City of Emporia, Kansas, a municipal corporation, hereinafter referred to as “City”, and Rural Water District No. 2, Coffey County, Kansas, a corporation existing under and by virtue of the laws of the State of Kansas and having its principal place of business in Gridley, Coffey County, Kansas, hereinafter referred to as “Water District”.

WITNESSETH:

That, WHEREAS, the City owns and operates a municipal waterworks; and

WHEREAS, the water produced by the municipal waterworks is approved by the Kansas Department of Health and Environment for domestic use; and

WHEREAS, the Water District owns and operates a system of water mains and distribution lines in an area adjacent to the City of Emporia, Kansas, all of which at the time of the execution hereof are outside of the corporate limits of the City of Emporia, Kansas.

NOW, THEREFORE, in view of the premises aforesaid, and in consideration of the mutual covenants and promises herein contained, it is agreed by and between the parties hereto as follows:

1. Water Sales. The City hereby agrees to sell treated water meeting applicable standards for the State of Kansas a **minimum of 2 million gallons** and a **maximum of 4 million gallons** per month to the Water District at the point of delivery as specified herein, and the Water District agrees to purchase from the City, said water within the minimum and maximum quantities during the term of this Contract, or any renewal or extension. Water in excess of 4 million gallons per month may be purchased by the Water District to the extent that it is available without adversely affecting City’s

ability to meet other contractual obligations. A penalty of ten percent (10%) per thousand gallons water rate may be added to the cost of each thousand gallons of water used over the stated maximum.

2. Meter Building. The Water District has provided a connection to the water mains and lines of the City for delivery and supply of water to the Water District in a method approved by the City. The Water District shall provide and maintain a meter building at the site designated by the parties. The Water District and the City shall each be allowed keys for access to the meter building for monitoring and inspection. The Water District shall grant to the City a right of access across its property or easements as needed in furtherance of this Agreement.
3. Meter. Water purchased by the Water District from the City shall be measured by a meter to be located at the point of delivery in the meter building. The meter shall be provided by the City and shall remain the property of the City and be maintained and replaced by the City when necessary in the discretion of the City. The City shall test the meter for accuracy periodically. The Water District shall have access to the meter for purposes of verification. The City shall read the meter once per month. The Water District shall be billed for the water on the City's monthly billing cycle and the terms thereof.
4. Backflow Prevention. Pursuant to state regulations and city ordinance, Water District shall provide and maintain cross connection control at the service connection between the City and the Water District through piping modifications or installation of a backflow prevention device at its sole expense.

5. Rate. The Water District shall pay for water provided by the City for all water received under this Contract during the preceding calendar month in an amount to be computed according to the Code of the City of Emporia, Kansas, as currently set forth at Section 28-43, as amended. Said rate as established by the City Code shall be subject to amendment and change from time to time by the City, and the charges to said Water District shall then be computed at the amended rate. Rate increases to the purchaser reflect the increased cost of water production, including power, chemicals, administration, labor, technology, repair, and replacement.
6. Rate Structure. It is understood and agreed that the categories of meter size, the number of gallons presently established for the minimum charge and the number of gallons presently established for charges exceeding the minimum charge may be altered by the City to reflect increased operating costs of the utility. It is further understood and agreed that the percentage of increase or decrease affecting the Water District rate in the event of such amendment shall apply to the entire per gallon charge.
7. Consumer Meters. All Consumer Meters shall be furnished by the Water District and maintained by the Water District at its expense. The Water District shall advise the City Finance Department of the number of consumer meters sold and unsold and the number of consumer meters in use as of December 31 of each year during the term of this agreement. This figure must be provided no later than February 1 of the following calendar year.
8. Annexation. All water supplied by the City to the Water District at the point of delivery, and all distribution mains, lines, equipment or other facilities installed or

provided by the Water District shall remain the absolute property of the Water District with full title and ownership thereto. If the City intends to annex any lands within the territory of the Water District, the City shall give written notice to the Water District of the City's intent to annex such land, not less than 60 days before the effective date of any ordinance annexing land into the boundaries of the City. K.S.A. 12-540 and 12-541, as amended, shall govern the procedure for annexation of Water District territory by the City.

9. Force Majeure. This Agreement is made with the mutual understanding that the supplying of water by the City shall be subject to all applicable provisions of the ordinances and regulations of the City of Emporia now existing or hereinafter enacted pertaining to the consumption and use of water, and that the City now has the capacity of producing treated water in a quantity sufficient to meet the normal demands of its users, including said Water District. The City hereby agrees to take reasonable care to provide an adequate supply of water at all times pursuant to the terms of this Contract, it being understood by the parties that the municipal water supply might by reason of unforeseen emergency, catastrophe, extended drought, or disaster commonly called an "Act of God", become inadequate to meet the needs of the inhabitants of the City, and that in such event the supplying of water by the City to the Water District may be curtailed, terminated or restricted on the same basis as to the residence of the City, and the Water District hereby agrees to extend the same restrictions to the Water District users as those imposed by the City upon its water users within the City Limits for the duration of the emergency. Additionally, the Water District shall hereby observe and enforce the Water Conservation Ordinance as set forth in the Code of the City of

Emporia, Kansas, as currently existing at Section 28-28 or as the same be subsequently amended, at the same time and in the same manner said ordinance is imposed upon the City users within the City of Emporia. Nothing in this Contract shall be deemed to constitute a dedication of the City's water rights to serve Water District territory.

10. Waiver and Covenant. In consideration of the agreement to supply water contained herein, the Water District agrees to waive, release, covenant, acquit and forever discharge the City, its Commissioners, officers and employees, of and from all actions, causes of action, damages or demands of whatever name or nature in any manner arisen, arising, or to grow out of the delivery and use of water supplied by the City or the operation and maintenance of the City's water plant and transmission facilities and equipment, including, but not by way of limitation, interruption of the supply of water for any reason.
11. Indemnity. From and after its passage through the District Meter, all water delivered to the Water District shall be the responsibility of the Water District, and any alleged injuries, claims, or damage arising from the consumption or distribution of water shall be the responsibility of the Water District. The Water District agrees to hold the City harmless from any liability for acts of the Water District or its agents resulting from or incident to its operation and maintenance of a water distribution system.
12. Damages. The City, its Commissioners, officers, and employees shall not be liable for special, indirect, incidental or consequential damages resulting from or arising out of any nonconformity or defect in water supplied under this Contract, or delay or failure of delivery for whatever cause.

13. Term. The Term of this contract shall be ten (10) years from the date this contract was executed until the 15th day of July 2030, unless renewed or extended by mutual written consent of the parties. The expiration of this contract, or any extension thereof, shall not in any way effect or diminish any right of security that the United States government or any federal or state loan agency may have in the property of said Water District by reason of any loan or contractual obligation of said Water District.
14. Assignment. This contract may be assigned by the Water District to the United States Government or other lending agency as consideration for any loans to the Water District, made or insured, or to be made or insured, in financing the construction, extension, repair and maintenance of the water system of the Water District. Except as above stated, this contract shall not be sublet or assigned by the Water District without the written consent of the City.
15. Limitations. It is further agreed between the parties that the Water District shall accept certain limitations concerning connection to its distribution system as follows:
 - a. The Water District may provide water service to commercial or business activities if situated in an area properly zoned for such purposes according to the zoning regulations and with the prior approval of the Emporia City Commission in its discretion if the business is a significant water user (anticipated to be greater than 10,000 gal. per day on average).
 - b. The Water District shall not knowingly or with reason to know provide water service to commercial or business activities of any nature established after the

date of this agreement unless said users have a state approved sewage system and are located within the limits of an approved sewage system.

The limitations shall be subject to review and revision as agreed to by the parties. If said revisions to the limitations shall be approved by both parties, the same shall be revised and executed by both parties, and attached hereto, and made a part of this Contract, superseding all previous limitations.

16. Material Change in Circumstance. Either party may request to reopen this agreement due to a material change of circumstances and the other party shall not unreasonably refuse to negotiate regarding the terms and limitations of this agreement. A Material Change in Circumstance includes, but is not limited to, a change in Water District's yearly water demand of 40% or more.
17. In the event that any term hereof upon due process is held invalid, such invalidity shall not affect the other terms hereof, and to this end the terms of this Contract are intended to be severable.
18. This contract shall and does hereby supersede all contracts entered into between the Water District and the City, prior to the date of execution contained herein, provided that the Water District shall not be relieved of the payment of any sums due the City pursuant to the terms of such agreement. This contract is solely between the City and Water District and no third party shall be deemed benefitted thereby or entitled to enforcement thereof. This Contract shall bind the successors of the parties to the same extent as the parties are bound.
19. In the event of breach of any provision of this Agreement by either party, the other party may, upon the expiration of thirty (30) days following the notice of said breach

and failure to cure such breach, petition the District Court of Lyon County, Kansas for injunctive or mandatory relief to cure such breach.

WITNESS OUR HANDS this ____ day of _____, 2020.

THE CITY OF EMPORIA, KANSAS
BY:

Danny Geifer, Mayor

ATTEST:

Kerry Sull, City Clerk

RURAL WATER DISTRICT NO. 2,
COFFEY COUNTY, KANSAS
BY:

Chairman

ATTEST:

Secretary

and failure to cure such breach, petition the District Court of Lyon County, Kansas for injunctive or mandatory relief to cure such breach.

WITNESS OUR HANDS this 6 day of July, 2020.

THE CITY OF EMPORIA, KANSAS
BY:

Danny Geifer, Mayor

ATTEST:

Kerry Sull, City Clerk

RURAL WATER DISTRICT NO. 2,
COFFEY COUNTY, KANSAS
BY:

John Decker
Chairman

ATTEST:

Richard Beyer
Secretary

AGENDA ITEM SUMMARY

MEETING DATE: July 15, 2020

ITEM NUMBER: 7

SUBJECT: Consider awarding a bid for the Industrial Park III Resurfacing & Drainage Improvements Project No. PV2004.

RECOMMENDATION: Staff recommends awarding the project to APAC-KS, Inc., Shear Division for a total base bid amount of \$ 500,923.51, an Add Alternate No. 1 Bid of \$ 35,311.57, and Ad Alternate No. 2 Bid of \$ 49,281.15 for a total bid amount of \$ 585,516.23.

BACKGROUND SUMMARY:

At 2:00 p.m. on Tuesday, July 7, 2020, the City Engineer's Office publicly opened a bid on the Industrial Park III Resurfacing & Drainage Improvements Project No. PV2004. The City had one bidder out of three plan holders submit a bid. The following is the bid received and the Engineer's Estimate.

Contractor	Base Bid	Add Alternate No. 1 Bid	Add Alternate No 2. Bid	Grand Total of Base Bid, Add Alternate 1 & 2
APAC-KS, Inc., Shear Div.	\$ 500,923.51	\$ 35,311.57	\$ 49,281.15	\$ 585,516.23
Engineer's Estimate	\$ 570,558.30	\$ 33,540.00	\$ 50,205.00	\$ 654,303.30

The staff recommends awarding the project to APAC-KS, Inc., Shear Division for the Base Bid plus both Bid Alternates for the total amount of \$585,516.23. This amount is within the Engineer's Estimate and the City's overall budget for the project.

The project is funded with the City's KDOT Federal Fund Exchange Money (25%) and KDOT Economic Development Money (75%).

Attached is the complete project bid tabulation sheet for the Base Bid, Add Alternate No. 1 Bid and Add Alternate No. 2 Bid and the Grand Total of all three.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

CITY OF EMPORIA, KS
BID TABULATION
FOR CONSTRUCTION OF INDUSTRIAL PARK III RESURFACING & DRAINAGE PROJECT NO. PV2004, KDOT PROJ. NO. 56 KA-5730-01
(South Ave., Logan Ave., and Weaver St.)

July 7, 2020
2:00 p.m.

Quantity	Units	Description	APAC-KS, Shears Division Emporia, KS		CITY ENGINEER'S ESTIMATE	
			Unit	Total	Unit	Total
BASE BID:						
1	L.S.	Mobilization	\$14,637.42	\$14,637.42	\$54,000.00	\$54,000.00
32.694	S.Y.	Asphalt Milling (2" Avg Depth)	\$2.01	\$65,714.94	\$2.25	\$73,561.50
3,934	TONS	HMA (Commercial Grade) (Class A)	\$77.85	\$306,261.90	\$82.00	\$322,588.00
15	TON	Asphalt Patching (4" Avg. Depth)	\$181.23	\$2,718.45	\$220.00	\$3,300.00
837	LF	Curb & Gutter (2'-6" Combined) (AE) (Remove & Replace)	\$45.16	\$37,798.92	\$46.00	\$38,502.00
144	S.Y.	Concrete Pavement (9" Reinf) (AE) (Remove & Replace)	\$132.26	\$19,045.44	\$125.00	\$18,000.00
111	S.Y.	Concrete Sidewalk (4" Plain) (AE) (Remove & Replace)	\$73.12	\$8,116.32	\$67.00	\$7,437.00
48	S.Y.	ADA Sidewalk Ramp	\$225.81	\$10,838.88	\$240.00	\$11,520.00
1	Ea.	Area Drop Inlet (24"x24")	\$3,660.92	\$3,660.92	\$1,500.00	\$1,500.00
53	L.F.	Storm Sewer (15" RCP)	\$113.03	\$5,990.59	\$48.00	\$2,544.00
10	C.Y.	Flowable Fill	\$157.10	\$1,571.00	\$150.00	\$1,500.00
2	Ea.	Utility Adjustment (Concrete) (Valve Box) (Water)	\$573.71	\$1,147.42	\$1,000.00	\$2,000.00
3	Ea.	Utility Adjustment (Concrete) (Manhole) (Sewer)	\$885.84	\$2,657.52	\$1,200.00	\$3,600.00
3	Ea.	Utility Adjustment (Valve Box Riser) (Valve Box) (Water)	\$79.33	\$237.99	\$100.00	\$300.00
3	Ea.	Utility Adjustment (Manhole Riser) (Manhole) (Sewer)	\$192.23	\$576.69	\$250.00	\$750.00
231	L.F.	Pavement Marking (Thermoplastic) (White) (6") (Solid)	\$0.86	\$198.66	\$1.20	\$277.20
1,824	L.F.	Pavement Marking (Thermoplastic) (Yellow) (4") (Double)	\$0.65	\$1,185.60	\$2.00	\$3,648.00

CITY OF EMPORIA, KS
BID TABULATION
FOR CONSTRUCTION OF INDUSTRIAL PARK III RESURFACING & DRAINAGE PROJECT NO. PV2004, KDOT PROJ. NO. 56 KA-5730-01
(South Ave., Logan Ave., and Weaver St.)

July 7, 2020
2:00 p.m.

Quantity	Units	Description	APAC-KS, Shears Division Emporia, KS		CITY ENGINEER'S ESTIMATE	
			Unit	Total	Unit	Total
1,296	L.F.	Pavement Marking (Thermoplastic) (Yellow) (4") (Broken)	\$0.65	\$842.40	\$1.20	\$1,555.20
42	L.F.	Pavement Marking (Thermoplastic) (Yellow) (12") (Diagonal)	\$6.45	\$270.90	\$2.50	\$105.00
100	L.F.	Pavement Marking (Intersection Grade) (White) (24") (STOP Line)	\$12.90	\$1,290.00	\$2.80	\$280.00
128	L.F.	Pavement Marking (Intersection Grade) (White) (24") (Type II Crosswalk)	\$12.90	\$1,651.20	\$2.80	\$358.40
4	Ea.	Pavement Marking (Intersection Grade) (White) (Right Arrow)	\$268.82	\$1,075.28	\$300.00	\$1,200.00
2	Ea.	Pavement Marking (Intersection Grade) (White) (Left Arrow)	\$268.82	\$537.64	\$300.00	\$600.00
1	Ea.	Pavement Marking (Intersection Grade) (Railroad Crossing)	\$645.16	\$645.16	\$1,200.00	\$1,200.00
624	L.F.	Pavement Marking Removal	\$2.69	\$1,678.56	\$3.00	\$1,872.00
1	L.S.	Temp Seed and Mulch	\$772.02	\$772.02	\$500.00	\$500.00
50	L.F.	Temp Slope Barrier (Silt Fence)	\$5.83	\$291.50	\$6.00	\$300.00
10	Ea.	Inlet Sediment Barrier	\$138.18	\$1,381.80	\$100.00	\$1,000.00
1	C.Y.	Sediment Removal (Set Price)	\$35.00	\$35.00	\$35.00	\$35.00
1	L.S.	Permanent Seeding, Fertilizer and Mulch	\$1,268.78	\$1,268.78	\$1,500.00	\$1,500.00
1	L.S.	Traffic Control	\$6,799.61	\$6,799.61	\$15,000.00	\$15,000.00
1	Hr.	Flagger (Set Price)	\$25.00	\$25.00	\$25.00	\$25.00
TOTAL AMOUNT OF BASE BID:				\$500,923.51		\$570,558.30

CITY OF EMPORIA, KS
BID TABULATION
FOR CONSTRUCTION OF INDUSTRIAL PARK III RESURFACING & DRAINAGE PROJECT NO. PV2004, KDOT PROJ. NO. 56 KA-5730-01
(South Ave., Logan Ave., and Weaver St.)

July 7, 2020
2:00 p.m.

Quantity		Units		Description		APAC-KS, Shears Division		CITY ENGINEER'S	
						Emporia, KS		ESTIMATE	
		Unit		Total		Unit		Total	
ADD ALTERNATE NO. 1:									
1	L.S.			Mobilization	\$392.63	\$392.63	\$2,500.00	\$2,500.00	
116	L.F.			Curb & Gutter (2'-6" Combined) (AE) (Remove & Replace)	\$45.16	\$5,238.56	\$65.00	\$7,540.00	
182	S.Y.			Concrete Pavement (9" Reinf) (AE) (Remove & Replace)	\$150.54	\$27,398.28	\$125.00	\$22,750.00	
1	L.S.			Permanent Seeding, Fertilizer and Mulch	\$634.39	\$634.39	\$250.00	\$250.00	
1	L.S.			Traffic Control	\$1,647.71	\$1,647.71	\$500.00	\$500.00	
TOTAL AMOUNT OF ADD ALTERNATE NO. 1:						\$35,311.57		\$33,540.00	
Quantity		Units		Description		Unit		Total	
ADD ALTERNATE NO. 2:									
1	L.S.			Mobilization	\$678.90	\$678.90	\$2,500.00	\$2,500.00	
87	C.Y.			Common Excavation	\$16.86	\$1,466.82	\$32.00	\$2,784.00	
38	C.Y.			Compaction of Earthwork	\$13.56	\$515.28	\$12.00	\$456.00	
71	S.Y.			Removal of Existing Sidewalk	\$16.52	\$1,172.92	\$10.00	\$710.00	
277	S.Y.			Combined Material (AB-3) ((6" Compacted)	\$9.95	\$2,756.15	\$20.00	\$5,540.00	
127	L.F.			Curb & Gutter (2'-6" Combined) (AE) (Remove & Replace)	\$45.16	\$5,735.32	\$65.00	\$9,255.00	

CITY OF EMPORIA, KS
BID TABULATION
FOR CONSTRUCTION OF INDUSTRIAL PARK III RESURFACING & DRAINAGE PROJECT NO. PV2004, KDOT PROJ. NO. 56 KA-5730-01
(South Ave., Logan Ave., and Weaver St.)

July 7, 2020
2:00 p.m.

Quantity	Units	Description	APAC-KS, Shears Division Emporia, KS		CITY ENGINEER'S ESTIMATE	
			Unit	Total	Unit	Total
ADD ALTERNATE NO. 2:						
230	S.Y.	Concrete Pavement (9" Reinforced) (AE) (Remove & Replace)	\$150.54	\$34,624.20	\$127.00	\$29,210.00
1	L.S.	Permanent Seeding, Fertilizer and Mulch	\$683.85	\$683.85	\$250.00	\$250.00
1	L.S.	Traffic Control	\$1,947.71	\$1,947.71	\$500.00	\$500.00
TOTAL AMOUNT OF ADD ALTERNATE NO. 2:				<u>\$49,281.15</u>		<u>\$50,205.00</u>
TOTAL AMOUNT OF BASE BID, ADD ALTERNATE NO. 1 & NO. 2:				<u>\$585,516.23</u>		<u>\$654,303.30</u>

AGENDA ITEM SUMMARY

MEETING DATE: July 15, 2020

ITEM NUMBER: 8

SUBJECT: Consider accepting the KDOT CCLIP US-50 (6th Ave. & Prairie St.) Intersection Improvements Project No. PV1909, KDOT Project No. 50-56 KA-5412-01.

RECOMMENDATION: Recommend accepting the KDOT CCLIP US-50 (6th Ave. & Prairie St.) Intersection Improvements Project No. PV1909, KDOT Project No. 50-56 KA-5412-01 Agreement and Authorize Mayor to sign.

BACKGROUND SUMMARY:

KDOT has awarded the City of Emporia \$600,000.00 through the CCLIP program with the City's portion being 10%. The CCLIP Geometric Street Improvements project will address road and traffic signal improvement at 6th Avenue & Prairie Street. The CCLIP Project is funded in KDOT fiscal year 2022.

Attached is a copy of the KDOT CCLIP Agreement.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

PROJECT NO. 50-56 KA-5412-01
INTERSECTION IMPROVEMENT
CITY OF EMPORIA, KANSAS

AGREEMENT

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

RECITALS:

- A. The Secretary has authorized a intersection improvement project, as further described in this Agreement.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City.
- C. The City desires to construct the Project.
- D. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such state aid, such work is required to be done in accordance with the laws of Kansas.

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

ARTICLE I

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

1. **"Agreement"** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. **"City"** means the City of Emporia, Kansas, with its place of business at 719 Commercial Street, Emporia, KS 66801.
3. **"Construction"** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
4. **"Construction Contingency Items"** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
5. **"Construction Engineering"** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
6. **"Consultant"** means any engineering firm or other entity retained to perform services for the Project.

7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
11. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.
12. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
13. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
14. **“Non-Participating Costs”** means the costs of any items or services which the Secretary reasonably determines are not Participating Costs.
15. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
16. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
17. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
18. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **intersection improvements at US-50 and Prairie Street in Emporia, Kansas**, and is the subject of this Agreement.

19. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
20. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
21. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
22. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.
23. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT’s Bureau of Right of Way and the Office of Chief Counsel.
2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the Construction of the Project in accordance with the final Design Plans and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the City.
3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor’s agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party’s claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.
4. **Payment of Costs.** The Secretary agrees to be responsible for ninety percent (90%) of the total actual costs of Preliminary Engineering, Right of Way, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering, but not to exceed \$600,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering that exceed \$666,666.00 for the Project. The Secretary shall not be responsible for the total actual costs of Utility adjustments or Non-Participating Costs for the Project.

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

ARTICLE III

CITY RESPONSIBILITIES:

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

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

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

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

5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 3 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

6. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 3 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 3 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

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

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

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

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

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

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

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

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

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

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

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

(e) Trails and Sidewalks on KDOT Right of Way. With regard to any bike or pedestrian paths or sidewalks ("Trail/Sidewalk") constructed pursuant to the Design Plans, the City agrees as follows:

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

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

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

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

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

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

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

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

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

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

street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

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

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

(f) Cost of Relocation. Except as provided by state law, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state laws. Except where the Utility adjustments are Participating Costs for the Project, the expense of the removal or adjustment of only privately owned Utilities located on private Right of Way shall be borne by the City and the Secretary in the same proportion as other approved Construction costs as stipulated elsewhere in this Agreement.

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

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

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

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

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

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

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

(a) **Temporary Traffic Control.** The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the City's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the City of the determinations made pursuant to this section.

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

GENERAL PROVISIONS:

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

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

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

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

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

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

7. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

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

ATTEST:

THE CITY OF EMPORIA, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

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

CONTRACTUAL PROVISIONS ATTACHMENT

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

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

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

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

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

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

KANSAS DEPARTMENT OF TRANSPORTATION

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

PREAMBLE

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

CLARIFICATION

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

ASSURANCE APPENDIX A

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

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

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

ASSURANCE APPENDIX E

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

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

AGENDA ITEM SUMMARY

MEETING DATE: July 15, 2020

ITEM NUMBER: 9

SUBJECT: Consider accepting the selection of BG Consultants, Inc. as the project engineer for the contract KDOT CCLIP US-50 (6th Ave & Prairie St.) Improvements Project No. PV1909, KDOT Project No. 50-56 KA-5412-01 with BG Consultants, Inc.

RECOMMENDATION: Recommend the selection of BG Consultants, Inc. as the project engineer and accepting the KDOT CCLIP US-50 (6th Ave & Prairie St.) Improvements Project No. PV1909, KDOT Project No. 50-56 KA-5412-01 contract with BG Consultants, Inc.

BACKGROUND SUMMARY:

KDOT has awarded the City of Emporia \$600,000.00 through the CCLIP program with the City's portion being 10% (\$55,000.00). The CCLIP Geometric Street Improvements project will address roadway geometric and traffic signal improvements at 6th Avenue & Prairie Street. The CCLIP Project is funded in KDOT fiscal year 2022 with the City's share being paid out of the Multi Year funds.

Attached is a copy of the City's Request for Qualifications for selection, KDOT Attachments, and the KDOT CCLIP Contract.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: July 15, 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.

Tentative Agenda for July 22nd Study Session

- Fire truck Purchase
- Review Non-Personnel Funds & 5-year plan.
- Update of New Floodplain Map.
- Discuss the Vacating of Road K.
- Discuss New Website
- Update on Commission Goals
- Discuss Possible Annexation of Properties North of 30th Ave.
- Discuss ICA w/Fanestil
- Discuss City Fencing Policy & Price Update.
- Discuss Sidewalk Plan at Peter Pan Park.
- Pickle Ball Courts

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: July 15, 2020

ITEM NUMBER: 11

SUBJECT: Executive Session

RECOMMENDATION:

BACKGROUND SUMMARY:

At this time, the City Commission request an executive session to discuss proprietary information of a potential residential developer.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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

AGENDA ITEM SUMMARY

MEETING DATE: July 15, 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 retail/service developer.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

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