



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**March 28, 2019**

**Department** Administration

**Director Approval** Kelly Passauer

**AGENDA ITEM** Consider authorizing an agreement with Morrison Builders, Inc. for the temporary use of the City’s right-of-way adjoining their building at 223 West Main Street.

**SUMMARY RECOMMENDATION** Approve the agreement.

**BACKGROUND** In years past the Commission has authorized use of right-of-way for private purposes subject to the issuance of a temporary use permit. We take this approach so that the City maintains total control over the rights-of-way for future needed improvements if they become necessary but still cooperate with adjoining property owners.

The owners of 223 West Main Street have requested the following:

1. Extension on the northwest corner of the building for a wooden patio with wrought iron fencing around it. The approximate dimensions are 30ftx10ft.
2. Space to place condensers on the west wall of the building for Indy Brew Works and install a 5ft privacy fence to act as a screen wall cover for this equipment to prevent exposure to passing traffic.
3. Concrete steps and walkway at the Southwest Brownstone entrance to the staircase for apartments. This would extend and connect to the city sidewalk.
4. Two designated parking spaces on the Southwest corner for the Lofts at West Main Apartments, for the purpose of loading and unloading.
5. Relocation of the south portion of sidewalk to extend to the curb on the west sidewalk extended to the curb line.

With the renovation of this property, which is essentially landlocked, there are limited alternatives available, and any impacts on public safety or other businesses appear to be minimal.

**BUDGET IMPACT** The agreement states that any costs associated with restoring the right-of-way are the responsibility of the property owner. Therefore, the future budget impact would consist of the economic benefits of a new business in the downtown historic district.

**SUGGESTED MOTION** I move to authorize an agreement with Morrison Builders, Inc. for the temporary use of the City's right-of-way adjoining their building at 223 West Main Street.

**SUPPORTING DOCUMENTS**

1. Letter request.
2. Agreement prepared by the City Attorney.



Dear, Craig Whitehead

My name is Steve Morrison with Morrison Builders, Inc and we are renovating the old Stranton Building at 223 West Main street that was in process to be slated for demolition. We are renovating the entire building to include a Brewery, six apartments, and exterior improvements. We would like to request a few things per a Land Use Agreement for the Brewery and Apartments renovation project.

We wish to have a Land Use Agreement to reflect the following items:

- 1-Extension on the northwest corner of the building for a wooden patio with wrought iron fencing around it. The approximate dimensions are 30ftx10ft.
- 2-Space to place condensers on the west wall of the building for Indy Brew Works and install a 5ft privacy fence to act as a screen wall cover for this equipment to prevent exposure to passing traffic.
- 3-Concrete steps and walkway at the Southwest Brownstone entrance to the staircase for apartments. This would extend and connect to the city sidewalk.
- 4-Two designated parking spaces on the Southwest corner for the Lofts at West Main Apartments, for the purpose of loading and unloading.
- 5-Relocation of the south portion of sidewalk to extend to the curb on the west sidewalk extended to the curb line.

We appreciate your time and consideration in these matters to allow us to move forward towards a completion on this exciting downtown project.

Please contact me directly with any questions or comments.

With gratitude,

Steve Morrison

*Steve Morrison*

Morrison Builders Inc,

479-435-0853

steve@morrisonbuildersinc.com

## AGREEMENT FOR TEMPORARY USE OF RIGHT-OF-WAY

*This Agreement* is entered into between the **City of Independence, Kansas**, hereafter City, and **Morrison Builders, Inc.**, an Arkansas for profit corporation, hereafter Owner.

*Whereas*, Owner owns the following described real estate:

Commencing at the NW corner of Lot 13, Block 56, Original City of Independence, thence South 80 feet, thence East 40 feet, thence North 80 feet, thence West 40 feet to place of beginning, Montgomery County, Kansas (commonly known as 223 West Main, Independence, Kansas)

*And Whereas*, Owner's real estate is situated on the Southwest corner of the intersections of West Main Street and South 9th Street.

*And Whereas*, City owns or controls the right-of-way for sidewalks and streets on the North and West sides of Owner's real estate.

*And Whereas*, Owner is in the process of remodeling the improved structure on its real estate and desires to enter into an agreement with City for the temporary use of City's right-of-way.

*Now Therefore*, in consideration of the mutual covenants and agreements hereinafter contained, the parties agree to the following:

1. **Owner's Use of Right-of-Way:** Owner shall have permission to use City's right-of-way on a temporary basis in the following manner:

a. Owner may construct a patio with appropriate fencing around it extending from the Northwest corner of the building currently situated on Owner's real estate. The approximate dimensions of the patio shall be 10 feet East and West by 30 feet North and South.

b. Owner may place condensers on the West wall of the building located on Owner's real estate and shall install a five foot privacy fence around them.

c. Owner may install concrete steps and a walkway at the Southwest corner of the building located on Owner's real estate for the purpose of accessing the second and third story apartments located in the building on Owner's real estate.

d. Owner may designate two parking spaces located near the Southwest corner of the building on Owner's real estate for the purpose of access to the apartments located on the second and third story of Owner's building.

e. Owner may relocate a portion of the public sidewalk which runs along the West side of Owner's real estate in order to accommodate the improvements set forth above.

2. **Conditions:** Owner shall comply with the following conditions:

a. Owner must obtain approval from the City as to its site plan and building specifications.

b. All improvements requested in the preceding paragraph shall be at the sole expense of Owner.

c. Owner shall comply with all applicable City ordinances.

3. **Term:** This agreement shall be for a term of one year and shall thereafter automatically renew on an annual basis until notice of termination is given as hereinafter provided.

4. **Termination:** Either party may terminate this agreement for any reason upon thirty (30) days' written notice to the other. In the event Owner violates the terms and conditions of this agreement, the City may terminate this agreement upon

ten (10) days' written notice to Owner.

5. **Duty Upon Termination:** Upon termination of this agreement for any reason, City, at its sole option, may notify and require Owner to restore the right-of-way to its original condition. Upon receiving such notice, Owner shall have thirty (30) days within which to restore the right-of-way to its original condition. Any improvements remaining after expiration of such period shall become the property of City without compensation to Owner or, at City's sole option, the City may restore the right-of-way to its original condition and Owner shall reimburse the City for the cost of restoration.

6. **Maintenance:** Owner shall maintain the right-of-way in good condition, free of accumulation of trash and debris including snow removal. In the event it is necessary for the City to repair or maintain the right-of-way, the City shall have the authority to make such repairs or maintenance as may be required. The City's maintenance shall be deemed to include repairs or improvements to utilities performed either by the City or an independent utility company. In the event of such repairs or improvements, regardless of the entity making the repairs or improvements, neither the City nor the party making the repairs or improvements shall have any obligation to Owner to restore the right-of-way to its prior condition or to compensate Owner for damage to improvements made by Owner on the right-of-way.

7. **Indemnification:** Owner shall indemnify and hold harmless the City from any and all claims arising in any way from the use of the above described right-of-way by Owner, its agents and employees, or its customers and invitees.

8. **Insurance:** Owner shall secure and maintain continuously in force a policy of comprehensive general liability insurance with policy limits of at least \$500,000 per occurrence and shall name the City as an additional insured.

9. **Binding Effect:** This agreement shall constitute a covenant running with the land and shall be binding upon the heirs, successors and assigns of the parties hereto.

**CITY OF INDEPENDENCE, KANSAS**

By: \_\_\_\_\_  
Louis Ysusi, Mayor

ATTEST:

\_\_\_\_\_  
David W. Schwenker, City Clerk

**MORRISON BUILDERS, INC.**

By: \_\_\_\_\_  
Beverly Morrison, President

STATE OF KANSAS     )  
                                  ) SS:  
MONTGOMERY COUNTY    )

**BE IT REMEMBERED**, That on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared **Louis Ysusi**, Mayor, and **David W. Schwenker**, City Clerk, of



