

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
March 26, 2015**

Call to Order

1. **Roll Call** ____ Roberts____Longanecker ____Crooks____Cross____Troutner ____ Brown
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. Agenda Approval
5. City Council Meeting Minutes February 26, 2015
6. City Council Meeting Minutes March 12, 2015

Regular Agenda

7. **Public Comments.** Persons who wish to address the City Council regarding items not on the agenda and that are under the jurisdiction of the City Council may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court or other outside tribunals are not permitted. Please notify the City Clerk before the meeting if you wish to speak. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.
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.

Business Requiring Action

9. **CONSIDER ORDINANCE NO. 996 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 25.07 ACRES OF LAND [LOCATED ON THE EAST SIDE OF HOMESTEAD LANE AND NORTH OF INTERSTATE 35] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON C-2, HEAVY SERVICE COMMERCIAL DISTRICT**

Motion: _____ Second: _____ Vote: _____

10. **CONSIDER ORDINANCE NO. 997 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 63.35 ACRES OF LAND [LOCATED ON THE EAST SIDE OF HOMESTEAD LANE AND SOUTH OF 199TH STREET] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO A COMBINATION OF CITY OF EDGERTON C-2, HEAVY SERVICE COMMERCIAL (19.38 ACRES) AND L-P, LOGISTICS PARK (43.97 ACRES) DISTRICTS**

Motion: _____ Second: _____ Vote: _____

11. **Report by the City Administrator**

12. Report by the Mayor

**13. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319
(b) (4) FOR CONFIDENTIAL AND PROPRIETARY INFORMATION TO INCLUDE
BOND COUNSEL, FINANCIAL ADVISOR AND CITY ADMINISTRATOR**

Motion: _____ Second: _____ Vote: _____

**14. CONSIDER AMENDED AND RESTATED PROJECT AGREEMENT FOR INTERMODAL
FACILITY/LOGISTICS PARK KANSAS CITY**

Motion: _____ Second: _____ Vote: _____

**15. CONSIDER AN AMENDED AND RESTATED PUBLIC INFRASTRUCTURE FINANCING
PLAN FOR INTERMODAL FACILITY/LOGISTICS PARK KANSAS CITY**

Motion: _____ Second: _____ Vote: _____

16. Future Meeting/Event Reminders:

- March 28th 9 AM to 1 PM – Low Cost Vaccine Clinic at 307 E Nelson
- April 7th Election Day
- April 9th 7:00 PM – City Council Meeting
- April 14th 7:00 PM – Planning Commission Meeting
- April 15th Noon – Senior Lunch
- April 23rd 7:00 PM – City Council Meeting

17. Adjourn Motion: _____ Second: _____ Vote: _____

**City of Edgerton, Kansas
Minutes of City Council Regular Session
February 26, 2015**

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on February 26, 2015. The meeting convened at 7:00 p.m. with Mayor Roberts presiding, and City Clerk Janeice L. Rawles recording.

1. ROLL CALL

Charlie Troutner	present
Clay Longanecker	present
Frances Cross	present
Cindy Crooks	present
Jody Brown	absent

With a quorum present, the meeting commenced.

Staff in attendance: City Administrator Beth Linn
 Community Development Director Kenny Cook
 City Attorney Patrick Reavey

Consultants in attendance: Johnson County Sheriff's Department
 Jerry Mallory, Jo. Co. Planning

2. WELCOME AND PLEDGE OF ALLEGIANCE

3. CONSENT AGENDA

- Agenda approval
- City Council Meeting Minutes February 12, 2015
- Acceptance of Dedication of Right-of-Way along Waverly Road

Motion by Crooks, seconded by Longanecker, to approve the Agenda approval only.

Motion was approved, 4-0.

Motion by Crooks, seconded by Troutner, to table until next meeting the Minutes from February 12, 2015.

Motion was approved, 4-0.

Motion by Longanecker, seconded by Crooks, to pull from the consent agenda the Acceptance of Dedication of Right-of-Way along Waverly Road. This item was pulled for verification and to allow for any discussion.

Motion was approved, 4-0.

4. PUBLIC COMMENTS

Colleen Cole, 19911 Pepper Tree Lane, Edgerton, Kansas was present to get an update on the changes on the projects. She reported that a horrible smell is present in the morning and in the evening surrounding her residence. Ms. Cole asked about the big trucks exhaust brakes and when the signs would be installed. The City Administrator informed the council the signs are in, just waiting for the ground to thaw to install

5. DECLARATIONS BY COUNCIL MEMBERS

None

Council member Brown arrived at the meeting, 7:18 pm.

6. REQUEST FROM PROPERTY OWNER REGARDING CONFLICT BETWEEN CITY WATER MAIN AND PROPERTY OWNER SANITARY SEWER SERVICE LINE WAS CONSIDERED

Community Development Director Kenny Cook presented the information about the continuing conversation between the city and the home owner regarding the conflict with the water and sanitary Sewer Service Lines. Mr. Cook indicated the issue was resolved prior to the City Council Meeting, noting this topic is for information only.

7. RECESS INTO EXECUTIVE SESSION PURSUANT TO K S. A. 75-4319 (B) (1) PERSONNEL MATTERS OF NONELECTED PERSONNEL WAS CONSIDERED

This item was removed from the agenda.

8. FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR CONSTRUCTION OF A WATER TOWER TO SERVE LOGISTICS PARK KANSAS CITY WAS CONSIDERED

Beth Linn, City Administrator, presented information about the Agreement for Construction of a Water Tower to Serve Logistics Park Kansas City. Edgerton Land Holding Company (ELHC) has awarded a design-build contract and during the contract negotiation period, Johnson County Rural Water District No. 7 worked with ELHC and the contractor to increase the tank size from 500,000 to 1,000,000 gallons. The First Amendment was approved by Johnson County Rural Water District No. 7 on October 14, 2014. First Amendment has been reviewed and approved by Intermodal's Bond Counsel. There was discussion about putting The City of Edgerton logo on this water tower. This would be an expense that the City of Edgerton would incur.

Motion by Longanecker, seconded by Troutner, to approve the First Amendment to Development Agreement for construction of a water tower to serve Logistics Park Kansas City, and to have The City of Edgerton Logo on the Tower.

The vote on the motion: Yea votes: Crooks, Longanecker, Brown, and Troutner. Nay Votes: Cross.

The motion was approved, 4-1

9. PURCHASE OF A TRUCK FOR ANIMAL CONTROL/CODE ENFORCEMENT OFFICER THROUGH THE MID AMERICA REGIONAL COUNCIL'S METRO VEHICLE BID LIST WAS CONSIDERED

This item discussed previously, was returned to review used truck pricing and new truck pricing. Council member Crooks said that she would like to see the full picture when purchasing vehicles and equipment. The City Administrator indicated there will be changes made to the purchasing policy in the future.

Motion by Crooks, seconded by Brown, to approve the purchase of a truck, for animal control/code enforcement officer through the Mid America Regional Council's metro vehicle bid list. The truck is a Ford F150 Super Cab truck from Shawnee Mission Ford in the amount of \$24,399.

The vote on the motion: Yea votes: Longanecker, Brown, Cross and Crooks. Nay votes: Troutner.

Motion was approved, 4-1.

10. THE ADDITION OF BUILDING INSPECTOR AS AUTHORIZED PAID POSITION WAS CONSIDERED

Kenny Cook, Community Development Director, presented information about the recommendation of adding a Building Inspector to the list of authorized positions for 2015. The total fees paid to Johnson County under the current agreement are 100% of the plan review fees and 50% of the building permit fees. With the amount of fees paid to Johnson County in 2014, and similar amount of construction taking place in 2015, the city can expect to save a significant number of dollars, which would allow the City to provide improved service to its citizens. The city attorney has reviewed and approved the job description.

Motion by Crooks, seconded by Longanecker, to approve the addition of a Building Inspector as authorized paid position.

The vote on the motion: Yea votes: Brown, Crooks, Longanecker. Nay votes: Cross, Troutner. The motion was approved, 3-2.

11. ORDINANCE NO. 994 PROVIDING FOR THE RANGE OF SALARIES AND COMPENSATION OF VARIOUS CITY OFFICERS AND EMPLOYEES OF THE CITY OF EDGERTON, KANSAS WAS CONSIDERED.

Kenny Cook, Community Development Director, stated the pay ordinance needs an amendment to allow for the new position of Building Inspector.

Motion by Cross, seconded by Brown, to approve Ordinance No. 994 providing for the range of salaries and compensation of various city officers and employees of the City of Edgerton, Kansas, to be amended, to allow for the new position of Building Inspector.

Motion was approved, 5-0.

12. A CONTRACT FOR SERVICES AND SCOPE OF WORK WITH ETC INSTITUTE FOR A CITIZEN SURVEY WAS CONSIDERED

Beth Linn, City Administrator, presented back/ ground information about the survey that was completed in 2012. The 2012 survey was used to assist the Governing Body during the preparation of the annual budget by prioritizing funding and resources. Ms. Linn suggested adding some Park and Recreation questions to the survey, now that we have a Park and Recreation Program.

Motion by Longanecker, seconded by Brown, to approve a contract for services and scope of work with ETC Institute for a citizen survey.

Motion was approved, 5-0.

13. RECESS INTO EXECUTIVE SESSION – LAND ACQUISITION

Motion by Brown, seconded by Cross, to recess into executive session under the real property acquisition exception for a period of ten minutes for with City Attorney Patrick Reavey and City Administrator Beth Linn present.

The vote on the motion: Yea votes: Cross, Troutner, Crooks, and Brown. Nay votes: Longanecker. Motion was approved, 4-1.

Meeting recessed at 8:52 p.m.

Meeting reconvened at 9:04.

Motion by Crooks, seconded by Brown, to return to regular session with No Action Taken.

Motion was approved, 5-0.

14. REPORT BY THE CITY ADMINISTRATOR

Personnel Manual sections D, E, and F were passed out for review by Mayor and council.

The On Call Policy was also passed out for review.

15. Report by the Mayor

The Mayor had no report

16. FUTURE MEETING/EVENT REMINDERS:

March 10th 7:00 pm – Planning Commission

March 12th 7:00 pm – City Council Meeting

March 18th Noon – Senior Lunch

March 26th 7:00 pm – City Council Meeting

March 28th 9am to 1 pm –low cost vaccine clinic at 307 E. Nelson

17. RECESS INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (b) (1) PERSONNEL MATTERS OF NONELECTED PERSONNEL WAS CONSIDERED

Motion by Crooks, seconded by Brown, to recess into executive session for a period of fifteen minutes, with City Attorney Patrick Reavey present.

Motion approved, 5-0.

Meeting recessed at 9:05 pm.

Meeting reconvened into regular session at 9:21 pm., with no action taken.

Motion by Brown, seconded by Cross, to recess back into Executive session for fifteen minutes under same criteria.

Motion approved, 5-0

Meeting recessed at 9:23 pm

Meeting reconvened to regular session at 9:42 pm, with no action taken.

Motion by Crooks, seconded by Brown, to recess back into executive session for five minutes under same criteria.

Meeting recessed at 9:43 pm

Motion by Crooks, seconded by Brown, to return to regular session, no action taken.

Meeting reconvened to regular session at 9:48 pm.

18. ADJOURN

Motion by Brown, seconded by Longanecker, to adjourn the meeting.

Motion approved, 5-0.

Meeting adjourned at 8:51 pm.

Janeice L. Rawles, CMC
City Clerk

Approved by the Governing Body on _____

**City of Edgerton, Kansas
Minutes of City Council Regular Session
March 12, 2015**

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on March 12, 2015. The meeting convened at 7:00 p.m. with Mayor Roberts presiding, and City Clerk Janeice L. Rawles recording.

1. ROLL CALL

Charlie Troutner	present
Clay Longanecker	present
Frances Cross	present
Cindy Crooks	present
Jody Brown	present

With a quorum present, the meeting commenced.

Staff in attendance: City Administrator Beth Linn
 Community Development Director Kenny Cook
 City Attorney Patrick Reavey

Consultants in attendance: Johnson County Sheriff's Department
 Kirk Keller, Johnson County Fire District

2. WELCOME AND PLEDGE OF ALLEGIANCE

3. CONSENT AGENDA

- Agenda approval
- City Council Meeting Minutes February 12, 2015
- Acceptance of Dedication of Right-of-Way along Waverly Road

Motion by Crooks, seconded by Cross, to approve the Consent Agenda.

Motion was approved, 5-0.

4. PUBLIC COMMENTS

None

5. DECLARATIONS BY COUNCIL MEMBERS

None

6. INCREASE TO FIVE PERCENT (5%) IN VIDEO SERVICE PROVIDER FEE WITH MEDIACOM COMMUNICATIONS CORPORATION (MEDIACOM) AND FURTHER AUTHORIZE THE MAYOR TO EXECUTE AN ACKNOWLEDGEMENT WITH MEDIACOM WAS CONSIDERED.

Beth Linn, City Administrator, presented information about Mediacom Communications Corporation who provides cable television services within the City of Edgerton. The City's franchise fee is 3% under Ordinance #701 and in accordance with K.S.A. 12-2024 there is a 5% maximum that video service providers shall calculate and pay the fees to the City upon request. If approved, the new rate will be paid quarterly.

Motion by Cross, seconded by Brown, to approve the increase to five percent in video service provider fee with Mediacom Communications corporation and further authorize the mayor to execute an acknowledgement with Mediacom.

Motion was approved, 5-0.

7. RENEWAL OF CORPORATE INSURANCE POLICY FOR APRIL 1, 2015 TO MARCH 31, 2016 WAS CONSIDERED

Beth Linn, City Administrator, introduced Kevin O'Brien with The Reilly Company. Mr. O'Brien stated that he is an independent insurance broker and would like to thank the staff of The City of Edgerton, in particular Karen Kindle and Janeice Rawles, for doing such a great job in helping to make sure that all information was complete. He also stated that since there have not been any major catastrophe in 2013 the insurance rates have stayed stable.

Motion by Crooks, seconded by Longanecker, to approve renewal of corporate insurance policy for April 1, 2015 to March 31, 2016.

Motion was approved, 5-0.

8. ORDINANCE NO. 995 ANNEXING LAND (OWNED BY EDGERTON LAND HOLDING COMPANY, LLC) INTO THE CITY OF EDGERTON, KANSAS WAS CONSIDERED

City Administrator Beth Linn showed on the map the location of the two parcels to be annexed. The parcels are touching the current city boundaries which allows for the annexation.

Motion by Brown, seconded by Longanecker, to approve Ordinance No. 995 annexing land owned by Edgerton Land Holding Company, LLC into the City of Edgerton, Kansas.

Motion was approved, 5-0.

8.5 ADDITION TO THE AGENDA- AGREEMENT WITH JOHNSON COUNTY FIRE DISTRICT #1

The Mayor added a presentation from the Johnson County Fire Department. Present at the meeting was Battalion Chief Kirk Keller. Chief Keller presented an agreement for the AED's. He indicated the

agreement needs approval and signatures, so that the City of Edgerton can receive two AED's to be installed by the Johnson County Fire Department.

The Council thanked the Johnson County Fire Department District 1 for training city employees.

Motion by Longanecker, seconded by Brown, to approve the agreement with the Johnson County Fire Department District 1 for two AED's to be installed in the City of Edgerton.

Motion was approved, 5-0.

8.6 ADDITION TO THE AGENDA- CITIZEN SURVEY

The Citizen Survey was presented for review. Council member Crooks favored it and the Mayor stated favor with the survey. All Council members were polled and in agreement to proceed with the survey with some minor changes.

9. REPORT BY THE CITY ADMINISTRATOR

Update regarding 56 Highway/199th street intersection improvements, which now includes turning lanes. This intersection is an important safety project and action needs to be taken soon. The Kansas Department of Transportation will fund the project. The City of Edgerton's share is \$35,000.00.

For the City of Edgerton to begin using the service of County Assistance Road System (CARS) and the Stormwater Management Advisory Council (SMAC), the City of Edgerton should have representatives to attend the meetings.

Motion by Crooks, seconded by Cross, to appoint Kenny Cook as delegate and Beth Linn as alternate to CARS and SMAC.

Motion was approved, 5-0.

10. REPORT BY THE MAYOR

The Mayor has no report

Patrick Reavey, City Attorney, addressed the Mayor and City Council about the Waverly Road Agreement. Pete Heaven, attorney for BNSF, found an error in Exhibit B and would like to add a paragraph to correct the number of feet.

Motion by Longanecker, seconded by Cross, to allow corrected Exhibit B be replaced in original agreement.

Motion was approved, 5-0.

11. FUTURE MEETING/EVENT REMINDERS

March 18th Noon – Senior Lunch

March 26th 7:00 p.m. – City Council Meeting

March 28th 9AM-1 PM – Low Cost Vaccine Clinic at 307 E. Nelson

12. RECESS INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (B)(1) PERSONNEL MATTERS OF NONELECTED PERSONNEL WAS CONSIDERED

Motion by Brown, seconded by Cross, to recess into executive session to include City Attorney for twenty minutes at 7:58 pm.

Motion was approved, 5-0.

At 8:02 pm Beth Linn, City Administrator, was called into the executive session.

Motion by Crooks, seconded by Cross, to reconvene regular session.

Motion was approved, 5-0

Meeting reconvened at 8:18 pm.

Motion by Crooks, seconded by Cross, to recess into executive session for fifteen minutes to include City Attorney and City Administrator.

Meeting recessed at 8:20 pm.

City Administrator dismissed from executive session at 8:32 pm.

Motion by Crooks, seconded by Longanecker, to reconvene into regular session.

Motion was approved, 5-0.

Meeting reconvened at 8:35 pm.

The Mayor stated that a raise for the City Administrator was discussed. The Council thanked Beth Linn for doing a great job for the City of Edgerton.

Motion by Cross, seconded by Crooks, to approve a raise of 5% for the City Administrator, Beth Linn.

Motion was approved 5-0.

Council member Brown asked for an update on the Building Inspector position to be placed on the next agenda.

13. ADJOURN

Motion by Crooks, seconded by Brown, to adjourn the meeting.

Motion was approved 5-0.

Meeting adjourned at 8:42 pm.

Janeice L. Rawles, CMC
City Clerk

Approved by the Governing Body on _____

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 996 Adopting a Recommendation By the City Planning Commission to Approve Rezoning of Approximately 25.07 Acres Of Land [Located on the East side of Homestead Lane and North of Interstate 35] In Edgerton, Kansas From Johnson County RUR, Rural Zoning to City of Edgerton C-2, Heavy Service Commercial District

Department: Community Development

Background/Description of Item: The City of Edgerton received an application RZ-09-24-2014A for rezoning from Paul V. and Marie E. Middleton, requesting to rezone approximately 25.07 acres located on the East side of Homestead Lane and North of Interstate 35 from Johnson County RUR to City of Edgerton Heavy Service Commercial (C-2) zoning. The property requested to be rezoned was annexed into the City of Edgerton in January of 2015. The applicants have requested to rezone the parcel to the C-2 District to allow for development which would provide services to the Logistics Park and travelers along Interstate 35.

This rezoning application was reviewed with respect to the Edgerton Comprehensive Plan, Zoning and Subdivision Regulations, and the laws in Kansas, in particular the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. Attached is the staff report including the review of this rezoning based on the Golden Criteria. The Planning Commission held a public hearing on March 10, 2015 regarding this rezoning. The Planning Commission recommended approval of the application with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

Enclosure: Draft Ordinance No. 996
Staff Report from March 10, 2015 Planning Commission
Application RZ-09-24-2014A

Related Ordinance(s) or Statute(s):

Recommendation: Approve Ordinance No. 996 Adopting a Recommendation By the City Planning Commission to Approve Rezoning of Approximately 25.07 Acres Of Land [Located Approximately on the East side of Homestead Lane and North of Interstate 35] In Edgerton, Kansas From Johnson County RUR, Rural Zoning to City of Edgerton C-2, Heavy Service Commercial District

Funding Source: N/A

Prepared by: Kenneth Cook, Community Development Director
Date: March 17, 2015

ORDINANCE NO. 996

AN ORDINANCE ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 25 ACRES OF LAND [LOCATED EAST OF HOMESTEAD ROAD AND NORTH OF INTERSTATE 35] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON C-2 HEAVY SERVICE COMMERCIAL DISTRICT

WHEREAS, the City Planning Commission has recommended that a rezoning request -- from Johnson County RUR, Rural zoning to City of Edgerton C-2 Heavy Service Commercial District -- be approved for approximately 25 acres of land, located East of Homestead Road and North of Interstate 35, the legal description of which is set forth below; and

WHEREAS, all newspaper and mailed notifications were performed and a public hearing was properly held before the City Planning Commission.

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

Section 1. That the following legally described property [located East of Homestead Road and North of Interstate 35] is hereby rezoned from Johnson County RUR Rural zoning to City of Edgerton C-2 Heavy Service Commercial District, and City Staff is directed to reflect said rezoning in the City's Official Zoning map and other City records:

The South 1/2 of the Northwest 1/4 of Section 10, Township 15 South, Range 22 East of the 6th P.M., Johnson County, Kansas, lying North of Highway I-35 as now established AND the following described tract:

From the Northwest corner of the Northwest Quarter of Section 10, Township 15 South, Range 22 East, thence South 0 degrees 00 minutes 00 seconds West 991.99 feet along the West line of said Quarter Section to the True Point of Beginning; thence North 89 degrees 39 minutes 08 seconds East 643.04 feet, thence South 0 degrees 00 minutes 00 seconds West 342.20 feet along a line parallel to the West line of said Quarter Section to a point on the South line of the North Half of said Quarter Section; thence North 89 degrees 43 minutes 38 seconds West along the South line of the North Half of said Quarter Section to a point on the West line of said Quarter Section; thence North 0 degrees 00 minutes 00 seconds East 335.23 feet along the West line of said Quarter Section to the Point of Beginning containing 5.00 acres, more or less, all in Johnson County, Kansas.

All being more particularly described as follows:

Commencing at the Northwest corner of the Northwest 1/4, Section 10, Township 15 South, Range 22 East; thence South 02 degrees 03 minutes 46 seconds East along the West line of the said Northwest 1/4 a distance of 991.99 feet to a point; thence North 87 degrees 35 minutes 22 seconds East, 280.86 feet to the TRUE POINT OF BEGINNING; thence continuing North 87 degrees 35 minutes 22 seconds East, 362.18 feet to a point; thence South 02 degrees 03 minutes 46 seconds East, 342.19 feet (deeded 342.20 feet) to a point in the North line of the South 1/2 of the said Northwest 1/4; thence North 88 degrees 12 minutes 35 seconds East along the said North line, 1487.52 feet to a point in the Northwesterly right-of-way of Highway I-35 as recorded in Book 201108, Page 1191; thence South 53 degrees 32 minutes 58 seconds West along the said highway right-of-way, 737.13 feet (deed 737.07 feet) to a point; thence South 64 degrees 51 minutes 34 seconds West along said highway right-of-way, 509.90 feet to a point; thence South 85 degrees 06 minutes 40 seconds West along said highway right-of-way, 821.52 feet to a point; thence North 10 degrees 04 minutes 47 seconds West along said highway right-of-way, 802.50 feet to a point; thence North 15 degrees 12 minutes 50 seconds East along said highway right-of-way, 141.15 feet to a point; thence North 88 degrees 57 minutes 08 seconds East along said highway right-of-way, 116.36 feet to a point; thence North 0 degrees 38 minutes 21 seconds West along said highway right-of-way, 76.41 feet to the TRUE POINT OF BEGINNING and containing 25.0737 acres, more or less.

Section 2. That the Governing Body, in making its decision on the rezoning, considered City Staff's comments and recommendations. The Governing Body also based its decision on the following criteria:

- a) The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
- b) Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties.
- c) The extent to which the zoning amendment may detrimentally affect nearby property has been addressed.
- d) The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial.
- e) Consistency with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of Edgerton.

Section 3. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 26th DAY OF MARCH, 2015.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

JANIECE RAWLES, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

STAFF REPORT

February 9, 2015

To: Edgerton Planning Commission
Fr: Kenneth Cook, AICP, CFM, Community Development Director/Zoning Administrator
Re: Application RZ-09-24-2014A for rezoning of approximately 25 acres located East of Homestead Road and North of I-35 from RUR, County Rural Zoning District, to C-2, Heavy Service Commercial District

APPLICATION INFORMATION

Applicant/Property Owner: Paul V. and Marie E. Middleton

Requested Action: Rezoning from RUR, County Rural Zoning District, to C-2, Heavy Service Commercial District

Legal Description: Part of Section 10, Township 15, Range 22

Site Address/Location: 20081 Homestead Land – Approximately 25 acres.

Existing Land Use: Agriculture

Existing Zoning and Uses: County RUR, Rural District zoning

Existing Improvements: Two Farm Structures

Site Size: Approximately 25 acres

Reason for Rezoning Request: The City of Edgerton has received an application requesting that the property be rezoned to C-2, Heavy Service Commercial District. The City's Unified Development Code (UDC) defines this district as "*composed of certain uses that require extensive lot frontages, storage requirements, promote heavy traffic generation, extended hours (of) operations, and are customarily associated with intensive commercial use of land.*" A separate application (RZ-09-24-2014B) has also been received requesting the rezoning of the adjoining property to the North to the C-2 and L-P, Logistics Park District. The applicants have requested for the subject property to be rezoned to the C-2 District in anticipation of the need for commercial uses which will serve the 1,500 acre master planned logistics park and intermodal facility and interstate traffic.

The subject property is located just North of the I-35 interchange with Homestead Lane. The West side of Homestead Lane is currently zoned for the C-2 District. The Future Land Use Map for the City of Edgerton shows the use of the properties on the West side of Homestead Lane and North of I-35 as Commercial (Retail/Office). A very small area directly North of the interchange and on the East side of Homestead Lane is shown on the Future Land Use Map as Commercial with the remainder of this area being shown as Business Park/Industrial. The Preferred Land Use Plan of the

Southwest Area Plan, while not adopted by the City, shows commercial uses on the West side of Homestead Lane with the subject property being shown as Warehousing and Distribution.

Background Information

The subject property is currently zoned County RUR and the annexation of the property was approved by the City Council on January 8, 2015 by Ordinance #990. A dwelling was previously located on the property in the Northwestern corner (South of the entrance) and was removed as part of the improvements to Homestead Lane. Two agricultural structures remain on the property.

The attached Zoning Exhibit provides a proposed idea as to how the subject property might be developed along with the adjoining tract to the North. Staff understands that KDOT has retained access control along the entire Western side of this property and extending along the adjoining property to the North up to 199th Street. One access point has been permitted at the shared boundary line between these two properties. This access point is restricted to right turns both in and out of the property and does not allow access to/from the Southbound lanes of Homestead Lane.

Subject Property



The purpose and uses listed for the **C-2, Heavy Service Commercial District** (Section 4.3) in the City of Edgerton's Unified Development Code are as follows:

C-2 District – Permitted Uses.

1. All uses permitted by right or condition in the C-1 district (*See italicized below*)
2. Automobile sales, new and used.
3. Truck stops
4. Car and truck washes
5. Lumber yards
6. Laboratory, medical or dental
7. Manufactured home sales
8. Motels and hotels; meeting facilities
9. Automobile service and repair
10. Automobile body shop
11. Motorcycle sales and service
12. Trailer sales and rental
13. Use of a single family residential structure that is inhabited and being used as a residence as of June 10, 2008 and such use was a previously legal conforming use, except that a residential use that is voluntarily rezoned after June 10, 2008 shall only be allowed to continue in accordance with a Conditional Use permit granted pursuant to Section 4.3D. (Ord. 844; 2008)

C-2 District – Uses Permitted by Condition (Conditional Uses). The following uses may be permitted with a conditional use permit obtained pursuant to the provisions of Article 7.

1. Communications towers over 60 feet in height.
2. Asphalt or concrete plant.
3. Camps, travel trailer, or RV parks.
4. Adult entertainment – sexually oriented businesses
5. Use of single family structure that was a previously legal conforming use and is inhabited and being used as a residence at the time the landowner makes application for rezoning. Any conditional use permit granted pursuant to this provision shall have a duration of no more than one year after the effective date of the ordinance approving the conditional use permit. (Ord. 844; 2008)

C-1 District – Permitted Uses

- | | | |
|--|--|--|
| 1. Ambulance service. | 12. Automated teller machine. | 25. Convenience stores, with or without gasoline sales. |
| 2. Amusement and video arcades. | 13. Bakeries and confectionery establishments. | 26. Drugs and cosmetics. |
| 3. Automobile service station. | 14. Barbers, hair styling and similar personal services. | 27. Dry cleaners. |
| 4. Auction room. | 15. Bed and breakfast. | 28. Discount stores. |
| 5. Alterations and tailoring. | 16. Books and periodicals. | 29. Drive through food service. |
| 6. Apparel. | 17. Bus passenger station. | 30. Exterminator, pest. |
| 7. Antiques. | 18. Cameras and photo equipment. | 31. Farmers market. |
| 8. Apartments located above the first floor of a business. | 19. Crafts. | 32. Florist and gift shops. |
| 9. Appliance and electronics repair. | 20. Church or place of worship. | 33. Food store. |
| 10. Art galleries and studios. | 21. Clubs or cultural group. | 34. Financial institutions, including drive-through banks. |
| 11. Automotive parts, no outdoor storage. | 22. Computer sales and service. | 35. Furniture store. |
| | 23. Carpeting and floor covering. | 36. Funeral home, mortuary. |
| | 24. Caterer. | 37. Greeting cards and stationery. |

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| 38. Gasoline service stations. | 45. Interior decorating. | 55. Optical shops. |
| 39. Garden supplies. | 46. Internet providers. | 56. Package sales of alcoholic liquor or cereal malt beverages. |
| 40. Hardware stores. | 47. Jewelry. | 57. Paint and wallpaper. |
| 41. Health or fitness clubs. | 48. Laundry, self-serve. | 58. Pet stores. |
| 42. Health related sales and services. | 49. Locksmiths. | 59. Photocopying and retail printing. |
| 43. Home lighting and fixtures. | 50. Medical services and offices. | 60. Picture framing. |
| 44. Housewares and kitchenware. | 51. Microbrewery. | |
| | 52. Music and musical instruments. | |
| | 53. Office, general. | |
| | 54. Office supplies. | |
61. Postal and mailing services.
62. Publicly owned and operated community buildings, public museums, public libraries, or meeting facilities.
63. Restaurants and other eating establishments, but this does not include drive through facilities.
64. Single family residence, but only if the structure was inhabited and being used as a residence as of June 10, 2008, and such use was a previously legal conforming use, except that a residential use that is voluntarily rezoned after June 10, 2008 shall only be allowed to continue in accordance with a conditional use permit granted pursuant to Section 4.2D. (Ord. 843)
- | | | |
|----------------------------------|--|---|
| 65. Shoe repair. | 69. Theaters, indoor. | 74. Video rentals, except adult videos. |
| 66. Sporting goods and bicycles. | 70. Toys and hobby supplies. | 75. Reserved. |
| 67. Taxidermist. | 71. Public utilities. | 76. Accessory uses. |
| 68. Taverns and bars. | 72. U.S. Post offices. | |
| | 73. Veterinarian (domesticated pets only). | |
77. Any commercial or office use that meets the intent and purpose of this section and is keeping with the general character of the district. (Ord. 843; 2008)

C-1 District – Conditional Uses

- | | | |
|--|--------------------------------------|--|
| 1. Parking lots detached from the principal use. | 5. Amusement parks and video arcades | 10. Welding shops |
| 2. Recycling collection station. | 6. Car washes | 11. Miniature golf course |
| 3. Reserved. | 7. Self-storage | 12. Camps, travel trailer, or RV parks |
| 4. Communications towers over 60 feet in height | 8. Automobile service and repair | 13. Lumberyards. |
| | 9. Automobile body shop | |
14. Use of single family structure that was a previously legal conforming use and is inhabited and being used as a residence at the time the landowner makes application for rezoning. Any conditional use permit granted pursuant to this provision shall have a duration of no more than one year after the effective date of the ordinance approving the conditional use permit. (Ord. 843;2008)

Infrastructure and Services:

1. Homestead Lane, the nearest street to this property, is a paved street designed to support intermodal and logistics park traffic. Homestead Lane provides access to Interstate 35, adjacent to the south. Access to Homestead Lane has been restricted by KDOT to one driveway located at the Northwest corner of the property. This driveway is limited to right in

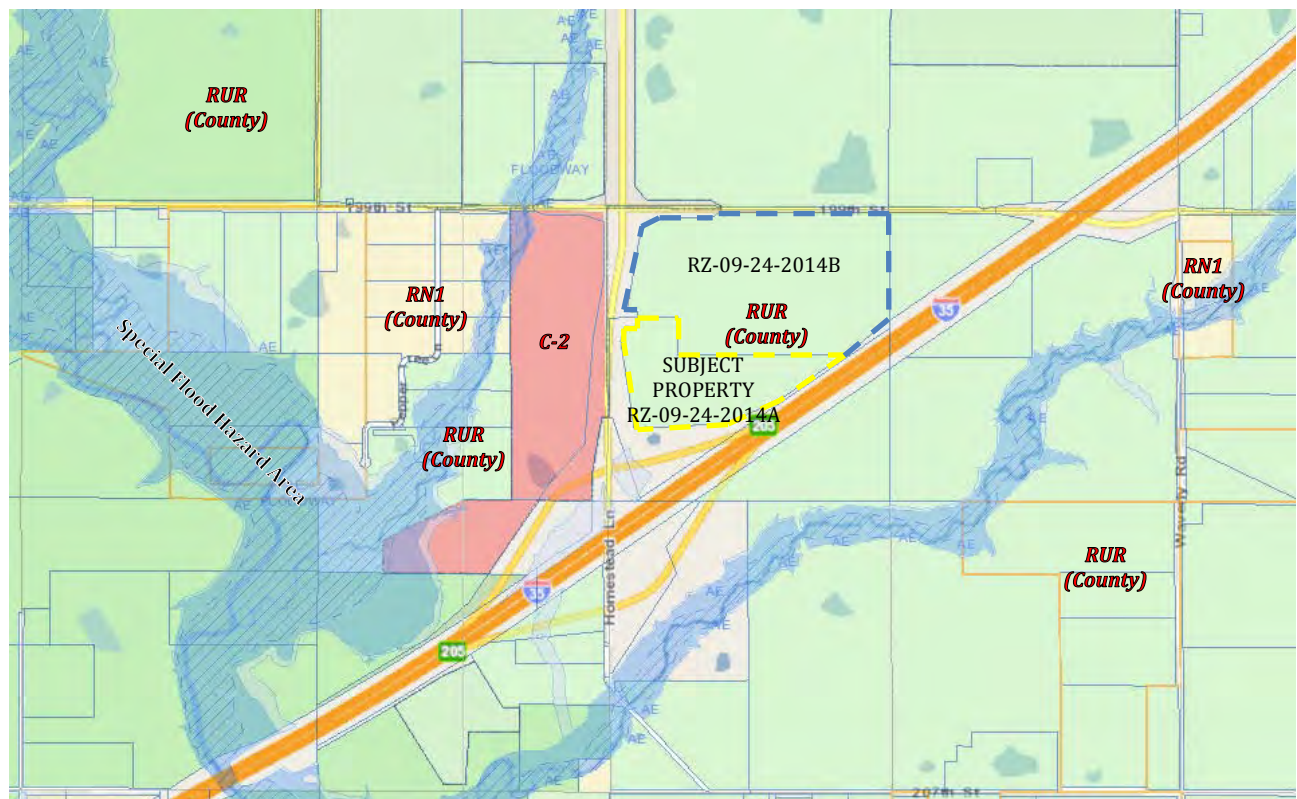
and out movements. 199th Street is a 50 foot wide, paved road located North of the adjoining tract. 199th Street extends to the East across I-35 and The Zoning Exhibit submitted as part of this request shows interior roads/driveways which would allow for access by the subject property to 199th Street.

2. The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane. A stormwater plan should be submitted to the City Engineer prior to development of the property.
3. The subject property does not have any areas designated as Special Flood Hazard Areas. A small area of Zone X, Future Conditions Floodplain is located just to the Southwest of the property in the interchange area.
4. The property does not have direct access to sanitary sewer service and the property owner may wish to self-form a benefit district. The gravity sewer line installed as part of the Big Bull Creek Waste Water Treatment Facility and Conveyance project is located on the West side of the Thorp property to the West of Homestead Lane. This sewer line is approximately 750' to the West of Homestead Lane.
5. The property is located within the service area of Rural Water District No. 7. A 12-inch water main extends from the North side of 199th Street to the Southeast quadrant of the intersection of 199th and Homestead Lane. From the Southeast quadrant a 2 inch main extends to near the Northwest corner of the subject property.
6. Police protection is provided by the Johnson County Sheriff's Department under contract with the City of Edgerton. Fire protection is provided by Johnson County Rural Fire District No. 1. A fire station is located in the City of Edgerton, approximately 1.5 miles to the west.

Property Zoning History

The subject property was recently annexed into the City of Edgerton on January 8, 2015, in anticipation of commercial development. Prior to that the property was located in unincorporated Johnson County, and zoned RUR, Rural District.

Zoning on Subject and Adjacent Property



Staff Analysis

Staff has reviewed this rezoning application with respect to the Edgerton Unified Development Code, the laws in Kansas, and the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. The following is staff's review.

1. Need for the Proposed Change. The subject property has County RUR, Rural Zoning, which allows only agricultural, residential, and residential accessory uses. The anticipated uses of the property are highway service commercial. The C-2 Zoning District is the most compatible designation for these uses.
2. Magnitude of the Change. The existing County zoning is considered a holding designation due to the property's location near other planned C-2 development. The property is vacant, with one farm building. The magnitude of change is not considered extreme or rare when property is being developed for its planned end use.
3. Whether or not the change will bring harm to established property rights. The property most likely to be affected by this proposed zoning is the parcel located to the Northeast known as 31570 W 199th Street, which has an existing home. It is not anticipated that there will be any substantial impacts as the dwelling is approximately 1,900 feet from the Northeast corner of the subject property. While this adjoining dwelling is currently located in the unincorporated county and zoned RUR, Rural, the City of Edgerton's Comprehensive Plan anticipates Business Park/Industrial uses in this area. Separate Site Plan review and approval will be required before building permits can be issued. Part of a Site Plan review will include attention to buffering and setbacks, stormwater management and possibly transition of uses between adjoining uses and any proposed commercial use. This Site Plan review will help mitigate impact that might occur to adjacent properties.
4. Effective use of Land. Commercial development at this location is an effective and efficient use of the property, which is near other C-2 zoned property and the I-35 interchange. Its location facilitates ease of use by highway and intermodal/logistics park traffic and concentrates traffic, noise, and activity in one location versus such uses being dispersed throughout the community.
5. The extent to which there is a need in the community for the uses allowed in the proposed zoning. Commercial uses at this location will provide useful resources to support and serve the BNSF intermodal and logistics park facilities to the north and traffic along I-35 to the South.
6. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space. The immediate area is in transition from rural to commercial, with the new I-35 interchange and other C-2 zoning adjacent. The area is currently primarily rural, but with the interchange and the intermodal and logistics park developments to the north, the character of the area is changing significantly. However, the nearby regional parks and floodplains areas will generally remain undeveloped, acting as open space, which will help to retain some of the rural character of the area.

7. Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties. The proposed zoning is compatible with the planned future uses of adjacent C-2 zoned property to the West. While officially part of a separate request, an application for a Zoning Amendment has also been submitted on the property to the North. This request includes C-2 zoning on the Western portions of the property and L-P District on the Eastern portion and if approved would be compatible with this request. Prior to the issuance of any building permit the property will be required to go through the Site Plan review process. This process will allow the Planning Commission to take into consideration possible impacts to adjacent properties and ways that these can be mitigated.
8. Suitability of the uses to which the property has been restricted under its existing zoning. With the construction the I-35 and Homestead Lane interchange, BNSF's intermodal facility and other logistics park uses in the area, the existing County zoning is no longer appropriate for this property. The best use of this property is Commercial.
9. Length of time the subject property has remained vacant under the current zoning designation. The property previously had a dwelling located on it but the dwelling was required to be removed as part of the improvements for Homestead Lane. Two agricultural structures remain on the property and the property has remained in agricultural use.
10. The extent to which the zoning amendment may detrimentally affect nearby property. While it is anticipated that the development of this site for commercial purposes will cause additional traffic and noise, it is not anticipated that there will be any significant detrimental effects to nearby property. Additional commercial properties are currently located between the subject property and the group of dwellings located West of Homestead Lane. It is also anticipated that other nearby sites will continue to transition to commercial and industrial uses. The Site Plan review process will allow the Planning Commission to look at any possible impacts and place requirements (such as buffering, setbacks and stormwater management) on how the site may be developed in order to mitigate any detrimental effects.
11. Consideration of rezoning applications requesting Planned Development Districts (PUD) for multifamily and non-residential uses should include architectural style, building materials, height, structural mass, siting, and lot coverage. This is not a request for a PUD.
12. The availability and adequacy of required utilities and services to serve the uses allowed in the proposed zoning. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services. Homestead Lane is a recently constructed, paved street designed to support intermodal and logistics park traffic. Utilities will be provided by the developer in conjunction with development of the property. Among other improvements, this will require the extension of sewer to the site. The sewer line is currently located on the West side of the property on the West side of Homestead (750 feet West of Homestead).
13. The extent to which the uses allowed in the proposed zoning would adversely affect the capacity or safety of that portion of the road network influenced by the uses, or present parking problems in the vicinity of the property. Homestead Lane is improved to a standard that can accommodate commercial and industrial traffic in the area. The site will need to be

designed to allow traffic to have access to 199th Street as access to Homestead Lane is limited to right in/out. Improvements may be needed to 199th Street to provide for proper traffic flow with increased traffic and turning movements. The City is currently working on a Waverly Road upgrade project in which Waverly Road, currently a gravel road, will be upgraded to a concrete heavy-haul road and will also include a connection to 199th Street which will be near the Northeast corner of this site. The developer will be required to comply with the City's UDC off-street parking requirements as part of the Site Plan review process.

14. The environmental impacts that the uses allowed in the proposed zoning would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm. The City will follow NPDES (stormwater management requirements) guidelines that require the developer to address runoff and water pollution mitigation measures as part of the development of the property. Mitigation of pollution in the form of water, air, noise, light, etc, will be addressed as part of the Site Plan review process.
15. The economic impact on the community from the uses allowed in the proposed zoning. Prior Very little commercial development exists in the City. Uses allowed in C-2, if built, have the potential to benefit City residents and the community in a positive way by providing needed services, jobs, and tax revenues.
16. The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial. There would be little gain to the public health, safety and welfare of the City of Edgerton if the zoning is denied. The City would be adversely impacted due to lost opportunity for jobs and tax revenue if commercial uses were to locate in another nearby community.
17. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton. The Future Land Use Map (Attached) from the Comprehensive Plan for the City of Edgerton shows the West side of Homestead and a small portion of the Northeast quadrant of the interchange as Commercial (Retail/Office). North of the anticipated commercial area is shown as Business Park/Industrial. While the area shown as commercial on the Future Land Use Map does not appear to extend to the Northern end of the subject property, a Comprehensive Plan (and the Future Land Use Map) are designed to be a guide of what may be expected and not an exact representation. The following is a relevant excerpt from the City's Comprehensive Plan.

New Interchange on Interstate 35: *The City should take proactive steps to maximize the economic potential of I-35 and Homestead Lane. Areas around an interchange are often prominent locations for retail and commercial developments that provide substantial economic diversification to a City's land use and tax base.*

Taking into consideration the Future Land Use Map together with the text describing the anticipated uses around the Homestead interchange of the Comprehensive Plan it can be determined that the request can be considered as consistent with the Comprehensive Plan. The only question that may need to be asked is if there is a limit to the distance that any commercial zoning should extend to the North and East at this location. It would also appear

that commercial uses on the West side of Homestead are being used as a transitional use from the business park/industrial uses which are expected on the East side of Homestead.

18. The recommendation of professional staff. See Recommendation below

Recommendation

City staff recommends **approval** of the proposed rezoning of the subject property from County RUR, Rural District to C-2, City of Edgerton Heavy Service Commercial District, with the following stipulations:

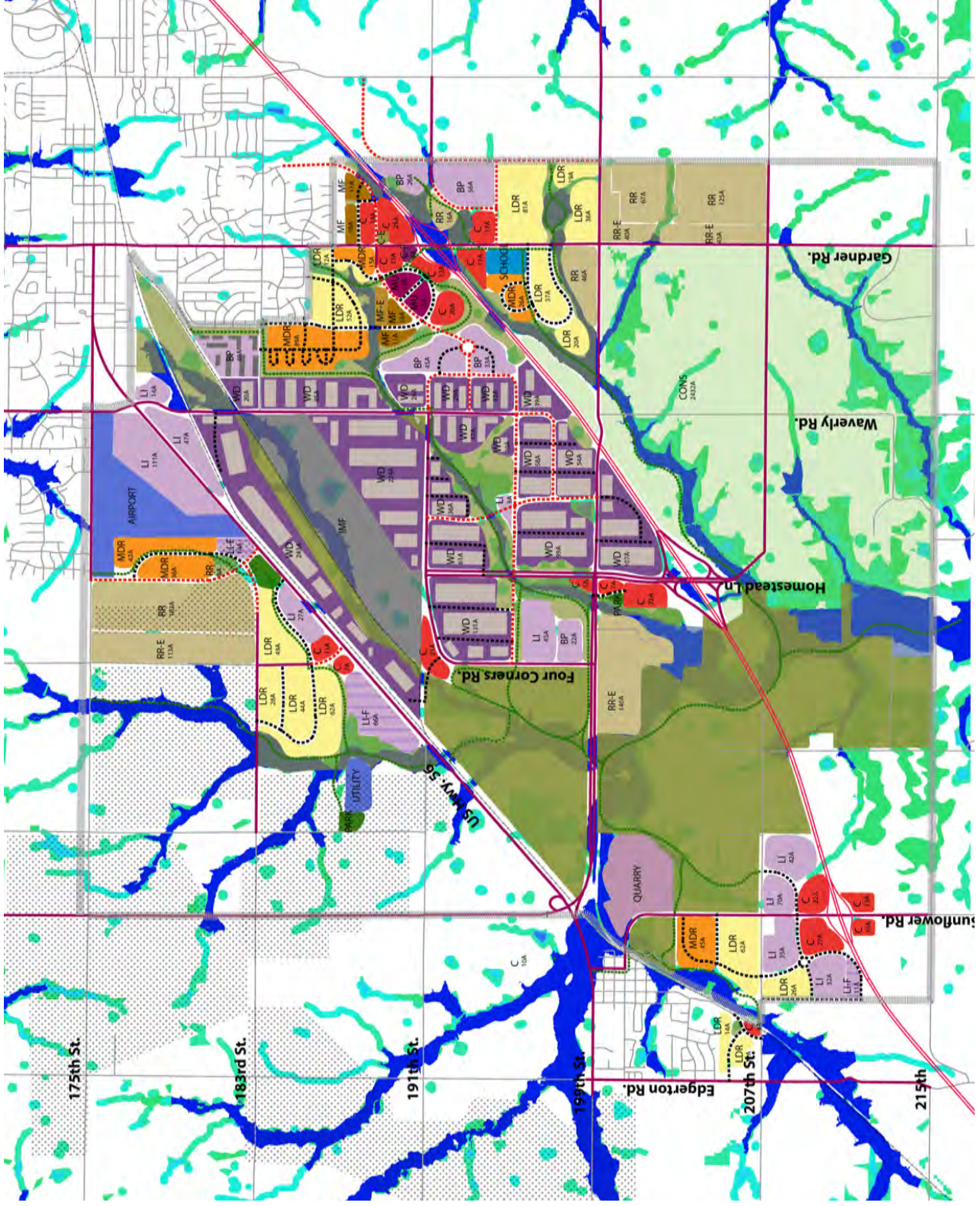
1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

Attachments

City of Edgerton Future Land Use Map
Southwest Area Plan – The Preferred Land Use Plan
Application for Rezoning No. RZ-09-24-2014A



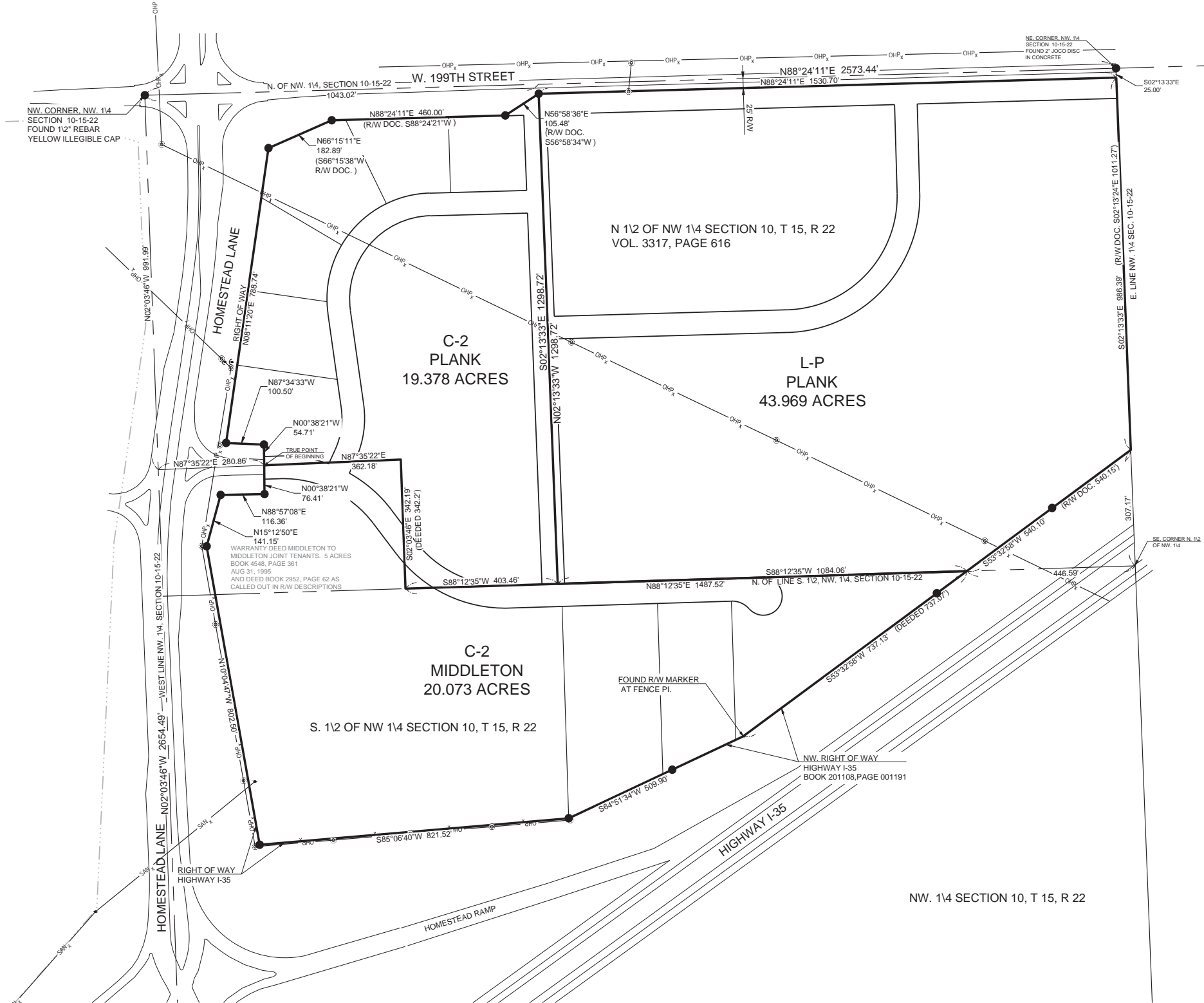
Figure 5.1: Preferred Land Use Concept



Preferred Land Use Concept

- Rural Residential (RR)
- Conservation Development (CONS)
- Low Density Urban Residential (LDR)
- Medium Density Urban Residential (MDR)
- High Density Urban Residential (HDR)
- Commercial (C)
- Mixed Use (MU)
- Business Park or Limited Industry (BP and LI)
- Warehousing and Distribution (WD)
- Civic
- Parks and Open Space
- Areas with Concentrations of Oil Wells

\\projects\2014\14-1082.0 Survey\14-1082.0 Survey\14-1082.0 Arch\Full bleed D (36.00 x 24.00 inches). 1:1



Middleton Property C-2

Description:

Part of the Northwest One-Quarter of Section 10, Township 15 South, Range 22 East of the 6th Principal Meridian, Johnson County, Kansas. Lying North of Highway 35 as now established, being more particularly described as follows:

Commencing at the Northwest corner of the Northwest 1/4, Section 10, Township 15 South, Range 22 East; thence South 02 degrees 03 minutes 46 seconds East along the West line of the said Northwest 1/4 a distance of 991.99 feet to a point; thence North 87 degrees 35 minutes 22 seconds East, 280.86 feet to the TRUE POINT OF BEGINNING; thence continuing North 87 degrees 35 minutes 22 seconds East, 362.18 feet to a point; thence South 02 degrees 03 minutes 46 seconds East, 342.19 feet (deeded 342.20 feet) to a point on the North line of the South 1/2 of the said Northwest 1/4; thence North 88 degrees 12 minutes 35 seconds East along the said North line, 1487.52 feet to a point on the Northwesterly right-of-way of Highway I-35 as recorded in Book 201108, Page 1191; thence South 53 degrees 32 minutes 58 seconds West along the said highway right-of-way, 737.13 feet (deed 737.07 feet) to a point; thence South 64 degrees 51 minutes 34 seconds West along said highway right-of-way, 509.90 feet to a point; thence South 85 degrees 06 minutes 40 seconds West along said highway right-of-way, 821.52 feet to a point; thence North 10 degrees 04 minutes 47 seconds West along said highway right-of-way, 802.50 feet to a point; thence North 15 degrees 12 minutes 50 seconds East along said highway right-of-way, 141.15 feet to a point; thence North 88 degrees 57 minutes 08 seconds East along said highway right-of-way, 116.36 feet to a point; thence North 0 degrees 38 minutes 21 seconds West along said highway right-of-way, 76.41 feet to the TRUE POINT OF BEGINNING and containing 25.0737 acres, more or less.

Plank Property C-2

Description:

Part of the North One-Half of the Northwest One-Quarter of Section 10 Township 15 South Range 22 East of the 6th Principal Meridian, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Northwest corner of the Northwest One-Quarter of said Section 10 Township 15 South Range 22 East; thence South 02 degrees 03 minutes 46 seconds East along the West line of the said Northwest One-Quarter a distance of 991.99 feet to a point; thence North 87 degrees 35 minutes 22 seconds East 286.86 feet to the True Point of Beginning of the herein described tract; thence North 00 degrees 38 minutes 21 seconds West along the highway right of way for Homestead Lane as now established, a distance of 54.71 feet to a point; thence North 87 degrees 34 minutes 33 seconds West along said right of way a distance of 100.50 feet to a point; thence North 08 degrees 11 minutes 20 seconds East a distance of 788.74 feet along said right of way to a point; thence North 66 degrees 15 minutes 11 seconds East (per right of way document South 66 degrees 15 minutes 38 seconds West) a distance of 182.89 feet to point; thence North 88 degrees 24 minutes 11 seconds East along said highway right of way and along a line parallel to the North line of the said Northwest One-Quarter (per right of way document South 88 degrees 24 minutes 21 seconds West) a distance of 460.00 feet to a point; thence North 56 degrees 58 minutes 36 seconds East (per right of way document South 56 degrees 58 minutes 34 seconds West) a distance of 105.48 feet to a point that is 25 feet South of the North line of the said Northwest One-Quarter; thence South 02 degrees 13 minutes 33 seconds East a distance of 1398.72 feet to a point on the North line of the South One-Half of the said Northwest One-Quarter; thence South 88 degrees 12 minutes 35 seconds West along the North line of the South One-Half of the said Northwest One-Quarter a distance of 403.46 feet to a point; thence North 02 degrees 03 minutes 46 seconds West a distance of 342.19 feet (deeded 342.22 feet) to a point; thence South 87 degrees 35 minutes 22 seconds West a distance of 362.18 feet to the True Point of Beginning and containing 19.378 acres, more or less.

Plank Property L-P

Description:

Part of the North One-Half of the Northwest One-Quarter of Section 10 Township 15 South Range 22 East of the 6th Principal Meridian, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Northwest corner of the Northwest One-Quarter of said Section 10 Township 15 South Range 22 East; thence South 02 degrees 03 minutes 46 seconds East along the West line of the said Northwest One-Quarter a distance of 991.99 feet to a point; thence North 87 degrees 35 minutes 22 seconds East 286.86 feet to a point; thence North 00 degrees 38 minutes 21 seconds West along the highway right of way for Homestead Lane as now established, a distance of 54.71 feet to a point; thence North 87 degrees 34 minutes 33 seconds West along said right of way a distance of 100.50 feet to a point; thence North 08 degrees 11 minutes 20 seconds East a distance of 788.74 feet along said right of way to a point; thence North 66 degrees 15 minutes 11 seconds East (per right of way document South 66 degrees 15 minutes 38 seconds West) a distance of 182.89 feet to point; thence North 88 degrees 24 minutes 11 seconds East along said highway right of way and along a line parallel to the North line of the said Northwest One-Quarter (per right of way document South 88 degrees 24 minutes 21 seconds West) a distance of 460.00 feet to a point; thence North 56 degrees 58 minutes 36 seconds East (per right of way document South 56 degrees 58 minutes 34 seconds West) a distance of 105.48 feet to a point that is 25 feet South of the North line of the said Northwest One-Quarter, said point being the True Point of Beginning of the herein described tract; thence North 88 degrees 24 minutes 11 seconds East along a line parallel to and 25 feet South of the North line of the said Northwest One-Quarter, a distance of 1530.70 feet to a point on the East line of the said Northwest One-Quarter; thence South 02 degrees 13 minutes 33 seconds East along the East line of the said Northwest One-Quarter (per right of way document South 02 degrees 13 minutes 24 seconds East 1011.27 feet) a distance of 986.39 feet to a point in the Northerly right of way line of I-35 as now established; thence South 53 degrees 32 minutes 58 seconds West along the North line of the said I-35 right of way (per right of way document 540.15 feet) a distance of 540.10 feet to a point on the North line of the South One-Half of the said Northwest One-Quarter; thence South 88 degrees 12 minutes 35 seconds West along the North line of the South One-Half of the said Northwest One-Quarter a distance of 1084.06 feet to a point; thence North 02 degrees 13 minutes 33 seconds West a distance of 1398.72 feet to the True Point of Beginning and containing 43.969 acres, more or less.



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WWW.SCHLAGELASSOCIATES.COM
Kansas State Certificates of Authority
#E-236 #LX-29 #LS-54

ZONING EXHIBIT
PLANK, MIDDLETON PROPERTY
PART OF NW. 1/4 OF SECTION 10, T 15S, R 22E
JOHNSON COUNTY, KANSAS

REVISION DATE	DESCRIPTION
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AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Ordinance No. 997 Adopting a Recommendation By the City Planning Commission to Approve Rezoning of Approximately 63.35 acres Of Land [Located on the East side of Homestead Lane and South of 199th Street] In Edgerton, Kansas From Johnson County RUR, Rural Zoning to a combination of City of Edgerton C-2, Heavy Service Commercial (19.38 acres) and L-P, Logistics Park (43.97 acres) Districts

Department: Community Development

Background/Description of Item: The City of Edgerton received an application RZ-09-24-2014B for rezoning from Paul and Naomi Middleton, requesting to rezone approximately 63.35 acres located on the East side of Homestead Lane and South of 199th Street from Johnson County RUR to City of Edgerton Heavy Service Commercial (C-2) and Logistics Park (L-P) zoning. The property requested to be rezoned was annexed into the City of Edgerton in January of 2015. The applicants have requested to rezone the Western portion of the parcel to the C-2 District to allow development which would provide services to the Logistics Park and travelers along Interstate 35 and for Eastern portion of the parcel to the L-P District to match the anticipated uses as shown on the Future Land Use Map and that is anticipated on properties to the North.

This rezoning application was reviewed with respect to the Edgerton Comprehensive Plan, Zoning and Subdivision Regulations, and the laws in Kansas, in particular the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. Attached is the staff report including the review of this rezoning based on the Golden Criteria. The Planning Commission held a public hearing on March 10, 2015 regarding this rezoning. The Planning Commission recommended approval of the application with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

Enclosure: Draft Ordinance No. 997
Staff Report from March 10, 2015 Planning Commission
Application RZ-09-24-2014B

Related Ordinance(s) or Statute(s):

Recommendation: Approve Ordinance No. 997 Adopting a Recommendation By the City Planning Commission to Approve Rezoning of Approximately 63.35 acres Of Land [Located on the East side of Homestead Lane and South of 199th Street] In Edgerton, Kansas From Johnson County RUR, Rural Zoning to a combination of City of Edgerton C-2, Heavy Service Commercial (19.38 acres) and L-P, Logistics Park (43.97 acres) Districts

Funding Source: N/A

Prepared by: Kenneth Cook, Community Development Director
Date: March 17, 2015

ORDINANCE NO. 997

AN ORDINANCE ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 63 ACRES OF LAND [LOCATED NORTHEAST OF THE INTERSECTION OF 199TH STREET AND HOMESTEAD ROAD] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON C-2 HEAVY SERVICE COMMERCIAL DISTRICT FOR THE WESTERN PORTION OF THE PROPERTY AND FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON L-P LOGISTICS PARK DISTRICT FOR THE EASTERN PORTION OF THE PROPERTY

WHEREAS, the City Planning Commission has recommended that a rezoning request for approximately 63 acres of land located Southeast of the intersection of 199th Street and Homestead Road -- from Johnson County RUR Rural zoning to City of Edgerton C-2 Heavy Service Commercial District for the Western portion of the property, and from Johnson County RUR Rural zoning to City of Edgerton L-P Logistics Park District for the Eastern portion of the property -- be approved, the legal descriptions of which are set forth below; and

WHEREAS, all newspaper and mailed notifications were performed and a public hearing was properly held before the City Planning Commission.

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

Section 1. That the following legally described property [located Southeast of the intersection of 199th Street and Homestead Road] is hereby rezoned from Johnson County RUR Rural zoning to City of Edgerton C-2 Heavy Service Commercial District, and City Staff is directed to reflect said rezoning in the City's Official Zoning map and other City records:

Part of the North One-Half of the Northwest One-Quarter of Section 10 Township 15 South Range 22 East of the 6th Principal Meridian, Johnson County, Kansas, being more particularly described as follows:
Commencing at the Northwest corner of the Northwest One-Quarter of said Section 10 Township 15 South Range 22 East; thence South 02 degrees 03 minutes 46 seconds East along the West line of the said Northwest One-Quarter a distance of 991.99 feet to a point;

thence North 87 degrees 35 minutes 22 seconds East 286.86 feet to the True Point of Beginning of the herein described tract; thence North 00 degrees 38 minutes 21 seconds West along the highway right of way for Homestead Lane as now established, a distance of 54.71 feet to a point; thence North 87 degrees 34 minutes 33 seconds West along said right of way a distance of 100.50 feet to a point; thence North 08 degrees 11 minutes 20 seconds East a distance of 788.74 feet along said right of way to a point; thence North 66 degrees 15 minutes 11 seconds East (per right of way document South 66 degrees 15 minutes 38 seconds West) a distance of 182.89 feet to point; thence North 88 degrees 24 minutes 11 seconds East along said highway right of way and along a line parallel to the North line of the said Northwest One-Quarter (per right of way document South 88 degrees 24 minutes 21 seconds West) a distance of 460.00 feet to a point; thence North 56 degrees 58 minutes 36 seconds East (per right of way document South 56 degrees 58 minutes 34 seconds West) a distance of 105.48 feet to a point that is 25 feet South of the North line of the said Northwest One-Quarter; thence South 02 degrees 13 minutes 33 seconds East a distance of 1398.72 feet to a point on the North line of the South One-Half of the said Northwest One-Quarter; thence South 88 degrees 12 minutes 35 seconds West along the North line of the South One-Half of the said Northwest One-Quarter a distance of 403.46 feet to a point; thence North 02 degrees 03 minutes 46 seconds West a distance of 342.19 feet (deeded 342.22 feet) to a point; thence South 87 degrees 35 minutes 22 seconds West a distance of 362.18 feet to the True Point of Beginning and containing 19.378 acres, more or less.

Section 2. That the following legally described property [located Southeast of the intersection of 199th Street and Homestead Road] is hereby rezoned from Johnson County RUR Rural zoning to City of Edgerton L-P Logistics Park District, and City Staff is directed to reflect said rezoning in the City's Official Zoning map and other City records:

Part of the North One-Half of the Northwest One-Quarter of Section 10 Township 15 South Range 22 East of the 6th Principal Meridian, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Northwest corner of the Northwest One-Quarter of said Section 10 Township 15 South Range 22 East; thence South 02 degrees 03 minutes 46 seconds East along the West line of the said Northwest One-Quarter a distance of 991.99 feet to a point; thence North 87 degrees 35 minutes 22 seconds East 286.86 feet to a point; thence North 00 degrees 38 minutes 21 seconds West along the highway right of way for Homestead Lane as now established, a distance of 54.71 feet to a point; thence North 87 degrees 34 minutes 33 seconds West along said right of way a distance of 100.50 feet to a point; thence North 08 degrees 11 minutes 20 seconds East a distance of 788.74 feet along said right of way to a point; thence North 66 degrees 15 minutes 11 seconds East (per right of way document South 66 degrees 15 minutes 38 seconds West) a distance of 182.89 feet to point; thence North 88 degrees 24 minutes 11 seconds East along said highway right of way and along a line parallel to the North line of the said Northwest One-Quarter (per right of way document South 88 degrees 24 minutes 21 seconds West) a distance of 460.00 feet to a point; thence North 56 degrees 58 minutes 36 seconds East (per right of way document

South 56 degrees 58 minutes 34 seconds West) a distance of 105.48 feet to a point that is 25 feet South of the North line of the said Northwest One-Quarter, said point being the True Point of Beginning of the herein described tract; thence North 88 degrees 24 minutes 11 seconds East along a line parallel to and 25 feet South of the North line of the said Northwest One-Quarter, a distance of 1530.70 feet to a point on the East line of the said Northwest One-Quarter; thence South 02 degrees 13 minutes 33 seconds East along the East line of the said Northwest One-Quarter (per right of way document South 02 degrees 13 minutes 24 seconds East 1011.27 feet) a distance of 986.39 feet to a point in the Northerly right of way line of I-35 as now established; thence South 53 degrees 32 minutes 58 seconds West along the North line of the said I-35 right of way (per right of way document 540.15 feet) a distance of 540.10 feet to a point on the North line of the South One-Half of the said Northwest One-Quarter; thence South 88 degrees 12 minutes 35 seconds West along the North line of the South One-Half of the said Northwest One-Quarter a distance of 1084.06 feet to a point; thence North 02 degrees 13 minutes 33 seconds West a distance of 1398.72 feet to the True Point of Beginning and containing 43.969 acres, more or less.

Section 3. That the Governing Body, in making its decision on the rezoning, considered City Staff's comments and recommendations. The Governing Body also based its decision on the following criteria:

- a) The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
- b) Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties.
- c) The extent to which the zoning amendment may detrimentally affect nearby property has been addressed.
- d) The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial.
- e) Consistency with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of Edgerton.

Section 3. This ordinance shall take effect and be enforced from and after its publication once in the official city newspaper.

ADOPTED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 26th DAY OF MARCH, 2015.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

JANIECE RAWLES, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney

STAFF REPORT

February 9, 2015

To: Edgerton Planning Commission
Fr: Kenneth Cook, AICP, CFM, Community Development Director/Zoning Administrator
Re: Application RZ-09-24-2014B for rezoning of approximately 63 acres located East of Homestead Road, South of 191st Street from RUR, County Rural Zoning District, to C-2, Heavy Service Commercial District & L-P, Logistics Park District

APPLICATION INFORMATION

Applicant/Property Owner: Paul and Naomi Middleton

Agent: Vivian Plank

Requested Action: Rezoning from RUR, County Rural Zoning District, to C-2, Heavy Service Commercial District & L-P, Logistical Park District

Legal Description: Part of Section 10, Township 15, Range 22

Site Address/Location: Southeast of the Intersection of 199th Street & Homestead.

Existing Land Use: Agriculture

Existing Zoning and Uses: County RUR, Rural District zoning

Existing Improvements: None

Site Size: Approximately 63 acres

Reason for Rezoning Request: The City of Edgerton has received an application requesting that the property be rezoned to C-2, Heavy Service Commercial District and L-P, Logistics Park District. The City's Unified Development Code (UDC) defines the C-2 District as *"composed of certain uses that require extensive lot frontages, storage requirements, promote heavy traffic generation, extended hours (of) operations, and are customarily associated with intensive commercial use of land."* The L-P District is described as:

The purpose of the Logistics Park, L-P District is to create a limited multimodal industrial zone that provides for a modern type of industrial uses or industrial park created to support activities related to trade and rail and other transport service. Limitations are placed on the uses in this district to significantly restrict the outside activities and outside storage of materials, noise, vibration, smoke, pollution, fire and explosive hazard, glare and other potentially adverse influences.

This zone is intended for industrial parks and larger, cleaner types of industries. The manufacturing uses should be conducted within a totally enclosed building. Any activities conducted outside should be screened and buffered, and external effects such as excessive noise or odor should not extend beyond the property lines. Residential uses should be discouraged from locating near the L-P District to protect the industries from residential complaints.

Areas should not be zoned to the L-P District unless they are located adjacent or near to arterial thoroughfares capable of carrying commercial and truck traffic, as well as being located close to major truck routes. It is the general intent of this District to provide for a mutually beneficial, economically viable, well-planned development poised for long-term success including:

- 1. To provide for the distribution of and appropriate relationships between various land uses and to minimize conflict between land uses;*
- 2. To describe desired future physical conditions within the L-P District;*
- 3. To manage growth in an orderly manner; and*
- 4. To serve as a basis for future development recommendations within the L-P District and set the precedent for sound planning and sustainable development practices throughout the L-P District area of influence.*

A separate application (RZ-09-24-2014A) has also been received requesting the rezoning of the adjoining property to the South to the C-2 District. The applicants have requested for the subject property to be rezoned to the C-2 District in anticipation of the need for commercial uses which will serve the 1,500 acre master planned logistics park and intermodal facility and interstate traffic. The applicants also request that the Eastern portion of the subject property be rezoned to the L-P District. The L-P District matches the anticipated use as shown on the Future Land Use Map and that is anticipated on properties to the North.

The subject property is located just North of the I-35 interchange with Homestead Lane. The West side of Homestead Lane is currently zoned for the C-2 District. The Future Land Use Map for the City of Edgerton shows the use of the properties on the West side of Homestead Lane and North of I-35 as Commercial (Retail/Office). A very small area directly North of the interchange and on the East side of Homestead Lane is shown on the Future Land Use Map as Commercial with the remainder of this area being shown as Business Park/Industrial. The Preferred Land Use Plan of the Southwest Area Plan, while not adopted by the City, shows commercial uses on the West side of Homestead Lane with the subject property being shown as Warehousing and Distribution.

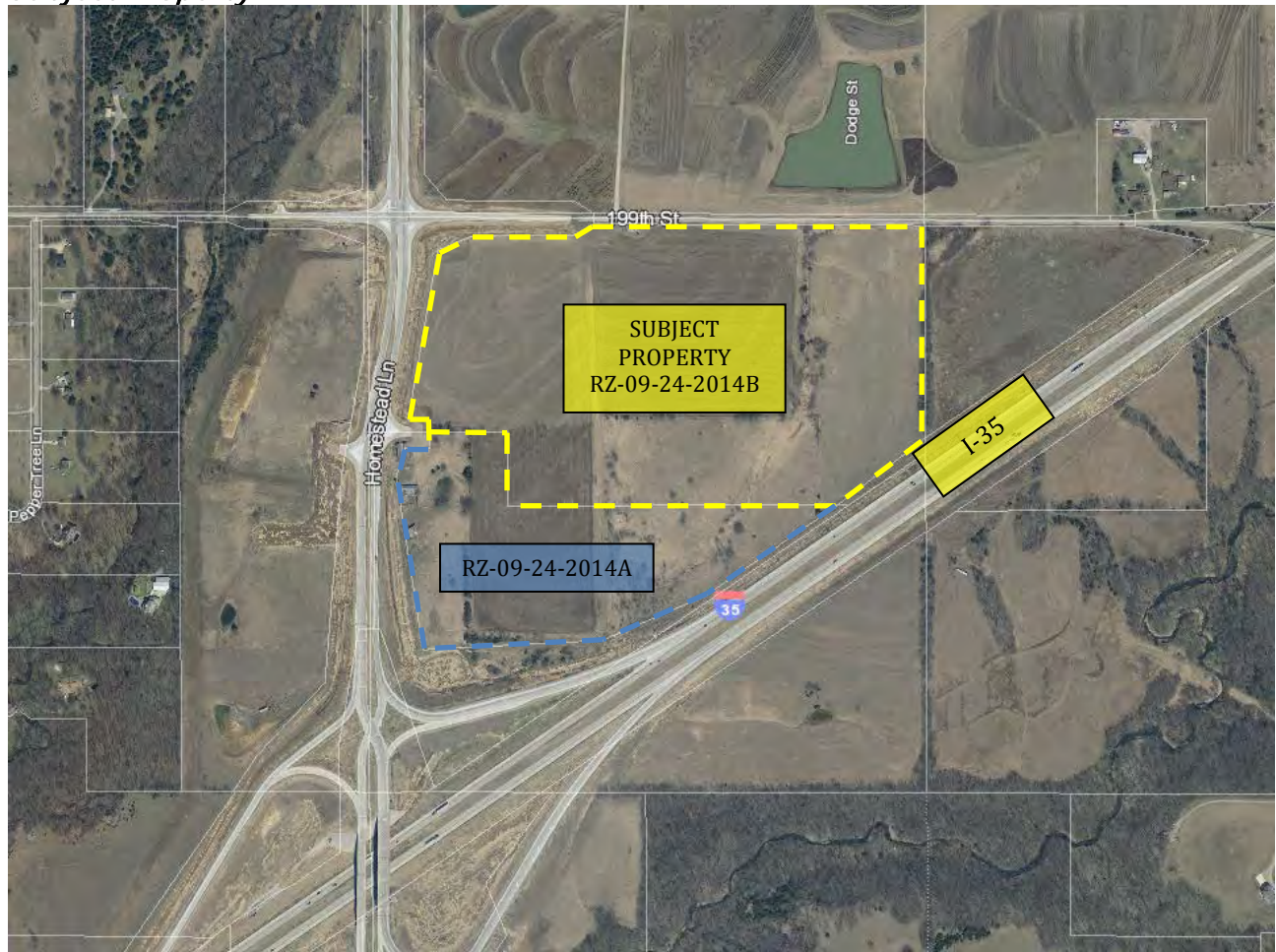
Background Information

The subject property is currently zoned County RUR and the annexation of the property was approved by the City Council on January 8, 2015 by Ordinance #990. The site has been used for agricultural purposes.

The attached Zoning Exhibit provides a proposed idea as to how the subject property might be developed along with the adjoining tract to the North. Staff understands that KDOT has retained access control along the entire Western side of this property and extending along the adjoining property to the North up to 199th Street. One access point has been permitted at the shared boundary line between these two properties. This access point is restricted to right turns both in

and out of the property and does not allow access to/from the Southbound lanes of Homestead Lane.

Subject Property



The uses listed for the **C-2, Heavy Service Commercial District** (Section 4.3) in the City of Edgerton's Unified Development Code are as follows:

C-2 District – Permitted Uses.

1. All uses permitted by right or condition in the C-1 district (*See italicized below*)
2. Automobile sales, new and used.
3. Truck stops
4. Car and truck washes
5. Lumber yards
6. Laboratory, medical or dental
7. Manufactured home sales
8. Motels and hotels; meeting facilities
9. Automobile service and repair
10. Automobile body shop
11. Motorcycle sales and service
12. Trailer sales and rental

13. Use of a single family residential structure that is inhabited and being used as a residence as of June 10, 2008 and such use was a previously legal conforming use, except that a residential use that is voluntarily rezoned after June 10, 2008 shall only be allowed to continue in accordance with a Conditional Use permit granted pursuant to Section 4.3D. (Ord. 844; 2008)

C-2 District – Conditional Uses.

1. Communications towers over 60 feet in height.
2. Asphalt or concrete plant.
3. Camps, travel trailer, or RV parks.
4. Adult entertainment – sexually oriented businesses
5. Use of single family structure that was a previously legal conforming use and is inhabited and being used as a residence at the time the landowner makes application for rezoning. Any conditional use permit granted pursuant to this provision shall have a duration of no more than one year after the effective date of the ordinance approving the conditional use permit. (Ord. 844; 2008)

C-1 District – Permitted Uses

- | | | |
|---|--|---|
| 1. Ambulance service. | 18. Cameras and photo equipment. | 41. Health or fitness clubs. |
| 2. Amusement and video arcades. | 19. Crafts. | 42. Health related sales and services. |
| 3. Automobile service station. | 20. Church or place of worship. | 43. Home lighting and fixtures. |
| 4. Auction room. | 21. Clubs or cultural group. | 44. Housewares and kitchenware. |
| 5. Alterations and tailoring. | 22. Computer sales and service. | 45. Interior decorating. |
| 6. Apparel. | 23. Carpeting and floor covering. | 46. Internet providers. |
| 7. Antiques. | 24. Caterer. | 47. Jewelry. |
| 8. Apartments located above the first floor of a business. | 25. Convenience stores, with or without gasoline sales. | 48. Laundry, self-serve. |
| 9. Appliance and electronics repair. | 26. Drugs and cosmetics. | 49. Locksmiths. |
| 10. Art galleries and studios. | 27. Dry cleaners. | 50. Medical services and offices. |
| 11. Automotive parts, no outdoor storage. | 28. Discount stores. | 51. Microbrewery. |
| 12. Automated teller machine. | 29. Drive through food service. | 52. Music and musical instruments. |
| 13. Bakeries and confectionery establishments. | 30. Exterminator, pest. | 53. Office, general. |
| 14. Barbers, hair styling and similar personal services. | 31. Farmers market. | 54. Office supplies. |
| 15. Bed and breakfast. | 32. Florist and gift shops. | 55. Optical shops. |
| 16. Books and periodicals. | 33. Food store. | 56. Package sales of alcoholic liquor or cereal malt beverages. |
| 17. Bus passenger station. | 34. Financial institutions, including drive-through banks. | 57. Paint and wallpaper. |
| | 35. Furniture store. | 58. Pet stores. |
| | 36. Funeral home, mortuary. | 59. Photocopying and retail printing. |
| | 37. Greeting cards and stationery. | 60. Picture framing. |
| | 38. Gasoline service stations. | 61. Postal and mailing services. |
| | 39. Garden supplies. | |
| | 40. Hardware stores. | |
| 62. Publicly owned and operated community buildings, public museums, public libraries, or meeting facilities. | | |
| 63. Restaurants and other eating establishments, but this does not include drive through facilities. | | |

64. *Single family residence, but only if the structure was inhabited and being used as a residence as of June 10, 2008, and such use was a previously legal conforming use, except that a residential use that is voluntarily rezoned after June 10, 2008 shall only be allowed to continue in accordance with a conditional use permit granted pursuant to Section 4.2D. (Ord. 843)*
- | | | |
|---|---|--|
| 65. <i>Shoe repair.</i> | 69. <i>Theaters, indoor.</i> | 74. <i>Video rentals, except adult videos.</i> |
| 66. <i>Sporting goods and bicycles.</i> | 70. <i>Toys and hobby supplies.</i> | 75. <i>Reserved.</i> |
| 67. <i>Taxidermist.</i> | 71. <i>Public utilities.</i> | 76. <i>Accessory uses.</i> |
| 68. <i>Taverns and bars.</i> | 72. <i>U.S. Post offices.</i> | |
| | 73. <i>Veterinarian (domesticated pets only).</i> | |
77. *Any commercial or office use that meets the intent and purpose of this section and is keeping with the general character of the district. (Ord. 843; 2008)*

C-1 District – Conditional Uses

1. *Parking lots detached from the principal use.*
 2. *Recycling collection station.*
 3. *Reserved.*
 4. *Communications towers over 60 feet in height*
 5. *Amusement parks and video arcades*
 6. *Car washes*
 7. *Self-storage*
 8. *Automobile service and repair*
 9. *Automobile body shop*
 10. *Welding shops*
 11. *Miniature golf course*
 12. *Camps, travel trailer, or RV parks*
 13. *Lumberyards.*
14. *Use of single family structure that was a previously legal conforming use and is inhabited and being used as a residence at the time the landowner makes application for rezoning. Any conditional use permit granted pursuant to this provision shall have a duration of no more than one year after the effective date of the ordinance approving the conditional use permit. (Ord. 843:2008)*

The uses listed for the L-P, Logistics Park District (Section 5.2) in the City of Edgerton's Unified Development Code are as follows:

L-P District – Permitted Uses.

1. Building and construction contractor offices, including display areas.
2. Business and trade schools.
3. Commercial pick-up and delivery services.
4. Display or catalog showrooms.
5. Laboratories and research facilities.
6. Manufacturing, processing, fabrication or assembly of commodity - limited.
7. Motion picture production studios and stations.
8. Photographic processing facilities.
9. Printing and publishing.
10. Radio and television broadcasting stations.
11. Research establishments of industrial, medical or scientific nature.
12. Restaurants, including drive-up or drive-thru services.
13. Warehousing/Distribution centers, including trucking and courier services; public warehousing and storage; and motor freight transportation terminals and maintenance facilities.
14. Mailing, packaging, parcel service and storage.
15. Printing, communications, mail orders.
16. Sales outlets and wholesale trade.
17. Retail sales in conjunction with a manufacturing or fabrication use.
18. Health and hospital supplies; office supplies.
19. Copy, printing and duplication services.
20. Internet service providers.
21. Sale, servicing, and repair of electrical and other electronic devices.
22. Government facilities.
23. Retail and wholesale of furniture and home furnishings, carpet, paint and wallpaper, and plumbing and lighting fixtures.
24. Sales and installation of cellular phones, stereos, radios and similar electronic equipment for vehicles.

25. Veterinary hospitals and clinics.
26. Accessory uses.
27. Agricultural.
28. Auto and truck motor fuel facilities and repair.
29. Auto and truck washing.
30. Recreational vehicle sales and service.

31. Towing and impound yard.
32. Trailer or truck sales and rental.
33. Building materials yard and lumber yard.
34. Mini-Warehouse and self storage.
35. Recycling collection center.
36. Similar uses.

L-P Districted – Conditional Uses.

1. Communication transmission towers over sixty (60) feet, subject to the provisions in Article 7.
2. Truck stops with fuel and accessory services;
3. Private or public owned playgrounds, playfields, and recreational facilities (e.g. public or private golf courses, tennis or other courts, and swimming pools) open for public or commercial use;
4. Auditoriums, convention centers, and conference facilities
5. Colleges and universities.
6. Transportation storage and trucking yards.
7. Cargo container storage, repair or maintenance.

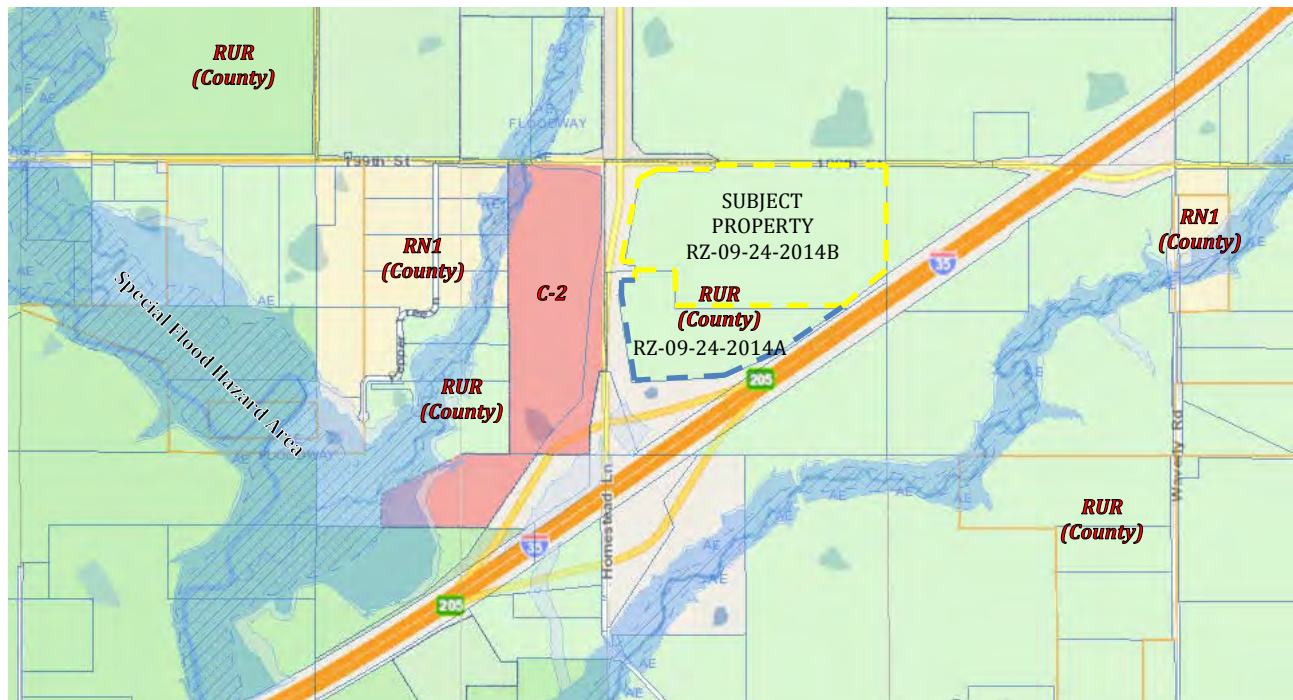
Infrastructure and Services:

1. Homestead Lane, the nearest street to this property, is a paved street designed to support intermodal and logistics park traffic. Homestead Lane provides access to Interstate 35, adjacent to the south. Access to Homestead Lane has been restricted by KDOT to one driveway located at the Northwest corner of the property. This driveway is limited to right in and out movements. 199th Street is a 50 foot wide, paved road located North of the adjoining tract. 199th Street extends to the East across I-35 and The Zoning Exhibit submitted as part of this request shows interior roads/driveways which would allow for access by the subject property to 199th Street.
2. The property is located within the Big Bull Creek watershed, which flows south from 167th Street to the southern edge of the county at Homestead Lane. A stormwater plan should be submitted to the City Engineer prior to development of the property.
3. The subject property does not have any areas designated as Special Flood Hazard Areas. A small area of Zone X, Future Conditions Floodplain is located just to the Southwest of the property in the interchange area.
4. The property does not have direct access to sanitary sewer service and the property owner may wish to self-form a benefit district. The gravity sewer line installed as part of the Big Bull Creek Waste Water Treatment Facility and Conveyance project is located on the West side of the Thorp property to the West of Homestead Lane. This sewer line is approximately 750' to the West of Homestead Lane.
5. The property is located within the service area of Rural Water District No. 7. A 12-inch water main extends from the North side of 199th Street to the Southeast quadrant of the intersection of 199th and Homestead Lane. From the Southeast quadrant a 2 inch main extends to near the Northwest corner of the subject property.
6. Police protection is provided by the Johnson County Sheriff's Department under contract with the City of Edgerton. Fire protection is provided by Johnson County Rural Fire District No. 1. A fire station is located in the City of Edgerton, approximately 1.5 miles to the west.

Property Zoning History

The subject property was recently annexed into the City of Edgerton on January 8, 2015, in anticipation of commercial development. Prior to that the property was located in unincorporated Johnson County, and zoned RUR, Rural District.

Zoning on Subject and Adjacent Property



Staff Analysis

Staff has reviewed this rezoning application with respect to the Edgerton Unified Development Code, the laws in Kansas, and the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. The following is staff's review.

1. Need for the Proposed Change. The subject property has County RUR, Rural Zoning, which allows only agricultural, residential, and residential accessory uses. The anticipated uses of the property are highway service commercial and industrial. The C-2 and L-P Zoning Districts are both compatible with these uses.
2. Magnitude of the Change. The existing County zoning is considered a holding designation due to the property's location near other planned C-2 and L-P development. The property is currently being used for agricultural purposes. The magnitude of change is not considered extreme or rare when property is being developed for its planned end use.
3. Whether or not the change will bring harm to established property rights. The property most likely to be affected by this proposed zoning is the parcel located to the Northeast known as 31570 W 199th Street, which has an existing home. It is not anticipated that there will be any substantial impacts as the dwelling is approximately 950 feet from the Northeast corner of the subject property. While this adjoining dwelling is currently located in the unincorporated county and zoned RUR, Rural, the City of Edgerton's Comprehensive Plan anticipates Business Park/Industrial uses in this area. Other nearby tracts are currently being used for agricultural purposes. Separate Site Plan review and approval will be required

before building permits can be issued. Part of a Site Plan review will include attention to buffering and setbacks, stormwater management and possibly transition of uses between adjoining uses and any proposed commercial use. This Site Plan review will help mitigate impact that might occur to adjacent properties.

4. Effective use of Land. Commercial and industrial development at this location is an effective and efficient use of the property, which is near other C-2 zoned property, the BNSF Intermodal Facility, LPKC and the I-35 interchange. Its location facilitates ease of use by highway and intermodal/logistics park traffic and concentrates traffic, noise, and activity in one location versus such uses being dispersed throughout the community.
5. The extent to which there is a need in the community for the uses allowed in the proposed zoning. Commercial uses at this location will provide useful resources to support and serve the BNSF intermodal and logistics park facilities to the north and traffic along I-35 to the South. The L-P District will also provide additional area for the development of warehouse or other types of uses allowed in that district that desire to be located in the vicinity of the BNSF Intermodal Facility.
6. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space. The immediate area is in transition from rural to commercial, with the new I-35 interchange and other C-2 zoning adjacent to the West and as the L-P District has been expanding in this direction. The area is currently primarily rural, but with the interchange and the intermodal and logistics park developments to the north, the character of the area is changing significantly. However, the nearby regional parks and floodplains areas will generally remain undeveloped, acting as open space, which will help to retain some of the rural character of the area.
7. Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties. The proposed zoning is compatible with the planned future uses of adjacent C-2 zoned property to the West and the anticipated business park/industrial uses to the North. While officially part of a separate request, an application for a Zoning Amendment has also been submitted on the property to the South. This request includes C-2 zoning on the property which is located between the subject property and the interchange, and if approved would be compatible with this request. Prior to the issuance of any building permit the property will be required to go through the Site Plan review process. This process will allow the Planning Commission to take into consideration possible impacts to adjacent properties and ways that these can be mitigated.
8. Suitability of the uses to which the property has been restricted under its existing zoning. With the construction the I-35 and Homestead Lane interchange, BNSF's intermodal facility and other logistics park uses in the area, the existing County zoning is no longer appropriate for this property. The best use of this property is commercial, business park or industrial uses.
9. Length of time the subject property has remained vacant under the current zoning designation. The property has only been used for agricultural purposes and has never been developed for other uses.

10. The extent to which the zoning amendment may detrimentally affect nearby property. While it is anticipated that the development of this site for commercial and industrial purposes will cause additional traffic and noise, it is not anticipated that there will be any significant detrimental effects to nearby property. Additional commercial properties are currently located between the subject property and the group of dwellings located West of Homestead Lane. It is also anticipated that other nearby sites will continue to transition to commercial and industrial uses. The Site Plan review process will allow the Planning Commission to look at any possible impacts and place requirements (such as buffering, setbacks and stormwater management) on how the site may be developed in order to mitigate any detrimental effects.
11. Consideration of rezoning applications requesting Planned Development Districts (PUD) for multifamily and non-residential uses should include architectural style, building materials, height, structural mass, siting, and lot coverage. This is not a request for a PUD.
12. The availability and adequacy of required utilities and services to serve the uses allowed in the proposed zoning. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services. Homestead Lane is a recently constructed, paved street designed to support intermodal and logistics park traffic. Utilities will be provided by the developer in conjunction with development of the property. Among other improvements, this will require the extension of sewer to the site. The sewer line is currently located on the West side of the property on the West side of Homestead (750 feet West of Homestead).
13. The extent to which the uses allowed in the proposed zoning would adversely affect the capacity or safety of that portion of the road network influenced by the uses, or present parking problems in the vicinity of the property. Homestead Lane is improved to a standard that can accommodate commercial and industrial traffic in the area. The site will need to be designed to allow traffic to have access to 199th Street as access to Homestead Lane is limited to right in/out. Improvements may be needed to 199th Street to provide for proper traffic flow with increased traffic and turning movements. The City is currently working on a Waverly Road upgrade project in which Waverly Road, currently a gravel road, will be upgraded to a concrete heavy-haul road and will also include a connection to 199th Street which will be near the Northeast corner of this site. The developer will be required to comply with the City's UDC off-street parking requirements as part of the Site Plan review process.
14. The environmental impacts that the uses allowed in the proposed zoning would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm. The City will follow NPDES (stormwater management requirements) guidelines that require the developer to address runoff and water pollution mitigation measures as part of the development of the property. Mitigation of pollution in the form of water, air, noise, light, etc, will be addressed as part of the Site Plan review process.
15. The economic impact on the community from the uses allowed in the proposed zoning. While a substantial quantity of land in this area is currently zoned L-P, very little commercial development exists in the City. Uses allowed in C-2 or L-P districts, if built, have the potential

to benefit City residents and the community in a positive way by providing needed services, jobs, and tax revenues.

16. The relative gain (if any) to the public health, safety, and welfare from a denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial. There would be little gain to the public health, safety and welfare of the City of Edgerton if the zoning is denied. The City would be adversely impacted due to lost opportunity for jobs and tax revenue if commercial uses were to locate in another nearby community.

17. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton. The Future Land Use Map (Attached) from the Comprehensive Plan for the City of Edgerton shows the West side of Homestead and a small portion of the Northeast quadrant of the interchange as Commercial (Retail/Office). North of the anticipated commercial area is shown as Business Park/Industrial. While the area shown as commercial on the Future Land Use Map does not extend all of the way to 199th Street, as is being requested in this application, a Comprehensive Plan (and the Future Land Use Map) is designed to be a guide of what may be expected and not an exact representation. The following is a relevant excerpt from the City's Comprehensive Plan.

***New Interchange on Interstate 35:** The City should take proactive steps to maximize the economic potential of I-35 and Homestead Lane. Areas around an interchange are often prominent locations for retail and commercial developments that provide substantial economic diversification to a City's land use and tax base.*

Taking into consideration the Future Land Use Map together with the text describing the anticipated uses around the Homestead interchange of the Comprehensive Plan it can be determined that the request can be considered as consistent with the Comprehensive Plan. The only question that may need to be asked is if there is a limit to the distance that any commercial zoning should extend to the North and East at this location. It would also appear that commercial uses on the West side of Homestead are being used as a transitional use from the business park/industrial uses which are expected on the East side of Homestead.

18. The recommendation of professional staff. See Recommendation below

Recommendation

City staff recommends **approval** of the proposed rezoning of the subject property from County RUR, Rural District to C-2, Heavy Service Commercial District and L-P, Logistics Park District based upon the attached Zoning Exhibit, with the following stipulations:

1. All Site Plan application requirements of the City shall be met.
2. All infrastructure requirements of the City shall be met.
3. Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

Attachments

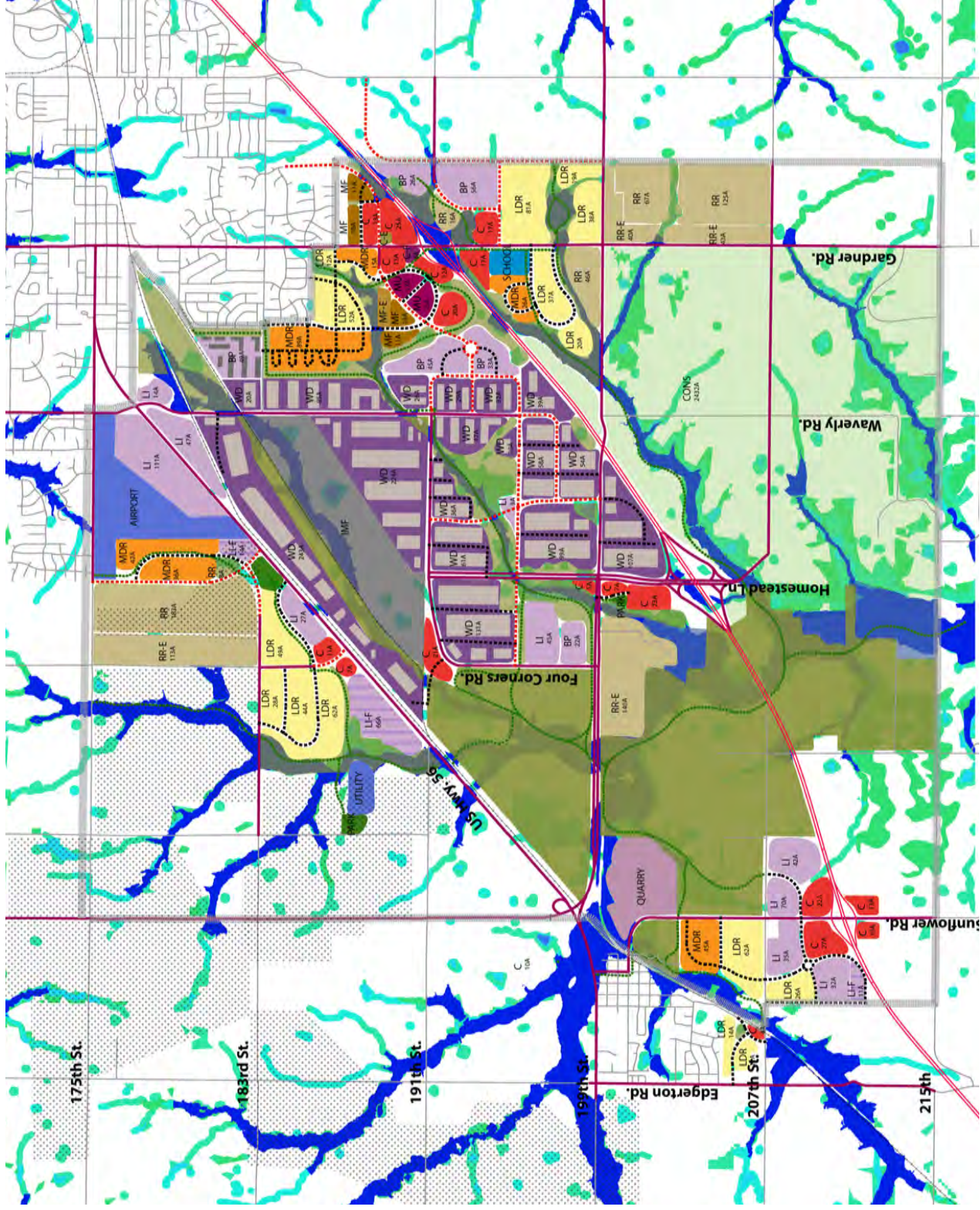
City of Edgerton Future Land Use Map

Southwest Area Plan – The Preferred Land Use Plan

Application for Rezoning No. RZ-09-24-2014B (with Zoning Exhibit)

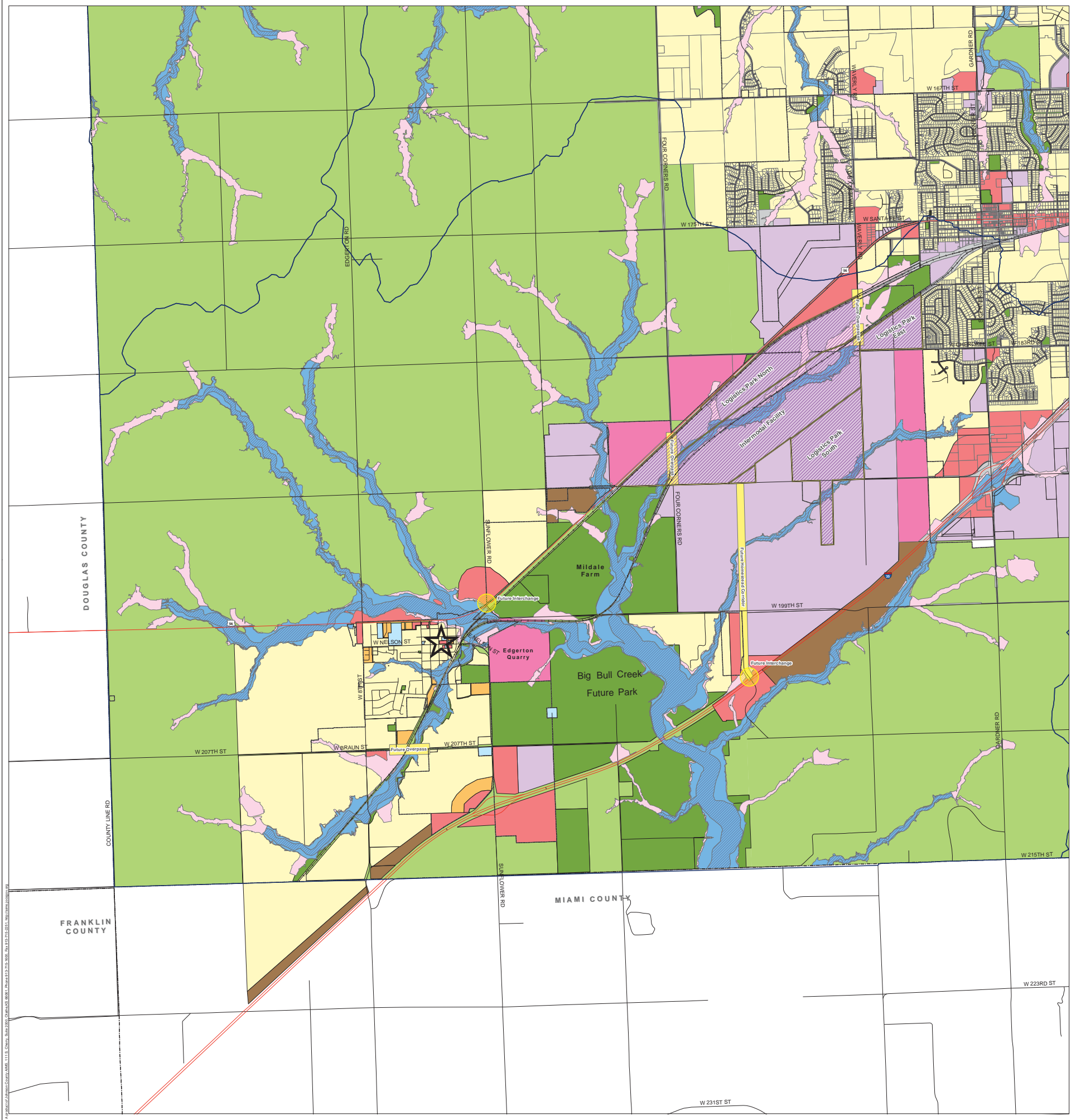


Figure 5.1: Preferred Land Use Concept

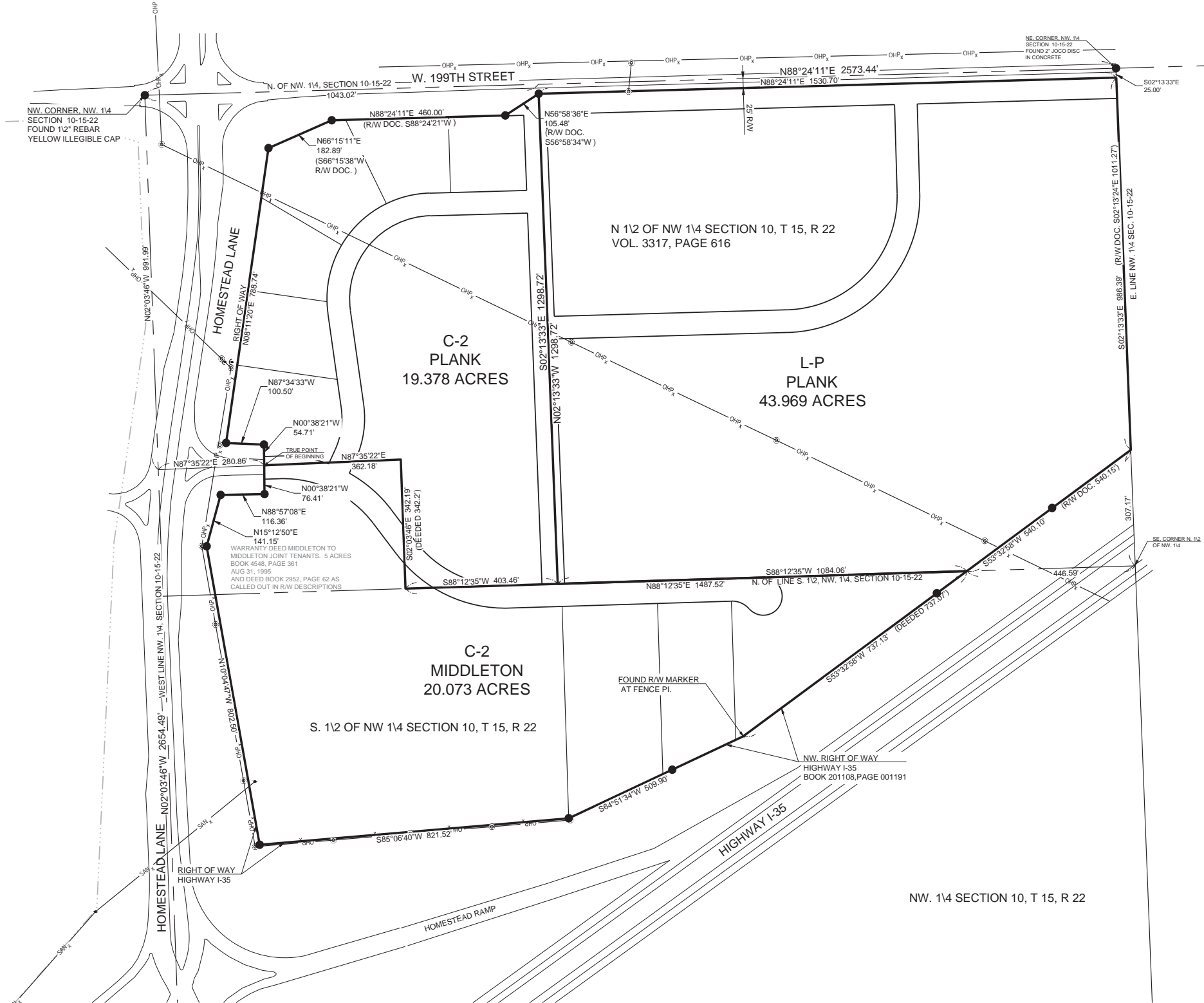


Preferred Land Use Concept

- Rural Residential (RR)
- Conservation Development (CONS)
- Low Density Urban Residential (LDR)
- Medium Density Urban Residential (MDR)
- High Density Urban Residential (HDR)
- Commercial (C)
- Mixed Use (MU)
- Business Park or Limited Industry (BP and LI)
- Warehousing and Distribution (WD)
- Civic
- Parks and Open Space
- Areas with Concentrations of Oil Wells



\\projects\2014\14-1082.0 Survey\14-1082.0 Survey\14-1082.0 Arch\Full bleed D (36.00 x 24.00 inches). 1:1



Middleton Property C-2

Description:

Part of the Northwest One-Quarter of Section 10, Township 15 South, Range 22 East of the 6th Principal Meridian, Johnson County, Kansas. Lying North of Highway 35 as now established, being more particularly described as follows:

Commencing at the Northwest corner of the Northwest 1/4, Section 10, Township 15 South, Range 22 East; thence South 02 degrees 03 minutes 46 seconds East along the West line of the said Northwest 1/4 a distance of 991.99 feet to a point; thence North 87 degrees 35 minutes 22 seconds East, 280.86 feet to the TRUE POINT OF BEGINNING; thence continuing North 87 degrees 35 minutes 22 seconds East, 362.18 feet to a point; thence South 02 degrees 03 minutes 46 seconds East, 342.19 feet (deeded 342.20 feet) to a point on the North line of the South 1/2 of the said Northwest 1/4; thence North 88 degrees 12 minutes 35 seconds East along the said North line, 1487.52 feet to a point on the Northwesterly right-of-way of Highway I-35 as recorded in Book 201108, Page 1191; thence South 53 degrees 32 minutes 58 seconds West along the said highway right-of-way, 737.13 feet (deed 737.07 feet) to a point; thence South 64 degrees 51 minutes 34 seconds West along said highway right-of-way, 509.90 feet to a point; thence South 85 degrees 06 minutes 40 seconds West along said highway right-of-way, 821.52 feet to a point; thence North 10 degrees 04 minutes 47 seconds West along said highway right-of-way, 802.50 feet to a point; thence North 15 degrees 12 minutes 50 seconds East along said highway right-of-way, 141.15 feet to a point; thence North 88 degrees 57 minutes 08 seconds East along said highway right-of-way, 116.36 feet to a point; thence North 0 degrees 38 minutes 21 seconds West along said highway right-of-way, 76.41 feet to the TRUE POINT OF BEGINNING and containing 25.0737 acres, more or less.

Plank Property C-2

Description:

Part of the North One-Half of the Northwest One-Quarter of Section 10 Township 15 South Range 22 East of the 6th Principal Meridian, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Northwest corner of the Northwest One-Quarter of said Section 10 Township 15 South Range 22 East; thence South 02 degrees 03 minutes 46 seconds East along the West line of the said Northwest One-Quarter a distance of 991.99 feet to a point; thence North 87 degrees 35 minutes 22 seconds East 286.86 feet to the True Point of Beginning of the herein described tract; thence North 00 degrees 38 minutes 21 seconds West along the highway right of way for Homestead Lane as now established, a distance of 54.71 feet to a point; thence North 87 degrees 34 minutes 33 seconds West along said right of way a distance of 100.50 feet to a point; thence North 08 degrees 11 minutes 20 seconds East a distance of 788.74 feet along said right of way to a point; thence North 66 degrees 15 minutes 11 seconds East (per right of way document South 66 degrees 15 minutes 38 seconds West) a distance of 182.89 feet to point; thence North 88 degrees 24 minutes 11 seconds East along said highway right of way and along a line parallel to the North line of the said Northwest One-Quarter (per right of way document South 88 degrees 24 minutes 21 seconds West) a distance of 460.00 feet to a point; thence North 56 degrees 58 minutes 36 seconds East (per right of way document South 56 degrees 58 minutes 34 seconds West) a distance of 105.48 feet to a point that is 25 feet South of the North line of the said Northwest One-Quarter; thence South 02 degrees 13 minutes 33 seconds East a distance of 1398.72 feet to a point on the North line of the South One-Half of the said Northwest One-Quarter; thence South 88 degrees 12 minutes 35 seconds West along the North line of the South One-Half of the said Northwest One-Quarter a distance of 403.46 feet to a point; thence North 02 degrees 03 minutes 46 seconds West a distance of 342.19 feet (deeded 342.22 feet) to a point; thence South 87 degrees 35 minutes 22 seconds West a distance of 362.18 feet to the True Point of Beginning and containing 19.378 acres, more or less.

Plank Property L-P

Description:

Part of the North One-Half of the Northwest One-Quarter of Section 10 Township 15 South Range 22 East of the 6th Principal Meridian, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Northwest corner of the Northwest One-Quarter of said Section 10 Township 15 South Range 22 East; thence South 02 degrees 03 minutes 46 seconds East along the West line of the said Northwest One-Quarter a distance of 991.99 feet to a point; thence North 87 degrees 35 minutes 22 seconds East 286.86 feet to a point; thence North 00 degrees 38 minutes 21 seconds West along the highway right of way for Homestead Lane as now established, a distance of 54.71 feet to a point; thence North 87 degrees 34 minutes 33 seconds West along said right of way a distance of 100.50 feet to a point; thence North 08 degrees 11 minutes 20 seconds East a distance of 788.74 feet along said right of way to a point; thence North 66 degrees 15 minutes 11 seconds East (per right of way document South 66 degrees 15 minutes 38 seconds West) a distance of 182.89 feet to point; thence North 88 degrees 24 minutes 11 seconds East along said highway right of way and along a line parallel to the North line of the said Northwest One-Quarter (per right of way document South 88 degrees 24 minutes 21 seconds West) a distance of 460.00 feet to a point; thence North 56 degrees 58 minutes 36 seconds East (per right of way document South 56 degrees 58 minutes 34 seconds West) a distance of 105.48 feet to a point that is 25 feet South of the North line of the said Northwest One-Quarter, said point being the True Point of Beginning of the herein described tract; thence North 88 degrees 24 minutes 11 seconds East along a line parallel to and 25 feet South of the North line of the said Northwest One-Quarter, a distance of 1530.70 feet to a point on the East line of the said Northwest One-Quarter; thence South 02 degrees 13 minutes 33 seconds East along the East line of the said Northwest One-Quarter (per right of way document South 02 degrees 13 minutes 24 seconds East 1011.27 feet) a distance of 986.39 feet to a point in the Northerly right of way line of I-35 as now established; thence South 53 degrees 32 minutes 58 seconds West along the North line of the said I-35 right of way (per right of way document 540.15 feet) a distance of 540.10 feet to a point on the North line of the South One-Half of the said Northwest One-Quarter; thence South 88 degrees 12 minutes 35 seconds West along the North line of the South One-Half of the said Northwest One-Quarter a distance of 1084.06 feet to a point; thence North 02 degrees 13 minutes 33 seconds West a distance of 1398.72 feet to the True Point of Beginning and containing 43.969 acres, more or less.



SCHLAGEL & ASSOCIATES, P.A.
Engineers • Planners • Surveyors • Landscape Architects
14920 West 107th Street • Lenexa, Kansas 66215
(913) 492-5158 • Fax: (913) 492-9400
WWW.SCHLAGELASSOCIATES.COM
Kansas State Certificates of Authority
#E-236 #LX-29 #LS-54

ZONING EXHIBIT
PLANK, MIDDLETON PROPERTY
PART OF NW. 1/4 OF SECTION 10, T 15S, R 22E
JOHNSON COUNTY, KANSAS

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ZONING EXHIBIT

SHEET

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OF 1

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Amended and Restated Project Agreement for the Intermodal Facility/Logistics Park Kansas City

Department: Administration

Background/Description of Item: In April 2013, the City of Edgerton approved a First Amendment to the Project Agreement to assign the original project agreement from The Allen Group to Edgerton Land Holding Company. Since that time, Edgerton Land Holding Company (ELHC) has purchased a significant amount of additional property adjacent to the original logistics park site.

Staff, including Intermodal Bond Counsel and the City's Financial Advisor, have been working with the Edgerton Land Holding Company team to amend and restate both the Project Agreement and Infrastructure Financing Plan to reflect the current conditions of the project. Additionally, in 2014 the City of Edgerton entered into an agreement with the Kansas Department of Transportation (KDOT) for construction of Waverly Road generally from Highway 56 to 199th Street. Approval of that agreement requires the City, BNSF and ELHC to amend the existing Project Agreement and Infrastructure Financing Plan to reflect the dedication of city utility sales from Logistics Park Kansas City (LPKC) to be paid to KDOT on the schedule detailed in that agreement.

Enclosure: Draft of Amended and Restated Project Agreement for the Intermodal Facility/Logistics Park Kansas City

Related Ordinance(s) or Statute(s):

Recommendation:

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: March 23, 2015

AMENDED AND RESTATED PROJECT AGREEMENT
Intermodal Facility/Logistics Park Kansas City

This Amended and Restated Project Agreement (the “Agreement”) is made and entered into this ____ day of _____, 2015 (the “Effective Date”), by and among the **City of Edgerton, Kansas**, a Kansas municipal corporation (the “City”), **BNSF Railway Company**, a Delaware corporation (“BNSF”), and **Edgerton Land Holding Company, LLC**, a Kansas limited liability company (“ELHC”). City, BNSF and ELHC may each be referred to herein as a “party” and collectively as the “parties”.

RECITALS:

A. As of the Effective Date, BNSF is the owner of that certain real property located in Johnson County, Kansas, comprising approximately 1,000 gross acres depicted on **Exhibit A-1** attached hereto and legally described on **Exhibit A-2** (the “Site”).

B. BNSF has developed and constructed an intermodal facility with the capacity of processing up to 500,000 container lifts annually adjacent to the BNSF rail line (the “Intermodal Facility” or “IMF”) upon a portion of the Site constituting approximately 440 acres as generally shown on **Exhibit B** attached hereto (the “Intermodal Site”). ELHC is developing a portion of the Site comprising approximately 560 acres, as generally shown on **Exhibit C** attached hereto (the “Original Logistics Park Site”), as an industrial park, including industrial warehouse, distribution, flex and storage facilities and for other supporting commercial uses for sale, lease and operation by ELHC and various private businesses (the “Original Logistics Park”). ELHC is also developing approximately ____ acres, as generally depicted on **Exhibit H-1** attached hereto (the “Additional Logistics Park Site”), as an industrial park, including industrial warehouse, distribution, flex and storage facilities and for other supporting commercial uses for sale, lease and operation by ELHC and various private businesses on the property legally described on **Exhibit H-2** (the “Additional Logistics Park”). The Original Logistics Park Site and the Additional Logistics Park Site are collectively referred to herein as the “Logistics Park Site.” The Original Logistics Park and the Additional Logistics Park are collectively referred to herein as the “Logistics Park.”

C. Pursuant to that certain Option Agreement dated April 13, 2007, as amended (the “Option Agreement”) BNSF granted to The Allen Group – Kansas City, LLC, a Delaware limited liability company (“TAG-KC”) the exclusive right and option to purchase the Logistics Park Site. TAG-KC, with the consent of BNSF, assigned the Option to ELHC.

D. Collectively, the Intermodal Facility and the Logistics Park may be referred to herein as the “Projects”; provided, however, that use of the plural shall not be construed to mean that the Intermodal Facility and Logistics Park are being jointly developed.

E. To provide for the construction, development, completion and operation of the Projects in, on and about the Site, the parties entered into a Project Agreement (Intermodal Facility/Logistics Park) dated March 25, 2010 (the “Basic Project Agreement”), among the City, BNSF and TAG-KC.

F. To provide for the appointment of ELHC as the successor developer of the Logistics Park and to make certain other amendments to the Basic Project Agreement, the parties entered into a First Amendment to Public Infrastructure Financing Plan (Intermodal Facility/Logistics Park Kansas City) dated April 23, 2013 (the “First Amendment,” and together with the Basic Project Agreement, the “Original Project Agreement”), among the City, BNSF, ELHC and TAG-KC.

G. The parties are entering into this Agreement to amend and restate the Original Project Agreement in its entirety to provide for the continued construction, development, completion and operation of the Projects in, on and about the Site pursuant to a plan (“Development Plan”), which Development Plan is described more fully in **Section 2.1** hereof.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ELHC, BNSF and the City hereby agree as follows:

ARTICLE 1 **DEFINITIONS AND INTERPRETATION**

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

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually;
- (c) reference to any gender includes each other gender;
- (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (e) reference in this Agreement to any article, section, appendix, annex, schedule or exhibit means such article or section thereof or appendix, annex, schedule or exhibit thereto;

(f) each of the items or agreements identified on the attached Index of Exhibits and Schedules are deemed part of this Agreement to the same extent as if set forth herein;

(g) certain exhibits which are referenced in the Agreement as “for purposes of an illustrative example only” shall not be deemed to obligate the parties to locate certain buildings, parking structures and other improvements in the specific configurations or specific locations set forth thereon;

(h) “hereunder”, “hereof”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;

(i) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;

(j) relative to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding;”

(k) capitalized terms, not otherwise defined in the text of this agreement shall have the definitions set forth in Schedule 1 or as otherwise provided herein.

1.2 Accounting Terms. Unless expressly otherwise provided, accounting terms shall be construed and interpreted, and accounting determination and computations shall be made, in accordance with generally accepted accounting principles.

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

ARTICLE 2

DEVELOPMENT PLAN AND EXPANSION OF LOGISTICS PARK

2.1 Development Plan. The parties hereby understand that the “Development Plan” for the Projects shall be as described below and, for purposes of an illustrative example only, as set forth on the site plan attached as **Exhibit D** hereto and made a part hereof. The City hereby understands and agrees that the Development Plan shows approximately 7,100,000 square feet of industrial warehouse, distribution and storage facility improvements and approximately 165,000 square feet of office/flex facility improvements on the Original Logistics Park Site at full build out, and subject to the terms of **Section 9** hereof, the City agrees that up to 7,100,000 square feet of such industrial warehouse, distribution and storage facility improvements and up to 165,000 square feet of office/flex facility improvements are generally contemplated to be located on the Original Logistics Park Site. It is hereby expressly understood and agreed by the parties that such exhibit is for purposes of providing an illustrative example only and is subject to **Section 1.1(g)** hereof.

2.2 Expansion of Additional Logistics Park and Additional Logistics Park Site. The descriptions of the Additional Logistics Park and the Additional Logistics Park Site are shown on the attached **Exhibits H-1** and **H-2**. The parties agree that the descriptions of the Additional

Logistics Park and the Additional Logistics Park Site may be amended at any time by having each party execute and deliver a certificate in the form attached hereto as **Exhibit M** containing a new description of the Additional Logistics Park and the Additional Logistics Park Site. Notwithstanding the foregoing, the parties agree that the boundaries of the Additional Logistics Park and the Additional Logistics Park Site shall not extend beyond Highway 56 to the north, Interstate 35 to the south, Four Corners Road to the west and Gardner Road to the east.

ARTICLE 3

DEVELOPMENT OF THE INTERMODAL FACILITY; BNSF OBLIGATIONS

3.1 Recognition of BNSF as Developer of the Intermodal Facility. The City recognizes that BNSF is the developer of the Intermodal Site and has the right to improve the Site. The performance of all such activities by BNSF hereunder shall be as an independent contractor and not as an agent of the City.

3.2 Construction Management Plan. BNSF has provided to the City and ELHC a copy of its construction management plan (the "Construction Management Plan"). It is BNSF's present intention that the Intermodal Facility will generally be constructed in accordance with the Construction Management Plan and BNSF and the City hereby agree to work cooperatively in the implementation of the Construction Management Plan.

ARTICLE 4

DEVELOPMENT OF LOGISTICS PARK; ELHC OBLIGATIONS

4.1 Appointment of ELHC as Developer of the Logistics Park. The City hereby recognizes that ELHC is the developer for the Original Logistics Park Site and the Additional Logistics Park Site. The performance of all activities by ELHC hereunder shall be as an independent contractor, and not as an agent of the City, except as otherwise specifically provided herein.

4.2 Design of the Logistics Park. Subject to compliance with all Applicable Laws and Requirements, and ELHC obtaining the proper approvals of the City's planning commission and otherwise complying with the terms and conditions of **Section 9.2** hereof, ELHC shall have the sole right to design, construct, equip and complete the LPKC Improvements (hereafter defined).

4.3 Construction of LPKC Improvements. ELHC shall cause the construction and completion of the improvements required by ELHC in connection with the Logistics Park in ELHC's discretion (the "LPKC Improvements"). For purposes of illustrative example only, and subject to **Section 1.1(g)** hereof, the LPKC Improvements are generally described on **Exhibit E** attached hereto. All of the LPKC Improvements shall be the property of ELHC except interior roads and rights-of-way dedicated as public roads and public rights-of-way. The parties further agree as follows:

(a) ELHC shall lead the design and construction of the interior roads on the LPKC Site, which interior roads (which may be public roads) are listed as projects on **Exhibit B** to the Financing Plan. These internal roads shall be subject to Applicable Laws and Requirements, and such interior roads shall be dedicated as public roads and/or public right of way if the parties intend for such interior road to be a public road. City hereby agrees to approve and accept public roads and/or public rights of way so dedicated. Each such road shall be deemed a "Public Road"

as that term is used in the Financing Plan.

(b) ELHC has commenced construction of in excess of 825,000 square feet of buildings included in the Logistics Park. In addition to the foregoing construction, ELHC acknowledges it has communicated to the City its intention, subject to market conditions, to maintain an ongoing program of constructing speculative buildings within the Logistics Park, or upon land within a one-mile radius of such Logistics Park. To confirm this intent, ELHC has provided to the City reasonable documentation that ELHC has committed in excess of \$40,000,000 to land acquisition, development, and its speculative building program, all to occur within the Logistics Park, or with respect to land within a one-mile radius of the Logistics Park, which information the City agrees to keep confidential, subject to the requirements of the Kansas Open Meetings Act and/or the Kansas Open Records Act, as the same may be applicable.

4.4 Construction Management Plan. The construction management plan for the Logistics Park Site attached to this Agreement as **Exhibit O-1.2** (the “Logistics Park Construction Management Plan”) is hereby approved by the City and ELHC hereby agrees that the Logistics Park will generally be constructed in accordance with the Logistics Park Construction Management Plan.

4.5 Permits and Reviews. ELHC hereby recognizes, stipulates and agrees that (a) in the design, construction, completion, use or operation of the LPKC Improvements, ELHC or its general contractors shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required, and (b) that nothing herein shall be construed as any release by the City of the responsibility of ELHC to comply with, and satisfy the requirements of, all Applicable Laws and Requirements. The City hereby agrees that the fees and costs to be paid by ELHC in connection with permits for and reviews of the LPKC Improvements is set forth on **Exhibit F** attached hereto, and the costs of any such permits may be increased from time to time beyond what they are on the Effective Date, provided that any such increases are uniformly applied in the City and do not result in permit costs that are unreasonable as compared with those in the other municipalities in Johnson County, Kansas.

ARTICLE 5

CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

5.1 Construction of the Public Infrastructure Improvements. Reference is hereby made to certain infrastructure improvements which are necessary for the operation of the Projects (collectively, the “Public Infrastructure Improvements”). The scope of the Public Infrastructure Improvements is generally described in the Financing Plan.

(a) Each Party agrees to work with the other parties in the design, construction and completion of the Public Infrastructure Improvements. The Parties hereby understand and agree that the City’s financial obligations with respect to paying for, reimbursing or financing any Public Infrastructure Improvement are in all respects subject to and contingent upon the initial and ongoing availability and sufficiency of the Public Infrastructure Improvements Sources (as defined in **Section 2** of the Financing Plan and limited by **Section 4** of the Financing Plan) to pay for such Public Infrastructure Improvements.

(b) Throughout construction and upon completion of the Public Infrastructure

Improvements, the Parties shall have the right to reasonably inspect the same. Further, the Public Infrastructure Improvements shall be completed in accordance with the final plans as set forth in the Infrastructure Construction Documents (as defined below) in all material respects.

(c) The City hereby agrees to maintain or cause to be maintained the City Public Infrastructure Improvements.

5.2 Conceptual Design and Plans for Public Infrastructure Improvements. The conceptual plans (the “Infrastructure Concept Plans”) for each Public Infrastructure Improvement shall be attached to the Public Infrastructure Improvement Notice attached to the Financing Plan as **Exhibit G**. All Infrastructure Concept Plans shall be compatible with the Development Plan and the general local infrastructure plan of the City.

(a) Final Design and Plans for Infrastructure Construction Documents. The Party responsible for each Public Infrastructure Improvement shall provide to the other parties construction documents therefor (the “Infrastructure Construction Documents”), which Infrastructure Construction Documents shall include final plans consistent with the Infrastructure Concept Plans, cost estimates for the applicable Public Infrastructure Improvement, and the design of which shall be compatible with the Development Plan and all Applicable Laws and Requirements. If ELHC is the party designing and constructing any Public Infrastructure Improvement and sufficient unencumbered funds are not on deposit and available in the Public Infrastructure Fund to pay for such Public Infrastructure Improvement, the City shall enter into a reimbursement with ELHC (the “Reimbursement Agreement”), the terms of which shall comply in all respects to the requirements in Section 3(a) of the Financing Plan.

5.3 Changes in Costs to Public Infrastructure Improvements. The parties agree that the estimated cost of any Public Infrastructure Improvement as identified in a Public Infrastructure Improvement Notice in the form of **Exhibit G** to the Financing Plan is the estimated cost of such Public Infrastructure Improvement at the time such notice is delivered. The parties agree that (a) the City shall have the unilateral right to approve any increase in cost of such Public Infrastructure Improvement so long as the cumulative increase in cost does not exceed 10% of the estimated cost, and (b) the City and ELHC shall have the right to approve any increase in cost of such Public Infrastructure Improvement if the cumulative increase in cost exceeds 10% of the estimated cost. If the City is not the party constructing such Public Infrastructure Improvement, the responsible party shall obtain the consent of the City to all costs that exceed the estimated cost. Notwithstanding the foregoing, all parties must consent to any increase in costs that are 10% or more of the estimated cost of such Public Infrastructure Improvement. With respect to the City, the City Administrator shall have authority to approve any increase in cost of any Public Infrastructure Improvement so long as the cumulative increase in costs of such Public Infrastructure Improvement does not exceed either (i) \$100,000, or (ii) five percent (5%) of the cost of such Public Infrastructure Improvement, and such increase in cost does not affect the general scope of such Public Infrastructure Improvement.

5.4 Preliminary Schedule for Public Infrastructure Improvements. BNSF, the City and ELHC hereby agree that the schedule for construction of the Public Infrastructure Improvements is described in **Section 5** of the Financing Plan.

5.5 Infrastructure Reimbursements. The parties hereby understand and agree that ELHC and

BNSF have previously advanced certain costs and expenses for the benefit of the Infrastructure Improvements, including engineering fees for the Public Infrastructure Improvements (collectively, the “Prefunded Infrastructure Costs”), and the parties hereby agree that such Prefunded Infrastructure Costs, which include, but are not limited to those set forth on **Exhibit O** attached hereto, shall be deemed to be reimbursable to ELHC and BNSF respectively as Public Infrastructure Improvement Costs. The parties hereby further agree that such Prefunded Infrastructure Costs shall be paid pursuant to the Financing Plan. In addition, the City shall be entitled to recover its actual and unreimbursed costs more fully described in that certain “Project Funding Agreement” by and between the City and BNSF and dated July 23, 2009 pursuant to the Financing Plan.

5.6 Periodic Meetings. From the Effective Date until all Public Infrastructure Improvements are accepted by the City, the City and ELHC shall meet with each other and BNSF (at the discretion of BNSF), and/or such other parties as the City and ELHC shall reasonably designate, at such intervals as ELHC and the City shall mutually agree or reasonably request, but no less frequently than monthly, to review and discuss the design, development and construction of the Public Infrastructure Improvements.

ARTICLE 6

UTILITIES; RELOCATIONS AND VACATIONS; CITY OBLIGATIONS

6.1 Utility Services. The parties agree as follows with regard to utilities serving or to be serving the Site:

(a) Electrical and Gas Service: The parties hereby understand and agree that ELHC and BNSF shall have absolute discretion to choose the electric service and gas service provider(s) to the Logistics Park and Intermodal Facility, respectively, and the City agrees to not unreasonably impair or inhibit the provision of electric or gas service to the Site so long as such electric service or gas service provider(s) shall enter into a franchise agreement with the City.

(b) Wastewater Service: The City has completed all wastewater improvements. The City agrees to continue to provide wastewater services at market rates.

6.2 Utility Relocation. The limits of the Public Infrastructure Projects include certain utility lines and related facilities (the “Utility Facilities”) in certain rights of way and in easements (the “City Utility Easements”) that run on, across, through and under the Site and the Public Infrastructure Improvements, as described in **Exhibit I** attached hereto and incorporated herein by reference. As part of the Projects, ELHC and BNSF require that the Utility Facilities be removed, relocated, rebuilt or altered, as described on **Exhibit I** (the “Relocation Work”). The City agrees to require utility companies operating utility facilities within the right-of-way to relocate the facilities at the utility companies’ sole cost and expense; a utility company’s refusal to do so shall not obligate the City, ELHC or BNSF to relocate the facilities at their respective cost. Utility Facilities located within dedicated easements shall be relocated concurrent with the Public Infrastructure Improvements adjacent to said easements and such relocations shall be eligible project expenses as part of the projects, which shall be completed concurrent with the Public Infrastructure Improvements adjacent to the Relocation Work, subject to the availability of funds from the sources of funds set forth in the Financing Plan, but the costs of which shall be deemed to be reimbursable Public Infrastructure Improvement Costs, and ELHC and BNSF

hereby agree to grant the City standard utility easements for such relocated Utility Facilities prior to the start of the Relocation Work. The City agrees to cause the appropriate City official to release the Utility Easements held by the City on the Site within thirty (30) days of the City's receipt of notice from BNSF that it has issued a notice to proceed ("NTP") to its general contractor to construct the IMF, or sooner if requested by ELHC. The parties hereby understand and agree that any utility easements held by utility companies that are not affiliated with the City will need to be released by such utility companies. The foregoing notwithstanding, BNSF shall be responsible for any relocation of the Kansas City Power and Light Company high voltage transmission line currently traversing the Intermodal Site.

6.3 Water District No. 7 Relocation. Water District No. 7 of Johnson County, Kansas (the "Water District") currently owns and/or operates certain water mains and related facilities (the "Water District Facilities") in certain rights of way and in easements (the "Water District Easements") that run on, across, through and under the Site, as described in **Exhibit J** attached hereto and incorporated herein by reference. As part of the Projects, ELHC and BNSF, pursuant to a separate agreement with the Water District, will require that the Water District Facilities be removed, relocated, rebuilt or altered, as described on **Exhibit J** by the Water District (the "Water District Relocation Work"). ELHC and BNSF hereby agree to grant the Water District standard utility easements on the Site for such relocated Water District Facilities prior to the start of the Water District Relocation Work. The City hereby agrees to make available right-of-way and/or general utility easements that may be used by the Water District along with other utilities.

6.4 Vacation and Closure of Streets. After annexation, and as soon as practicable after the BNSF issues the NTP or sooner as required by ELHC in connection with the Logistics Park Improvements, and without limiting the generality of the foregoing, the City hereby agrees to vacate, or to cooperate with the County to cause the vacation of, certain streets located within the Site as identified on **Exhibit K** attached hereto (the "Vacated Streets"), without reserving any of the City's utility easements, by taking all necessary steps to present an ordinance and recommend its approval. The City hereby agrees to close, or to cooperate with the County to cause the closure of, certain streets located within the Site as identified on **Exhibit K** attached hereto (the "Closed Streets"), without reserving any of the City's utility easements, by taking all necessary steps to present an ordinance and recommend its approval. Upon approval of the ordinance(s) vacating the Vacated Streets and/or closing the Closed Streets, and the ordinance releasing the City Utility Easements, the existence of City Utility Facilities in the Vacated Streets and/or Closed Streets shall not impede the construction of the Projects on, over and around such City Utility Facilities, subject to the conditions set forth herein. The parties further agree as follows:

(a) After annexation, and soon as practicable after the BNSF issues the NTP or sooner as required by ELHC in connection with the Logistics Park Improvements, and without limiting the generality of the foregoing, the City hereby agrees to close, or to cooperate with the County to cause the closure of Four Corners Road north of 191st Street and south of 56 Highway, without reserving any of the utility easements until such time as the City and/or County shall construct a bridge over the rail line serving the Intermodal Facility. In connection therewith, ELHC and BNSF hereby agree to preserve and grant a right of way easement (i) to the City for emergency and/or public safety access to the Site at the south right-of-way line of 56 Highway and its intersection with Four Corners Road; and (ii) to the City and/or County on such portions of the Site as may be reasonably necessary for construction of any such bridge serving Four Corners Road.

6.5 Permits and Reviews. The City hereby agrees not to unreasonably withhold, condition or delay any and all approvals, permits, and plan reviews necessary in connection with the applicable Public Infrastructure Improvements and the LPKC Improvements. In connection with such reviews, the City shall designate a point of contact for the City and ELHC's respective permits and reviews, which point of contact may be a City employee or employee's, and/or a third party consultant (the “Permit and Review Consultant”) to expedite the review process for all such approvals, permits and plan reviews. The parties hereby agree that the costs associated with the City's employment of the Permit and Review Consultant shall be considered Public Infrastructure Improvement Costs for purposes hereof.

ARTICLE 7

FINANCING; SOURCE AND USES OF FUNDS; PUBLIC FUNDING

7.1 Private Costs of ELHC and BNSF. The costs associated with the design, development and construction of the Intermodal Facility and the LPKC Improvements, respectively, will be paid for with funds from BNSF and ELHC, respectively, from a combination of sources.

7.2 Abatements. The City hereby recognizes and understands that ELHC will require abatements of ad valorem property taxes (“Abatements”) for each of the buildings it intends to develop in the Logistics Park. Therefore, the City shall adopt a resolution of intent indicating its intention to grant to ELHC the Abatements for each building developed on the Logistics Park Site during the Term of this Agreement. The resolution of intent shall provide that each Abatement shall be for a term of 10 calendar years, commencing on the January 1 following the year in which bonds are issued for each building. The resolution of intent shall require the owner of each building to make twenty semi-annual payments-in-lieu-of-tax, each in an amount equal to the product of (x) the square footage of the building or project being constructed, multiplied by (y) the Base PILOT (as hereinafter defined), multiplied by (z) 50% (each, a “PILOT” and collectively, the “PILOTS”). The “Base PILOT” for abatements granted prior to January 1, 2022, shall be \$0.21. The Base PILOT for abatements on or after January 1, 2022, shall increase on January 1, 2022, and on each January 1 thereafter, by an amount equal to the product of \$0.21 multiplied by the greater of (i) 1.5% per year using 2022 as the base year, or (ii) 50% of the cumulative annual increase in the United States consumer price index for all urban areas (commonly known as the CPI-U) using 2022 as the base year, such product being rounded up to the next \$0.01. The City agrees to amend its existing resolution of intent for abatements to comply with this Section 7.2. The City further agrees to amend the Performance Agreements for the industrial revenue bond projects known as ELHC IV, ELHC XI and ELHC XII to modify the PILOT schedule for each project to comply with this Section 7.2. If there is any dispute about the square footage of the building or project being constructed, the records of the Johnson County Appraiser’s Office shall be determinative.

7.3 Public Infrastructure Improvement Costs. The current estimates of the project costs related to the Public Infrastructure Improvements are set forth and described in **Exhibit B** to the Financing Plan (the “Public Infrastructure Improvement Costs”). Contemporaneously herewith, the City, ELHC and BNSF have entered into the Financing Plan. Pursuant to the Financing Plan, the parties have agreed to various sources of funds, including private contributions and Public Funding (as defined below) from the parties thereto, along with various funding mechanisms to

pay for the Public Infrastructure Improvement Costs. For purposes hereof, the term “Public Funding” shall be deemed to mean public financial assistance to the project provided by the State of Kansas, the County, and/or the City as set forth in the Financing Plan.

7.4 Origination Fee Payments: **Section 2** of the Financing Plan provides for certain Infrastructure Abatements (as defined in the Financing Plan) for each building developed on the Logistics Park Site and certain Origination Fees (as defined in the Financing Plan) to be collected by the City. The parties agree that ELHC shall be responsible for the payment of the Origination Fees and ELHC shall be responsible for delivering such Origination Fees to the City as and when the same are due, as set forth in the Financing Plan.

7.5 Abatements; Denial of Abatements. The parties hereby agree as follows:

(a) The parties hereby understand and agree that the development of the Logistics Park is likely to evolve on a building-by-building basis as and when third parties agree to lease or purchase portions of the Logistics Park Site. Accordingly, subject to **Section 2** of the Financing Plan, the parties hereby contemplate that ELHC will be requesting approval of the LPKC Abatements and Infrastructure Abatements (collectively, the “Abatements”) contemplated herein on a phased, or potentially, on a building-by-building basis.

(b) The parties hereby acknowledge that the financial structure contemplated by this Agreement and the Financing Plan is necessarily reliant on the approval of such Abatements when future buildings are presented by ELHC to the City. Accordingly, during the Term of this Agreement, the City hereby understands and agrees with ELHC that if the City denies or reduces any of the Abatements contemplated herein and proposed by ELHC on the Logistics Park Site for any Logistics Park Improvement that is eligible for Abatement under state law, then ELHC shall have the following rights:

(i) ELHC may terminate the Agreement, and ELHC shall have no obligations hereunder; and

(ii) All other rights set forth and available to ELHC in **Section 6** of the Financing Plan.

7.6 Adjacent Projects Benefiting from Public Infrastructure Improvements. The parties hereby understand and agree that the Public Infrastructure Improvements described herein and funded pursuant to the Financing Plan will benefit properties other than the Site alone. **Section 2** of the Financing Plan provides for the capture of funds from such benefited properties.

7.7 City Maintenance and Administrative Expenses. Upon completion of any of the Public Infrastructure Improvements, the City hereby agrees to maintain and operate such Public Infrastructure Improvements at its sole cost and expense, except that, for purposes of this Section, quiet zones shall not be considered Public Infrastructure Improvements. The City shall be entitled to withdraw from the Public Infrastructure Fund the amount equal to \$25,000 on December 1, 2013 and December 1, 2014, to offset the costs of maintenance of and snow/ice removal on public roads within the Logistics Park Site. Commencing in 2015, the City shall be entitled to withdraw from the Public Infrastructure Fund on or after each April 1 an amount equal to the number of square feet of building having been constructed in the Logistics Park as of

January 1 of such year (as evidenced in the records of the Johnson County Appraiser) multiplied by \$0.09 (the “Base Annual Maintenance and Administrative Fee”). Commencing in 2022, the Base Annual Maintenance and Administrative Fee shall increase by the same inflation factor applied to the Base PILOT in §7.2 herein.

7.8 Extension of Tax Abatement. The City agrees that ELHC shall be entitled to property tax abatement for any project located on any land that ELHC (or an entity in which ELHC holds a 50% or greater ownership interest) owns in the Logistics Park, or at least 25% of the land area of the project is located within one (1) mile of the boundaries of the Logistics Park and within the city limits of the City (as now or hereafter established), but excluding any land not located within the Logistics Park but which is covered by another development agreement between the City and ELHC, or an entity related to ELHC. The parties agree that the term and percentage of property tax abatement granted to each such project shall be consistent with the City’s then-existing tax abatement policy. Origination Fees on real property collected in connection with the property described in this section above shall be deposited in the Public Infrastructure Fund, upon the terms and conditions set forth in the Financing Plan.

ARTICLE 8

TERMINATION

8.1 Termination, Effect. Upon any such termination of this Agreement, this Agreement shall terminate as to all parties, and, except as specifically set forth herein to the contrary, the parties hereto shall have no further duty or obligation hereunder. Without limiting the generality of the foregoing, and subject to the provisions of the Prefunding Agreement between BNSF and the City, each party shall be solely liable and responsible for all costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby.

ARTICLE 9

TERM; USE AND OPERATION

9.1 Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon that date which is twenty (20) years from the Effective Date (the “Term”), subject to the prior termination of certain covenants and obligations as set forth herein.

9.2 Compliance. ELHC and BNSF shall conduct their affairs and carry on their respective business and operations in connection with the Projects in such a manner as to comply with all Applicable Laws and Requirements, and to observe and conform to all valid orders, regulations or requirements of any Governmental Authorities applicable to the conduct of their business and operations and the ownership of the Projects; provided, however, that nothing contained in this Agreement shall require ELHC or BNSF to comply with, observe and conform to any such law, order, regulation or requirement of any Governmental Authorities so long as the validity thereof shall be contested in good faith by appropriate proceedings. ELHC agrees to promptly pay any and all fees and expenses associated with any safety, health or other inspections required of it under this Agreement or imposed upon it by Applicable Law and Requirements as to the Logistics Park Site, unless contested in good faith with the assurances provided in the preceding sentence. ELHC agrees to comply with all City codes and properly obtain all City planning

commission approvals required as to the Logistics Park Site.

9.3 Utilities. During the Term, all utility services used by ELHC or BNSF in, on or about the Projects shall be paid for by the user and shall be contracted for by the user in its name.

9.4 Access. During the Term, ELHC and BNSF hereby recognize, acknowledge and agree that the parties, and their respective duly authorized representatives and agents, shall have access to, and the right to inspect the Public Infrastructure Improvements at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement. In exercising its rights hereunder, the parties shall use reasonable efforts to avoid unreasonable interference with the construction and operation of the Public Infrastructure Improvements and the Projects. Provided, however, that City shall be required to execute and observe the requirements of BNSF's standard Entry Agreement before entering its property.

ARTICLE 10

DEFAULT AND REMEDIES

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

10.2 Default by the City. The City shall be in default under this Agreement if: (a) subject to **Section 4** of the Financing Plan, the City fails to make any of the payments of money required by it under the Financing Plan, and the City fails to cure or remedy the same within thirty (30) days after the City has been given written notice specifying such default; or (b) the City fails to keep or perform any material covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within sixty (60) days after the City has been given written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected; or (c) the City materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days following written notice. In the event of such default, BNSF and ELHC may take such actions, or pursue such remedies, as exist hereunder or at law or in equity, and the

City covenants but only to the extent permitted by the Kansas Cash Basis Law to pay and to indemnify BNSF and ELHC against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred in connection with the enforcement of such actions or remedies. Notwithstanding the foregoing, the City's liability for monetary amounts shall be limited by the Kansas Cash Basis Law and to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote or consequential damages.

ARTICLE 11

MISCELLANEOUS

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

11.2 Force Majeure. In the event that any party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, riots, insurrection, environmental remediation required by the appropriate Government Authorities, discovery of cultural, archeological or paleontological resources or endangered species, any lawsuit seeking to restrain, enjoin, challenge or delay construction, failure of the City to timely grant any approvals contemplated herein, war or terrorism within the continental United States, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement ("Force Majeure"), such party shall provide written notice of such Force Majeure event(s) to the other parties hereto within forty five (45) days of such event(s). Upon such written notice, the performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, the City hereby understands and agrees that "Force Majeure" shall not be deemed to include failure of the City to timely grant any approvals contemplated herein with respect to performance of obligations of the City hereunder.

11.3 Covenants of Parties.

(a) Representations and Warranties of ELHC. ELHC represents and warrants to the City and BNSF as follows:

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

(ii) Authority. The execution, delivery and performance by ELHC of this Agreement, the Annexation Agreement and the Financing Plan (the “Transaction Documents”) are within ELHC's powers and have been duly authorized by all necessary action of ELHC.

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

(iv) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the due execution and delivery by ELHC of the Transaction Documents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by ELHC of the Transaction Documents or the consummation of the transactions contemplated hereby or thereby except for zoning, building and other customary permits to be obtained from the City or other governmental units.

(v) Valid and Binding Obligation. The provisions of the Transaction Documents are the legal, valid and binding obligations of ELHC, enforceable against ELHC in accordance with the terms hereof and thereof.

(b) Representations and Warranties of BNSF. BNSF represents and warrants to the City and ELHC as follows:

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

(ii) Authority. The execution, delivery and performance by BNSF of the Transaction Documents are within BNSF's powers and have been duly authorized by all necessary action of BNSF.

(iii) No Conflicts. Neither the execution and delivery of the Transaction Documents, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of BNSF or any provision of law, statute, rule

or regulation to which BNSF is subject, or to any judgment, decree, license, order or permit applicable to BNSF, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which BNSF is a party, by which BNSF is bound, or to which BNSF is subject.

(iv) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the due execution and delivery by BNSF of the Transaction Documents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by BNSF of the Transaction Documents or the consummation of the transactions contemplated hereby or thereby except for zoning, building and other customary permits to be obtained from the City or other governmental units.

(v) Valid and Binding Obligation. The provisions of the Transaction Documents are the legal, valid and binding obligation of BNSF, enforceable against BNSF in accordance with the terms hereof and thereof.

(c) Representations and Warranties of the City. The City represents and warrants to ELHC and BNSF as follows:

(i) Authority. The execution, delivery and performance by the City of the Transaction Documents are within its powers and have been duly authorized by all necessary action.

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

(iii) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the due execution and delivery by the City of the Transaction Documents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by the City of the Transaction Documents or the consummation of the transactions contemplated hereby or thereby.

(iv) Valid and Binding Obligation. The provisions of the Transaction Documents are, to the fullest extent permitted by applicable law, the legal, valid and binding obligation of the City enforceable against the City in accordance with the terms hereof and thereof.

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

11.5 Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that the Intermodal Site and BNSF's development of the Intermodal Site are regulated by other state or federal law, including but not limited to the Interstate Commerce Commission Termination Act of 1995. Nothing in this Agreement or by making a zoning application shall be deemed a waiver by BNSF of any rights or remedies it may have under such other state or federal law, or a waiver of the preemptive effect of such other state or federal law.

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

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

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

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

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

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

To the City:	City Administrator
	City of Edgerton
	City Hall
	404 E. Nelson Street
	Edgerton, KS 66021
	Phone: (913) 893-6231
	Fax: (913) 893-6232

With a copy to: Patrick Reavey
Reavey Law, LLC
Livestock Exchange Building
1600 Genessee, Suite 303
Kansas City, MO 64102
Phone (816) 474-6300
Fax (816) 474-6302

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

To ELHC: Edgerton Land Holding Company, LLC
Attn: Nathaniel Hagedorn
6300 N. Revere, Ste. 225
Kansas City, MO 64151
Telephone: (816) 888-7381
Facsimile: (816) 888-7399
nathaniel@northpointkc.com

With a copy to: F. Chase Simmons, Esq.
Polsinelli PC
700 W. 47th Street, Ste. 1000
Kansas City, MO 64112
Telephone: (816) 360-4207
Facsimile: (816) 572-5007
csimmons@polsinelli.com

To BNSF: BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131
Attention: Mark Ude
Phone: (817) 352-6470
Fax: (817) 352-2398

With a copy to: David Rankin, Esq.
Senior General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131
Phone: (817) 352-2383
Fax: (817) 352-2398

With a copy to: Lewis A. Heaven, Jr., Esq.
Lathrop & Gage LLP
10851 Mastin Blvd., Suite 1000
Overland Park, Kansas 66210-1669
Phone: (913) 451-5100
Fax: (913) 451-0875

All notices given by fax or personal delivery, followed up by regular United States mail, shall be deemed duly given one business day after they are so delivered.

11.12 Entire Agreement. Together with the Exhibits hereto, this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces all prior oral or written agreements concerning the subject matter hereof. Provided, however, that this Agreement shall not supersede, modify, amend or otherwise affect any agreement, currently existing or executed in the future, between ELHC, BNSF and the City.

11.13 Subsequent Infrastructure Improvements. The parties recognize and agree that the Projects may eventually require additional off site infrastructure improvements (the "Subsequent Infrastructure Improvements"), but that no such Subsequent Infrastructure Improvements are contemplated under the terms and conditions of this Agreement or the Financing Plan. The parties hereby understand and agree that none of the parties have committed to fund or manage the design, construction or completion of any such Subsequent Infrastructure Improvements. However, the parties hereby agree that they shall use commercially reasonable efforts to cooperate with one another in the design and planning of such Subsequent Infrastructure Improvements, if any, as and when the same are required, however nothing in this sentence shall obligate any party to pay the costs of such Subsequent Infrastructure Improvements.

11.14 Assigns. During the Term of this Agreement, the terms and conditions hereof shall be binding upon the parties and their respective successors and assigns. Nothing in this section shall in any way prevent the lease, alienation or sale of the property in the Site, or any portion thereof, by ELHC or BNSF, nor shall anything in this Section be construed as limiting any rights of any lender or equity partner or investor. Anything contained in this Section to the contrary notwithstanding, (i) no consent shall be required for any pledge of all or any portion of the Site owned by ELHC or BNSF or this Agreement as collateral security, or for any foreclosure sale or deed in lieu thereof or subsequent transfers after such sale or deed in lieu; and (ii) no consent shall be required prior to selling, leasing or transferring any parcel of property within the Site to users for development and use consistent with the Applicable Laws and Requirements, nor shall consent be required in the event that (a) ELHC assigns this Agreement to any entity affiliated with ELHC or any entity in which ELHC, its affiliates or its principals owns 50 percent or more of the ownership interest, or to any lender for the purpose of mortgage financing, (b) BNSF assigns this Agreement to any entity affiliated with BNSF or any entity in which BNSF, its affiliates or its principals owns 50 percent or more of the ownership interest, or to any lender for the purpose of mortgage financing, or (c) ELHC assigns its interests in this Agreement to BNSF (and any subsequent assignment by BNSF to a successor developer). Notwithstanding the foregoing, during the Term of this Agreement, in the event of any transfer permitted by this Section 11.15, the transferee shall assume the rights and obligations set forth in this Agreement in writing. It is understood and agreed that in the event ELHC does not purchase the Logistics Park Site as required by and within the term of the Option, BNSF shall have the exclusive right

to transfer and assign the rights, obligations and interests of ELHC herein to a successor developer of its choice, or assume such rights, obligations and interests, without the consent of or further action by ELHC or the City. The parties may record a Memorandum of this Agreement in the land records of Johnson County, Kansas. Upon the expiration of the Term or earlier termination of this Agreement, the parties hereby agree to execute and record a release of Memorandum of this Agreement from the land records of Johnson County, Kansas if a Memorandum of this Agreement was recorded.

The Remainder of this Page Left Intentionally Blank

Signature Page for Project Agreement

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

ELHC:

**EDGERTON LAND HOLDING COMPANY,
LLC**, a Kansas limited liability company

By: _____

Printed Name: _____

Title: _____

“ELHC”

Signature Page for Project Agreement

City:

CITY OF EDGERTON, KANSAS,
a Kansas municipal corporation

[SEAL]

By: _____
Donald Roberts
Mayor

ATTEST:

“CITY”

Janeice Rawles
City Clerk

Signature Page for Project Agreement

BNSF:

BNSF RAILWAY COMPANY, a Delaware
corporation

By: _____

Title: _____

INDEX OF EXHIBITS AND SCHEDULES

EXHIBIT	DESCRIPTION
Schedule 1	Definitions of Capitalized Terms
Exhibit A-1:	The Site - Map
Exhibit A-2:	The Site– Legal Description
Exhibit B:	Intermodal Site
Exhibit C:	Original Logistics Park Site
Exhibit D:	Development Plan
Exhibit E:	LPKC Improvements
Exhibit F:	Schedule of Permit & Review Fees
Exhibit G-1:	Public Infrastructure Improvements
Exhibit G-2	Infrastructure Concept Plans
Exhibit H-1:	Additional Logistics Park - Map
Exhibit H-2:	Additional Logistics Park– Legal Description
Exhibit I:	Utility Easements/Relocation Work
Exhibit J:	Water District Easements/Relocation Work
Exhibit K:	Vacated Streets
Exhibit L	Prefunded Infrastructure Costs
Exhibit O-1.2	Logistics Park Construction Management Plan

SCHEDULE 1
DEFINITIONS OF CAPITALIZED TERMS

“Abatements” means, ad valorem real property tax abatements described in Section 7.2 hereof.

“Additional Logistics Park” has the meaning described in Recital B of this Agreement, unless amended pursuant to Section 2.2 of this Agreement.

“Additional Logistics Park Site” has the meaning described in Recital B of this Agreement, unless amended pursuant to Section 2.2 of this Agreement.

“Agreement” means this Amended and Restated Project Agreement (Intermodal Facility/Logistics Park Kansas City) by and between the City, ELHC and BNSF.

“Annexation Agreement” means the Annexation Agreement dated March 25, 2010 among the City, TAG-KC and BNSF.

“Annual Appropriations” means funds budgeted and appropriated for the purpose of paying the amounts described herein during the City's then-current budget year (which is based on a January 1 to December 31 fiscal year), as described in Section 7.5 hereof.

“Applicable Laws and Requirements” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, and/or determination, including, without limitation, the Kansas Cash Basis Law (K.S.A. § 10-1101, *et. seq.*), the Budget Law (K.S.A. § 75-2529, *et. seq.*) and the Interstate Commerce Commission Termination Act of 1995, as described in Section 9.2 hereof.

“City Approval Period” means period of time for the City to review and approve (or disapprove) the Public 1 Infrastructure Construction Documents as described in Section 5.3 hereof.

“City Public Infrastructure Improvements” means Public Infrastructure Improvements made within the corporate limits of City and over which the City has control through ownership or by acceptance of dedication.

“City Relocation Work” means the Utility Facilities to be removed, relocated, rebuilt or altered, as described on Exhibit I attached hereto and described in Section 6.2 hereof.

“City Utility Easement” means City's easements that run on, across, through and under the Site, as described in Exhibit I attached hereto and described in Section 6.2 hereof.

“City Utility Facilities” means City's utility lines and related facilities owned and/or operated by the City, as described in Exhibit I attached hereto and described in Section 6.1 hereof.

Closed Streets” means the streets located within the Site as identified on Exhibit K attached hereto, to be closed as set forth in Section 6.4 hereto.

“Contractor(s)” means the one or more general contractors for the construction of the TAG-KC Infrastructure Improvements, as described in Section 5.5 hereof.

“County” means Johnson County, Kansas.

“Development Plan” means the plan which is described in Recital F and described in Section 2.1 hereof.

“Effective Date” means the date of this Agreement first above written.

“Electrical Specifications” means the specifications and requirements for electrical service to the Site, as described on Exhibit P attached hereto, and described in Section 6.1(a) hereof.

“Financing Plan” means that certain Amended and Restated Public Infrastructure Financing Plan entered into among the City, ELHC and BNSF contemporaneously herewith.

“Governmental Authority” or **“Governmental Authorities”** means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), which have jurisdiction over the Site or the parties.

“Infrastructure Abatements” means those certain abatements of ad valorem property taxes for each building or project in the Logistics Park to be granted to ELHC by the City pursuant to **Section 2(v)** of the Financing Plan.

“Infrastructure Concept Plans” means the conceptual plans attached to this Agreement as Exhibit G-2, and described in Section 5.2 hereof.

“Intermodal Facility” means the facility which BNSF intends to develop and construct adjacent to the BNSF rail line as described in Recital B of this Agreement.

“Logistics Park” means, together, the Original Logistics Park and the Additional Logistics Park.

“Logistics Park Site” means, together, the Original Logistics Park Site and the Additional Logistics Park Site.

“LPKC Improvements” means the improvements required in connection with the Logistics Park as described on **Exhibit F** attached hereto and described in Section 4.3 hereto.

“Original Logistics Park” has the meaning described in Recital B of this Agreement.

“Original Logistics Park Site” has the meaning described in Recital B of this Agreement.

“Origination Fee(s)” means those certain fees to be paid by ELHC in connection with the Infrastructure Abatements as set forth in **Section 2** of the Financing Plan.

“Permit and Review Consultant” means the City agrees not to unreasonably withhold, condition or delay any and all approvals, permits, and plan reviews necessary in connection with the TAG-KC Infrastructure Improvements and the LPKC Improvements. In connection with such reviews, the City shall designate a point of contact for TAG-KC's permits and reviews, which point of contact may be a City employee or employee's, and/or a third party consultant to expedite the review process for all such approvals, permits and plan reviews, as described in Section 6.5 hereof.

“Person” means any natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body or government or other entity.

“Preliminary Infrastructure Improvements Schedule” means the schedule for construction of the Public Infrastructure Improvements described in **Section 5** of the Financing Plan.

“Public Funding” means public financial assistance to the project provided by the State of Kansas, the County, and/or the City as set forth in the Financing Plan.

“Public Infrastructure Improvement Costs” means the project costs related to the Public Infrastructure Improvements as described in **Section 7.3** hereof.

“Public Infrastructure Improvements” shall have the meaning given to such term in **Section 1** of the Financing Plan.

“Infrastructure Construction Documents” means construction documents for the Public Infrastructure Improvements, as described in **Section 5.3** hereof.

“Vacated Streets” means those certain streets located within the Site as identified on Exhibit K attached hereto and described in **Section 6.4** hereto.

“Water District” means Water District No. 7, Johnson County, Kansas.

“Water District Easements” means those certain Water District No. 7 rights of way and in easements that run on, across, through and under the Site, as described in Exhibit J attached hereto and described in Section 6.3 hereto.

“Water District Facilities” means Water District No. 7's water mains and related facilities described in **Exhibit J** attached hereto and described in **Section 6.3** hereof.

“Water District Relocation Work” means that as part of the removal, relocation, rebuilding or alteration of the Water District Facilities, as described on **Exhibit J** attached to and described in **Section 6.3** hereof.

Exhibit H

Amendment of Original Logistics Park and Original Logistics Park Site

Pursuant to **Section 2.2** of the Project Agreement, the City, BNSF and ELHC agree that the description of the Additional Logistics Park and the Additional Logistics Park Site is amended to the description attached to this Certificate. The description attached to this Certificate does not extend beyond Highway 56 to the north, Interstate 35 to the south, Four Corners Road to the west and Gardner Road to the east.

CITY OF EDGERTON, KANSAS, a Kansas
municipal corporation

[SEAL]

By: _____
Mayor

ATTEST:

City Clerk

BNSF RAILWAY COMPANY,
a Delaware corporation

By: _____
Printed Name: _____
Title: _____

**EDGERTON LAND HOLDING COMPANY,
LLC**, a Kansas limited liability company

By: _____
Printed Name: _____
Title: _____

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Amended and Restated Public Infrastructure Financing Plan for the Intermodal Facility/Logistics Park Kansas City

Department: Administration

Background/Description of Item: In April 2013, the City of Edgerton approved a First Amendment to the Infrastructure Financing Plan to assign the finance agreement from The Allen Group to Edgerton Land Holding Company. Since that time, Edgerton Land Holding Company (ELHC) has purchased a significant amount of additional property adjacent to the original logistics park site.

Staff, including Intermodal Bond Counsel and the City's Financial Advisor, have been working with the Edgerton Land Holding Company team to amend and restate both the Project Agreement and Infrastructure Financing Plan to reflect the current conditions of the project. Additionally, in 2014 the City of Edgerton entered into an agreement with the Kansas Department of Transportation (KDOT) for construction of Waverly Road generally from Highway 56 to 199th Street. Approval of that agreement requires the City, BNSF and ELHC to amend the existing Project Agreement and Infrastructure Financing Plan to reflect the dedication of city utility sales from Logistics Park Kansas City (LPKC) to be paid to KDOT on the schedule detailed in that agreement. The draft infrastructure financing plan also removes references to the Kansas Intermodal Transportation Revolving Loan Fund (KITRF) as that funding source for infrastructure is not anticipated to be available.

Enclosure: Draft of Amended and Restated Infrastructure Financing Plan for the Intermodal Facility/Logistics Park Kansas City

Related Ordinance(s) or Statute(s):

Recommendation:

Funding Source: N/A

Prepared by: Beth Linn, City Administrator
Date: March 23, 2015

AMENDED AND RESTATED PUBLIC INFRASTRUCTURE FINANCING PLAN

Intermodal Facility/Logistics Park Kansas City

This Amended and Restated Public Infrastructure Financing Plan (this “Financing Plan”) is made and entered into as of this ____ day of _____, 2015, by and among the **City of Edgerton, Kansas**, a Kansas municipal corporation (the “City”), **BNSF Railway Company**, a Delaware corporation (“BNSF”), and **Edgerton Land Holding Company, LLC**, a Kansas limited liability company (“ELHC”). City, BNSF and ELHC may each be referred to herein as a “party” and collectively as the “parties”.

RECITALS:

A. BNSF is the owner of certain real property located in Johnson County, Kansas comprising approximately 1,000 gross acres depicted on **Exhibit “A-1”** attached hereto and legally described on **Exhibit “A-2”** attached hereto, less portions purchased by ELHC and its predecessor (the “Site”).

B. BNSF has developed and constructed an intermodal facility with the capacity of processing up to 500,000 container lifts annually adjacent to the BNSF rail line (“Intermodal Facility”) upon approximately 440 acres of the Site as shown on **Exhibit “A-1”** (“Intermodal Site”).

C. BNSF and The Allen Group – Kansas City, LLC, a Delaware limited liability company (“TAG-KC”) entered into an Option Agreement, dated as of April 13, 2007, as amended (the “Option”) pursuant to which TAG-KC intends to purchase a portion of the Site comprising approximately 560 acres as depicted on **Exhibit “A-1”** for the development of an industrial park, including industrial warehouse, distribution, flex and storage facilities and for other supporting commercial uses (the “Original Logistics Park”).

D. TAG-KC, with the consent of BNSF, assigned the Option to ELHC.

E. Significant Public Infrastructure Improvements (hereafter defined) will be necessary to serve the Intermodal Facility and the Logistics Park, and the parties have agreed that the costs of the Public Infrastructure Improvements shall be funded through the public and private sources identified in this Financing Plan.

F. To provide for the financing of the Public Infrastructure Improvements, the parties entered into a Public Infrastructure Financing Plan (Intermodal Facility/Logistics Park Kansas City) dated March 25, 2010 (the “Basic Financing Plan”), among the City, BNSF and TAG-KC.

G. To provide for the appointment of ELHC as the successor developer of the Logistics Park and to make certain other amendments to the Basic Financing Plan, the parties

entered into a First Amendment to Public Infrastructure Financing Plan (Intermodal Facility/Logistics Park Kansas City) dated April 23, 2013 (the "First Amendment," and together with the Basic Financing Plan, the "Original Financing Plan"), among the City, BNSF, ELHC and TAG-KC.

H. BNSF, ELHC and the City have, contemporaneously herewith, entered into an Amended and Restated Project Agreement (the "Project Agreement") related to development of the Site and including construction of the Public Infrastructure Improvements.

I. The Project Agreement provides that the parties may agree to expand the boundaries of the Original Logistics Park by following the procedure set forth therein (as expanded from time to time, the "Logistics Park").

J. The purpose of this Plan is to identify the Public Infrastructure Improvements which will be reasonably necessary to serve the Intermodal Facility and Logistics Park and to provide a safe and adequate transportation system for the public, as well as identifying the sources of funds and financing mechanisms that the parties agree to utilize to fund such Public Infrastructure Improvements.

K. The parties are entering into this Financing Plan to amend and restate the Original Financing Plan in its entirety.

NOW THEREFORE, in consideration of the mutual assurances and agreements contained in this Financing Plan, and for other good and valuable consideration, the parties agree to the following terms and conditions:

1. The Public Infrastructure Improvements. The parties have identified the projects described in **Section 5(a), 5(b), 5(c)** and on the attached **Exhibit B** as "Public Infrastructure Improvements" which are reasonably required for or as a result of the proposed development of the Intermodal Facility and the Logistics Park. A description of each Public Infrastructure Improvement and the estimated hard and soft costs¹ of completing each Public Infrastructure Improvement (the "Public Infrastructure Improvement Costs") are also set forth in the **Section 5** or the attached **Exhibit B** and are estimates in 2014 dollars² but are considered by the parties to be reliable estimates for purposes of this Financing Plan, and to the extent necessary for this Financing Plan, each separate estimate will be referred to as the project cost for that particular improvement set forth herein. The parties may amend **Exhibit B** at any time by preparing a new **Exhibit B** and including the certification of amendment in the form included in **Exhibit B**, and attaching the amended **Exhibit B** to this Financing Plan.

¹ The Public Infrastructure Improvement Costs set forth herein shall include the actual costs of construction, including labor and materials, as well as "soft costs" including reimbursement of past and future design and engineering fees, project management fees, contingency, right of way acquisition and other related costs directly related to the particular improvements.

² The cost estimates set forth in this Section 1 are made based upon the 2014 costs of materials, labor and other factors. The parties recognize and understand that many of these improvements will be made later and that the costs for labor, materials and other factors may increase over time and thereby increase the actual costs for the Public Infrastructure Improvement Costs beyond the estimates set forth herein.

2. Public Infrastructure Improvement Sources – the Public Infrastructure Fund: The Public Infrastructure Improvements will be separately funded using a variety of funding sources, including the following known or anticipated commitments. The City may use whatever funding assistance is made available by and through the State of Kansas and the City may use the Funding Mechanisms in **Section 3** below. The City hereby agrees to create a special, independent project fund called the “Public Infrastructure Fund,” which may contain one or more sub-accounts and be held within the City’s treasury or by a third-party trustee, which shall be funded with moneys derived from the following sources (the “Sources of Funds”), all of which shall be collected or received by the City and placed in the Public Infrastructure Fund, subject to the annual appropriation of the City’s City Council, and then used to pay for, reimburse, or pay debt service on funds borrowed for the purpose of paying, Public Infrastructure Improvement Costs:

- a. Utility Sales Taxes: The City shall deposit an amount equal to 100% of the City's revenue derived from City retailers' sales taxes on utilities (“Utility Sales Taxes”) generated in connection with utility services on the Site during the Term of this Financing Plan, and shall deposit those monies to the Public Infrastructure Fund for payment or reimbursement of Public Infrastructure Improvement Costs.¹ Notwithstanding the foregoing, the parties acknowledge that the City and BNSF have entered into an Agreement dated February __, 2015 (the “KDOT Agreement”) with the Secretary of the Kansas Department of Transportation (“KDOT”) whereby KDOT has agreed to make certain improvements to Waverly Road. In order to comply with the KDOT Agreement, the parties agree that, commencing on the January 1 of the fifth full calendar year following the year in which the City delivers the Notice of Acceptance described in the KDOT Agreement (the “Initial Collection Year”), the City will create a separate account within the Public Infrastructure Fund (the “KDOT Account”). The City agrees to deposit the percentages of all Utility Sales Taxes in the KDOT Account at the times and in the manner required by the KDOT Agreement until such time that all amounts owing to KDOT pursuant to the reimbursement obligation in the KDOT Agreement have been paid in full. Any Utility Sales Taxes not deposited in the KDOT Account may be used for any purpose permitted by this Financing Plan.
- b. Franchise Fees: The City shall deposit an amount equal to 100% of the City's revenue derived from franchise fees generated in connection with utility services on the Site during the Term of this Financing Plan, and shall deposit those monies to the Public Infrastructure Fund for payment or reimbursement of Public Infrastructure Improvement Costs.
- c. The BNSF Contribution: BNSF has, pursuant to the Basic Financing Plan, paid to the City for deposit into the Public Infrastructure Fund the sum of \$1,820,880 (the “BNSF Contribution”) in lieu of Excise Taxes or similar

¹ The parties acknowledge that the City will use its best efforts to determine the appropriate amount of tax receipts to direct to the Public Infrastructure Fund but that the calculation of an exact amount depends upon the cooperation of third parties.

taxes. Receipt and deposit of the BNSF Contribution is hereby acknowledged by the parties.

- d. Excise Taxes: The City shall deposit an amount equal to 100% of the revenue received from excise taxes (including the BNSF Contribution and any other payments made in lieu of excise taxes) paid in connection with the Site (the “Excise Taxes”) during the Term of this Financing Plan, and the City shall contribute those monies to the Public Infrastructure Fund for payment or reimbursement of Public Infrastructure Improvement Costs.
- e. Intermodal Site Property Taxes: The City shall deposit an amount equal to 100% of the City's share of the ad valorem property taxes (above the 2009 base year taxes) received by the City in connection with the Intermodal Site (the “Intermodal Site Property Taxes”) during the Term of this Financing Plan, and the City shall deposit those monies to the credit of the Public Infrastructure Fund for payment or reimbursement of Public Infrastructure Improvement Costs.
- f. Origination Fee Payments: The City has adopted a resolution of intent in the form attached as **Exhibit C** hereto, indicating its intention to grant an abatement of ad valorem property taxes (the “Infrastructure Abatements”) for each building or project developed on the Logistics Park Site during the Term of the Financing Plan and such Infrastructure Abatements shall run for a period of ten (10) calendar years commencing on the January 1 of the year following the year in which bonds are issued for such building or project. For each Infrastructure Abatement that is granted through the use of industrial revenue bonds, the City hereby agrees to assess and collect, and unless such site subject to the Infrastructure Abatement has been transferred and assigned as set forth below, ELHC hereby agrees to pay or cause to be paid an origination fee equal to \$25,000 plus an amount equal to the product of (x) the square footage of the building or project being constructed, multiplied by (y) the Base Origination Factor (as hereinafter defined), multiplied by (z) 10 (each, an “Origination Fee” and collectively, the “Origination Fees”). The “Base Origination Factor” for abatements approved before January 1, 2022, shall be \$0.41. The Base Origination Factor for abatements approved on and after January 1, 2022, shall increase on January 1, 2022, and on each January 1 thereafter, by an amount equal to \$0.41 multiplied by the greater of (i) 1.5% per year using 2022 as the base year, or (ii) 50% of the cumulative annual increase in the United States consumer price index for all urban areas (commonly known as the CPI-U) using 2022 as the base year, such product being rounded up to the next \$0.01. The Origination Fee may be adjusted for any Infrastructure Abatement by the City with the written consent of BNSF and ELHC. The Origination Fee shall be paid as follows: \$25,000 at the bond closing and the balance shall be paid in twenty (20) equal installments on June 1 and December 1 of each year, commencing on the December 1 in the year following the year in which bonds are issued. In the event that ELHC should sell or otherwise transfer ownership of a

building or land within the Logistics Park, or any portion thereof, the City hereby understands and agrees that the responsibility to pay the Origination Fee for the bond issue relating to such building may be assigned by ELHC to the new owner. Upon such transfer and assignment, ELHC shall be released from all obligations with respect to payment of Origination Fees attributable to the bond issue for such transferred parcel and shall not have any continued responsibility therefor. In the event of a transfer of a parcel from ELHC to a purchaser, the City agrees not to materially alter the percentage of property tax abatement or the obligation to pay the Origination Fee with respect to such parcel without the written consent of ELHC; provided, however, the transferee will be required to comply with the terms of any payment-in-lieu of tax agreement to continue to receive the abatement.

In the event (i) the owner of any parcel utilizes the constitutional method of abatement pursuant to Article 11, Section 13 of the Constitution of the State of Kansas and K.S.A. 79-213 and 79-251, as amended (“Constitutional Abatement”), or (ii) the owner of any parcel chooses not to seek either an Infrastructure Abatement or Constitutional Abatement and the value of such project is estimated to be more than \$5 million, said owner shall pay to the City an amount equal to \$25,000 plus an amount equal to the product of (x) the square footage of the building or project being constructed, multiplied by (y) the Base In Lieu Factor (as hereinafter defined), multiplied by (z) 10 (“In Lieu Payment”). The “Base In Lieu Factor” for abatements granted prior to January 1, 2022, shall be \$0.41. The Base In Lieu Factor for abatements approved on and after January 1, 2022, shall increase on January 1, 2022, and on each January 1 thereafter, by an amount equal to \$0.41 multiplied by the greater of (i) 1.5% per year using 2022 as the base year, or (ii) 50% of the cumulative annual increase in the United States consumer price index for all urban areas (commonly known as the CPI-U) using 2022 as the base year, such product being rounded up to the next \$0.01. The In Lieu Payment may be adjusted by the City with the written consent of BNSF and ELHC. The In Lieu Payment shall be paid as follows: \$25,000 at the bond closing and the balance shall be paid in twenty (20) equal installments on June 1 and December 1 of each year, commencing on the December 1 in the year following the year in which the building permit is issued or the ordinance is passed. The City retains the right to refuse to issue a building permit for any parcel until such time as the initial payment of such In Lieu Payment has been paid and an In Lieu of Payment agreement has been entered into between the City and the owner of such parcel. Notwithstanding any provisions of this Section to the contrary, (i) ELHC shall be released from any and all obligations with respect to payment of In Lieu Payments for any parcel which has been transferred as set forth above, and shall have no continued responsibility therefor, and (ii) in the event that any owner of any parcel seeks approval of an Infrastructure Abatement or constitutional abatement, and the City denies approval of the same, such owner shall not be responsible for the payment of any In Lieu Payment or Origination

Fees in connection with such parcel.

If there is any dispute about the square footage of the building or project being constructed, the records of the Johnson County Appraiser's Office shall be determinative.

Except with respect to any parcel transferred and assigned as set forth above, ELHC shall be responsible for collecting the Origination Fees and In Lieu Payments from each of its tenants or users of the buildings within the Logistics Park from which Origination Fees or In Lieu Payments (or portion thereof) are due. Subject to the obligation of ELHC to pay the Origination Fees and In Lieu Payments as set forth above, the City requires ELHC to include a provision in each of its leases with the tenants and other users of the Logistics Park Site, which provision shall be substantially similar to that contained in **Exhibit D** attached hereto, requiring such tenants or users to pay an amount equal to the Origination Fees or In Lieu Payment to ELHC.

In the event that any of the Origination Fees or In Lieu Payments are not timely paid to the City, the City hereby agrees that it shall provide ELHC, or the purchaser of the parcel if such parcel has been sold by ELHC, with written notice of such failure, and ELHC, or the purchaser of the parcel if such parcel has been sold by ELHC, shall have sixty (60) days to cure such failure by paying the full amount of the unpaid Origination Fees or In Lieu Payments before the City shall exercise any remedies in connection with such failure. ELHC shall have no liability or obligation for the payment of any Origination Fee or In Lieu Payment in connection with any parcel that has been transferred as set forth above.

Upon collection of the Origination Fees and In Lieu Payments, the City hereby agrees to deposit the Origination Fees and In Lieu Payments in the Public Infrastructure Fund to further economic development in the City.

The parties acknowledge that the City may charge an origination fee for the issuance of industrial revenue bonds for the purpose of granting sales tax exemption on personal property. The parties agree that any origination fee collected by the City relating to the issuance of industrial revenue bonds issued for personal property is not covered by this Financing Plan and will not be deposited in the Public Infrastructure Fund.

- g. Adjacent Parcel Origination Fees: The City hereby agrees to deposit in the Public Infrastructure Fund 100% of the origination fees actually received by it and that are imposed pursuant to the City's tax abatement and industrial revenue bond policy for projects located on Adjacent Parcels (defined below) (the "Adjacent Parcel Origination Fees") until such time that the City delivers to BNSF and ELHC a report from the City's financial advisor or a nationally-recognized firm of independent certified public accountants stating that no additional funds need to be

deposited in the Public Infrastructure Fund in order to pay for all Public Infrastructure Improvements. The term “Adjacent Parcels” shall mean and parcel located within the Logistics Park but not owned by ELHC or an entity related to ELHC.

- h. Origination Fees from Parcels within One (1) Mile. The City hereby agrees to deposit in the Public Infrastructure Fund 100% of the origination fees actually received by it and that are imposed pursuant to the City’s tax abatement and industrial revenue bond policy for projects located on Parcels within one (1) mile (defined below) (the “One Mile Parcel Origination Fees”) until such time that the City delivers to BNSF and ELHC a report from the City’s financial advisor or a nationally-recognized firm of independent certified public accountants stating that no additional funds need to be deposited in the Public Infrastructure Fund in order to pay for all Public Infrastructure Improvements. The term “Parcels within one (1) mile” shall mean property located on any land that ELHC (or an entity in which ELHC holds a 50% or greater ownership interest) owns if at least 25% of the land area of the project is located within one (1) mile of the boundaries of the Logistics Park and within the corporate limits of the City, and such property is not covered by any other development agreement between the City and ELHC, or any entity related to ELHC.
- i. Other Sources: The funds from other programs, grants, charges or appropriations which are pledged or deposited in the Public Infrastructure Fund or, at the election of the City, with the trustee for any bonds issued pursuant to **Section 3** hereof.

Notwithstanding the deposit of all of the Sources of Funds, the parties hereby agree that if, during the Term, the City delivers to BNSF and ELHC a report from the City’s financial advisor or a nationally-recognized firm of independent certified public accountants stating that, based upon reasonable assumptions, no additional Sources of Funds need to be deposited in the Public Infrastructure Fund in order to pay for all Public Infrastructure Improvements contemplated by the Financing Plan, or to repay any loans or other debt obligations incurred to pay for Public Infrastructure Improvements or otherwise satisfy any of the City’s other obligations under this Financing Plan, then the City shall no longer be obligated to deposit Sources of Funds to the Public Infrastructure Fund. Subsequent to the delivery of the foregoing financial report, the City shall re-commence depositing Sources of Funds to the Public Infrastructure Fund if the City’s financial advisor or a nationally-recognized firm of independent certified public accountants delivers to the City, BNSF and ELHC a report stating that, based upon revised assumptions, additional funds need to be deposited in the Public Infrastructure Fund. If such report demonstrates that there are excess funds on deposit in the Public Infrastructure Fund and the excess funds are not required to pay for all Public Infrastructure Improvements, said excess funds shall be transferred to the City’s general fund and may be used for any purpose permitted by law.

3. Funding Mechanisms. The parties hereby understand and agree that the Sources of Funds on deposit in the Public Infrastructure Fund may be used to pay for the Public Infrastructure Improvement Costs directly, or to reimburse or amortize funds advanced pursuant to any financing mechanisms or funding or reimbursement agreement (the “Funding Mechanisms”) which may be utilized by the parties to provide funding for the Public Infrastructure Improvement Costs as and when the Public Infrastructure Improvements need to be completed. Such Funding Mechanisms may include bonds issued by the City among other mechanisms. Provided, however, that nothing in this Agreement shall obligate the City to issue general obligation bonds or special obligation bonds secured by an annual appropriation pledge of the City, and issuing any such bonds shall be solely within the discretion of the City, subject to the terms and restrictions set forth below. The parties agree as follows:

- a. Reimbursement Agreements with ELHC. (i) Upon ELHC’s delivery of an Improvement Notice (as defined below) to the City regarding ELHC’s intention to proceed with the design and construction of a Public Infrastructure Improvement, the City may, as set forth in Section 5.2(a) of the Project Agreement, enter into a Reimbursement Agreement (as defined in the Project Agreement) with ELHC, which shall provide for the reimbursement of the costs paid by ELHC to design and construct any such Public Infrastructure Improvement, with interest at the rate 9.5% per annum, calculated from the date(s) that ELHC actually pays for the applicable costs. Reimbursement Agreements shall not have an amortization or payment schedule. Instead, amounts owing under Reimbursement Agreements shall be paid from the proceeds of bonds issued by the City or moneys remaining in the Public Infrastructure Fund. ELHC agrees that the balance of accrued interest owing on all outstanding Reimbursement Agreements as of the date of this Financing Plan shall be reduced to an amount equal to the accrued interest that would have accrued on each Reimbursement Agreement had the interest rate on each Reimbursement Agreement been 6% per annum.

(ii) At its discretion, in lieu of executing a Reimbursement Agreement, the City may issue to ELHC a tax-exempt developer note (a “Developer Note”), bearing interest at a rate that, after taking into account the value of the tax-exemption, assuming ELHC is taxed at the highest Federal marginal tax rate for individuals, would produce a taxable-equivalent yield of 9.5% per annum. Such Developer Note shall not have an amortization or payment schedule and shall be paid from the proceeds of bonds issued by the City or moneys remaining in the Public Infrastructure Fund.
- b. Bonds.
 - i. The parties anticipate that the City may issue general obligation bonds, special obligation indebtedness secured by an annual appropriation pledge, or limited obligation home rule revenue bonds pursuant to the authority in Article 12, Section 5 of the Kansas Constitution (collectively, the “Bonds”), the debt service on which shall be payable with funds on deposit in the Public

Infrastructure Fund, to finance or refinance some or all of the Public Infrastructure Improvements.

- ii. The City may issue the Bonds at any time as long no credit enhancement is necessary from ELHC. The City may not issue the Bonds without the written consent of ELHC, in the sole discretion of ELHC, if credit enhancement from ELHC would be required; provided, however, notwithstanding any other provision of this Agreement, the City may issue at any time, at its discretion, Developer Notes pursuant to paragraph 3(a)(ii) herein to substitute for all or a part of any Reimbursement Agreement then outstanding in a like amount (including both principal and accrued interest at the time of such substitution).
- iii. If Bonds are to be issued, the City agrees to engage an underwriter or financial advisor in furtherance of the issuance of the Bonds and to use its best efforts, or cause the underwriter or financial advisor to use its best efforts, to locate a purchaser for the Bonds. To the extent permitted by Federal law, ELHC agrees to assist the City in locating a purchaser for the Bonds. The terms of the Bonds shall not be unreasonable when compared with similar obligations issued by Kansas municipalities, as determined by the City's financial advisor. The City agrees to make the net proceeds of the Bonds available for (i) the redemption of any Reimbursement Agreement (in part or in full); (ii) the redemption of any Developer Note (in part or in full); (iii) the reimbursement or payment of Public Infrastructure Improvement costs incurred by any party; (iv) the funding of required reserves, costs of issuance, underwriting fees and other obligations associated with the issuance of the Bonds.
- iv. Principal and interest on Bonds shall be repaid from funds available in the Public Infrastructure Fund and, upon approval of the City, from other sources. All costs of issuing the Bonds and retiring the Bonds shall be paid from Bond proceeds, proceeds of refunding Bonds or funds on deposit in the Public Infrastructure Fund.
- v. The parties agree that, at any time Bonds are outstanding, the parties will not amend this Financing Plan in any manner that either eliminates or impairs any of the Sources of Funds or results in any of the Sources of Funds not being deposited in the Public Infrastructure Fund.
- vi. The parties agree that the purchasers of any Bonds shall be deemed third party beneficiaries of this **Section 3** of the Financing Plan and that the City may assign its rights under this Financing Plan and the Project Agreement to one or more trustees as security for the

holders of the Bonds. The parties further agree that the City may cause some or all of the Sources of Funds to be deposited directly with one or more trustees if the City deems it beneficial for the issuance of Bonds in lieu of depositing such Sources of Funds directly in the Public Infrastructure Fund. In such event, all references in this Financing Plan to the Public Infrastructure Fund shall include all amounts on deposit with any trustee which been deposited pursuant to this subparagraph (vii).

- c. Priority of Payments from the Public Infrastructure Fund. In order to provide for the payment of debt service on any Bonds and the repayment of any obligations under any of the Reimbursement Agreements or Developer Notes, the City agrees to establish the following accounts either within the Public Infrastructure Fund or with one or more trustees pursuant to a master trust indenture, at the City's option, and agrees to deposit the Sources of Funds in the following order:
 - i. Priority Indebtedness Account. The City shall establish or cause to be established with a trustee an account identified as the "Priority Indebtedness Account." Sources of Funds (including funds on deposit in the Public Infrastructure Fund on the date of this Financing Plan) shall **FIRST** be deposited into the Priority Indebtedness Account until there is an amount on deposit sufficient to make the next twelve months of required debt service payments on the following indebtedness (the "Priority Indebtedness"): (x) indebtedness evidenced by the Loan Agreement dated as of April 30, 2012, as amended from time to time, between the City and The Kansas Department of Health and Environment acting on behalf of the State of Kansas (y) the City's General Obligation Bonds, Series 2012A. Priority Indebtedness may be evidenced by the issuance of a note or bond under a master trust indenture. Amounts on deposit in the Priority Indebtedness Account shall be used solely to make debt service payments on Priority Indebtedness.
 - ii. Priority Indebtedness Reserve Account. The City shall establish or cause to be established with a trustee an account identified as the "Priority Indebtedness Reserve Account." Sources of Funds (including funds on deposit in the Public Infrastructure Fund on the date of this Financing Plan) shall **SECOND** be deposited into the Priority Indebtedness Reserve Account until there is an amount on deposit sufficient to fund one year of maximum annual debt service on all Priority Indebtedness. Amounts on deposit in the Priority Indebtedness Reserve Account shall be transferred to the Priority Indebtedness Account in an amount equal to cover any deficiency in the Priority Indebtedness Account in the event funds on deposit in the Priority Indebtedness Account are not sufficient to make any debt service payment on any Priority Indebtedness.

In the event funds are transferred from the Priority Indebtedness Reserve Account to the Priority Indebtedness Account, ELHC agrees, upon written demand and within sixty (60) days, to deposit an amount equal to such transfer in the Priority Indebtedness Reserve Account so that the amount on deposit in the Priority Indebtedness Reserve Account again equals one year of maximum annual debt service on all Priority Indebtedness.

- iii. City Maintenance and Administrative Costs. The City shall establish or cause to be established with a trustee an account identified as the “Maintenance and Administrative Account.” Sources of Funds (including funds on deposit in the Public Infrastructure Fund on the date of this Financing Plan) shall **THIRD** be deposited into the Maintenance and Administrative Account on April 1 of each year, or as soon thereafter as funds are available from the Sources of Funds, an amount equal to the amount the City is entitled to withdraw pursuant to **Section 7.7** of the Project Agreement. Amounts on deposit in the Maintenance and Administrative Account shall be transferred without delay to the City’s general fund and used for any purpose the City deems desirable.
- iv. Bond Payments. The City shall establish or cause to be established with a trustee an account identified as the “Bond Payment Account.” Sources of Funds (including funds on deposit in the Public Infrastructure Fund on the date of this Financing Plan) shall **FOURTH** be deposited into the Bond Payment Account at any time Bonds issued pursuant to Section 3(b) of this Financing Plan are outstanding but only to the extent necessary to fund any debt service payments or other payments required by the applicable trust indenture or bond resolution and due on any of the Bonds within the subsequent 366 days. Funds deposited into this account shall be used to make debt service payments on outstanding Bonds as provided by the applicable trust indenture or bond resolution.
- v. Reimbursement Agreements and Developer Notes. The City shall establish or cause to be established with a trustee an account identified as the “Reimbursement Agreements Account.” Sources of Funds (including funds on deposit in the Public Infrastructure Fund on the date of this Financing Plan) shall **FIFTH** be deposited into the Reimbursement Agreement Account so long as there are any amounts then due and owing under any Reimbursement Agreement or Developer Note. Payments on Reimbursement Agreements and Developer Notes shall be applied first to the Reimbursement Agreement or Developer Note that has been outstanding the longest (and pro rata on any Reimbursement Agreements or Developer Notes executed on the same date) and then to subsequent Reimbursement Agreements or Developer

Notes in the order of execution. Payments on a Reimbursement Agreement or Developer Note shall first be applied to interest and then to principal.

- vi. Disbursement to City. The City shall establish or cause to be established with a trustee an account identified as the “Distribution Account.” Sources of Funds (including funds on deposit in the Public Infrastructure Fund on the date of this Financing Plan) shall **SIXTH** be deposited into the Distribution Account. The City shall be entitled to withdraw funds from the Distribution Account at any time to (1) redeem Bonds or other obligations outstanding in part or in full; (2) pay for maintenance of, improvements to or replacement of Public Infrastructure Improvements or (3) use such funds for economic development or other purposes as deemed prudent by the City.

4. City's Limited Obligation to Perform. Notwithstanding anything to the contrary in this Financing Plan, the City's obligation to pay the costs of or reimburse any of the Public Infrastructure Improvements or otherwise advance, spend or reimburse any funds on the Intermodal Facility or Logistics Park or repay funds borrowed for such purpose from any other source is limited to the extent funds are available to the City from the Public Infrastructure Fund. To the extent funds are not available in the Public Infrastructure Fund, the City shall not be in default under the Financing Plan, the Project Agreement or the Annexation Agreement so long as the City has made all deposits to the Public Infrastructure Fund required by this Financing Plan.

5. Schedule. The parties hereby understand and agree that commencement of design and construction of the Public Infrastructure Improvements shall be as follows (the “Schedule”):

- a. Waste Water Improvements. The City has constructed the Big Bull Creek wastewater plant using the proceeds of a KDHE revolving fund loan. The approximate cost of the Waste Water Improvements was \$11,498,000 and remaining loan payments, as of January 1, 2015, total \$14,197,122.52.
- b. Quiet Zone #1. The City has constructed Quiet Zone #1, which is the quiet zone located at Nelson Street, with a borrowing totaling \$310,000 and remaining bond debt service payments, as of January 1, 2015, total \$405,832.50.
- c. Quiet Zone #2. The City has constructed Quiet Zone #2, which is the quiet zone located at 199th Street, at an approximate cost of \$110,000 using funds on hand in the Public Infrastructure Fund.
- d. Design of Grade Separation. An amount not to exceed \$2 million, which is the estimated cost to design a grade separation railroad crossing at 207th Street in Edgerton, to be made available on or before January 1, 2016.
- e. Construction of Grade Separation. An amount not to exceed \$13 million, which is the estimated cost to construct a grade separation railroad

crossing at 207th Street in Edgerton, to be made available on or before January 1, 2018.

- f. All remaining Public Infrastructure Improvements shall be commenced when ELHC executes and delivers to the City and BNSF a Public Infrastructure Improvement Notice to Proceed (the “Improvement Notice”) in the form attached hereto as **Exhibit G**.

6. City Denial of Abatements. The parties hereby understand and agree that the development of the Logistics Park is likely to evolve on a building-by-building basis as and when third parties agree to lease or purchase portions of the Logistics Park Site. The parties hereby acknowledge that the financial structure contemplated by this Financing Plan is necessarily reliant on the approval of real property tax abatements (“Abatements”), as well as the City's deposit of the Sources of Funds to the Public Infrastructure Fund as set forth in **Section 2** hereof, when future buildings are presented by ELHC to the City. Accordingly, during the Term, the City hereby understands and agrees with the parties that if the City denies or reduces any of the Abatements proposed by ELHC on the Logistics Park Site which otherwise satisfy the terms and criteria set forth on **Exhibit M** of the Project Agreement (but subject to **Section 9** of this Agreement), or if the City fails to perform on its deposit of any of the Sources of Funds in **Section 2** contemplated herein, ELHC shall not be obligated to pay any additional Origination Fees for any new project in the Logistics Park thereafter and shall have no liability or responsibility therefor. The parties hereby agree that the provisions of this **Section 6** shall survive the expiration or earlier termination of this Financing Plan.

7. Term. The term of this Financing Plan, and the agreements set forth herein (the “Term”) shall commence on the date hereof and end upon the date that is the later of the date all of the Public Infrastructure Improvements have been substantially completed and paid or the date any Bonds, Developer Notes, Reimbursement Agreements, loans or indebtedness issued in support of the Financing Plan have reached final maturity and have been fully satisfied or are defeased pursuant to the applicable trust indenture or resolution.

8. Costs of Issuance, Reserves and Capitalized Interest. The parties agree that the actual borrowings contemplated by **Section 3** hereof may be more than the amounts stated herein to cover other costs and expenses related to the loan or bond issue, including but not limited to costs of issuance, credit enhancement fees, debt service reserve funds and capitalized interest.

9. Statutory Public Funding Requirements; Change of Law. The parties hereby agree that they will comply with all reasonable requirements, including any statutory requirements, associated with the finalizing, issuance, sale, purchase and delivery, if any, of the funds for the Public Infrastructure Improvements and shall cooperate with one another to fully effectuate the terms, distributions, abatements, and payments as detailed herein. In the event a change occurs in federal or state law that prohibits or substantially impairs the use of any of the Funding Mechanisms, the parties agree to negotiate in good faith to agree upon one or more alternative or additional funding mechanisms so that the intent of this Agreement may be carried out. In the event any such change in state law is subject to avoidance by charter ordinance, the City agrees to adopt such charter ordinance.

10. Custody of and Accounts Created Within the Public Infrastructure Fund. The

parties agree that the City may establish accounts within the Public Infrastructure Fund as may be necessary for the proper administration of the Public Infrastructure Fund. If Bonds or Developer Notes are issued, or it is anticipated that Bonds or Developer Notes will be issued, in compliance with the terms and conditions of this Financing Plan, the parties agree that the City may establish reserve funds and accounts for the payment of such Bonds or Developer Notes, the City may transfer some or all of the funds on deposit in the Public Infrastructure Fund to a trust company or bank in good standing and qualified to accept such trust (the "Trustee"), and the City may agree to deposit, or cause to be deposited, some or all of the Sources of Funds with the Trustee if deemed necessary in connection with the issuance of such Bonds or Developer Notes.

11. Termination. The parties hereby agree that this Financing Plan shall not be automatically terminated if the Project Agreement is terminated pursuant to the conditions set forth in Article 8 thereof.

12. Assigns. During the Term of this Financing Plan, the terms and conditions hereof shall be binding upon the parties and their respective successors and assigns. Nothing in this section shall in any way prevent the lease, alienation or sale of the property in the Site, or any portion thereof, by ELHC or BNSF, nor shall anything in this Section be construed as limiting any rights of any lender or equity partner or investor. Anything contained in this Section to the contrary notwithstanding, (i) no consent shall be required for any pledge of all or any portion of the Site owned by ELHC or BNSF or this Financing Plan as collateral security, or for any foreclosure sale or deed in lieu thereof or subsequent transfers after such sale or deed in lieu; and (ii) no consent shall be required prior to selling, leasing or transferring any parcel of property within the Site to commercial and industrial users for development and use consistent with the applicable laws and requirements, nor shall consent be required in the event that (a) ELHC assigns its interests in this Financing Plan to any entity affiliated with ELHC or any entity in which ELHC, its affiliates or its principals owns 50 percent or more of the ownership interest, or to any lender for the purpose of mortgage financing, or (b) BNSF assigns its interests in this Financing Plan to any entity affiliated with BNSF or any entity in which BNSF, its affiliates or its principals owns 50 percent or more of the ownership interest, or to any lender for the purpose of mortgage financing, or (c) ELHC assigns its interests in this Financing Plan to BNSF (and any subsequent assignment by BNSF to a successor developer). Notwithstanding the foregoing, during the Term of this Financing Plan, in the event of any transfer permitted by this **Section 11**, the transferee shall demonstrate the financial ability to and shall assume the rights and obligations set forth in this Financing Plan in writing. It is understood and agreed that in the event ELHC does not purchase the Logistics Park property as required by and within the term of the Option, BNSF shall have the exclusive right to transfer and assign the rights, obligations and interests of ELHC herein to a successor developer of its choice, or assume such rights, obligations and interests, without the consent of or further action by ELHC or the City.

13. 191st Street Improvements. The parties agree that the construction and improvement of 191st Street from Four Corners Road to Waverly Road, at the cost and under the supervision of the County, has been completed.

14. Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and received for all purposes if (i) delivered by nationally recognized overnight delivery service; (ii) facsimile (with follow up within one (1) business day by United

States Mail); or (iii) delivered in person, in each case if addressed to the parties set forth below:

To the City: City Administrator
City of Edgerton
City Hall
404 E. Nelson Street
Edgerton, KS 66021
Phone: (913) 893-6231
Fax: (913) 893-6232

With a copy to: Patrick Reavey
Reavey Law, LLC
Livestock Exchange Building
1600 Genessee, Suite 303
Kansas City, MO 64102
Phone (816) 474-6300
Fax (816) 474-6302

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

To TAG-KC: Edgerton Land Holding Company, LLC
Attn: Nathaniel Hagedorn
6300 N. Revere, Ste. 225
Kansas City, MO 64151
Telephone: (816) 888-7381
Facsimile: (816) 888-7399
nathaniel@northpointkc.com

With a copy to: F. Chase Simmons, Esq.
Polsinelli PC
700 W. 47th Street, Ste. 1000
Kansas City, MO 64112
Telephone: (816) 360-4207
Facsimile: (816) 572-5007
csimmons@polsinelli.com

To BNSF: BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131
Attention: Mark Ude
Phone: (817) 352-6470
Fax: (817) 352-2398

With a copy to: David Rankin, Esq.
Senior General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131
Phone: (817) 352-2383
Fax: (817) 352-2398

With a copy to: Lewis A. Heaven, Jr., Esq.
Lathrop & Gage LLP
10851 Mastin Blvd., Suite 1000
Overland Park, Kansas 66210-1669
Phone: (913) 451-5100
Fax: (913) 451-0875

All notices given by fax or personal delivery, followed up by regular United States mail, shall be deemed duly given one business day after they are so delivered.

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

*[Remainder of this page is left blank intentionally
Signature pages to follow]*

Signature Page for Financing Plan

CITY OF EDGERTON, KANSAS,
a Kansas municipal corporation

[SEAL]

By: _____
Donald Roberts
Mayor

ATTEST: "CITY"

Janeice Rawles
City Clerk

Signature Page for Financing Plan

BNSF RAILWAY COMPANY,

a Delaware corporation

By: _____

Printed Name: _____

Title: _____

“BNSF”

Signature Page for Financing Plan

**EDGERTON LAND HOLDING COMPANY,
LLC**, a Kansas limited liability company

By: _____

Printed Name: _____

Title: _____

“ELHC”

Exhibit B

Public Infrastructure Improvements

The Public Infrastructure Improvements and the estimated Public Infrastructure Improvements Costs are set forth below. **The order in which the Public Infrastructure Improvements are listed below is not intended to create any order of priority.**

Form of Certification of Amendment of Exhibit B

The City, BNSF and ELHC agree as of the ____ day of _____, 20____, that the Financing Plan is amended by substituting this **Exhibit B** for the **Exhibit B** of the Financing Plan in force on the date immediately preceding the date hereof.

CITY OF EDGERTON, KANSAS, a Kansas
municipal corporation

[SEAL]

By: _____
Mayor

ATTEST:

City Clerk

BNSF RAILWAY COMPANY,
a Delaware corporation

By: _____
Printed Name: _____
Title: _____

**EDGERTON LAND HOLDING COMPANY,
LLC**, a Kansas limited liability company

By: _____
Printed Name: _____
Title: _____

Exhibit G

Public Infrastructure Improvement Notice

ELHC agrees to promptly proceed with the Public Infrastructure Improvement(s) identified below:

Public Infrastructure <u>Improvement</u>	Public Infrastructure <u>Improvement Description</u>	<u>Estimated Cost</u>	<u>Funding Mechanism</u>	Responsible <u>Party</u>

The Infrastructure Concept Plans (as defined in the Project Agreement), if any, are attached to this Notice.

This Public Infrastructure Improvement Notice is dated _____, ____.

**EDGERTON LAND HOLDING COMPANY,
LLC**, a Kansas limited liability company

By: _____

Printed Name: _____

Title: _____