

**EDGERTON CITY COUNCIL  
MEETING AGENDA  
CITY HALL, 404 EAST NELSON STREET  
November 18, 2021  
7:00 P.M.**

**Call to Order**

1. **Roll Call** \_\_\_\_ Roberts \_\_\_\_ Longanecker \_\_\_\_ Lewis \_\_\_\_ Brown \_\_\_\_ Beem
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 from October 28, 2021 Regular City Council Meeting
5. Approve One-Year Contract Extension with Clements Cleaning Service to Provide Janitorial Services for the Edgerton City Hall and Auxiliary Office Space for 2022
6. Approve Year-End Longevity Bonus for Employees
7. Approve Ordinance No. 2098 Providing for the Range of Salaries and Compensation of Various City Officers and Employees

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

**Regular Agenda**

8. **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.
9. **Public Comments.** Persons who wish to address the City Council regarding items on the agenda may do so when called upon by the Mayor. Comments on items not on the agenda, personnel matters or matters pending before court/other outside tribunals are not permitted. Please notify the City Clerk if you wish to speak by signing in at the meeting. Speakers must provide their name and address for the record and are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.

**Business Requiring Action**

10. **CONSIDER THE 2022 FUNDING RECOMMENDATIONS FOR THE HUMAN SERVICE FUND**

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

11. **CONSIDER AN AGREEMENT WITH TYLER TECHNOLOGIES, INC., FOR ERP SOFTWARE**

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

12. **CONSIDER AGREEMENT WITH HENDERSON BUILDING SOLUTIONS FOR GREENSPACE PROJECT TO PROVIDE OWNERS REPRESENTATIVE SERVICES**

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

**13. CONSIDER A CONTRACT WITH ELEVATEEDGERTON! FOR ECONOMIC DEVELOPMENT SERVICES FOR 2022**

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

**14. CONSIDER REVISION TO LOGISTICS PARK KANSAS CITY PHASE I SANITARY SEWER MASTER PLAN**

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

**15. PUBLIC HEARING ON THE PROPOSED PROJECT PLAN B1 WITHIN THE EDGERTON HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT**

**16. CONSIDER ORDINANCE NO. 2099 APPROVING AND ADOPTING REDEVELOPMENT PROJECT PLAN B1 WITHIN THE EDGERTON HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT PROJECT IN THE CITY OF EDGERTON, KANSAS.**

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

**17. CONSIDER RESOLUTION NO. 11-18-21A APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A DISPOSITION AND DEVELOPMENT AGREEMENT (PROJECT PLAN B1 – HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT.**

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

**18. PUBLIC HEARING REGARDING THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT (CID) FOR THE EDGERTON CROSSING WOODSTONE PROJECT**

**19. CONSIDER ORDINANCE NO. 2100 AUTHORIZING THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT (EDGERTON CROSSING WOODSTONE PROJECT) AND LEVYING A CID SALES TAX WITHIN SUCH DISTRICT.**

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

**20. CONSIDER RESOLUTION NO. 11-18-21B AUTHORIZING A COMMUNITY IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT FOR THE EDGERTON CROSSING WOODSTONE PROJECT**

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

**21. CONSIDER ORDINANCE NO. 2101 AUTHORIZING A TRANSIENT GUEST TAX GRANT DEVELOPMENT AGREEMENT WITH WOODSTONE PROPERTIES, LLC**

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

22. **CONSIDER RESOLUTION NO. 11-18-21C DETERMINING THE INTENT OF THE CITY OF EDGERTON, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN ONE OR MORE SERIES, THE AGGREGATE PRINCIPAL AMOUNT OF ALL SERIES NOT TO EXCEED \$82,000,000, TO PAY THE COST OF CONSTRUCTING THE EDGERTON CROSSING PROJECT FOR THE BENEFIT OF WOODSTONE PROPERTIES, LLC.**

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

23. **CONSIDER FACILITY USE AND MAINTENANCE AGREEMENT WITH EDGERTON HISTORIC SOCIETY FOR EDGERTON COMMUNITY MUSEUM**

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

24. **CONSIDER ORDINANCE NO. 2102 PROHIBITING PARKING ALONG 200TH STREET EAST OF HOMESTEAD LANE UNTIL THE END OF ROADWAY IN THE CITY OF EDGERTON, KANSAS AND PROVIDING CERTAIN PENALTIES FOR VIOLATION THEREOF**

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

25. **Report by the City Administrator**

- Report on 502 E 2<sup>nd</sup> Street

26. **Report by the Mayor**

27. **Future Meeting Reminders:**

- December 9<sup>th</sup>: City Council Meeting – 7:00PM
- December 14<sup>th</sup>: Planning Commission Meeting – 7:00PM
- January 11<sup>th</sup>: Planning Commission Meeting – 7:00PM
- January 13<sup>th</sup>: City Council Meeting – 7:00PM
- January 27<sup>th</sup>: City Council Meeting – 7:00PM

28. **CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B)(6) FOR PRELIMINARY DISCUSSIONS REALTED TO THE ACQUISITION OF REAL PROPERTY TO INCLUDE CITY ATTORNEY, CITY ADMINISTRATOR AND PUBLIC WORKS DIRECTOR TO DISCUSS PURCHASE CONTRACT SPECIFICS**

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

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

## EVENTS

November 19<sup>th</sup>: Yappy Hour  
November 25-26<sup>th</sup>: City Hall Closed for Thanksgiving Holiday  
November 29<sup>th</sup>: Trees due for Tree Decorating Contest  
December 1<sup>st</sup>: Watercolor Christmas Cards  
December 3<sup>rd</sup>: Mayor's Christmas Tree Lighting Ceremony  
December 4<sup>th</sup>: Christmas Cookie Exchange  
December 8<sup>th</sup>: Nominations due for Holiday Home Decorating Contest  
December 10<sup>th</sup>: Kids Night Out  
December 14<sup>th</sup>: Tales for Tots  
December 15<sup>th</sup>: Senior Lunch & BINGO  
December 24<sup>th</sup>: City Hall Closed for Christmas Holiday  
December 29<sup>th</sup>: Nerf Battle

**City of Edgerton, Kansas**  
**Minutes of City Council Regular Session**  
**October 28, 2021**

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on October 28, 2021. The meeting convened at 7:03 PM with Mayor Roberts presiding.

**1. ROLL CALL**

Clay Longanecker	present
Josh Lewis	present
Josh Beem	absent
Jody Brown	present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator Beth Linn
- City Attorney Lee Hendricks
- City Clerk Alexandria Clower
- Finance Director Karen Kindle
- Accountant Justin Vermillion
- Development Services Director Katy Crow
- Public Works Director Dan Merkh
- CIP Manager Brian Stanley
- Marketing & Communications Manager Kara Banks via phone

**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 from October 14, 2021 Regular City Council Meeting
5. Approve Contract with Weather Or Not®, Inc. to provide Weather Forecasting Services for 2022.
6. Approve Large Animal Permit for Darius Crist, 510 W Braun Street.
7. Approve Large Animal Permit for Michael Mabrey, 1200 W Braun Street.
8. Approve Large Animal Permit for Rick Magee, 1301 W 8<sup>th</sup> Street.
9. Approve Large Animal Permit for Glyn Powers, 1606 W 8<sup>th</sup> Street.
10. Approve Large Animal Permit for Derren Seute, 1313 W 8<sup>th</sup> Street.

Councilmember Brown moved to approve the consent agenda, seconded by Councilmember Longanecker. The Consent Agenda was approved, 3-0.

## **Regular Agenda**

11. **Declaration.** There were no declarations made by the Governing Body.

12. **Public Comments.** There were no public comments made.

## **Business Requiring Action**

### **13. CONSIDER AN AGREEMENT WITH STRATEGY, LLC, FOR INFORMATION TECHNOLOGY SERVICES**

Ms. Karen Kindle, Finance Director, addressed the Council. She stated the City does not have IT staff on-site, so they contract with a managed service provider for services. She stated this contract is currently with Strategy LLC and has been so since October 2016. She stated the city issued an RFP for IT services on August 31, 2021, with proposals due by the end of September. The contract is for one year, with two one-year options to renew, subject to an annual review, concurrent of the City Council and the annual availability of an appropriation. She stated this RFP also included services related to the maintenance and hosting of the city's website.

She stated the RFP was advertised in the Gardner News and on the website, as well as being sent directly to fifteen firms. In the end, only 3 responses were received by the deadline. She stated the monthly cost comparison is provided in the packet. The cost proposals were based on the number of users, computers, servers, and network devices.

She stated in addition to reviewing the proposals and costs submitted, staff visited the offices of the three firms and interviewed them based on the information in their proposals as well as asked their approaches for providing services to the city.

She stated based on the proposals, interviews, and review of costs, staff recommends continuing services with Strategy, LLC for both the IT services and Website maintenance. There is adequate funding available in the 2022 Operating Budget to cover the estimated monthly cost.

Councilmember Longanecker stated he thought it was odd that the Century Business Technologies would contract out their helpdesk services.

Councilmember Lewis asked what the significant shift with Teams and SharePoint is. He asked if the City currently uses these now.

Ms. Kindle stated SmartPro Technologies uses Teams for everything, but the City currently uses SharePoint and Teams almost separately. Teams is used for our everyday in-house communication and SharePoint is used to maintain the files, this company would suggest merging the two and using Teams as the main source for everything. She stated staff is concerned with managing both the implementation of new enterprise resource planning (ERP) software and the conversion to a new way of doing everyday tasks with Teams and SharePoint.

Councilmember Lewis confirmed that the file structure is SharePoint and Teams is being used just for communication.

Ms. Linn confirmed. She stated the use of Teams started during the Pandemic with staff in multiple locations. She stated, since returning, there are a few people that continue to use Teams and there are others that have gone back to normal operation and do not access Teams as a primary way of connection like they used to.

Mayor Roberts stated at the end of the day, the staff are the ones that will be using the services. He stated he wants to be supportive of what they think is best.

Ms. Linn stated the other piece is the relationship with Strategy. She stated SmartPro has never worked around utilities infrastructure, so there would be a large learning curve with them as well.

Councilmember Lewis asked what last years monthly cost with Strategy was.

Ms. Kindle stated it was \$3,500 a month, and it was paid for by the device as well. She stated this year, the city is adding a server at the treatment plant, and the price per user and computer also increased.

Mayor Roberts stated offsite IT can be vastly higher in cost than any of the options presented and knows from his previous career that change in IT is always a struggle.

There were no further questions or comments.

Councilmember Longanecker moved to approve the Agreement with Strategy, LLC for IT Services. Councilmember Lewis seconded the motion. The agreement was approved, 3-0.

#### **14. CONSIDER AN AGREEMENT WITH TYLER TECHNOLOGIES, INC., FOR ERP SOFTWARE**

Ms. Karen Kindle addressed the Council. She stated joining on Teams are John Hardin with Tyler Technologies, and Mike Mucha with Government Finance Officers Association (GFOA).

She stated staff began discussions with Council regarding the need to replace the current financial software in 2018. Council then approved funding for the ERP Software Exploration Project, which would take place in 2019. She stated staff began by issuing an RFQ for Business Process and ERP Advisory Services to find a consultant to assist the City in the search for ERP software. The City selected GFOA because of their experience assisting over 500 local governments on similar projects.

She stated an ERP steering committee was established and began working with GFOA staff in September 2019, to develop a project calendar for the business process analysis and RFP process. She stated after a visit from GFOA with staff, the RFP for ERP Software was issued in February 2020, and a pre-proposal conference was held in March 2020. She stated the RFP was placed on the City's website and GFOA sent the RFP to their contacts at various software companies. The city received three responses from Tyler Technologies, Casselle and ClearGov.

She stated the steering committee and GFOA reviewed the responses and elevated Tyler Technologies and Casselle for further evaluation. She stated software demonstrations were held in June 2020, based on the demos, the steering committee elevated Tyler Technologies to the discovery phase.

She stated in August 2020, the steering committee along with the Mayor, visited a Tyler customer site in the City of Waxahachie, TX. The committee then talked with other references and participated in additional software demos with Tyler. She stated there are many other Tyler clients in the State of Kansas, and Tyler has a large staff to provide support and the company has the resources to continue to invest in the software.

She stated in September 2020, a discovery day was held with Tyler where the committee and GFOA dug deeper into items such as project staff, Tyler's experience with projects similar to the City's project and clarifications for items arising out of the demos.

She stated based on the discovery day and additional research, the committee then elevated Tyler to the contract negotiation stage in October 2020. She stated contract negotiations have been on-going since that time.

She stated the city will utilize the Software as a Service (SaaS) version of the software vs. purchasing servers and hosting the software on site. She stated this version will result in less IT infrastructure to maintain and result in limited involvement by the City's IT provider once the software is up and running. She stated this version will also simplify employee access to the system. She stated the City is purchasing the following modules; Finance, HR/Payroll/Employee Self Service, Project Accounting, Utility Billing/Misc. Accounts Receivable/Cashiering, Fixed Assets, Work Orders, Community Development, and Court.

She stated the costs include the first year of the SaaS fees as well as the professional services related to implementing the software. In addition, there are a few hardware items included such as receipt printers, bar code scanners and digital signature pads. She stated there is a not-to-exceed cost for the first year of \$233,967. Tyler has also included a bank of 188 professional service hours to be used should any unforeseen situations arise which require them to exceed the hours they have originally estimated.

She stated the costs for Tyler are the largest portion of the estimated projects costs. Other costs include services provided by the City's IT provider, hardware items not purchased through Tyler, such as iPads, scanners, check printer, Bluebeam plan review software, and a contingency. She stated the budget for the project was \$240,000 until council directed staff at the CIP Work Session on October 14, 2021, to allocate \$35,000 to the project to cover the addition of the Court Module. She stated this brings the total budget for the project to \$275,000.

She stated the GFOA staff and City Attorney have reviewed and approved the SaaS Agreement provided.

Mayor Roberts stated the term of this contract is for 5 years and asked what happens after the contract concludes.

Mr. Hardin, with Tyler, addressed the Council. He stated for the first 5 years, the rate is guaranteed to not go up. He stated after, the standard practice is to renegotiate and set a new price. He stated he has seen that rate fluctuate from 3-5% in that time.

Mayor Roberts stated the total money involved in pretty substantial and he would like to see a 20-year agreement. He stated unfortunately, at the end of the first 5 years if staff is not satisfied with the product or does not negotiate well, it could be problematic.

Councilmember Lewis stated he does not know if there can be an agreement that is a longer term from any tech company, especially with the market and how fast technology changes. He asked what the annual dollar amount would be.

Ms. Kindle stated \$52,000 a year.

Councilmember Lewis stated he likes the idea of a cloud solution piece. He asked if there are any specific security options that have to be met by state statute.

Mr. Mucha, with GFOA, addressed the Council. He stated a 5-year agreement is standard. He stated he has seen in the market range from 3-8 years for agreements but it is very rare to exceed that due to unknown inflation costs for years out. He stated from a negotiation perspective, he understands the risk to have to renegotiate at the end of the 5 years. He stated GFOA has been successful in providing information at the end of those years for negotiation purposes for the current market pricing and a fair value.

Mr. Hardin stated a 5-year agreement is a common trend in the industry, but most recently the trend is moving to 3-year agreements. He stated in regard to security, the big selling point as to why someone would choose the cloud model is the security behind it. He stated they take care of daily backups themselves at Tyler data centers. He stated Tyler meets and exceeds every government regulation, and their biggest focus is keeping data secure especially for local governments.

Mayor Roberts stated in the City's case, implementation is everything and implementing the right way will make a difference for the future of not only the City staff but also residents. He stated his biggest concern is the 5-year contract and asked if there could be a guaranteed maximum price or not to exceed percentage.

Ms. Linn asked if there was a way to mitigate risk in that second term.

Mr. Mucha stated in the software market, prices have primarily held or gone down as the market becomes competitive. He stated having a contract that expires at the end of 5 years will allow the ability to true up to the market value. He stated the vast majority of companies are within that contract range because a shorter contract is a burden to renegotiate and a longer one can go against the overall market.

Mayor Roberts stated he is looking for a guarantee of a not-to-exceed dollar amount or percentage increase at the end of the 5 years. He does not want to see the contract expire and then to have new terms, the percentage increase to 500%.

Mr. Hardin stated he would ask.

Mayor Roberts stated it is his concern and he is just looking for a specific number. He suggested cost-of-living plus something else, as long as it is reasonable.

Councilmember Lewis stated it would help from a budgeting perspective too.

Mayor Roberts stated this is a lot to invest upfront. He suggested tabling the item for now.

Ms. Linn asked from a timing perspective, would Tyler Technologies be able to address the concerns and have a response prior to the next Council date of November 18<sup>th</sup>.

Mr. Hardin confirmed.

There were no further questions or comments.

Councilmember Longanecker made motion to table the agreement. Councilmember Brown seconded the motion. The agreement was tabled until the November 18<sup>th</sup> City Council Meeting, 3-0.

#### **15. CONSIDER ADOPTION OF THE 2022-2026 CAPITAL IMPROVEMENT PROGRAM (CIP)**

Ms. Karen Kindle addressed the Council. She stated the Governing Body reviewed projects and funding recommendations from staff at the October 14, 2021 CIP Work Session. She stated Council provided direction regarding funding new projects and providing additional funding for other projects as recommended by city staff. She stated in addition, Council requested a few projects be moved from the unfunded list to the funded status, as well as added some projects to the unfunded list.

She stated a schedule is provided within the Council packet to show projects that have been funded by the Governing Body as well as a project added to the unfunded project list.

She stated adoption of the CIP will establish the funding, budget and time frame for the projects as listed on the Funded Projects Schedule. As projects move through the stages of the project life cycle, staff will bring contract, funding/cost changes, timing changes, etc. to the Governing Body for approval.

There were no further questions or comments.

Councilmember Lewis moved to approve the adoption of the 2022-2026 CIP, seconded by Councilmember Brown. The CIP was approved, 3-0.

**16. CONSIDER PROFESSIONAL SERVICES AGREEMENT WITH RENAISSANCE INFRASTRUCTURE CONSULTING (RIC) FOR 191ST STREET/GARDNER ROAD/INTERSTATE 35 SAFETY AND OPERATIONAL ANALYSIS**

Ms. Beth Linn, City Administrator, addressed the Council. She stated over the last several years, Edgerton City Council has heard numerous safety concerns related to the traffic around Gardner Road interchange at I-35, particularly related to the proximity of 191<sup>st</sup> Street and Nike Elementary School. She stated Edgerton has previously responded that any improvements in the area would be the responsibility of various other agencies, such as City of Gardner, KDOT, Johnson County, etc.

She stated however, based on continuing safety concerns, even after interim improvements to the area, the enclosed draft Professional Services Agreement with RIC authorizes a safety and operational analysis of 191<sup>st</sup> Street/Gardner Road/Interstate 35 area.

She stated the Scope of Services is included in the Council packet.

She stated the enclosed agreement is the City's standard agreement, which includes an hourly rate schedule applicable for the term of the agreement. She stated this agreement is structured similar to the agreement for City Engineer services where the City is only billed for actual hours of work performed. She stated staff will work with RIC to best prioritize the use of their services to limit the project budget.

She stated the project will be funded from the Public Infrastructure Fund for LPKC Phase 1.

Mayor Roberts stated based on the number of complaints and concerns with safety at this area, it is worth moving forward on this study to have clear data.

There were no further questions or comments.

Councilmember Lewis moved to approve the agreement with RIC for 191<sup>st</sup> St./Gardner Rd./I-35 Safety and Operations analysis. Councilmember Longanecker seconded the motion. The Agreement was approved, 3-0.

**17. CONSIDER AGREEMENT WITH BG CONSULTANTS FOR THE DESIGN OF BIFURCATION OF 191<sup>ST</sup> STREET (EAST OF MONTROSE STREET)**

Ms. Beth Linn addressed the council. She stated due to continued concerns related to safety at the 191<sup>st</sup> St./Gardner Rd./I-35 Interchange area, the enclosed agreement with BG Consultants authorizes proceeding with design simultaneous to conducting the Traffic Study. She stated proceeding simultaneously allows for Edgerton to be prepared to bid for construction should the safety study recommend the closure of 191<sup>st</sup> Street.

She stated the enclosed agreement for the Design of the Bifurcation of 191<sup>st</sup> Street east of Montrose Street at the Edgerton corporate city limits. She stated the scope of services can be found within the packet. She added the cul-de-sac geometry will be designed to accommodate truck turnaround movements.

She stated the design phase includes the preparation of construction plans and project special provisions as listed within the packet.

She stated the agreement includes a not to exceed cost of \$29,500. These costs will be funded entirely from the Public Infrastructure Fund for LPKC Phase 1. She stated no City general fund dollars will be used for these services.

She stated if approved, staff anticipates beginning the design of the project immediately, with the anticipation of the design to be completed within approximately 90 days.

Mayor Roberts stated the risk factor to this is if the study comes in and says there are no safety problems. He added that it would be worthy of hearing from Fire District #1. He stated they have made it clear they will not support the closure.

Councilmember Longanecker stated if the study says the road is dangerous, he is sure they would agree and want the bifurcation done.

Mayor Roberts stated they would look at it differently than a Public Works director or citizens. He stated he thinks it would be good to hear the perspective from a partner standpoint.

There were no further questions or comments.

Councilmember Brown moved to approve the agreement with BG Consultants for the Design of Bifurcation of 191<sup>st</sup> Street, east of Montrose Street. Councilmember Lewis seconded the motion. The Agreement was approved, 3-0.

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

- Third (3<sup>rd</sup>) Quarter Financial Report

Ms. Karen Kindle addressed the Council. She reviewed the 3<sup>rd</sup> Quarter Financials with Council. She stated as we review the General Fund, we are hitting right on target. She stated expenditures are at or below the budget. She stated at the end of the quarter there were sufficient funds and the City is within budget authority.

She referenced the Water Fund, stating revenues are where they are expected to be, as well as expenditures. She stated both bond payments have been made. She stated the City is within policy on the fund balance and within the budget authority.

She stated, in reference to the Sewer Fund, revenues, expenditures, and debt service are all within expected margins. She stated all payments have been made for the year. She stated there is enough balance for the reserve and within the budget authority.

Ms. Linn stated the 3<sup>rd</sup> Quarter Code Enforcement report is at the dais for Councilmembers.

Mayor Roberts stated there are quite a few numbers that are down, which is a good thing.

Ms. Crow stated the City's Code Enforcement Officer has done an exceptional job at education and explaining the code to the citizens. He is also very willing to work with the residents and there are quite a few residents that are willing to work with us. She stated the City has been very successful with Code Enforcement.

## **19. Report by the Mayor**

Mayor Roberts invited local business owner Dan Fuller, who owns White Tail Run Winery, to speak.

Mr. Fuller addressed the Council. He stated he and his family have considered themselves part of Edgerton for 45 years. He stated in 2003, after retirement, he planted grapes and in 2010 the family decided to start producing wine. He thanked the City for using their facilities and for hosting the upcoming Trivia Night Fundraiser.

Ms. Linn stated the Trivia Night raises money for the Mayors Christmas Tree fund. She stated it is a great opportunity to support a local business and have a great time.

Mayor Roberts stated White Tail Run was a gracious host in 2019 too.

Mr. Fuller stated this event works well for the company too because it helps more people find out where the winery is and get the word out.

He stated the other reason he came to address Council was to discuss and show support for those that live near and are opposed to the proposed solar farm. He stated there were quite a few residents that will be impacted from this solar farm that attended the Johnson County Planning Commission meeting. At this meeting they were scheduled to address 5 topics: length of the conditional use permit, limitation on acreage used, mile buffer from city limits, and the other two topics were not able to be discussed due to the time limit. He stated it was recommended to have a 20-year permit, and while some were asking for 30 years, they voted for a 25-year permit. He stated some were asking for the use of 3,000 acres, some recommended 2,000, but the decision was tied and they will have to revisit. He stated a motion was made to approve a 2-mile buffer, which was voted down. They did approve a 1.5 mile buffer with waivers. He stated this means, if the company gets enough waivers, they can get closer to city limits. He stated the plan right now has the solar farm to the southern point of 56 Highway and County Line Road. He stated Edgerton's ability to expand could be hampered. He stated he and the surrounding neighbors are not against solar, but they are against this going in so close to their homes and businesses. He showed a map referencing the suitability of a solar farm at the location proposed, the map showed that it is at the lowest suitability where it is proposed to be.

Mayor Roberts stated that when they spoke on the phone, Mr. Fuller had mentioned the harm that could come to his grapes and his business.

Mr. Fuller stated the solar company has said they have to keep all vegetation away from the panels, and to do so, he could only assume that they will use the cheapest herbicide they can get: 2,4-D. He stated when applied in the wrong temperatures and weather, this solution can travel for miles. He stated the proposed location is 400 yards from his family's vineyard, so if

this continues, he would guess his vineyard will be gone in 3-4 years, which means to keep going at the rate they are now, they would have to outsource their products which would cause harm to the current winery license. Right now, their license is based on the fact they grow their own produce for the products.

Councilmember Lewis asked why NextEra thinks this is the better place to be.

Mr. Fuller stated this will be the largest solar complex in the United States. Most are away from populated areas with a maximum of 1,000 acres used. He stated this site would affect about 75-80 houses, and it just doesn't make any sense.

Mayor Roberts and the Councilmembers thanked Mr. Fuller for coming to speak to the Governing Body and informing them of what he has heard and knows about this solar farm project.

#### **20. Future Meeting Reminders:**

- November 9<sup>th</sup>: Planning Commission Meeting – 7:00PM
- November 18<sup>th</sup>: City Council Work Session (Stormwater Master Plan) – 6:00 PM
- November 18<sup>th</sup>: City Council Meeting – 7:00PM
- December 9<sup>th</sup>: City Council Meeting – 7:00PM
- December 14<sup>th</sup>: Planning Commission Meeting – 7:00PM

Councilmember Longanecker gave an update regarding Senior Lunch. He stated NorthPoint Development will be sponsoring the next lunch in November for the seniors.

Mayor Roberts stated the Chili Cook Off in October had about 30 people in attendance. He stated it was great to see everyone back together.

#### **21. Adjourn**

Councilmember Lewis moved to adjourn, seconded by Councilmember Longanecker. All in favor. The meeting was adjourned at 8:17 PM.

Submitted by Alexandria Clower, City Clerk

## **EVENTS**

October 30<sup>th</sup>: Mildale Farm Fall Festival  
October 31<sup>st</sup>: SpookEton Halloween Fest  
November 1<sup>st</sup>: Candle Making  
November 5<sup>th</sup>: Trivia Night at White Tail Run Winery to  
Benefit the Mayors Christmas Tree Fund  
November 9<sup>th</sup>: Tales for Tots  
November 17<sup>th</sup>: Senior Lunch & BINGO  
December 3<sup>rd</sup>: Mayor's Christmas Tree Lighting Ceremony  
December 14<sup>th</sup>: Tales for Tots  
December 15<sup>th</sup>: Senior Lunch & BINGO

## City Council Action Item

---

**Council Meeting Date:** November 18, 2021

**Department:** Community Development

### **Agenda Item: Consider Approval of a One-Year Contract Extension with Clements Cleaning Service to Provide Janitorial Services for the Edgerton City Hall and Auxiliary Office Space for 2022**

**Background/Description of Item:**

Since February 2012, the City of Edgerton has contracted with Clements Cleaning Service to provide janitorial services for Edgerton City Hall and Auxiliary Office spaces. Clements Cleaning Service continues to provide excellent service and therefore, staff would recommend approval of a one-year extension as allowed by the contract.

The cost of the monthly service is \$875 for City Hall, 305 E. Nelson and 312 E. Nelson, Studio B. The cost of this contract extension was allocated as part of the 2022 annual budget process. The scope of work includes the cleaning and janitorial services necessary to maintain Edgerton Community Hall and City Offices in a clean and orderly condition in accordance with general commercial practices as listed below.

**Weekly tasks include:**

- Vacuum carpeted floors
- Dry mopped and/or sweep linoleum/wood floors.
- Clean/dust all window sills, furniture, kitchen counters, table tops and similar horizontal surfaces
- Empty wastebaskets and recycle bins.
- Fully clean restrooms
- Wet mop floors
- Clean sinks, toilets and mirrors.
- Replenish toilet tissue and paper towels. Toilet tissue and paper towels supplied by the City.
- Clean water fountains
- Clean entrance doors and office window glass.
- Damp mop linoleum
- Remove soiled areas and spots from the carpet and upholstered chairs

**Quarterly/annual task as needed:**

- Dust and/or clean tops of doors, cabinets, baseboards, exposed pipes, etc.
- Dust and remove spots from walls, woodwork
- Vacuum carpets with heavy duty carpet cleaner

The City Attorney has reviewed the enclosed contract, updating it for 2022 services.

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

---

**Funding Source:** General – Facilities – Building/Ground Maintenance

**Budget Allocated:** \$19,000

**Finance Director Approval:** x Karen E. Kindle  
Karen Kindle, Finance Director

---

**Recommendation: Approve a One-Year Contract Extension with Clements Cleaning Service to Provide Janitorial Services for the Edgerton City Hall and Auxiliary Office Space for 2022**

**Enclosed:** Contract with Clements Cleaning Service

**Prepared by:** Alexandria Clower, City Clerk

## INDEPENDENT CONTRACTOR AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Edgerton, Kansas, a Kansas municipal corporation, hereinafter referred to as "City", and Stephanie Clements with Clements Cleaning Service, hereinafter referred to as "Contractor".

### WITNESSETH:

**WHEREAS**, City desires to employ the services of Contractor, as an independent contractor, to provide janitorial services (hereinafter "Services") for the City; and

**WHEREAS**, said Contractor desires to accept employment as an independent contractor for Edgerton, Johnson County, Kansas, subject to all the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

### SECTION ONE-DUTIES; SCOPE

The City hereby agrees to employ Contractor, as an independent contractor and not an employee, to provide Services for City Hall located at 404 E. Nelson Street, Edgerton, KS, to the City offices at 305 E. Nelson Street, Edgerton, KS and to the City offices at 312 E. Nelson, Studio B as provided herein. The Services to be furnished under this agreement shall consist of all cleaning and janitorial services necessary to maintain City Hall and City offices in a clean and orderly condition in accordance with general commercial practices.

The total area of **City Hall (cleaned on a weekly basis)** shall consist of the lobby, City Administrator Office, Assistant City Administrator Office, Administrative Staff Offices and File Room, City Hall with Kitchen and Men's and Women's Restroom.

The total area of **312 E. Nelson Street, Studio B (cleaned twice monthly)** shall consist of office space, kitchen, bathroom, conference room and hardwood stairs leading to upstairs unit.

The total area of **305 E. Nelson (cleaned twice monthly)** shall consist of office space, kitchen, bathroom and hardwood floors.

The Services required by this Agreement shall be performed in a manner acceptable to management. The Services covered by this Agreement shall be performed on the frequency described above, on a day determined by the Contractor, except as otherwise provided herein, at such times and in such manner as not to interfere with office operations and rentals of City Hall as directed by the City Administrator, or designee. The Contractor shall provide cleaning dates to City staff 48 hours in advance.

The City shall provide a wet mop and a dry mop for use at City facilities. All other materials and equipment, including tools, required for the performance of this Agreement shall be furnished by the Contractor.

The following Services shall be provided at all three locations upon every cleaning:

- a) Vacuum carpeted floors
- b) Dry mop and/or sweep linoleum floors
- c) Clean/dust all window sills, furniture, kitchen counters, table tops and similar horizontal surfaces
- d) Empty wastebaskets and recycle bins. All trash and recycling shall be placed in designated containers.

- e) Fully Clean Restrooms
- f) Wet mop floors
- g) Clean sinks, toilets and mirrors.
- h) Replenish toilet tissue and paper towels. Toilet tissue and paper towels supplied by the City.
- i) Clean water fountains
- j) Clean entrance doors and office window glass.
- k) Damp mop linoleum
- l) Remove soiled areas and spots from the carpet and upholstered chairs

The following Services shall be provided on an as-needed basis:

- a) Dust and/or clean tops of doors, cabinets, baseboards, exposed pipes, etc.
- b) Dust and remove spots from walls , woodwork
- c) Vacuum carpets with heavy duty carpet cleaner

## **SECTION TWO -TERM**

This Agreement will become effective following approval by the City Council and shall terminate on December 31, 2022. The contract may be terminated at the end of the contract term unless the City and Contractor have mutually agreed upon an extension no later than thirty days (30) prior to the expiration date, unless otherwise mutually agreed upon by the parties. All subsequent contract extensions, if any, shall be in increments of one (1) year.

The Contractor may terminate the Contract upon no less than thirty (30) days written notice of termination prior to the date Contractor wishes to terminate. City may terminate this agreement at any time.

## **SECTION THREE- COMPENSATION**

City agrees to pay Contractor as follows for services rendered pursuant to this Agreement.

- \$435 for monthly cleaning of City Hall
- \$265 for monthly (2 times/month) cleaning of 305 E. Nelson
- \$175 for monthly (2 times/month) cleaning of 312 E. Nelson, Studio B

Contractor shall prepare and present a monthly invoice to the City setting forth time spent performing duties pursuant to this Agreement. Said invoice shall not include time spent by Contractor traveling to and from City facilities. City agrees to process payment provided by Contractor for services rendered during the month upon receipt of the invoice. Payment is made via direct deposit to the bank account number provided by the Contractor.

## **SECTION FOUR- DUTY TO DEFEND AND INDEMNIFY**

In accordance with Kansas law, the City agrees to defend and indemnify Contractor for any claims made against Contractor, excepting claims involving negligence by Contractor or its subcontractors, for actions or inactions by Contractor while acting within the scope of this Agreement.

## **SECTION FIVE – CONFIDENTIALITY AND NON-DISCLOSURE**

The identity and personal information of citizens, the City's work product and office operations must be kept strictly confidential at all times. Although Contractor is authorized to provide services on behalf of City, as an express condition of this Agreement, it is agreed that Contractor and any employees or subordinates performing work under Contractor's direction shall absolutely maintain confidential any information learned during the course of Contractor's work for City. Any indiscretion is grounds for immediate termination of Contractor.

**SECTION SIX- GENERAL PROVISIONS**

The text herein shall constitute the entire agreement between the parties. This Agreement shall become effective upon execution by Contractor and execution by the Mayor after approval by the City Council. Contractor shall be paid at the current monthly rate for any services performed prior to this Agreement becoming effective.

**SECTION SEVEN- CHOICE OF LAW**

This Agreement is to be construed and enforced in accordance with the laws of the State of Kansas and any action to enforce this Agreement shall be brought in the Johnson County District Court.

**SECTION EIGHT- MODIFICATION**

This Agreement cannot be modified or changed by any verbal statement, promise or agreement and no modification, change nor amendment, shall be binding on the parties unless it shall have been agreed to in writing.

**IN WITNESS WHEREOF**, the parties set their hands the day and year first above shown.

**CLEMENTS CLEANING SERVICE:**

**CITY OF EDGERTON, KANSAS**

\_\_\_\_\_  
Stephanie Clements

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

APPROVED AS TO FORM:

ATTEST:

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

\_\_\_\_\_  
Alexandria Clower, City Clerk

## City Council Action Item

**Council Meeting Date:** November 18, 2021

**Department:** Administration

### **Agenda Item: Consider Approval of Year-End Longevity Bonus for Employees**


**Background/Description of Item:**

Historically, the City of Edgerton has thanked its long-term employees for their years of service with a longevity bonus at year-end. The bonus has been awarded based on \$1.50 per month of employment with the City. Using this methodology, 2021 bonuses would total \$2,080.00 and would range from \$50 to \$570.00. Employees who have not worked for the City for at least thirty-three months and part-time employees would receive a minimum \$50 bonus. The City of Edgerton Personnel Rules and Regulations state "Annual longevity pay may be given at the discretion of the Governing Body."

**Related Ordinance(s) or Statue(s):** Personnel Rules and Regulations

**Funding Source:** General Fund, Water Fund, Sewer Fund

**Budget Allocated:** General Fund Salaries: \$1,288,373; Water Fund Salaries: \$78,109; Sewer Fund Salaries: \$134,014.

x   
Karen Kindle, Finance Director

### **Recommendation: Approve the Year-End Longevity Bonus for employees**

**Prepared by:** Justin Vermillion, Accountant

## City Council Action Item

**Council Meeting Date:** November 18, 2021

**Department:** Administration

### **Agenda Item: Consider Ordinance No. 2098 Providing for the Range of Salaries and Compensation of Various City Officers and Employees**

**Background/Description of Item:**

Approval of the compensation and benefits study provided for the annual update of the minimum and maximum amounts of the pay ranges to reflect the CPI percentage used during budget development. The CPI used during development of the 2022 Budget was 1.4%.

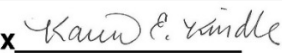
The Maintenance Technician III-Utilities position approved by Council has been added to range 5.

If approved, Ordinance No. 2098 will go into effect January 1, 2022, and repeal the previous salary ordinance.

**Related Ordinance(s) or Statute(s):** Ordinance No. 2049

**Funding Source:** General Fund, Water Fund, Sewer Fund

**Budget Allocated:** Salaries and wages are included in the various departments in the operating budgets of the General Fund, Water Fund and Sewer Fund.

x   
Karen Kindle, Finance Director

### **Recommendation: Approve Ordinance No. 2098 Providing for the Range of Salaries and Compensation of Various City Officers and Employees**

**Enclosed:** Ordinance No. 2098 Redlined  
Ordinance No. 2098 Clean

**Prepared by:** Karen Kindle, Finance Director

**ORDINANCE NO. XXXX**

**AN ORDINANCE PROVIDING FOR THE RANGE OF SALARIES AND COMPENSATION OF VARIOUS CITY OFFICERS AND EMPLOYEES OF THE CITY OF EDGERTON, KANSAS, EFFECTIVE UPON PUBLICATION AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:**

**SECTION ONE:** In accordance with the provisions of the Personnel Rules and Regulations of the City of Edgerton, Kansas, and Section 1-319 of Article 3 of Chapter I of the Code of the City of Edgerton, Kansas, the following appointed officers and employees of the City of Edgerton, Kansas shall have the following annual pay ranges:

**City of Edgerton, Kansas  
Base Salary Structure**

Range	Job Title	Minimum	Maximum
1	Not used		
2	Seasonal Laborer School Crossing Guard Summer Youth Coordinator	<del>\$15,582</del> <u>\$15,800</u>	<del>\$27,080</del> <u>\$27,459</u>
3	Customer Service Representative Maintenance Technician I Administrative Assistant Court Clerk	<del>\$32,549</del> <u>\$33,005</u>	<del>\$48,822</del> <u>\$49,506</u>
4	Maintenance Technician II Customer Service Representative II	<del>\$37,715</del> <u>\$38,243</u>	<del>\$56,571</del> <u>\$57,363</u>
5	Accounting Technician Code Enforcement/Animal Control Officer Recreation Coordinator <del>Maintenance Technician III-Utilities</del>	<del>\$41,072</del> <u>\$41,647</u>	<del>\$61,608</del> <u>\$62,471</u>
6	Foreman Planning & Zoning Coordinator Building Inspector	<del>\$47,014</del> <u>\$47,672</u>	<del>\$70,521</del> <u>\$71,508</u>
7	City Clerk Accountant	<del>\$51,664</del> <u>\$52,387</u>	<del>\$77,495</del> <u>\$78,580</u>
8	Marketing/Communications Manager	<del>\$55,797</del> <u>\$56,578</u>	<del>\$83,695</del> <u>\$84,867</u>
9	Public Works Superintendent Utilities Superintendent CIP Project Manager	<del>\$61,996</del> <u>\$62,864</u>	<del>\$92,994</del> <u>\$94,296</u>
10	Assistant City Administrator Development Services Director Finance Director Public Works Director	<del>\$87,828</del> <u>\$89,058</u>	<del>\$131,742</del> <u>\$133,586</u>

**SECTION TWO:** The following officers and employees of the City of Edgerton, Kansas shall receive compensation as hereinafter provided:

Position	Compensation
City Treasurer	\$180.25 per calendar month
City Attorney	\$175.00 per hour. Duties include: attendance at City Council meetings, preparation of ordinary ordinances, advise, conference and phone calls.
Municipal Judge	\$500 per docket attended
Prosecuting Attorney	\$150 per hour
Court Appointed Attorney	\$75.00 per hour for in-court time and out-of-court preparation time

**SECTION THREE:** The City Administrator shall set the individual employee's salary and compensation which shall fall within the salary and compensation ranges established by this Ordinance.

**SECTION FOUR:** All other ordinances in conflict are hereby repealed upon the adoption of this Ordinance.

**SECTION FIVE:** This Ordinance shall take effect on January 1, ~~2021~~2022.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF EDGERTON, KANSAS ON THE ~~10~~18<sup>TH</sup> DAY OF ~~December~~ November ~~2020~~2021.

\_\_\_\_\_  
DONALD ROBERTS, Mayor

ATTEST:

\_\_\_\_\_  
ALEXANDRIA CLOWER, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
LEE W. HENDRICKS, City Attorney

Formatted: Space After: 0 pt, Line spacing: single, Tab stops: 0.28", Left + 3.25", Centered + Not at 0.83"

## **ORDINANCE NO. 2098**

### **AN ORDINANCE PROVIDING FOR THE RANGE OF SALARIES AND COMPENSATION OF VARIOUS CITY OFFICERS AND EMPLOYEES OF THE CITY OF EDGERTON, KANSAS, EFFECTIVE UPON PUBLICATION AND REPEALING ALL ORDINANCES IN CONFLICT THEREWITH**

#### **BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:**

**SECTION ONE:** In accordance with the provisions of the Personnel Rules and Regulations of the City of Edgerton, Kansas, and Section 1-319 of Article 3 of Chapter I of the Code of the City of Edgerton, Kansas, the following appointed officers and employees of the City of Edgerton, Kansas shall have the following annual pay ranges:

#### **City of Edgerton, Kansas Base Salary Structure**

Range	Job Title	Minimum	Maximum
1	Not used		
2	Seasonal Laborer School Crossing Guard Summer Youth Coordinator	\$15,800	\$27,459
3	Customer Service Representative Maintenance Technician I Administrative Assistant Court Clerk	\$33,005	\$49,506
4	Maintenance Technician II Customer Service Representative II	\$38,243	\$57,363
5	Accounting Technician Code Enforcement/Animal Control Officer Recreation Coordinator Maintenance Technician III-Utilities	\$41,647	\$62,471
6	Foreman Planning & Zoning Coordinator Building Inspector	\$47,672	\$71,508
7	City Clerk Accountant	\$52,387	\$78,580
8	Marketing/Communications Manager	\$56,578	\$84,867
9	Public Works Superintendent Utilities Superintendent CIP Project Manager	\$62,864	\$94,296
10	Assistant City Administrator Development Services Director Finance Director Public Works Director	\$89,058	\$133,586

**SECTION TWO:** The following officers and employees of the City of Edgerton, Kansas shall receive compensation as hereinafter provided:

<b>Position</b>	<b>Compensation</b>
City Treasurer	\$180.25 per calendar month
City Attorney	\$175.00 per hour. Duties include: attendance at City Council meetings, preparation of ordinary ordinances, advise, conference and phone calls.
Municipal Judge	\$500 per docket attended
Prosecuting Attorney	\$150 per hour
Court Appointed Attorney	\$75.00 per hour for in-court time and out-of-court preparation time

**SECTION THREE:** The City Administrator shall set the individual employee's salary and compensation which shall fall within the salary and compensation ranges established by this Ordinance.

**SECTION FOUR:** All other ordinances in conflict are hereby repealed upon the adoption of this Ordinance.

**SECTION FIVE:** This Ordinance shall take effect on January 1, 2022.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF EDGERTON, KANSAS ON THE 18<sup>TH</sup> DAY OF November 2021.

\_\_\_\_\_  
DONALD ROBERTS, Mayor

ATTEST:

\_\_\_\_\_  
ALEXANDRIA CLOWER, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
LEE W. HENDRICKS, City Attorney

## City Council Action Item

---

**Council Meeting Date:** November 18, 2021

**Department:** Administration

### **Agenda Item: Consider 2022 Funding Recommendations for the Human Service Fund**

**Background/Description of Item:**

During the annual budget process for 2022, Edgerton City Council approved an allocation of \$2,500 to United Community Services for the Human Service Fund. The Human Service Fund agreement gives participating jurisdictions the authority and responsibility for determining allocations from this fund. Enclosed is the 2022 Human Service Fund Recommendations Report for review. As a participating jurisdiction, Edgerton City Council has been asked to review and approve the funding recommendations no later than December 30, 2021.

The Human Service Fund offers local governments a cost-efficient, accountable mechanism to support an array of services that help residents of every city and township who are facing difficult circumstances. Funding is awarded to local nonprofit agencies which provide vital programs that meet the needs of Johnson County residents who live with income at or near the federal poverty level. Priority is given to programs that address childcare, job training, emergency aid and shelter, child/adult abuse, child welfare, and health care. (See appendix B for funding guidelines.) Agencies recommended for grants demonstrate positive outcomes and are working collaboratively with others in the community.

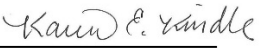
Last year programs receiving Human Service Fund grants provided over 168,000 units of service to more than 37,000 Johnson County residents in-need. But, these programs benefit more than just the individual and their family; the entire community, including local government, benefits. Without a strong human service infrastructure to address issues such as unemployment, lack of childcare, homelessness, child abuse and neglect, domestic violence, and untreated medical conditions, our community will experience higher crime rates and lower tax revenue, a decline in the standard of living, and weakened economic health.

**Related Ordinance(s) or Statue(s):** N/A

---

**Funding Source:** General Fund – General Government

**Budget Allocated:** \$2,500

x   
Karen Kindle, Finance Director

---

**Recommendation: Approve 2022 Funding Recommendations for the Human Service Fund**

**Enclosed:** 2022 Human Service Fund Recommendations Report

**Prepared by:** Alexandria Clower, City Clerk



# United Community Services of Johnson County

November 5, 2021

## Board Members

Roxann Kerr Lindsey, President

Kate Allen

Marshaun Butler

Joe Connor

Tara Eberline

Erik Erazo

Rev. Adam Hamilton

Robin Rollins Harrold

Thomas Herzog

Donna Lauffer

Patty Markley

Dr. L. Michael McCloud, PhD

Hon. Donald Roberts

Kevin Tubbesing

Vanessa Vaughn West

Dave White

Rebecca Yocham

## Council of Advisors

Gary Anderson

Mary Birch

Dr. Andy Bowne

Pat Colloton

Dr. Stuart Day

Hon. Peggy Dunn

Hon. Ed Eilert

Jeff Ellis

SuEllen Fried

Ellen Hanson

Terrie Huntington

Audrey Langworthy

Penny Postoak Ferguson

Jill Quigley

Tom Robinett

Clint Robinson

Carol Sader

Brad Stratton

Charlie Sunderland

Hon. Stephen Tatum

David Warm

## Executive Director

Julie K. Brewer

To: Beth Linn, City Administrator

From: Julie Brewer, Executive Director

RE: 2022 Human Service Fund Recommendation Report

The United Community Services (UCS) Board of Directors has prepared its 2022 Human Service Fund allocation recommendations. An electronic version of the 2022 Human Service Fund Recommendation Report is attached. Print copies are available upon request.

UCS is sincerely grateful for the funding from the participating jurisdictions which resulted in total funding of approximately \$437,830. During 2022, allocations will benefit Johnson County residents who will be served through 19 programs recommended for grants. Thanks to your support, in 2020, programs receiving Human Service Fund grants provided over 168,000 units of service to more than 37,000 Johnson County residents.

The Human Service Fund agreement gives participating jurisdictions the authority and responsibility for approving UCS' recommendations for Human Service Fund grants. **The city of Edgerton is requested to approve the recommendations and notify UCS no later than December 30, 2021.** After that date, the recommendations will stand as presented.

If you have any questions about the recommendations or process, please contact Christina Ashie Guidry at [christinag@ucsjoco.org](mailto:christinag@ucsjoco.org) or (913) 438-4764. We appreciate your support of this county-wide partnership. Thank you.

Enclosure: 2022 Human Service Fund Recommendations Report

cc: Alex Clowers



# United Community Services of Johnson County

## Board Members

Roxann Kerr Lindsey, President  
Kate Allen  
Marshaun Butler  
Joe Connor  
Tara Eberline  
Erik Erazo  
Rev. Adam Hamilton  
Robin Rollins Harrold  
Thomas Herzog  
Donna Lauffer  
Patty Markley  
Dr. L. Michael McCloud, PhD  
Hon. Donald Roberts  
Kevin Tubbesing  
Vanessa Vaughn West  
Dave White  
Rebecca Yocham

## Council of Advisors

Gary Anderson  
Mary Birch  
Dr. Andy Bowne  
Pat Colloton  
Dr. Stuart Day  
Hon. Peggy Dunn  
Hon. Ed Eilert  
Jeff Ellis  
SuEllen Fried  
Ellen Hanson  
Terrie Huntington  
Audrey Langworthy  
Penny Postoak Ferguson  
Jill Quigley  
Tom Robinett  
Clint Robinson  
Carol Sader  
Brad Stratton  
Charlie Sunderland  
Hon. Stephen Tatum  
David Warm

## Executive Director

Julie K. Brewer

## 2022 HUMAN SERVICE FUND RECOMMENDATIONS REPORT

Human service programs are vital to the well-being, safety, and stability of Johnson County residents. United Community Services (UCS) commends city and County government leaders for recognizing the important role of local government in supporting human service programs. Together, Johnson County Government and 14 cities have budgeted \$437,830 for the **Human Service Fund** (HSF) in 2022 – more than a 10% increase from 2021.

In 2022, HSF received a 50% increase in applications for funding. Due to your generous support, five new programs are recommended for funding, for a total of 19 programs receiving your support. Four of these new programs are welcomed through the new Small Grants Program, which provides grants of less than \$5,000 for new, growing, and grassroots organizations working to build their footprint and grant capacity. Thank you for making this possible!

The HSF offers local governments a cost-efficient, accountable mechanism to support an array of services that help residents of every city and township who are facing difficult circumstances. Funding is competitive and is awarded to local nonprofit agencies which provide vital programs that meet the needs of Johnson County residents who live with income at or near the federal poverty level. Priority is given to programs that address work support services, emergency aid and shelter, child/adult abuse, child welfare, and health care. (See Appendix B for all funding priorities.)

Agencies recommended for grants demonstrate positive outcomes and are working collaboratively with other organizations in the community. Funding recommendations represent the maximum HSF award for the calendar year(s), and UCS is not responsible for reductions in grant awards that may occur due to reduction in allocated funds by participating jurisdictions.

Thanks to your support, in 2020, programs receiving HSF grants provided over 168,000 units of service to more than 37,000 Johnson County residents. In 2020, “units of service” included medical and dental appointments, nights of safe housing, counseling and case management, emergency rental and utility assistance, food pantries, employment training and more. These programs benefit more than just the individual and their family; the entire community, including local government, benefits. Without a strong human service infrastructure to address issues such as unemployment, lack of childcare and transportation, homelessness, child abuse and neglect, domestic violence, and untreated medical conditions, our community will experience higher crime rates and lower tax revenue, a decline in the standard of living, and weakened economic health.

**Jurisdictions are asked to accept the funding recommendations by  
December 30, 2021.**

## 2022 Human Service Fund Applicant History and Recommendations

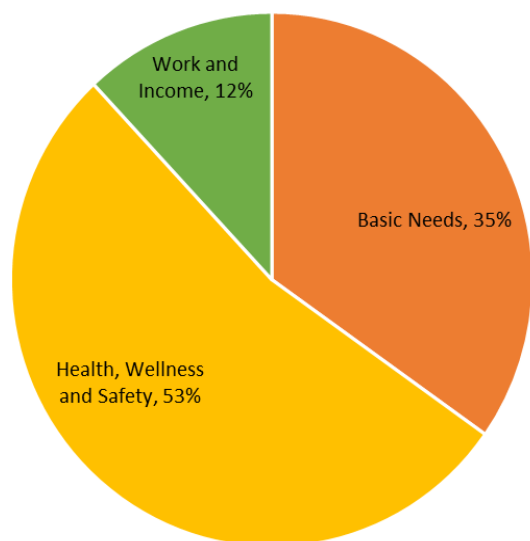
Regular HSF Grant Applicant	2020 Grant	2021 Grant	2022 Recommended	Program Description
CASA of Johnson & Wyandotte*	\$48,000	\$48,000	\$50,000	Child Advocacy: court-ordered intervention by trained volunteers for children determined by a judge to be a "Child in Need of Care" due to abuse or neglect, or as high concern for safety and placement.
Catholic Charities of NE Kansas*	\$70,000	\$70,000	\$68,500	Emergency assistance and supportive housing, including case management to meet basic needs of low-income families and help them work towards self-sufficiency.
Center of Grace	—	—	\$0	Free blood pressure monitors to take in-home blood pressure readings for low-income clients referred by health screening
El Centro*	\$22,800	\$22,800	\$25,000	Safety net services for low-income, under/uninsured households: economic empowerment (emergency assistance, financial literacy, assistance filing taxes), and access to healthcare (health navigation and health promotion).
FosterAdopt Connect	\$5,000	\$5,000	\$5,000	Behavioral Interventionist Program: One-on-one services in the home with fostered/adopted children to support behavioral and emotional management and retain housing placement.
Growing Futures EEC*	\$9,000	\$9,000	\$19,398	Scholarships for pre-kindergarten wraparound childcare fees for low-income families, supporting full-time education/employment of caregivers and kindergarten preparedness.
Harvesters	\$15,000	\$15,000	No request	BackSnack and Kids Café programs provide food for low-income school children for weekends and meals in afterschool locations and summer sites.
Health Partnership Clinic*	\$45,000	\$49,500	\$49,500	Health, dental, and behavioral healthcare, through a medical home model, for uninsured low-income Johnson County residents.
Hillcrest Ministries of MidAmerica*	\$10,000	No request	\$10,000	Transitional housing for youth, single adults, and families experiencing homelessness; case management, budget counseling, and supportive services.
Inclusion Connections	—	—	\$5,000	Life skill, education, and employability training at sliding scale fees for low-income young adults with developmental disabilities to support long term employment and quality of life.
Jo. Co. Interfaith Hospitality Network*	\$9,000	\$9,000	\$9,000	Case management, including shelter and meals for single women and families with children experiencing homelessness.
Kansas Children's Service League*	\$20,280	\$20,280	\$20,340	Healthy Families Program: Home-based education and family support for new parents whose children are at-risk for child abuse and neglect.
KidsTLC*	\$18,500	\$17,500	\$17,500	Thriving Families: Crisis counseling, parent education, and assistance navigating health care and mental health care, housing, and community resources to support positive family outcomes.
Metro Lutheran Ministries	—	—	\$0	Short-term case management and emergent assistance for households at-risk of homelessness.
NCircle*	\$15,696	\$19,696	\$19,696	Training and Employment Services: skills training, certification, financial education, mentorship & job placement for clients in Department of Corrections custody and/or on supervision.
SAFEHOME	\$21,000	\$21,000	\$21,000	Case management services for clients of the domestic violence shelter, including emergency shelter, housing assistance, therapy, legal services, and advocacy.
Salvation Army Family Lodge (Olathe)*	\$20,000	\$23,000	\$25,000	Transitional housing for families in Johnson County experiencing homelessness, including related services and comprehensive case management.
Sunflower House*	\$42,500	\$42,500	\$46,898	Personal safety, education and prevention programs for children and youth. Prevention and education programs for childcare professionals and caregivers, including mandated reporters.
<b>Subtotal</b>	<b>\$371,776</b>	<b>\$372,776</b>	<b>\$410,830</b>	Funds allocated to human service programs serving Johnson County residents.

UCS	\$26,000	\$26,000	\$27,000	Fee for administration of the Human Service Fund.
<b>Total</b>	<b>\$397,776</b>	<b>\$398,276</b>	<b>\$437,830</b>	The 2021 federal poverty level for a family of three is \$21,960.

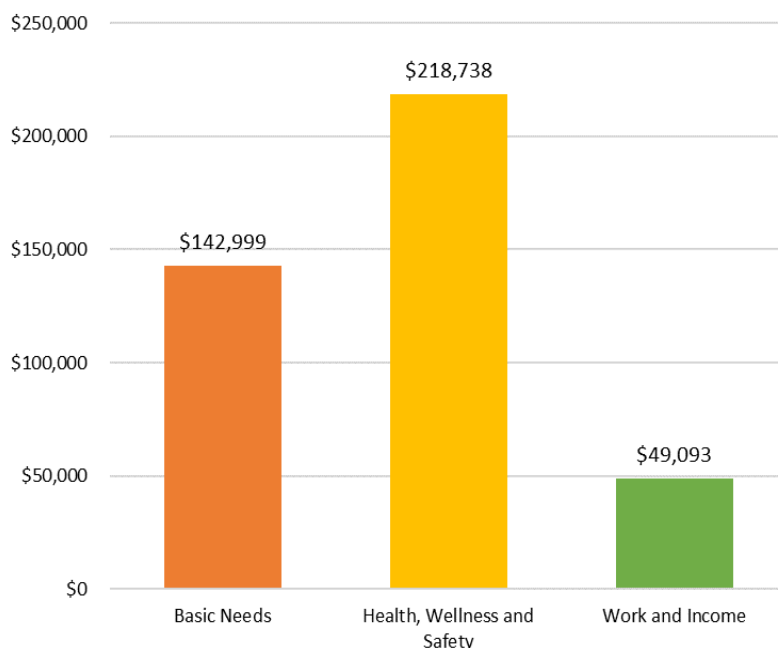
\*Applicants are returning grantees with established programs for which the UCS Board recommends two years of funding. The two-year funding recommendation is contingent on: continued agency performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it wishes to continue substantially the same program at the same level of funding in calendar year 2023. If all these conditions are met, these grantees may elect to submit a letter of affirmation rather than completing a full HSF application for the 2023 funding cycle. In the alternative, these grantees may submit a full HSF application in 2023.

	HSF Small Grant Applicant	2022 Recommendation	Program Description
<b>HSF Small Grants Program (New in 2022)</b>	Community Center of Shawnee	<b>\$4,500</b>	Food pantry, clothing, and emergency financial assistance for shelter, fuel, utilities, healthcare, and transportation to support basic needs, healthcare access, and employment in Johnson County.
	Gateway to Hope	<b>\$4,500</b>	Sisters of Hope/Hermanas en la Esperanza provides mental and behavioral healthcare to low income, under/uninsured teen girls and women in Johnson County through free and reduced fee services. This program serves primarily low-income Latina and BIPOC teens and women in English and Spanish.
	HopeBuilders	<b>\$4,999</b>	Supports adequate housing and retention of affordable housing stock by providing accessibility modifications and home repair for older adults and individuals living with disabilities in Johnson County.
	Pathway to Hope	<b>\$4,999</b>	Reclamation Clubhouse empowers individuals diagnosed with serious mental illness to secure and maintain stable employment and self-sufficiency through job training, transportation, work tools and attire, and employment support in Johnson County.

Distribution of Human Service Funds by Program Type  
Total Recommended Grants in 2022: \$410,830



Human Service Fund: Funding Recommendations by Program Type



## 2022 Human Service Fund Recommendations

### HSF Small Grants Recommendations

After consultation with and agreement of contributing jurisdictions, 2022 represents the launch of HSF Small Grants. HSF Small Grants are for amounts less than \$5,000 for agencies that are new, growing, or grassroots and working to build their footprint and grant capacity in Johnson County. Like regular HSF applicants, these nonprofits must meet Human Service Fund guidelines (See Appendix B), including funding priorities, eligibility criteria, and reporting requirements. \$18,998 in total funding is recommended for applicants to the HSF Small Grants.

<b>Community Center of Shawnee</b>  \$4,500 Recommendation	Funding is recommended to support transportation assistance and food pantry services to decrease food insecurity and increase self-sufficiency of Johnson County residents as part of the emergency assistance program, which includes food, clothing, holiday meals, school supplies, transportation assistance, and shelter. Community Center of Shawnee serves low-income clients. Transportation is a recognized barrier to employment and healthcare access in Johnson County.
---------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**2022 Results Projected:** Reduction of food insecurity in Johnson County through the provision of food and increase in transportation supporting employment, employment retention, and access to healthcare by Johnson County residents.

<b>Gateway to Hope</b>  \$4,500 Recommendation	Funding is recommended to subsidize the Sisters of Hope/Hermanas en la Esperanza program, which provides sliding scale and free quality mental health and behavioral healthcare to low income, under- and uninsured women in Johnson County, with an emphasis on Latina women and other women of color. Services are provided in English and Spanish. Access to mental and behavioral healthcare services are an acute need for low-income women in Johnson County.
---------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**2022 Results Projected:** Increased access to mental health and behavioral healthcare for low-income and under- and uninsured women; reduction of depression and anxiety among clients; increase in work attendance and productivity among clients; and decrease in work absences among clients.

<b>HopeBuilders</b>  \$4,999 Recommendation	Funding is recommended to support home safety, accessibility, and mobility through free home repair, modification, and accessibility projects which support older adults and individuals with disabilities in Johnson County. A recommendation of the 2021 Johnson County Community Housing Study, home modification and repair is an important component of maintaining existing Johnson County housing stock.
------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**2022 Results Projected:** Support families in maintaining a safe home environment, reduction in falls reported by clients, increased client mobility and self-sufficiency.

<b>Pathway to Hope</b>  \$4,999 Recommendation	Funding is recommended to support the Reclamation Clubhouse, the local chapter of a national program, which provides a day program and free education and employment training as well as work tools, clothing, and transportation for adults with a diagnosis of serious mental illness to support stable employment and self-sufficiency.
---------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**2022 Results Projected:** Clients will obtain employment skills resulting in employment; clients will report job satisfaction and will maintain employment.

### HSF Regular Grants Recommendations

<b>CASA of Johnson and Wyandotte Counties</b>  \$50,000 Recommendation	A \$2,000 increase in funding, for a total of \$50,000, is recommended for the Child Advocacy Program, a court-ordered program that serves children from birth to age 18. Most children in the program are those whom a Juvenile Court Judge has determined to be a “Child in Need of Care” due to abuse or neglect by parent or caretaker (commonly placed in foster care). Children may also be referred by a Family Court Judge when child safety and placement are of great concern in a high conflict divorce or separation. In these cases, the judge is determining if the child can reside in a safe placement without having to be placed in state custody (foster care). A trained CASA volunteer advocate regularly meets with the child and focuses on the child’s situation, including safety, mental health, education needs, etc. The volunteer also gathers information from the parents, foster parents, social workers, attorneys, and teachers, then with the CASA supervisor, identifies service needs. CASA submits a report to the judge which includes information about the child’s statements, behavior, and interaction with parents. Court reports support the judge’s critical decisions about where the child should live and what services should be court-ordered.
---------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**2022 Results Projected:** Children are safe from additional abuse or neglect. Children have a stable adult presence in their lives, and when eligible will complete high school. CASA anticipates serving 494 Johnson County children during 2022.

**Outcomes achieved during 2020:** 351 Johnson County children were served. The presence of a stable adult is a key factor in building resilience from a history of trauma. 98% of children served by CASA had a stable adult presence through their CASA volunteer during their court involvement. While assigned to a CASA advocate, 99% of the children served did not have an additional affirmed or substantiated report of abuse to Kansas Department for Children and Families (DCF). Of the CASA-served youth eligible for graduation, 90% graduated.

CASA is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$50,000/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.

**Catholic  
Charities of  
Northeast  
Kansas**

\$68,500  
Recommendation

Funding is recommended for the Emergency Assistance and Supportive Housing program which operates within two centers in Johnson County. The program provides assistance and strengths-based case management, without regard to religious affiliation, to families living at or below 150% of federal poverty guidelines. Emergency Assistance services include those that meet residents' basic needs such as food, clothing and shelter, as well as financial assistance with prescription medication and medical supplies, utilities, childcare, and transportation. The case management delivery model emphasizes practices to achieve self-sufficiency, including asset development/financial literacy, workforce development and job-seeking assistance, life skills, and referrals to other available community resources.

**2022 Results Projected:** During 2022, the agency anticipates serving 14,012 Johnson County residents with assistance that includes food and/or financial support to maintain housing and utilities. Every client who receives financial assistance will engage in budget coaching and a financial review with their case manager. 75% of clients will attend financial literacy education classes and receive one-on-one coaching according to assessed need and capability.

**Outcomes achieved during 2020:** 13,058 Johnson County residents were served and visits to Catholic Charities for food assistance totaled 51,091, a 20% increase in visits over 2019. Direct financial assistance enabled 940 individuals to maintain safe housing for at least 30 days. 1,044 individuals benefited from utility service assistance which enabled them to sustain utility services for 30 days. All individuals who received direct financial assistance completed a financial assessment with their case manager. 91% of individuals who received financial assistance also attended financial literacy education with one-on-one budget coaching.

Catholic Charities of Northeast Kansas is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$68,500/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.

**El Centro, Inc.**

\$25,000  
Recommendation

A \$2,200 increase in funding, for a total of \$25,000, is recommended for El Centro's Johnson County Family Services Center located in Olathe where a set of safety-net services are provided to low-income and/or under/uninsured Johnson County individuals and families. Services promote self-sufficiency, well-being, and health. Services include economic empowerment (emergency assistance, financial literacy classes, assistance filing taxes), access to healthcare (health navigation and promotion) and policy education.

**2022 Results Projected:** During 2022, El Centro expects to serve 2,700 Johnson County residents at the Olathe office. Results include meeting clients' basic needs (sustain housing and utility services, completion of financial classes), assisting clients with work and income supports (filing taxes, obtaining an Individual Tax Identification Number if needed) and clients leading healthier lives (successful access of community healthcare resources and increased knowledge of chronic disease prevention and healthy consumer behaviors).

**Outcomes achieved during 2020:** 3,248 unduplicated Johnson County residents were served. Due to CARES Act funds, El Centro was able to pass through additional funds to support low-income clients. Clients' basic needs were met: 265 households received utility assistance and were able to maintain utilities for minimum of 30 days; 269 households received rental assistance. 534 individuals completed financial empowerment classes. 51 people were assisted with the process that enabled them to receive an Individual Tax Identification Number and thus file income taxes. 575 individuals were assisted with applying for the Supplemental Nutrition Assistance Program (SNAP) and received benefits; 208 enrolled in KanCare with assistance; 964 were assisted in filing income taxes. El Centro also offered a drive through food pantry, serving over 2,000 individuals in Olathe and implemented educational videos related to health eating, budgeting, voting, the census, and COVID-19 with total view exceeding 36,600 between July-December 2020.

El Centro is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$25,000/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirm that it wishes to continue this program at the same level of funding in 2023.

**FosterAdopt Connect**

\$5,000

Recommendation

Funding is recommended for a new program at FosterAdopt Connect: the Behavioral Intervention Program (BIP). FosterAdopt Connect has received a federal grant to expand this program and HSF funds will provide a portion of the match for the federal grant. BIP uses the Nuerosequential Model of Therapeutics to provide intensive one-on-one in-home services with fostered and adopted children to address behavioral and emotional management to stabilize housing placement, preventing families from experiencing the trauma of disrupted housing placements, and reducing the need for residential in-patient services. BIP is recognized as an effective intervention and the cost of in-home intervention through BIP is significantly less than in-patient treatment and/or disrupting housing placement for children in the program.

**2022 Results Projected:** In 2022, FosterAdopt anticipates serving 30 Johnson County families through over 3,500 hours of intervention to reduce the likelihood of placement disruption for foster and adopted children, reduce risk factors for entry to residential care, enhance household capacity to meet children's needs, and reduce costs to regional care systems.

**Outcomes achieved during 2020:** In 2020, FosterAdopt Connect delivered Family Advocacy Services to 250 children and adults through its Lenexa office. 87% of families developed and maintained an action plan within 30 days of initial contact and 85% of families demonstrated increased access to resources and knowledge through having indirect advocacy needs met within 3 business days.

**Growing Futures Early Education Center**

A \$10,398 increase in funding, for a total of \$19,398, is recommended for Growing Futures' Scholarship Assistance for Wrap Around Care (WAC) Program. WAC complements the Head Start program, providing full-day care and education from 7 a.m. to 5: 30 p.m. 2021 research by The Family Conservancy and Mid-America Regional Council indicates that affordable childcare is an acute need in Johnson County and the surrounding region, with

\$19,398  
Recommendation

1,084 childcare slots permanently lost in Johnson County alone in 2020 due to COVID shutdowns, in order to support return to full-time employment by primary caregivers. Families served by Growing Futures are living at or below federal poverty guidelines. The majority of Growing Futures families speak English as a second language and half of families are single parent households. Through the HSF grant, childcare scholarships help low-income families experiencing financial hardships who are unable to pay their share of childcare fees and who are working or going to school for at least 30 hours per week. Scholarships allow for continuity of early childhood care and education while parents are working or attending school. Growing Futures also provides resources and support for the family to support self-sufficiency including connection to health, nutrition, social services, mental health services, parental education and parenting events.

**2022 Results Projected:** All supported families have income at or below the federal poverty level and require full day childcare to obtain employment and/or complete educational goals; all supported families have been adversely impacted financially during the COVID pandemic. Through the extended WAC program, Growing Futures will provide over 4,500 hours of care for enrolled children, serving an estimated 66 Johnson County residents. With Growing Futures, children will maintain daily attendance, supporting caregivers in maintaining employment and/or education. Families will engage in family counseling and support with Growing Futures, resulting in families achieving at least one large family goal, based upon family determined strengths and needs. Despite the financial hardship of families, children will remain enrolled in the program to ensure they obtain a high quality HeadStart education, which children will demonstrate by achieving kindergarten-readiness as demonstrated by the Child Observation Record scores and Bracken School Readiness Assessment.

**Outcomes achieved during 2020:** 66 Johnson County residents were served through families receiving short term help or fee subsidies which allowed parents to remain working or in school while facing financial challenges. No children left the program due to inability to pay fees. 87% of families took steps toward completion of a large family goal and 87% of children achieved kindergarten readiness.

Growing Futures is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$19,398/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.

**Health Partnership Clinic (HPC)**

\$49,500  
Recommendation

Funding is recommended for primary and preventative medical care, which are provided at Health Partnership Clinic's office in Olathe, a pediatric clinic in Shawnee Mission, and a school-based clinic in Merriam. Funding helps to support a Nurse Practitioner providing care to uninsured patients at the Olathe Clinic. HPC's patients are primarily low-income and the majority are uninsured or publicly-insured. HPC is Johnson County's largest safety-net clinic and only Federally Qualified Health Center; it utilizes a medical home model which emphasizes prevention and health maintenance while providing a broad scope of services including care for patients with chronic diseases. HPC also provides dental and behavioral health services, and works in partnership with homeless shelters, delivering onsite health

care services and case management. Specialty care is provided through a network of providers.

**2022 Results Projected:** Anticipated program results include access to a medical and dental home for low-income and uninsured residents, patients achieve better health outcomes and are satisfied with services they receive, and patients continue to utilize HPC as their health home. During 2022, HPC anticipates serving 9,347 Johnson County residents through 25,125 patient office visits or encounters.

**Outcomes achieved during 2020:** 6,258 Johnson County residents were served through 15,485 patient office visits and/or clinical encounters. Approximately 94% of patients surveyed indicated they were either satisfied or very satisfied with overall care they received as a patient. 49% of hypertensive patients maintained blood pressure below 140/90; 64.7% of diabetic patients achieved HgA1c (blood glucose) level of 9.0 or below.

Health Partnership Clinic is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$49,500/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.

**Hillcrest  
Ministries of  
MidAmerica**

\$10,000  
Recommendation

Funding is recommended for Hillcrest's Transitional Housing – Homeless Youth and Families Program. Transitional housing for homeless youth, up to age 24, families with children, and single adults will be provided in seven apartments located in Overland Park. Hillcrest uses either the U.S. Housing and Urban Development or McKinney-Vento definition of homeless and clients are at or below federal poverty guidelines. The program provides housing and food, case management, budget counseling and connection to community services to address immediate and ongoing needs, such as medical, dental, vision, mental health, substance abuse treatment, employment training, tutoring, and mentoring.

**2022 Results Projected:** 30 homeless children, youth, and adults will be provided transitional housing and achieve at least one goal from their assessment plan. Homeless youth will work toward achieving an education goal and adults will maintain or improve employment.

**Outcomes achieved during 2020:** 30 residents of Johnson County were served through transitional housing and completed individual service assessments. Each client completed at least one achievement goal identified in their individual service assessment. Of those, 3 youth worked toward achieving education goals and 12 adults improved and maintained employment.

Hillcrest Ministries of MidAmerica is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$10,000/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.

<b>Inclusion Connections</b>  \$5,000 Recommendation	<p>A new applicant, funding is recommended for the EmployAbility/PawsAbilities employment program, which provides job training, transportation, job counseling, and wrap around services for low-income young adults with developmental disabilities (IDDs). The EmployAbility/PawsAbilities program is one of several services provided by Inclusion Connections. Inclusion Connections provides both day programs and evening programs for its clients including educational programs, life skills, and entertainment and physical activity-based programs. All programs are low-cost and sliding scale fee for low-income clients.</p> <p>With supportive job training, ongoing transportation assistance, barrier reduction, and client choice to direct employment opportunities, the EmployAbility/ PawsAbilities program supports long-term employment, quality of life, and independence among young adults with IDD and allows caregivers to maintain employment, supporting positive family outcomes. Employment among young adults with IDD nationally is 15%.</p> <p><b>2022 Projected Outcomes:</b> 75% of EmployAbility program participants will obtain employment; 90% of employed clients will maintain employment; and clients will report an increase in quality of life.</p>
<b>Johnson County Interfaith Hospitality Network (JCIHN)</b>  \$9,000 Recommendation	<p>JCIHN provides shelter, meals, transportation and case management for families and single unaccompanied females experiencing homelessness. Area congregations provide shelter and meals on a rotating schedule while JCIHN staff helps families regain self-sufficiency and independence. Human Service Funds are used to provide strengths-based case management which includes assistance with transportation, referrals to other community resources, assistance with budgeting, money management, and job and housing searches. Services are provided by over 3,000 volunteers through partnerships with 40 faith congregations.</p> <p><b>2022 Results Projected:</b> During 2022, the agency expects to serve 40 Johnson County residents with 2,500 days of shelter and case management. Clients completing the program will increase their economic resources, and approximately 50% will move into homes of their own within four months of entering the network. Volunteers will increase their awareness of human service needs in Johnson County.</p> <p><b>Outcomes achieved during 2020:</b> During 2020, 57 Johnson County residents were served. Of those completing the program, 65.5% reported increasing their income by 25% or more while in the program, and 52.5% moved into homes of their own within three months of entering the network. Johnson County residents received 1,656 cumulative days of shelter and strength-based case management.</p> <p>JCIHN is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$9,000/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.</p>

**Kansas Children's Service League (KCSL)**

\$20,340

Recommendation

Funding is recommended for Healthy Families Johnson County, a child abuse prevention program which provides intensive home-based education and family support services to parents who are experiencing extreme stress and are "at-risk" for abuse and neglect. Eligibility is based upon risk factors, not income, however, most of the families are low-income. Participants receive routine at-home visits, case management, referrals to community resources and services, child development and parent education, and linkage to health care services. Parent engagement includes Parent Cafés, parent support groups, and a parent advisory group. Funding is also recommended for the \$540 annual cost of webhosting the Johnson County Early Learning Collaborative, a collaborative of organizations (including KCSL) which serve young children. The website is used to connect caregivers and providers with programs that serve children, and as link to My Resource Connection when other services are needed.

**2022 Results Projected:** During 2022, 250 Johnson County individuals are expected to be served. Anticipated outcomes include: families will not have any substantiated child abuse or neglect while in the program; children will be covered by health insurance and current on immunizations; and, children will have had a developmental screen in the last six months (or are already receiving services for developmental delays).

**Outcomes achieved during 2020:** 259 Johnson County residents were served. 99% of the families served remained free from substantiated abuse and neglect while in the program and 85% of children were up to date on immunizations. 99% of children enrolled for at least six months had health insurance and 90% had a developmental screening.

KCSL is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$20,340/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.

**KidsTLC**

\$17,500

Recommendation

Funding is recommended for KidsTLC Thriving Families program which offers resource referral, parent support groups, and health care navigation to families who face behavioral and mental health issues with their children. The program serves families in the community and families who have children in one of KidsTLC's programs. Eligibility is not based upon income, however, most of the families are low-income (58% of KidsTLC's clients are living below 200% of the Federal Poverty Level). The program serves as the navigation arm for the agency, helping families find mental health/health care, housing and community resources/support. It also provides education and support to Spanish-speaking families. The program is a health navigation resource for schools and participates in Olathe and Shawnee Mission School Districts' IMPACT Olathe and Project Home programs which serve youth and families who are at-risk for homelessness. The goal of Thriving Families is to educate families about health issues, trauma, and raising healthy children; and, to provide health navigation resources so parents can raise healthy children.

**2022 Results Projected:** KidsTLC estimates serving 325 Johnson County residents through this program. Program results include clients will experience increased access to services, barriers to services are reduced, and clients express increased awareness of resources.

**Outcomes achieved during 2020:** Through crisis intervention, housing support, and health

navigation, the Thriving Families program served 185 Johnson County residents as well as 139 (not unduplicated) individuals through the Que Onda Familias educational platform. 45% of clients reported an increase in knowledge of their needs and resources available; 45% reported an increase in self-sufficiency as measured by the Arizona Self-Sufficiency Survey, and families were referred to KidsTLC services, including outpatient, respite care, intensive outpatient, Strengthening Families, Parents as Teachers, CARES parent education, and more.

KidsTLC is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$17,500/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.

**NCircle DBA  
Cultivate, Inc.,**

\$19,696

Recommendation

In 2021, NCircle, a subcontractor of Goodwill of MoKan, replaced Goodwill as the applicant for this Training and Employment Program. Funding is recommended for NCircle's Digital Literacy and College of Trades programs which provide skills training, certification instruction, financial education, job placement, and mentorship for individuals in Johnson County Department of Corrections Adult Residential Center (ARC) and Therapeutic Community, as well as adults on probation upon release from the ARC. In an expansion of this program, NCircle is working with partners and Johnson County Community College to provide college credit courses and community college support for clients. Through these programs, new life skills, employment training, and case management resources will be provided to clients (most of whom return to Johnson County upon completion of sentence/probation period). Program participants demonstrate increased rate of employment, increased income, decreased recidivism, and decreased new charges.

**2022 Results Projected:** NCircle plans to serve 80 Johnson County residents through this program. Participants will increase their workplace skills and digital skills, increase the number of persons with in-demand workforce credentials in Johnson County, and demonstrate a reduction in recidivism and costs to the County.

**Outcomes Achieved in 2020:** Goodwill and NCircle served 88 individuals through 5,430 hours of instruction and case management. Clients of the program earned 71 certificates through the College of Trades program and none of program participants reoffended or committed a new crime since their successful completion of the program.

NCircle is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$19,696/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.

**Safehome**

\$21,000

Recommendation

Safehome provides shelter and other assistance to survivors of domestic violence. For 2022, funding is recommended for case management to support Safehome clients living in its emergency shelter. Safehome clients are provided case management as well as therapy, legal services, hospital advocacy, and a hotline. This is a new program for HSF funding; previously, HSF supported an economic empowerment program focused on financial

literacy, workshops, and employment assistance. Employment assistance and financial literacy will continue to be supported through case management services for shelter clients.

**2022 Results Projected:** Safehome will provide emergency shelter to 77 Johnson County residents. 65% of residents will transition from Safehome after 90 days to permanent housing and remain housed for at least six months; residents will increase financial independence and stability through employment and budgeting; residents will increase their knowledge about domestic violence, create a safety plan, and improve mental health through therapy.

**Outcomes achieved during 2020:** 66 Johnson County residents participated in the economic empowerment program with 67% of clients in shelter for at least 4 weeks completing job interviews and 100% of clients in shelter for more than 12 weeks obtaining a job.

**Salvation Army  
Family Lodge -  
Olathe**

\$25,000

Recommendation

An increase in funding of \$2,000, for a total of \$25,000, is recommended to assist low and very-low income homeless families in Johnson County with food and shelter at the Salvation Army Family Lodge in Olathe. In most cases, the Lodge provides up to 90 days of shelter (with a maximum stay of 180 days in some circumstances). Residents meet weekly with a case manager who utilizes the strengths-based case management model. Classes and/or skill building opportunities include parenting, financial literacy, maintaining employment, housing searches, daily living/life skills, developing a support system, and navigating mainstream resources.

**2022 Results Projected:** In addition to providing safe shelter, outcomes will include families increasing their skills or income, applying for mainstream services (SNAP, TANF, Medicaid, etc.), moving into transitional or permanent housing, and children beginning or continuing to receive daycare services as a work support for guardians. The Family Lodge anticipates serving 150 Johnson County residents.

**Outcomes achieved during 2020:** The Family Lodge provided 24,378 units of service which it defines as “one bed night and/or one meal provided” to 134 Johnson County residents. 96% of families exiting the program moved into transitional or permanent housing. 100% of eligible families applied for and received mainstream services (medical assistance, childcare subsidy, WIC, and SNAP). 91% of participants who successfully completed the program increased their skills or income.

Salvation Army is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$25,000/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.

**Sunflower House**

\$46,898

Recommendation

An increase of \$4,398 is recommended, for a total of \$46,898, in funding to support the Personal Safety Education Program, a child abuse prevention education program. Sunflower House provides child-based education and mandated reporter training free of charge, and this increase helps offset loss of program fees; without grant support, these

programs are not sustainable. The program includes: 1) *Happy Bear*, an interactive drama in Spanish and English for children ages four to seven enrolled in public and private early childhood centers and elementary schools; 2) *Think First and Stay Safe*, a curriculum for grades PreK-5 that reinforces personal and digital boundaries and emphasizes that bullying and sexual abuse are against the law; 3) *E-Safety*, provides middle school students with information about how to protect themselves from online predators, and includes safety topics such as sexting, bullying, child exploitation, and social networking; 4) *Keeping Kids Safe Online*, a workshop for parents and caregivers provided in partnership with the FBI Cyber Crimes Unit; 5) *Stewards of Children*, a child sexual abuse prevention and education training for adults; 6) *Mandated Reporter Training* which teaches attendees to recognize signs of sexual abuse, correct procedures/laws for reporting, and how to handle a child's disclosure; and, 7) *Child Protection Project*, a presentation designed to raise the awareness of child sexual abuse among parents and caregivers, and give them tools needed to be proactive in protecting children.

**2022 Results Projected:** Age-appropriate person safety/abuse education will be provided to children; adults will be educated on child abuse indicators and reporting abuse; youth and adults will increase their knowledge of online crimes against children, including online safety steps and proper reporting. The agency anticipates reaching 15,000 Johnson County residents during 2022.

**Outcomes achieved during 2020:** 14,465 Johnson County residents were served. In post-program surveys, 98% of children indicated they would report unwanted contact, including physical touches and electronic communications. 98% of adults, including those within the special needs community, who were educated on child abuse indicators and reporting abuse, indicated they gained new information and 96% said they would monitor the electronic communications of children more closely.

Sunflower House is a returning grantee with an established program. Funding is recommended for both 2022 and 2023 at \$46,898/year, contingent on continued grantee performance and timely semi-annual reporting; jurisdiction funding commitment and review; and agency affirmation that it will continue this program at the same level of funding in 2023.

## APPENDIX A

### 2022 HUMAN SERVICE FUND PARTICIPATING JURISDICTIONS

JURISDICTION	CONTRIBUTION
Johnson County	\$151,500
De Soto	\$2,880
Edgerton	\$2,500
Gardner	\$6,600
Leawood	\$18,000
Lenexa	\$22,350
Merriam	\$10,000
Mission	\$10,000
Olathe	\$70,000
Overland Park	\$94,000
Prairie Village	\$10,000
Roeland Park	\$6,000
Shawnee	\$30,000
Spring Hill	\$2,000
Westwood	\$2,000
<b>Total from County Government &amp; Cities</b>	<b>\$437,830</b>
UCS Administration	\$27,000
<b>Total Available to Allocate</b>	<b>\$410,830</b>

### 2022 HUMAN SERVICE FUND GRANT REVIEW COMMITTEE

#### UCS Board Members

- Robin Harrold, *Committee Chair*, AdventHealth
- Marshaun Butler, Children's Mercy Kansas City
- Tara S. Eberline, Foulston Siefkin, LLP
- Mickey McCloud, Johnson County Community College
- Vanessa Vaughn-West, Lathrop GPM LLP

#### UCS Council of Advisors

- Hon. Steve Tatum (ret'd), 10<sup>th</sup> Judicial District Court

#### Community Members

- Janet Barrow, WaterOne

Staff support: Christina Ashie Guidry, UCS Director of Resource Allocation

## **APPENDIX B**

### **2022 HUMAN SERVICE FUND GUIDELINES**

The Human Service Fund is a competitive process that awards grants to nonprofit organizations for operating health and human service programs that promote self-sufficiency, well-being and/or personal safety of Johnson County residents who live with income at or near the federal poverty level. Funded programs provide pathways and opportunities for building a healthy community where every resident is empowered to reach their full potential. Components of the safety net investment that are supported by the HSF are: 1) basic needs, 2) work and income supports, and 3) health, wellness and personal safety.

#### **FUNDING PRIORITIES 2022**

Health and human service programs funded by the Human Service Fund must:

- promote self-sufficiency, well-being and/or personal safety of Johnson County residents and fit within safety net investment components of basic needs, education/training, work and income supports, or health.
- offer county-wide services or fill a gap which results in county-wide benefit.
- offer equal access to all clients and prospective clients who could benefit from the program.
- deliver measurable outcomes which benefit county residents and, in the long-term, benefit local governments by avoiding, deferring, or preventing costs that otherwise might be incurred by local government.

Priority is given to programs that:

- address emergency aid and shelter, adequate housing, child/adult abuse, child welfare, health, work support services such as transportation, childcare and early childhood development, and job training.
- serve individuals and/or families with income below or near the federal poverty level.
- demonstrate innovation and/or collaboration in program delivery.
- are consistent with an evidence-based program, best practices or promising practices, or replicate a successful model.
- build the capacity of neighborhoods and local jurisdictions to support equity in the social determinants of health.

#### **ELIGIBILITY**

- Applicants must deliver direct services to Johnson County residents, be recognized by the IRS under section 501(c)(3), provide health and human services programming as their primary mission, and be in good standing in Kansas or Missouri as a nonprofit corporation, i.e. may not be an entity of city or county government.
- Agency must provide most recent IRS form 990 and, if requesting \$5,000 or greater in HSF funds, an independent certified audit of the previous year's financial records, or, if total agency revenues were less than \$250,000, an independent review of financial statements prepared by a Certified Public Accountant. The audit or review must have been completed within nine (9) months of the close of the fiscal year. Upon request, the agency may need to provide additional financial information.
- The applicant complies with Agency Standards.

- Applicant affirms compliance with any applicable nondiscrimination ordinances and/or policies of the municipalities that provide resources to the Human Service Fund.
- Funded program must:
  - promote self-sufficiency, well-being and/or personal safety of Johnson County residents and fit within safety net investment components of basic needs, work and income supports, or health.
  - primarily serve Johnson County, Kansas residents who live with income at or near federal poverty level. However, programs that do not meet this criterion may still be eligible if the program addresses child/adult abuse, and/or leads to the prevention of poverty, and primarily serves Johnson County residents.
  - clearly define and measure outcomes for participants.
  - benefit local governments by avoiding, deferring, or preventing costs that otherwise might be incurred by local government.
  - offer county-wide services or fill a gap which results in county-wide benefit.
  - offer equal access to all clients and prospective clients who could benefit from the program.
- Only one HSF application may be submitted by an agency. Applications will not be accepted for both the HSF and Alcohol Tax Fund (ATF, managed by Drug and Alcoholism Council, a program of UCS) for the same program during the same funding cycle. However, applications may be submitted for both funds by the same agency or department for discrete programs during the same funding cycle. Criteria of discrete programs include, but are not limited to, programs for which expenses are recorded separately for purposes of functional accounting, programs that, if serving a population targeted by another program, serve a distinct need of that population, and/or employ distinct strategies and projected outcomes.
- Applications for substance abuse programs are not accepted and should be directed to the ATF.

## City Council Action Item

---

**Council Meeting Date:** November 18, 2021

**Department:** Administration

### **Agenda Item: Consider an Agreement with Tyler Technologies, Inc., for ERP Software**

#### **Background/Description of Item:**

**At the October 28, 2021, Council meeting, the Governing Body tabled this item and asked staff to request a change to the renewal terms of the agreement with Tyler Technologies. Staff worked with GFOA and the City Attorney to develop a proposal that (1) capped the annual renewals at the then current price not to exceed 5%; (2) changed the start date of the term to January 1, 2022; and (3) removed the SaaS fees for the EnerGov solution for the first year of the term since the implementation of that software would not likely occur for a year. The negotiation was successful. The revised pages of the contract are included in this packet. The revisions can be found in Section F.1 on page 9 and in Exhibit B. Both the City Attorney and GFOA have approved the changes to the contract. The entire contract can be found in the October 28, 2021 City Council packet.**

Staff began discussions with Council regarding the need to replace the current financial software in a budget work session on June 7, 2018. At the CIP work session on October 18, 2018, Council approved \$75,000 in funding in 2019 for the ERP Software Exploration Project. Reasons for replacing the software include:

- The software is Microsoft Access based. Microsoft has indicated for several years that they will likely stop supporting Access in the intermediate future.
- Staff experiences issues with the software on a regular basis. The issues require staff time to place a support call and to work the issue until it is resolved.
- System updates are difficult to apply and often contain bugs when first deployed.

On May 15, 2019, staff issued an RFQ for Business Process and ERP Advisory Services to find a consultant to assist the City in the search for ERP software. The City selected the Government Finance Officers Association (GFOA) on July 22, 2019. GFOA was selected because of their experience assisting over 500 local governments on similar projects, GFOA is a non-profit membership organization focused on supporting local governments and members of the project team have worked for local governments during their careers. In addition, GFOA has established finance best practices for local governments and could assist the City in adopting those as part of this project.

An ERP steering committee consisting of the City Administrator, Finance Director, Accountant, Development Services Director and Public Works Director was established and began working with GFOA staff in September 2019, to develop a project calendar for the business process analysis and RFP process. GFOA visited Edgerton and met with staff in October and November 2019. The RFP for ERP Software was issued on February 21, 2020, and a pre-proposal conference was held on March 4, 2020. Due to the COVID-19 Pandemic, the City extended the due date from March 25, 2020, to April 8, 2020. The RFP was placed on the City's website and GFOA sent the RFP to their contacts at the various software companies. The City received three responses: Tyler Technologies, Casselle and ClearGov. Two vendors, BS&A Software and Dude Solutions, declined to respond.

The steering committee and GFOA reviewed the responses and elevated Tyler Technologies and Casselle for further evaluation. ClearGov's proposal contained only a budget and reporting solution. Since the other two firms had more complete offerings, staff concentrated evaluation efforts on those firms. Software demonstrations were held in June 2020. Based on the demos, the steering committee elevated Tyler Technologies to the discovery phase. Tyler's system had all of the modules the City was looking for and the flow of the system/user friendliness of the screens was much better than Casselle.

In August 2020, the steering committee, along with the Mayor, visited a Tyler customer site, the City of Waxahachie, TX. The steering committee then talked with other references and participated in additional software demos with Tyler. It should be noted that there are a few cities on the Kansas side of the metro area that use the software proposed by Tyler: DeSoto, Bonner Springs and Spring Hill. All have implemented the software in the last couple of years. There are many other Tyler clients in the State of Kansas. In addition, Tyler has a large staff to provide support and the company has the resources to continue to invest in the software.

A discovery day was held with Tyler in September 2020, where the steering committee and GFOA dug deeper into items such as project staff, Tyler's experience with projects similar to the City's project and clarifications for items arising out of the demos.

Based on the discovery day and the additional due diligence, the steering committee elevated Tyler to the contract negotiation stage in October 2020. Contract negotiations have been ongoing since that time. GFOA worked with the City Attorney and the steering committee to review the documents and negotiate contract terms on the City's behalf.

The City will utilize the Software as a Service (SaaS) version of the software (also known as the "cloud" version) vs. purchasing servers and hosting the software on site. This version will result in less IT infrastructure to maintain and result in limited involvement by the City's IT provider once the software is up and running. This version will also simplify employee access to the system. The City is purchasing the following modules:

- Finance (General Ledger, Budget, Purchasing, Accounts Payable)
- HR/Payroll/Employee Self Service
- Project Accounting
- Utility Billing/Miscellaneous Accounts Receivable/Cashiering
- Fixed Assets
- Work Orders
- Community Development (Licenses & Permits)

- Court

The Tyler costs include the first year of the SaaS fees as well as the professional services related to implementing the software. In addition, there are a few hardware items included such as receipt printers, bar code scanners and digital signature pads. The not-to-exceed cost for the first year SaaS fees, professional services and the hardware items is \$233,967. Tyler has included a bank of 188 professional service hours to be used should unforeseen situations arise which require them to exceed the hours they originally estimated.

Costs for Tyler on the largest portion of the estimated projects costs. Other costs include services provided by the City's IT provider, hardware items not purchased through Tyler, such as iPads, scanners, check printer, Bluebeam plan review software, and a contingency. The budget for the project was \$240,000 until Council directed staff at the CIP Work Session on October 14, 2021, to allocate \$35,000 to the project to cover the addition of the Court Module. This brings the total budget for the project to \$275,000.

Attached is the SaaS Agreement with Tyler Technologies. The agreement contains:

- Software license and the terms covering use of the software, the SaaS relationship, etc.
- Statement of Work – Contains the milestones and acceptance criteria for the various stages of the project.
- Investment Summary – Contains and itemization of the costs for the first year SaaS fees, the professional implementation services, and the few hardware items to be purchased through Tyler.

The GFOA staff have reviewed and approved the SaaS Agreement.

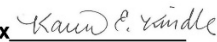
The City Attorney has reviewed and approved the SaaS Agreement.

**Related Ordinance(s) or Statute(s):** N/A

---

**Funding Source:** CIP (General Fund)

**Budget Allocated:** \$275,000

x   
Karen Kindle, Finance Director

---

<b>Recommendation: Approve the SaaS Agreement with Tyler Technologies, Inc., for ERP Software</b>
---------------------------------------------------------------------------------------------------

**Enclosed:** Updated Pages to SaaS Agreement with Tyler Technologies, Inc. (entire contract in October 28, 2021 City Council packet)

**Prepared by:** Karen Kindle, Finance Director

services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

## **SECTION F – TERM AND TERMINATION**

1. Term. The initial term of this Agreement is five (5) years from the first day of the first month following the Effective Date, unless earlier terminated as set forth below. Upon expiration of the initial term, this Agreement can be renewed by written instrument signed by both parties for additional one (1) year renewal terms sixty (60) days prior to the end of the initial term or the then-current renewal term, whichever is applicable. Any renewals shall be at our then-current rates or a five (5) percent increase over the prior term, whichever is less. Your right to access or use the Tyler Software and the SaaS Services will terminate at the end of this Agreement unless the Agreement is renewed as per this subsection.
2. Termination. This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section E(2).
  - 2.1 Failure to Pay SaaS Fees. You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.
  - 2.2 For Cause. If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section H(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section H(3).
  - 2.3 Force Majeure. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more.
  - 2.4 Lack of Appropriations. As allowed by Kansas cash basis law, If you should not appropriate or otherwise make available funds sufficient to utilize the SaaS Services, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid, but unused SaaS Fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.
  - 2.5 Public Interest. The Client may unilaterally terminate this Agreement upon thirty (30) days written notice to us for any reason deemed to be in the public interest. You will not be entitled to a refund or offset of previously paid, but unused SaaS Fees.
  - 2.6 Disentanglement. In the event of any termination, Client and Tyler shall mutually agree upon "wind down" disentanglement procedures to include, without limitation, the scope, staffing, and costs required by such procedures. Such services shall be paid to Tyler on a time and



## Exhibit B

### Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary of the Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

**Invoicing:** We will invoice you for the applicable software and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

1. **SaaS Fees.** SaaS Fees are invoiced on an annual basis, beginning on the commencement of the initial term as set forth in Section F (1) of this Agreement. Your annual SaaS fees for the initial term are set forth in the chart below. Upon expiration of the initial term, your annual SaaS fees will be at our then-current rates or five (5) percent over the prior term's rates, whichever is less.

Payment	Period	Amount
Year 1	1/1/22-12/31/22	\$42,920
Year 2	1/1/23-12/31/23	\$54,957
Year 3	1/1/24-12/31/24	\$54,957
Year 4	1/1/25-12/31/25	\$54,957
Year 5	1/1/26-12/31/26	\$54,957

2. **Other One-Time Tyler Software and Services.** Tyler will invoice Client for all professional services on a milestone basis. Tyler will invoice Client for the milestone amount set forth below upon completion and acceptance of the associated services in accordance with the Agreement and/or SOW.

Stage	Description	Amount
EnerGov - Stage 1 - Initiate & Plan Activities	Acceptance of Initiate & Plan Stage	\$ 2,579.00
EnerGov - Stage 2 - Assess & Define Activities	Acceptance of Assess & Define Stage	\$ 4,836.00
EnerGov - Stage 3 - Prepare Solution Activities	Acceptance of Prepare Solution Stage	\$ 9,672.00
EnerGov - Stage 4 - Production Readiness Activities	Acceptance of Production Readiness Stage	\$ 8,060.00
EnerGov - Stage 5 - Production Cutover Activities	Acceptance of Production Cutover Activities	\$ 6,448.00

Incode FIN/PY - Stage 1 - Initiate and Plan Activities	Acceptance of Initiate & Plan Stage	\$ 6,189.00
Incode FIN/PY - Stage 2 - Assess & Define Activities	Acceptance of Assess & Define Stage	\$ 11,604.00
Incode FIN/PY - Stage 3 - Prepare Solution Activities	Acceptance of Prepare Solution Stage	\$ 23,208.00
Incode FIN/PY - Stage 4 - Production Readiness Activities	Acceptance of Production Readiness Stage	\$ 19,340.00
Incode FIN/PY - Stage 5 - Production Cutover Activities	Acceptance of Production Cutover Activities	\$ 15,472.00
Incode Utility Billing - Stage 1 - Initiate and Plan Activities	Acceptance of Initiate & Plan Stage	\$ 2,993.00
Incode Utility Billing - Stage 2 - Assess & Define Activities	Acceptance of Assess & Define Stage	\$ 5,612.00
Incode Utility Billing - Stage 3 - Prepare Solution Activities	Acceptance of Prepare Solution Stage	\$ 11,223.00
Incode Utility Billing - Stage 4 - Production Readiness Activities	Acceptance of Production Readiness Stage	\$ 9,351.00
Incode Utility Billing - Stage 5 - Production Cutover Activities	Acceptance of Production Cutover Activities	\$ 7,482.00
Incode Court - Stage 1 - Initiate and Plan Activities	Acceptance of Initiate & Plan Stage	\$ 1,978.00
Incode Court - Stage 2 - Assess & Define Activities	Acceptance of Assess & Define Stage	\$ 3,710.00
Incode Court - Stage 3 - Prepare Solution Activities	Acceptance of Prepare Solution Stage	\$ 7,419.00
Incode Court - Stage 4 - Production Readiness Activities	Acceptance of Production Readiness Stage	\$ 6,183.00
Incode Court - Stage 5 - Production Cutover Activities	Acceptance of Production Cutover Activities	\$ 4,946.00
Control Point 6 - final	Project issues addressed for all Phases	\$ 3,435.00
<b>TOTAL</b>		\$ 171,740.00

3. Annual Services. Unless otherwise indicated in this Exhibit B, fees for annual services are due annually, in advance, commencing on the availability of the service. Your annual fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your

annual fees will be at our then-current rates.

4. Third Party Products.

4.1 *Third Party Software License Fees:* License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.

4.2 *Third Party Software Maintenance:* The first year maintenance for the Third Party Software is invoiced when we make it available to you for downloading.

4.3 *Third Party Hardware:* Third Party Hardware costs, if any, are invoiced upon delivery.

4.4 *Third Party Services:* Fees for Third Party Services, if any, are invoiced as delivered, along with applicable expenses, at the rates set forth in the Investment Summary.

4.5 *Third Party SaaS:* Third Party SaaS Services fees, if any, are invoiced annually, in advance, commencing with availability of the respective Third Party SaaS Services. Pricing for the first year of Third Party SaaS Services is indicated in the Investment Summary. Pricing for subsequent years will be at the respective third party's then-current rates.

5. Transaction Fees. Unless paid directly by an end user at the time of transaction, per transaction (call, message, etc.) fees are invoiced on a quarterly basis. Fees are indicated in Schedule A and may be increased by Tyler upon notice of no less than thirty (30) days.

6. Expenses. Travel is not anticipated for this implementation. If travel is required, then such expenses for Tyler delivered services will be billed as incurred and only in accordance with our then-current Business Travel Policy. Our current Business Travel Policy is attached to this Exhibit B as Schedule 1. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.

**Payment.** Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is available by contacting [AR@tylertech.com](mailto:AR@tylertech.com).

## City Council Action Item

---

**Council Meeting Date:** November 18, 2021

**Department:** Public Works

### **Agenda Item: Consider Agreement With Henderson Building Solutions for Greenspace Project to Provide Owners Representative Services**

#### **Background/Description of Item:**

At the October 24, 2019, Council Meeting, the City Council approved the CIP Budget for 2020-2024. The Greenspace project was included in that budget with a project time frame from April 2019 through May of 2021 and a budget of \$4,130,000. The funding source is listed as general obligation bonds.

This project includes the design and construction of The Greenspace facility. The project includes a building of approximately 20,000 – 30,000 square feet. Public engagement was completed by City Staff, identifying program elements including but not limited to; multi-use sports courts, meeting spaces, Admin/management spaces, walking track, Game, weight, fitness movie room, storm shelter, and splash pad. These details are to be finalized during phase I with the proposed architect.

During the uncertainty of the Covid-19 pandemic in 2020, City Staff proposed revising the scope and schedule to the project. During CIP and Covid-19 impact discussions in 2020, Council approved the staff recommendations to change delivery method to design-bid-build and the schedule to have design slated in 2021.

Previously City Council approved an Agreement with Incite Design Studio for Phase I Design Services. As this is the first vertical build that the City has designed and built in many years, staff recommends strengthening our team by selecting a firm to provide owner's representative services. This firm would advise the City with regards to the constructability, schedule, site logistics and construction budget of the project. The Owner's Representative would bring significant experience in vertical construction and is crucial to the successful completion of the project, staying within the budget and schedule.

Requests for Letters of Interest were sent out on October 1, 2021 for the Owner's Representative role. These were due back on October 22, 2021. Two firms submitted letters. Based on Letters of Interest and interviews conducted, the selection committee (City Engineer, Public Works Director, CIP Project Manager, and City Administrator) recommends Henderson Building Solutions as the most qualified and best team for the project. The selection committee recommends the Henderson team based on their experience with

providing these services to municipalities of similar size and experience designing and constructing mixed-use facilities.

If approved, staff anticipates Henderson Building Solutions would immediately join Incite Design Studio in the design phase of the project. The completion date is greatly dependent on final design and the ability to obtain the needed materials. Any changes to the schedule impacting the completion date will be brought to council.

Please find enclosed the City's standard Professional Services Agreement including Scope of Services for Pre-Construction Phase Services for the Owner's Representative. This agreement structures payment for Owner's Representative services similar to City Engineer services where City pays only for hours provided.

The Agreement is still pending review by Henderson. Upon final approval from City Attorney and City Engineer, staff recommends authorizing the Mayor to execute the agreement.

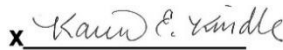
**Related Ordinance(s) or Statue(s):** N/A

---

**Funding Source:** GO Bonds

**Budget Allocated:** \$4,130,000

**Finance Director Approval:**

x   
Karen Kindle, Finance Director

---

<p><b>Recommendation: Approve Agreement With Henderson Building Solutions for Greenspace Project to Provide Owners Representative Services and Authorize The Mayor To Execute The Agreement</b></p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Enclosed:** Draft Agreement for Professional Services

**Prepared by:** Dan Merkh, Public Works Director

**PROFESSIONAL  
SERVICES  
AGREEMENT  
CONSULTANT-CLIENT**

**THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement")** is made and entered into as of the \_\_\_\_\_ day \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date") by and between Henderson Building Solutions, party of the first part, (the CONSULTANT), and CITY OF EDGERTON, KANSAS, party of the second part, (the CLIENT).

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Professional Services for the following improvement/services (hereinafter referred to as the "Project"):

Owner's Representative Services for The Greenspace.

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

## SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 "Additional Services" means any Services requested by the CLIENT which are not covered by **Exhibit 1** of this Agreement.
- 1.2 "Agreement" means this contract and includes change orders issued in writing.
- 1.3 "CLIENT" or "Client" means the City of Edgerton.
- 1.4 "CONSULTANT" or "Consultant" means the company identified on page 1 and any additional parties they might employ (upon the approval of CLIENT) to perform pursuant to this contract.
- 1.5 "Contract Documents" means those documents so identified in the Agreement for this Project.. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 "Engineering Documents" or "Architectural Documents" or "Survey Documents" means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.
- 1.7 "Consulting Services" or "Engineering Services" or "Architectural Services" or "Survey Services" means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 "Services" is a description of the required work as shown in **Exhibit 1**.

## SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 SCOPE OF SERVICES: The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.
- 2.2 GENERAL DUTIES AND RESPONSIBILITIES
  - 2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

- 2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT's profession currently practicing in the same locality under similar conditions.
- 2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the Client.
- 2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement, as specifically provided in **Exhibit 2**.
- 2.2.5. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.6. **Endorsement:** When applicable, the CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.7. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a reasonable time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.8. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for five (5) years from the date of final payment.

## **SECTION 3 – CLIENT RESPONSIBILITIES**

### **3.1 GENERAL DUTIES AND RESPONSIBILITIES**

- 3.1.1. **Communication:** The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. CONSULTANT'S review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that CONSULTANT is able to fully understand the project requirements.

- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

## SECTION 4 – PAYMENT

### 4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the rates indicated in the attached Fee Schedule; Exhibit 3 and the actual reimbursable expenses permitted under this Agreement and incurred on the Project. This fee is based on the scope of Services outlined in Exhibit 1 of this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one (1) percent per month.
- 4.1.2. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule attached hereto as Exhibit 3. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.3. **Reimbursable Expenses:** Reimbursable expenses shall be charged following approval by CLIENT. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT.
- 4.1.4. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 3**. The bill submitted by CONSULTANT shall itemize the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and (1) percent per month.
- 4.1.5. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates per Exhibit 3. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.

- 4.1.6. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

## SECTION 5 – MUTUAL PROVISIONS

### 5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on any material breach by the CLIENT, but only upon giving notice to CLIENT of the alleged breach and providing CLIENT thirty (30) days to cure such alleged breach.

Upon receipt of such notice from CLIENT, the CONSULTANT shall, at CLIENT's option as contained in the notice; Immediately cease all Services and meet with CLIENT to determine what Services shall be required of the CONSULTANT in order to bring the Project to a reasonable termination in accordance with the request of the CLIENT. The CONSULTANT shall also provide to the CLIENT digital and/or mylar copies of drawings and documents completed or partially completed at the date of termination. The CONSULTANT is entitled to terminate this agreement by providing thirty (30) days written notice.

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.
- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

### 5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as

otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

### 5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

5.3.1. Reports, drawings, plans or other documents (or copies) furnished to CONSULTANT by the CLIENT shall, at CLIENT's written request, be returned upon completion of the Services hereunder. Reports, drawings, plans, documents, software, field notes and work product (or copies thereof) in any form prepared or furnished by CONSULTANT under this Agreement are instruments of service. Exclusive ownership, copyright and title to all instruments of service remain with CONSULTANT. CLIENT is hereby granted a License to Use instruments of service with use limited to use on this project. The instruments of service are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work or on any other project.

### 5.4 INDEMNIFY AND HOLD HARMLESS

5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand or cause of action to the extent caused by: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents.

5.4.2. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused by: (i) CONSULTANT'S breach of this Agreement; (ii) incurred as a result of the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.

### 5.5 ENTIRE AGREEMENT

5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

### 5.6 APPLICABLE LAW

5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

### 5.7 ASSIGNMENT OF AGREEMENT

5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

### 5.8 NO THIRD PARTY BENEFICIARIES

5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

### 5.9 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT

shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.10 TITLES, SUBHEADS AND CAPITALIZATION

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.11 SEVERABILITY CLAUSE

5.11.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.12 FIELD REPRESENTATION

5.12.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.13 HAZARDOUS MATERIALS

5.13.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.14 AFFIRMATIVE ACTION

5.14.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.15 SPECIAL PROVISIONS

5.15.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 4**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_.

**CONSULTANT:**

**CLIENT:**

\_\_\_\_\_  
**(Firm Name)**

**City of Edgerton,  
Kansas**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

END OF CONSULTANT-CLIENT AGREEMENT

## **EXHIBIT 1 SCOPE OF SERVICES**

### **PRE-CONSTRUCTION PHASE SERVICES**

- 1) Advise the Owner with regards to the constructability, schedule, site logistics and construction budget of the proposed projects.
- 2) Review information relevant to use of subconsultants by Architect for geological testing, surveying, construction testing and other special consultants.
- 3) Review information as requested by the Owner relevant to each Project, including pre-design studies, preliminary site plans, current building program/utilization, Owner research, project concepts, proposed building program, environmental investigation and remediation reports, building systems analysis reports, and applicable legal requirements.
- 4) Make recommendations regarding alternative solutions whenever design details appear to
  - a) adversely affect construction feasibility, the Project Program, Budget or Schedule, or
  - b) cause the Project to deviate from the approved drawings or requirements of Owner.
- 5) Monitor the construction cost estimates for compliance with the project budget. Monitor construction cost estimates and project budget to make recommendations concerning availability of materials and labor, time requirements for installation and construction, and other factors related to costs, including costs of alternative designs or materials, and possible cost reductions and economies.
- 6) Coordinate with Owner and Architect all requirements for insurance, bonds, and other such financial and legal document requirements.
- 7) For any work that is to be separated into separate bid sections, review the working drawings and make recommendations to the Owner to:
  - a) coordinate the work of the separate bid portions
  - b) allocate the work to the separate bid portions
  - c) provide the proper coordination for phased construction
  - d) advise Owner with respect to whether major portions of the work should be bid as separate prime contracts.
- 8) Consult with and advise Owner concerning appropriate construction delivery methods, such as separate prime contractors and sequenced bid packages.
- 9) Assist with coordination of the design, acquisition and integration of any Owner Directly procured items such as information technology, security, audio/visual, signage, etc. Make recommendations as to the timely and economical purchases of materials and equipment and monitor the purchase of such items.
- 10) Provide recommendations regarding each Contractor's proposed mobilization schedule, temporary Project facilities, equipment, materials and services during construction and the assignment of responsibilities relating to same.

## **EXHIBIT 2**

### **CITY OF EDGERTON, KS INSURANCE REQUIREMENTS FOR DESIGN & CONSULTING SERVICES - 2020**

Consultant shall procure and maintain at its sole cost and expense, the following insurance coverage for the duration of the project and for a period of at least two (2) years (five years for professional liability insurance) following termination of this agreement, with minimum acceptable limits as follows:

- (1) COMMERCIAL GENERAL LIABILITY
  - \$1,000,000 Per Occurrence
  - \$2,000,000 Aggregate

Coverage shall be written on ISO occurrence form CG 0001 or equivalent. Endorsements or policy provisions that limit contractual liability are not acceptable. It shall also name City, its officers, officials, employees, and agents as additional insureds on a primary basis, not contributing with any insurance maintained by the additional insured, using ISO additional insured endorsement CG 2010, or its equivalent, copies of which are required to be attached to the certificate of insurance.

- (2) WORKERS COMPENSATION - STATUTORY & EMPLOYERS LIABILITY
  - \$100,000 Each Accident
  - \$500,000 Policy Limit - Disease
  - \$100,000 Each Employee – Disease

Coverage shall apply to all workers and employees related to the work, including sole proprietors, partners, members of an LLC, and officers of a corporation, regardless of whether or not such persons come under the statutory requirements to carry this coverage. Firms domiciled outside the state of Kansas must have "other states" coverage in effect.

- (3) PROFESSIONAL LIABILITY / ERRORS & OMISSIONS
  - \$1,000,000 Per Claim
  - \$2,000,000 Aggregate

This coverage, shall apply to actual or alleged negligent wrongful acts, errors or omissions resulting in claim(s) for damages related to the work involving the operations of Consultant, and/or its sub-Consultant(s) if any are utilized in the completion of the work. If such policy is "claims-made" form, the retroactive date must be shown and must be before the date of the Agreement or the beginning of work set forth in the Agreement. This insurance must be maintained and evidence of insurance must be provided for at least Five (5) years after termination of this Agreement. If coverage is canceled or non-renewed and not replaced with another "claims-made" policy form with a Retroactive Date prior to the Agreement effective date, Consultant must purchase "extended reporting period" (tail) coverage for a minimum period representing at least Five (5) years after termination of this agreement.

**CITY OF EDGERTON, KS**  
**INSURANCE REQUIREMENTS FOR DESIGN & CONSULTING SERVICES – 2020, CONT'D**

**(4) WAIVER OF SUBROGATION**

Consultant, and in addition, its insurers, through policy endorsement, and to the fullest extent permitted by law, waives all rights against City, its officers, officials, employees, and agents for recovery of damages to the extent that these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per the requirements stated above.

**(5) CERTIFICATE OF INSURANCE**

Prior to commencing the work, Consultant shall furnish an acceptable certificate(s) of insurance, identifying insurers that write Consultant's coverages, with minimum Best's Guide Rating of A- and Class VIII or better, and authorized to do business in the state of Kansas. Certificate will evidence the required coverage and endorsements stated above. Should any of the above described policies be cancelled or non-renewed, the City shall first be provided 30 days prior written notice, except 10 days for non-payment of premium. This cancellation provision shall be indicated on the certificate of insurance. City also reserves the right to obtain copies of Consultant's policies to validate coverage in effect if certificates are ambiguous. Annually, Consultant agrees to provide a new/replacement formal certificate of insurance five (5) days prior to the expiration date. If any portion of the work is to be subcontracted, Consultant shall require that the subcontracted Consultant(s) shall comply with the same indemnification agreement terms and be required to provide and maintain all insurance coverages and provisions as stated above, with a formal certificate of insurance acceptable to City evidencing same. Self-Insured retentions must be declared to and approved by City. If consultant is self-insured for any of the above coverages, such self-insurance must be approved by City, which may require written guarantees for payment of self insured

losses and related investigation, administration, and defense costs. And it must provide claims handling procedures acceptable to the City. Acceptance of any certificate that does not comply with the above requirements shall not operate as a waiver of Consultant's obligations hereunder. And the fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by City shall not be limited by the amount of the required insurance coverage. Consultant shall notify City in writing as soon as possible after any occurrence that could potentially lead to any lawsuit and/or after it receives notice or knowledge of any demand, claim, cause of action, lawsuit, or action arising out of the work performed under this contract.

### EXHIBIT 3

#### COST AND SCHEDULE

CORE RATES	
Executive	180
Preconstruction Manager	120
Senior Construction Manager	120
Senior Estimator	115
BIM/CADD Technician	110
Superintendent	98
Construction Manager III	98
Construction Manager II	90
Construction Manager I	85
Accountant	65
Clerical	40

Hourly rates shown above will be used for labor expended during the preconstruction phase of the project. In the interest of transparency and full disclosure, and knowing you are working to understand and identify a proper budget for the project, owners representative services extending beyond preconstruction will be these hourly rates for labor plus a fee of 2% of construction cost.

Design phase has begun. The transition from design phase to construction phase will begin in early 2022. The construction phase will last until Summer of 2023.

**EXHIBIT 4**  
**SPECIAL PROVISIONS**

## City Council Action Item

---

**Council Meeting Date:** November 18, 2021

**Department:** Administration

### **Agenda Item: Consider a Contract with ElevateEdgerton! For Economic Development Services for 2022**

**Background/Description of Item:**

ElevateEdgerton! was formed in early 2017 as a public-private entity dedicated to driving development to Edgerton. In summer 2021, James Oltman, President for ElevateEdgerton!, presented to the Edgerton City Council the request for 2022 funding allocation as part of the annual budget process. City Council approved the 2022 Budget request to include: \$55,000 membership plus \$10,000 as special grant for targeted allocation to the Commercial Development Recruiting Fund which provides ability to leverage money from other partners for the purpose of commercial development recruitment activities. City Council also authorized \$10,000 of in-kind contribution of time from the Marketing/Communications Manager.

Similar to other partner entities, typically the City of Edgerton has done an annual agreement for this type of funding allocation. Please find enclosed a draft agreement for economic development services for 2022 with ElevateEdgerton!. The draft agreement requires ElevateEdgerton! to prepare a plan of work describing the specific deliverables for that year. Following the draft agreement is the proposed Deliverables as referenced in the agreement. The term of this agreement shall be for one year commencing on January 1, 2022 and terminating on December 31, 2022.

Attracting businesses to the City is a time-consuming process that requires specialized knowledge and strong relationships with state agencies, utilities, businesses, developers and real estate professionals. Due to the significant importance of continued development and growth of the business sector within the City, staff recommends the City Council continue to secure these services from ElevateEdgerton!.

The Agreement has been previously reviewed and approved by City Attorney. Any changes recommended for 2020 would be presented during the City Council meeting.

**Related Ordinance(s) or Statue(s):** N/A

---

**Funding Source:** General Fund – Economic Development

**Budget Allocated:** \$65,000

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

---

**Recommendation: Approve a Contract with ElevateEdgerton! For Economic Development Services for 2022**

**Enclosed:** Draft Agreement with ElevateEdgerton!  
2022 Deliverables

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

## AGREEMENT

THIS CONTRACT FOR ECONOMIC DEVELOPMENT SERVICES ("Renewal") is made and entered into as of this 18<sup>th</sup> day of November, 2021, by and between the City of Edgerton, Kansas (the "City") and ElevateEdgerton! ("EDC"), a Kansas not-for-profit corporation.

EDC has been organized by representatives of the business community and certain government agencies in and around the City of Edgerton, Kansas for the purpose of promoting economic growth in the area, and

The City of Edgerton desires to procure from EDC certain services in support of the City's plan for continued economic development and growth.

Therefore, in consideration of the mutual covenants herein contained the parties agree as follows:

1. **SERVICES.** EDC agrees to provide, through its professional staff, the following services to the City:

a. **MARKETING.** EDC shall provide support to the City and its staff in marketing the business advantages to potential corporate residents, which support shall include, but is not limited to, market research, accumulation of data concerning prospective tenants, development and distribution of marketing materials, attendance at trade shows, conventions and other events where appropriate market intelligence can be gained, and other activities deemed appropriate by the parties. EDC shall initiate such activities as it deems appropriate to ensure that the City is well represented in the commercial and industrial real estate market both regionally and nationally.

b. **EXISTING BUSINESS RELATIONS.** EDC, through its professional staff, shall assist the City and its staff in establishing and maintaining relationships with the existing businesses, to assist those businesses in developing and expanding their facilities at the City and to identify and pursue potential linkages with other businesses who may be candidates for locating to the City. EDC staff shall specifically and purposefully offer its services to each and every business in the City. EDC shall develop a means of annually contacting the managers of these businesses informing them about the services available through EDC. EDC staff shall annually survey these businesses to update information about expansion opportunities.

c. **BUSINESS RECRUITMENT.** EDC shall initiate an aggressive program to identify and recruit new businesses to the City. EDC shall undertake specific efforts to identify target businesses by industry and by name, to inform those businesses of the opportunities for locating to the City, and to follow-up with qualified prospects in order to prepare development proposals. EDC staff shall participate in joint efforts at the local, regional and state levels to recruit new businesses to the City.

d. **DEVELOPMENT PROPOSALS.** EDC staff shall assist existing businesses and prospective new businesses in preparing development proposals for the consideration of the City.

EDC staff shall become familiar with every aspect of economic development as it applies to the City, and shall develop an understanding of the City's objectives in developing the commercial and industrial sectors of the City. EDC staff shall act as facilitator for prospective business development and shall assist in the presentation of the development proposal to the various jurisdictions having oversight on the development in the City. EDC staff shall strive to develop a "one-stop shopping" approach for development proposals so that a proponent of a project can get virtually all of his or her questions answered by or through EDC staff.

2. **PERFORMANCE STANDARDS.** EDC shall establish a plan of work in which the specific activities to be performed by EDC staff are delineated. Such plan of work shall specifically address the nature and scope of services to be provided to the City and shall establish performance criteria by which EDC staff's individual performance will be measured. Such plan of work shall be prepared annually and shall be subject to the approval of the City Administrator prior to adoption by the board of directors of EDC.

3. **COMPENSATION.** In consideration of the services to be provided by EDC, the City shall pay to EDC the sum of \$55,000, payable on the first day of the month of February. EDC shall prepare an invoice for the payment and submit such invoice to the City 30 days prior to the scheduled payment. The City shall also pay to EDC up to \$10,000 as special grant to the Commercial Development Recruiting Fund for the purpose of commercial development recruitment activities. EDC shall prepare an invoice for the payment and submit such invoice to the City 30 days prior to the scheduled payment.

4. **TERM.** The term of this agreement shall be for one year commencing on January 1, 2022 and terminating on December 31, 2022.

5. **RENEWAL.** This agreement may be renewed annually by mutual agreement of the parties.

6. **NO AGENCY RELATIONSHIP.** Notwithstanding anything to the contrary contained in this Agreement, EDC and its employees shall not hold itself or themselves out as, and shall not be, an agent for the City. Neither EDC nor its employees shall have authority to enter into agreements, leases, or other commitments on behalf of the City.

7. **INDEMNITY.** Each party to this agreement agrees to and shall defend and hold harmless the other for the negligent acts and omissions of such party and its agents, employees and contractors, provided, however, nothing herein shall be construed as a waiver by either party of any limitation of liability provided under the Kansas Tort Claims Act.

8. **INSURANCE.** EDC shall be solely responsible for obtaining all insurance coverages that it deems necessary or desirable in connection with its business and its obligations under this Agreement, including, but not limited to, general liability, workers compensation, and automobile liability coverage. Should it deem beneficial, the City may request copies of such insurance coverage from EDC.

9. **TERMINATION.** In the event one party breaches this Agreement the other party may declare this Agreement in default. The non-breaching party may terminate this Agreement upon thirty days notice to the breaching party and this Agreement shall thereafter terminate unless the default is cured

within such thirty days.

**10. DUTIES UPON EXPIRATION OR TERMINATION.** It is acknowledged and agreed that in the course of performing its obligations under this Agreement EDC will compile and prepare certain market information, client lists, data bases and other information relating to the City operations, businesses, prospective businesses, and other information, all of which shall become the property of the City upon the expiration or early termination of this Agreement. EDC agrees to deliver to the City all such information not later than the fifth business day following the expiration or early termination of the Agreement. All such information shall be kept confidential by EDC following the expiration or early termination of this Agreement and EDC agrees not to disclose such information to any third party except as required by law.

**11. FUNDING.** The parties acknowledge that EDC's ability to fulfill the terms of this Agreement is contingent upon continued funding by its members, and that such funding is currently primarily comprised of voluntary contributions. EDC shall make reasonable efforts to gain continuing financial support through expanded membership and through other funding sources, such as grants-in-aid and service contracts with other agencies and organizations.

**IN WITNESS WHEREOF**, the parties hereto have set their hand this 18<sup>th</sup> day of November, 2021, at Johnson County, Kansas.

ELEVATEEDGERTON!

CITY OF EDGERTON, KANSAS

\_\_\_\_\_  
James Oltman, President

\_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
Alexandria Clower, City Clerk

APPROVED AS TO FORM:

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



To: Edgerton City Council

From: James Oltman – President, ElevateEdgerton!

Re: 2022 Funding Request

Date: 11/18/2021

#### Overview

ElevateEdgerton! has been operating as a public-private organization since the very beginning of 2017. Since formation ElevateEdgerton! has focused its efforts on residential development recruitment, commercial development recruitment, workforce development efforts and being a resource in the continued growth of Logistics Park Kansas City.

On June 16th, 2021 the ElevateEdgerton! Board of Directors will hold their third strategic planning session since the inception of ElevateEdgerton! to evaluate the current focused priorities set forth for ElevateEdgerton!. During this process they will evaluate the progress of the organization and refine as needed.

The purpose/mission of ElevateEdgerton!(EE!) is to promote/facilitate organized growth of the Edgerton, KS and Logistics Park Kansas City(LPKC) community by taking advantage of opportunities available because of the Burlington Northern Santa Fe Intermodal Facility.

#### **2022 ElevateEdgerton! Priorities**

Residential Development  
Retail/Hotel/Service Industry Recruitment  
Workforce  
Investor Retention/Growth  
Rail-served development recruitment



## 2022 ElevateEdgerton! Deliverables

- Housing development efforts
  - Maintain and update inventory of properties well positioned for residential development
  - Meet with potential housing developers about new residential construction in Edgerton
  - Compile data relevant to aiding housing development efforts
- Retail/commercial recruitment efforts
  - Continue to assess the needs of LPKC tenants and proceed accordingly
  - Maintain and update marketing material specifically geared towards commercial recruitment
  - Attend events and meetings geared towards active recruitment of retail/commercial
    - Commercial Developer meetings
    - ICSC Recon: Global Retail Convention
- Workforce
  - Host monthly HR roundtable for all LPKC tenants
  - Coordinate LPKC exclusive career fairs
  - Regional marketing for LPKC employment opportunities
- Investor Retention/Growth
  - Continued effort on adding new strategic partnerships to ElevateEdgerton!
- Representing Edgerton within the region
  - Attend Planning Commission and City Council meetings when economic development opportunities are being discussed
  - Represent Edgerton at regional economic development events
    - Kansas City Area Development Council
    - KC Smartport
    - Kansas Economic Development Alliance
    - Southern Economic Development Council
    - Council of Supply Chain Management Professionals
- Community Services
  - New Resident bags
  - Create an outlet for community news and events



2021/2022 ElevateEdgerton! Deliverables

- Housing development efforts
  - o Maintain and update inventory of properties well positioned for residential development
  - o Meet with potential housing developers about new residential construction in Edgerton
  - o Stay up to date on Economic Development Tools available to assist communities recruit housing development
- Retail/commercial recruitment efforts
  - o Maintain and update marketing material specifically geared towards commercial recruitment
  - o Attend events and meetings geared towards active recruitment of retail/commercial
- Workforce
  - o Host monthly HR roundtable for all LPKC tenants
  - o Coordinate LPKC exclusive career fairs
  - o Regional marketing for LPKC employment opportunities
- Investor Retention/Growth
  - o Continued effort on adding new strategic partnerships to ElevateEdgerton!
- Representing Edgerton within the region
  - o Attend Planning Commission and City Council meetings when economic development opportunities are being discussed
  - o Represent Edgerton in the economic development community
    - Kansas City Area Development Council
    - KC SmartPort
    - Kansas Economic Development Alliance
    - Southern Economic Development Council
    - Greater Kansas City Foreign Trade Zone
- Community Services
  - o New Resident bags
  - o Create an outlet for community news and events
  - o Enable flexibility to adapt to unforeseen circumstances as we exit COVID pandemic



Requested funding amount:

\$55,000.00 cash contributions

\$10,000 in-kind contributions from City of Edgerton Marketing and Communications employee

\$10,000 targeted allocation – Commercial Development Recruiting Fund – Provides ability to leverage money from other partners for the purpose of commercial development recruitment activities:

- Data Collection – Targeted Industries
- Commercial development related marketing
- Enhance efforts to capitalize on the addition of the On the Go Travel Center



On the Go  
Travel Center  
opened



Edgerton  
Crossing  
Commercial  
Development  
announced



Hosted COVID Vaccine  
Clinic – Over 300 Edgerton  
residents and LPKC  
employees were  
vaccinated



Lewis Indoor  
Athletic Ribbon  
Cutting



Construction  
commenced  
on IP-52



Cyclones in the  
Outfield Softball  
game sponsor



Completed  
Edgerton  
Housing Study



15% growth in  
ElevateEdgerton!  
membership from  
the private sector



Unveiled “Why  
I work at LPKC”  
marketing  
campaign



Unveiled “Explore  
Edgerton” marketing  
campaign

## City Council Action Item

---

**Council Meeting Date:** November 18, 2021

**Department:** Utilities

### **Agenda Item: Consider Revision To Logistics Park Kansas City Phase I Sanitary Sewer Master Plan**

**Background/Description of Item:**

On May 11, 2017, City Council approved the Logistic Park Kansas City (LPKC) Phase I Sanitary Sewer Master Plan. This master plan was developed by Edgerton Land Holding Company (ELHC) and reviewed by city staff. The original map, which has been included in the packet, shows a building at the upstream connection to the rail serve area (just north of the intermodal rail facility). The building is labeled IP XL, which is currently occupied by Coldpoint. They have been utilizing a holding tank for their sewer service, which requires pumping of the wastewater and hauling it off site. The original intent was to remain on a holding tank until development continued to the west, and the infrastructure was installed to service these buildings. At time of development and installation of the infrastructure, IP XL/Coldpoint would install a lift station pumping the flow to the west.

In early fall of 2021, ELHC approached the City with a request to construct private wastewater infrastructure to pump the flow to the east into Big Industrial Lift Station. Included in the packet is a map showing the proposed revision to the Master Plan. Staff worked with ELHC to understand the impact and nature of this request. ELHC is requesting a permanent revision to the master plan. ELHC and Renaissance Infrastructure Consulting (RIC) prepared a memo, included in the packet.

Staff has reviewed the memo which addressed the majority of the concerns staff had regarding this request. However, due to the unknown type and schedule of future development of rail-served properties, staff recommends granting a temporary revision to the Master Plan rather than permanent revision. Additionally, the approval of the temporary revision should include a requirement that at the time of any future development in the area, ELHC would be required to provide an analysis of the specific development and its demands to sanitary sewer master plan to determine the best permanent solution for both IPXL/Coldpoint and other future rail-serve development.

The applicant will install and maintain the private infrastructure themselves, with no requested funds from the City.

**Related Ordinance(s) or Statue(s):** N/A

---

**Funding Source:** N/A

**Budget Allocated:** N/A

**Finance Director Approval:** N/A

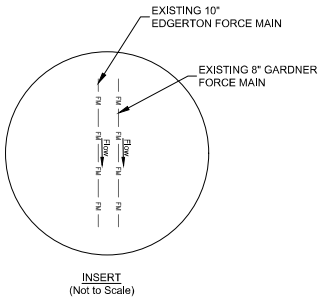
---







**Recommendation: Approve Temporary Revision To Logistics Park Kansas City Phase I Sanitary Sewer Master Plan with Requirement for Analysis for Any Future Rail-Serve Development**

**Enclosed:** Original LPKC Utility Master Plan map  
Draft LPKC Utility Master Plan map  
Letter from RIC

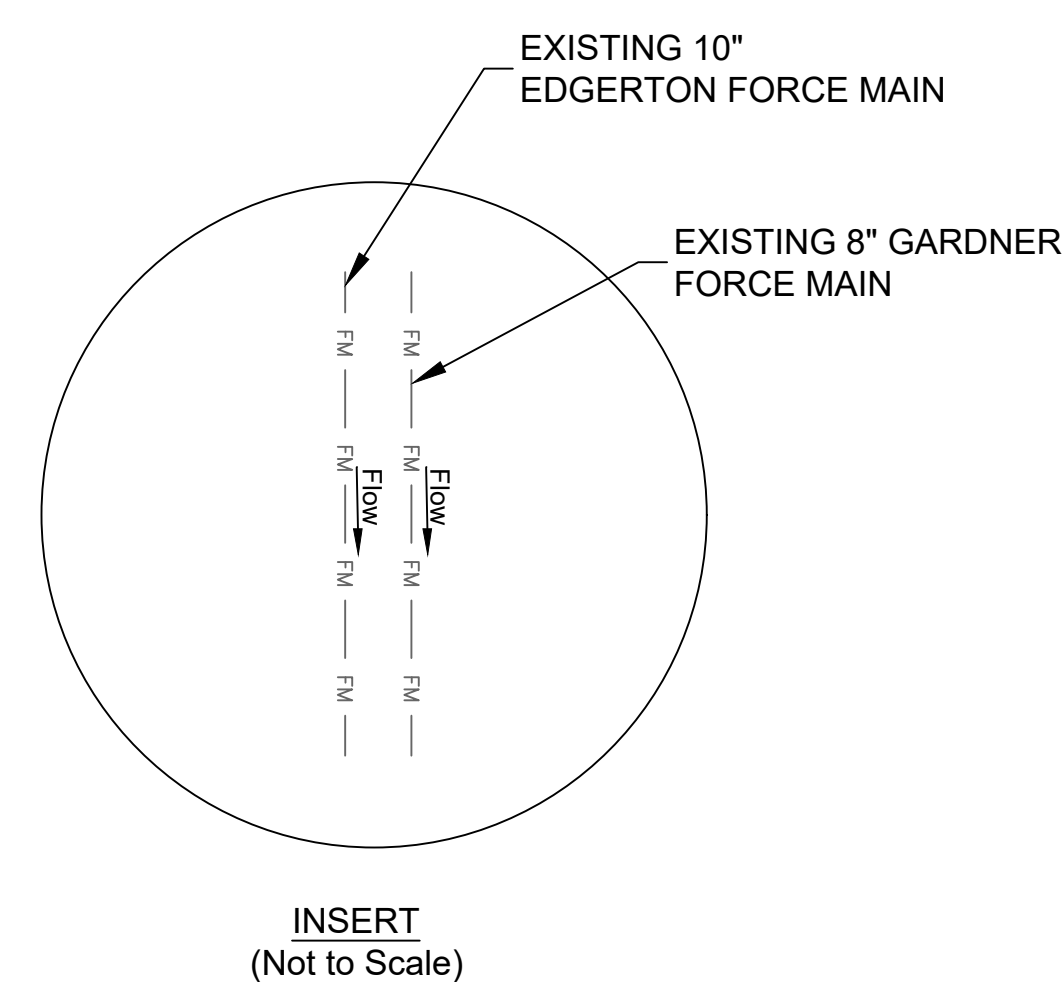
**Prepared by:** Dan Merkh, Public Works Director

NO.	BY	QD	DATE	REVISION
8.	PJO	CRT	05/05/17	Overall Layout REVISED
7.	PJO	CRT	04/07/17	Overall Layout REVISED
6.	PJO	CRT	11/7/17	Overall Sanitary Sewer Layout REVISED
5.	BEC	CRT	12/20/16	Updated In-Plant Facility Flow Main and Gravity Line
4.	PJO	CRT	10/18/16	Overall Sanitary Sewer Layout
3.	PJO	CRT	07/06/16	Overall Sanitary Sewer Layout
2.	BAM	CRT	7/11/16	Overall Layout Revised
1.	RLV	CRT	06/27/16	Revised Final City Comments

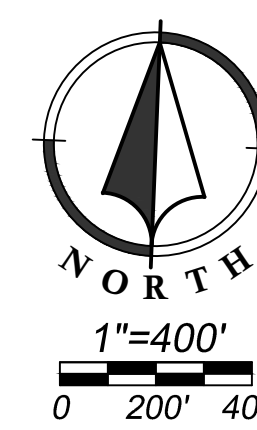


- ### LEGEND
- |                                                                                       |                              |
|---------------------------------------------------------------------------------------|------------------------------|
|  | Existing Force Main          |
|  | Existing Sanitary Sewer Line |
|  | Proposed Force Main          |
|  | Proposed Sanitary Sewer Line |
|  | Proposed Service Line        |
|  | Proposed Concrete Boring     |
| FFE = 1000.00                                                                         | Finished Floor Elevation     |





Existing Force Main  
Existing Sanitary Sewer Line  
Proposed Force Main  
Proposed Sanitary Sewer Line  
Proposed Service Line  
Proposed Concrete Boring  
Finished Floor Elevation



---

## Proposed Revision to LPKC Wastewater Master Plan

- NorthPoint Development is requesting a revision to the LPKC Wastewater Master Plan. The revision would allow the private Coldpoint pump station to pump to the existing Big Industrial gravity sewer and pump station.
- Coldpoint pumping to Big Industrial would be a permanent revision to the LPKC Wastewater Master Plan.
- Big Industrial Pump Station has two 36 HP pumps each capable of pumping up to approximately 400 gallons/minute. This provides a peak capacity for the pump station of approximately 571,000 gallons/day and an average daily flow of 190,000 gallons/day. The Big Industrial pump station is currently receiving on average of 4500 to 7500 gallons/day. The Coldpoint pump station would add 4000 to 6000 gallons/day average daily flow. This would bring the average daily flow to the Big Industrial pump station to 8500 to 13,500 gallons/day. This is still well below the average daily design of 190,000 gallons/day. This would leave plenty of capacity for the two future warehouse building proposed north of 183<sup>rd</sup> Street.
- The additional 4000 to 6000 gallons/day of flow would result in an additional average of 15 minutes of pump run time per day or 450 minutes per month. For 36 HP pumps this would result in an average of 201.4 kilowatts per month. Assuming a cost of approximately \$0.10 per kilowatt this would be a monthly cost of approximately \$20 per month.
- Coldpoint is willing to work with the City of Edgerton on future industrial pretreatment programs (within reason).

## CITY OF EDGERTON, KANSAS

### COUNCIL AGENDA ITEM

---

**Council Meeting Date:** November 18, 2021  
**Agenda Item:** Ordinance No. 2099 Establishing Project Plan B1  
**Subject:** Edgerton Homestead Lane Retail TIF District  
Project Plan B1

---

#### Summary:

On August 22, 2019, the City created the Homestead Lane Retail TIF District on property generally located at the northeast and northwest corners of Interstate 35 and Homestead Lane (the "District"). Pursuant to a Development Agreement with Woodstone Properties, LLC (the "Developer"), the City agreed to consider a TIF project plan for the redevelopment of approximately 42 acres located in the southwest corner of Homestead Lane and 199<sup>th</sup> Street (the "Project Plan Area") that is within the District.

The Developer proposes to construct one or two hotels, a conference center, travel center, restaurants, retail space, office space and associated infrastructure improvements on the Project Plan Area. The City proposes to construct public infrastructure improvements. Together, these improvements are referred to as "Project Plan B1."

In order to create a project plan within a TIF District, the City needs to take the following actions:

1. Prepare a feasibility study;
2. Prepare a project plan;
3. Have the project plan considered by the Planning Commission;
4. Set a date for a public hearing on the project plan;
5. Notify the county, school district and property owners and publish notice of the public hearing; and
6. Approve an ordinance creating the project plan.

The City has taken all of the actions described in 1 through 5 above. The final step in establishing Project Plan B1 is approval of the accompanying Ordinance by a 2/3 Council vote.

[Summary Published in *The Gardner News* on November 24, 2021]

## **ORDINANCE NO. 2099**

### **AN ORDINANCE APPROVING AND ADOPTING REDEVELOPMENT PROJECT PLAN B1 WITHIN THE EDGERTON HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT PROJECT IN THE CITY OF EDGERTON, KANSAS**

**WHEREAS**, pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”), a city is authorized to assist in the development and redevelopment of eligible areas located within the city in order to promote, stimulate and develop the general and economic welfare of the State of Kansas and its communities;

**WHEREAS**, in order to promote, stimulate and develop the general and economic welfare of the City of Edgerton, Kansas (the “City”), the Edgerton City Council on August 22, 2019 adopted Ordinance No. 2021 establishing a Redevelopment District (the “District”) pursuant to the Act;

**WHEREAS**, pursuant to the Act, the City, in cooperation with the Edgerton Planning Commission, prepared a Redevelopment Project Plan for an area within the District (“Project Plan B1”);

**WHEREAS**, Project Plan B1 was found by the Edgerton Planning Commission on September 9, 2021 to be consistent with the intent of the comprehensive plan for the development of the City, and such finding is included in Planning Commission Resolution No. 09-09-21F;

**WHEREAS**, the purpose of Project Plan B1 is to construct hotels, a conference center, travel center, restaurants, retail space, office space, and associated infrastructure (the “Project”);

**WHEREAS**, Project Plan B1 provides for reimbursement to the Project developer for various TIF eligible expenses associated with the development of the Project and reimbursement to the City for TIF eligible costs associated with certain public infrastructure improvements, all as described in more detail in Project Plan B1;

**WHEREAS**, pursuant to Resolution No. 09-23-21C adopted on September 23, 2021, the City gave notice of its intent to consider Project Plan B1 and conduct a public hearing on the proposed Project Plan B1 at this meeting;

**WHEREAS**, a feasibility study has been completed which indicates the benefits derived from Project Plan B1 are significant;

**WHEREAS**, in accordance with the Act, Project Plan B1, including a summary of the feasibility study and a description and map of the area to be redeveloped, has been on file in the

office of the City Clerk and available for viewing during regular office hours; and

**WHEREAS**, the City will require that the Project developer enter into a Disposition and Development Agreement with the City that establishes the terms for implementing Project Plan B1.

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

**Section 1. Approval of Project Plan B1.** Project Plan B1, a copy of which is on file and available for inspection in the office of the City Clerk, is hereby adopted and approved.

**Section 2. Project Plan B1 Boundary.** The boundary of the Project Plan B1 area is legally described as follows:

The East One-Third (1/3) of the Northeast Quarter (NE 1/4) excluding that part in roads and Highways of Section 9, Township 15, Range 22, in the City of Edgerton, Johnson County, Kansas.

**Section 3. Ordinance Transmittal.** In accordance with the Act, following publication of the summary of this Ordinance, the City Clerk is authorized and directed to transmit a copy of the description of the land within the Project Plan B1 and a map indicating the boundaries of Project Plan B1 to the County Clerk, County Assessor, County Treasurer and Board of County Commissioners of Johnson County, Kansas, and the Board of Education of Unified School District No. 231 of Johnson County, Kansas.

**Section 4. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by a 2/3 vote of the Governing Board of the City and publication in an official City newspaper.

**PASSED** by the Governing Body of the City of Edgerton, Kansas, this 18<sup>th</sup> day of November, 2021.

---

Donald Roberts, Mayor

[SEAL]

ATTEST:

---

Alexandria Clower, City Clerk

## **CITY OF EDGERTON, KANSAS**

### **COUNCIL AGENDA ITEM**

---

**Council Meeting Date:** November 18, 2021

**Agenda Item:** Resolution No. 11-18-21A  
Approving a Disposition and Development Agreement

**Subject:** Edgerton Homestead Lane Retail TIF District  
Project Plan B1

---

#### **Summary:**

The City has just approved Project Plan B1 in the Homestead Lane Retail TIF District. The Disposition and Development Agreement (“DDA”) contains the agreements between the City and Woodstone Properties, LLC (the “Developer”) on the use of TIF revenues.

The DDA provides that the Developer has an estimated \$24.5 million of Private TIF Reimbursable Costs and the City has an estimated \$8.5 million of Public TIF Reimbursable Costs.

The DDA states that TIF Revenues are to be divided 50/50 between the City and the Developer for years 1 through 15 of the Project Plan B1. The DDA states that the City shall receive 100% of the TIF Revenues in years 16 through 20 unless the Developer has satisfied the conditions in Section 4.3 of the Development Agreement. Those conditions are:

- a. TGT Bump Conditions – Travel Center, both hotels and conference center, quick-service restaurant, casual dining restaurant plus another restaurant; and
- b. Certificates of occupancy on an additional 15,000 square feet of office, retail or restaurants space by the end of year 15.

If these two conditions are satisfied, TIF Revenues for years 16 through 20 shall be split 50/50 between the City and the Developer.

The DDA also contains other covenants and agreements with respect to the project and certification of expense requirements.

## **RESOLUTION NO. 11-18-21A**

### **RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A DISPOSITION AND DEVELOPMENT AGREEMENT (PROJECT PLAN B1 – HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT)**

---

**WHEREAS**, on August 22, 2019, the City of Edgerton, Kansas (the “City”) adopted Ordinance No. 2021 establishing a Redevelopment District referred to as the Homestead Lane Retail District Redevelopment (TIF) District (the “District”);

**WHEREAS**, pursuant to K.S.A. 12-1770 *et seq.*, as amended, the City prepared Redevelopment Project Plan B1 (“Project Plan B1”), consisting of the construction of hotels, a conference center, travel center, restaurants, retail space, office space and associated infrastructure and site work (the “Project”), which is located on approximately 42 acres located in the southwest corner of Homestead Lane and 199<sup>th</sup> Street;

**WHEREAS**, pursuant to Ordinance No. 2099 passed on this date, the City established Project Plan B1 as a redevelopment project within the District; and

**WHEREAS**, the City and Woodstone Properties, LLC, a Missouri limited liability company (the “Developer”), desire to enter into a Disposition and Development Agreement (the “DDA”) that contains the terms for implementation of Project Plan B1, such as the manner and amount of reimbursing TIF eligible costs, the description of TIF eligible costs, performance standards, and the procedures and conditions for and priority of reimbursement, all as set forth in the DDA.

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

**Section 1. Approval of Disposition and Development Agreement.** The City Council hereby approves the DDA in substantially the form attached hereto as **Exhibit A**.

**Section 2. Execution of Disposition and Development Agreement.** Following publication of the Ordinance establishing Project Plan B1, the Mayor of the City is hereby authorized to enter into the DDA in substantially the form presented to and reviewed by the City Council at this meeting (a copy of which upon execution shall be filed in the office of the City Clerk), with such changes therein as shall be approved by the Mayor, the Mayor’s signature thereon being conclusive evidence of his approval thereof. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the DDA.

**Section 3. 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 Resolution and to carry out, comply with and perform the duties of the City with respect to the DDA.

**Section 4. Effective Date.** This Resolution shall take effect and be in full force immediately after its adoption by the City Council.

**ADOPTED** this 18<sup>th</sup> day of November, 2021.

**CITY OF EDGERTON, KANSAS**

[SEAL]

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

ATTEST:

\_\_\_\_\_  
Alexandria Clower, City Clerk

**EXHIBIT A**

**FORM OF DISPOSITION AND DEVELOPMENT AGREEMENT**

**EDGERTON HOMESTEAD LANE RETAIL DISTRICT  
REDEVELOPMENT (TIF) PROJECT PLAN B1  
DISPOSITION AND DEVELOPMENT AGREEMENT  
(Edgerton Crossing Woodstone Project)**

**THIS DISPOSITION AND DEVELOPMENT AGREEMENT** (the “**Agreement**”), is dated as of the \_\_\_\_ day of November, 2021, between the **CITY OF EDGERTON, KANSAS**, a Kansas municipal corporation (the “**City**”), and **WOODSTONE PROPERTIES, LLC**, a Missouri limited liability company (the “**Developer**”). The City and the Developer are sometimes hereinafter collectively referred to as the “**Parties**” and each a “**Party**”.

**RECITALS**

A. The Edgerton City Council adopted Ordinance No. 2021 on August 22, 2019, establishing a Redevelopment (“**TIF**”) District (the “**District**”). The City has identified multiple development projects located within the District.

B. On November 18, 2021, the City adopted Ordinance No. 2099 (the “**Ordinance**”) approving and adopting Redevelopment (TIF) Project Plan B1 (the “**Project Plan**”) located within the District and providing for the redevelopment of approximately 42 acres located in the southwest corner of Homestead Lane and 199<sup>th</sup> Street (the “**Property**”) and for other authorized, eligible improvements within the District. The Property is legally described on **Exhibit A** attached hereto.

C. The Property is owned by the Developer. The City and Developer entered into a Development Agreement dated September 10, 2021 (as supplemented and amended from time to time, the “**Development Agreement**”). The Development Agreement contains general terms for the development of the Property and the granting of certain incentives by the City.

D. The Project Plan contemplates the construction of hotels, a conference center, travel center, restaurants, retail space, office space and associated infrastructure (the “**Private Project Improvements**”) as reflected in the City development approvals (the “**Project**” as defined in **Section 3.1** herein). The City has received a Financial Analysis of the Project dated September 2021 and prepared by Columbia Capital Management, LLC (the “**Financial Analysis**”).

E. Developer is responsible for constructing or causing to be constructed the Private Project Improvements, subject to tenant/user/market demand, and for annually paying applicable ad valorem taxes and special assessments on the Property owned by Developer.

F. As contemplated in the Project Plan, the Parties desire to enter into this Agreement to set forth the terms for the implementation of the Project Plan, and to provide for reimbursement of a portion of the TIF Reimbursable Costs (defined in **Section 2.2** herein) on a “pay as you go” basis after construction of portions of some or all of the Private Project Improvements are completed and TIF Revenues (defined in **Section 1.3** herein) are subsequently received by the City.

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

## **ARTICLE ONE - PROJECT**

**Section 1.1 Authority.** The City has authority to adopt tax increment financing (“**TIF**”) pursuant to the Kansas Tax Increment Redevelopment Act, codified at K.S.A. 12-1770 *et seq.* (Supp. 2014, *as amended*) (the “**Act**”), to promote, stimulate and develop the general and economic welfare of the State of Kansas and its communities.

### **Section 1.2 Purpose.**

The purpose of this Agreement is to implement Project Plan B1 as generally described in the Recitals hereto and the approved development plans and building permits.

(a) This Agreement is entered into for the purpose of developing the Property and not for speculation in land holding.

(b) The City has determined that development of the Property pursuant to this Agreement is vital and in the best interest of the City and the health, safety and welfare of its residents, and in accordance with the public purposes and provisions of applicable State and local laws.

(c) This Agreement pertains to and affects the ability of the Parties to finance and carry out the purposes of this Agreement and the goals of the Project Plan.

### **Section 1.3 The Project Plan.**

Project Plan B1 was created by the Ordinance, a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference. The Project Plan is a legislative document of the City. Nothing in this Agreement precludes amendment by the City of the Project Plan without consent of Developer provided the amendment does not change the nature or the scope of the Private Project Improvements to be constructed by Developer, amend the timing of the Project Plan, decrease the sources or approved amount of TIF Revenues (as defined below) available for reimbursement of Private TIF Reimbursable Costs (defined in **Section 2.2** hereof) or reduce the type or amount of Private TIF Reimbursable Costs set forth in this Agreement unless (i) this Agreement is terminated in accordance with **Section 6.5**; (ii) the amendment is requested by Developer; (iii) Developer received all potential reimbursement permitted under this Agreement; (iv) Developer consents to such amendment in writing; or (v) Developer has not timely cured any default of this Agreement and the time to cure has expired.

The City shall reimburse Developer for Private TIF Reimbursable Costs incurred by Developer with that portion of the Tax Increment (as defined by the Act) generated from the Property and received by the City from the County Treasurer (the “**TIF Revenues**”) in accordance with the procedure, priority and duration set forth in **Article Five**; provided Developer is not then in default of this Agreement beyond any applicable cure period, and further provided, however, that if Developer receives any reimbursement from TIF Revenues after Developer is notified that

Developer is in default under this Agreement and Developer does not cure such default before the end of any applicable cure period, then Developer shall repay to the City any reimbursement from TIF Revenues Developer received after Developer received notice of such default.

The Parties understand and agree that the City, in its sole discretion and without consent, may at any time during the term of this Agreement, reduce the size of the District provided, however, that such reduction shall not reduce the Property.

#### **Section 1.4 Parties to the Agreement.**

(a) The City is exercising governmental functions and powers and organized and existing pursuant to K.S.A. 13-101 et seq. and all amendments thereto, and is acting herein pursuant to the authority of the Act and Article 12, Section 5 of the Kansas Constitution.

(b) Developer is a Missouri limited liability company, authorized to do business and in good standing in the State of Kansas. Throughout the term of this Agreement, Developer shall maintain its status as a limited liability company in good standing and authorized to do business in the State of Kansas.

(c) The Parties are sophisticated buyers and sellers of real property and have participated in the drafting of this Agreement. The parties covenant and represent that they are fully authorized to enter into and to execute this Agreement and to bind the Parties, and have executed this Agreement after its review and consultation with legal counsel.

#### **Section 1.5 Restrictions on Assignments and Transfer of Interests in Developer.**

(a) Restrictions on Assignment of Rights and Obligations. The qualifications and identity of Developer are of particular importance to the City. It is because of Developer's qualifications and identity that the City is willing to enter into this Agreement. Except as otherwise set forth herein, Developer shall not assign, or otherwise transfer (whether voluntarily, by operation of law, or otherwise) this Agreement, or any of its rights or obligations under the Agreement, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. In the event of an assignment consented to by the City, the proposed assignee shall enter into an agreement (the "**Assignment Agreement**") expressly for the benefit of the City, pursuant to which such assignee shall assume all of the rights and obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject. Upon approval of the Assignment Agreement by the City, Developer shall be released from all of its rights and obligations under this Agreement accruing after the date of the Assignment Agreement.

(b) Transfer of Interests in Developer. Any change in ownership of the Developer that results in J. Shannon McMurdo no longer being the majority owner of Developer shall require the written consent of the City.

(c) Collateral Assignment. Notwithstanding subsection (a) above, Developer and its successors and assigns shall also have the right, without the City's consent, to collaterally assign to any Secured Lender (as defined below) as collateral any and all of Developer's rights and/or obligations under this Agreement. The City shall receive as soon as possible, but not less than 30 days following the date of such collateral assignment, written notice from Developer that it has

entered into a collateral assignment with a Secured Lender in connection with the Property, which notice shall specify the name, address and telephone number of the Secured Lender, as well as the title, date and parties to the collateral assignment agreement. Such Secured Lender shall have the right to perform any term, covenant, condition or agreement and to remedy, in accordance with the terms of this Agreement, any default by Developer under this Agreement, and the City shall accept such performance by any such Secured Lender with the same force and effect as if furnished by Developer. No Secured Lender shall be personally liable or obligated to perform the obligations of Developer under the Agreement unless and until such Secured Lender takes possession of the property as a mortgagee or by a receiver appointed at the request of mortgagee or becomes the Developer of the fee estate under this Agreement by foreclosure, or deed in lieu of foreclosure or otherwise. For purposes of this Section, "**Secured Lender**" means a bank, financial institution or other person or entity from which Developer has borrowed funds to finance all or a portion of the Project and in whose favor Developer has agreed to provide a security interest as collateral for such loan.

Before a Secured Lender may exercise any rights of Developer under the Agreement, the Secured Lender shall provide to the City not less than 10 days' written notice of the Secured Lender's intent to exercise its right to become the assignee of Developer under the Agreement, which notice shall include the effective date of the collateral assignment, and the title, date and parties to such collateral assignment agreement. The City is entitled to rely upon representations made in the notices described in this Section without further investigation or inquiry.

Provided that Developer has timely given the City written notice of a collateral assignment as described in this Section, the City agrees to provide the Secured Lender with the same notice of default at the same time such notice is given to Developer, and the Secured Lender shall have the same rights (but shall have no obligation) to cure, correct or remedy a default as are provided to Developer. If Developer fails to timely notify the City of such collateral assignment, failure of the City to provide a Secured Lender with the notice of default described in this paragraph shall not constitute a default of the City under this Agreement and the City shall have no liability to Developer or Secured Lender for failure to provide such notice. Further, except for providing the same notice of default as described herein, no collateral assignment to a Secured Lender shall increase, limit or otherwise modify the City's rights and obligations described in this Agreement.

(d) Lease of Property. Nothing in this section shall apply to Developer's lease of portions of the Property to other persons or entities. This Agreement shall not obligate, provide rights, or otherwise apply to any such lessees and any such leases shall not relieve Developer of its obligations under this Agreement, including but not limited to its obligations with respect to the leased property.

(e) Sale of Property. Nothing in this section shall limit Developer's right to sell or otherwise transfer the Property or portions thereof to other persons or entities, but such sale shall not relieve Developer of its obligations under this Agreement, including but not limited to its obligations with respect to the sold or transferred Property, unless Developer has been released from its obligations as provided in **Section 1.5(a)** above.

(f) Right to Receive TIF Revenue. Only the City, Developer, an assignee under an approved Assignment Agreement pursuant to **Section 1.5(a)**, or a Secured Lender pursuant to **Section 1.5(c)**, and not any other subsequent purchaser, assignee or tenant, unless expressly

consented to in writing by Developer and the City in accordance with the provisions of this Agreement, shall be entitled to receive TIF Revenues for any purpose.

(g) No Assignment if in Default. Notwithstanding anything in this Section to the contrary, no assignment or transfer of this Agreement is permitted if Developer is in default in the performance of any of the material terms, covenants, conditions or agreements of this Agreement and has not cured such default prior to the effective date of such assignment or transfer.

(h) City Costs. Developer shall be responsible for all City fees, including but not limited to professional consultant and advisor fees, if any, associated with a request for City action associated with any assignment under **Section 1.5** or estoppel certificate under **Section 1.6** herein.

### **Section 1.6 Estoppel Certificate.**

Within 30 days of the City's receipt of a written request from Developer, and not more than once per year, the City shall execute, acknowledge and deliver a statement certifying that to the best of its knowledge but without any independent investigation: (a) this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as amended); (b) all sums required to be paid by Developer to the City under the terms of this Agreement due on or prior to the date of the statement have been paid in full; and (c) the City has not given any currently outstanding notices to the Developer or to any other party asserting any breach or violation of, or default under, any of the provisions of this Agreement or any other documents relating to the Private Project Improvements. Developer shall be responsible for any City fees associated with the City's preparation and issuance of such estoppel certificate.

## **ARTICLE TWO - TIF PROJECT**

**Section 2.1 Private Project Improvements.** Developer shall perform or cause to be performed the Private Project Improvements subject to tenant/user/market demand, but consistent with the Development Plan (hereinafter defined in **Section 3.1**), City Code, and in accordance with and compliance with the Project Schedule (defined in **Section 3.3**).

### **Section 2.2 TIF Reimbursable Costs.**

(a) The costs incurred as a result of the Private Project Improvements performed, or caused to be performed, by Developer which are eligible for TIF reimbursement include, but are not limited to: land acquisition, architectural and engineering costs (except those associated with vertical construction of non-parking structure buildings owned or leased by Developer); demolition; reclamation; geotechnical evaluation and structural study and improvements of the surface and/or subsurface; site preparation and development; utilities infrastructure, structured and surface parking, lighting, landscaping, and other associated infrastructure, hardscape and associated amenities; construction interest; and the TIF Fee (collectively, the "**Private TIF Reimbursable Costs**"). The Private TIF Reimbursable Costs are described in more detail on **Exhibit C**, attached hereto and incorporated herein by reference. All Private TIF Reimbursable Costs must be consistent with the Act. The City shall reimburse Developer from TIF Revenues for Private TIF Reimbursable Costs paid by the Developer or caused to be paid by the Developer pursuant to **Article Five** of this Agreement.

Cost estimates for the Private TIF Reimbursable Costs have been submitted by Developer and the City is entitled to rely on the estimated costs without making any independent investigation. Subject to available TIF Revenues received by the City and the provisions of this Agreement, including but not limited to **Section 2.3** and **Article Five** herein, Developer may be reimbursed for individual line items of Private TIF Reimbursable Costs set forth on **Exhibit C** in higher amounts than the estimates set forth thereon, subject to the aggregate maximum amount of Total TIF Reimbursable Costs set forth on **Exhibit C**. With the consent of the City, which shall not be unreasonably withheld, Developer may also be reimbursed for items not listed on **Exhibit C**, to the extent permitted under the Act, and subject to available TIF Revenues and the aggregate maximum amount of TIF Reimbursable Costs set forth on **Exhibit C** attached hereto.

(b) Developer may make or cause to be made other improvements to the Property that may be eligible for TIF financing under the Act, but if such costs are not included on **Exhibit C** as Private TIF Reimbursable Costs, such costs shall be considered “**Non-TIF Reimbursable Costs**” and not entitled to reimbursement, except where the City otherwise expressly consents in writing.

(c) The Project Plan also contemplates reimbursement to the City with TIF Revenues for public improvements including, but not limited to, certain public infrastructure improvements, adjacent to or substantially for the benefit of the District or for the benefit of The Logistics Park – Kansas City, including a new interchange and traffic signals (the “**Public TIF Reimbursable Costs**”). Reimbursement of the Public TIF Reimbursable Costs is subject to the priority, amount and duration as described in **Article Five** herein. Together, the Private TIF Reimbursable Costs and the Public TIF Reimbursable Costs are referred to as the “**TIF Reimbursable Costs**.”

### **Section 2.3 Reallocation of Line Items.**

Developer has the right to be reimbursed for individual line items of Private TIF Reimbursable Costs set forth on **Exhibit C** in higher amounts than the estimates set forth therein, subject to the Total Maximum Aggregate of Eligible Private TIF Reimbursable Costs set forth on **Exhibit C**.

### **Section 2.4 Payment of Financing Costs**

Interest cost to carry at a rate of 5% (per annum, non-compounding) (the “**Financing Costs**”) is an eligible Private TIF Reimbursable Cost as set forth on **Exhibit C** attached hereto. The City shall only reimburse Developer for Financing Costs accruing after the date the Project Plan is approved. For purposes of calculating the Financing Costs as a Private TIF Reimbursable Cost, Developer shall certify such expenses pursuant to **Article Five** as a separate line item expense. For the month in which such interest is initially imputed or incurred, it shall accrue from the 15<sup>th</sup> day of the month for costs funded from the 1<sup>st</sup> to the 14<sup>th</sup> day of a month and from the last day of the month imputed or incurred for costs funded after the 15<sup>th</sup> day of a given month. The Total Maximum Aggregate of Eligible Private TIF Reimbursable Costs set forth on **Exhibit C** attached hereto is exclusive of the Financing Costs.

### **Section 2.5 When TIF Reimbursement Not Required.**

The City has no obligation to reimburse Developer for Private TIF Reimbursable Costs in excess of TIF Revenues received by the City from the Property or beyond the duration agreed to

in **Section 3.5** herein, regardless of whether or not there are unreimbursed Private TIF Reimbursable Costs remaining. In addition, the City shall have no reimbursement obligation during any period in which Developer is in material default of this Agreement beyond any applicable cure period or if this Agreement has been terminated in accordance with the terms hereof, or otherwise invalidated by a court of competent jurisdiction.

**Section 2.6 Time is of the Essence.** The Parties agree that time is of the essence in performing the obligations under this Agreement.

## **ARTICLE THREE – PROJECT DEVELOPMENT**

### **Section 3.1 Scope of Development.**

(a) The Property shall be developed in accordance with the Project Plan, and within the general controls established in the approved development plans for the Private Project Improvements (herein the **“Project”**), as the forgoing may be revised from time to time, subject to approval of the City in accordance with its development review and zoning processes (the **“Final Development Plan”**), which documents shall be incorporated herein by reference. A copy of the site plan is attached hereto as **Exhibit D** to reflect the general nature and type of proposed improvements contemplated by the Project Plan (the **“Site Plan”**).

(b) Any construction by Developer of the Private Project Improvements shall utilize a high quality of architectural design and materials that are in accordance with plan approvals by the City, and the Private Project Improvements shall be consistent with the approved Final Development Plan.

(c) Definitions:

- (1) For purposes of this Article, **“commencement of construction”** shall be defined to mean the commencement of site work.
- (2) For purposes of this Agreement, **“substantial completion”** or **“substantially complete”** or **“complete”** shall be defined to mean when the work is sufficiently complete, in accordance with the plans and applicable City codes, so that the work can be utilized for the purposes for which it was intended. Substantial completion may not require evidence of a Temporary Certificate of Occupancy (**“TCO”**) or final certificate of occupancy (**“CO”**) for all or any portion of the work if the work can be utilized for such purposes without such TCO or CO.

(d) After approval of the Project Plan, approval and execution of this Agreement, and receipt of any required City development approvals for which Developer shall promptly and diligently pursue, Developer shall promptly begin and thereafter diligently prosecute to complete the construction of the Private Project Improvements in accordance with the Project Schedule set forth in **Section 3.3** hereof. Subject to an Excused Delay (as defined in the Development Agreement), the Developer shall commence construction and development within the times specified herein or such reasonable extension of said date as may be granted by the City as provided herein, and Developer shall diligently pursue it to completion. The timing of

development set forth in **Section 3.3** is subject to revision from time-to-time as mutually agreed upon in writing between Developer and the City and is subject to the provisions herein.

**Section 3.2 Progress Reports.** During the term of this Agreement, upon the written request of the City, Developer shall submit to the City Administrator or his designee written reports of the progress of the construction of the Private Project Improvements. Such request shall not be made more frequently than every six (6) months.

**Section 3.3 Project Schedule.** Developer agrees to comply with the construction schedule set forth in Article VIII of the Development Agreement (the "**Project Schedule**").

**Section 3.4 Development Performance Standards.** Subject to the notice and cure periods set forth in **Section 6.1**, Developer is required to satisfy the following Performance Standards (the "**Performance Standards**") which are considered material to this Agreement or Developer will be considered in default of this Agreement:

(a) Payment of the TIF Fee and City's Annual Administrative Service Fee. Developer is responsible for the TIF Fee, which is a non-refundable amount equal to 1% of the total TIF Revenues estimated to be reimbursed to Developer pursuant to this Agreement. The TIF Fee for this Project is \$50,000, which is based upon the approved aggregate of Private TIF Reimbursable Costs but capped at the maximum TIF Fee that the City charges (the "**TIF Fee**"). The TIF Fee is included as a Private TIF Reimbursable Cost and is to be paid as follows:

- (1) Payment of the required City fees. The Developer is responsible for paying the City's TIF legal fee of \$20,000 and the Financial Analysis fee of \$14,000 at the time of execution of this Agreement.
- (2) Payment of the Redevelopment Project Plan Approval Fee. At the time of execution of this Agreement, Developer shall pay an amount equal to 25% of the TIF Fee (the "**Project Plan Fee**"). The Project Plan Fee for this Project will be \$12,500.
- (3) Balance of TIF Fee. The balance of the TIF Fee in the amount of \$37,500 shall be paid by Developer with the first Private TIF Reimbursable Cost disbursement. If there are not sufficient funds in the first Private TIF Reimbursable Cost disbursement, the City is authorized to continue to deduct the balance of the TIF Fee from each subsequent disbursement until paid in full.
- (4) Annual Administrative Fee. The annual administrative service fee of one percent (1.0%) of the annual TIF Revenues actually reimbursed to Developer or its assigns for Private TIF Reimbursable Costs (the "**City's Annual Administrative Fee**") shall be deducted by the City from TIF Revenues before disbursement of the remaining TIF Revenues. The City's Annual Administrative Fee is not an eligible Private TIF Reimbursable Cost.

- (b) Developer must be in compliance with **Sections 3.3** and **3.4** hereof.

(c) In accordance with **Section 4.4**, and subject to Developer's opportunity to cure set forth in **Section 6.1(d)**, Developer shall not be delinquent in any material respect on any of the ad valorem real property taxes or special assessments assessed against the real property in the City owned by Developer. Notwithstanding anything to the contrary herein and subject to the provisions of **Section 4.4**, the Developer shall have the right to pay any and all taxes and special assessments under protest in accordance with applicable law without violating any provision hereof.

(d) For the duration of the TIF Term (defined in **Section 3.5** herein), Developer shall not be delinquent on any City fees associated with the Project, including but not limited to City TIF fees, the City Costs described in **Section 1.5(h)** herein, and development fees, and shall be in compliance with all City Codes including the property maintenance codes applicable to the Property owned by Developer, subject to Developer's right to notice and cure under **Section 6.1(c)** hereof. Developer's obligation under this **Section 3.4(e)** does not restrict Developer from challenging the legality of any Code provision or any fee first levied against the Property or portion thereof or the Developer by the City after the execution of this Agreement. Developer shall not be deemed to be in default of this **Section 3.4(e)** for a violation of the City's property maintenance code unless Developer is in material breach of the property maintenance codes applicable to the Property owned by Developer beyond the notice and cure periods set forth in **Section 6.1**.

(f) **Civic Involvement.** The granting of economic development incentives is a discretionary decision of the City and is granted to promote, stimulate and develop the general and economic welfare of the quality of life in the City; therefore, civic and community involvement of any Developer receiving Private TIF Reimbursement is important to the City. During the TIF Term, Developer agrees to comply with Section 12.2 of the Development Agreement (the "**Civic Obligation**"). The Civic Obligation is not considered a TIF eligible expense and may not be deducted from the TIF disbursement.

**Section 3.5 TIF Term.** The TIF Term (hereafter defined) commences on the date Project Plan B1 is approved. Project Plan B1 shall terminate upon the earlier to occur of: (a) 20 years from the date on which Project Plan B1 is approved; or (b) reimbursement of all TIF Reimbursable Costs (the "**TIF Term**").

**Section 3.6 Project Cost.** The cost of developing, constructing, improving and operating the Private Project Improvements shall be the sole responsibility of Developer; however, the City shall make reimbursement to Developer in accordance with this Agreement for Private TIF Reimbursable Costs with TIF Revenues received by the City, provided Developer is not in material default of the Agreement beyond any applicable cure period set forth in this Agreement.

**Section 3.7 City and Other Permits.** Before commencing construction, Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work.

#### **ARTICLE FOUR: ADMINISTRATION**

**Section 4.1 Rights of Access & Inspection.**

(a) For the purpose of ensuring compliance with this Agreement, representatives of the City shall have the right of access to the Property, upon reasonable notice, without charges or fees, at normal construction hours during the period of construction, including, but not limited to the inspection of the work being performed in constructing the Project. Such representatives of the City shall check in with the Construction Superintendent in the Project Trailer, and shall conform their conduct to the requirements of the safety program in effect at the Project, shall at all times carry proper identification, shall insure their own safety, shall assume the risk of injury; and shall not interfere with the construction activity unless such activity is in violation of this Agreement, City Code, state or federal regulations, statutes or other law. This provision shall not preempt the City's exercise of its police powers to access the Project in accordance with local, state or federal law.

(b) For a period of 5 years after receiving a Certificate of Completion, Developer shall maintain records and supporting documentation associated with the Private Project Improvements constructed by Developer, customarily retained by a reasonable contractor performing similar work, and Developer agrees to make such documents available for inspection by the City upon written request with reasonable notice to Developer.

(c) The City has the right to inspect, at reasonable times and for a period of 5 years after receiving a Certificate of Completion, the books and records of Developer pertaining to the Private Project Improvements constructed by Developer as pertinent to the purposes of this Agreement, including but not limited to construction contracts and invoices documenting requests for reimbursement of Private TIF Reimbursable Costs, which the City shall keep confidential to the extent permitted by law.

**Section 4.2 Local, State and Federal Laws.** Developer shall carry out the provisions of this Agreement in conformity with all applicable local, state and federal laws and regulations.

**Section 4.3 Anti-discrimination.** Developer agrees that in the construction of the Project, Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

**Section 4.4 Taxes & Assessments.**

Developer shall pay when due all real estate taxes and assessments levied against the Property owned by Developer and all other real property of Developer within the City or Developer shall be in default of this Agreement. Developer, however, shall have the right to pay said taxes under protest in accordance with applicable law.

Developer shall promptly notify the City in writing of a protest of real estate taxes or valuation of any portion of the Property owned by Developer promptly after the appeal is filed but in no event later than ten (10) days after filing the appeal. In the event of an appeal of ad valorem taxes or valuation of all or any portion of the Property owned by Developer the disbursement of TIF Revenues shall be modified as set forth in **Section 5.2** herein. Any reduction in the assessed valuation of the Property may result in Developer's inability to receive full reimbursement for all Private TIF Reimbursable Costs set forth in **Exhibit C**.

**ARTICLE FIVE: REIMBURSEMENT OF TIF REIMBURSABLE COSTS**

### **Section 5.1 Certificate of Completion.**

Reimbursement shall only be made to Developer after the City's issuance of a Certificate of Completion for a "definable portion thereof" of the Project associated with the Private TIF Reimbursable Costs for which reimbursement is sought, compliance with the Performance Standards and receipt by the City of acceptable documentation of such Private TIF Reimbursable Costs pursuant to this **Article Five** and **Exhibit F** and deduction of the City Annual Administrative Fee, and if applicable, the balance of the Project Plan Fee.

For purposes of this Article, "**a definable portion thereof**" means, with respect to the Project, the earlier of (i) substantial completion of the construction of any stand-alone building, along with any associated improvements required under the public zoning and other land use approvals and documents, which may include items such as infrastructure, parking, sewers, sidewalks, streets, utilities, and lighting (the "**Associated Improvements**") or (ii) the issuance of a temporary certificate of occupancy for a Private Project Improvement. "A definable portion thereof" may also include a smaller or more discrete portion of work associated with the Project, as determined by the City Administrator. If an improvement is partially completed in a manner which results in the material risk of physical damage to the Project, is unsightly, results in inability for the public and/or tenants (as the case may be) to utilize that portion of the improvement which is completed, or materially violates City ordinances or permits then the portion completed shall not be eligible for a Certificate of Completion until the additional improvements are made. If any of the improvements require additional improvements to be constructed contemporaneously or prior to receipt of permits, then all such items must be substantially completed to constitute a definable portion thereof.

(a) Any request for a Certificate of Completion shall include a description of the Private Project Improvement or definable portion thereof for which the certificate is requested and an affidavit of Developer certifying: (1) that the Private Project Improvement or definable portion thereof is substantially complete; (2) the costs of the substantially completed work that constitute Private TIF Reimbursable Costs; (3) that construction was in accordance with all applicable laws and codes; (4) that the costs were incurred in furtherance of the Project, complete a definable portion of the Project as contemplated by this **Section 5.1** and that the costs have not previously been submitted for CID, TIF or other City reimbursement; (5) that Developer's Contractor has no actual knowledge of outstanding or anticipated liens for the work constructed and Developer has no knowledge of Developer's Contractor's intent to file a lien; and (6) that Developer is not in material default under this Agreement (the "**Developer Affidavit**"). The Developer Affidavit form is attached as **Exhibit D**. Notwithstanding anything to the contrary, the existence of a lien or an intent to file a lien shall not be the basis of the City refusing to reimburse Developer for any Private TIF Reimbursable Costs, except that City shall have the right to temporarily withhold an amount of reimbursements equal to the amount of the lien or threatened lien until the earlier of the (i) lien has been discharged or (ii) City is satisfied that the lien is not going to adversely affect the City.

(b) Upon the City's receipt of a request for Certificate of Completion from Developer, the City shall physically inspect the completed Project or a definable portion thereof for which the Certificate of Completion is requested. If such Project or definable portion thereof is complete and appears to be in compliance with City Codes and the City has not notified Developer of an event of default which has not been cured, then the City will issue a Certificate of Completion

which confirms that the Private TIF Reimbursable Cost is eligible for reimbursement in accordance with this Agreement to the extent TIF Revenues are available. This Certificate of Completion shall not relieve Developer of constructing the improvements in accordance with local, state and federal laws and regulations, completing the improvements and achieving final Completion, nor should it be relied upon by any person or entity.

(c) The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any tenant, any holder of any deed of trust securing money loaned to finance the Project; nor does it substitute for Developer's need to receive any other City permits or certificates of occupancy, or Governing Body acceptance of public improvements.

## **Section 5.2 Reimbursement Procedures.**

(a) Developer shall only be reimbursed for approved Private TIF Reimbursable Costs and only after receipt of a Certificate of Completion, as described in **Section 5.1**. Reimbursement shall only be made with TIF Revenues received by the City and deposited by the City in a separate, segregated account of the City (the "**Project Plan B1 Fund**") and for the duration set forth in this Agreement and/or **Exhibit C**. The City is under no obligation to provide financial assistance in excess of the available TIF Revenues, including but not limited to (1) where the TIF Revenues do not meet the estimates in the feasibility analysis; (2) the Private Project Improvements are not completed in the timeframe expected thereby reducing the TIF Revenues generated during the TIF Term; (3) Developer does not construct the same project upon which the feasibility analysis was based; (4) TIF Revenues do not fully reimburse the Private TIF Reimbursable Costs submitted by Developer; (5) the TIF Term expires pursuant to **Section 3.5** or if this Agreement is otherwise terminated in accordance with the terms hereof; or (6) Developer fails to meet the requirements of **Section 3.3**.

The Financial Analysis incorporated a number of development projections and a number of assumptions, including dates for commencement and completion of property, property tax collection at 100% and a 1% annual assessed valuation growth rate. In addition, the Financial Analysis assumes a constant mill levy. Changes in any of the projections or assumptions will change the amount of TIF Revenues generated from the Property. The mill levy may vary each year of the TIF Term based upon legislative actions and budgetary decisions made by the individual taxing jurisdictions.

(b) Reimbursement of Private TIF Reimbursable Costs will be made available on a "Pay-As-You-Go" basis with available TIF Revenues. The City will not issue full faith and credit TIF bonds.

(c) Priority. Subject to available TIF Revenues, the City and Developer shall be reimbursed the amounts and in the priority set forth below and on **Exhibit C** subject to the provisions of this Agreement:

- (1) The City shall receive the first priority for payment of the City Annual Administrative Fee which shall be deducted from the TIF Revenues prior to any other disbursement.

- (2) The City shall receive full payment of its TIF Fee prior to any other disbursement to Developer.
- (3) Provided Developer is not otherwise in default of this Agreement, the TIF Revenues relating to each calendar year after which the Developer receives a Certificate of Completion for a definable portion of the Project as defined in **Section 5.1**, excluding the City Annual Administrative Fee, shall be apportioned between the Developer and the City in the following percentages:

TIF Term Year	TIF Revenue Allocation	
	Developer	City
Years 1 – 15	50%	50%
Years 16 – 20	Described in (4) below	

- (4) The City shall receive 100% of the TIF Revenues for years 16 through 20 of the TIF Term unless, by the last day of the 15<sup>th</sup> year of the TIF Term, the Developer has satisfied both of the conditions in Section 4.3 of the Development Agreement. If the Developer has satisfied both of the conditions in Section 4.3 of the Development Agreement by such time, the TIF Revenues shall be paid 50% to the Developer and 50% to the City for years 16 through the end of the TIF Term.
  - (5) In no event will reimbursement to the Developer extend beyond the reimbursement of all Private TIF Reimbursable Costs.
- (d) Reimbursement to Developer:
- (1) Prior to receiving reimbursement, Developer must apply for and receive a Certificate of Completion and submit to the City Administrator copies of all invoices supporting its request for reimbursement in such detail as may reasonably be requested by the City Administrator, accompanied by a Certificate of Expenditures for the associated costs, which approval will not be unreasonably withheld or denied by the City Administrator. The Certificate of Expenditures form is included as **Exhibit E** Invoices must comply with the provisions set forth in **Exhibit F**, attached hereto and incorporated herein by reference. The invoice or other supporting documentation must identify the Project or definable portion thereof for which reimbursement is sought and clearly state the amount of reimbursement requested. Invoices must be submitted no more than biannually. Developer shall provide lien waivers in such form, and accompanied by such other information, as is reasonably requested by the City to evidence that the reimbursement is permitted. The City Administrator shall rule on the eligibility of the cost as soon as possible but no later than sixty (60) days of the submittal and if he/she fails to do so, the cost is deemed ineligible. If the City Administrator determines or is deemed to have determined hereunder the cost is ineligible, Developer may appeal the decision to the Governing Body by filing with the City Clerk, a written request for an appeal within seven (7) days of the City Administrator's written denial. Any

reimbursement of the disputed portion of any payment shall be stayed pending a final determination by the Governing Body of any appeal, however the balance shall be paid in the normal course.

- (2) After approval of the invoice, the City shall make disbursement to Developer in accordance with the priorities and duration set forth in **Exhibit C** and subparagraph (c) herein. Regardless of the entity making improvement to the Property or the entity that controls Property ownership, during the term of this Agreement, disbursement of the TIF Revenue for Private TIF Reimbursable Costs shall be made to Developer, unless the parties agree in writing to disburse the TIF Revenues to a third party, in which case, disbursements to a third party shall be deemed a disbursement to the Developer for purpose of determining the maximum Private TIF Reimbursable Costs and all other purposes of this Agreement.

(c) Disbursements: All disbursements for approved Private TIF Reimbursable Costs shall be made by the City from the Project Plan B1 Fund against approved invoices submitted to the City in accordance with the provisions contained herein. Such disbursements shall be made biannually within thirty (30) days after the City's receipt of the ad valorem tax payment from the County. Disbursements will only be made electronically through the automated clearinghouse ("ACH") or similar City approved payment method. Developer shall submit to the City the necessary financial information as required by the City to enable the use of the aforementioned payment methods and to enable the City to properly report such payments as required by state and federal law. The City shall have no liability to pay any Private TIF Reimbursable Costs from any source except from TIF Revenues received from the County and deposited in the Project Plan B1 Fund during the TIF Term in accordance with the Act.

Notwithstanding anything in this Agreement to the contrary, in any year in which ad valorem taxes are appealed by Developer, the City shall make a good faith determination of the amount of TIF Revenues subject to appeal (the "Disputed Amount") and the amount of TIF Revenues that would remain if the Developer is successful (the "Undisputed Amount"). The City agrees to disburse 100% of (or 75% of if the appeal is more than 15 years from the date on which Project Plan B1 was approved) of the Undisputed Amount. Once a final determination on the appeal has been made and assuming the appeal is successful, the City agrees to disburse to Developer the remaining balance of the Undisputed Amount that would apply to the new valuation. If the City was incorrect in its good faith determination and the "Undisputed Amount" was greater than the actual tax liability based on the new valuation, the City shall withhold the amount of the TIF Revenue disbursed in excess of the new valuation from the following years' TIF Revenue distribution or if there is no distribution to be made or all or a portion of the Property for which taxes were paid has been sold or assigned, Developer will return the amount of TIF Revenues Developer received from the City in excess of the actual tax liability based on the new valuation. If the appeal is not entirely successful, the City agrees to distribute 100% of TIF Revenues received attributable to any portion of the Disputed Amount which the Developer paid as a result of the appeal not being entirely successful.

### **Section 5.3 Reimbursement of Tenant or Purchaser incurred TIF Reimbursable Costs.**

Notwithstanding anything in this Agreement to the contrary, in the event that a tenant or purchaser of a portion of the Property completes the Project, or a portion thereof, and as a result incurs Private TIF Reimbursable Costs, Developer shall be entitled to reimbursement of such Private TIF Reimbursable Costs so long as such costs have not been previously reimbursed or the right to such reimbursement has not otherwise been assigned by Developer with TIF Revenues, or other City funds, and further provided the Developer is not in default of this Agreement beyond the applicable cure period, and Developer submits a Certificate of Completion, invoices and other supporting documentation in accordance with the provisions of this Agreement and attached **Exhibits E, F and G**.

**Section 5.4 City's Right to Make Additional TIF Reimbursements.** The City, at any time during the term of this Agreement after the City has issued a Certificate of Completion for all of the Private Project Improvements, shall have the right to pay Developer an amount equal to all Private TIF Reimbursable Costs owed to Developer under this Agreement pursuant to **Exhibit C** and approved in the Certificate of Expenditures and thereafter terminate this Agreement in accordance with **Section 6.5**. Thereafter, the City may also elect to terminate this Agreement for convenience and/or terminate or otherwise amend the Project Plan in accordance with the Act, provided that the City has met all of the City's obligations contained in this Agreement

## **ARTICLE SIX - DEFAULTS & REMEDIES**

### **Section 6.1 Defaults.**

(a) Subject to any extensions granted in accordance with this Agreement, failure or delay by either Party to perform any term or provision of this Agreement, after receiving notice and failing to cure, as set forth herein, constitutes a default under this Agreement.

(b) A Party claiming a default ("**Claimant**") shall give written notice of default to the other party, specifying the default complained of. Notice shall be given to the Parties at the addresses set out in **Section 7.4** hereof.

(c) Claimant shall not institute proceedings against the other Party, nor be entitled to damages, if the other Party within fourteen (14) days from receipt of such notice commences to cure, correct or remedy such failure and shall complete such cure, correction or remedy within thirty (30) days from the date of such notice unless otherwise provided herein or unless such defaulting Party has commenced and is diligently working to cure the default and the time period necessary to cure is longer than thirty (30) days, in which case such cure period shall continue as long as reasonably necessary to allow for cure, not to exceed ninety (90) days unless such longer time is mutually agreed to by both parties in writing.

(d) Notwithstanding any provision herein to the contrary, if the City determines that the Developer-owned Property's ad valorem real property taxes or special assessments for the Private Project Improvements have not been paid, upon written notice by the City of such delinquency received by the Developer at the address indicated for Notices in this Agreement, the Developer shall pay such Property taxes and special assessments within ten (10) business days after receipt of such notice. Developer's failure to pay such Property taxes and special assessments within such ten (10) business day period shall constitute an event of default under this Agreement. The notice and cure rights set forth in this subsection shall only apply to the first two (2) instances

where the taxes and special assessments for the Property are not timely paid. Any additional instances where such taxes and special assessments are not timely paid shall constitute an event of default under this Agreement, with no notice and cure rights under this subsection. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit the Developer from contesting the assessed value of such Property or the taxes thereon, or any special assessment levied against the Property after execution of this Agreement; provided however, that Developer shall pay any and all amounts that are contested with respect to the Property under protest while any such proceedings are pending. Developer shall also notify the City anytime it chooses to appeal the assessed valuation of the Property or any portion thereof. An appeal of assessed value that reduces the assessed value of the Property below the amount set forth in the Financial Analysis upon which Project Plan B1 is based will likely result in Developer's inability to receive reimbursement for all TIF Reimbursable Costs set forth in **Exhibit C**.

(e) The entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the Developer, or adjudicating the Developer bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, adjustment or composition of or in respect of the Developer under the U.S. Bankruptcy Code or any other applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee or similar official of or for the Developer or any substantial part of the Project property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order not stayed and in effect for a period of sixty (60) consecutive days, and such decree order causes Developer to be unable to perform Developer's obligations under this Agreement whether directly or as shown by evidence of a means of acceptable, alternative financing provided by the Developer to the City.

(f) The following shall constitute an event of default under this Agreement: the commencement by the Developer of a voluntary case, by it of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the Developer of bankruptcy or insolvency proceedings against it, or the filing by Developer of a petition or answer or consent seeking reorganization, arrangement or relief under the United States Bankruptcy Code or any other applicable federal or state law, or the consent or acquiescence by it to the filing of any such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Developer or any member of Developer, or any substantial part of their property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability or its failure to pay its debts generally as they become due, or the taking of corporate action by the Developer in furtherance of any such action.

## **Section 6.2 Legal Actions.**

(a) Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas. Neither Party shall be entitled to attorney fees as a result of litigation relating to or arising out of this Agreement. Neither party shall at any time be liable for lost tax revenues or lost profits for any action arising under this Agreement or the transactions contemplated thereby.

(b) This Agreement is entered into, under and pursuant to, and is to be interpreted, construed and enforceable in accordance with the laws of the State of Kansas.

**Section 6.3 Rights and Remedies Are Cumulative.** Both Parties shall have available to it all remedies at law and equity. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

**Section 6.4 Waivers.**

(a) Any failures or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(b) All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Parties and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision.

**Section 6.5 Termination.**

(a) If Developer is not in compliance with the Project Schedule set forth in Article , unless otherwise extended by written agreement of the Parties, or fails to thereafter diligently pursue the Project to completion, subject to tenant/user/market demand and Excused Delay (as defined in the Development Agreement), the City shall have the right to terminate this Agreement without any further right to cure.

(b) Upon reimbursement of all TIF Reimbursable Costs; or the expiration of the Project Plan in accordance with state law, whichever occurs first, this Agreement, by its terms, shall terminate and have no further force or effect. Notwithstanding the foregoing, the following provisions shall survive such termination: **Section 3.3(d)**, **Section 3.4(e)** and **Section 4.4**.

(c) Notwithstanding anything else in this Agreement, in the event of a default under this Agreement by Developer which is material and that is not timely cured pursuant to **Section 6.1** hereof, the City may terminate this Agreement. The City may also terminate this Agreement if the Developer is in default under the Development Agreement and such default has not been timely cured.

(d) If the City terminates this Agreement as provided herein, the City will notify Developer in writing, at least fourteen (14) days prior to terminating the Agreement. The intent of this provision is to provide notice to Developer, not to provide any additional right to cure.

(e) If Project Plan B1 or this Agreement is terminated or is otherwise invalidated by a court of competent jurisdiction or State action, the City's obligation to make any additional reimbursements of Private TIF Reimbursable Costs shall cease. Upon termination of this Agreement, the City may, but is not obligated, to terminate the TIF District and/or repeal the Project Plan.

**ARTICLE 7 – MISCELLANEOUS**

**Section 7.1 Entire Agreement.**

(a) This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original, and all of which together shall constitute one and the same instrument. Hand signatures transmitted by fax or electronic mail in portable document format (PDF) or similar format are also permitted as binding signatures to this Agreement.

(b) This Agreement incorporates and supersedes all prior negotiations or previous agreements between the parties and their predecessors in interest with respect to TIF discussions relating to this Property.

(c) This Agreement may only be modified by written instrument executed by the City and Developer.

**Section 7.2 Headings.** The captions and section headings contained in this Agreement are for convenience of reference only and shall not be considered in any interpretation of the provisions of this Agreement.

**Section 7.3 Notices.** Written notices, demands and communications between the City and Developer shall be sufficiently given by personal service or dispatched by registered or certified mail, postage prepaid, return receipt requested, or overnight courier, to the persons and addresses stated herein. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate in writing to the City Clerk, with a copy to the City Attorney. Notwithstanding anything to the contrary contained herein, notice personally served shall be deemed to have been received as of the date of such services or the date service is refused if written verification thereof is received from messenger service attempting such delivery.

To the City:	City Administrator Edgerton Community Building 404 East Nelson Edgerton, Kansas 66021 Phone: (913) 893-6231 Fax: (913) 893-6232 <a href="mailto:BLinn@EdgertonKS.org">BLinn@EdgertonKS.org</a>
With a copy to:	Scott W. Anderson SA Legal Advisors LC 16201 W. 95th Street, Suite 270 Lenexa, Kansas 66219 Phone (913) 600-2999 <a href="mailto:SAnderson@SALegalAdvisors.com">SAnderson@SALegalAdvisors.com</a>
To Developer:	Woodstone Properties, LLC Attn: J. Shannon McMurdo 2131 State Highway 265 Ste. C Branson, Missouri 65616

Phone : (417) 338-0501  
[Shannon@woodstonebuilders.com](mailto:Shannon@woodstonebuilders.com)

With a copy to: Polsinelli PC  
900 W. 48<sup>th</sup> Place, Suite 900  
Kansas City, Missouri 64112  
Attention: Curtis J. Petersen  
Phone: (816) 753-1000  
[cpetersen@polsinelli.com](mailto:cpetersen@polsinelli.com)

**Section 7.4 Confidentiality.** Nothing in this Agreement grants either party any right to use, directly or indirectly, the trade names, trademarks, or other intellectual property of the other party in connection with any product, service, promotion or publication without prior written approval of the other party.

**Section 7.5 No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the City and Developer or as constituting Developer as the agent or representative of the City for any purpose or in any manner under this Agreement, being understood that Developer is an independent contractor hereunder. Each party (the “**Indemnifying Party**”) agrees to indemnify and hold harmless the other party (the “**Indemnified Party**”) against all claims for workers’ compensation, unemployment tax and withholding tax obligations related to this Project and asserted by anyone working for or employed on behalf of the Indemnifying Party.

**Section 7.6 Non-Liability of City Officials and Employees.** No member, official, representative, or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City for any amount which may become due to Developer or successor or on any obligations under the terms of the Agreement.

**Section 7.7 Non-Liability of Developer Representatives and Employees.** No shareholder, owner, manager, director, employee, affiliate or representative of Developer shall be personally liable or obligated to perform the obligations of Developer, pursuant to the provisions of the Agreement or for any default or breach of the Agreement by Developer.

**Section 7.8 Third Party Beneficiary.** Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third-party beneficiary.

**Section 7.9 Incorporation into Agreement.** Unless otherwise provided herein, the Recitals and all the exhibits attached hereto are incorporated herein by reference.

**Section 7.10 Conflict of Terms.** It is the intention of the City and Developer that if any provision of this Agreement is capable of two constructions, one of which would render this provision valid and enforceable, then the provision shall have the meaning which renders it valid and enforceable.

**Section 7.11 No Limitation of Governmental Functions or Police Powers.** Nothing in this Agreement shall be construed as a limitation on the ability of the City to exercise its governmental functions or to diminish, restrict or limit the police powers of the City granted by the Kansas Constitution, statutes or by general law.

**Section 7.12 Severability.** The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

[Remainder of page intentionally blank.]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first above written.

**[SEAL]**

**CITY OF EDGERTON, KANSAS**

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

ATTEST:

\_\_\_\_\_  
Alexandria Clower, City Clerk

**WOODSTONE PROPERTIES, LLC,**  
a Missouri limited liability company

By: \_\_\_\_\_  
J. Shannon McMurdo  
Member

## **EXHIBIT A**

### **Project Plan B1 Area Legal Description**

The East One-Third ( $1/3$ ) of the Northeast Quarter (NE  $1/4$ ) excluding that part in roads and Highways of Section 9, Township 15, Range 22, in the City of Edgerton, Johnson County, Kansas.

## **EXHIBIT B**

### **Project Plan B1 Ordinance**

Copy of Ordinance No. 2099 adopted by the Edgerton Governing Body on November 18, 2021.

## EXHIBIT C

### TIF Reimbursable Costs – Project Plan B1

The following items are estimated TIF eligible private and public costs for reimbursement with TIF Revenues generated from Project Plan B1. Reimbursement shall be made in the following priority as described more fully in **Section 5.2(c)** of the Agreement, or otherwise agreed to, in writing, by the City and Developer:

Description of Expenditure		Reimbursement to:	Estimated Reimbursement
Eligible TIF Fees (excluding Annual Administrative Fee)		Developer <sup>1</sup>	\$50,000
Private TIF Reimbursable Costs paid by Developer, including:		Developer	\$24,628,903 <sup>2,3</sup>
a. Land Acquisition	\$5,625,000		
b. Site Work Improvements Interior Roads, Grading, Utility Relocations and/or Improvements	\$12,397,700		
c. Architecture and Engineering	\$6,592,203		
d. TIF Study	\$14,000		
<b>Estimated Private TIF Reimbursable Costs</b>			<b>\$24,678,903<sup>4</sup></b>
Public TIF Reimbursable Costs paid by City, including:  The City's costs associated with public infrastructure improvements, adjacent to or substantially for the benefit of the District, including improvements to 199 <sup>th</sup> Street, and the construction and installation of publicly-owned infrastructure improvements which serve Logistics Park – Kansas City	\$8,500,000	City	
<b>Estimated Public TIF Reimbursable Costs</b>			<b>\$8,500,000</b>
<b>Estimated Aggregate TIF Reimbursable Costs</b> (excluding the City Annual Administrative Fee which is TBD and interest)			<b>\$33,178,903</b>

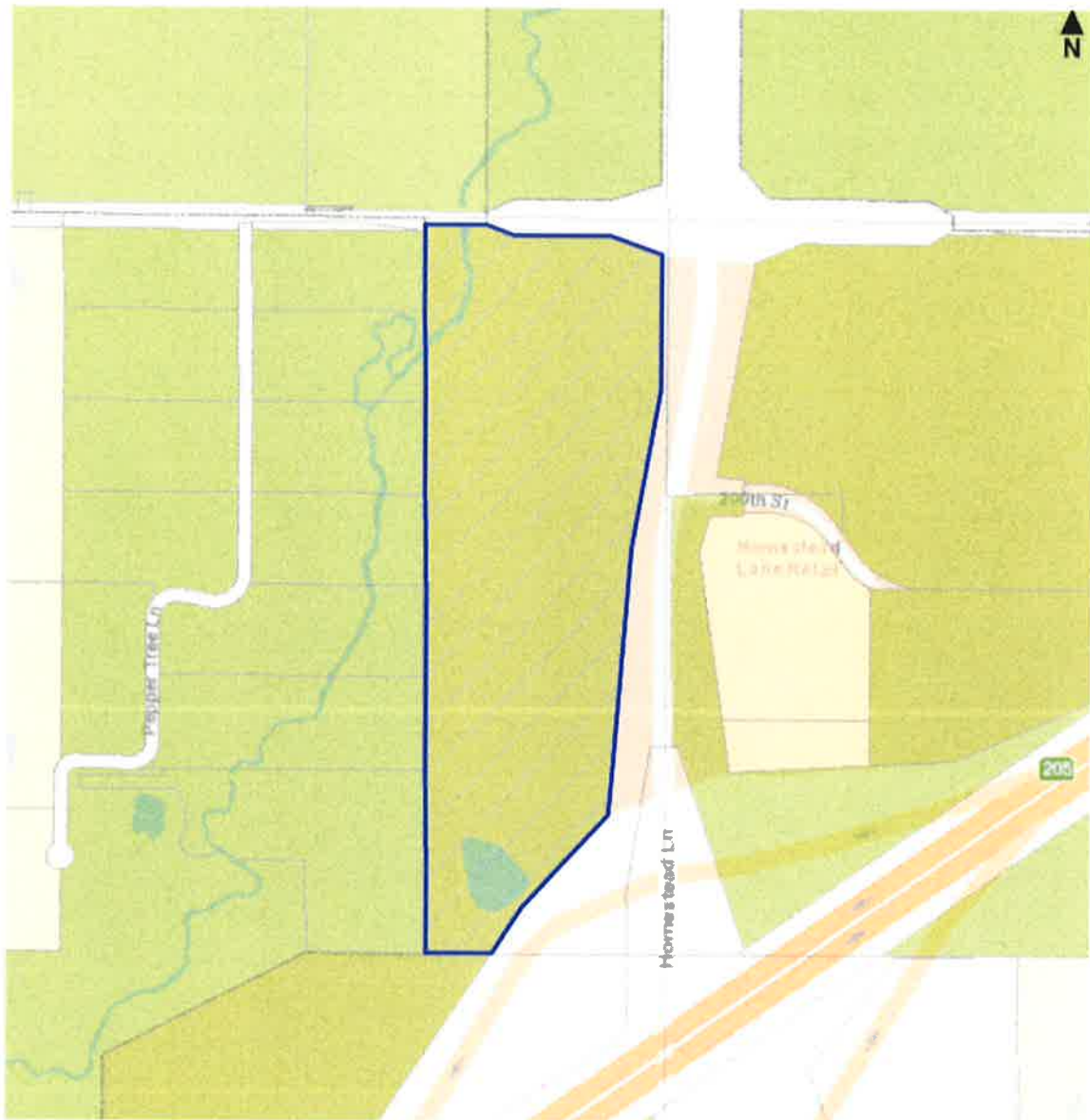
Notwithstanding any other provision of this Plan to the contrary, reimbursable expenditures shall at all times be consistent with the Act, including judicial interpretation of the Act.

<sup>1</sup> The TIF Fee is based upon 1% of the Private TIF reimbursable Costs, but cannot exceed \$50,000. This total excludes the Annual Administrative TIF Fee as it not an eligible Private TIF Reimbursable Cost. This sum shall be reimbursed to Developer if it has been paid by Developer and if not, it shall be deducted from the first Private TIF Reimbursable Cost payment (and thereafter until paid in full) and paid to the City.

<sup>2</sup> This amount includes sums which may be included in a subsequent Community Improvement District. At the time of certifying its costs to the City, Developer must elect the Project Plan and the incentive source for which it desires reimbursement and it shall not submit those same costs for reimbursement from any other reimbursement source.

- <sup>3</sup> The amount of the total Public TIF Reimbursable Costs does not include a sum for the Annual Administrative TIF Fee as this amount is to be determined as it is based upon the annual amount of TIF Revenues disbursed to Developer.
- <sup>4</sup> The Total Estimated Aggregate of TIF Reimbursable Costs does not include a sum for the Annual Administrative TIF Fee as this amount is to be determined as it is based upon the annual amount of TIF Revenues disbursed to Developer. It does also not include Financing Costs which are an eligible reimbursable expense in the manner described in the DDA.

**EXHIBIT D**  
**Site Plan of Project**



## EXHIBIT E

### Edgerton Homestead Lane Retail District Redevelopment (TIF) Project Plan B1 (Woodstone Project)

#### Request for Certificate of Completion and Affidavit of Developer

*Woodstone Properties, LLC ("Developer") has constructed certain improvements that are the subject of the above-referenced Project Plan B1 (the "Project"). Implementation of Project Plan B1, including the procedures for reimbursement of eligible TIF expenses, is set forth in the Disposition and Development Agreement dated November \_\_, 2021 (the "DDA") between the Developer and the City of Edgerton, Kansas ("City"). Unless otherwise defined herein, all terms shall have the definitions set forth in the DDA.*

I, \_\_\_\_\_, being duly sworn, do state under oath for this affidavit the following:

1. I am over the age of 18 and am competent to attest to the facts herein. I have personal knowledge of the facts recited in this Affidavit and I am authorized by the Developer to make these representations.

2. Developer has completed a definable portion of the Project and requests a Certificate of Completion from the City. The Project or definable portion of the Project for which a Certificate of Completion is requested is described as: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(the "Completed Work").

3. The cost of the Completed Work that constitutes Private TIF Reimbursable Costs is \$ \_\_\_\_\_.

4. To my actual knowledge, construction of the Completed Work was in accordance with all applicable federal, state and local laws and regulations.

5. The costs incurred for the Completed Work were in furtherance of the Project.

6. To my actual knowledge, Developer has no outstanding or anticipated liens on the Completed Work.

7. To my actual knowledge, Developer is not in default under the DDA.

FURTHER AFFIANT SAITH NOT.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this \_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

My appointment expires:

## EXHIBIT F

### Edgerton Homestead Lane Retail District Redevelopment (TIF) Project Plan B1 (Woodstone Project)

#### Certification of Expenditures Form

Request No. \_\_\_\_\_

Date Submitted: \_\_\_\_\_

Pursuant to **Section 5.2(d)** of the Disposition and Development Agreement dated November \_\_, 2021 (the "DDA"), between the City of Edgerton, Kansas and the undersigned (the "Developer"), the Developer, by its undersigned representative, requests payment or reimbursement and hereby states and certifies as follows:

1. Developer has received a Certificate of Completion for the Project or Phase for which the costs submitted were incurred.
2. All terms in this request shall have and are used with the meanings specified in the DDA.
3. The names of the persons, firms or corporations to whom the payments requested hereby are due, the amounts to be paid and the general classification and description of the costs for which each obligation requested to be paid hereby was incurred are as set forth on **Attachment 1** hereto.
4. These costs have been incurred and are presently due and payable and are reasonable costs that are payable or reimbursable under the DDA.
5. Each item listed above has not previously been paid or reimbursed and no part thereof has been included in any other request previously filed with the City.
6. To the actual knowledge of the undersigned, there has not been filed with or served upon the Developer any notice of any lien, right to a lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request.
7. To the actual knowledge of the undersigned, all work for which payment is now or has heretofore been requested (insofar as such payments relate to the construction, remodeling and renovation portions of the Project) has been performed in accordance with the plans and specifications therefor.
8. Lien waivers for costs for which payment is hereby requested have been received and are attached hereto as **Attachment 2** hereto.

**WOODSTONE PROPERTIES, LLC,**  
a Missouri limited liability company

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT 1  
TO CERTIFICATION OF EXPENDITURE**

REQUEST NO. \_\_\_\_\_

DATED \_\_\_\_\_

---

**Itemization of Costs**

Payee	Amount	Description of Cost – Line Item of Private Reimbursable Cost
-------	--------	-----------------------------------------------------------------

---

**FOR CITY USE ONLY**

\_\_\_\_\_ APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ DENIED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Title: \_\_\_\_\_

If Denied, basis for Denial:

## **EXHIBIT G**

### **Submittal Requirements for Reimbursement of TIF Invoices**

When submitting a reimbursement request, Developer shall apply the following requirements with respect to its documentation:

1. Complete request for Certificate of Completion, including affidavit included therein.
2. Evidence that the expense was an eligible TIF Reimbursable Cost in the DDA.
3. Indication of the time frame the expense was made.
4. Identification of the improvement for which reimbursement is sought.
5. Submission of invoices shall accompany the Certificate of Completion; and Certificate of Expenditures by Developer certifying that all expenses submitted are TIF Reimbursable Costs and have not been previously submitted or paid by TIF Revenues or other City sources.
6. Lien Waivers. These may only be waived by the City, and will generally only be done if the invoice reflects payment has been made.
7. Any other information requested by the City.
  - a. Individual receipts must total an aggregate of at least \$1,000.00 for submittal. After the project is complete, if increment is available submission of receipts for lesser amounts in the aggregate will be accepted and processed.
  - b. All expenses must be documented by itemized invoices. Handwritten notes or receipts with handwritten notes will not be accepted. If available, supporting receipts should be attached to any invoice submitted. In the case of services, the invoice should include itemization of the time spent on the project; description of the service performed; location where the service was performed; the name of the person and/or company performing the service; and information regarding the cost of the service (i.e. rate of pay and number of hours performed, or if a lump sum, the number of hours performed or type of work performed may be necessary to determine if the cost was reasonable and customary).

Submission of above information directly to City Administrator in the timeframe set forth in the DDA.

## CITY OF EDGERTON, KANSAS

### COUNCIL AGENDA ITEM

---

**Council Meeting Date:** November 18, 2021

**Agenda Item:** Ordinance No. 2100 Authorizing Creation of a Community Improvement District

**Subject:** Edgerton Crossing Woodstone Project

---

#### Summary:

Woodstone Properties, LLC ("Developer") is constructing hotels, a conference center, travel center, casual dining restaurant, quick-service restaurants, retail space, office space, and other commercial buildings/uses on unimproved land located at the southwest corner of Homestead Lane and 199<sup>th</sup> Street. The Developer and the City previously entered into a Development Agreement to set forth certain agreements with respect to the development.

The Development Agreement provides that the Developer will develop the project and the City will consider various incentives, including a 1% CID sales tax with the proceeds going to the Developer to reimburse the Developer for certain eligible improvements.

In order to create a Community Improvement District, the City must comply with the following steps:

1. The City must receive a petition from the Developer to create the district;
2. The City must adopt a resolution giving notice of a public hearing on the creation of the district that is published once a week for two consecutive weeks and sent by certified mail to all owners at least 10 days before the hearing;
3. The City must hold a public hearing at least 7 days after the last publication;
4. The City must adopt an ordinance creating the district; and
5. The ordinance must be recorded.

The City has just held a public hearing on the creation of the CID and the levying of the 1% sales tax. The next step in the process is approval of the Ordinance to create the CID and levy the sales tax.

#### Ordinance:

The Ordinance creates the Community Improvement District (Edgerton Crossing Woodstone Project) and levies the 1% CID sales tax. The CID sales tax will be levied for a term of 22 years.

**ORDINANCE NO. 2100**

**AN ORDINANCE AUTHORIZING THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT (EDGERTON CROSSING WOODSTONE PROJECT) AND LEVYING A CID SALES TAX WITHIN SUCH DISTRICT.**

**WHEREAS**, K.S.A. 12-6a26 *et seq.* (the “Act”) authorizes the Governing Body of a city to create a community improvement district to finance projects within a defined area of the city and to levy a community improvement district sales tax upon receipt of a petition signed by the owners of more than 55% of the land area within the proposed district, and signed by owners collectively owning more than 55% by assessed value of the land area within the proposed district; and

**WHEREAS**, a Petition for the Creation of a Community Improvement District (the “Petition”) was filed with the City of Edgerton, Kansas (the “City”) on September 22, 2021, proposing the creation of the Community Improvement District (Woodstone Project) (the “District”) under the Act and the imposition of a 1% community improvement district sales tax (the “CID Sales Tax”) in order to pay the costs of projects as described in the Petition (the “Projects”); and

**WHEREAS**, the Petition was signed by Woodstone Properties, LLC, a Missouri limited liability company (the “Property Owner”), the owner of record of 100% of the land area contained in the proposed District and the owner of 100% by assessed value of the land area contained within the proposed District; and

**WHEREAS**, pursuant to Resolution No. 09-23-21B, the City provided notice that it would hold a public hearing on November 18, 2021 to consider establishing the District, and on such date the Governing Body conducted a public hearing to consider establishing the District, all in accordance with the Act; and

**WHEREAS**, the Act provides that upon conclusion of the public hearing the Governing Body, by majority vote, may create the District by adoption of an Ordinance and authorize the Projects therein; and

**WHEREAS**, the Governing Body of the City hereby finds and determines it to be advisable to create the District and set forth the boundaries thereof, authorize the Projects as described herein, approve the estimated costs of the Projects and approve the method of financing the same, all in accordance with the provisions of the Act;

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

**Section 1. Creation of Community Improvement District; Boundaries.** The Governing Body hereby finds and determines that it is advisable to create, in accordance with the

provisions of the Act, the District within the City to be referred to as the Community Improvement District (Edgerton Crossing Woodstone Project) located generally at the southwest corner of Homestead Lane and 199<sup>th</sup> Street. A map outlining the boundaries of the proposed District is attached as **Exhibit A** hereto and incorporated by reference herein. A legal description of the boundaries of the District is set forth on **Exhibit B** attached hereto and incorporated by reference herein.

**Section 2. Authorization of Community Improvement District Projects and Estimated Costs.** The Projects consist of generally the acquisition of land, sitework and the construction of infrastructure improvements (excluding water and electrical offsite improvements), and any other items or uses authorized by the Act. The total estimated cost of the Projects is \$4,384,232.

**Section 3. Method of Financing.**

(a) The Projects will be financed with the CID Sales Tax levied pursuant to the provisions of the Act and the costs of the Projects will be reimbursed on a pay-as-you-go basis, as defined in the Act. The CID Sales Tax shall be effective January 1, 2023 and extend for the term of the CID.

(b) There will be no issuance of bonds, including full faith and credit bonds, pursuant to the Act.

(c) There will be no special assessments authorized or levied.

**Section 4. Segregation of CID Sales Tax.** The CID Sales Tax collected shall be deposited into a special fund of the City to be designated as the Community Improvement District Revenue Fund (Edgerton Crossing Woodstone Project). The CID Sales Tax collected shall be used to reimburse the costs of the Projects.

**Section 5. Recording.** The City Clerk shall file a certified copy of this Ordinance with the Register of Deeds of Johnson County, Kansas.

**Section 6. Term of District.** The term of the District shall continue for a term of 22 years from the date the State Director of Taxation begins collecting the CID Sales Tax or until the approved District eligible costs up to a maximum of \$4,384,232 are paid, whichever occurs first. The City shall record written evidence of the termination of the District with the Register of Deeds of Johnson County, Kansas when the District is terminated.

**Section 7. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication once in the official City newspaper. After publication of this Ordinance, the City Clerk is directed to provide the Kansas Department of Revenue with a copy of this Ordinance notifying them of the establishment of the District and the levy of the CID Sales Tax.

**PASSED** by the Governing Body of the City of Edgerton, Kansas, this 18<sup>th</sup> day of November, 2021.

---

Donald Roberts, Mayor

[SEAL]

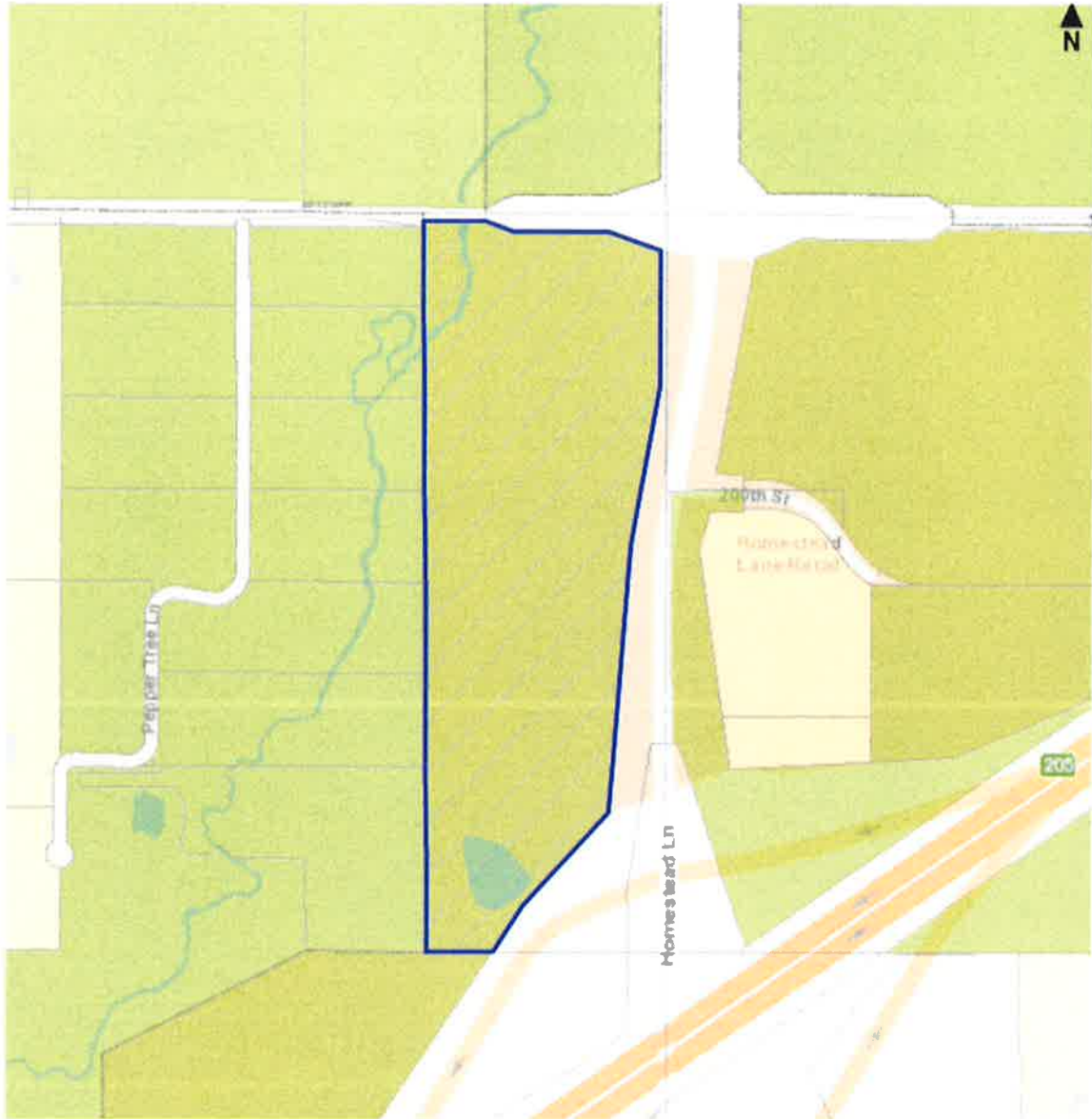
ATTEST:

---

Alexandria Clower, City Clerk

Community Improvement District (Edgerton Crossing Woodstone Project)

**EXHIBIT A**  
**MAP OF CID DISTRICT**



## **EXHIBIT B**

### **LEGAL DESCRIPTION OF CID DISTRICT**

The East One-Third ( $1/3$ ) of the Northeast Quarter (NE  $1/4$ ) excluding that part in roads and Highways of Section 9, Township 15, Range 22, in the City of Edgerton, Johnson County, Kansas.

# CITY OF EDGERTON, KANSAS

## COUNCIL AGENDA ITEM

---

**Council Meeting Date:** November 18, 2021

**Agenda Item:** Resolution No. 11-18-21B  
Approving a CID Development Agreement

**Subject:** Edgerton Crossing Woodstone Project

---

### Summary:

The City just approved a community improvement district for the Edgerton Crossing Woodstone project. The CID Development Agreement contains the agreements between the City and Woodstone Properties, LLC ("Developer") on the use of the 1% CID sales tax revenues.

### Resolution:

The Resolution approves the form of CID Development Agreement. In the CID Development Agreement, the City agrees to levy the 1% CID sales tax for a term of 22 years, commencing January 1, 2023. The City also agrees to deposit all CID sales tax revenues in a fund and further agrees to use the money in that fund to reimburse the Developer for eligible project expenses.

The Developer agrees that the City can collect an annual 1% administrative fee to cover the City's expenses in administering the CID.

## **RESOLUTION NO. 11-18-21B**

### **RESOLUTION AUTHORIZING A COMMUNITY IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT FOR THE EDGERTON CROSSING WOODSTONE PROJECT**

**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 has created the Community Improvement District (Woodstone Project) (the “District”) and imposed a 1% community improvement district sales tax;

**WHEREAS**, Woodstone Properties, LLC, a Missouri limited liability company (the “Developer”), desires to develop one or more hotels, a conference center, a travel center, restaurants, office and retail space (the “Project”) at the southwest corner of Homestead Lane and 199<sup>th</sup> Street, all as further described in the form of CID Development Agreement attached hereto as **Exhibit A** (the “CID Development Agreement”); and

**WHEREAS**, the City desires to provide for the development of the Project on the terms set forth in the CID Development Agreement;

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

**Section 1. Approval of Development Agreement.** The Governing Body hereby approves the CID Development Agreement in substantially the form attached hereto as **Exhibit A**.

**Section 2. Execution of CID Development Agreement.** The Mayor of the City is hereby authorized to enter into the CID Development Agreement, in substantially the form presented to and reviewed by the Governing Body at this meeting (a copy of which upon execution shall be filed in the office of the City Clerk), with such changes therein as shall be approved by the Mayor, the Mayor’s signature thereon being conclusive evidence of his approval thereof. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the CID Development Agreement.

**Section 3. 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 Resolution and to carry out, comply with and perform the duties of the City with respect to the CID Development Agreement.

**Section 4. Effective Date.** This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body.

**ADOPTED** this 18<sup>th</sup> day of November, 2021.

**CITY OF EDGERTON, KANSAS**

[SEAL]

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

ATTEST:

\_\_\_\_\_  
Alexandria Clower, City Clerk

**EXHIBIT A**

**FORM OF CID DEVELOPMENT AGREEMENT**

---

**CID DEVELOPMENT AGREEMENT**

**between the**

**CITY OF EDGERTON, KANSAS**

**and**

**WOODSTONE PROPERTIES, LLC**

**November \_\_, 2021**

**Relating to the Edgerton Crossing Woodstone Project**

---

## **TABLE OF CONTENTS**

### **ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION**

Section 1.01	Rules of Construction .....	2
Section 1.02	Definitions of Words and Terms .....	2

### **ARTICLE II REPRESENTATIONS AND WARRANTIES**

Section 2.01	Representations of City.....	6
Section 2.02	Representations of the Developer .....	6
Section 2.03	Developer's Acquisition of the Property .....	8

### **ARTICLE III REIMBURSEMENT OF DEVELOPER'S CID COSTS**

Section 3.01	CID Costs, Generally .....	8
Section 3.02	Developer to Advance Costs .....	8
Section 3.03	City's Obligation to Reimburse Developer .....	8
Section 3.04	Developer Reimbursement Process .....	9
Section 3.05	Right to Inspect and Audit.....	10
Section 3.06	Limitation on City's Payment Obligations .....	10
Section 3.07	The CID, Generally .....	10

### **ARTICLE IV THE PROJECT**

Section 4.01	Scope of the Project .....	10
Section 4.02	Project Schedule .....	10
Section 4.03	Design of Project .....	11
Section 4.04	Plans and Construction .....	12
Section 4.05	Rights of Access .....	13
Section 4.06	Certificate of Substantial Completion .....	13

### **ARTICLE V USE OF THE CID**

Section 5.01	Operation of Project .....	14
Section 5.02	Taxes, Assessment, Encumbrances and Liens .....	15

**ARTICLE VI  
REIMBURSEMENT OF CID COSTS;  
COMMUNITY IMPROVEMENT DISTRICT FINANCING**

Section 6.01	CID Fund .....	18
Section 6.02	City's Annual Administrative Fee .....	19

**ARTICLE VII  
ASSIGNMENT; TRANSFER**

Section 7.01	Transfer of Obligations .....	19
--------------	-------------------------------	----

**ARTICLE VIII  
GENERAL COVENANTS**

Section 8.01	Indemnification of City .....	20
Section 8.02	Non-liability of Officials, Employees and Agents of the City .....	22

**ARTICLE IX  
DEFAULTS AND REMEDIES**

Section 9.01	Developer Event of Default .....	22
Section 9.02	City Event of Default .....	22
Section 9.03	Remedies Upon a Developer Event of Default .....	23
Section 9.04	Remedies Upon a City event of Default .....	24

**ARTICLE X  
GENERAL PROVISIONS**

Section 10.01	Mutual Assistance .....	25
Section 10.02	Effect of Violation of the Terms and Provisions of this Agreement; No Partnership .....	25
Section 10.03	Time of Essence .....	25
Section 10.04	Amendments .....	25
Section 10.05	Agreement Controls .....	25
Section 10.06	Conflicts of Interest .....	26
Section 10.07	Term .....	26
Section 10.08	Validity and Severability .....	26
Section 10.09	Required Disclosures .....	26
Section 10.10	Tax Implications .....	27
Section 10.11	Authorized Parties .....	27
Section 10.12	Notice .....	27
Section 10.13	Kansas Law .....	28
Section 10.14	Counterparts .....	28

Section 10.15 Consent or Approval .....	28
Section 10.16 Electronic Transactions .....	28

Exhibit A	Map of CID District
Exhibit B	Legal Description of CID
Exhibit C	Form of Certificate of CID Costs
Exhibit D	Form of Certificate of Substantial Completion

## **CID DEVELOPMENT AGREEMENT**

**THIS CID DEVELOPMENT AGREEMENT** (this “**Agreement**”) is entered into by and between the **CITY OF EDGERTON, KANSAS**, a municipal corporation duly organized and existing under the laws of the State of Kansas (the “**City**”), and **WOODSTONE PROPERTIES, LLC**, a Missouri limited liability company (the “**Developer**,” and together with the City, the “**Parties**,” and each a “**Party**”), and is dated as of November \_\_\_\_, 2021 (the “**Effective Date**”).

### **RECITALS**

**WHEREAS**, the Developer is the owner of certain privately-owned property located in the southwest quadrant of Homestead Lane and 199<sup>th</sup> Street, Edgerton, Johnson County, Kansas (the “**Property**”); and

**WHEREAS**, the City has the authority to undertake community improvement district financing pursuant to the Kansas Community Improvement District Act, K.S.A. 12-6a26 *et seq.* (the “**CID Act**”); and

**WHEREAS**, on September 22, 2021, Woodstone Properties, LLC, a Missouri limited liability company (the “**Developer**”), submitted a petition (the “**CID Petition**”) to the City requesting the formation of the CID (as defined below) and the levying of a CID Sales Tax (as defined below) in accordance with the CID Act; and

**WHEREAS**, pursuant to Ordinance 2100 adopted by the City on November 18, 2021 (the “**CID Ordinance**”), the City created a Community Improvement District encompassing the Property, the boundaries of which are legally described on **Exhibit B** and generally depicted on **Exhibit A** attached hereto (the “**CID**”) and approved the imposition of the CID Sales Tax, all in accordance with the CID Act; and

**WHEREAS**, the Developer seeks to construct or improve upon the Property certain improvements described in a general manner consisting of hotels, a conference center, travel center, restaurants, retail space, office space, other commercial buildings and, subject to the terms and conditions of this Agreement, all other items allowable under the CID Act (collectively, the “**Project**”); and

**WHEREAS**, the Parties agree that construction and improvement of the Project and the CID financing is to their mutual benefit; and

**WHEREAS**, the City and the Developer now desire to enter into this Agreement to formalize the development and financing of the Project.

**NOW, THEREFORE**, in consideration of the foregoing, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

## **ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.01. Rules of Construction.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement.

- A. The terms defined in this Article include the plural as well as the singular.
- B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Kansas Regulatory Basis of Accounting as prescribed by the Kansas Municipal Audit & Accounting Guide.
- C. All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
- D. All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- E. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.
- F. The Article and Section headings herein are for convenience only and shall not affect the construction hereof,
- G. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The provisions of the CID Petition, and such resolutions and ordinances of the City introduced or adopted by the City Council which created the CID and approved the CID Sales Tax, and the provisions of the CID Act, as amended, are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof.

**Section 1.02. Definitions of Words and Terms.** Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

“**Agreement**” means this Woodstone CID Development Agreement, between the City and the Developer, as amended from time to time.

“**Applicable Law and Requirements**” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction,

writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities.

**“Certificate of CID Costs”** means a certificate relating to CID Costs in substantially the form attached hereto as **Exhibit C**.

**“Certificate of Substantial Completion”** means a certificate evidencing the Substantial Completion of a distinct portion of the Project, in substantially the form attached hereto as **Exhibit D**.

**“CID”** means the Community Improvement District created by the City on November 18, 2021 pursuant to Ordinance No. 2100.

**“CID Act”** means the Kansas Community Improvement District Act, K.S.A. 12-6a26 through 12-6a36, as amended and supplemented from time to time.

**“CID Costs”** means all costs that are eligible to be paid from CID Revenues in accordance with the CID Act.

**“CID Fund”** means the fund created pursuant to **Section 6.01** hereof.

**“CID Revenues”** means 100% of the amounts received by the City from the CID Sales Tax.

**“CID Sales Tax”** means the amount collected by the City from the imposition of a 1% sales and use tax pursuant to the CID Act.

**“CID Sales Tax Term”** means a term equal to twenty-two (22) calendar years, beginning on January 1, 2023 and ending on December 31, 2044.

**“City”** means the City of Edgerton, Kansas.

**“City Event of Default”** shall have the meaning set forth in **Section 9.02** of this Agreement.

**“City Representative”** means the Mayor or City Administrator of the City, and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement.

**“City’s Annual Administrative Fee”** shall have the meaning set forth in **Section 6.02** of this Agreement.

**“Construction Plans”** means plans, drawings, specifications and related documents, and construction schedules for the construction of the Project, together with all supplements, amendments or corrections, submitted by the Developer and (if required to be pursuant to Applicable Law and Requirements) approved by the City in accordance with this Agreement.

**“County”** means Johnson County, Kansas.

**“Developer”** means Woodstone Properties, LLC, a limited liability company organized and existing under the laws of the State of Missouri, and any successors and assigns permitted pursuant to this Agreement.

**“Developer Event of Default”** shall have the meaning set forth in **Section 9.01** of this Agreement.

**“Developer Representative”** means J. Shannon McMurdo and such other person or persons designated and duly authorized to act on behalf of the Developer in matters relating to this Agreement.

**“Development Agreement”** means the Development Agreement dated September 10, 2021, between the City and the Developer, as supplemented and amended from time to time.

**“Governmental Approvals”** means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Project and the CID, and consistent with this Agreement.

**“Governmental Authorities”** means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

**“Pay As You Go”** means “Pay-as-you-go financing” as defined in the CID Act.

**“Permitted Subsequent Approvals”** means the building permits and other governmental approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

**“Plans”** means Site Plans, Construction Plans and all other Governmental Approvals necessary to construct the Project in accordance with City ordinances and applicable laws of Governmental Authorities and this Agreement.

**“Project”** shall have the meaning described in the recitals to this Agreement.

**“Substantial Completion”** has the meaning set forth in **Section 4.06**.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.01. Representations of City.** The City makes the following representations and warranties, which are true and correct on the date hereof, to the best of the City’s knowledge:

A. **Due Authority.** The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

B. **No Defaults or Violation of Law.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. **No Litigation.** There is no litigation, proceeding or investigation pending or threatened against the City with respect to the Project or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

D. **Governmental or Corporate Consents.** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

E. **No Default.** No default or City Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or a City Event of Default in any material respect on the part of the City under this Agreement.

## **Section 2.02. Representations of the Developer.**

The Developer makes the following representations and warranties, which are true and correct on the date hereof, to the Developer's actual knowledge:

A. **Due Authority.** The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. **No Defaults or Violation of Law.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and

conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. **No Litigation.** No litigation, proceeding or investigation is pending or threatened against the Project, the Developer or any officer, director, member or shareholder of the Developer and affecting the Project. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

D. **Governmental or Corporate Consents.** As of the Effective Date, no additional consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity, in connection with the execution, delivery and performance by the Developer of this Agreement, other than Permitted Subsequent Approvals.

E. **No Default.** No default or Developer Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or a Developer Event of Default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument affecting the Property to which the Developer is a party or by which the Developer is or may be bound.

F. **Compliance with Laws.** The Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations contemplated by this Agreement.

**Section 2.03. Developer's Acquisition of the Property.** At the time that this Agreement is executed, Developer represents that it has fee simple title to all of the real property in the CID.

### **ARTICLE III REIMBURSEMENT OF DEVELOPER'S CID COSTS**

**Section 3.01. CID Costs, Generally.** Subject to the terms of this Agreement, the City shall reimburse the Developer for CID Costs. The Developer shall be reimbursed on a Pay As You Go basis as further set forth in this Agreement. The City shall only be obligated to reimburse the Developer from the CID Fund in the manner set forth in **Article VI** hereof.

**Section 3.02. Developer to Advance Costs.** The Developer agrees to advance or cause to be advanced all CID Costs as necessary to complete the Project. The Developer also agrees to pay the fees and expenses of the City's legal counsel related to drafting and negotiating this Agreement and implementing the CID.

**Section 3.03. City's Obligation to Reimburse Developer.**

A. **Obligation to Reimburse.** Subject to the terms of this Agreement and the conditions in this Section, the City shall reimburse Developer for CID Costs. The Developer shall be reimbursed by the City for CID Costs from the CID Fund on a Pay As You Go basis.

B. **Timing of Reimbursement.** The City shall have no obligation to reimburse Developer until funds are available in the CID Fund and the conditions listed in **Section 6.01(C)** hereof are satisfied.

C. **Source of Reimbursement.** The City shall make payments from the CID Fund on a Pay As You Go basis.

#### **Section 3.04. Developer Reimbursement Process.**

A. All requests for reimbursement of CID Costs shall be made in a Certificate of CID Costs in substantial compliance with the form attached hereto as **Exhibit C**. Requests for reimbursement shall be submitted by the Developer to the City not more often than quarterly. The Developer shall provide itemized invoices, receipts or such other information reasonably satisfactory to the City to confirm that any such cost has been paid and qualifies as a CID Cost, and shall further provide a summary sheet detailing the costs requested to be reimbursed. Such summary sheet shall show the date such cost was paid, the payee, a brief description of the type of cost paid, and the amount paid. The Developer shall provide such additional information as reasonably requested by the City to confirm that such costs have been paid and qualify as CID Costs.

B. The City reserves the right, upon reasonable written notice to Developer, to have its engineer or other agents or employees inspect all work in respect of which a Certificate of CID Costs is submitted, to examine the Developer's and others' records relating to all expenses related to the invoices to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

C. The City shall have 30 calendar days after receipt of any Certificate of CID Costs to review and respond by written notice to the Developer. If the submitted Certificate of CID Costs and supporting documentation demonstrates that (1) the request relates to the CID Costs; (2) the expense has been paid; (3) Developer is not in material default under this Agreement; (4) there is no fraud on the part of the Developer; and (5) the conditions precedent listed in **Section 6.01(C)** have been satisfied, then the City shall approve the Certificate of CID Costs and make, or cause to be made, reimbursement from the CID Fund in accordance with **Article VI** (and subject to **Section 3.06**) hereof as funds are available in the CID Fund; provided, the City shall disburse CID Revenues (less the City's Annual Administrative Fee) to the Developer on no more than a monthly basis. If the City reasonably disapproves of the Certificate of CID Costs in accordance with this **Article III**, the City shall notify the Developer in writing of the reason for such disapproval within such 30-day period, in which event the Developer shall have the right to revise and re-submit the Certificate of CID Costs to address the City's reason for disapproval, and the City will review and approve (or disapprove) the revised Certificate of CID Costs in accordance with this Section. Approval of the Certificate of CID Costs will not be unreasonably withheld, conditioned or delayed.

**Section 3.05. Right to Inspect and Audit.** The Developer agrees that, up to one year after completion of the Project, the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review and audit, from time to time, all the Developer's books and records relating to the CID Costs (including, but not limited to, all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices); provided, however, that (to the extent it may legally do so) the City agrees to maintain the confidentiality of the foregoing materials and, under no circumstances, allow the same to become public record.

**Section 3.06. Limitation on City's Payment Obligations.** Notwithstanding any other term or provision of this Agreement, the City's obligation to reimburse the Developer for CID Costs shall be limited to monies in the CID Fund and shall not be payable from any other source.

**Section 3.07. The CID, Generally.** The City shall not, under any circumstances other than by a future written agreement between the parties, terminate the CID or take any action to reduce the CID Sales Tax Term prior to such time as the Developer has been reimbursed for all CID Costs.

#### **ARTICLE IV THE PROJECT**

**Section 4.01. Scope of the Project.** Subject to the terms and conditions of this Agreement, the Developer shall construct, or cause to be constructed, the Project, subject to tenant/user/market demand.

**Section 4.02. Project Schedule.**

A. Subject to the terms and conditions of this Agreement, after the Effective Date and receipt of all applicable Governmental Approvals, the Developer shall use commercially reasonable efforts to promptly commence (or cause to be commenced), and shall promptly thereafter diligently prosecute to completion, the construction of the Project, subject to tenant/user/market demand.

B. The completion of the Project shall be evidenced by the Developer's delivery of a Certificate of Substantial Completion in accordance with **Section 4.06** of this Agreement.

C. The City agrees to act in good faith and use its best efforts to timely process and review all Plans and consider the issuance of all necessary permits and other approvals, including building permits, rezoning approvals, preliminary and final plat approval, and all other permits or approvals which are required for the Developer to construct the Project. To the extent the City determines that any Plans or other documents or requests submitted by the Developer for the City's approval are unacceptable, the City shall provide a written description detailing the portions of the Plans or documents that are unacceptable.

**Section 4.03. Design of Project.** In order to further the development of the Project, the City hereby authorizes the Developer to construct, or cause to be constructed, the Project according to the final Plans approved by the City.

**Section 4.04. Plans and Construction.**

A. **Plans.** The Developer shall submit Plans for the Project for review and approval by the City pursuant to the review and approval process set forth in the City ordinances and applicable state law.

B. **Construction Permits and Approvals.** Before commencement of construction of the Project, the Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by any Applicable Law and Requirements. The City shall cooperate with and provide all usual assistance to the Developer in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law; except that the City shall not be required to issue any such permits or approvals for any portion of the Project not in conformance with this Agreement or City ordinances or policies.

C. **Development Schedule.** Subject to the terms and conditions of this Agreement, the Developer shall commence or cause to be commenced construction of the Project in good and workmanlike manner in accordance with the terms of this Agreement, and shall cause the Project to be completed with due diligence. Upon reasonable advance notice, the Developer shall meet with the City to review and discuss the design and construction of the Project in order to enable the City to monitor the status of construction and to determine that the Project is being performed and completed substantially in accordance with this Agreement.

D. **No Waiver.** Nothing in this Agreement shall constitute a waiver of the City's right to consider and approve or deny Governmental Approvals pursuant to the City's regulatory authority as provided by the City's ordinances and applicable state law.

**Section 4.05. Rights of Access.** Representatives of the City shall have the right of access to the Property, upon reasonable notice to Developer in advance, without charges or fees, at normal construction hours during the period of construction, for the purpose of ensuring compliance with this Agreement, including, but not limited to, the inspection of the work being performed in constructing, renovating, improving, equipping, repairing and installing the Project, so long as they comply with all safety rules. Except in case of emergency, prior to any such access, such representatives of the City will check in with the on-site manager. Such representatives of the City shall carry proper identification, shall insure their own safety, assuming the risk of injury, and shall not interfere with the construction activity.

**Section 4.06. Certificate of Substantial Completion.** Promptly after the Substantial Completion of a distinct portion of the Project in accordance with the provisions of this Agreement, the Developer may submit a Certificate of Substantial Completion to the City. "**Substantial Completion**" shall mean that the Developer shall have completed a distinct portion of the Project and, if required, shall have been granted a Temporary Certificate of Occupancy by the City

Building Official if such improvement requires a Temporary Certificate of Occupancy. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit D**. The City shall, within ten (10) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The City's execution of the Certificate of Substantial Completion shall constitute evidence of the satisfaction of the Developer's agreements and covenants to construct such distinct portion of the Project. The final Certificate of Substantial Completion to be submitted by the Developer shall contain a statement that such certificate is the final Certificate of Substantial Completion.

## **ARTICLE V DEVELOPER COVENANTS**

**Section 5.01. Operation of Project.** The Project shall comply with all applicable building and zoning, health, property maintenance, environmental and safety codes and laws and all other applicable laws, rules and regulations. The Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by City ordinances and any Applicable Law and Requirements for the construction and operation of the Project, including but not limited to obtaining all necessary licenses and paying any necessary fees to obtain required permits and licenses.

### **Section 5.02. Taxes, Assessments, Encumbrances and Liens.**

A. So long as the Developer owns the real property within the CID, the Developer shall pay (or cause to be paid), prior to delinquency, all real estate taxes and assessments on the real property owned by the Developer within the CID. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

B. Developer agrees to use commercially reasonable efforts to ensure that no mechanics' or other liens shall be established or remain against the Project, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

## **ARTICLE VI REIMBURSEMENT OF CID COSTS; COMMUNITY IMPROVEMENT DISTRICT FINANCING**

### **Section 6.01. CID Fund.**

A. **Creation of CID Fund; Deposit of CID Revenues.** The City shall establish and maintain a separate fund and account known as the CID District Fund (Edgerton Crossing Woodstone Project) (the “CID Fund”). All CID Revenues shall be deposited into the CID Fund.

B. **Disbursements from the CID Fund.** All disbursements from the CID Fund shall be made only to reimburse CID Costs or to pay the City’s Annual Administrative Fee.

C. **Conditions Precedent to Reimbursements.** Developer hereby understands and agrees that it shall not receive any reimbursements from the CID Fund unless and until the conditions precedent set forth below have been fully satisfied as determined by City in its sole reasonable discretion:

1. Developer submits a Certificate of CID Costs for CID Costs of the Project;
2. City has approved the Certificate of CID Costs;
3. Developer shall be in full compliance with the terms and conditions of this Agreement;
4. With respect to the CID Costs that are the subject of the request for reimbursement, the Developer shall have advanced or cause to be advanced all costs and shall have provided evidence of such advances;
5. One or more Certificates of Substantial Completion shall have been submitted to and approved by the City; and
6. If Developer owns the real property within the CID, Developer shall have fully paid all outstanding property taxes on the Property that are then due, subject to Developer’s legal rights to protest.

**Section 6.02. City’s Annual Administrative Fee.** Developer consents to the City’s collection of an annual administrative fee equal to one percent (1%) of the annual CID Revenues actually received by the City (the “City’s Annual Administrative Fee”), which the City shall first deduct from such CID Revenues before disbursing the remaining CID Revenues to the Developer in accordance with this Agreement.

## **ARTICLE VII ASSIGNMENT; TRANSFER**

### **Section 7.01. Transfer of Obligations.**

A. Except as otherwise provided in this Agreement, the rights, duties and obligations hereunder of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed; provided that, no City approval is required for any such assignment to any entity affiliated with Developer or any entity in which Developer, its affiliates or its principals owns 51 percent or more of the ownership interest, or to any lender for financing purposes.

B. The Parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement.

## ARTICLE VIII GENERAL COVENANTS

### Section 8.01. Indemnification of City.

A. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the "**City Indemnified Parties**") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorney's fees, resulting from, arising out of, or in any way connected with:

1. The Developer's actions and undertakings in the implementation of this Agreement;
2. The negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project; and
3. Any expense incurred by the City resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, coproducer, architect, contractor, consultant or other vendor.

This section shall not apply to willful misconduct or negligence of the City or its officers, employees or agents. This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an "**Action**") is begun or made as a result of which the Developer may become obligated to one or

more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt notice to the Developer of the occurrence of such event.

C. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement with respect to any liability arising prior to the termination of this Agreement.

**Section 8.02. Non-liability of Officials, Employees and Agents of the City.** No recourse shall be had for the reimbursement of the CID Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

## **ARTICLE IX DEFAULTS AND REMEDIES**

**Section 9.01. Developer Event of Default.** “Developer Event of Default” shall mean a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement, and continuance of such default or breach for a period of thirty (30) days after the City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall promptly upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch. “Developer Event of Default” shall also mean any default of the Developer under the Development Agreement.

**Section 9.02. City Event of Default.** “City Event of Default” shall mean a default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement, and continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

**Section 9.03. Remedies Upon a Developer Event of Default.**

A. Upon the occurrence and continuance of a Developer Event of Default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to terminate this Agreement or terminate Developer's rights under this Agreement.
2. The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default.
3. The City may suspend reimbursement to Developer of CID Costs until such time as the Developer Event of Default has been fully remedied.

B. Upon termination of this Agreement pursuant to this Section, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

C. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

D. The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived.

E. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

F. Notwithstanding the foregoing or anything in this Agreement (including, without limitation, this Section) to the contrary, under no circumstances will: (i) Developer be liable for any special, punitive, remote, or consequential damages, including (without limitation) lost tax revenues; or (ii) the City or any third party be entitled to specifically enforce construction of the Project (or any portion thereof) by the Developer.

#### **Section 9.04. Remedies Upon a City Event of Default.**

A. Upon the occurrence and continuance of a City Event of Default the Developer shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law or in equity:

1. The Developer shall have the right to terminate this Agreement and the Developer's obligations hereunder;
2. The Developer may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement, to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default.

B. If the Developer has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Developer, then and in every case the Developer and the City shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Developer shall continue as though no such proceeding had been instituted.

C. Each of the Developer's remedies provided hereunder shall be cumulative and in addition to each other such remedy, and the exercise by the Developer of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the Developer shall apply to obligations beyond those expressly waived.

D. Any delay by the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the Developer of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

## **ARTICLE X GENERAL PROVISIONS**

**Section 10.01. Mutual Assistance.** The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

**Section 10.02. Effect of Violation of the Terms and Provisions of this Agreement; No Partnership.** The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants

running with the land have been provided. The Agreement shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Project or the CID. Subject to the limitations set forth in Section 9.03 hereof, the City shall have the right, if this Agreement or covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

**Section 10.03. Time of Essence.** Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

**Section 10.04. Amendments.** This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

**Section 10.05. Agreement Controls,** The Parties agree that the Project will be implemented as agreed in this Agreement, subject to the terms and conditions hereof. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of CID Costs and all other methods of implementing the Project. The Parties further agree that this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof (including, without limitation, any memorandum of understanding) and is a full integration of the agreement of the Parties.

**Section 10.06. Conflicts of Interest.**

A. No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed. Upon receiving notice of such possible conflict, the City shall promptly disclose the same to Developer in writing and, from that point forward until the Parties reach a mutually-agreeable resolution, keep Developer apprised of the status of such possible conflict.

B. The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its actual knowledge, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct

or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

**Section 10.07. Term.** Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until the Developer has been reimbursed for all CID Costs incurred in connection with the Project, unless the parties agree to terminate this Agreement at an earlier date.

**Section 10.08. Validity and Severability.** It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

**Section 10.09. Required Disclosures.** The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

**Section 10.10. Tax Implications.** The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

**Section 10.11. Authorized Parties.** Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Representative and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Representative may seek the advice, consent or approval of the City Council before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section; provided, however, that (except as expressly provided otherwise herein or required pursuant to Applicable Law and Requirements) such supplemental agreement, request, demand, approval, notice or consent shall not require a public hearing before the City Council or formal approval thereof via resolution, ordinance or otherwise.

**Section 10.12. Notice.** All notices and requests required or desired to be given pursuant to this Agreement shall be sent as follows:

To the City:	City Administrator Edgerton Community Building 404 East Nelson P.O. Box 255 Edgerton, Kansas 66021 Phone: (913) 893-6231 <a href="mailto:BLinn@EdgertonKS.org">BLinn@EdgertonKS.org</a>
With a copy to:	Scott W. Anderson SA Legal Advisors LC 16201 W 95th Street, Suite 270 Lenexa, Kansas 66219 Phone (913) 600-2999 <a href="mailto:SAnderson@SALegalAdvisors.com">SAnderson@SALegalAdvisors.com</a>
To the Developer:	Shannon McMurdo Woodstone Properties, LLC 2131 State Highway 265 Ste. C Branson, Missouri 65616 Phone : (417) 338-0501 <a href="mailto:Shannon@woodstonebuilders.com">Shannon@woodstonebuilders.com</a>
With a copy to:	Polsinelli PC 900 W. 48 <sup>th</sup> Place, Suite 900 Kansas City, Missouri 64112 Attention: Curtis J. Petersen Phone: (816) 753-1000 <a href="mailto:cpetersen@polsinelli.com">cpetersen@polsinelli.com</a>

or at such other addresses as the Parties may indicate in writing to the other in accordance with the provisions of this Agreement (with at least 10 days' notice of such change in writing), either by personal delivery, reputable overnight delivery service (such as UPS or FedEx), or by certified mail, return receipt requested. Any notice sent by: (a) certified mail, return receipt requested, shall be deemed delivered two (2) business days after deposited in the United States Mail; (b) personal delivery shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the business day following the date the notice is deposited with the overnight delivery service.

**Section 10.13. Kansas Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. Any action to enforce the provisions of this Agreement shall be brought in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

**Section 10.14. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format shall also be permitted as binding signatures to this Agreement.

**Section 10.15. Consent or Approval.** Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld, conditioned or unduly delayed.

**Section 10.16. Electronic Transactions.** The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Signature pages follow]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date.

**CITY OF EDGERTON, KANSAS**

(SEAL)

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

ATTEST:

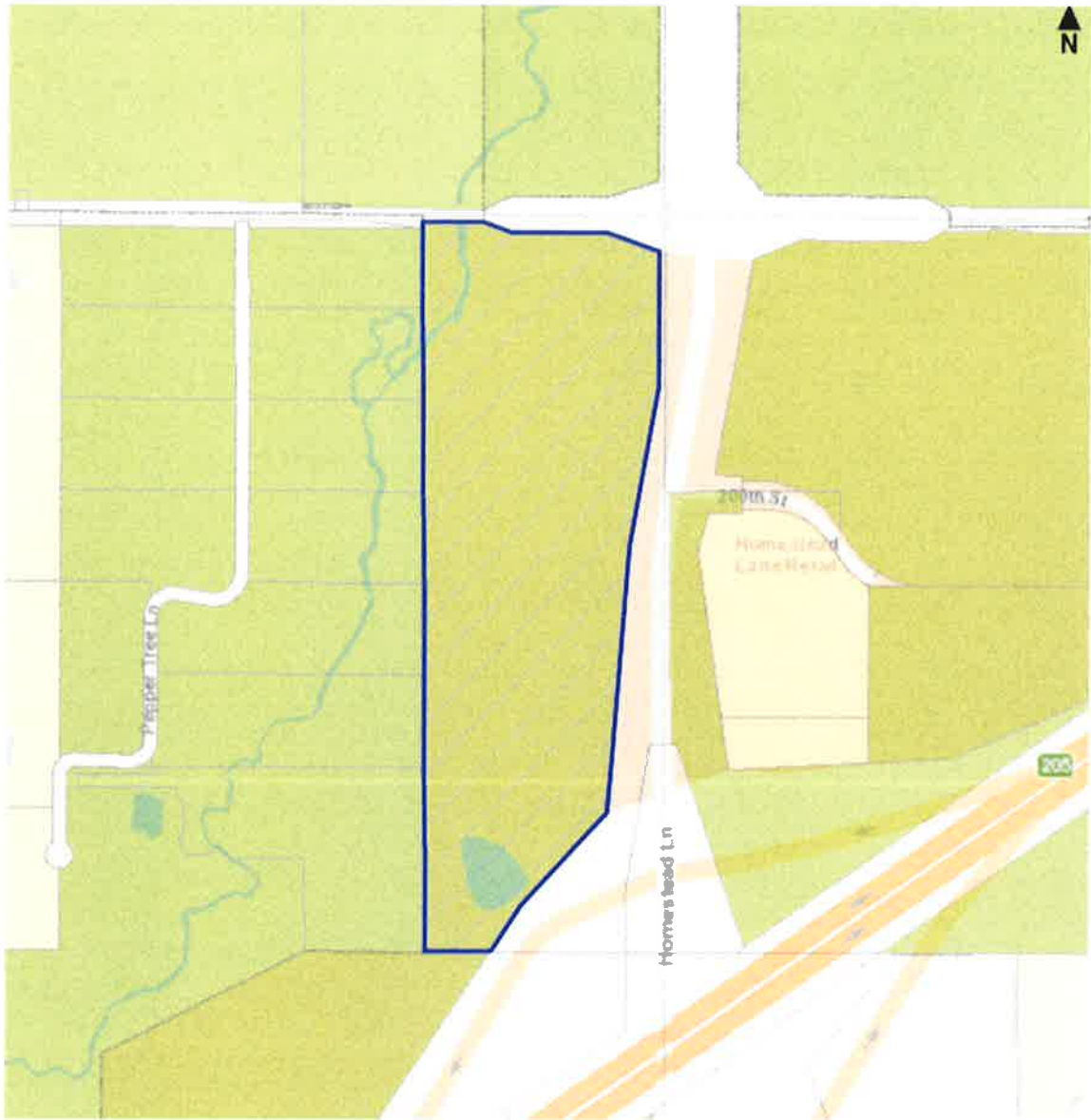
\_\_\_\_\_  
Alexandria Clower, City Clerk

**WOODSTONE PROPERTIES, LLC,**  
a Missouri limited liability company

By: \_\_\_\_\_  
J. Shannon McMurdo, Member

Development Agreement (Woodstone CID District)

**EXHIBIT A**  
**MAP OF CID DISTRICT**



**EXHIBIT B**

**LEGAL DESCRIPTION OF CID**

The East One-Third (1/3) of the Northeast Quarter (NE 1/4) excluding that part in roads and Highways of Section 9, Township 15, Range 22, in the City of Edgerton, Johnson County, Kansas.

## **EXHIBIT C**

### **FORM OF CERTIFICATE OF CID COSTS**

#### **CERTIFICATE OF CID COSTS**

TO: City of Edgerton, Kansas  
Attention: City Administrator

Re: Woodstone CID District

*Terms not otherwise defined herein shall have the meaning ascribed to such terms in that certain Woodstone CID Development Agreement dated as of November \_\_\_\_, 2021 (the "Agreement"), between the City of Edgerton, Kansas ("City") and Woodstone Properties, LLC ("the Developer").*

In connection with the Agreement, the undersigned hereby states and certifies that, to his or her actual knowledge:

1. Each item listed on *Schedule 1* hereto is a CID Cost and was incurred in connection with the construction of the Project.
2. These CID Costs have been paid and are reimbursable under the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the CID Fund, and no part thereof has been included in any other certificate previously filed with the City.
4. There is not now filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith,
5. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.
8. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WOODSTONE PROPERTIES, LLC

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved for Payment this day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF EDGERTON, KANSAS

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

## **EXHIBIT D**

### **FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION**

*Pursuant to **Section 4.06** of the Agreement, the City shall, within ten (10) days following delivery of this Certificate, carry out such inspections as it deems necessary to verify to its reasonable satisfaction as to the accuracy of the certifications contained in this Certificate.*

### **CERTIFICATE OF SUBSTANTIAL COMPLETION**

The undersigned, Woodstone Properties, LLC (the “Developer”), pursuant to that certain Woodstone CID Development Agreement, dated as of November \_\_, 2021, between the City of Edgerton, Kansas (the “City”) and the Developer (the “Agreement”), hereby certifies to the City, to its actual knowledge, as follows:

1. That as of \_\_\_\_\_, 20\_\_\_\_, the construction, renovation, repairing, equipping and constructing of a distinct portion of the Project (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. The distinct portion(s) of the Project that has been completed is described as follows:
3. The distinct portion of the Project has been completed in a workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).
4. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Project.
5. The City’s acceptance of this Certificate shall evidence the satisfaction of the Developer’s agreements and covenants to construct such distinct portion of the Project.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WOODSTONE PROPERTIES, LLC,  
a Missouri limited liability Company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED:

CITY OF EDGERTON, KANSAS

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **CITY OF EDGERTON, KANSAS**

### **COUNCIL AGENDA ITEM**

---

**Council Meeting Date:** November 18, 2021

**Agenda Item:** Ordinance No. 2101 Approving a TGT Development Agreement

**Subject:** Edgerton Crossing Woodstone Project

---

#### **Summary:**

The City levies a 6% transient guest tax on the gross revenues received from all hotel and motel stays. The transient guest tax is not charged on incidental expenses.

As part of the Edgerton Crossing project, Woodstone Properties, LLC (the "Developer") is constructing one or two hotels. In the Development Agreement the City agreed to make an economic development grant to the Developer in an amount equal to a portion of the transient guest taxes received by the City from the hotels.

#### **Resolution:**

The Resolution approves the form of TGT Development Agreement. The TGT Development Agreement is intended to implement the transient guest tax grant provided for in the master Development Agreement.

The TGT Development Agreement states that the City will make an annual economic development grant to the Developer each year equal to 50% of the transient guest taxes collected by the City.

If the Developer constructs the following prior to January 1, 2029, then the Developer will receive 75% of the transient guest taxes collected by the City from the Developer's hotels:

- The travel center
- Two hotels with the conference center
- A quick-service restaurant, a casual dining restaurant and another restaurant

[Summary Published in *The Gardner News* on November 24, 2021]

## **ORDINANCE NO. 2101**

### **AN ORDINANCE AUTHORIZING A TRANSIENT GUEST TAX DEVELOPMENT AGREEMENT WITH WOODSTONE PROPERTIES, LLC**

**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;

**WHEREAS**, the City has entered into a Development Agreement dated September 10, 2021, with Woodstone Properties, LLC (the “Developer”), whereby the Developer has agreed to construct one or two hotels, a conference center, a travel center, restaurants, office and retail space on property located at the southwest corner of 199<sup>th</sup> Street and Homestead Lane (the “Project”);

**WHEREAS**, the City has passed Charter Ordinance No. 21 imposing a transient guest tax of 6% (the “TGT Tax”);

**WHEREAS**, Article 12, Section 5 of the Kansas Constitution gives the City home rule authority and, pursuant to such authority, the City is authorized to make economic development grants to facilitate economic development; and

**WHEREAS**, the City has agreed to make an annual economic development grant to the Developer for a twenty-year term in amounts based on a percentage of actual TGT Taxes collected by the City (the “Annual TGT Grant”).

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

**Section 1. Findings of Fact.** The City finds and determines that the Annual TGT Grant is necessary to induce the Developer to construct the Project. The City further finds and determines that the Project will create a substantial number of jobs and other benefits for the community and will promote the public interest and public welfare of the community.

**Section 2. Authorization of TGT Development Agreement.** The City is hereby authorized to enter into the TGT Development Agreement with the Developer in substantially the form of **Exhibit A** (the “TGT Development Agreement”), 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.

**Section 3. Approval of Annual TGT Grant.** The City hereby approves the Annual TGT Grant being made to the Developer in the amounts set forth in the TGT Development Agreement. The term of the Annual TGT Grant shall not exceed 20 years. The Annual TGT Grant shall not be a general obligation of the City and shall be subject to the provisions of the Kansas cash basis law, the Kansas budget law, and other laws of the State of Kansas.

**Section 4. Execution of TGT Development Agreement.** The Mayor of the City is hereby authorized and directed to execute the TGT Development 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 TGT Development 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 TGT Development 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 18<sup>th</sup> day of November, 2021.

---

Donald Roberts, Mayor

[SEAL]

ATTEST:

---

Alexandria Clower, City Clerk

**EXHIBIT A**

**FORM OF TGT DEVELOPMENT AGREEMENT**

---

**TGT DEVELOPMENT AGREEMENT**

**between the**

**CITY OF EDGERTON, KANSAS**

**and**

**WOODSTONE PROPERTIES, LLC**

**November \_\_, 2021**

**Relating to the Edgerton Crossing Woodstone Project**

---

## **TGT DEVELOPMENT AGREEMENT**

**THIS WOODSTONE TGT DEVELOPMENT AGREEMENT** (this “**Agreement**”) is entered into by and between the **CITY OF EDGERTON, KANSAS**, a municipal corporation duly organized and existing under the laws of the State of Kansas (the “**City**”), and **WOODSTONE PROPERTIES, LLC**, a Missouri limited liability company (the “**Developer**,” and together with the City, the “**Parties**,” and each a “**Party**”), and is dated as of November \_\_\_, 2021 (the “**Effective Date**”).

### **RECITALS**

**WHEREAS**, the Developer is the owner of certain privately-owned property located in the southwest quadrant of Homestead Lane and 199<sup>th</sup> Street, Edgerton, Johnson County, Kansas (the “**Property**”); and

**WHEREAS**, the Developer and the City have entered into a Development Agreement dated September 10, 2021 (the “**Development Agreement**”), whereby the Developer has agreed to develop one or two hotels on the Property; and

**WHEREAS**, the City has passed Charter Ordinance No. 21 imposing a transient guest tax of 6%; and

**WHEREAS**, the City has agreed to rebate a certain percentage of the transient guest tax to the Developer pursuant to Ordinance No. 2101 and the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

### **ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.01. Rules of Construction.** For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement.

- A. The terms defined in this Article include the plural as well as the singular.
- B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Kansas Regulatory Basis of Accounting as prescribed by the Kansas Municipal Audit & Accounting Guide.

C. All references in this instrument to designated "Articles," "Sections" and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.

D. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

E. The Article and Section headings herein are for convenience only and shall not affect the construction hereof,

F. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section.

G. In the event of any inconsistency or ambiguity between the Development Agreement and this Agreement, this Agreement shall control.

**Section 1.02. Definitions of Words and Terms.** Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

**"Agreement"** means this Woodstone TGT Development Agreement, between the City and the Developer, as amended from time to time.

**"Annual City Administrative Fee"** means an amount equal to 1% of the sum of the Quarterly TGT Eligible Amount for each of the four calendar year quarters for the applicable calendar year.

**"Annual TGT Grant"** means the sum of the Quarterly TGT Eligible Amount for each of the four calendar year quarters for the applicable calendar year less an amount equal to the Annual City Administrative Fee.

**"Annual TGT Revenues"** means 100% of the TGT Taxes received by the City that are generated by the Hotels in accordance with the TGT Ordinance during a calendar year, less an amount equal to the Annual City Administrative Fee.

**"Applicable Law and Requirements"** means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities.

**"City"** means the City of Edgerton, Kansas.

**"City Event of Default"** shall have the meaning set forth in **Section 6.02** of this Agreement.

**“City Representative”** means the Mayor or City Administrator of the City, and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement.

**“Developer”** means Woodstone Properties, LLC, a limited liability company organized and existing under the laws of the State of Missouri, and any successors and assigns permitted pursuant to this Agreement.

**“Developer Event of Default”** shall have the meaning set forth in **Section 6.01** of this Agreement.

**“Development Agreement”** means the Development Agreement dated September 10, 2021, between the City and the Developer, as supplemented and amended from time to time.

**“Extended-Stay Hotel”** means a single extended-stay hotel building containing approximately 72 keyed hotel guest rooms, including such amenities as in-room kitchenettes and on premise laundry facilities, as further described in the Development Agreement.

**“Hotels”** mean, collectively, the Regular Hotel and the Extended-Stay Hotel.

**“Permitted Subsequent Approvals”** means the building permits and other governmental approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

**“Project Minimum Improvements”** has the meaning given to such term in the Development Agreement.

**“Quarterly TGT Eligible Amount”** means the product of Quarterly TGT Revenues for such calendar year quarter multiplied by the TGT Percentage applicable to such quarter.

**“Quarterly TGT Revenues”** means 100% of the TGT Tax received by the City that is generated by the Hotels in accordance with the TGT Ordinance during a calendar quarter.

**“Regular Hotel”** means a single hotel building containing approximately 90 keyed hotel guest rooms, as shown on the Development Plan.

**“TGT Bump Date”** means the date on which all of the Project Minimum Improvements plus both Hotels plus an additional quick-service or casual dining restaurant have received certificates of occupancy.

**“TGT Bump Date Certificate”** means the certificate delivered to the City pursuant to **Section 3.03** in the form attached as **Exhibit A**.

**“TGT Ordinance”** means Charter Ordinance No. 21 adopted by the City on October 8, 2015, which ordinance imposes the TGT Tax.

**“TGT Percentage”** means 50%. If the City accepts a TGT Bump Date Certificate prior to January 1, 2029, then **“TGT Percentage”** shall mean 75% for the then-current calendar quarter and all future calendar quarters during the TGT Term.

**“TGT Tax”** means a transient guest tax rate of 6% (excluding any future increases of such tax) charged upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court.

**“TGT Term”** means 80 calendar quarters (20 years), commencing on the first day of the calendar quarter after the calendar quarter during which the first Hotel charges any TGT Tax.

**“TIF DDA”** means the Disposition and Development Agreement dated November \_\_\_\_, 2021, between the City and the Developer.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.01. Representations of City.** The City makes the following representations and warranties, which are true and correct on the date hereof, to the best of the City’s knowledge:

A. **Due Authority.** The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

B. **No Defaults or Violation of Law.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. **No Litigation.** There is no litigation, proceeding or investigation pending or threatened against the City with respect to the Project or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

D. **Governmental or Corporate Consents.** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

E. **No Default.** No default or City Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or a City Event of Default in any material respect on the part of the City under this Agreement.

## **Section 2.02. Representations of the Developer.**

The Developer makes the following representations and warranties, which are true and correct on the date hereof, to the Developer's actual knowledge:

A. **Due Authority.** The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. **No Defaults or Violation of Law.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. **No Litigation.** No litigation, proceeding or investigation is pending or threatened against the Project, the Developer or any officer, director, member or shareholder of the Developer and affecting the Project. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

D. **Governmental or Corporate Consents.** As of the Effective Date, no additional consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity, in connection with the execution, delivery and performance by the Developer of this Agreement, other than Permitted Subsequent Approvals.

E. **No Default.** No default or Developer Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or a Developer Event of Default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument affecting the Property to which the Developer is a party or by which the Developer is or may be bound.

F. **Compliance with Laws.** The Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly

constituted governmental authority, commission and court applicable to any of its affairs, business, operations contemplated by this Agreement.

### **ARTICLE III TGT GRANT**

**Section 3.01. TGT Grant.** During the TGT Term, but subject to annual appropriation and compliance by the Developer with the other terms and provisions of this Agreement, the City agrees to make an annual economic development grant to the Developer in an amount equal to the Annual TGT Grant.

**Section 3.02. Payment of Annual TGT Grant.** Each Annual TGT Grant shall be paid by the City to the Developer within 120 days following the end of the applicable calendar year.

**Section 3.03 TGT Bump Date Certificate.** At such time that the Developer has satisfied all of the conditions to establish the TGT Bump Date, the Developer shall deliver a TGT Bump Date Certificate to the City. The City shall, within five days following delivery of the TGT Bump Date Certificate, verify to its reasonable satisfaction the accuracy of the certifications contained in the TGT Bump Date Certificate. The City's execution of the TGT Bump Date Certificate shall constitute evidence of the satisfaction of the conditions required for the TGT Bump Date.

### **ARTICLE IV ASSIGNMENT**

Any assignment of this Agreement shall require the written consent of the City. Any change in ownership of the Developer that results in J. Shannon McMurdo no longer being the majority owner of Developer shall require the written consent of the City.

### **ARTICLE V GENERAL COVENANTS**

#### **Section 5.01. Indemnification of City.**

A. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the "**City Indemnified Parties**") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorney's fees, resulting from, arising out of, or in any way connected with:

1. The Developer's actions and undertakings in the implementation of this Agreement;
2. The negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Hotels; and

3. Any expense incurred by the City resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor.

This section shall not apply to willful misconduct or negligence of the City or its officers, employees or agents. This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an "**Action**") is begun or made as a result of which the Developer may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt notice to the Developer of the occurrence of such event.

C. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement with respect to any liability arising prior to the termination of this Agreement.

**Section 5.02. Non-liability of Officials, Employees and Agents of the City.** No recourse shall be had for the payment of the TGT Grant or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

## **ARTICLE VI DEFAULTS AND REMEDIES**

**Section 6.01. Developer Event of Default.** "**Developer Event of Default**" shall mean a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement, and continuance of such default or breach for a period of thirty (30) days after the City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute

an event of default if the Developer shall promptly upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch. **“Developer Event of Default”** shall also mean any default of the Developer under the Development Agreement, the CID Development Agreement or the TIF DDA.

**Section 6.02. City Event of Default.** **“City Event of Default”** shall mean a default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement, and continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

**Section 6.03. Remedies Upon a Developer Event of Default.**

A. Upon the occurrence and continuance of a Developer Event of Default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to terminate this Agreement or terminate Developer’s rights under this Agreement.
2. The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default.
3. The City may suspend payment to Developer of the Annual TGT Grant until such time as the Developer Event of Default has been fully remedied.

B. Upon termination of this Agreement pursuant to this Section, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

C. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

D. The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived.

E. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

F. Notwithstanding the foregoing or anything in this Agreement (including, without limitation, this Section) to the contrary, under no circumstances will: (i) Developer be liable for any special, punitive, remote, or consequential damages, including (without limitation) lost tax revenues; or (ii) the City or any third party be entitled to specifically enforce construction of the Hotels (or any portion thereof) by the Developer.

#### **Section 6.04. Remedies Upon a City Event of Default.**

A. Upon the occurrence and continuance of a City Event of Default the Developer shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law or in equity:

1. The Developer shall have the right to terminate this Agreement and the Developer's obligations hereunder;
2. The Developer may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement, to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default.

B. If the Developer has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Developer, then and in every case the Developer and the City shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Developer shall continue as though no such proceeding had been instituted.

C. Each of the Developer's remedies provided hereunder shall be cumulative and in addition to each other such remedy, and the exercise by the Developer of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the Developer shall apply to obligations beyond those expressly waived.

D. Any delay by the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the Developer of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

## **ARTICLE VII GENERAL PROVISIONS**

**Section 7.01. Mutual Assistance.** The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

**Section 7.02. No Partnership.** Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

**Section 7.03. Time of Essence.** Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

**Section 7.04. Amendments.** This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

**Section 7.05. Agreement Controls.** The Parties agree that this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof (including, without limitation, any memorandum of understanding) and is a full integration of the agreement of the Parties.

### **Section 7.06. Conflicts of Interest.**

A. No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed. Upon receiving notice of such possible conflict, the City shall promptly disclose the same to Developer in writing and, from that point forward until the Parties reach a mutually-agreeable resolution, keep Developer apprised of the status of such possible conflict.

B. The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its actual knowledge, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Hotels during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Hotels, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Hotels at any time during or after such person's tenure.

**Section 7.07. Term.** Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until the end of the TGT Term, unless the parties agree to terminate this Agreement at an earlier date.

**Section 7.08. Validity and Severability.** It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

**Section 7.09. Required Disclosures.** The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

**Section 7.10. Tax Implications.** The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

**Section 7.11. Notice.** All notices and requests required or desired to be given pursuant to this Agreement shall be sent as follows:

To the City:	City Administrator
	Edgerton Community Building
	404 East Nelson
	P.O. Box 255
	Edgerton, Kansas 66021
	Phone: (913) 893-6231

[BLinn@EdgertonKS.org](mailto:BLinn@EdgertonKS.org)

With a copy to: Scott W. Anderson  
SA Legal Advisors LC  
16201 W 95th Street, Suite 270  
Lenexa, Kansas 66219  
Phone (913) 600-2999  
[SAnderson@SALegalAdvisors.com](mailto:SAnderson@SALegalAdvisors.com)

To the Developer: Shannon McMurdo  
Woodstone Properties, LLC  
2131 State Highway 265 Ste. C  
Branson, Missouri 65616  
Phone : (417) 338-0501  
[Shannon@woodstonebuilders.com](mailto:Shannon@woodstonebuilders.com)

With a copy to: Polsinelli PC  
900 W. 48<sup>th</sup> Place, Suite 900  
Kansas City, Missouri 64112  
Attention: Curtis J. Petersen  
Phone: (816) 753-1000  
[cpetersen@polsinelli.com](mailto:cpetersen@polsinelli.com)

or at such other addresses as the Parties may indicate in writing to the other in accordance with the provisions of this Agreement (with at least 10 days' notice of such change in writing), either by personal delivery, reputable overnight delivery service (such as UPS or FedEx), or by certified mail, return receipt requested. Any notice sent by: (a) certified mail, return receipt requested, shall be deemed delivered two (2) business days after deposited in the United States Mail; (b) personal delivery shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the business day following the date the notice is deposited with the overnight delivery service.

**Section 7.12. Kansas Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. Any action to enforce the provisions of this Agreement shall be brought in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

**Section 7.13. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format shall also be permitted as binding signatures to this Agreement.

**Section 7.14. Electronic Transactions.** The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed

to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Signature pages follow]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date.

**CITY OF EDGERTON, KANSAS**

(SEAL)

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

ATTEST:

\_\_\_\_\_  
Alexandria Clower, City Clerk

TGT Development Agreement (Woodstone Project)

**WOODSTONE PROPERTIES, LLC,**  
a Missouri limited liability company

By: \_\_\_\_\_  
J. Shannon McMurdo, Member

**EXHIBIT A**

**FORM OF TGT BUMP DATE CERTIFICATE**

The undersigned, Woodstone Properties, LLC (the "Developer"), pursuant to that certain TGT Development Agreement dated November \_\_, 2021 (the "Agreement"), between the City of Edgerton, Kansas (the "City") and the Developer, hereby certifies to the City that, as of \_\_\_\_\_, 20\_\_\_\_, the conditions contained in the Agreement in the definition of TGT Bump Date have occurred and been satisfied by the Developer.

Dated: \_\_\_\_\_

**WOODSTONE PROPERTIES, LLC,**  
a Missouri limited liability company

By: \_\_\_\_\_  
J. Shannon McMurdo, Member

The City agrees that the conditions contained in the Agreement in the definition of TGT Bump Date have been satisfied.

**CITY OF EDGERTON, KANSAS**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# CITY OF EDGERTON, KANSAS

## COUNCIL AGENDA ITEM

---

**Council Meeting Date:** November 18, 2021

**Agenda Item:** Resolution No. 11-18-21C  
Master Resolution of Intent

**Subject:** Industrial Revenue Bonds for the Edgerton Crossing Woodstone Project

**Notice of Intent Published:** November 10, 2021  
(Notice of Resolution of Intent Only – No Hearing Required)

---

### Summary:

The City has received an application for the issuance of industrial revenue bonds from Woodstone Properties, LLC, a Missouri limited liability company, for the construction of two hotels, conference center, truck stop, truck maintenance facility, truck wash, casual dining restaurants, quick-service restaurants and other office and commercial buildings (the "Project"). The Project will be known as Edgerton Crossing and is located at the southwest corner of Homestead Lane and 199<sup>th</sup> Street in Edgerton, Kansas. It is anticipated that the bonds will be issued in multiple series to cover different portions of the Project.

The issuance of the bonds will enable the developer to utilize a sales tax project exemption certificate for the Project. The Project is not eligible for property tax abatement. No ad valorem property tax abatement will be granted for the Project at any time. The City is not requiring an origination fee at this time for issuing the bonds.

A public hearing is not required for this project. KSA 12-1744e does require that the City publish notice of its intent to adopt a resolution of intent for the Project because the Project will be used for retail purposes.

## **RESOLUTION NO. 11-18-21C**

**A RESOLUTION DETERMINING THE INTENT OF THE CITY OF EDGERTON, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN ONE OR MORE SERIES, THE AGGREGATE PRINCIPAL AMOUNT OF ALL SERIES NOT TO EXCEED \$82,000,000, TO PAY THE COST OF CONSTRUCTING THE EDGERTON CROSSING PROJECT FOR THE BENEFIT OF WOODSTONE PROPERTIES, LLC.**

**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 to further promote, stimulate and develop the general welfare and economic prosperity of the state of Kansas; and

**WHEREAS**, the City is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the "Act"), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act and to lease or sublease such facilities to private persons or entities; and

**WHEREAS**, Woodstone Properties, LLC, a Missouri limited liability company (the "Company"), has requested the City to issue its industrial revenue bonds in one or more series, the aggregate principal amount of all series not to exceed \$82,000,000 (the "Bonds"), for the purpose of financing the costs of acquiring, constructing, improving and equipping two hotels, conference center, truck stop, truck maintenance facility, truck wash, casual dining restaurants, quick-service restaurants and other office and commercial buildings (the "Project"), all to be located in Edgerton Crossing at the southwest corner of Homestead Lane and 199<sup>th</sup> Street in Edgerton, Kansas, and to sublease the Project to the Company or its successors or assigns, all pursuant to the Act; and

**WHEREAS**, it is found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that the City issue the Bonds in one or more series pursuant to the Act, such Bonds to be payable solely out of rentals, revenues and receipts derived from the sublease of the Project by the City to the Company, or its successors or assigns, as lessee; and

**WHEREAS**, the City will not grant an exemption from ad valorem taxes for the Project;

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

**Section 1. Approval of Project.** The Governing Body of the City finds and determines that the acquisition, construction and equipping of the Project will promote, stimulate and develop the general welfare and economic prosperity of the City through the promotion and advancement of commercial development in the City and the issuance of the Bonds in one or more series to pay such costs will be in furtherance of the public purposes set forth in the Act.

**Section 2. Intent to Issue Bonds.** The Governing Body of the City determines and declares the intent of the City to assist the Company in completing the Project through the issuance of the Bonds pursuant to the Act. It is anticipated that a separate series of the Bonds will be issued for separate portions of the Project. The aggregate principal amount of all series of Bonds shall not exceed \$82,000,000.

**Section 3. Provision for the Bonds.** Subject to the conditions of this Resolution, the City will (i) issue its Bonds in multiple series to pay the costs of acquiring, constructing, improving and equipping the Project, with such maturities, interest rates, redemption terms and other provisions as may be determined by ordinance of the City; (ii) provide for the sublease (with an option to purchase) of the Project to the Company or its assigns; and (iii) to effect the foregoing, adopt such resolutions and ordinances and authorize the execution and delivery of such instruments and the taking of such action as may be necessary or advisable for the authorization and issuance of the Bonds by the City and take or cause to be taken such other action as may be required to implement this Resolution.

**Section 4. No Ad Valorem Tax Exemption.** No exemption from ad valorem taxes shall result from the issuance of the Bonds.

**Section 5. Conditions to Issuance.** The issuance of each series of the Bonds and the execution and delivery of any documents related to a series of the Bonds are subject to:

(i) receipt by the City of a completed application by the Company for each portion of the Project and adoption of a resolution assigning a portion of this resolution of intent by the Governing Body of the City for each portion of the Project;

(ii) obtaining any necessary governmental approvals;

(iii) agreement by the City, the Company and the purchaser of such series of the Bonds upon (a) mutually acceptable terms for such series of the Bonds and for the sale and delivery thereof, and (b) mutually acceptable terms and conditions of any documents related to the issuance of such series of the Bonds and the applicable portion of the Project, including, but not limited to, provisions relating to the security for the payment of such series of the Bonds and provisions relating to the maintenance of the applicable portion of the Project; and

(iv) compliance with the Act relating to the issuance of industrial revenue bonds.

**Section 6. Sale of the Bonds/Authority to Proceed.** The sale of each series of the Bonds shall be the responsibility of the Company, but arrangements for the sale of each series of the Bonds shall be subject to the City's approval. The Company is authorized to proceed with the acquisition and completion of the Project (provided all other City approvals and permits have been obtained) and to advance such funds as may be necessary to accomplish such purposes, and to the extent permitted by law, the City shall reimburse the Company for such expenditures out of the proceeds of the Bonds, when and if issued. Notwithstanding such authorization, the Company proceeds at its own risk and if for any reason, any series of the Bonds is not issued, the City shall have no liability to the Company for any reason. The Act provides that the City may only issue any series of the Bonds by adoption of

an ordinance authorizing such series of the Bonds and providing for the terms and details of such series of the Bonds. The City has not yet adopted an ordinance authorizing any series of the Bonds. This Resolution only evidences the intent of the current Governing Body to issue Bonds for the Project. Nothing herein shall be construed as a guaranty by the City that any series of the Bonds will be issued.

**Section 7. Assignment.** The Company may assign all or a portion of its interest in this Resolution only with the consent of the City.

**Section 8. Limited Obligations of the City.** Each series of the Bonds and the interest thereon shall be special, limited obligations of the City payable solely out of the rents, revenues and receipts of the City derived from the sublease of the Project to the Company. Each series of the Bonds shall not constitute a general obligation of the City, the State of Kansas or any other political subdivision thereof, shall not constitute a pledge of the full faith and credit of the City, the State of Kansas or any other political subdivision thereof and shall not be payable in any manner by taxation.

**Section 9. Termination.** This Resolution shall terminate if the City terminates the Development Agreement dated September 10, 2021 (the "Development Agreement"), between the City and the Company, as a result of a Developer default. The City shall not be required to issue any series of the Bonds during any time the Developer is in default under the Development Agreement.

**Section 10. Further Action.** SA Legal Advisors LC, Bond Counsel for the City, and officers and employees of the City, are authorized to work with the purchaser of the Bonds, the Company, their respective counsel and others, to prepare for submission to and final action by the City all documents necessary to effect the authorization, issuance and sale of each series of the Bonds and other actions contemplated hereunder.

**Section 11. Effective Date.** This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

**ADOPTED** November 18, 2021.

**CITY OF EDGERTON, KANSAS**

(Seal)

\_\_\_\_\_  
Donald Roberts, Mayor

ATTEST:

\_\_\_\_\_  
Alexandria Clower, City Clerk



**EDGERTON**  
global routes. local roots.

404 East Nelson  
Edgerton, KS 66021  
P: 913.893.6231  
EDGERTONKS.ORG

## City Council Action Item

**Council Meeting Date:** November 18, 2021

**Department:** Administration

### **Agenda Item: Consider Facility Use and Maintenance Agreement with Edgerton Historic Society for Edgerton Community Museum**

**Background/Description of Item:** In 2013, the Edgerton Historic Society opened the Edgerton Community Museum ("Museum") at 406 East Nelson adjacent to City Hall. In December 2013 and annually since, Edgerton City Council approved a Facility Use and Maintenance Agreement with the Historic Society for the use of the museum building similar to the Agreement with Johnson County Library since it is housed in a building owned by the City.

The enclosed draft agreement continues that arrangement for 2022. The agreement contemplates that EHS would agree to pay the city a monthly Usage and Maintenance Fee. In the past years, City Council set the fee at \$1. For 2022, City Council may determine an appropriate amount and insert it into the agreement.

The agreement was previously reviewed and approved by the City Attorney. Additionally, the updated agreement will be provided to the Edgerton Historic Society (EHS). The draft agreement is valid for one year beginning January 1, 2022 through December 31, 2022. Either party may elect not to renew the agreement with two months prior notice.

**Related Ordinance(s) or Statue(s):** N/A

**Funding Source:** N/A

**Budget Allocated:** N/A

**Finance Director Approval:** N/A

### **Recommendation: Approve Facility Use and Maintenance Agreement with Edgerton Historic Society for Edgerton Community Museum**

**Enclosed:** Draft Facility Use and Maintenance Agreement

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

## **FACILITY USE AND MAINTENANCE AGREEMENT**

THIS FACILITY USE AND MAINTENANCE AGREEMENT (the Agreement) is made this 18th day of November, 2021, by and between the City of Edgerton (hereinafter the “City”) and the Board of Directors of the Edgerton Historic Society (hereinafter “EHS”). The parties agree as follows:

**SECTION ONE:** City’s Agreement to Make a Facility Available for the Edgerton Community Museum. City owns a former home located at 406 East Nelson (hereinafter “the Facility”) and desires to enter into a Use and Maintenance Agreement (hereinafter “the Agreement”) authorizing EHS to use an agreed area of the Facility (hereinafter the “Museum”) for the purposes of establishing and maintaining the Edgerton Community Museum.

**SECTION TWO:** EHS’s Agreement to Maintain a Museum at the Facility. EHS has approved the establishment and maintenance of the Edgerton Community Museum at the Facility, and EHS desires to establish and maintain a public museum at the Facility.

### **SECTION THREE: CITY’S RESPONSIBILTIES**

1. Making the Facility Ready for Use; Compliance with Codes and Laws. The City agrees that it shall, at its sole expense, prepare the Facility and the Museum Site for use by EHS. The City warrants that the Facility and the Museum Site will be completed in a manner that assures that the Facility and the Museum Site will be in compliance with all federal, state, county, and city laws and building and zoning codes (necessary ADA improvements to the second floor excepted), and that the City will, at its sole expense, bring the Facility or Museum Site into compliance with such laws or codes, in the event that the parties are advised of a violation of any one of such laws or codes.
2. Signage. The City agrees that EHS shall be permitted to place appropriate signs on the exterior of the Facility or on the property identifying the museum, subject to City zoning and building codes.
3. Maintenance of the Facility. The City agrees that it will, at its sole expense, maintain the grounds and sidewalk surrounding the Facility; mow the grass; remove snow and ice from the parking lot, ADA ramp and sidewalk areas around the Facility (not including the porch); maintain all electrical, plumbing, mechanical, heating, ventilation, and air condition systems in good repair; maintain the floors, roof, walls, windows, entry areas and common areas of the Facility in a manner that makes the Facility safe and free of hazards for use by EHS patrons; arrange for pest and insect control; and arrange for capital improvements of the Facility that are needed to assure that the Facility is in good condition for use by EHS patrons and the citizens of Edgerton. EHS may perform capital improvements to the museum but only with the written consent and approval of the City. The City may enter the Museum at any time to inspect and/or verify building structure and/or systems are functioning properly.
4. Utilities. The City will be responsible to make all payments due for utilities used at the Museum Site.

#### **SECTION FOUR: EHS'S RESPONSIBILITIES**

1. Agreement to Use the Museum Site. EHS agrees to establish and maintain a public community museum at the Museum Site of the Facility. The parties agree that museum services and selection of materials are the sole prerogative of EHS.
2. Museum Operations. During the term of this Agreement, EHS shall operate the hours of the museum as determined by EHS so long as those hours of operation are within those that the Edgerton Library is open to the public. The Edgerton Library provides public restroom facilities to the patrons of the museum. Exhibits within the museum open to the public shall only operate on the first floor of the museum until such time as accommodations for ADA accessibility requirements are made to the second floor. The second floor of the museum shall be used for storage purposes only with access to that storage limited to members of the EHS.
3. Usage of Facilities for City Functions. EHS agrees to allow the City to use the Facility for City functions following reasonable notice if the Facility is not otherwise reserved for use by another party.
4. Usage and Maintenance Fee. EHS agrees to pay the City a Usage and Maintenance Fee (hereinafter the "Fee") in the sum of \$ \_\_\_\_ per year. The Fee shall be paid annually by the first day of the year.
5. Security. EHS shall be solely responsible for securing the Museum Site and safeguarding EHS materials used in the operation of the public community museum at the Museum Site. The City agrees all such security measures are the sole prerogative of EHS. The City will control the locks for entrance into the building including providing a key for use by EHS and changing the locks as necessary.
6. Maintenance of Museum Site and Payment of Utilities. EHS agrees to maintain and keep in good repair the Museum Site (excluding capital improvements to the common areas, walls, floors, or ceiling) and agrees, at its sole expense, to contract for custodial services for the Museum Site.
7. Use of Exterior of Property. EHS may place historical artifacts on the surrounding grounds with permission from the City.

#### **SECTION FIVE: FAILURE TO MAKE REPAIRS**

The City agrees to respond promptly when advised pursuant to Section Three of this Agreement of needed repairs or service to the Facility, the surrounding grounds, sidewalks, and parking. In the event that the City does not, within a reasonable period of time, respond to the call for repair or services, EHS may undertake such repair or service on its own, and the City agrees to reimburse EHS for the reasonable cost of any such repair or service.

## SECTION SIX: TERM

The term of this Agreement shall be one year beginning January 1, 2022 through December 31, 2022. In the event that one of the parties elects not to renew this Agreement, it shall give the other party two months prior written notice of its intent not to renew.

## SECTION SEVEN: INSURANCE AND HOLD HARMLESS

1. City's Insurance. The City agrees to maintain insurance for the structure.
2. EHS's Insurance. EHS agrees to maintain throughout the term of this lease (and provide The City with a formal Accord 25 certificate of insurance documenting such coverage is in force), the following minimum coverages:
  - a. Commercial General Liability on an occurrence basis, with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. The City shall be included as an additional insured, on a primary basis, non-contributory with any other insurance carried by The City.
  - b. Commercial Property insurance covering all items of EHS property on the premises and tenant improvements and alterations. The City and EHS hereby waive and request that their insurers waive any right of recovery/subrogation against each other on account of any loss or damage to property, to the extent covered by the commercial property insurance required above.
  - c. Workers Compensation insurance providing statutory benefits to EHS employees and employers liability insurance with limits of not less than \$500,000.
  - d. Directors & Officers and Employment Practices Liability insurance with a per claim limit of not less than \$500,000, and with defense costs provided in addition to such limit of liability. EPL coverage is also to extend to third party claimants.
3. Hold Harmless. Each party agrees to protect, defend, indemnify and hold the party and their officers, employees, and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly out of its error, omission or negligent act.
4. Waiver of Subrogation. Each of the parties releases the other party from all liability for damage due to any act or neglect of the other party (except as hereinafter provided) occasioned to property owned by the parties which is or might be incident to or the result of a fire or any other casualty against loss for which either of the parties is now carrying or hereafter may carry insurance; provided, however, that these releases shall not apply to any loss or damage occasioned by the willful, wanton, or premeditated negligence of either of the parties, and the parties hereto further covenant that any insurance that they obtain on their respective properties shall contain an appropriate provision whereby the insurance company, or companies, consent to the mutual release of liability contained in this paragraph.
5. Kansas Tort Claims Act. Nothing herein shall be construed as the City waiving its immunities and liability limitations afforded to the City by the Kansas Tort Claims Act.

**IN WITNESS WHEREOF**, the parties have set their hands this 18<sup>th</sup> day of November, 2021.

CITY OF EDGERTON, KANSAS

BOARD OF DIRECTORS OF THE  
EDGERTON HISTORIC SOCIETY

\_\_\_\_\_  
Donald Roberts, Mayor

\_\_\_\_\_  
Chair

ATTEST:

ATTEST:

\_\_\_\_\_  
Alexandria Clower, City Clerk

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Attorney



**EDGERTON**  
global routes. local roots.

404 East Nelson  
Edgerton, KS 66021  
P: 913.893.6231  
EDGERTONKS.ORG

## City Council Action Item

**Council Meeting Date:** November 18, 2021

**Department:** Administration

**Agenda Item: Consider Ordinance No. 2102 Prohibiting Parking Along 200th Street East Of Homestead Lane Until The End Of Roadway In The City Of Edgerton, Kansas And Providing Certain Penalties For Violation Thereof**

**Background/Description of Item:**

With the opening of the new On the Go Travel Plaza, staff identified a new location of trucks and vehicles parking on public street that impedes the proper flow of traffic. This can present an unsafe condition as the roadways do not contain a shoulder area and are not wide enough to allow for parked vehicles.

City Attorney has reviewed and approved the enclosed draft ordinance. The ordinance, similar to other locations in LPKC, includes exemptions to emergency vehicles, city and utility vehicles, and any vehicles that are working on behalf of the City or a City event. Drivers found to be in violation of the proposed ordinance would be subject to a fine as outlined in the adopted Standard Traffic Ordinance (STO).

**Related Ordinance(s) or Statue(s):** Ordinance 1089

**Funding Source:** N/A

**Budget Allocated:** N/A

x   
Karen Kindle, Finance Director

**Recommendation: Approve Ordinance No. 2102 Prohibiting Parking Along 200th Street East Of Homestead Lane Until The End Of Roadway In The City Of Edgerton, Kansas And Providing Certain Penalties For Violation Thereof**

**Enclosed:** Draft Ordinance  
Map of proposed No Parking roadways

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

**ORDINANCE NO. 2102**

**AN ORDINANCE PROHIBITING PARKING ALONG 200<sup>th</sup> STREET EAST OF HOMESTEAD LANE UNTIL THE END OF ROADWAY IN THE CITY OF EDGERTON, KANSAS AND PROVIDING CERTAIN PENALTIES FOR VIOLATION THEREOF**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS:**

SECTION 1. No person shall park a vehicle at any time along 200<sup>th</sup> Street east of Homestead Lane until the end of the roadway in the City of Edgerton, Kansas. This prohibition shall not apply to the temporary parking of emergency vehicles, such as ambulances or fire trucks, street, sewer, gas, electric or other utility or repair maintenance vehicles, municipal vehicles or vehicles being used for a City event or function.

SECTION 2. The passage of this Ordinance shall empower the City to place a sign(s) at the location described above prohibiting such activity and violation of the same shall result in a fine. The fine for violation of this ordinance shall be identical to the fine levied for violation of Section 96 (as amended) of the Standard Traffic Ordinance for Kansas Cities in the most current addition adopted by the City of Edgerton.

SECTION 3. All ordinances or sections of ordinances in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED by the Council and approved by the Mayor on this 18th day of November 2021.

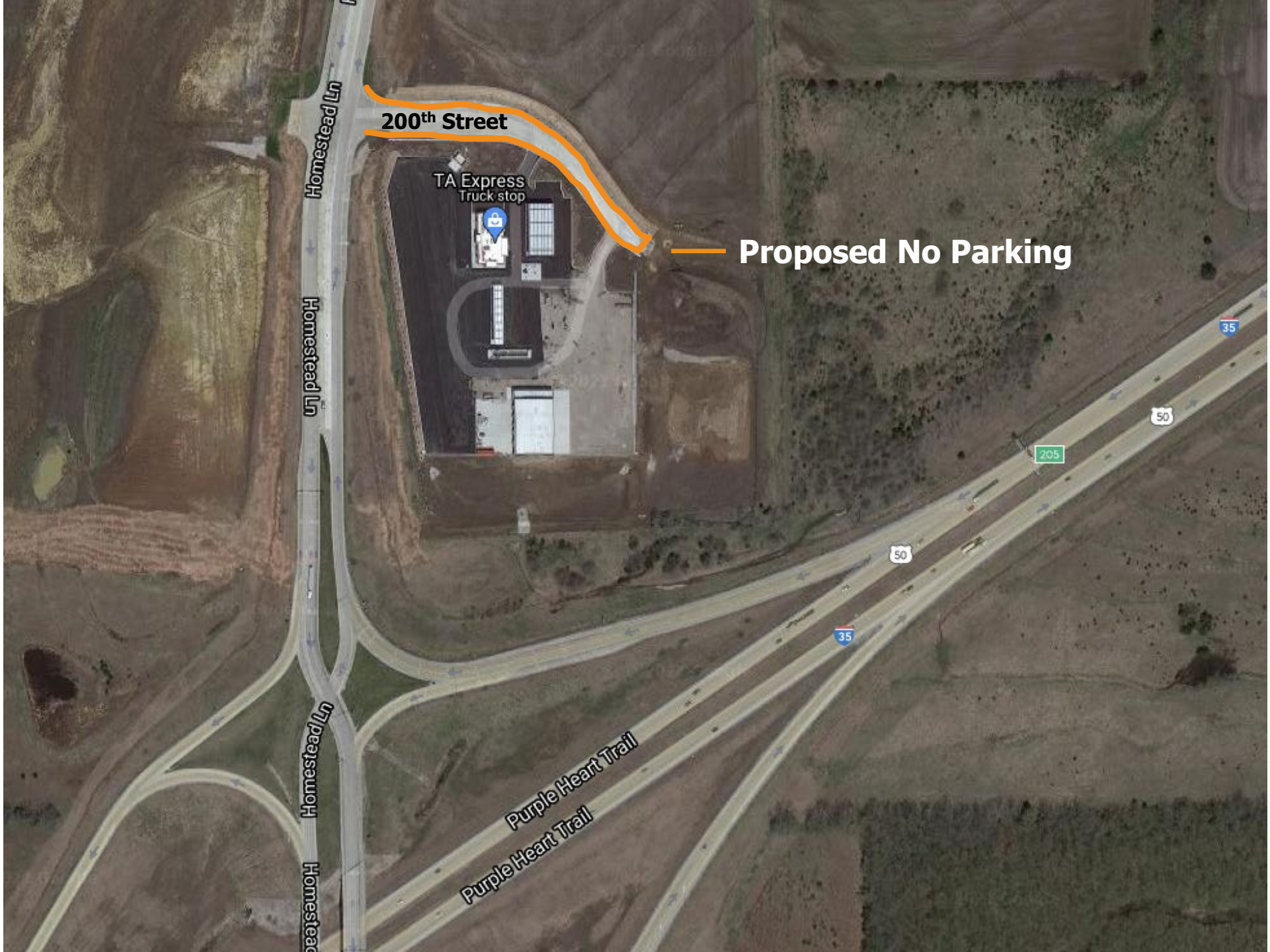
\_\_\_\_\_  
DONALD ROBERTS, Mayor

ATTEST:

\_\_\_\_\_  
ALEXANDRIA CLOWER, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
LEE W. HENDRICKS, City Attorney



200<sup>th</sup> Street

TA Express  
Truck stop

Proposed No Parking

Homestead Ln

Homestead Ln

Homestead Ln

Homestead Ln

Purple Heart Trail

Purple Heart Trail

35

50

205

50

35

**MEMORANDUM**

Date: November 18, 2021  
To: City of Edgerton Governing Body  
From: Katy Crow, Development Services Director  
Re: Status Update – 502 E. 2<sup>nd</sup> Street, Edgerton, Kansas

On July 22, 2021 the Edgerton City Council passed Resolution 07-22-21A which requires the owners of 502 E. 2<sup>nd</sup> Street, Edgerton, Kansas to resolve the dangerous and unfit structure which exists on said property by February 24, 2022. This resolution continues action taken in Resolution 10-22-20A which set a deadline of July 22, 2021 to resolve the dangerous structure status of this property.

As part of the adoption of Resolution 07-22-21A, the Governing Body requested staff provide bi-monthly updates on the progress being made at the site.

On November 12, 2021 City staff performed a walkthrough of the site with the owner of the property, Juan Abundiz to review the status of the project. The last update was provided to the Governing Body on September 23, 2021. Since the last walk-through the owner has not done any additional work on the outside of the house, but he has cleaned up the exterior of the site, abating a code violation that he was provided notice of on September 14, 2021. Additionally, City staff worked with Evergy to put their landscaping contractor in touch with Mr. Abundiz and the dead tree that was encroaching on power lines was topped and branches removed.

Mr. Abundiz represented that the lack of progress on the site over the last two months has been due to two things. First, he continues to be kept busy with his regular job. Second, the cost of an HVAC system for the house has almost doubled from \$8,000 to \$15,000 since he was originally given the quote in the spring of this year. Mr. Abundiz is in the process of looking for financing to purchase the HVAC equipment as no further interior work can continue until that system is in place.

The structure appears to be airtight with all doors and windows intact. The owner has represented that the remaining exterior item is the replacing the roof and painting. There is some decorative rock that they are working to add to the front of the home as well.

City staff will perform another walkthrough in January and provide an update at the January 27, 2022 City Council meeting.





