

**EDGERTON CITY COUNCIL  
MEETING AGENDA  
CITY HALL, 404 EAST NELSON STREET  
June 13, 2019  
7:00 P.M.**

**Call to Order**

1. **Roll Call** \_\_\_\_ Roberts \_\_\_\_ Longanecker \_\_\_\_ Brown \_\_\_\_ Conus \_\_\_\_ Lewis \_\_\_\_ Smith
2. **Welcome**
3. **Pledge of Allegiance**

**Consent Agenda** *(Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action)*

4. Approve Minutes for May 23, 2019 Regular City Council Meeting
5. Approve Resolution No. 06-13-19A Edgerton's Downtown Summer Movie Nights as "Public Festivals" For the Purposes of the City's Noise Restrictions Pursuant to Section 11-604 of the City Code of the City of Edgerton, Kansas

**Regular Agenda**

6. **Public Comments.** Persons who wish to address the City Council regarding items not on the agenda and that are under the jurisdiction of the City Council may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court or other outside tribunals are not permitted. Please notify the City Clerk before the meeting if you wish to speak. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.
7. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

**Business Requiring Action**

8. **CONSIDER ORDINANCE NO. 2012 AUTHORIZING THE CITY OF EDGERTON, KANSAS, TO ISSUE HOME RULE REVENUE BONDS (LOGISTICS PARK INFRASTRUCTURE PHASE TWO PROJECTS) SERIES 2019A, IN AN AGGREGATE MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$9,000,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY OR REIMBURSE THE COSTS OF PUBLIC INFRASTRUCTURE IMPROVEMENTS; AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

9. **CONSIDER RESERVE POLICY**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

10. **Report By The City Administrator**

11. **Report By the Mayor**

**12. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B)(2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR**

**13. CONSIDER DEVELOPMENT AGREEMENT WITH MY STORE III INC.**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**14. Future Meeting/Event Reminders:**

- June 14<sup>th</sup> – 15<sup>th</sup>: Edgerton Frontier Days
- June 19<sup>th</sup>: Senior Lunch – Noon
- June 27<sup>th</sup>: City Council – 7pm
- June 27<sup>th</sup>: City Council Work Session (immediately following City Council) – 2020 General Fund Budget
- June 28<sup>th</sup>: Blood Drive at Community Hall - Noon – 6pm
- July 3<sup>rd</sup>: Community Picnic and Firework Show - 6pm – 10:30pm

**15. Adjourn** Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**City of Edgerton, Kansas**  
**Minutes of City Council Regular Session**  
**May 23, 2019**

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on May 23, 2019. The meeting convened at 7:00 p.m. with Mayor Roberts presiding.

**1. ROLL CALL**

Ron Conus	present
Clay Longanecker	present
Josh Lewis	present
Katee Smith	present
Jody Brown	absent

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator Beth Linn
- Assistant City Administrator Scott Peterson
- City Attorney Lee Hendricks
- City Clerk Rachel James
- Development Services Director Katy Crow
- Finance Director Karen Kindle
- Public Works Director Dan Merkh
- Public Works Superintendent Trey Whitaker
- Marketing and Communications Manager Kara Banks
- Utilities Superintendent Mike Mabrey
- ElevateEdgerton! President James Oltman

**2. WELCOME**

**3. PLEDGE OF ALLEGIANCE**

**CONSENT AGENDA**

4. Approve Minutes for May 9, 2019 Regular City Council Meeting
5. Approve Final Acceptance of 2018 CARS 4<sup>th</sup> & Nelson Street Improvements Project and Authorize Final Payment to Linaweaver Construction
6. Approve Resolution No. 05-23-19A Providing for the Creation of Temporary No Parking Zones On Certain Streets To Permit The Holding of Frontier Days
- 6a. Approve Consent Agreement KS6193/FA #10130621/MRKSL014913 Between The City Of Edgerton And AT&T Wireless Services

Motion by Longanecker, Second by Lewis to the consent agenda.

Motion passed 4-0.

**REGULAR AGENDA**

7. **Public Comments.**

Eric Orrison, 100 W 7<sup>th</sup> Street, Mr. Orrison had general questions about Highway 56 Trail easements and negotiations for his property.

Beth Linn, City Administrator, outlined the process for the trail and acquiring right-of-way and stated that City Staff would be in contact with Mr. Orrison as the project progresses.

8. **Declaration.** None.

9. Presentation for 2020 Budget Request by Project Grad

No representative from Project Grad 2020. Consensus to continue funding for 2020 at \$2000.

10. Presentation for 2020 Budget Request by UCS

Marya Schott, for Human Service Fund, a non-profit serving Johnson County which focuses on mobilizing targeted resource allocations for residents of Johnson County who are in need of assistance. Ms. Schott went into detail on the history of UCS in Johnson County, how these funds are raised and distributed.

Mayor Roberts stated that UCS has a ton of data and they have taken real initiative looking at affordable workforce housing within the county.

There was a consensus to provide funding at \$2000 for the 2020 Budget Year to UCS.

11. Presentation for 2020 Budget Request by Johnson County Human Services

Brandy Hodge and Joanne Hayworth, Johnson County Human Services Representatives, presented on the 2020 Budget Request from Johnson County Human Services which provides stabilization assistance, homelessness assistance, and utility assistance for county residents needing support.

This organization has been providing Utility and Emergency Assistance to citizens for over 25 years. The organization receives dollar matching from Johnson County and they are requesting \$2000 for the 2020 Budget year.

Mayor Roberts asked about KCP&L and Kansas Gas. Ms. Hodge stated that both have assistance programs that are managed within the individual companies.

Councilmember Conus asked how someone applies for assistance through Johnson County Human Services. Ms. Hodge stated that residents can call the Southwest Multi-Service Center at (913) 715-6653. Beth Linn, City Administrator, also stated that residents can always call City Hall at (913) 893-6231 if they have any questions or need help getting connected to available services.

There was a consensus to provide funding at \$2000 for the 2020 Budget Year to Johnson County Human Services.

#### 12. Presentation for 2020 Budget Request by Miami County Conservation

Leslee Rigney, Miami County Conservation Representative, introduced the 2020 Budget request for the organization.

Ms. Rigney stated they have been working over the past years to reduce nitrogen, phosphorous, and other pollutants from entering local streams. Recently the conservation group has been working on stabilization techniques for the local stream banks. Ms. Rigney also outlined other conservation and education efforts the group has focused on in the past couple years and what they hope to focus on in 2020.

Mayor Roberts asked how much the large storms we've been having affect velocity through the streams. Ms. Rigney stated that the streams in this area were not meant for this kind of rainfall, so there definitely has been an impact from these larger storms.

There was a consensus to provide funding at \$4,000 for the 2020 Budget Year to Miami County Conservation.

Supplemental information for the Miami County Conservation presentation is available on the Edgerton City website on the May 23<sup>rd</sup>, 2019 City Council page.

#### 13. Presentation for 2020 Budget Request by Gardner Edgerton Chamber of Commerce

Jason Camus, President of the Gardner Edgerton Chamber of Commerce, presented the budget request which is \$2,000 for the contract and \$2,000 for the GE magazine. Mr. Camus overviewed the status of 2019 deliverables and events happening in the Gardner Edgerton community.

There was a consensus to provide funding at \$4,000 for the 2020 Budget Year to Gardner Edgerton Chamber of Commerce.

#### 14. Presentation for 2020 Budget Request by ElevateEdgerton!

James Oltman, ElevateEdgerton! President, gave an overview of the completed 2018-2019 deliverables, a progress update on 2019 deliverables, and plans ElevateEdgerton! has going into 2020. Highlights include a completed hotel feasibility study, five new ElevateEdgerton! members, and successful events where local high schoolers were able to tour LPKC and learn about careers.

Councilmember Conus thanks Mr. Oltman for a tour of the ElevateEdgerton! offices and stated he feels more confidence in the progress Elevate is making.

Mayor Roberts stated Mr. Oltman has a difficult job as a one man show and he has done an excellent job and that they are seeing the potential on the horizon.

There was a consensus to fund ElevateEdgerton! at \$75,000 for the 2020 Budget Year with \$10,000 in-kind contributions.

Supplemental information for the ElevateEdgerton! presentation is available on the Edgerton City website on the May 23<sup>rd</sup>, 2019 City Council page.

## **BUSINESS REQUIRING ACTION**

### **15. PUBLIC HEARING FOR RESOLUTION NO 05-23-19B CONSENTING TO THE PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO COLDPOINT LOGISTICS REAL ESTATE, LLC OR ITS SUCCESSORS IN INTEREST**

Scott Anderson, City Bond Attorney, outlined the Resolution of Intent for Phase 4 of the Coldpoint Building. This would be an approximately 147,820 sq. ft. expansion to the existing 473,270 sq. ft. facility.

Mayor Roberts opened the Public Hearing at 8:15pm. There were no public comments.

Mayor Roberts closed the Public Hearing at 8:17pm.

### **16. CONSIDER RESOLUTION NO. 05-23-19B CONSENTING TO THE PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO COLDPOINT LOGISTICS REAL ESTATE, LLC OR ITS SUCCESSORS IN INTEREST**

Scott Anderson, City Bond Attorney, outlined that the partial assignment of the Master Resolution of Intent assigns \$26,000,000 of the Master Resolution of Intent to ColdPoint for constructing this project.

Mayor Roberts requested the Cost-Benefit analysis be available in a supplemental packet that is posted on the Edgerton City website on the May 23<sup>rd</sup>, 2019 City Council page.

Motion by Longanecker, Second by Smith to approve Resolution No. 05-23-19B.

Motion passed 4-0.

### **17. AN ORDINANCE AUTHORIZING THE CREATION OF THE LPKC DISTRICT NO. 2 COMMUNITY IMPROVEMENT DISTRICT, LEVYING SPECIAL ASSESSMENTS WITHIN SUCH DISTRICT, AND APPROVING A DEVELOPMENT AGREEMENT**

Scott Anderson, City Bond Attorney, stated this Ordinance would create a Community Improvement District on some or all of the Phase Two Land. The Special assessments would be equal to \$0.05 a square foot for all structures constructed within the district that are 50,000 square feet or larger that constitute a warehouse, manufacturing, or distribution facility.

The Ordinance would create the LPKC District No. 2 Community Improvement District and the City would be able to levy the special assessments provided for in the Development Agreement. Mr. Anderson stated that a similar Community Improvement District was created for the Kubota project.

There were no questions or comments.

Motion by Longanecker, Second by Lewis to approve Ordinance No. 2011.

Motion passed, 4-0.

**18. CONSIDER COLLATERAL ASSIGNMENT OF RIGHTS UNDER THE LPKC DISTRICT NO. 2 COMMUNITY IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT**

Scott Anderson, City Bond Counsel, stated that NorthPoint was obtaining loans from UMB Bank to finance its project and public infrastructure improvements. As a condition to making the loans, UMB Bank is requiring that NorthPoint assign payments it is to receive under the Phase 2 Development Agreement, LPKC CID District No. 1 and LPKDC CID District No. 2 to UMB Bank pursuant to the Collateral Assignment of CID Revenues and Collateral Assignment of Development Agreement. UMB Bank is requiring that the City acknowledge both of these collateral assignments. The resolution authorizes the City to acknowledge both of these collateral assignments.

Motion by Longanecker, Second by Lewis to approve Collateral Assignment of Rights under the LPKC District No. 2 Community Improvement District Development Agreement.

Motion passed, 4-0.

**19. CONSIDER PRELIMINARY DESIGN-BUILD AGREEMENT BETWEEN CITY OF EDGERTON AND MILES EXCAVATING, INC. FOR 2019 STREET RECONSTRUCTION PROJECT**

Dan Merkh, Public Works Director, introduced the Preliminary Design-Build Agreement between the City of Edgerton and Miles Excavating, Inc. and Cook Flat Strobel for the 2019 Street Reconstruction Project which targets streets identified as passed their useful life.

Requests for Qualifications were due April 24, 2019 and interview with the teams were conducted May 2, 2019. Staff recommends the Miles Excavating/ Cook Flat Strobel (CFS)/TREKK and the most qualified team for the project.

Councilmember Smith asked about a general overview of the project. Mr. Merkh and Beth Linn, City Administrator, provided detail and described information shown on the map attachments within the Agenda Packet.

Councilmember Conus stated that residents have complained about the road for a long time and that this is an important project. Mayor Roberts stated that the partnership with Logistics Park- Kansas City has provided the funds for the complete reconstruction of the

roads. Ms. Linn stated that this is the most extensive replacement/residential street reconstruction with the pace the City wants.

Motion by Lewis, Second by Smith to approve the Preliminary Design-Build Agreement between the City of Edgerton, Kansas and Miles Excavating, Inc. for 2019 Street Reconstruction Project pending changes from City Attorney and authorize the Mayor to execute the Agreement.

Motion passed, 4-0.

## **20. CONSIDER 2019 ANNUAL STREET MAINTENANCE PROGRAM**

Dan Merkh, Public Works Director, stated that Staff and BG Consultants compiled information on the section of roadway needing maintenance activities in 2019. Staff recommends that Council consider Ultrathin Bonded Asphalt Surface (UBAS) and concrete joint sealing for sections of roadway at LPKC for the 2019 Street Maintenance Program.

The 2019 Budget includes funding of \$51,469. Staff would recommend allocating additional funds from (1) \$19,869 of unused funds originally budgeted for the 2018 Annual Street Maintenance Program, and (2) \$6,552 from unallocated LPKC Maintenance Fee not previously dedicated to any project.

Motion by Lewis, Second by Longanecker to approve the 2019 Annual Street Maintenance Program.

Motion passed, 4-0.

## **21. Report by the City Administrator**

Kara Banks, Marketing and Communications Manager, was introduced to Council. She overviewed her background on KMBZ.

Dan Merkh, Public Works Director, gave an overview of the 2018-2019 Snow Season. In total, there was 29.1 inches of snowfall, 672 man-hours, 2301 lane miles of snow plow operations. There were issues with the level of inconsistency in the towing of vehicles as well as LPKC clearing the sidewalks. Recommendations for next season include more coordination with the Sheriff's Office, Equipment Assessment, Snow Crew Structure, and an RFP for Salt. Mr. Merkh also stated that Staff had received a number of compliments on the Snow Removal during the 2018-2019 Season which he read excerpts from.

Councilmember Lewis said kudos to City Staff for the Snow Removal and to keep up the good work next snow season.

Mayor Roberts said that Staff should keep up the good work and that we have done better than neighboring communities throughout the season.

There were more general compliments on the snow season and a few questions about towing during the season.



22. **Report by the Mayor** None.

23. **Future Meeting/Event Reminders:**

- June 1<sup>st</sup>: Summer Kick Off Block Party – 6:30PM
- June 11<sup>th</sup>: Planning Commission Work Session – 5PM
- June 11<sup>th</sup>: Planning Commission – 7PM
- June 13<sup>th</sup>: City Council – 7PM
- June 13<sup>th</sup>: City Council Budget Work Session – Immediately following Council
- June 14<sup>th</sup>-15<sup>th</sup>: Edgerton Frontier Days
- June 19<sup>th</sup>: Senior Lunch – Noon
- June 27<sup>th</sup>: City Council – 7PM
- June 27<sup>th</sup>: City Council Budget Work Session – Immediately following Council
- July 3<sup>rd</sup>: Community Picnic & Fireworks Show – 6PM to 10:30PM

24. **CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B)(2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY, CITY ADMINISTRATOR, AND ASSISTANT CITY ADMINISTRATOR**

Motion by Smith, Second by Lewis to recess into executive session pursuant to K.S.A. 75-4319 (b)(1) for the purpose of discussing contract negotiations to include City Attorney, City Administrator, and Assistant City Administrator for five (5) minutes.

Motion was approved, 4-0.

Session recessed at 9:20 pm. Meeting reconvened at 9:25 pm.

Motion by Lewis, Second by Longanecker to returned to open session.

Motion was approved, 4-0.

Motion by Longanecker, Second by Lewis to approve Wiedemann Inc. Change Order #4 related to Nelson Street Water Line Improvements.

Motion was approved, 4-0.

25. **Adjourn**

Motion by Lewis, Second by Smith to adjourn.

Motion was approved 4-0. The meeting adjourned at 9:30 pm.

## City Council Action Item

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**Council Meeting Date:** June 13, 2019

**Department:** Parks and Recreation

**Agenda Item: Consider Resolution No. 06-13-19A Recognizing Edgerton's Downtown Summer Movie Nights As "Public Festivals" For The Purposes Of The City's Noise Restrictions Pursuant To Section 11-604 Of The City Code Of The City Of Edgerton, Kansas**

**Background/Description of Item:**

The City of Edgerton's Downtown Summer Movie Nights will be held July 13<sup>th</sup> and August 3<sup>rd</sup>.

Within this resolution is permission to waive the City's noise restrictions in order for all to enjoy the movies on July 13<sup>th</sup> and August 3<sup>rd</sup>. It is anticipated that the movies will be completed by 11:30 p.m. each evening.

City staff will inform the Johnson County Sheriff's Office of the proposed request to waive the City's noise restrictions.

**Related Ordinance(s) or Statue(s):**

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**Funding Source:** N/A

**Budget Allocated:** N/A

**Finance Director Approval:** N/A

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**Recommendation: Approve Resolution No. 06-13-19A Recognizing Edgerton's Downtown Summer Movie Nights As "Public Festivals" For The Purposes Of The City's Noise Restrictions Pursuant To Section 11-604 Of The City Code Of The City Of Edgerton, Kansas**

**Enclosed:**

Draft Resolution No. 06-13-19A

**Prepared by:** Maddie Becker, Parks and Recreation Coordinator

**RESOLUTION NO. 06-13-19A**

**A RESOLUTION RECOGNIZING EDGERTON'S DOWNTOWN SUMMER MOVIE NIGHTS AS "PUBLIC FESTIVALS" FOR THE PURPOSES OF THE CITY'S NOISE RESTRICTIONS PURSUANT TO SECTION 11-604 OF THE CITY CODE OF THE CITY OF EDGERTON, KANSAS**

**WHEREAS**, the City of Edgerton, Kansas intends to hold Edgerton's Downtown Summer Movie Nights in 2019 on June 1<sup>st</sup>, July 13<sup>th</sup> and August 3<sup>rd</sup>; and

**WHEREAS**, Chapter XI, Article 6 of the Code of the City of Edgerton regulates the levels of noise and sound within the City and prohibits certain excessive, amplified or unnecessary noises, including certain noises occurring between 10:00 P.M. and 8:00 A.M.; and

**WHEREAS**, Section 11-604 specifically states that such regulations do not apply when the governing body recognizes the event where the noise and sound is to occur as a "public festival"; and

**WHEREAS**, the City wishes to recognize these movie night events as "public festivals," therefore exempting them from any noise or sound restrictions during the pendency of the events.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS, THAT:**

**SECTION ONE: Edgerton Downtown Summer Movie Nights as "Public Festivals":** Edgerton Downtown Summer Movie Nights are hereby recognized as public festivals and, therefore, the noise restrictions contained within Article 6 of Chapter XI of the Code of the City of Edgerton shall not apply to noise and sounds made or generated by the movie nights held on June 1, 2019, July 13, 2019 and August 3, 2019.

**SECTION TWO - Effective Date:** This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body.

ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 23<sup>rd</sup> DAY OF MAY 2019.

ATTEST:

CITY OF EDGERTON, KANSAS

\_\_\_\_\_  
Rachel A. James, City Clerk

By: \_\_\_\_\_  
Donald Roberts, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Lee W. Hendricks, City Attorney

## CITY OF EDGERTON, KANSAS

### COUNCIL AGENDA ITEM

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**Council Meeting Date:** June 13, 2019

**Agenda Item:** Ordinance Authorizing Series 2019A Home Rule Revenue Bonds

**Subject:** Home Rule Revenue Bonds for Phase 2 Public Infrastructure Improvements

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The City and Edgerton Land Holding Company, LLC (“ELHC”) entered into a Phase Two Development Agreement for the development of Phase Two of the Logistics Park – Kansas City. Both the City and ELHC have been spending funds on various public infrastructure improvements.

The Development Agreement contemplates that the City will issue home rule revenue bonds to reimburse the City for amounts it has been spending and to pay ELHC for amounts it has spent. The projects include the following:

1. **Homestead Lane and 207<sup>th</sup> Street south of Interstate 35:** Construction of new four-lane road and bridge south of I-35. City received grant for 80% of the cost of construction. Remainder of cost included in Home Rule Revenue Bonds.
2. **Big Bull Creek Lift Station:** Construction of new sanitary sewer lift station near Homestead Lane and 207<sup>th</sup> Street. This project was approved as part of the extension of sanitary sewer service to serve the Kubota North American Distribution Center. The lift station will serve Phase I of the LPKC Phase II Wastewater Master Plan.
3. **South I-35 Gravity Sanitary Sewer Main:** Construction of new gravity sanitary sewer main from Big Bull Creek Lift Station to serve the Kubota North American Distribution Center. This line was approved as part of Phase I of the LPKC Phase II Wastewater Master Plan.
4. **207<sup>th</sup> Street east of Waverly Road:** Construction of the continuation of new concrete roadway for 207<sup>th</sup> Street east of Waverly Road approximately 0.5 miles adjacent to the Inland Port LI (the new Hostess Distribution Center).

The Ordinance authorizes the City to issue up to \$9 million of home rule revenue bonds to reimburse or pay for the costs of the projects. The issuance of the bonds will convert the interest rate accruing on the costs paid by ELHC from a taxable 9.5% interest rate to a tax-exempt rate. This interest savings will ultimately result in more funds being available in the public infrastructure fund. The issuance of the bond will also allow the City to be reimbursed for funds it has spent or plans to spend on the projects listed above.

The bonds are payable solely from funds on deposit in the public infrastructure fund and are not a general obligation of the City.

[Summary Published in *The Gardner News* on June 19, 2019]

## **ORDINANCE NO. 2012**

**AN ORDINANCE AUTHORIZING THE CITY OF EDGERTON, KANSAS, TO ISSUE HOME RULE REVENUE BONDS (LOGISTICS PARK INFRASTRUCTURE PHASE TWO PROJECTS) SERIES 2019A, IN AN AGGREGATE MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$9,000,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY OR REIMBURSE THE COSTS OF PUBLIC INFRASTRUCTURE IMPROVEMENTS; AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.**

**WHEREAS**, the City of Edgerton, Kansas (the “City”), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and thereby to further promote, stimulate and develop the general welfare and economic prosperity of the State of Kansas; and

**WHEREAS**, the City and Edgerton Land Holding Company, LLC, a Kansas limited liability company (“ELHC”), entered into a Logistics Park Phase Two Development Agreement dated January 25, 2018 (the “Development Agreement”), to provide for the financing and construction of certain Public Infrastructure Improvements (as defined in the Development Agreement) located within Phase Two of the Logistics Park-Kansas City; and

**WHEREAS**, the Development Agreement requires the City to collect certain Sources of Funds (as defined in the Development Agreement) and deposit the Sources of Funds in a Phase Two Public Infrastructure Fund (as defined in the Development Agreement); and

**WHEREAS**, the Development Agreement Plan anticipates that the City will issue home rule revenue bonds pursuant to Article 12, Section of 5 of the Kansas Constitution (the “Act”); and

**WHEREAS**, the Development Agreement also anticipates that the Sources of Funds held by the City in the Phase Two Public Infrastructure Fund will be transferred to a trustee to be held and administered pursuant to a master trust indenture;

**WHEREAS**, the City intends to enter into a Master Trust Indenture dated the date set forth therein (the “Master Indenture”) with Commerce Bank (the “Trustee”), pursuant to which the Sources of Funds will be held and distributed by the Trustee and which provides for the issuance of up to \$100 million in home rule revenue bonds; and

**WHEREAS**, pursuant to the Act, the City is authorized to determine its local affairs and government, and pursuant to and in furtherance of the purposes of the Act and the Development Agreement, the City proposes to issue its Home Rule Revenue Bonds (Logistics Park Infrastructure Phase Two Projects), Series 2019A, in the aggregate principal amount not to exceed \$9,000,000 (the “Bonds”) for the purpose of providing funds to pay or reimburse the costs of acquiring and completing the Public Infrastructure Improvements described in the Supplemental Indenture (hereafter defined) (the “Projects”); and

**WHEREAS**, the governing body of the City further finds and determines that it is necessary and desirable in connection with the issuance of these Bonds that the City enter into certain agreements, and that the City take certain other actions and approve the execution of certain other documents as herein provided;

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS, AS FOLLOWS:**

**Section 1. Authorization for the Acquisition and Completion of the Projects.** The City is hereby authorized to provide for the acquisition and completion of the Projects, all in the manner and as more particularly described in the Development Agreement, the Master Indenture and the Supplemental Indenture (hereafter defined).

**Section 2. Authorization of and Security for the Bonds.** The City is hereby authorized to issue and sell the Bonds for the purpose of providing funds to pay or reimburse the cost of acquiring and completing the Projects. The Bonds shall be issued and secured pursuant to the Master Indenture and Supplemental Indenture, and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rates, shall be in such form, shall be subject to redemption and other terms and conditions, and shall be issued in such manner, subject to such provisions, covenants and agreements, as are set forth in the Master Indenture and Supplemental Indenture. The Bonds shall be payable solely out of the funds provided for in the Master Indenture and Supplemental Indenture, which shall be pledged and assigned to the Trustee as security for payment of the Bonds as provided in the Master Indenture and Supplemental Indenture.

**Section 3. Authorization of Documents.** The City is hereby authorized to enter into the following documents, in substantially the forms presented to and reviewed by the Governing Body of the City (copies of which documents, upon execution thereof, shall be filed in the office of the City Clerk), with such changes therein as shall be approved by the officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof:

- (a) Master Indenture;
- (b) Supplemental Master Trust Indenture No. 1 dated the date set forth therein (the "Supplemental Indenture"), which supplements the Master Indenture and describes the terms of the Bonds, the sources and uses of funds, and other matters;
- (c) Bond Placement Agreement dated the date set forth therein (the "Placement Agreement"), among the City, Commerce Bank, as Placement Agent, and ELHC, as Purchaser, pursuant to which the Bonds will be placed to ELHC; and
- (d) Tax Certificate dated the date set forth therein (the "Tax Certificate"), between the City and the Trustee, containing certain covenants and restrictions relating to the Bonds and the Projects and the use of proceeds of the Bonds.

**Section 4. Execution of Bond and Documents.** The Mayor of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Master Indenture and Supplemental Indenture. The Mayor of the City is hereby authorized and directed to execute the Master Indenture, the Supplemental Indenture, the Placement Agreement, the Tax Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds, the Master Indenture, the Supplemental Indenture, the Placement Agreement, the Tax Agreement and such other documents, certificates and instruments as may be necessary.

**Section 5. Further Authority.** The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds, the Master Indenture, the Supplemental Indenture, the Placement Agreement and the Tax Agreement.

**Section 6. Effective Date.** This Ordinance shall take effect and be in force from and after its passage, approval and publication in summary form in the official City newspaper.

**PASSED** by the Governing Body of the City of Edgerton, Kansas, this 13<sup>th</sup> day of June, 2019.

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Donald Roberts, Mayor

[SEAL]

ATTEST:

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Rachel A. James, City Clerk

Approved as to form:

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Scott W. Anderson, Bond Counsel

## City Council Action Item

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**Council Meeting Date:** June 10, 2019

**Department:** Administration

<b>Agenda Item:</b> Consider Reserve Policy
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**Background/Description of Item:**

In 2010, the Governing Body adopted Resolution No. 05-13-10E, establishing the current Budget Reserve Policy. Staff has reviewed this policy and determined that it needs updating to reflect recommendations from the utility rate financial advisor, Raftelis Financial Consultants, and to simplify the information/remove information that is no longer applicable.

City staff also worked with the City's financial advisor, Columbia Capital, to verify that the reserve levels proposed were in line with best practices and were appropriate to maintain the City's bond rating (AA). It should be noted that Standard & Poor (S&P), the City's rating agency for bond issues, considers 15% to be a reasonable reserve. They don't give any additional credit for larger reserves until the reserves exceed 75%.

The draft policy reflects the following changes:

- Focuses the policy on the City's three operating Funds: General, Water and Sewer.
  - The City has discontinued use of some of the funds listed.
  - The City's main operations are what would be covered by reserves and these three funds contain the City's main operations.
- Focuses on a percentage of expenditures instead a percentage of revenue.
  - This is in line with the way the City's rating agency for bond issues – S&P – calculates reserves.
- Designates a portion of the General Fund reserve for uninsured losses.
  - The range of reserve required hasn't changed.
  - A portion of the required reserve is designated to cover losses of items the Governing Body as chosen to self-insure vs include in the insurance policy coverage. The amount designated in the draft policy is \$50,000.
- Changes the calculation of the reserve for the Water Fund to be a range of 17%-25%.
  - The current policy has a multi-step procedure for calculating the required reserve which is cumbersome and not as straight forward as it could be.
  - This percentage range is similar to the calculation for the General Fund and is in line with the recommendation from Raftelis.
- Changes the calculation of the reserve for the Sewer Fund to be a range of 17%-25%.
  - The current policy has a multi-step procedure for calculating the required reserve which is cumbersome and not as straight forward as it could be.



- This percentage range is similar to the calculation for the General Fund and is in line with the recommendation from Raftelis.

**Related Ordinance(s) or Statue(s):** Resolution 05-13-10E

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**Funding Source:** n/a

**Budget Allocated:** n/a

x Karen E. Kindle

**Finance Director Approval:** Karen Kindle, Finance Director

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<b><u>Recommendation:</u></b> Approve the Budget Reserve Policy
---

**Enclosed:** Draft of Budget Reserve Policy

**Prepared by:**

**Karen Kindle** \* Finance Director

**City of Edgerton, Kansas  
Reserve Policy**

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**1. Objective**

The objective of this policy is to guide City officials as they consider the proper amount of cash reserves to maintain in the City's operating funds. The reserves are maintained to:

- Meet cash flow requirements/maintain working capital;
- Provide contingencies for unpredictable revenue sources;
- Provide contingencies for losses related to items that have been designated by the Governing Body as self-insured;
- Provide contingencies for unpredictable expenditures and emergencies; and
- Maintain the City's bond rating.

**2. Funds Subject to This Policy**

The operating funds of the City are subject to this policy. Those funds are:

- General Fund
- Water Fund
- Sewer Fund

**3. Required Reserve Levels**

The chart below shows the level of reserves that should be maintained in each operating fund, unless higher levels are required in order to maintain the City's desired credit rating, as recommended by the financial advisor.

<b>Fund</b>	<b>Reserve Level Required</b>
<b>General Fund</b>	17% - 25% of budgeted, expenditures, excluding transfers of which \$50,000 is designated for self-insured losses
<b>Water Fund</b>	17% - 25% of budgeted, expenditures, excluding transfers
<b>Sewer Fund</b>	17% - 25% of budgeted, expenditures, excluding transfers

**4. Fund Balance in Excess of Required Reserve Level**

If the balance in a fund exceeds the required reserve level, the excess funds can be kept as part of the reserve or used for the purposes listed below.

- For one-time expenditures;
- For equipment purchases through transfers to the Equipment Reserve Fund; and
- For capital projects through transfers to the Capital Projects Fund.

**5. Fund Balance Below Required Reserve Level**

Should the fund balance fall below the required reserve level, and the situation will not be corrected within ninety days, the City Administrator shall submit a plan to the Governing Body to rebuild the reserve amount to the required level.

**6. Annual Review**

The level of reserves shall be monitored during the year and reviewed annually as part of the operating budget development.

## City Council Action Item

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**Council Meeting Date:** June 13, 2019

**Department:** Administration

### **Agenda Item: Consider Development Agreement With My Store III Inc.**

**Background/Description of Item:**

Both the City of Edgerton and ElevateEdgerton! have identified the recruitment of new commercial business to Edgerton as one of the top priorities to provide these services to residents and businesses of Edgerton.

My Store III, Inc. is a Kansas corporation that currently operates a truck stop and gas station in the Kansas City metropolitan area. The company has purchased property along Homestead Lane just north of the Interstate 35 and plans to develop a truck stop including the amenities such as fueling stations for regular and diesel fuel, truck parking, restrooms with showers, truck scale and wash, etc.

As part of the Project, the Developer is required to construct Public Infrastructure Improvements as described in Section 2.6 of the Agreement.

The enclosed Development Agreement proposes the Developer petition the City for the creation of a Community Improvement District for a community improvement district sales tax of one percent (1%) on the entire property (approximately 25 acres) to be collected for twenty-two years as allowed by Kansas Statute. The City would create a special fund to collect these CID revenues. In addition, the City agrees to deposit (subject to annual appropriation) the City's share of retail sales tax actually collected from the Project Site into this same fund.

The Development Agreement states the City agrees to reimburse the Developer up to \$750,000 for the cost of making the Public Infrastructure Improvements as described in the agreement. That reimbursement would be paid solely from funds deposited into the CID revenue fund (as described above).

Once the Developer has been reimbursed \$750,000, the City will close the fund and transfer any amounts remaining to the City's general fund. Any amounts remaining in the CID Account will be used by the City to reimburse the City for the City Project as allowed by Kansas Statute. The Development Agreement includes draft language for the City Project to include any combination of the following: (1) construction or maintenance of public infrastructure on, adjacent to or necessary to extend service to the Community Improvement District including, but not limited to, roads, storm sewer, sidewalk/trail, street lights, traffic signals, sanitary

sewer, etc.; (2) economic development initiatives targeted to recruit new business to the Community Improvement District; or (3) providing city services within the Community Improvement District.

The Development Agreement also allows for the Developer to issue sales tax only industrial revenue bonds and obtain project exemption certificate for sales tax on public infrastructure projects.

Finally, the Agreement requires the Project to commence construction no later than 90 days after approval of the final site plan by the Edgerton Planning Commission. Developer also agrees that the Project will be substantially completed no later than 18 months following the date that the site plan is approved by the Edgerton Planning Commission.

The City's Economic Development Counsel drafted the enclosed Agreement and is finalizing the details of the Agreement. City Attorney has also reviewed the draft Agreement. Any additional recommended changes will be reviewed with City Council at June 13<sup>th</sup> City Council meeting.

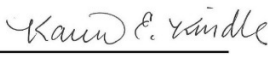
**Related Ordinance(s) or Statue(s):** Community Improvement District Act (K.S.A. 12-6a26 through 12-6a36)

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**Funding Source:** New CID Revenues from Project Site and City's Portion of Retail Sales Tax on Project Site

**Budget Allocated:** \$750,000

**Finance Director Approval:**

x   
Karen Kindle, Finance Director

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**Recommendation: Approve Development Agreement With My Store III Inc. and Authorize the Mayor to Sign the Agreement including Any Recommended Changes from Legal Counsel**

**Enclosed:** Draft Development Agreement

**Prepared by:** Beth Linn, City Administrator

## DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into as of June \_\_, 2019, between the **CITY OF EDGERTON, KANSAS**, a Kansas municipal corporation (the “City”), and **MY STORE III INC.**, a Kansas corporation, and its successors and assigns (the “Developer”). The City and Developer may each be referred to herein as a “party” and collectively as the “parties.”

### RECITALS

- A. The Developer desires to construct the Project on the Project Site.
- B. The City is willing to grant certain incentives for the development of the Project so long as the Developer constructs the Public Infrastructure Improvements and otherwise complies with the terms of this Agreement.

### AGREEMENT

In consideration of the mutual assurances and agreements contained in this Agreement, and for other good and valuable consideration, the parties agree as follows:

### ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 Definitions. Capitalized words used in this Agreement which are not otherwise defined shall have the following meanings:

“Applicable Laws and Requirements” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, and/or determination, including, without limitation, the Kansas Cash Basis Law (K.S.A. § 10-1101, *et. seq.*), the Budget Law (K.S.A. § 75-2529, *et. seq.*) and the Interstate Commerce Commission Termination Act of 1995.

“Biscuits Sales Tax Fund” has the meaning given to such term in **Section 3.4**.

“Bonds” mean industrial revenue bonds issued by the City pursuant to K.S.A. 12-1740 to 12-1749d, inclusive.

“CID Tax” has the meaning given to such term in **Section 3.1**.

“City” means the City of Edgerton, Kansas.

“City Project” means any combination of the following: (1) construction or maintenance of public infrastructure on, adjacent to or necessary to extend service to the Community Improvement District including, but not limited to, roads, storm sewer, sidewalk/trail, street lights, traffic signals, sanitary sewer, etc.; (2) economic development initiatives targeted to recruit new

business to the Community Improvement District; or (3) providing city services within the Community Improvement District.

“City CID Revenues” has the meaning given to such term in **Section 3.4**.

“Community Improvement District” means the community improvement district created pursuant to **Article III** of this Agreement and has the meaning given to such term in **Section 3.1**.

“Community Improvement District Act” means the provisions of K.S.A. 12-6a26 through 12-6a36, and amendments thereto, which is known as the community improvement district act.

“Developer” means My Store III, Inc., a Kansas corporation, or its successors or assigns as permitted by this Agreement.

“Developer CID Revenues” has the meaning given to such term in **Section 3.4**.

“Development Plan” has the meaning given to such term in **Section 2.1**.

“Project Site” means certain unimproved land generally located \_\_\_\_\_, and is legally described on the attached **Exhibit A**.

“Project” has the meaning given to such term in **Section 2.2**.

“Public Infrastructure Improvements” has the meaning given to such term in **Section 2.6**.

1.2 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (c) reference in this Agreement to any article, section, appendix, annex, schedule or exhibit means such article or section thereof or appendix, annex, schedule or exhibit thereto;
- (d) each of the items or agreements identified on the attached Index of Exhibits and Schedules are deemed part of this Agreement to the same extent as if set forth herein;
- (e) “hereunder”, “hereof”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;
- (f) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;
- (g) capitalized terms, not otherwise defined in the text of this agreement shall have the

definitions set forth in **Section 1.1** or as otherwise provided herein.

**1.3 Legal Representation of the Parties.** This Agreement was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

## **ARTICLE II DEVELOPMENT OF PROJECT AND PUBLIC INFRASTRUCTURE IMPROVEMENTS**

**2.1 Development Plan.** The parties hereby understand that the “Development Plan” for the Project on the Project Site is depicted in **Exhibit B**.

**2.2 Developer to Develop Project.** The Developer shall design, develop and construct the Project with its own funds, except as otherwise specifically provided herein. The performance of all activities by Developer shall be as an independent contractor, and not as an agent of the City, except as otherwise specifically provided herein.

The Project shall contain the following:

1. Truck stop with a canopy for diesel fuel with at least six fueling stations and a canopy for regular fuel with at least sixteen fueling stations.
2. Truck parking.
3. Bathrooms with showers.
4. Internal preparation of food.
5. Convenience store.
6. Scale for weighing trucks.
7. Truck maintenance facility.
8. Truck wash.
9. One in-store franchisee, such as a Dunkin’ Donuts or comparable brand.

**2.3 Design of Project.** Subject to compliance with all Applicable Laws and Requirements, and Developer obtaining the proper approvals through the City's planning and development process, Developer shall have the sole right to design, construct, equip and complete the Project.

**2.4 Construction of Project.** Developer shall cause the construction and completion of the Project in its discretion. All of the Project shall be the property of Developer or its assigns.

**2.5 Permits and Reviews.** Developer hereby recognizes, stipulates and agrees that (a) in the design, construction, completion, use or operation of the Project, Developer or its general contractors shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required, and (b) that nothing herein shall be construed as any release by the City of the responsibility of Developer to comply with, and satisfy the requirements of, all Applicable Laws and Requirements.

2.6 Public Infrastructure Improvements. The Developer also agrees to construct the following Public Infrastructure Improvements:

1. From right-in, right-out entrance on Homestead, a public street extending to the east property line, including any turn around that may be necessary for public safety as determined by the City.
2. Sidewalk along the south side of the new public street.
3. All necessary as determined by the City:
  - a. Storm sewer.
  - b. Curbs.
  - c. Street lighting.
4. Sanitary sewer adequate to serve the Project and future projects as included on the approved Site Plan.

2.7 Design and Construction of the Public Infrastructure Improvements. The Developer shall design and construct the Public Infrastructure Improvements. The City shall set the design standards and specifications for the Public Infrastructure Improvements. Each Public Infrastructure Improvement shall be deemed constructed when the City determines that the Public Infrastructure Improvement satisfies all design standards and specifications and the City Council accepts the Public Infrastructure Improvement. Throughout construction and upon completion of each Public Infrastructure Improvement, the City shall have the right to reasonably inspect the same. Cost of that inspection will be borne by the Developer in accordance with the City's Fee Resolution.

2.8 Maintenance of Public Infrastructure Improvements. The City hereby agrees to maintain or cause to be maintained each Public Infrastructure Improvement after completion and dedication to the City of each such Public Infrastructure Improvement. Developer will provide two-year maintenance bond for any Public Infrastructure Improvement.

2.9 Voluntary Community Involvement. Upon terms and conditions to which the parties may later agree during the term of this Agreement, Recipient will use reasonable efforts to participate in community events. These efforts may, but need not, include giving locally of cash or product donation and employee volunteer time. Additionally, Recipient agrees to be a member of ElevateEdgerton! at the "Expand" level or above for at least 10 years.

### **ARTICLE III**

#### **COMMUNITY IMPROVEMENT DISTRICT**

3.1 Petition for Creation of Community Improvement District. The Developer shall petition the City for the creation of a community improvement district pursuant to the Community Improvement District Act that covers all of the Project Site (the "Community Improvement District"). The Developer agrees that any petition submitted shall only seek financing by a CID sales tax of 1% (the "CID Tax").

3.2 Creation of Community Improvement District. The City agrees to submit creation of the



Community Improvement District to the City Council of the City within a reasonable amount of time after receipt of the petition from the Developer that meets all legal requirements contained in the Community Improvement District Act. The petition shall include a list of all Developer projects. All projects shall be projects permitted by the Community Improvement District Act and located on the Project Site. The City may remove any project from the petition if the City has a reasonable basis for removing such project. The Developer agrees to include a description of the City Project in the petition.

3.3 CID Tax. The Developer agrees to request, and the City agrees to impose subject to compliance with the Community Improvement District Act, the CID Tax on all of the Project Site within the Community Improvement District. The CID Tax shall be collected on all of the Project Site for a term of 22 years.

3.4 Biscuit Sales Tax Fund. The City agrees to create a special fund to be held by the City and designated the "Biscuit Sales Tax Fund." The Biscuit Sales Tax Fund shall have a "CID Account" and a "Sales Tax Account."

3.5 Deposit of CID Tax. The City shall deposit all CID sales tax receipts in the CID Account of the Biscuits Sales Tax Fund.

#### **ARTICLE IV CITY SALES TAX REBATE**

4.1 City Sales Tax Rebate. The City agrees, subject to annual appropriation, that it will deposit in the Sales Tax Account of the Biscuits Sales Tax Fund the City's share of the retail sales tax (currently 1 cent for each dollar in retail sales) actually collected by the City from retailers located on the Project Site. The City shall deposit such funds at least once each calendar quarter in the Sales Tax Account of the Biscuit Sales Tax Fund.

#### **ARTICLE V REIMBURSEMENT OF DEVELOPER**

5.1 Reimbursement to Developer. The City agrees to reimburse the Developer up to \$750,000 for the costs of making the Public Infrastructure Improvements. The reimbursement shall be paid to Developer solely from funds on deposit in the Biscuits Sales Tax Fund. The parties agree that the details and manner of reimbursement shall be described in more detail in a CID and Sales Tax Agreement to be entered into between the City and the Developer.

5.2 Timing of Reimbursement Payments. On the first business day of each calendar quarter, ninety days following the date in which the Public Infrastructure Improvements are accepted by and dedicated to the City, the City agrees to pay to the Developer an amount equal to the amount on deposit in the Biscuits Sales Tax Fund. The City agrees to continue making such payments until such time that the sum of \$750,000 has been paid to the Developer.

5.3 Transfer of Excess Funds. At such time that the Developer has been paid the sum of \$750,000 from the Biscuits Sales Tax Fund, the City shall close the fund and transfer any amounts remaining in the Sales Tax Account of the Biscuit Sales Tax Fund to the City's general fund. Any

amounts remaining in the CID Account of the Biscuit Sales Tax Fund shall be used by the City to reimburse the City for the City Project.

## **ARTICLE VI INDUSTRIAL REVENUE BONDS**

6.1 City Issuance of Bonds. The City agrees to issue Bonds to finance the costs of acquiring, constructing and equipping the Project to enable the Developer to obtain a project exemption certificate for sales tax. The Developer shall work with the City's Bond Counsel to issue the Bonds. The Developer shall pay all costs of issuing the Bonds.

6.2 Project Exemption Certificate. The City agrees that the Developer shall be entitled to use a project exemption certificate for the Project as a result of the issuance of the Bonds.

## **ARTICLE VII ASSIGNMENT BY DEVELOPER**

Any assignment of this Agreement shall require the written consent of the City.

## **ARTICLE VIII PROJECT CONSTRUCTION SCHEDULE**

Developer agrees that the Project will commence construction no later than 90 days after approval of the final site plan by the Edgerton Planning Commission. Developer agrees that the Project will be substantially completed no later than 18 months following the date that the site plan is approved by the Edgerton Planning Commission.

## **ARTICLE IX CITY TERMINATION OPTION**

9.1 City Option to Terminate. The City shall have the option to terminate this Agreement upon the occurrence of any of the following:

- (a) the site plan has not been submitted to the Edgerton Planning Commission on or before \_\_\_\_\_;
- (b) a building permit has not been issued for any portion of the Project on or before \_\_\_\_\_; or
- (c) if the Project is not substantially complete on the date that is 18 months following the date the site plan was approved by the Edgerton Planning Commission.

9.2 Notice of Termination. If the City elects to terminate this Agreement pursuant to Section 9.1, the City shall deliver written notice of such termination to the Developer at the notice address set forth in this Agreement.

## **ARTICLE X DEFAULT**

10.1 Default by Developer. Developer shall be in default under this Agreement if: (a) Developer fails to keep or perform any material covenant or obligation herein contained on the Developer's part to be kept or performed, and the Developer fails to remedy the same within sixty (60) days after the Developer has been given written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the Developer within such period and diligently pursued until the default is corrected; or (b) the Developer materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days following written notice. In the event of such default, the City may take such actions, or pursue such remedies, as exist hereunder or at law or in equity, and the Developer covenants to pay and to indemnify the City against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred in connection with the enforcement of such actions or remedies. Notwithstanding the foregoing, the Developer's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall Developer be liable for any remote or consequential damages.

10.2 Default by City. The City shall be in default under this Agreement if: (a) the City fails to keep or perform any material covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within sixty (60) days after the City has been given written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected; or (b) the City materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days following written notice. In the event of such default, the Developer may take such actions, or pursue such remedies, as exist hereunder or at law or in equity, and the City covenants but only to the extent permitted by the Kansas Cash Basis Law to pay and to indemnify Developer against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred in connection with the enforcement of such actions or remedies. Notwithstanding the foregoing, the City's liability for monetary amounts shall be limited by the Kansas Cash Basis Law and to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote or consequential damages.

## **ARTICLE XI REPRESENTATIONS AND WARRANTIES**

11.1 Representations and Warranties of Developer. Developer represents and warrants to the City as follows:

11.1.1 Organization. Developer is a limited liability company duly formed and validly existing under the laws of the State of Kansas. Developer is duly authorized to conduct business in all jurisdictions in which the nature of its properties or its activities requires such authorization. Developer shall (1) preserve and keep in full force and effect its corporate or other separate legal existence and (2) remain qualified to do business and conduct its affairs in the State of Kansas and each jurisdiction where ownership of its

property or the conduct of its business or affairs requires such qualification.

11.1.2 Authority. The execution, delivery and performance by Developer of this Agreement is within Developer's powers and have been duly authorized by all necessary action of Developer.

11.1.3 No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof, will contravene the organizational documents of Developer or any provision of law, statute, rule or regulation to which Developer is subject, or to any judgment, decree, license, order or permit applicable to Developer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer is a party, by which Developer is bound, or to which Developer is subject.

11.1.4 No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by Developer of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by Developer of this Agreement or the consummation of the transactions contemplated hereby except for zoning, building and other customary permits to be obtained from the City or other governmental units.

11.1.5 Valid and Binding Obligation. The provisions of this Agreement are the legal, valid and binding obligations of Developer, enforceable against Developer in accordance with the terms hereof.

11.2 Representations and Warranties of City. City represents and warrants to the Developer as follows:

11.2.1 Authority. The execution, delivery and performance by the City of this Agreement is within its powers and has been duly authorized by all necessary action.

11.2.2 No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof, will contravene the ordinances, rules, regulations of the City or the laws of the State nor result in a breach, conflict with or be inconsistent with any terms, covenants, conditions or provisions of any indenture, agreement or other instrument by which the City is bound or to which the City is subject.

11.2.3 No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by the City of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by the City of this Agreement or the consummation of the transactions

contemplated hereby.

11.2.4 Valid and Binding Obligation. The provisions of this Agreement are, to the fullest extent permitted by applicable law, the legal, valid and binding obligation of the City enforceable against the City in accordance with the terms hereof and thereof, subject to the Kansas cash basis law and the limited ability of the current City Council to bind future governing bodies.

## **ARTICLE XII MISCELLANEOUS**

12.1 Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

12.2 Amendments. This Agreement may be amended, changed or modified only by a written agreement duly executed by the City and the Developer.

12.3 Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas.

12.4 Invalidity of Any Provisions. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

12.5 Headings. The Article and Section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

12.6 Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

12.7 Time. Time is of the essence in this Agreement.

12.8 Consents and Approvals. Wherever in this Agreement it is provided that the City or the Developer shall, may or must give its approval or consent, the City or the Developer shall not, unless specifically herein provided otherwise, unreasonably withhold, condition, delay or refuse to give such approvals or consents. It is agreed, however, that the sole right and remedy for the Developer or the City in any action concerning the other's reasonableness will be action for declaratory judgment and/or specific performance, and in no event shall either such party be entitled to claim damages of any type or nature in any such action.

12.9 Notices. All notices required or desired to be given hereunder shall be in writing and all

such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes if (i) delivered by nationally recognized overnight delivery service; (ii) facsimile (with follow up by sending such notice within one (1) business day by United States Mail); or (iii) delivered in person, in each case if addressed to the parties set forth below:

To the City:                      City Administrator  
Edgerton Community Building  
404 East Nelson  
Edgerton, Kansas 66021  
Phone: (913) 893-6231  
Fax: (913) 893-6232  
[BLinn@EdgertonKS.org](mailto:BLinn@EdgertonKS.org)

With a copy to:                Scott W. Anderson  
SA Legal Advisors LC  
8801 Renner Avenue, Suite 403  
Lenexa, Kansas 66219  
Phone (913) 538-7556  
Fax (913) 273-1806  
[SAnderson@SALegalAdvisors.com](mailto:SAnderson@SALegalAdvisors.com)

To Developer:

All notices given by personal delivery or fax (when followed up by regular United States mail as set forth above), shall be deemed duly given the day they are so delivered / faxed. All notices sent by nationally recognized overnight delivery service shall be deemed duly given the next business day following the day such notice was deposited with such delivery service.

12.10 Entire Agreement. Together with the Exhibits hereto, this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces all prior oral or written agreements concerning the subject matter hereof.

[The Remainder of this Page Left Intentionally Blank]

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed as of the day and year first above written.

**CITY OF EDGERTON, KANSAS,**  
a Kansas municipal corporation

[SEAL]

By: \_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
Rachel A. James, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott W. Anderson, Economic Development Counsel

**MY STORE III INC.**  
a Kansas corporation

By: \_\_\_\_\_

**EXHIBIT A**  
**PROJECT SITE**

DRAFT



**EXHIBIT B**  
**DEVELOPMENT PLAN**

DRAFT