

EDGERTON CITY COUNCIL
***AMENDED* MEETING AGENDA**
CITY HALL, 404 EAST NELSON STREET
September 9, 2021
7:00 P.M.

Call to Order

1. **Roll Call** ____ Roberts ____ Longanecker ____ Lewis ____ Brown ____ Beem
2. **Welcome**
3. **Pledge of Allegiance**

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

4. Approve Minutes from August 26, 2021 Regular City Council Meeting
5. Approve Resolution No. 09-09-21A Waiving the City's Compliance with Generally Accepted Accounting Principles for Financial Reporting and Causing Such Reports to be Prepared in Compliance with the Cash Basis and Budget Laws of the State of Kansas

Motion: _____ Second: _____ Vote: _____

Regular Agenda

6. **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.
7. **Proclamation.** By The Mayor of The City of Edgerton, Kansas Honoring Senior Chief Petty Officer Jon David Crawford.
8. **Public Comments.** Persons who wish to address the City Council regarding items on the agenda may do so when called upon by the Mayor. Comments on items not on the agenda, personnel matters or matters pending before court/other outside tribunals are not permitted. Please notify the City Clerk if you wish to speak by signing in at the meeting. Speakers must provide their name and address for the record and are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.
9. **Presentation** for a New Campaign by ElevateEdgerton!, Presented by James Oltman.

Business Requiring Action

10. **CONSIDER A THREE-YEAR AGREEMENT WITH VARNEY & ASSOCIATES, CPAS, LLC, TO PREPARE THE CITY'S FINANCIAL AUDIT FOR FISCAL YEARS 2021, 2022 AND 2023**

Motion: _____ Second: _____ Vote: _____

11. **CONSIDER ORDINANCE NO. 2095 ADOPTING THE RECOMMENDATION OF THE EDGERTON PLANNING COMMISSION TO APPROVE APPLICATION ZA2021-07 FOR THE REZONING OF APPROXIMATELY 9.88 ACRES OF LAND LOCATED NORTHEAST OF THE INTERSECTION OF 191ST STREET AND MONTROSE STREET**

**IN EDGERTON, KANSAS FROM JOHNSON COUNTY "RUR" (RURAL DISTRICT)
ZONING TO CITY OF EDGERTON "L-P" (LOGISTICS PARK) ZONING DISTRICT.**

Motion: _____ Second: _____ Vote: _____

- 12. CONSIDER ORDINANCE NO. 2096 ADOPTING THE RECOMMENDATION OF THE EDGERTON PLANNING COMMISSION TO APPROVE APPLICATION ZA2021-08 FOR THE REZONING OF APPROXIMATELY 9.89 ACRES OF LAND LOCATED NORTHEAST OF THE INTERSECTION OF 191ST STREET AND MONTROSE STREET IN EDGERTON, KANSAS FROM JOHNSON COUNTY "RUR" (RURAL DISTRICT) ZONING TO CITY OF EDGERTON "L-P" (LOGISTICS PARK) ZONING DISTRICT.**

Motion: _____ Second: _____ Vote: _____

- 13. CONSIDER RESOLUTION NO. 09-09-21B CONSENTING TO BOND DOCUMENT AMENDMENTS TO EXTEND THE MATURITY DATE OF THE CITY'S INDUSTRIAL REVENUE BONDS (MY STORE III, INC. PROJECT), SERIES 2020**

Motion: _____ Second: _____ Vote: _____

- 14. CONSIDER RESOLUTION NO. 09-09-21C CONSENTING TO THE ASSIGNMENT OF BOND DOCUMENTS IN CONNECTION WITH THE CITY'S TAXABLE INDUSTRIAL REVENUE BONDS (ELHC VII, LLC PROJECT), SERIES 2020, AND AUTHORIZING A COLLATERAL ASSIGNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT**

Motion: _____ Second: _____ Vote: _____

- 15. CONSIDER RESOLUTION NO. 09-09-21D CONSENTING TO THE ASSIGNMENT OF BOND DOCUMENTS IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (ELHC XXII, LLC PROJECT), SERIES 2017, AND AUTHORIZING A COLLATERAL ASSIGNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT**

Motion: _____ Second: _____ Vote: _____

- 16. CONSIDER RESOLUTION NO. 09-09-21E CONSENTING TO THE ASSIGNMENT OF BOND DOCUMENTS IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (ELHC LI, LLC PROJECT), SERIES 2019, AND AUTHORIZING A COLLATERAL ASSIGNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT**

Motion: _____ Second: _____ Vote: _____

- 17. CONSIDER THE 2022 RECOMMENDED BUDGET**

Motion: _____ Second: _____ Vote: _____

- 18. Report by the City Administrator**

- 19. Report by the Mayor**

20. Future Meeting Reminders:

- September 14th: Planning Commission Meeting – 7:00PM
- September 23rd: Work Session – 6:00PM
- September 23rd: City Council Meeting – 7:00PM
- October 12th: Planning Commission Meeting – 7:00PM
- October 14th: City Council Meeting – 7:00PM
- October 28th: City Council Meeting – 7:00PM
- November 9th: Planning Commission Meeting – 7:00PM
- November 18th: City Council Meeting – 7:00PM
- December 9th: City Council Meeting – 7:00PM
- December 14th: Planning Commission Meeting – 7:00PM

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

Motion: _____ Second: _____ Vote: _____

22. *CONSIDER RESOLUTION NO. 09-09-21F AUTHORIZING THE CITY OF EDGERTON, KANSAS TO ENTER INTO A DEVELOPMENT AGREEMENT FOR A PROJECT IN THE HOMESTEAD LANE RETAIL TIF DISTRICT*

Motion: _____ Second: _____ Vote: _____

23. Adjourn Motion: _____ Second: _____ Vote: _____

EVENTS

September 14th: Tales 4 Tots
September 15th: Senior Lunch & BINGO
September 17th: Yappy Hour at the Edgerton Dog Park
September 18th: Annual Fishing Derby
September 24th: Escape Room at Community Hall
September 27th: Prehistoric Paleontologists (Kids Dino Program)
September 29th: Hillsdale Watershed Program

City of Edgerton, Kansas
Minutes of City Council Regular Session
August 26, 2021

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on August 26, 2021. The meeting convened at 7:00 PM with Mayor Roberts presiding.

1. ROLL CALL

Clay Longanecker	present
Josh Lewis	present
Josh Beem	present via phone
Jody Brown	present

With a quorum present, the meeting commenced.

Staff in attendance:	City Administrator Beth Linn
	City Attorney Lee Hendricks
	City Clerk Alexandria Clower
	Development Services Director Katy Crow
	Finance Director Karen Kindle
	Accountant Justin Vermillion
	Public Works Director Dan Merkh
	CIP Manager Brian Stanley
	Public Works Superintendent Trey Whitaker
	Marketing & Communications Manager Kara Banks

2. WELCOME

3. PLEDGE OF ALLEGIANCE

Consent Agenda

4. Approve Minutes from August 12, 2021 Regular City Council Meeting
5. Approve Renewing the appointments of John Daley and Deb Lebakken to the Edgerton Planning Commission, each for a three-year term expiring in September 2024

Councilmember Longanecker moved to approve the Consent Agenda, the motion was seconded by Councilmember Lewis. The Consent Agenda was approved, 4-0.

Regular Agenda

6. **Declaration.** No Councilmember had anything to declare at this time.

Presentation by James Oltman with ElevateEdgerton! regarding the new Workforce Recruitment social media campaign.

Mr. Oltman stated one of the many priorities of ElevateEdgerton! is workforce development, not only to obtain development for jobs but also working with those facilities to gain and maintain

quality employees. He stated the current workforce shortage is a challenge, no matter the profession. He stated EE! is working with the employers to try to break through the noise and tell the story of what LPKC has to offer. He stated there are a few testimonials from current employees at LPKC that he would like to show the Governing Body.

Mr. Oltman played the video for council.

Mr. Oltman stated these are just three examples of videos that will begin showing on social media next week, promoting workforce recruitment. He stated these are real LPKC employees who participated. He stated because of the employment opportunities LPKC has to offer, people have been able to become debt free, purchase homes, etc. He added it is important to remember that behind every number there is a real person with a real story.

Mayor Roberts stated the jobs at LPKC provide great opportunities, not only for the community of Edgerton, but also to the residents of the surrounding areas.

Business Requiring Action

7. PUBLIC HEARING FOR RESOLUTION NO. 08-26-21A OF THE CITY OF EDGERTON, KANSAS TO LEVY A PROPERTY TAX RATE EXCEEDING THE REVENUE NEUTRAL RATE

Mayor Roberts opened the Public Hearing regarding Resolution No. 08-26-21A at 7:11PM

There were no public comments made.

Mayor Roberts then closed the Public Hearing at 7:11 PM

8. CONSIDER RESOLUTION NO. 08-26-21A OF THE CITY OF EDGERTON, KANSAS TO LEVY A PROPERTY TAX RATE EXCEEDING THE REVENUE NEUTRAL RATE

Ms. Karen Kindle addressed the council. She stated as previously discussed during the budget process the most prominent change in this process is related to Senate Bill 13. She stated in June, City Staff worked with the Governing Body to come up with certain policy adjustments that the City would make regarding the Revenue Neutral Rate (RNR). She stated this information was presented at the budget work session. She stated the county had the City's RNR listed at 23.995, but it should have been 28.964. The 4.9 out of the 5.9 mill difference is due to an error at county. She stated the budget calls for a total mill rate of 29.939 as of packet publication, the Resolution provided was created from a template provided by the State of Kansas and has been reviewed and approved by the City Attorney.

Mayor Roberts stated there has been some misinformation provided, the amount provided by the county was an incorrect number and has now been corrected.

Councilmember Lewis moved to approved Resolution No. 08-26-21, to Levy a Property Tax Rate to Exceed the Revenue Neutral Rate. Seconded by Councilmember Brown. The Resolution No. 08-26-21A was approved, 4-0.

9. PUBLIC HEARING REGARDING THE 2022 RECOMMENDED BUDGET

Mayor Roberts opened the Public Hearing Regarding the 2022 Recommended Budget at 7:15 PM.

Mr. Ron Conus, 605 W Meriwood Ln., addressed the Council. He stated he had four points he would like to address regarding the recommended budget.

1. The City of Edgerton has the largest commercial development in the United States, with the PILOT project projecting over \$500,000 generated just this year. Despite the revenue brought in, the residential taxes continue to increase.
2. The intermediate family income range is the second lowest in the Johnson County area. Tax increases put an added burden on those families.
3. He is not a fan of big government, when the government is bigger there is an increase in dollars used for spending and an increase in taxes. He stated the highest efficiency rate for the City was in 2017 and the City government has been increasing at a size greater than the revenues coming in.
4. Earlier this year, the Kansas Legislature approved Senate Bill 13. The intent of this bill was to prevent politicians from claiming they have lowered the taxes. He stated the City presented a graph to the Governing Body related to the property taxes and how they had dropped to the lowest level in 10 years. He stated he sent this graph to the Kansas Policy Institute to analyze the data given and this group labeled the chart misleading. He stated anyone that has looked at their yearly tax levels can see that their numbers have risen to new highs. He stated this budget, especially with the mill rate will take taxes to the highest level they've been in the 15 years he's lived in Edgerton.

He stated not one Councilmember objected to this tax increase and hopes that the going forward the Governing Body will work to stop raising taxes on their citizens by voting no.

There were no further public comments.

Mayor Roberts closed the Public Hearing at 7:18 PM.

Ms. Linn stated the formal adoption of the Budget will be held on September 9th. She stated as part of the information process for the Governing Body and the residents of Edgerton, City Staff worked to produce a video that explains the budget and how revenue is spent.

Ms. Linn played the video.

Ms. Kindle stated the Agenda Packet includes a memo of changes to the budget since the budget work session took place. She stated the most important thing to note was the information received from the County regarding the TIF districts. At the time of the budget work session, the TIF information from the county had not yet been received. She stated since being received, City Staff worked to review with the City's Bond Counsel, Scott Anderson. She stated there have been some changes made to the schedule based on this info received related to the four TIF funds.

She stated the revenue for the TIF funds come from the incremental increase of property taxes related to commercial development in the applicable TIF District. There are two parts to the incremental property taxes: the City's portion related to the City mill levy and the portion that is related to the mill levies of other taxing jurisdictions. She stated the City's portion is taken out

of the City's total property tax revenue and deposited into the applicable TIF funds. She stated the TIF revenues are received from the County on the same schedule as the regular property tax distribution.

She stated for TIF – Edgerton Office, the 2021 estimate reflects no increase in assessed valuation and therefore, no increase in incremental property taxes for this TIF. In 2019 the City paid for the TIF study and the 2021 estimate includes a transfer from the general fund to cover the cost of the study. The 2022 recommended budget reflects the small increase in the assessed value of that property, therefore, a small increase in incremental property taxes for this TIF. She stated the 2022 recommended budget column shows spending the balance should a project plan be approved for 2022.

She stated for TIF – Homestead Lane A, revenues included are from parcels in the Project Area A that are not a part of Project Plan A1. She stated in the 2021 estimate there is no increase. The 2022 recommended budget shows an increase due to the information from the County which showed an increase in assessed value. She stated the revenue amount shown is a combination of the increment from the City mill levy and the increment from the other jurisdictions mill levies. The 2022 recommended budget includes payment to the General Fund for the down payment for the initial administration fee. She stated the revenue was received in 2020 and will need to be transferred to the General Fund in 2022. The rest of the expenditures represent the potential remaining balance in the fund and the amount listed allows budget authority should a project be approved.

She stated for TIF – Homestead Lane A1, referred to as On the Go Travel Center. She stated the revenues include the incremental property taxes for all parcels that are apart of the Project Plan A1. The 2021 estimate shows a small increase in assessed value, therefore, a small amount of incremental property taxes. The revenue shown is a combination of the increment from the City and other jurisdictions mill levies. She stated for 2022 recommended, the information from the county showed an increase in assessed value, the revenue amount shown is a combination of the city and other jurisdictions mill levies. The 2022 recommended expenditures include a payment of the amount due to the developer per the Disposition and Development Agreement, a payment of the remaining balance of the initial administration fee to the General Fund and a transfer of the funds to pay towards the temporary notes issued in 2020 to finance the city's cost for the 200th Street Intersection Project.

She stated for TIF – Homestead Lane B, the revenues include those parcels in Project Area B. She stated the 2021 estimate shows an increase in incremental property taxes and the revenue shown is a combination of the City's and other jurisdictions mill levies. For 2022 recommended budget, the information from the county showed an increase in assessed value. She stated for the 2022 recommended expenditures, the budget column shows spending the potential balance should there be a project plan adopted in 2022.

She stated for the General Fund a line was added to the revenue side below the Ad Valorem Tax line to show the incremental City taxes that will go to the TIF funds. She stated a line was also added to show the TIF administration fee revenue related to the Homestead LN TIF – Project Plan A1. There were no changes made to the expenditures or transfers to other funds.

Ms. Kindle stated the remainder of the 2022 Recommended Budget documents are the same from the work session.

There were no questions from the Councilmembers.

Ms. Linn stated the consideration for the formal adoption of the 2022 Budget will be held September 9th.

10. CONSIDER AGREEMENT WITH INCITE DESIGN STUDIO FOR GREENSPACE PROJECT

Mr. Dan Merkh, Public Works Director, addressed the council. He stated the City Council previously approved the CIP Budget for the 2020 to 2024 calendar years. The Greenspace project was included in that budget with a project time frame of April 2019 to May 2021, that has since been pushed due the COVID-19 Pandemic. The budget for this project was listed at roughly \$4 Million, with the funding source listed as General Obligation Bonds.

He stated the project includes the design and construction of a building approximately 20,000 – 30,000 square feet. Public engagement was completed by City Staff to identify program elements most desired by the community, and those details will be finalized during Phase I with the proposed architect.

He stated during the uncertainty of the pandemic in 2020, City Staff proposed revising the scope and schedule of the project to change the delivery method of this project to design-bid-build slated to begin in 2021.

Mr. Merkh stated with a total of nine submissions, the selection committee recommends Incite Design Studio based upon their existing experience providing these services to municipalities both of similar and larger populations, as well as experience designing buildings of similar size. City Staff is currently working with Incite to finalize the scope and fee for the project. He stated this contract is drafted into a 2-phase approach; Phase I includes the finalizing of public input, schematic design, delivery method assessment, and finalizing scope and construction estimates. Phase II will be to finalize design and documents. He stated upon completion of Phase I, Phase II will be brought back to Council at a later date.

He stated Phase I contract amount is \$30,600. Upon final approval from the City Attorney and City Engineer, staff recommends authorizing the Mayor to execute the contract. He stated if approved, the design of the project will begin immediately. Any changes to the contract or to the schedule impacting the completion date will be brought back before the Council.

Mayor Roberts stated he would like to see the City move forward. This project brings an amenity to the community that goes above and beyond anything Edgerton has ever had in the past. He stated there was a lot of public comment, which allows a design and final project based on the community's wants.

Councilmember Lewis moved to approve the Agreement with Incite Design Studio for the Greenspace Project and Authorizing the Mayor to Execute the Contract. Councilmember

Longanecker seconded the motion. The Agreement and Authorization of the Mayor to Execute was approved, 4-0.

11. CONSIDER ORDINANCE NO. 2092 RESTATING ARTICLE 12 – SIGN REGULATIONS OF THE UNIFIED DEVELOPMENT CODE OF THE CITY OF EDGERTON KANSAS TO UPDATE CERTAIN SECTIONS AND INCLUDE SIGNAGE REGULATIONS FOR L-P DISTRICT ZONING DESIGNATIONS AS AMENDED AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH

Ms. Katy Crow addressed the council. She stated the City's Uniform Development Code (UDC) was adopted to encourage the most appropriate use of land and to ensure the logical and compatible growth of various districts within the City. The UDC is intended to implement the planning goals and policies of the City Council and Planning Commission.

She stated the current UDC was adopted in 2004 and has been revised several times since to better fit the vision of Edgerton, as approved by the Governing Body. In 2019, the core contents of Article 12 underwent a complete update along with the signage requirements specific to commercial zoning districts. The sign code for the logistics park was not included in that article, but are instead referenced in Article 5, Logistics Park (LP).

She stated to bring consistency to the UDC, staff recommended to the Planning Commission that the signage for the LP District be moved from Article 5 to Article 12. This will provide clarification when discussing sign code requirements with applicants and when administering sign code enforcement. She stated in July and August of this year, the Planning Commission held Public Hearings related to both articles.

She stated in addition to the incorporation, staff presented information regarding portions of the current Article 5 sign code, where clarification is needed due to conflicts within the code content. She stated staff recommended updates to the LP sign code related to temporary signs, internal and external directional signs, and yard signs. She stated internal signs include those for directions within the lot, outer directional signs include those that would direct toward the site.

She stated the information incorporated into Article 12 is highlighted within the draft form included in the packet, as well as information regarding discussions held during Public Hearings. She stated the draft includes those recommended updates or changes per those discussions.

Ms. Crow stated upon conclusion of the Public Hearing held by Planning Commission, recommendation was made by the Planning Commission to the Governing Body to adopt Article 12 with the revisions included in this packet. She stated the City Attorney has reviewed the amended Article and approved the updates. She stated Ordinance No. 2092 is the restatement of the entire Article 12.

Councilmember Longanecker moved to approve Ordinance No. 2092, Restatement of Article 12 of the Unified Development Code. Councilmember Brown seconded the motion. The Ordinance was approved, 4-0.

12. CONSIDER ORDINANCE NO. 2093 AMENDING CHAPTER XIV OF THE EDGERTON, KANSAS MUNICIPAL CODE TO INCORPORATE THE 2021 STANDARD TRAFFIC ORDINANCE, SUBJECT TO EXISTING LOCAL TRAFFIC PROVISIONS IN THE CITY CODE WHICH SUPPLEMENT AND/OR MODIFY CERTAIN SECTIONS THEREOF

Ms. Kara Banks, Marketing and Communications Manager, addressed the council. She stated the League of Kansas Municipalities prepares and publishes the code, known as the STO, annually. The City of Edgerton, by ordinance, then adopts the current STO with exemptions as stated. She stated the Kansas State Legislature made multiple changes during the 2021 session with the most notable changes for Edgerton listed within the Agenda Packet.

There were no questions from the City Council.

Councilmember Brown moved to approve Ordinance No. 2093, Incorporating the 2021 Standard Traffic Ordinance into the City of Edgerton Municipal Code. Councilmember Longanecker seconded the motion. The Ordinance was approved, 4-0.

13. CONSIDER ORDINANCE 2094 AMENDING CHAPTER XI, ARTICLE I, SECTION 11-101 OF THE CODE OF THE CITY OF EDGERTON, KANSAS, CONCERNING THE UNIFORM PUBLIC OFFENSE CODE

Ms. Banks stated similar to the last ordinance on the Agenda, this Ordinance will adopt and incorporate the Uniform Public Offense Code as prepared and published by the League of Kansas Municipalities. She stated most changes were minor, with the most applicable change related to the City being that of Senate Bill 172, which created new criminal offenses, including trespassing on critical infrastructure facilities. This new law allows for a person(s) to be charged with a misdemeanor for such offense.

Councilmember Longanecker asked if trespassing was not an offense before.

Mr. Lee Hendricks, City Attorney, stated this was a federal offense before, but now a person can also be charged within a smaller jurisdiction as a misdemeanor offense and, if desired, the City of Edgerton could take action against the defendant.

Councilmember Longanecker moved to approve Ordinance No. 2094, Incorporating the 2021 Uniform Public Offense Code into the City of Edgerton Municipal Code. Councilmember Brown seconded the motion. The Ordinance was approved, 4-0.

14. Report by the City Administrator

Ms. Linn stated she had no report to give at this time.

15. Report by the Mayor

- Future Meetings Schedule for Remainder of 2021

Mayor Roberts stated for the remainder of the year, there are a few Council Meetings that fall on or close to a City Holiday where City Offices will be closed. He stated in November, both scheduled meeting dates are on holidays, November 11th, Veterans Day and November 25th, Thanksgiving. He asked Council if they would like to move those dates or cancel the meetings.

He stated in the past, the council has canceled the date for Thanksgiving and has held special meetings if necessary. This year he would suggest Council moving the first meeting and cancelling the second meeting. He stated going a full month without a meeting would not be the best idea. He stated in conversations with City Staff, they would recommend moving the November meeting to the third Thursday, November 18th.

Councilmember Longanecker moved to cancel the November 11th City Council Meeting and move this meeting to November 18th, seconded by Councilmember Beem, 4-0.

Councilmember Longanecker moved to cancel the November 25th City Council Meeting, seconded by Councilmember Beem, 4-0.

Mayor Roberts stated typically, the second meeting in December is canceled because it is usually close to Christmas and Council could hold a special meeting if necessary. He stated the first meeting in December is the 9th and will be held as usual. The second meeting is scheduled to be held on December 23rd. The following Friday is Christmas Eve. Although City offices are generally open on Christmas Eve, due to Christmas Day falling on a Saturday, City offices are closed for the holiday the day before. He stated he would be comfortable with the concept of calling a special meeting, if necessary, and canceling the scheduled date of December 23rd.

Councilmember Lewis moved to cancel the December 23rd City Council Meeting, seconded by Councilmember Brown, 4-0.

Mayor Roberts stated he has a couple of proposed Work Sessions if the Governing Body could make a 6PM start time. He stated those dates will be September 9th and September 23rd, both to be held at 6:00 PM, before the Regular City Council Meeting. The Work Session on the 9th will be held for discussion related to the Glendell Acres Park Renovation Project. The Work Session on the 23rd will be held as a joint work session with the Edgerton Planning Commission for discussion and presentations from the Johnson County Planning Department related to utility scale solar installations.

He stated he recommends this work session and wants residents to attend to hear what the County is proposing. He stated the current regulations would allow for a solar farm to be within 1 mile of any city, and this could tamper with the long-term growth of Edgerton.

Councilmember Lewis moved to approve the Work Sessions at 6:00PM on September 9th & 23rd, seconded by Councilmember Longanecker, 4-0.

16. Future Meeting Reminders:

- September 9th: City Council Meeting – 7:00PM
- September 14th: Planning Commission Meeting – 7:00PM
- September 23rd: City Council Meeting – 7:00PM
- October 12th: Planning Commission Meeting – 7:00PM
- October 14th: City Council Meeting – 7:00PM
- October 28th: City Council Meeting – 7:00PM

17. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B)(2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN

THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR FOR THE PURPOSES OF CONTRACT NEGOTIATIONS

Councilmember Brown moved to recess into executive session pursuant to K.S.A 75-4319(B)(2) to include the City Attorney and the City Administrator for the purposes of Contract Negotiations for 10 minutes. The open meeting will resume in the Council Chambers. Councilmember Beem seconded the motion.

The meeting recessed into executive session at 8:00 PM, 4-0.

Councilmember Brown moved to return to open session with no action being taken. Councilmember Lewis seconded the motion. Open session resumed at 8:10 PM, 4-0.

18. Adjourn

Councilmember Lewis moved to adjourn, seconded by Councilmember Beem. The meeting adjourned at 8:11 PM, 4-0.

Submitted by Alexandria Clower, City Clerk

EVENTS

August – Early September: JCPRD Walk & Read at Big Bull Creek Park

August 28th: Nocturnal Nature at Big Bull Creek

September 1st: Craft Night at Community Hall

September 6th: City Hall Closed for Labor Day

City Council Action Item

Council Meeting Date: September 9, 2021

Department: Administration

Agenda Item: Consider Approval of Resolution No. 09-09-21A Waiving the City's Compliance with Generally Accepted Accounting Principles for Financial Reporting and Causing Such Reports to be Prepared in Compliance with the Cash Basis and Budget Laws of the State of Kansas

Background/Description of Item:

Each year the City of Edgerton requests that the financial statements and financial reports of the City of Edgerton for the year ending December 31st be prepared in compliance with the cash basis and budget laws of the State of Kansas, and requests waiver of the requirements of K.S.A. 75-1120a(a).

K.S.A. 75-1120a(a) is the uniform system of fiscal procedure, accounting and reporting for municipalities. It requires the use of Generally Accepted Accounting Principles (GAAP). The Governing Body can, by resolution, each year make a finding that the financial statements and financial reports prepared in conformity with the requirements of GAAP are of no significant value to the Governing Body or members of the general public of the municipality. The Governing Body can then request a waiver from the Director of Accounts and Reports to prepare the City's financial statement on the basis of the cash receipts and disbursements as adjusted to show compliance with the cash basis and budget laws of this State.

Another requirement to receive the waiver is that the City of Edgerton may not have any bond ordinances or other ordinances or resolutions which require financial statements or reports to be prepared in conformity with K.S.A. 75-1120a(a). The City of Edgerton currently does not have any such ordinances or resolutions.

Related Ordinance(s) or Statue(s): K.S.A. 75-1120a

Funding Source: n/a

Budget Allocated: n/a

x Karen E. Kindle

Finance Director Approval: Karen Kindle, Finance Director

Recommendation: Approve Resolution 09-09-21A Waiving The City's Compliance With Generally Accepted Accounting Principles For Financial Reporting And Causing Such Reports To Be Prepared In Compliance With The Cash Basis And Budget Laws Of The State Of Kansas.

Enclosed: Draft Resolution 09-09-21A

Prepared by: Justin Vermillion, Accountant

RESOLUTION NO. 09-09-21A

A RESOLUTION WAIVING THE CITY'S COMPLIANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES FOR FINANCIAL REPORTING AND CAUSING SUCH REPORTS TO BE PREPARED IN COMPLIANCE WITH THE CASH BASIS AND BUDGET LAWS OF THE STATE OF KANSAS

WHEREAS, the City of Edgerton, Kansas, prepares its financial statements and financial reports for the year ending December 31, 2021 to be prepared in conformity with the cash basis and budget laws of this state; and

WHEREAS, K.S.A. 75-1120a (a) requires the financial statements be prepared in conformity with Generally Accepted Accounting Principles; and

WHEREAS, K.S.A. 75-1120a (a) the governing body, by resolution, annually shall make a finding that financial statements and financial reports prepared in conformity with the requirements of subsection (a) are not relevant to the requirements of the cash-basis and budget laws of this state and are of no significant value to the governing body or members of the general public of the municipality; and

WHEREAS, there are no revenue bond ordinances or other ordinances or resolutions of the municipality which require financial statements and financial reports to be prepared in conformity with K. S. A. 75-1120a (a) for the year ending December 31, 2021.

NOW, THEREFORE BE IT RESOLVED, by the Governing Body of the City of Edgerton, Kansas, in regular meeting, duly assembled, that the Director of Accounts and Reports waive the requirements of K. S. A. 75-1120a (a) as they apply to the City of Edgerton, Kansas for the year ending December 31, 2021.

BE IT FURTHER RESOLVED that the Governing Body shall cause the financial statements and financial reports of the City of Edgerton to be prepared on the basis of cash receipts and disbursements, as adjusted, to show compliance with the cash basis and budget laws of this State.

ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 9TH DAY OF SEPTEMBER, 2021.

ATTEST:

CITY OF EDGERTON, KANSAS

Alexandria Clower, City Clerk

By: _____
Donald Roberts, Mayor

APPROVED AS TO FORM:

Lee W. Hendricks, City Attorney

City Council Action Item

Council Meeting Date: September 9, 2021

Department: Administration

Agenda Item: Consider a Three-Year Agreement with Varney & Associates, CPAs, LLC, to Prepare the City's Financial Audit for Fiscal Years 2021, 2022 and 2023

Background/Description of Item:

Staff issued a Request for Proposals (RFP) for Audit Services on June 21, 2021. Staff requested proposals for financial audit services for the fiscal years ending 2021, 2022 and 2023. The previous RFP for Audit Services was done for the 2015 financial statements. The RFP was e-mailed to a list of firms doing business with other government clients and firms who submitted a proposal to the city's prior Audit RFP. The RFP was also distributed to ElevateEdgerton! Members and placed on the City's website. Proposals were due by July 23, 2021.

The City received five proposals, as well as two decline letters. The proposals are summarized below.

Firm Name	HQ Office	Proposal Contact	Audit Fee	Single Audit	Costs
Cochran Head Vick & Co., PC	Overland Park, KS	David L. Cochran	\$ 20,340	\$ 3,500	Incl in fixed fee
Gordon CPA, LLC	Lawrence, KS	Sean Gordon	2021: \$7,500 2022: \$7,800 2023: \$8,110	\$ 2,500	\$ 150
James Gordon & Associates	Manhattan, KS	Jacob Kujath	\$ 9,750	\$ 4,000	Incl in fixed fee
Jared, Gilmore & Phillips, PA	Chanute, KS	Neil L. Phillips	\$ 12,000	\$ 2,100	Incl in fixed fee
Varney & Associates, CPAs, LLC	Manhattan, KS	April Swartz	\$ 8,800	\$ 2,500	Incl in fixed fee

Staff reviewed the proposals, and interviewed two firms: Gordon CPA, LLC, and Varney & Associates CPAs, LLC. While both firms interviewed are qualified to perform the audit and can meet the City's timeline for fieldwork and delivery of the final audit report, staff felt that Varney & Associates understands the complexities in the City's accounting processes that other similar sized towns in Kansas do not experience. In addition, Varney & Associates has at least one auditor that has worked as a city clerk in a city that used the same accounting software as Edgerton. Varney & Associates expressed their commitment to continuous education and training of not only their staff but their clients as well. Specifically, they are now offering annual training for clients on the Kansas Municipal Audit and Accounting Guide (KMAAG). Varney & Associates also proactively provides communications to clients regarding regulatory changes and other matters that might affect client operations. Additionally, Varney

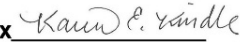
has a payroll tax expert on staff, a free resource that the City has utilized several times in the past few years.

The engagement letter is still pending City Attorney review and approval.

Related Ordinance(s) or Statue(s): K.S.A. 44-1030

Funding Source: General Fund, Water Fund, Sewer Fund

Budget Allocated: \$9,000 divided between the General Fund, Water Fund and Sewer Fund.

x 

Finance Director Approval: Karen Kindle, Finance Director

<p>Recommendation: Approve the agreement with Varney & Associates, CPAs, LLC, to prepare the City's Financial Audit for Fiscal Years 2021, 2022 and 2023 subject to approval by the City Attorney</p>
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Enclosed: Engagement Letter with Varney & Associates, CPAs, LLC

Prepared by: Justin Vermillion, Accountant



August 29, 2021

City of Edgerton, Kansas
PO Box 255
Edgerton, KS 66021

You have requested that we audit the fund summary statement of receipts, expenditures and unencumbered cash balances – regulatory basis of City of Edgerton, Kansas, as of and for the years ended December 31, 2021, 2022 and 2023 and the related notes to the financial statement. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter.

Supplementary information other than RSI will accompany City of Edgerton, Kansas's financial statement. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statement and perform certain additional procedures, including comparing and reconciling the supplementary information to the underlying accounting and other records used to prepare the financial statement or to the financial statement itself, and additional procedures in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS) and Kansas Municipal Audit and Accounting Guide (KMAAG). We intend to provide an opinion on the following supplementary information in relation to the financial statement as a whole:

- Summary of Expenditures – Actual and Budget
- Schedule of Receipts and Expenditures – Actual and Budget

Auditor Responsibilities

We will conduct our audit in accordance with U.S. GAAS and KMAAG. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statement. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statement, whether due to fraud or error, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements.

An audit also includes evaluating the appropriateness of accounting policies used, and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statement. If appropriate, our procedures will therefore include tests of documentary evidence that support the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of cash, investments, and certain other assets and liabilities by correspondence with creditors and financial institutions. As part of our audit process, we will request written representations from your attorneys, and they may bill you for responding. At the conclusion of our audit, we will also request certain written representations from you about the financial statement and related matters.

Auditor Responsibilities (Continued)

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements (whether caused by errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations) may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS and KMAAG.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statement in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statement that we have identified during the audit. Our responsibility as auditors is, of course, limited to the period covered by our audit and does not extend to any other periods.

We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinion on the financial statement is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

Compliance with Laws and Regulations

As previously discussed, as part of obtaining reasonable assurance about whether the financial statement is free of material misstatement, we will perform tests of City of Edgerton, Kansas's compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Management Responsibilities

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance acknowledge and understand that they have responsibility:

- a. For the preparation and fair presentation of the financial statement in accordance with KMAAG, a regulatory basis of accounting;
- b. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statement that is free from material misstatement, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements; and
- c. To provide us with:
 - i. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statement such as records, documentation, and other matters;
 - ii. Additional information that we may request from management for the purpose of the audit; and
 - iii. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
- d. For including the auditor's report in any document containing the financial statement that indicates that the financial statement has been audited by the entity's auditor;
- e. For identifying and ensuring that the entity complies with the laws and regulations applicable to its activities;
- f. For adjusting the financial statement to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current year period(s) under audit are immaterial, both individually and in the aggregate, to the financial statement as a whole; and
- g. For acceptance of nonattest services, including identifying the proper party to oversee nonattest work;
- h. For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets;

Management Responsibilities (Continued)

- i. For informing us of any known or suspected fraud affecting the entity involving management, employees with significant role in internal control and others where fraud could have a material effect on the financials; and
- j. For the accuracy and completeness of all information provided.

With regard to the supplementary information referred to above, you acknowledge and understand your responsibility: (a) for the preparation of the supplementary information in accordance with the applicable criteria; (b) to provide us with the appropriate written representations regarding supplementary information; (c) to include our report on the supplementary information in any document that contains the supplementary information and that indicates that we have reported on such supplementary information; and (d) to present the supplementary information with the audited financial statement, or if the supplementary information will not be presented with the audited financial statement, to make the audited financial statement readily available to the intended users of the supplementary information no later than the date of issuance by you of the supplementary information and our report thereon.

As part of our audit process, we will request from management, written confirmation concerning representations made to us in connection with the audit.

Reporting

We will issue a written report upon completion of our audit of City of Edgerton, Kansas's financial statement. Our report will be addressed to the board of directors of City of Edgerton, Kansas. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

Nonattest Services

With respect to any nonattest services we perform:

At the end of the year, we agree to perform the following:

- Propose adjusting or correcting journal entries to be reviewed and approved by management.
- Assist in preparation of the financial statement as of and for the year ended December 31, 2021.

We will not assume management responsibilities on behalf of City of Edgerton, Kansas. However, we will provide advice and recommendations to assist management in performing its responsibilities.

City of Edgerton, Kansas's management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

Our responsibilities and limitations of the engagement are as follows:

- This engagement is limited to the accounting services previously outlined. Our firm, in its sole professional judgment, reserves the right to refuse to do any procedure or take any action that could be construed as making management decisions or assuming management responsibilities, including determining account codings and approving journal entries. Our firm will advise City of Edgerton, Kansas with regard to tax positions taken in the preparation of the tax return, but City of Edgerton, Kansas must make all decisions with regard to those matters.

Other

We understand that your employees will prepare all confirmations we request and will locate any documents or support for any other transactions we select for testing.

If you intend to publish or otherwise reproduce the financial statement and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

Provisions of Engagement Administration, Timing and Fees

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

April G. Swartz is the engagement partner for the audit services specified in this letter. Her responsibilities include supervising Varney & Associates, CPAs, LLC's services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report.

Our fees are based on the amount of time required at various levels of responsibility, and we estimate that our fee for the audit will not exceed \$8,800 per year. If a Single Audit in accordance with Uniform Guidance is required, there will be an additional charge of \$2,500 per year. We will notify you immediately of any circumstances we encounter that could significantly affect this initial fee estimate. Whenever possible, we will attempt to use City of Edgerton, Kansas's personnel to assist in the preparation of schedules and analyses of accounts. This effort could substantially reduce our time requirements and facilitate the timely conclusion of the audit. Further, we will be available during the year to consult with you on financial management and accounting matters of a routine nature.

During the course of the audit we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

You agree to inform us of facts that may affect the financial statement of which you may become aware during the period from the date of the auditor's report to the date the financial statement is issued.

We agree to retain our audit documentation or work papers for a period of at least five years from the date of our report.

At the conclusion of our audit engagement, we will communicate to those charged with governance the following significant findings from the audit:

- Our view about the qualitative aspects of the entity's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

August 29, 2021
City of Edgerton, Kansas
Page five

Provisions of Engagement Administration, Timing and Fees (Continued)

The audit documentation for this engagement is the property of Varney & Associates, CPAs, LLC and constitutes confidential information. However, we may be requested to make certain audit documentation available to regulators pursuant to authority given to it by law or regulation, or to peer reviewers. If requested, access to such audit documentation will be provided under the supervision of Varney & Associates, CPAs, LLC's personnel. Furthermore, upon request, we may provide copies of selected audit documentation to regulators. The regulators may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statement including our respective responsibilities.

We appreciate the opportunity to be your financial statement auditors and look forward to working with you and your staff.

Sincerely,

Varney & Associates, CPAs, LLC

Certified Public Accountants
Manhattan, Kansas

RESPONSE:

This letter correctly sets forth our understanding of City of Edgerton, Kansas.

Acknowledged and agreed on behalf of City of Edgerton, Kansas by:

Name: _____

Title: _____

City Council Action Item

Council Meeting Date: September 9, 2021

Department: Community Development

Agenda Item: Consider Ordinance No. 2095 Adopting the Recommendation of the Edgerton Planning Commission to Approve Application ZA2021-07 for the Rezoning of Approximately 9.88 Acres of Land Located northeast of the intersection of 191st Street and Montrose Street in Edgerton, Kansas From Johnson County "RUR" (Rural District) Zoning to City of Edgerton "L-P" (Logistics Park) Zoning District.

Background/Description of Item: The City of Edgerton has received rezoning Application ZA2021-07 from Dennis Cohlma, representative of Cohlma, LLC requesting the rezoning of a 9.88 acre parcel located northeast of the intersection of 191st Street and Montrose Street in Edgerton, Kansas from Johnson County "RUR" zoning to City of Edgerton "L-P" Logistics Park zoning.

The parcel was annexed into the City of Edgerton on June 10, 2021. The current zoning designation of RUR is considered a holding designation and thus an appropriate zoning designation is required under the City of Edgerton Unified Development Code. This request is to rezone the parcels to L-P, Logistics Park District (L-P) with the intent of expanding the current cargo container storage operations of JB Hunt located on the adjacent parcel directly to the west.

Staff reviewed this rezoning application with respect to the Edgerton Comprehensive Plan, the Edgerton Unified Development Code Zoning and Subdivision Regulations, and the laws of the State of Kansas, in particular the "Golden Criteria" as established by the Supreme Court of Kansas in 1978.

The Planning Commission held a Public Hearing on August 10, 2021 regarding this rezoning request and voted 4-0 to recommend approval of Application ZA2021-07 subject to the following stipulations:

1. All infrastructure requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
2. All platting requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
3. All Site Plan application requirements of the City for a property located in the "L-P" Logistics Park District shall be met.

4. Prior to issuance of building permits, the property shall have a Site Plan which has been reviewed and approved by the City.

Copies of the staff report and draft minutes are included with this packet. Staff received no further public comment for this application following Planning Commission action.

City Attorney has prepared the enclosed draft ordinance approving the recommendation of the Planning Commission based on the Planning Commission staff report.

Related Ordinance(s) or Statute(s): K.S.A. 12-715b, K.S.A. 12-741, et. Seq. to K.S.A. 12-771 – Establishment of the Unified Development Code; 12-757 – Zoning Amendments

Funding Source: N/A

Budget Allocated: N/A

Finance Director Approval: N/A

Recommendation: Approval of Ordinance No. 2095 Adopting the Recommendation of the Edgerton Planning Commission to Approve Application ZA2021-07 for the Rezoning of Approximately 9.88 Acres of Land Located northeast of the intersection of 191st Street and Montrose Street in Edgerton, Kansas From Johnson County "RUR" (Rural District) Zoning to City of Edgerton "L-P" (Logistics Park) Zoning District.

Enclosed:

- Draft Ordinance No. 2095
- Staff Report from August 10, 2021 Planning Commission Meeting including Application ZA2021-07
- Draft minutes from the August 10, 2021 Planning Commission Meeting

Prepared by: Katy Crow, Development Services Director

ORDINANCE NO. 2095

AN ORDINANCE ADOPTING THE RECOMMENDATION OF THE CITY OF EDGERTON PLANNING COMMISSION TO APPROVE APPLICATION ZA2021-07 FOR THE REZONING OF APPROXIMATELY 9.88 ACRES OF LAND GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF 191ST STREET AND MONTROSE STREET IN EDGERTON, KANSAS FROM JOHNSON COUNTY "RUR" (RURAL DISTRICT) TO CITY OF EDGERTON "L-P" (LOGISTICS PARK) ZONING DISTRICT

WHEREAS, the Planning Commission of the City of Edgerton, Kansas received a request on June 29, 2021, from Dennis Cohlmiya, agent for Cohlmiya, LLC, the owner of a parcel of land totaling approximately 9.88 acres, generally located northeast of the intersection of 191st Street and Montrose Street in Edgerton, Kansas to rezone that property from Johnson County "RUR" (Rural District) to City of Edgerton "L-P" (Logistics Park) District; and

WHEREAS, following a public hearing in front of the Planning Commission on August 10, 2021 the Planning Commission has recommended that the rezoning request for that property – from Johnson County "RUR" (Rural District) to City of Edgerton "L-P" (Logistics Park) District -- be approved subject to certain conditions; and

WHEREAS, all required newspaper and mailing notifications were performed.

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

Section 1. That the following legally described property generally located northeast of the intersection of 191st Street and Montrose Street in Edgerton, Kansas is hereby rezoned from Johnson County "RUR" (Rural District) to City of Edgerton "L-P" (Logistics Park) District, and that City Staff is hereby directed to reflect said rezoning in the City's Official Zoning map and other City records:

Tract 1 (Parcel No. 2F221435-2002)

All of the West Half of the East Half of the Southeast Quarter of the Southwest Quarter of Section 35, Township 14, Range 22, Johnson County, Kansas.

Section 2. The above rezoning is expressly conditioned on the following:

- a) All infrastructure requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
- b) All platting requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
- c) All Site Plan application requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
- d) Prior to issuance of building permits, the property shall have a Site Plan which has been reviewed and approved by the City.

Section 3. That the Governing Body, in making its decision on the rezoning, considered City Staff's comments and recommendations as they relate to the Golden Criteria and otherwise. 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 4. This ordinance shall take effect 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 9th DAY OF SEPTEMBER, 2021.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

APPROVED AS TO FORM:

Lee Hendricks, City Attorney

STAFF REPORT

August 10, 2021

To: Edgerton Planning Commission
Fr: Chris Clinton, Planning and Zoning Coordinator
Re: Applications **ZA2021-07** – Rezoning a parcel of land generally located northeast of the intersection 191st Street and Montrose Street from Johnson County Rural (RUR) to City of Edgerton Logistics Park (L-P)

APPLICATION INFORMATION

Applicant and Property Owner: Dennis Cohlmlia, Agent
Cohlmlia, LLC
602 N Webb Road, Suite 110
Wichita, KS 67203

Requested Action: Rezoning from Johnson County Rural (RUR) Zoning District to City of Edgerton L-P (Logistics Park) Zoning District.

Legal Description: See attached application for complete legal description.

Site Address/Location: Generally located northeast of the intersection of 191st Street and Montrose Street

Existing Zoning and Land Uses: Johnson County Rural (RUR), vacant

Existing Improvements: None

Site Size: 9.88 acres

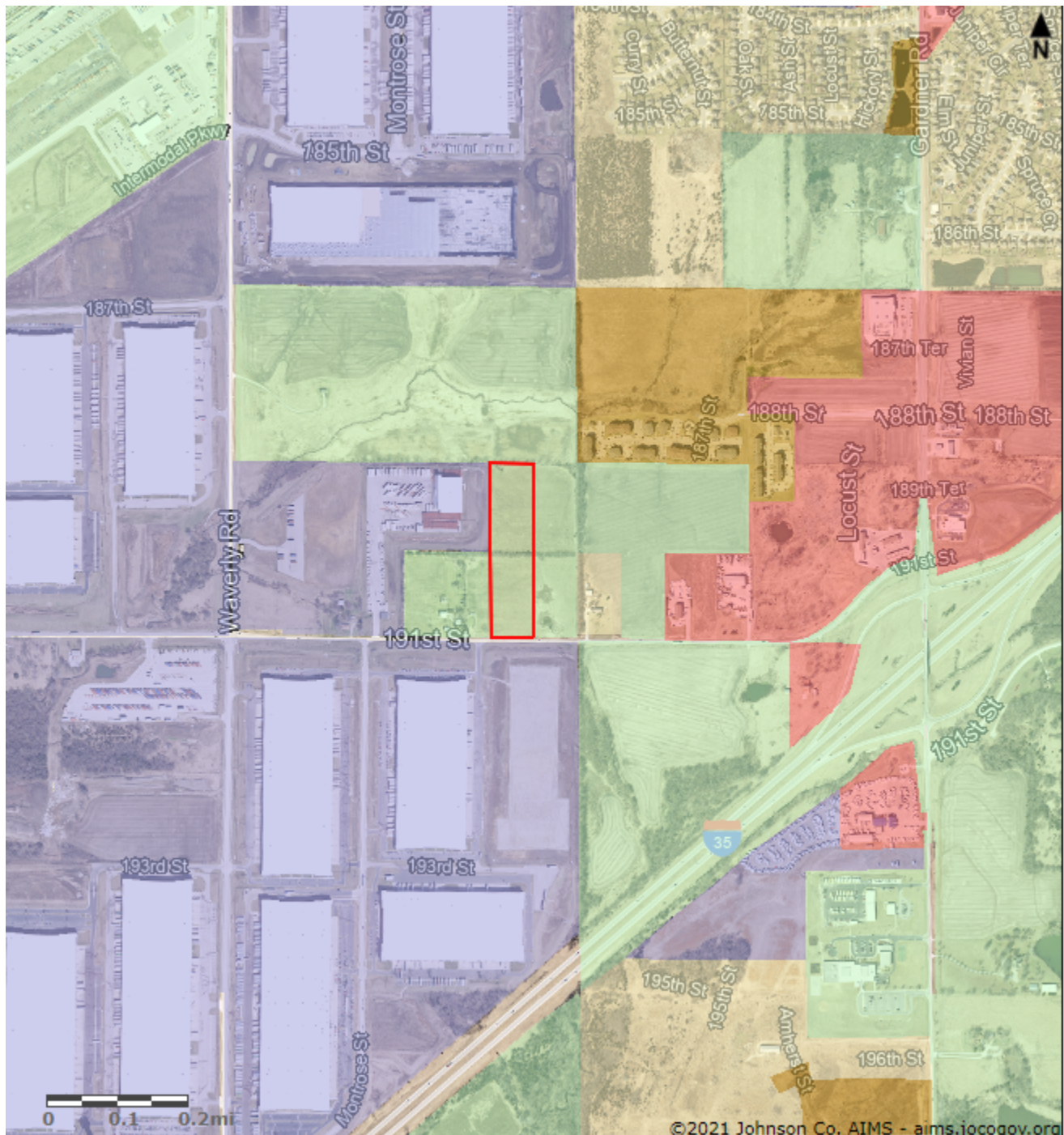
REASON FOR REZONING REQUEST:

This rezoning is being requested for future intermodal-related, logistics park development. Area adjacent to this parcel is part of Logistics Park Kansas City (LPKC), a 2,300-acre master-planned distribution and warehouse development anchored by the Burlington Northern Santa Fe Railway (BNSF) intermodal facility, which opened in late 2013. The BNSF intermodal facility is located approximately one and a half (1.5) miles west of the subject site. Due to their adjacency to the intermodal facility, companies located within LPKC benefit from significant transportation savings.



Figure 1 – Subject parcel outlined in red

Green: Johnson County RUR, City of Edgerton, or City of Gardner Agricultural (A)
Purple: City of Edgerton Logistics Park (L-P)
Red: City of Gardner Commercial and Business District
Yellow: City of Gardner Single Family Residential or Johnson County Residential Low Density
Gold: City of Gardner Multi-Family Residential



INFRASTRUCTURE AND SERVICES

1. Access to the parcel is currently from 191st Street by one private access point.
2. Utilities and service providers.
 - a. Water – Johnson County Water District #7
 - b. Sanitary Sewer – City of Edgerton
 - c. Electrical Service – Evergy
 - d. Gas Service – Kansas Gas Service
 - e. Police services would be provided by the City of Edgerton through the Johnson County Sheriff's Office
 - f. Fire protection is provided by Johnson County Fire District #1
3. Property is located within the Bull Creek watershed.

PROPERTY ZONING HISTORY

The subject property was annexed into the City of Edgerton on This property was annexed into the City of Edgerton on June 10, 2021. Prior to that, the property was in unincorporated Johnson County and as of this application the parcel retains a Johnson County (RUR) zoning designation.

STAFF ANALYSIS

The applicant has requested rezoning to Logistics Park (L-P) District. The City's Unified Development Code (UDC) states the purpose of the L-P District is to create a limited multimodal industrial zone that provides for modern type industrial uses or industrial park to support activities related to trade, rail, and other transport services. Limitations are placed on the uses in the district to significantly restrict the outside activities and outside storage of materials, noise, vibration, etc. The UDC also states manufacturing uses should be conducted within a totally enclosed building. The conduction of outdoor activities and outdoor storage is not allowed. External effects such as excessive noise or odor should not extend beyond the property lines.

Permitted uses within the L-P District include warehousing/distribution centers; motor freight transportation terminals; manufacturing, processing, fabrication, or assembly of commodity – limited; along with other permitted uses.

Staff has reviewed this rezoning application with respect to the Edgerton Unified Development Code, the laws of 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** – When this parcel was annexed into Edgerton, it contained a Johnson County RUR zoning designation as assigned by the County. That zoning designation only allows for an agricultural or residential use and it is considered a holding designation post annexation. Prior to any development occurring on the parcel, rezoning to a City of Edgerton zoning designation is required. The applicant has requested that this parcel be rezoned to L-P to allow for the future intermodal related development. Given the stated request to expand an existing L-P conditional use, the parcel's proximity to LPKC, the BNSF Railway intermodal facility, and the I-35/Homestead interchange, L-P District zoning is the appropriate designation.
2. **Magnitude of the Change** – This parcel is located within the first phase of LPKC and is located adjacent to an existing cargo container lot. There are nearby properties are also zoned L-P located across 191st Street. The parcel to the east of the subject parcel is also requesting rezoning to an L-P zoning designation as outlined in Application ZA2021-08. Application

ZA2021-08 will also be presented to the Planning Commission on August 10, 2021. Given the parcel's proximity to LPKC, the BNSF Railway intermodal facility, I-35 and the Homestead Lane interchange, the magnitude of the change would not be considered unusual when the property is being used for industrial development.

3. **Whether or not the change will bring harm to established property rights** - The subject property is near other industrial uses. While there are residentially zoned parcels to the north and west of the subject parcel, the L-P zoning designations require significant berming and landscaping to mitigate any impact to adjacent properties. If rezoned L-P, as requested, a separate Site Plan review and approval would be required prior to the issuance of any building permits. Part of a Site Plan review would include attention to buffering and setbacks, stormwater management and the appropriate transition between adjoining properties and any proposed industrial use.
4. **Effective use of Land** - L-P District permitted uses at this location are an effective and efficient use of the property due to its proximity to the BNSF Railway intermodal facility, LPKC and the I-35 interstate system.
5. **The extent to which there is a need in the community for the uses allowed in the proposed zoning** - Construction of warehousing, distribution, limited manufacturing, and related uses near the intermodal facility allow an inland port for goods in transit, by reducing truck traffic in the surrounding area and allowing for more efficient use of the supply chain.
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** - This parcel is located near the BNSF Railway Intermodal Facility. Continued development of the area includes intermodal related uses. While there are some parcels nearby which contain residential uses, the nearest residential use is a single family low density use. As noted previously, the Site Plan review process mitigates the impact to adjacent properties with the proper attention to buffering and setbacks, stormwater management, and transition of uses.
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 existing zoning and existing use of nearby parcels. The City's Unified Development Code (UDC) states that the purpose of the L-P District is to create a limited multimodal industrial zone which provides for modern types of industrial uses or an industrial park. Limitations are placed on uses in the district to significantly restrict outside activities and the outside storage of materials, noise, vibration, etc. The Site Plan review process is designed to mitigate impacts to adjacent properties with the proper attention to buffering and setbacks, stormwater management, and transition of uses.
8. **Suitability of the uses to which the property has been restricted under its existing zoning** - The existing Johnson County RUR zoning of the applicant property is viewed as a holding designation related to the annexation of the parcel. Johnson County RUR zoning is primarily for agricultural and low-density residential use. An industrial use on a property zoned for agriculture would not be a permitted use therefore, a rezoning to the L-P District is the most appropriate designation for the proposed use indicated by the applicant.
9. **Length of time the subject property has remained vacant under the current zoning designation** - Based upon available aerial photography, the property has been used for agricultural purposes in unincorporated Johnson County dating back to at least 2006.
10. **The extent to which the zoning amendment may detrimentally affect nearby property** - The City's Unified Development Code (UDC) states the purpose of the L-P District is to create a limited multimodal industrial zone that provides for modern types of industrial

uses or an industrial park. Limitations are placed on uses in the district to significantly restrict outside activities and the outside storage of materials, noise, vibration, etc. This parcel is located in the middle of Logistics Park Kansas City and several adjoining parcels already contain an L-P zoning designation. The Site Plan review process can mitigate impacts to adjacent properties with the proper attention to buffering and setbacks, stormwater management, and transition of uses.

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** – Sanitary sewer, electric, and gas utilities are located in the right-of-way adjacent to this property or across 191st Street. Water service is currently provided to the adjacent parcel to the west where current operations exist. The developer of the property is responsible for the extension of any needed utility to the parcel.
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 and 191st Street have been constructed to accommodate the traffic that will accompany any development on this parcel. During the Site Plan review process, both the type and volume of traffic associated with a new development are evaluated, often with the requirement that a traffic study be performed as part of the applicant's due diligence. This includes evaluating the transportation network in the area and any current and future access points to the parcel. Infrastructure upgrades to accommodate the new development's traffic volume and type are required and adequate off-street parking must be provided as on-street parking is not allowed.
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 National Pollutant Discharge Elimination System (NPDES) guidelines and stormwater management requirements which require any application to address runoff and water pollution mitigation measures as part of the development of the property. Any construction that occurs on site will be required to get a NPDES permit from the State of Kansas and a land disturbance permit from the City. Those permits require a stormwater pollution prevention plan that is reviewed by the City and the State. Mitigation of pollution in the form of 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** - Uses allowed in the L-P District, have the potential to benefit the residents and the community in a positive way by providing jobs, economic opportunities, and tax revenues to respective jurisdictions. During the Covid-19 pandemic, supply chain logistics were instrumental to delivering food and supplies to areas across the United States. This type of commercial industry continues to be an important contributor to the economy of this area.
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 relative gain, if any, to the public health,

safety, and welfare from the denial of these zoning applications. However, the City and community would be adversely impacted due to the lost opportunities for jobs, economic activity, and tax revenue if the anticipated logistics park uses and facilities were to locate in another community.

17. **Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton** - The Comprehensive Plan for the City of Edgerton has the area which the property is in designated as appropriate for zoning and uses associated with business park and industrial zoning. City Staff believes that the requested rezoning is compatible with the spirit and intent of future development outlined in the Comprehensive Plan and Future Land Use Map.
18. **The recommendation of professional staff** - See Recommendation below.

Recommendation:

Based on factors 1 through 17 above, City Staff recommends **approval** of proposed rezoning **Applications ZA2021-07** from Johnson County Rural (RUR), to City of Edgerton Logistics Park District (L-P) with the following stipulations:

1. All infrastructure requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
2. All platting requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
3. All Site Plan application requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
4. Prior to issuance of building permits, the property shall have a Site Plan which has been reviewed and approved by the City.

Attachments:

- Rezoning Applications ZA2021-07
- City of Edgerton Future Land Use Map

LOCATION OR ADDRESS OF SUBJECT PROPERTY: _____

PURPOSE FOR REZONING: _____

REQUESTED REZONING CHANGE: FROM _____ TO _____
(Current Zoning) (Proposed Zoning)

LEGAL DESCRIPTION: _____

CURRENT LAND USE: _____

PROPERTY OWNER'S NAME(S): _____ PHONE: _____

COMPANY: _____ FAX: _____

MAILING ADDRESS: _____
Street City State Zip


APPLICANT/AGENTS NAME(S): _____ PHONE: _____

COMPANY: _____ FAX: _____

MAILING ADDRESS: _____
Street City State Zip

ENGINEER/ARCHITECT'S NAME(S): _____ PHONE: _____

COMPANY: _____ FAX: _____

MAILING ADDRESS: _____
Street City State ZipSIGNATURE OF OWNER OR AGENT:  _____

If not signed by owner, authorization of agent must accompany this application.

FOR OFFICE USE ONLYCase No.: ~~RZ~~ _____ Amount of Fee Paid: \$ _____ Date Fee Paid: _____ Receipt # _____

Received By: _____ Date of Hearing: _____

REZONING INSTRUCTIONS

CERTIFIED LETTERS: The applicant will be responsible for mailing notices (see attached Property Owner Notification Letter) of the public hearing for the requested rezoning by certified mail, return receipt requested, to all owners of land within the notification area: two hundred (200) feet within the city limit, one thousand (1,000) feet in the unincorporated area of the subject property. These notices must be sent a minimum of twenty (20) days prior to the public hearing. Information regarding ownership

PROPERTY OWNER NOTIFICATION LETTERCase No.: RZ- ZA2021-07/ ZA2021-08

Dear Sir or Madam:

This letter is to notify you that a public hearing will be held at the Edgerton Community Building, 404 E. Nelson St., Edgerton, Kansas, to consider a rezoning change request from Johnson County Rural (RUR)

(current zoning) to Edgerton Logistics Park District (L-P)

(proposed zoning), on the following described tract of land:

Legal Description: All of the West Half of the East Half of the Southeast Quarter of the Southwest Quarter of Section 35, Township 14, Range 22, Johnson County, Kansas AND All of the East Half of the East Half of the Southeast Quarter of the Southwest Quarter of Section 35, Township 14, Range 22, Johnson County, Kansas.

General Location: Northeast of the intersection W 191st Street and Montrose Street

A public hearing will be held to consider the rezoning request on the above-described tract at 7:00 p.m. on August 10, 2021. Any interested persons or property owners are invited to attend. Information regarding this rezoning application is available in the office of the City Clerk at City Hall or by phone at (913) 893-6231. You may also contact the undersigned for additional information regarding this rezoning request.

A fourteen (14) day protest period begins at the conclusion of the public hearing during which you may file a protest petition in the office of the City Clerk. If valid protest petitions are received from twenty (20) percent of the property owners within the notification area, a three-quarters ($\frac{3}{4}$) vote of the Governing Body is required to approve this rezoning request.

Respectfully,

Violet Hooks/ CEI Engineering Associates, Inc

Applicant (or Owner or Agent)

ADDRESS: <u>3108 SW Regency Pkwy</u>	<u>Bentonville</u>	<u>AR</u>	<u>72712</u>
Street	City	State	Zip

PROPERTY OWNER NOTIFICATION AFFIDAVITCase No.: RZ- ZA2021-07/ ZA2021-08I, Violet V. Hooks/ CEI Engineering Associates, Inc, of lawful age being first duly sworn upon oath, state:

That I am the Agent (agent, owner, attorney) for the property for which the application was filed and did, not later than twenty (20) days prior to the date of the public hearing scheduled before the Edgerton Planning Commission, mail certified notice to all persons owning property within the notification area (two hundred (200) feet in the City of Edgerton, one thousand (1,000) feet in the unincorporated area of the subject property) in compliance with the Unified Development Code.

These notices were mailed on the 12th day of July, 2021.

Signature of Agent, Owner or Attorney

Subscribed and sworn to before me this 12th day of July, 2021.

Notary Public

My Commission Expires: April 27, 2028 (SEAL)
Date

BOBBI BARNES
BENTON COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires April 27, 2028
Commission No. 12764107

**EDGERTON CITY HALL
PLANNING COMMISSION MEETING
August 10, 2021**

A regular session of the Edgerton Planning Commission (the Commission) was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on August 10, 2021. The meeting convened when Chairperson John Daley called the meeting to order at 7:00 PM.

1. ROLL CALL

Jeremy Little	present
Charlie Crooks	present
Tim Berger	absent
Deb Lebakken	present
John Daley	present

With a quorum present, the meeting commenced.

Staff in attendance: Katy Crow, Development Services Director
Chris Clinton, Planning and Zoning Coordinator

2. WELCOME Chairperson Daley welcomed all in attendance to the meeting.

3. PLEDGE OF ALLEGIANCE All present participated in the Pledge of Allegiance.

CONSENT AGENDA

4. Approve Minutes from the July 13, 2021 Planning Commission Meeting.

Commissioner Little moved to approve the consent agenda. Commissioner Crooks seconded the motion. The consent agenda was approved, 4-0.

REGULAR AGENDA

5. DECLARATION

The Commissioners did not have anything to declare at this time.

Ms. Katy Crow, Development Services Director, stated that last month there was a public hearing for Article 5 of the Unified Development Code so that is Old Business but for the flow of the meeting it was best to have it paired with the proposed amendments for Article 12 of the Unified Development Code which is Item 10 on the agenda.

BUSINESS REQUIRING ACTION

NEW BUSINESS

Chairperson Daley stated during the remainder of the meeting, there will be two public hearings for new items and an opportunity to hear public comment and concerns regarding those specific items. He explained the applicant will be allowed to present their information in order for the Planning

Commission (the Commission) to either approve or make a recommendation to the Governing Body. Anyone wanting to speak during the public comments portion of the meeting will be able to do so. The speaker is requested to sign in and provide their name and address and will be limited to three (3) minutes each. Chairperson Daley said comments must pertain to the item for which the public hearing is being held. He stated as the chair of the Commission, he reserves the right to modify the procedures as needed to conduct an orderly and effective meeting.

Chairperson Daley reminded all in attendance that the role of the Commission in the rezoning process is that of a recommending body. The Governing Body will make the final decision and take formal action on the application at a future City of Edgerton City Council meeting.

6. HOLD A PUBLIC HEARING TO CONSIDER APPLICATION ZA2021-07 FOR REZONING OF 9.88 ACRES AND APPLICATION ZA2021-08 FOR REZONING OF 9.89 ACRES GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF 191ST STREET AND MONTROSE STREET FROM JOHNSON COUNTY RURAL (RUR) TO CITY OF EDGERTON LOGISTICS PARK (L-P)

Chairperson Daley introduced Application ZA2021-07 for rezoning of 9.88 acres and Application ZA2021-08 for rezoning of 9.89 acres generally located northeast of the intersection of 191st Street and Montrose Street from Johnson County Rural (RUR) to City of Edgerton Logistics Park (L-P). He stated public comment is only allowed during the public hearing. Once the public hearing has been closed, the time for comment has passed and no further comments from the audience will be taken. He reminded everyone that speakers are limited to 3 minutes. He explained rezoning is about the change in use of the land. Anything related to the development of the land like the roads, or what the building looks like, or the stormwater plan will be discussed at a later meeting. He stated that each application will have its own action after the public hearing.

Chairperson Daley opened the public hearing for Applications ZA2021-07 and ZA2021-08. He requested City Staff present their findings.

Ms. Crow stated these parcels are generally located one third (1/3) of a mile east of the intersection of 191st Street and Waverly Road. The applicant is Dennis Cohlma who is an agent of Cohlma, LLC who owns the property. The request is to rezone the parcels from Johnson County RUR to City of Edgerton L-P. She explained the property was annexed into the City of Edgerton on June 10, 2021. The parcels do not have any improvements and both parcels are just under ten (10) acres in size. Utilities and service providers, police, and fire protection are the standard providers for the City of Edgerton and Johnson County. Access to the properties would be from 191st Street.

Ms. Crow explained the parcel that Application ZA2021-07 is pertaining too, is surrounded by Johnson County RUR and City of Edgerton L-P zoned parcels. The Application ZA2021-08 parcel borders Johnson County RUR, City of Gardner AG, City of Gardner Multi-Family Residential, and City of Edgerton L-P zoned parcel. She stated there is a map on the second page of each Staff Report showing the zoning designations. She said the request for rezoning is for future intermodal related development. Permitted uses within the L-P District include warehousing/distribution centers; motor freight transportation terminals; light manufacturing, processing, fabrication or assembly of commodities, and other uses.

Ms. Crow said City Staff has reviewed the rezoning applications with respect to the Edgerton Unified Development Code (UDC), the laws of Kansas, and the Golden Criteria" as established by the Supreme Court of Kansas in 1978. The eighteen (18) criteria were each examined with respect to each rezoning application and the full list is provided in the Staff Reports. She explained she will inform the Commission on key points from the Staff Reports.

Ms. Crow stated based upon available aerial photography, these parcels were agricultural use in unincorporated Johnson County, prior to their annexation into the City of Edgerton. The existing RUR zoning is considered a hold designation when an annexation occurs.

Ms. Crow explained the applicant has requested the proposed change in order to allow construction of project similar to other project containing a L-P zoning designation. Construction of warehousing, distribution, limited manufacturing, and related facilities near the BNSF intermodal facility allows an inland port for goods in transit, by reducing truck traffic in the surrounding area and allowing for more efficient use of the supply chain. She said given the proximity of the parcel to LPKC Phase I, the BNSF facility, Interstate 35 (I-35) and the Homestead Lane interchange, an L-P zoning designation is the most compatible for these uses. The magnitude of the change is not considered extreme or rare when property is being developed for its planned end use, intermodal related development and the proposed zoning is compatible with the existing adjacent uses of neighboring properties to the west and south. Ms. Crow explained the UDC states that the purpose of the L-P District is to create a limited multimodal industrial zone which provides for modern types of industrial uses or an industrial park. Limitations are placed on uses in the district to significantly restrict outside activities and the outside storage of materials, noise, and vibration. If the rezoning is approved, a separate Site Plan review and approval will be required before building permits can be issued. She stated part of that review will include attention to buffering and setbacks, stormwater management and transition of uses between adjoining uses and any proposed industrial use. This Site Plan review will help mitigate impacts that might occur to adjacent properties.

Ms. Crow said 191st Street is designated as a Heavyweight Corridor and provides access to Homestead Lane, which is 1.3 miles to the west of the parcels. She explained the City will follow the National Pollutant Discharge Elimination System (NPDES) guidelines and stormwater management requirements which require any application to address runoff and water pollution mitigation measures as part of the development of the property. Any construction that occurs on site will be required to get a NPDES permit from the State of Kansas and a land disturbance permit from the City. Those permits require a stormwater pollution prevention plan that is reviewed by the City and the State. Mitigation of pollution in the form of air, noise, light, etcetera, will be addressed as part of the Site Plan review process.

Ms. Crow stated uses allowed in the L-P District have the potential to benefit the residents and community in a positive way by providing jobs, economic opportunities, and tax revenues to respective jurisdictions. She said there would be little relative gain, if any, to the public health, safety, and welfare from the denial of this zoning application. However, the City would be adversely impacted due to the lost opportunities for jobs, economic activity, and tax revenue if the anticipated logistics park uses are facilities were to locate in another community.

Ms. Crow said City Staff recommends approval of the proposed rezoning of the subject parcels from Johnson County RUR to City of Edgerton L-P with the following stipulations:

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

Ms. Crow stated these two parcels are very similar with there being only minor differences in the zoning designations of the parcels which border them.

Ms. Crow introduced the applicant's representative, Mr. Lynn Boyd, JB Hunt Transport, so that he may provide any additional information. Mr. Boyd added nothing further and thanked the Commission for their consideration of these applications.

Chairperson Daley asked City Staff if any written testimony was provided. Mr. Chris Clinton, Planning and Zoning Coordinator, stated there was none and stated nobody has signed up to speak during the public hearing.

Commissioner Lebakken moved to close the public hearing. Commissioner Little seconded the motion. The public hearing was closed, 3-0.

7. CONSIDER APPLICATION ZA2021-07 FOR REZONING OF 9.88 ACRES GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF 191ST STREET AND MONTROSE STREET FROM JOHNSON COUNTY RURAL (RUR) TO CITY OF EDGERTON LOGISTICS PARK (L-P)

Chairperson Daley stated these parcels are close to other warehouses. Ms. Crow stated that pursuant to the code requirements, notification letters for tonight's hearing were sent to the required adjacent landowners. City staff received an affidavit was received stating those letters were sent. Chairperson Daley asked if there was residential nearby. Ms. Crow replied that there is a multi-family residential corner to corner for Application ZA2021-08 and there are some parcels which contain Johnson County and City of Gardner rural residential and agriculture. Ms. Crow reminded the Commissioner to provide their rationale for their decision when formulating their motion.

Commissioner Crooks moved to recommend approval of Application ZA2021-07 for rezoning of 9.88 acres generally located northeast of the intersection of 191st Street and Montrose Street from Johnson County RUR to City of Edgerton L-P with the stipulations outlined by City Staff and based upon the information regarding the Golden Criteria in the Staff Report. Commissioner Lebakken seconded the motion. Application ZA2021-07 was recommended for approval, 3-0.

8. CONSIDER APPLICATION ZA2021-08 FOR REZONING OF 9.89 ACRES GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF 191ST STREET AND MONTROSE STREET FROM JOHNSON COUNTY RURAL (RUR) TO CITY OF EDGERTON LOGISTICS PARK (L-P)

Commissioner Crooks moved to recommend approval of Application ZA2021-08 for rezoning of 9.89 acres generally located northeast of the intersection of 191st Street and Montrose Street from Johnson County RUR to City of Edgerton L-P with the stipulations outlined by City Staff based on the

information regarding the Golden Criteria in the Staff Report. Commissioner Little seconded the motion. Application ZA2021-08 was recommended for approval, 3-0.

Ms. Crow stated Applications ZA2021-07 and ZA2021-08 will be presented to the Governing Body on September 9, 2021.

Mr. Boyd thanked the Commission and informed the Commission that JB Hunt will be developing part of the acreage that is being rezoned. The development will be presented to the Commission in the near future as they plan to upgrade and expand the facility, including the removal of the triple wide trailer currently in use.

DRAFT

City Council Action Item

Council Meeting Date: September 9, 2021

Department: Community Development

Agenda Item: Consider Ordinance No. 2096 Adopting the Recommendation of the Edgerton Planning Commission to Approve Application ZA2021-08 for the Rezoning of Approximately 9.89 Acres of Land Located northeast of the intersection of 191st Street and Montrose Street in Edgerton, Kansas From Johnson County "RUR" (Rural District) Zoning to City of Edgerton "L-P" (Logistics Park) Zoning District.

Background/Description of Item: The City of Edgerton has received rezoning Application ZA2021-08 from Dennis Cohlma, representative of Cohlma, LLC requesting the rezoning of a 9.88 acre parcel located northeast of the intersection of 191st Street and Montrose Street in Edgerton, Kansas from Johnson County "RUR" zoning to City of Edgerton "L-P" Logistics Park zoning.

The parcel was annexed into the City of Edgerton on June 10, 2021. The current zoning designation of RUR is considered a holding designation and thus an appropriate zoning designation is required under the City of Edgerton Unified Development Code. This request is to rezone the parcels to L-P, Logistics Park District (L-P) with the intent of expanding the current cargo container storage operations of JB Hunt located on the adjacent parcel directly to the west.

Staff reviewed this rezoning application with respect to the Edgerton Comprehensive Plan, the Edgerton Unified Development Code Zoning and Subdivision Regulations, and the laws of the State of Kansas, in particular the "Golden Criteria" as established by the Supreme Court of Kansas in 1978.

The Planning Commission held a Public Hearing on August 10, 2021 regarding this rezoning request and voted 4-0 to recommend approval of Application ZA2021-08 subject to the following stipulations:

1. All infrastructure requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
2. All platting requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
3. All Site Plan application requirements of the City for a property located in the "L-P" Logistics Park District shall be met.

4. Prior to issuance of building permits, the property shall have a Site Plan which has been reviewed and approved by the City.

Copies of the staff report and draft minutes are included with this packet. Staff received no further public comment for this application following Planning Commission action.

City Attorney has prepared the enclosed draft ordinance approving the recommendation of the Planning Commission based on the Planning Commission staff report.

Related Ordinance(s) or Statute(s): K.S.A. 12-715b, K.S.A. 12-741, et. Seq. to K.S.A. 12-771 – Establishment of the Unified Development Code; 12-757 – Zoning Amendments

Funding Source: N/A

Budget Allocated: N/A

Finance Director Approval: N/A

Recommendation: Approval of Ordinance No. 2096 Adopting the Recommendation of the Edgerton Planning Commission to Approve Application ZA2021-08 for the Rezoning of Approximately 9.89 Acres of Land Located northeast of the intersection of 191st Street and Montrose Street in Edgerton, Kansas From Johnson County "RUR" (Rural District) Zoning to City of Edgerton "L-P" (Logistics Park) Zoning District.

Enclosed:

- Draft Ordinance No. 2096
- Staff Report from August 10, 2021 Planning Commission Meeting including Application ZA2021-08
- Draft minutes from the August 10, 2021 Planning Commission Meeting – included with Council Agenda Item for Application ZA2021-07

Prepared by: Katy Crow, Development Services Director

ORDINANCE NO. 2096

AN ORDINANCE ADOPTING THE RECOMMENDATION OF THE CITY OF EDGERTON PLANNING COMMISSION TO APPROVE APPLICATION ZA2021-08 FOR THE REZONING OF APPROXIMATELY 9.89 ACRES OF LAND GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF 191ST STREET AND MONTROSE STREET IN EDGERTON, KANSAS FROM JOHNSON COUNTY "RUR" (RURAL DISTRICT) TO CITY OF EDGERTON "L-P" (LOGISTICS PARK) ZONING DISTRICT

WHEREAS, the Planning Commission of the City of Edgerton, Kansas received a request on June 29, 2021, from Dennis Cohlmiya, agent for Cohlmiya, LLC, the owner of a parcel of land totaling approximately 9.89 acres, generally located northeast of the intersection of 191st Street and Montrose Street in Edgerton, Kansas to rezone that property from Johnson County "RUR" (Rural District) to City of Edgerton "L-P" (Logistics Park) District; and

WHEREAS, following a public hearing in front of the Planning Commission on August 10, 2021 the Planning Commission has recommended that the rezoning request for that property – from Johnson County "RUR" (Rural District) to City of Edgerton "L-P" (Logistics Park) District -- be approved subject to certain conditions; and

WHEREAS, all required newspaper and mailing notifications were performed.

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

Section 1. That the following legally described property generally located northeast of the intersection of 191st Street and Montrose Street in Edgerton, Kansas is hereby rezoned from Johnson County "RUR" (Rural District) to City of Edgerton "L-P" (Logistics Park) District, and that City Staff is hereby directed to reflect said rezoning in the City's Official Zoning map and other City records:

Tract 2 (Parcel No. 2F221435-2009)

All of the East Half of the East Half of the Southeast Quarter of the Southwest Quarter of Section 35, Township 14, Range 22, Johnson County, Kansas.

Section 2. The above rezoning is expressly conditioned on the following:

- a) All infrastructure requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
- b) All platting requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
- c) All Site Plan application requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
- d) Prior to issuance of building permits, the property shall have a Site Plan which has been reviewed and approved by the City.

Section 3. That the Governing Body, in making its decision on the rezoning, considered City Staff's comments and recommendations as they relate to the Golden Criteria and otherwise. 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 4. This ordinance shall take effect 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 9th DAY OF SEPTEMBER, 2021.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

APPROVED AS TO FORM:

Lee Hendricks, City Attorney

STAFF REPORT

August 10, 2021

To: Edgerton Planning Commission
Fr: Chris Clinton, Planning and Zoning Coordinator
Re: Applications **ZA2021-08** – Rezoning a parcel of land generally located northeast of the intersection 191st Street and Montrose Street from Johnson County Rural (RUR) to City of Edgerton Logistics Park (L-P)

APPLICATION INFORMATION

Applicant and Property Owner: Dennis Cohlmlia, Agent
Cohlmlia, LLC
602 N Webb Road, Suite 110
Wichita, KS 67203

Requested Action: Rezoning from Johnson County Rural (RUR) Zoning District to City of Edgerton L-P (Logistics Park) Zoning District.

Legal Description: See attached application for complete legal description.

Site Address/Location: Northeast of the intersection of 191st Street and Montrose Street

Existing Zoning and Land Uses: Johnson County Rural (RUR), vacant

Existing Improvements: None

Site Size: 9.89 acres

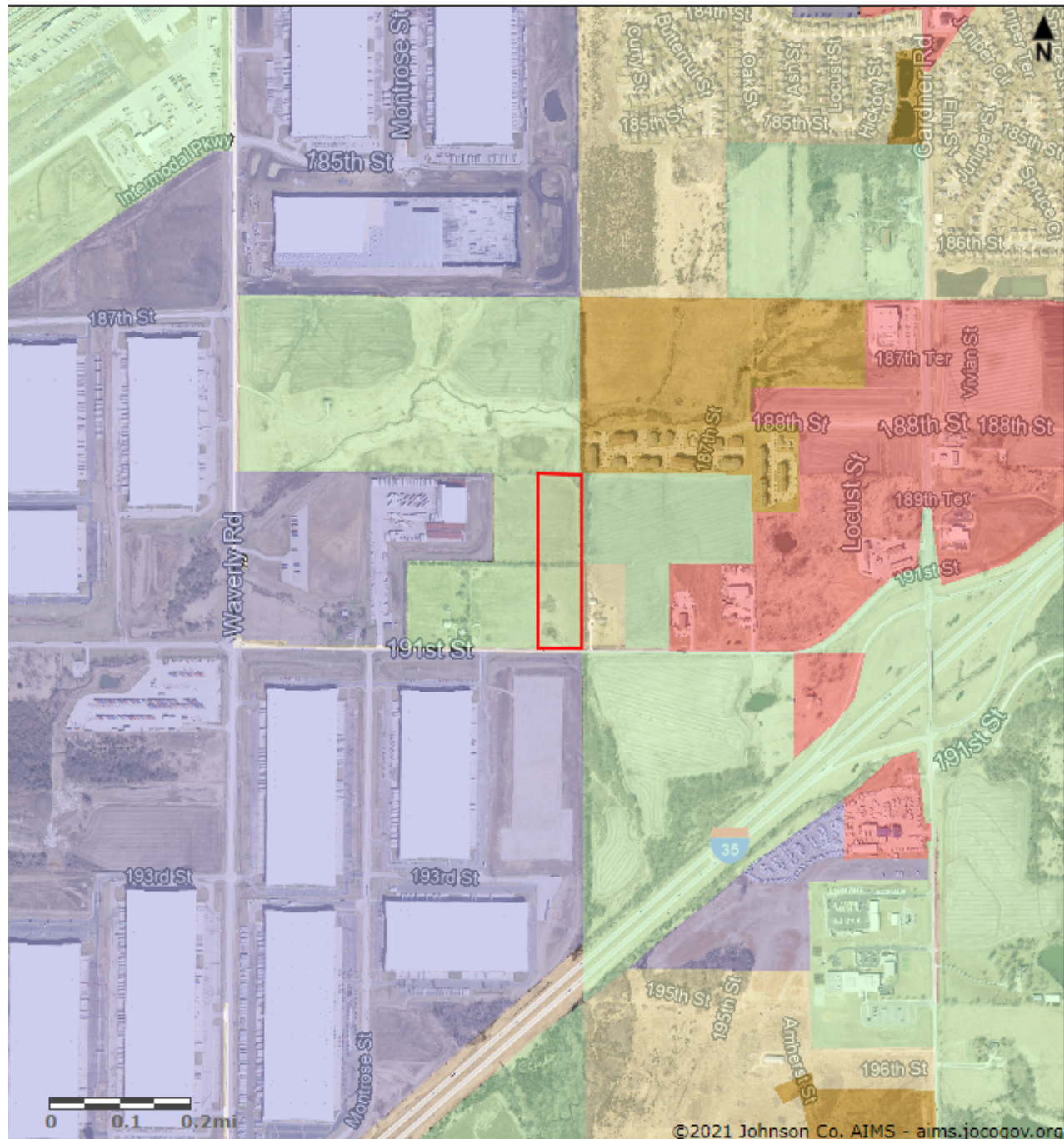
REASON FOR REZONING REQUEST:

This rezoning is being requested for future intermodal-related, logistics park development. Area adjacent to this parcel is part of Logistics Park Kansas City (LPKC), a 2,300-acre master-planned distribution and warehouse development anchored by the Burlington Northern Santa Fe Railway (BNSF) intermodal facility, which opened in late 2013. The BNSF intermodal facility is located approximately one and a half (1.5) miles west of the subject site. Due to their adjacency to the intermodal facility, companies located within LPKC benefit from significant transportation savings.



Figure 1 – Subject parcel outlined in red

Green: Johnson County RUR, City of Edgerton, or City of Gardner Agricultural (A)
Purple: City of Edgerton Logistics Park (L-P)
Red: City of Gardner Commercial and Business District
Yellow: City of Gardner Single Family Residential or Johnson County Residential Low Density
Gold: City of Gardner Multi-Family Residential



INFRASTRUCTURE AND SERVICES

1. Access to the parcel is currently from 191st Street by one private access point.
2. Utilities and service providers.
 - a. Water – Johnson County Water District #7
 - b. Sanitary Sewer – City of Edgerton
 - c. Electrical Service – Evergy
 - d. Gas Service – Kansas Gas Service
 - e. Police services would be provided by the City of Edgerton through the Johnson County Sheriff's Office
 - f. Fire protection is provided by Johnson County Fire District #1
3. Property is located within the Bull Creek watershed.

PROPERTY ZONING HISTORY

The subject property was annexed into the City of Edgerton on This property was annexed into the City of Edgerton on June 10, 2021. Prior to that, the property was in unincorporated Johnson County and as of this application the parcel retains a Johnson County (RUR) zoning designation.

STAFF ANALYSIS

The applicant has requested rezoning to Logistics Park (L-P) District. The City's Unified Development Code (UDC) states the purpose of the L-P District is to create a limited multimodal industrial zone that provides for modern type industrial uses or industrial park to support activities related to trade, rail, and other transport services. Limitations are placed on the uses in the district to significantly restrict the outside activities and outside storage of materials, noise, vibration, etc. The UDC also states manufacturing uses should be conducted within a totally enclosed building. The conduction of outdoor activities and outdoor storage is not allowed. External effects such as excessive noise or odor should not extend beyond the property lines.

Permitted uses within the L-P District include warehousing/distribution centers; motor freight transportation terminals; manufacturing, processing, fabrication, or assembly of commodity – limited; along with other permitted uses.

Staff has reviewed this rezoning application with respect to the Edgerton Unified Development Code, the laws of 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** – When this parcel was annexed into Edgerton, it contained a Johnson County RUR zoning designation as assigned by the County. That zoning designation only allows for an agricultural or residential use and it is considered a holding designation post annexation. Prior to any development occurring on the parcel, rezoning to a City of Edgerton zoning designation is required. The applicant has requested that this parcel be rezoned to L-P to allow for the future intermodal related development. Given the stated request to expand an existing L-P conditional use, the parcel's proximity to LPKC, the BNSF Railway intermodal facility, and the I-35/Homestead interchange, L-P District zoning is the appropriate designation.
2. **Magnitude of the Change** – This parcel is located within the first phase of LPKC and is located adjacent to a parcel to the west that is also requesting rezoning to L-P via Application ZA2021-07, which will also be presented to the Planning Commission on August 10, 2021.

There are nearby properties are also zoned L-P located across 191st Street. Given the parcel's proximity to LPKC, the BNSF Railway intermodal facility, I-35 and the Homestead Lane interchange, the magnitude of the change would not be considered unusual when the property is being used for industrial development.

3. **Whether or not the change will bring harm to established property rights** - The subject property is near other industrial uses. While there are residentially zoned parcels to the north and west of the subject parcel, the L-P zoning designations require significant berming and landscaping to mitigate any impact to adjacent properties. If rezoned L-P, as requested, a separate Site Plan review and approval would be required prior to the issuance of any building permits. Part of a Site Plan review would include attention to buffering and setbacks, stormwater management and the appropriate transition between adjoining properties and any proposed industrial use.
4. **Effective use of Land** - L-P District permitted uses at this location are an effective and efficient use of the property due to its proximity to the BNSF Railway intermodal facility, LPKC and the I-35 interstate system.
5. **The extent to which there is a need in the community for the uses allowed in the proposed zoning** - Construction of warehousing, distribution, limited manufacturing, and related uses near the intermodal facility allow an inland port for goods in transit, by reducing truck traffic in the surrounding area and allowing for more efficient use of the supply chain.
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** - This parcel is located near the BNSF Railway Intermodal Facility. Continued development of the area includes intermodal related uses. While there are some parcels nearby which contain residential uses, the nearest residential use is a higher density multi-family use. As noted previously, the Site Plan review process can mitigate impacts to adjacent properties with the proper attention to buffering and setbacks, stormwater management, and transition of uses.
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 existing zoning and existing use of nearby parcels. The City's Unified Development Code (UDC) states that the purpose of the L-P District is to create a limited multimodal industrial zone which provides for modern types of industrial uses or an industrial park. Limitations are placed on uses in the district to significantly restrict outside activities and the outside storage of materials, noise, vibration, etc. The Site Plan review process is designed to mitigate impacts to adjacent properties with the proper attention to buffering and setbacks, stormwater management, and transition of uses.
8. **Suitability of the uses to which the property has been restricted under its existing zoning** - The existing Johnson County RUR zoning of the applicant property is viewed as a holding designation related to the annexation of the parcel. Johnson County RUR zoning is primarily for agricultural and low-density residential use. An industrial use on a property zoned for agriculture would not be a permitted use therefore, a rezoning to the L-P District is the most appropriate designation for the proposed use indicated by the applicant.
9. **Length of time the subject property has remained vacant under the current zoning designation** - Based upon available aerial photography, the property has been used for agricultural purposes in unincorporated Johnson County dating back to at least 2006.
10. **The extent to which the zoning amendment may detrimentally affect nearby property** - The City's Unified Development Code (UDC) states the purpose of the L-P District is to create a limited multimodal industrial zone that provides for modern types of industrial

uses or an industrial park. Limitations are placed on uses in the district to significantly restrict outside activities and the outside storage of materials, noise, vibration, etc. This parcel is located in the middle of Logistics Park Kansas City and several adjoining parcels already contain an L-P zoning designation. The Site Plan review process can mitigate impacts to adjacent properties with the proper attention to buffering and setbacks, stormwater management, and transition of uses.

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** – Sanitary sewer, electric, and gas utilities are located in the right-of-way adjacent to this property or across 191st Street. Water service is currently provided to the adjacent parcel to the west where current operations exist. The developer of the property will be responsible for any extension of any needed utility to the parcel.
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 and 191st Street have been constructed to accommodate the traffic that will accompany any development on this parcel. During the Site Plan review process, both the type and volume of traffic associated with a new development are evaluated, often with the requirement that a traffic study be performed as part of the applicant's due diligence. This includes evaluating the transportation network in the area and any current and future access points to the parcel. Infrastructure upgrades to accommodate the new development's traffic volume and type are required and adequate off-street parking must be provided as on-street parking is not allowed.
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 National Pollutant Discharge Elimination System (NPDES) guidelines and stormwater management requirements which require any application to address runoff and water pollution mitigation measures as part of the development of the property. Any construction that occurs on site will be required to get a NPDES permit from the State of Kansas and a land disturbance permit from the City. Those permits require a stormwater pollution prevention plan that is reviewed by the City and the State. Mitigation of pollution in the form of 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** - Uses allowed in the L-P District, have the potential to benefit the residents and the community in a positive way by providing jobs, economic opportunities, and tax revenues to respective jurisdictions. During the Covid-19 pandemic, supply chain logistics were instrumental to delivering food and supplies to areas across the United States. This type of commercial industry continues to be an important contributor to the economy of this area.
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 relative gain, if any, to the public health,

safety, and welfare from the denial of these zoning applications. However, the City and community would be adversely impacted due to the lost opportunities for jobs, economic activity, and tax revenue if the anticipated logistics park uses and facilities were to locate in another community.

17. **Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton** - The Comprehensive Plan for the City of Edgerton has the area which the property is in designated as appropriate for zoning and uses associated with business park and industrial zoning. City Staff believes that the requested rezoning is compatible with the spirit and intent of future development outlined in the Comprehensive Plan and Future Land Use Map.
18. **The recommendation of professional staff** - See Recommendation below.

Recommendation:

Based on factors 1 through 17 above, City Staff recommends **approval** of proposed rezoning **Applications ZA2021-08** from Johnson County Rural (RUR), to City of Edgerton Logistics Park District (L-P) with the following stipulations:

1. All infrastructure requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
2. All platting requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
3. All Site Plan application requirements of the City for a property located in the "L-P" Logistics Park District shall be met.
4. Prior to issuance of building permits, the property shall have a Site Plan which has been reviewed and approved by the City.

Attachments:

- Rezoning Applications ZA2021-08
- City of Edgerton Future Land Use Map

LOCATION OR ADDRESS OF SUBJECT PROPERTY: _____

PURPOSE FOR REZONING: _____

REQUESTED REZONING CHANGE: FROM _____ TO _____
(Current Zoning) (Proposed Zoning)

LEGAL DESCRIPTION: _____

CURRENT LAND USE: _____

PROPERTY OWNER'S NAME(S): _____ PHONE: _____

COMPANY: _____ FAX: _____

MAILING ADDRESS: _____
Street City State Zip


APPLICANT/AGENTS NAME(S): _____ PHONE: _____

COMPANY: _____ FAX: _____

MAILING ADDRESS: _____
Street City State Zip

ENGINEER/ARCHITECT'S NAME(S): _____ PHONE: _____

COMPANY: _____ FAX: _____

MAILING ADDRESS: _____
Street City State ZipSIGNATURE OF OWNER OR AGENT:  _____

If not signed by owner, authorization of agent must accompany this application.

FOR OFFICE USE ONLYCase No.: ~~XX~~ _____ Amount of Fee Paid: \$ _____ Date Fee Paid: _____ Receipt # _____

Received By: _____ Date of Hearing: _____

REZONING INSTRUCTIONS

CERTIFIED LETTERS: The applicant will be responsible for mailing notices (see attached Property Owner Notification Letter) of the public hearing for the requested rezoning by certified mail, return receipt requested, to all owners of land within the notification area: two hundred (200) feet within the city limit, one thousand (1,000) feet in the unincorporated area of the subject property. These notices must be sent a minimum of twenty (20) days prior to the public hearing. Information regarding ownership

PROPERTY OWNER NOTIFICATION LETTERCase No.: RZ- ZA2021-07/ ZA2021-08

Dear Sir or Madam:

This letter is to notify you that a public hearing will be held at the Edgerton Community Building, 404 E. Nelson St., Edgerton, Kansas, to consider a rezoning change request from Johnson County Rural (RUR)

(current zoning) to Edgerton Logistics Park District (L-P)

(proposed zoning), on the following described tract of land:

Legal Description: All of the West Half of the East Half of the Southeast Quarter of the Southwest Quarter of Section 35, Township 14, Range 22, Johnson County, Kansas AND All of the East Half of the East Half of the Southeast Quarter of the Southwest Quarter of Section 35, Township 14, Range 22, Johnson County, Kansas.

General Location: Northeast of the intersection W 191st Street and Montrose Street

A public hearing will be held to consider the rezoning request on the above-described tract at 7:00 p.m. on August 10, 2021. Any interested persons or property owners are invited to attend. Information regarding this rezoning application is available in the office of the City Clerk at City Hall or by phone at (913) 893-6231. You may also contact the undersigned for additional information regarding this rezoning request.

A fourteen (14) day protest period begins at the conclusion of the public hearing during which you may file a protest petition in the office of the City Clerk. If valid protest petitions are received from twenty (20) percent of the property owners within the notification area, a three-quarters ($\frac{3}{4}$) vote of the Governing Body is required to approve this rezoning request.

Respectfully,

Violet Hooks/ CEI Engineering Associates, Inc

Applicant (or Owner or Agent)

ADDRESS: <u>3108 SW Regency Pkwy</u>	<u>Bentonville</u>	<u>AR</u>	<u>72712</u>
Street	City	State	Zip

PROPERTY OWNER NOTIFICATION AFFIDAVITCase No.: RZ- ZA2021-07/ ZA2021-08I, Violet V. Hooks/ CEI Engineering Associates, Inc, of lawful age being first duly sworn upon oath, state:

That I am the Agent (agent, owner, attorney) for the property for which the application was filed and did, not later than twenty (20) days prior to the date of the public hearing scheduled before the Edgerton Planning Commission, mail certified notice to all persons owning property within the notification area (two hundred (200) feet in the City of Edgerton, one thousand (1,000) feet in the unincorporated area of the subject property) in compliance with the Unified Development Code.

These notices were mailed on the 12th day of July, 2021.

Signature of Agent, Owner or Attorney

Subscribed and sworn to before me this 12th day of July, 2021.

Notary Public

My Commission Expires: April 27, 2028 (SEAL)
Date

BOBBI BARNES
BENTON COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires April 27, 2028
Commission No. 12764107

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: September 9, 2021

Agenda Item: Resolution No. 09-09-21B Authorizing Amended Bond Documents

Subject: Industrial Revenue Bonds for My Store III, Inc. Project

Background:

My Store III, Inc. (the “Developer”) is acquiring, constructing and equipping a truck stop, truck maintenance facility, truck wash and in-store and stand-alone restaurant space, located on approximately 12 acres of land east of Homestead Lane and north of Interstate 35 in Edgerton, Kansas (the “Project”). The Developer requested that the City finance the Project with industrial revenue bonds to enable the Developer to obtain a sales tax project exemption certificate for the Project. The City issued bonds for the Project on December 3, 2020. The bonds mature on December 1, 2021.

The Developer previously requested that the development agreement for the TIF project plan be amended to allow the Developer to have additional time to complete the Project. The City agreed and extended the completion deadline until October 1, 2022. The Developer is now requesting that the bond documents be amended to also provide additional time to complete the Project.

Resolution:

The Resolution authorizes the City to enter into First Amendments to the Base Lease, Lease Agreement and Trust Indenture. Each amendment extends the maturity date for the bonds until December 1, 2022. It is common to have bonds mature a few months after anticipated Project completion.

RESOLUTION NO. 09-09-21B

A RESOLUTION CONSENTING TO BOND DOCUMENT AMENDMENTS TO EXTEND THE MATURITY DATE OF THE CITY'S INDUSTRIAL REVENUE BONDS (MY STORE III, INC. PROJECT), SERIES 2020

WHEREAS, the City of Edgerton, Kansas (the "City"), desires to promote, stimulate and develop the general welfare and economic prosperity of the City and its inhabitants and to further promote, stimulate and develop the general welfare and economic prosperity of the state of Kansas; and

WHEREAS, the City is authorized and empowered under the provisions of K.S.A. 12-1740 to 12-1749d, inclusive (the "Act"), to issue industrial revenue bonds to pay the cost of certain facilities (as defined in the Act) for the purposes set forth in the Act and to lease such facilities to private persons or entities; and

WHEREAS, the City has previously issued its \$10,000,000 Taxable Industrial Revenue Bonds (My Store III, Inc. Project), Series 2020 (the "Bonds"), pursuant to a Trust Indenture dated as of December 1, 2020 (the "Indenture"), between the City and Security Bank of Kansas City (the "Trustee"), for the purpose of financing the costs of acquiring, constructing, and equipping a truck stop, truck maintenance facility, truck wash and in-store and stand-alone restaurant space, all to be located on approximately 12 acres of land east of Homestead Lane and north of Interstate 35 in Edgerton, Kansas (the "Project"), for the benefit of My Store III, Inc., a Kansas corporation (the "Company");

WHEREAS, in connection with the issuance of the Bonds, the City also entered into (a) a Base Lease Agreement dated as of December 1, 2020 (the "Base Lease"), between the Company and the City, whereby the Company leased certain land to the City on which the Project would be constructed, and (b) a Lease Agreement dated as of December 1, 2020 (the "Lease Agreement"), between the City and the Company, whereby the City leased the Project to the Company; and

WHEREAS, the Company has requested, and the City has agreed, to supplement and amend the Base Lease, the Lease Agreement and the Indenture in order to extend the maturity date of the Bonds to December 1, 2022;

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

Section 1. First Supplemental Base Lease. The Governing Body hereby approves of the form of the First Supplemental Base Lease Agreement (the "First Supplemental Base Lease"), in substantially the form presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the First Supplemental Base Lease for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to

attest to and affix the seal of the City, if required, to the First Supplemental Base Lease.

Section 2. First Supplemental Lease Agreement. The Governing Body hereby approves of the form of the First Supplemental Lease Agreement (the “First Supplemental Lease Agreement”), in substantially the form presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the First Supplemental Lease Agreement for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the First Supplemental Lease Agreement.

Section 3. First Supplemental Trust Indenture. The Governing Body hereby approves of the form of the First Supplemental Trust Indenture (the “First Supplemental Indenture”), in substantially the form presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the First Supplemental Indenture for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the First Supplemental Indenture.

Section 4. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the First Amendment to Base Lease, First Amendment to Lease Agreement and First Supplemental Indenture.

Section 5. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the City Council.

ADOPTED this 9th day of September, 2021.

CITY OF EDGERTON, KANSAS

(Seal)

Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

**MY STORE III, INC.,
As Lessor**

AND

**CITY OF EDGERTON, KANSAS,
As Lessee**

FIRST SUPPLEMENTAL BASE LEASE AGREEMENT

Dated as of September 1, 2021

Relating to:

**\$10,000,000
(Aggregate Maximum Principal Amount)
City of Edgerton, Kansas
Taxable Industrial Revenue Bonds
(My Store III, Inc. Project)
Series 2020**

FIRST SUPPLEMENTAL BASE LEASE AGREEMENT

THIS FIRST SUPPLEMENTAL BASE LEASE AGREEMENT dated as of September 1, 2021 (the “First Supplemental Base Lease”), between **MY STORE III, INC.**, a Kansas corporation (the “Company”), as lessor, and the **CITY OF EDGERTON, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the “City”), as lessee.

WITNESSETH:

WHEREAS, the City has issued its Taxable Industrial Revenue Bonds (My Store III, Inc. Project) Series 2020, in the aggregate maximum principal amount of \$10,000,000, pursuant to a Trust Indenture dated as of December 1, 2020 (the “Indenture”), between the City and Security Bank of Kansas City, as trustee (the “Trustee”), for the purpose of acquiring, constructing and equipping the Project (as defined in the Indenture); and

WHEREAS, the City leased the Project from the Company pursuant to a Base Lease Agreement dated as of December 1, 2020 (the “Original Base Lease”), between the City and the Company, and the City leased the Project to the Company pursuant to a Lease Agreement dated as of December 1, 2020, between the City and the Company; and

WHEREAS, the Company has requested that the City extend the term of the Original Base Lease for a year; and

WHEREAS, pursuant to the provisions of **Section 9.4** of the Original Base Lease, the City and the Company may amend the Original Base Lease with the consent of the Trustee;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Company do hereby represent, covenant and agree as follows:

AGREEMENT:

Section 1.1. Definitions. Capitalized terms used in this First Supplemental Base Lease but not defined herein shall have the meaning given to such terms in the Original Base Lease.

Section 1.2. Amendment to Term. In **Section 3.1** of the Original Base Lease, the date “December 1, 2021” is amended to read “December 1, 2022.”

Section 1.3. Governing Law. This First Supplemental Base Lease shall be governed by the laws of the State of Kansas.

Section 1.4. Execution in Counterparts. This First Supplemental Base Lease may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Base Lease to be executed in their respective corporate names, all as of the date first above written.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts
Mayor

[SEAL]

ATTEST:

Alexandria Clower
City Clerk

MY STORE III, INC.,
a Kansas corporation

By _____
Moussa Sobaiti, President and CEO

CONSENT OF TRUSTEE

Security Bank of Kansas City, as trustee, hereby consents to the execution and delivery of this First Supplemental Base Lease Agreement dated as of September 1, 2021, between My Store III, Inc., a Kansas corporation, and the City of Edgerton, Kansas (the “City”), relating to the City’s Taxable Industrial Revenue Bonds (My Store III, Inc. Project), Series 2020.

SECURITY BANK OF KANSAS CITY

By: _____
Name:
Title:

**CITY OF EDGERTON, KANSAS,
As Lessor**

AND

**MY STORE III, INC.,
As Lessee**

FIRST SUPPLEMENTAL LEASE AGREEMENT

Dated as of September 1, 2021

Relating to:

**\$10,000,000
(Aggregate Maximum Principal Amount)
City of Edgerton, Kansas
Taxable Industrial Revenue Bonds
(My Store III, Inc. Project)
Series 2020**

FIRST SUPPLEMENTAL LEASE AGREEMENT

THIS FIRST SUPPLEMENTAL LEASE AGREEMENT dated as of September 1, 2021 (the “First Supplemental Lease”), between the **CITY OF EDGERTON, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the “City”), as lessor, and **MY STORE III, INC.**, a Kansas corporation (the “Company”), as lessee.

WITNESSETH:

WHEREAS, the City has issued its Taxable Industrial Revenue Bonds (My Store III, Inc. Project) Series 2020, in the aggregate maximum principal amount of \$10,000,000, pursuant to a Trust Indenture dated as of December 1, 2020 (the “Indenture”), between the City and Security Bank of Kansas City, as trustee (the “Trustee”), for the purpose of acquiring, constructing and equipping the Project (as defined in the Indenture); and

WHEREAS, the City leased the Project from the Company pursuant to a Base Lease Agreement dated as of December 1, 2020, between the City and the Company, and the City leased the Project to the Company pursuant to a Lease Agreement dated as of December 1, 2020 (the “Original Lease”), between the City and the Company; and

WHEREAS, the Company has requested that the City extend the term of the Original Lease one year; and

WHEREAS, pursuant to the provisions of **Section 1202** of the Indenture and **Section 14.1** of the Original Lease, the City and the Company may amend the Original Lease with the consent of the Bondholders and the Trustee;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Company do hereby represent, covenant and agree as follows:

AGREEMENT:

Section 1.1. Definitions. Capitalized terms used in this First Supplemental Lease but not defined herein shall have the meaning given to such terms in the Original Lease.

Section 1.2. Amendment to Term. In **Section 3.2** of the Original Lease, the date “December 1, 2021” is amended to read “December 1, 2022.”

Section 1.3. Governing Law. This First Supplemental Lease shall be governed by the laws of the State of Kansas.

Section 1.4. Execution in Counterparts. This First Supplemental Lease may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Lease to be executed in their respective corporate names, all as of the date first above written.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts
Mayor

[SEAL]

ATTEST:

Alexandria Clower
City Clerk

MY STORE III, INC.,
a Kansas corporation

By _____
Moussa Sobaiti, President and CEO

CONSENT OF TRUSTEE

Security Bank of Kansas City, as trustee, hereby consents to the execution and delivery of this First Supplemental Lease Agreement dated as of September 1, 2021, between the City of Edgerton, Kansas (the “City”), and My Store III, Inc., a Kansas corporation, relating to the City’s Taxable Industrial Revenue Bonds (My Store III, Inc. Project), Series 2020.

SECURITY BANK OF KANSAS CITY

By: _____
Name:
Title:

CONSENT OF BONDHOLDER

My Store III, Inc., a Kansas corporation, as the owner of all of the outstanding City of Edgerton, Kansas (the “City”) Taxable Industrial Revenue Bonds (My Store III, Inc. Project), Series 2020, consents to the execution and delivery of this First Supplemental Lease Agreement dated as of September 1, 2021, between the City and My Store III, Inc., a Kansas corporation.

MY STORE III, INC.,
a Kansas corporation

By _____
Moussa Sobaiti, President and CEO

CITY OF EDGERTON, KANSAS,

AND

**SECURITY BANK OF KANSAS CITY,
as Trustee**

FIRST SUPPLEMENTAL TRUST INDENTURE

Dated as of September 1, 2021

Relating to:

**\$10,000,000
(Aggregate Maximum Principal Amount)
City of Edgerton, Kansas
Taxable Industrial Revenue Bonds
(My Store III, Inc. Project)
Series 2020**

FIRST SUPPLEMENTAL TRUST INDENTURE

THIS FIRST SUPPLEMENTAL TRUST INDENTURE dated as of September 1, 2021 (the “First Supplemental Indenture”), between the **CITY OF EDGERTON, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the “City”), and **SECURITY BANK OF KANSAS CITY**, a state banking corporation duly organized and existing under and by virtue of the laws of the State of Kansas, with a corporate trust office located in Kansas City, Kansas, as trustee (the “Trustee”);

WITNESSETH:

WHEREAS, the City has issued its Taxable Industrial Revenue Bonds (My Store III, Inc. Project) Series 2020, in the aggregate maximum principal amount of \$10,000,000 (the “Bonds”), pursuant to a Trust Indenture dated as of December 1, 2020 (the “Original Indenture”), between the City and the Trustee, for the purpose of financing the costs of a Project (as defined in the Original Indenture); and

WHEREAS, the City leased the Project from the Company pursuant to a Base Lease Agreement dated as of December 1, 2020 (the “Original Base Lease”), between the City and the Company, and the City leased the Project to the Company pursuant to a Lease Agreement dated as of December 1, 2020 (the “Original Lease”), between the City and the Company; and

WHEREAS, the Company has requested that the City extend the maturity date of the Bonds for a year; and

WHEREAS, pursuant to **Section 1102** of the Original Indenture, the City and the Trustee are authorized to enter into supplemental indentures with the consent of bondowners; and

WHEREAS, it is necessary to enter in to this First Supplemental Indenture to supplement the Original Indenture to extend the maturity date of the Bonds.

AGREEMENT:

Section 101. Definitions. Capitalized terms used in this First Supplemental Indenture but not defined herein shall have the meaning given to such terms in the Original Indenture.

Section 102. Amendment of Maturity Date. In **Section 208(a)** of the Original Indenture, the date “December 1, 2021” is amended to read “December 1, 2022.”

Section 103. Form of Replacement Bond. The form of the replacement Bond and the Trustee’s Certificate of Authentication to be endorsed thereon is attached hereto as **Exhibit A**.

Section 104. Governing Law. This First Supplemental Indenture shall be governed by the laws of the State of Kansas.

Section 105. Execution in Counterparts. This First Supplemental Indenture may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 106. Electronic Storage. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles,

electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the City of Edgerton, Kansas, has caused this First Supplemental Indenture to be signed in its name and behalf by its Mayor and the seal of the City to be hereunto affixed and attested by its City Clerk, and to evidence its acceptance of the trusts hereby created, Security Bank of Kansas City has caused this First Supplemental Indenture to be signed in its name and behalf by its duly authorized officer, all as of the date first above written.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts
Mayor

ATTEST:

Alexandria Clower
City Clerk

SECURITY BANK OF KANSAS CITY,
as Trustee

By: _____
Name:
Title:

[SEAL]

CONSENT OF COMPANY

My Store III, Inc., a Kansas corporation (the “Company”), as the lessee under the Lease Agreement dated as of December 1, 2020, as amended, between the City of Edgerton, Kansas and the Company, consents to the execution and delivery of this First Supplemental Trust Indenture dated as of September 1, 2021, between the City and Security Bank of Kansas City, as trustee.

MY STORE III, INC.,
a Kansas corporation

By _____
Moussa Sobaiti, President and CEO

CONSENT OF BONDHOLDER

My Store III, Inc., a Kansas corporation, as the owner of all of the outstanding City of Edgerton, Kansas (the “City”) Taxable Industrial Revenue Bonds (My Store III, Inc. Project), Series 2020, consents to the execution and delivery of this First Supplemental Trust Indenture dated as of September 1, 2021, between the City and Security Bank of Kansas City, as trustee.

MY STORE III, INC.,
a Kansas corporation

By _____
Moussa Sobaiti, President and CEO

EXHIBIT A

FORM OF REPLACEMENT BOND

This Bond has not been registered under the Securities Act of 1933, as amended, or any state securities laws, and this Bond may not be transferred unless (i) the City consents in writing to such transfer, and (ii) the City and the Trustee are furnished a written legal opinion from counsel acceptable to the City, the Trustee and the Company, to the effect that such transfer is exempt from the registration requirements of the Securities Act of 1933, as amended, and any applicable state securities laws. This Bond may be transferred to any successor of the Company or any entity owned by or under common ownership with the Company without the necessity of obtaining the City's consent or such an opinion.

No. R-2

**UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF JOHNSON**

**CITY OF EDGERTON, KANSAS
TAXABLE INDUSTRIAL REVENUE BOND
(MY STORE III, INC. PROJECT)
SERIES 2020**

THE CITY OF EDGERTON, KANSAS, a municipal corporation organized and existing under the laws of the State of Kansas (the "City"), for value received, promises to pay, but solely from the source hereinafter referred to, to

MY STORE III, INC., a Kansas corporation

or registered assigns, on December 1, 2022, the principal amount of

TEN MILLION DOLLARS

or such lesser amount as may be outstanding hereunder as reflected in the bond registration books maintained by the Trustee. The registered owner shall note the principal amount outstanding hereunder in the Table of Cumulative Outstanding Principal Amount attached hereto, provided, however, that the registration books maintained by the Trustee shall be the official record of the Cumulative Outstanding Principal Amount of this Bond, in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the registered owner hereof, either by check or draft mailed to the registered owner at a stated address as it appears on the bond registration books of the City kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States, interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the rate of 6.00% per annum payable in arrears on each June 1 and December 1, commencing on June 1, 2021, and continuing thereafter until the said Cumulative Outstanding Principal Amount is paid in full. Interest shall be computed on the basis of a year of 360 days consisting of 12 months of 30 days each. Principal on this Bond shall be payable on the maturity date set forth above, unless such principal shall have been paid as a result of a redemption of this Bond prior to such maturity date.

As used herein, the term “Cumulative Outstanding Principal Amount” means an amount equal to the aggregate of all amounts paid into the Construction Fund in accordance with the terms of the hereinafter defined Indenture, as reflected in the bond registration books maintained by the Trustee.

The Trustee shall keep and maintain a record of the amounts deposited into the Construction Fund pursuant to the terms of the Indenture as “Principal Amount Deposited into Construction Fund” and shall enter the aggregate principal amount of this Bond then outstanding on its records as the “Cumulative Outstanding Principal Amount” on its records maintained for this Bond. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the registered owner hereof, pursuant to the optional redemption provisions of the Indenture, the Trustee shall enter on its records the principal amount paid on the Bond as “Principal Amount Paid Pursuant to Optional Redemption Provisions,” and shall enter the then outstanding principal amount of this Bond as “Cumulative Outstanding Principal Amount” on its records. The registered owner may from time to time enter the respective amounts deposited into the Construction Fund pursuant to the terms of the Indenture under the column headed “Principal Amount Deposited Into Construction Fund” on the attached Table of Cumulative Outstanding Principal Amount (the “Table”) and may enter the aggregate principal amount of this Bond then outstanding under the column headed “Cumulative Outstanding Principal Amount” on the attached Table. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the registered owner hereof pursuant to the optional redemption provisions of the Indenture, the registered owner may enter the principal amount paid on this Bond under the column headed “Principal Amount Paid Pursuant to Optional Redemption Provisions” on the Table and may enter the then outstanding principal amount of this Bond under the column headed “Cumulative Outstanding Principal Amount” on the Table. However, the records maintained by the Trustee as to amounts deposited into the Construction Fund or principal amounts paid on this Bond shall be the official records of the Cumulative Outstanding Principal Amount for all purposes.

THIS BOND is a duly authorized Bond of the City designated “City of Edgerton, Kansas Taxable Industrial Revenue Bonds (My Store III, Inc. Project) Series 2020,” in the aggregate maximum principal amount of \$10,000,000 (the “Bonds”), to be issued for the purpose of providing funds to pay the cost of acquiring, constructing and equipping a truck stop, truck maintenance facility, truck wash and in-store and stand-alone restaurant space, all to be located on approximately 12 acres of land east of Homestead Lane and north of Interstate 35 in Edgerton, Kansas, including land, buildings, structures, improvements, fixtures, machinery and equipment (the “Project”), to be subleased to My Store III, Inc., a Kansas corporation (the “Company”), under the terms of a Lease Agreement dated as December 1, 2020, as supplemented by a First Supplemental Lease Agreement dated as of September 1, 2021 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Lease”), between the City and the Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations and Constitution and statutes of the State of Kansas, including particularly K.S.A. 12-1740 to 12-1749d, inclusive, as amended, and pursuant to proceedings duly had by the governing body of the City.

THE BONDS are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of December 1, 2020, as supplemented by a First Supplemental Trust Indenture dated as of September 1, 2021 (said Trust Indenture, as supplemented, and as further amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Indenture”), between the City and Security Bank of Kansas City, as trustee (the “Trustee”). Subject to the terms and conditions set forth therein, the Indenture permits the City to issue Additional Bonds (as defined therein) secured by the Indenture on a parity with the Bonds. Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Trustee and the owners of the Bonds, and the terms upon which the Bonds are issued and secured.

THIS BOND shall be subject to redemption and payment in whole or in part, as follows:

(a) At any time prior to the stated maturity thereof, by the City, at the option of and upon instructions from the Company, at a price equal to the principal amount thereof, plus accrued interest thereon, without premium or penalty, to the date of payment.

(b) At any time prior to the stated maturity thereof, to the extent amounts are deposited into the Bond Fund in accordance with **Section 602** of the Indenture, at a price equal to the principal amount thereof, plus accrued interest thereon, without premium or penalty, to the date of payment.

In the event the Bonds are to be called for redemption as provided in paragraphs (a) or (b) above, the Company shall deliver written notice to the City and the Trustee that it has elected to redeem all or a portion of the Bonds in accordance with paragraph (a) or (b) above at least ten days prior to the scheduled redemption date. The Trustee shall then deliver written notice to the Owner of this Bond at least five days prior to the scheduled redemption date by first class mail stating the date upon which the Bonds will be redeemed and paid.

THE BONDS are special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and not from any other fund or source of the City, and are secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the City under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute general obligations of the City or the State of Kansas, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the City and deposited in a special account created by the City and designated the "City of Edgerton, Kansas, Taxable Industrial Revenue Bond Fund – My Store III, Inc. Project, Series 2020."

THE OWNER of this Bond shall have no right to enforce the provision of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

SUBJECT TO the requirements for transfer set forth above in the legend contained on the face of this Bond, this Bond is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the registered owner hereof in person or by such person's duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or such person's duly authorized attorney, and thereupon a new fully registered Bond or Bonds, without coupons, and in the same aggregate principal amounts, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City, the Trustee and any Paying Agent may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

THE BONDS are issuable in the form of one fully registered Bond without coupons in the maximum principal denomination of \$10,000,000.

THIS BOND shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Kansas.

IN WITNESS WHEREOF, the City of Edgerton, Kansas, has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon, and has caused this Bond to be dated as of September ___, 2021.

CITY OF EDGERTON, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is the Taxable Industrial Revenue Bond (My Store III, Inc. Project) Series 2020, described in the Trust Indenture. The effective date of registration of this Bond is set forth below.

SECURITY BANK OF KANSAS CITY

Date

By: _____
Name: _____
Title: _____

TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT

<u>Date</u>	Principal Amount Deposited Into <u>Construction Fund</u>	Principal Amount Paid Pursuant to Redemption <u>Provisions</u>	Cumulative Outstanding Principal <u>Amount</u>	Notation Made <u>By</u>
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(FORM OF ASSIGNMENT)
(NOTE RESTRICTIONS ON TRANSFERS)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Typewrite Name, Address and Social Security or
other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_____ attorney to transfer the within Bond on the books kept by the Trustee
for the registration and transfer of Bonds, with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature to this assignment must
correspond with the name as it appears upon the
face of the within Bond in every particular.

Signature Guaranteed By:

[Seal of Bank]

(Name of Bank)

By: _____
Title: _____

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: September 9, 2021

Agenda Item: Assignment of Base Leases, Lease Agreements and Other Bond Documents
Resolution Nos. 09-09-21C

Subject: ELHC VII, XXII and LI Assignments

The City has issued industrial revenue bonds for the ELHC VII, XXII and LI Projects. Every time the City issues bonds, the ELHC entity leases the project to the City, and the City then subleases the project back to the ELHC entity. This gives the City the necessary legal interest in the project which is required by Kansas law to issue bonds.

The City is considering three resolutions that approve the assignment of the ELHC VII, ELHC XXII and ELHC LI projects, respectively. ELHC VII, LLC is assigning its interest in the property to IPVII 185 Street LLC, a Delaware limited liability company. ELHC XXII is assigning its interest in the property to IPXXII 193 Street LLC, a Delaware limited liability company. ELHC LI is assigning its interest in the property to IPLI 207 Street LLC, a Delaware limited liability company. All of the assignees are joint venture entities between NorthPoint Development and Ares, which is a global real estate investment fund. NorthPoint will continue to manage the joint venture entities.

Each resolution approves the following documents:

- (a) Assignment and Assumption of IRB Documents. The assignment for ELHC XXII is attached to this item summary as **Exhibit A**. The assignments for ELHC VII and LI are in substantially the same form. The Assignment transfers all of ELHC's interest in the Base Lease, the Lease Agreement, the Performance Agreement, the Origination Fee Agreement and the other bond documents for each project to the new joint venture entity. Each assignment has a consent page for the Mayor to sign acknowledging the City's consent to the assignment.
- (b) Collateral Assignment of IRB Documents. The collateral assignment for ELHC XXII is attached to this item summary as **Exhibit B**. The collateral assignments for ELHC VII and LI are in substantially the same form. The acquisition of each ELHC project by the applicable joint venture entity is being financed with a loan. As a condition to making the loans, the lender is requiring that the interest of the new joint venture entities be assigned to the lender as collateral for the loans. The collateral assignment has an acknowledgement for the Mayor to sign where the City acknowledges the existence of each agreement.
- (c) Consent, Agreement and Estoppel Certificate. The estoppel for ELHC XXII is attached to this item summary as **Exhibit C**. The estoppels for ELHC VII and LI are in substantially the same form. The Lender has requested that the City deliver this estoppel certificate to certify copies of bond documents, state there are no current defaults under the bond documents, and acknowledge that the City agrees to the assignment of the bond documents for each project.
- (d) Subordination/Attornment Agreement. The subordination for ELHC XXII is attached to this item summary as **Exhibit D**. The subordination for ELHC VII and LI are in substantially the same form. In the subordination, the City agrees to subordinate its interest in the bond documents for each project to the lender's new mortgage. Accordingly, if any joint venture entity is in default with lender, lender can step into the shoes of the joint venture entity, and the City agrees to recognize the lender as the new counter party to the bond documents. The lender will then have the right to keep the bond documents in place, transfer the bond documents to a purchaser, or terminate the bond documents and the corresponding property tax abatement for that project.

RESOLUTION NO. 09-09-21C

A RESOLUTION CONSENTING TO THE ASSIGNMENT OF BOND DOCUMENTS IN CONNECTION WITH THE CITY'S TAXABLE INDUSTRIAL REVENUE BONDS (ELHC VII, LLC PROJECT), SERIES 2020, AND AUTHORIZING A COLLATERAL ASSIGNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT

WHEREAS, the City of Edgerton, Kansas (the "City") is a duly organized and existing municipal corporation under the laws of the State of Kansas; and

WHEREAS, the City issued its Taxable Industrial Revenue Bonds (ELHC VII, LLC Project), Series 2020 (the "Bonds"), in the aggregate maximum principal amount of \$45,000,000, pursuant to a Trust Indenture dated as of April 1, 2020 (the "Indenture"), between the City and BOKF, N.A., as trustee (the "Trustee"), for the purpose of providing funds to pay the cost of acquiring, purchasing, constructing, installing and equipping a commercial project, consisting of an approximately 952,000 sq. ft. warehouse and distribution facility, to be located at 30901 W. 185th Street, Edgerton, Kansas (the "Project"); and

WHEREAS, the Project was leased by ELHC VII, LLC, a Kansas limited liability company ("ELHC"), to the City pursuant to a Base Lease Agreement dated as of April 1, 2020 (the "Base Lease"), between ELHC and the City, and the Project was subleased by the City to ELHC pursuant to a Lease Agreement dated as of April 1, 2020 (the "Lease Agreement"), between the City and the Assignor; and

WHEREAS, pursuant to **Section 6.2** of the Base Lease and **Section 13.1** of the Lease Agreement, the Assignor may assign the Base Lease and the Lease Agreement only with the written consent of the City; and

WHEREAS, the Assignor is requesting the City's consent to the assignment of the Assignor's interest under the Base Lease, Lease Agreement, Indenture, the Performance Agreement dated as of April 1, 2020 (the "Performance Agreement"), between the City and Assignor, the Origination Fee Agreement dated as of April 1, 2020 (the "Origination Fee Agreement"), between the City and the Assignor, the Bond Purchase Agreement dated April 21, 2020 (the "Bond Purchase Agreement"), among the City, the Assignor, as purchaser, and the Assignor, as the company, and all other documents executed in connection with the Bonds that are included in the transcript of proceedings for the Bonds (collectively, the "Other Bond Documents"), to IPVII 185 Street LLC, a Delaware limited liability company (the "Assignee"); and

WHEREAS, the City desires to consent to the assignment of the Assignor's interest under the Base Lease, Lease Agreement, Indenture, Performance Agreement, Origination Fee Agreement, the Bond Purchase Agreement and the Other Bond Documents to the Assignee; and

WHEREAS, in connection with the assignment, Assignee has requested that the City deliver a collateral assignment, an estoppel and a subordination agreement, and the City desires to approve such documents;

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

Section 1. Consent to Assignment. The Governing Body of the City hereby consents to the assignment of the Base Lease, Lease Agreement, Indenture, Performance Agreement, Origination Fee Agreement, Bond Purchase Agreement and the Other Bond Documents by the Assignor to the Assignee. The foregoing consents are contingent upon the satisfaction of all other requirements for assignments expressly set forth in the Lease Agreement.

Section 2. Authorization and Execution of Consent to Assignment. The Governing Body hereby approves of the form of the Assignment and Assumption of IRB Documents (the "Assignment"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the consent to the Assignment for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the Assignment.

Section 3. Authorization and Execution of Consent to Collateral Assignment. The Governing Body hereby approves of the form of the City consent to Collateral Assignment of IRB Documents (the "Collateral Assignment"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the consent to the Collateral Assignment for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the consent to the Collateral Assignment.

Section 4. Authorization and Execution of Estoppel. The Governing Body hereby approves of the form of the Consent, Agreement and Estoppel Certificate (the "Estoppel"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the Estoppel for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the Estoppel.

Section 5. Authorization and Execution of Subordination. The Governing Body hereby approves of the form of the Subordination/Attornment Agreement (the "Subordination"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the Subordination for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the Subordination.

Section 6. Further Authority. The Mayor is hereby authorized and directed to execute and deliver such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution (copies of said documents shall be filed in the records of the

City) for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 7. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

ADOPTED this 9th day of September, 2021.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

EXHIBIT A

Sample Assignment and Assumption of IRB Documents

(Space above reserved for the Register of Deeds' recording information)

Title of Document: Assignment and Assumption of IRB Documents

Date of Document: September ____, 2021

Grantor(s): ELHC XXII, LLC, a Kansas limited liability company

Grantee(s): IPXXII 193 Street LLC, a Delaware limited liability company

Grantee's Address: c/o Ares Management LLC, 3344 Peachtree Road, N.E., Suite
1950, Atlanta, Georgia 30326

Reference Book and Pages: Book 201703, Page 002210
Book 201703, Page 002211

Legal Description: See attached Exhibit A

ASSIGNMENT AND ASSUMPTION OF IRB DOCUMENTS

THIS ASSIGNMENT AND ASSUMPTION OF IRB DOCUMENTS (the “**Assignment**”) entered into on September ____, 2021 (the “**Effective Date**”) is by and between ELHC XXII, LLC, a Kansas limited liability company (the “**Assignor**”), and IPXXII 193 Street LLC, a Delaware limited liability company (the “**Assignee**”).

RECITALS

WHEREAS, the City of Edgerton, Kansas (the “**City**”) has previously issued its \$33,000,000 aggregate maximum principal amount of Industrial Revenue Bonds (ELHC XXII, LLC Project) Series 2017 (the “**Bonds**”) pursuant to a Trust Indenture dated as of March 1, 2017 (the “**Indenture**”), between the City and UMB BANK, N.A., as trustee (the “**Trustee**”), and used the proceeds of the Bonds to construct a Project (as defined in the Indenture);

WHEREAS, Assignor leased the Project to the City pursuant to the Base Lease Agreement dated as of March 1, 2017 (the “**Base Lease**”), between Assignor and the City, a memorandum of which was recorded March 8, 2017, in Book 201703, Page 002210, and the land that is subject to the Base Lease is set forth on **Schedule 1** (the “**Real Property**”);

WHEREAS, the City subleased the Project to Assignor pursuant to a Lease Agreement dated as of March 1, 2017 (the “**Lease Agreement**”), between the City and Assignor, a memorandum of which was recorded March 8, 2017, in Book 201703, Page 002211, which Lease Agreement covers the Real Property;

WHEREAS, the City and Assignor entered into a Performance Agreement dated as of March 1, 2017 (the “**Performance Agreement**”) whereby the parties set forth the terms relating to tax abatement for the Project;

WHEREAS, the City and Assignor entered into an Origination Fee Agreement dated as of March 1, 2017 (the “**Origination Fee Agreement**”) whereby Assignor agreed to make certain origination fee payments to the City over time;

WHEREAS, the City and Assignor entered into a Bond Purchase Agreement dated March 1, 2017 (the “**Bond Purchase Agreement**”) whereby City agreed to issue and Assignor agreed to purchase the Bonds on the terms and conditions set forth therein;

WHEREAS, Assignor now desires to assign and transfer to Assignee all of Assignor’s right, title and interest in and to the Indenture, the Bond Purchase Agreement, the Base Lease, the Lease Agreement, the Performance Agreement, and the Origination Fee Agreement (collectively, the “**IRB Documents**”);

WHEREAS, Assignee desires to accept such assignment subject to the terms and conditions set forth below; and

WHEREAS, the City and the Trustee desire to consent to such assignment and assumption.

AGREEMENT

NOW, THEREFORE, for and in consideration of the promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Assignment.** As of the Effective Date, Assignor hereby sells, transfers, conveys, assigns, and delivers to Assignee all of Assignor's rights and obligations under the IRB Documents (collectively, the "Assigned Interests").

2. **Assumption.** Assignee accepts all of the Assigned Interests assigned by Assignor in **Section 1** and assumes and agrees to pay, perform, and discharge promptly and fully when and as required all obligations and liabilities under the IRB Documents that accrue on or after the Effective Date.

3. **Delivery of documents; representations.** Pursuant to **Section 13.1(a)** of the Lease Agreement, Assignor represents that all conditions precedent to the assignment have been satisfied. Assignor represents that there has been no damage or destruction to the Project that has not been repaired, restored, and replaced in accordance with the terms of the Lease Agreement.

4. **Consent and release.** Pursuant to **Section 13.1(a)** of the Lease Agreement, the City consents to the Assignment of the IRB Documents from Assignor to Assignee. Pursuant to **Section 206** of the Indenture, the City consents to the assignment and transfer of the Bonds from Assignor to Assignee. The City releases Assignor from all liability under the IRB Documents occurring on and after the Effective Date.

5. **Assignor's Representation.** Assignor represents that Assignor has not transferred, sold, encumbered, or otherwise disposed of the Bonds nor has Assignor assigned the Lease or transferred or encumbered or otherwise disposed of its interest in the Project. Assignor further represents and warrants that Assignor is not aware of any default which exists on this date by it or the counterparty under the IRB Documents.

6. **Successors and Assigns.** This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

7. **Counterparts.** This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

8. **Governing law.** This Assignment shall be interpreted and construed under the laws of the State of Kansas, excluding any conflict of law or choice-of-law rules that might lead to the application of the internal laws of another jurisdiction.

9. **Recording.** Assignee shall submit this Assignment for recording in the Office of the Register of Deeds of Johnson County, Kansas on or about the Effective Date.

10. **Indemnity.** Assignor hereby indemnifies and holds Assignee harmless from and against all claims, demands, losses, damages, expenses and costs including, but not limited to, reasonable lawyer's fees and expenses actually incurred, arising out of or in connection with Assignor's failure to observe, perform and discharge each and every one of the covenants, obligations, and liabilities of the Assignor under the IRB Documents to be observed, performed, or discharged with respect to the period prior to the Effective Date. Assignee hereby indemnifies and holds Assignor harmless from and against all claims, demands, losses, damages, expenses, and costs including, but not limited to, reasonable lawyer's fees and expenses actually incurred, arising out of or in connection with Assignee's failure, from and after the date of this Assignment, to observe, perform, and discharge all covenants, obligations, and liabilities under the IRB Documents with respect to the period on and after the Effective Date.

11. Direction to Trustee. Assignor, as current sole owner of the Bonds hereby directs the Trustee to provide its acknowledgement of this Assignment. Upon the registration of the Bonds in the name of the Assignee, Assignee hereby provides written notice to the Trustee that it waives its right to actual payment of interest due on the Bonds on each interest payment date, as well as the principal of the Bonds maturing on the maturity date so long as the Assignee is the sole owner of the Bonds.

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives to execute this Assignment as of the Effective Date.

ASSIGNOR:

ELHC XXII, LLC,
a Kansas limited liability company

By: NorthPoint Development, LLC
a Missouri limited liability company
Its: Manager

By _____
Nathaniel Hagedorn, Manager

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF PLATTE)

BE IT REMEMBERED, that on this ____ day of September, 2021, appeared Nathaniel Hagedorn, to me personally known, who being duly sworn did say that he is the Manager of NorthPoint Development, LLC, the Manager of ELHC XXII, LLC, a Kansas limited liability company (the "Company"), and that the foregoing instrument was signed for the purposes therein contained on behalf of the Company and by authority of the Company; and he further acknowledged said instrument to be the free act and deed of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

ASSIGNEE:

IPXXII 193 Street LLC, a Delaware limited liability company

By: ELHC XXII, LLC,
a Kansas limited liability company, its Member

By: NorthPoint Development, LLC
a Missouri limited liability company,
Its: Manager

By _____
Nathaniel Hagedorn, Manager

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF PLATTE)

BE IT REMEMBERED, that on this ____ day of September, 2021, appeared Nathaniel Hagedorn, to me personally known, who being duly sworn did say that he is the Manager of NorthPoint Development, LLC, the Manager of ELHC XXII, LLC, a Kansas limited liability company, the Member of IPXXII 193 Street LLC, a Delaware limited liability company (the "Company"), and that the foregoing instrument was signed for the purposes therein contained on behalf of the Company and by authority of the Company; and he further acknowledged said instrument to be the free act and deed of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

CONSENT OF THE CITY OF EDGERTON, KANSAS

The City hereby acknowledges, consents and agrees to the execution and delivery of this Assignment and Assumption of IRB Documents dated September ____, 2021, between ELHC XXII, LLC, a Kansas limited liability company, and IPXXII 193 Street LLC, a Delaware limited liability company.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts
Mayor

ATTEST:

Alexandria Clower
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this ____ day of September, 2021, before me, a notary public in and for said county and state, came Donald Roberts, Mayor of the City of Edgerton, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and Alexandria Clower, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

ACKNOWLEDGMENT OF TRUSTEE

UMB BANK, N.A., as trustee, hereby acknowledges the execution and delivery of this Assignment and Assumption of IRB Documents dated September ____, 2021, between ELHC XXII, LLC, a Kansas limited liability company ("Assignor"), and IPXXII 193 Street LLC, a Delaware limited liability company ("Assignee").

The Trustee represents and warrants to the City of Edgerton, Kansas, Assignor, and Assignee that the Trustee has no knowledge of any default, monetary or otherwise, that has occurred under the terms of the IRB Documents.

UMB BANK, N.A.

By: _____
Sarah Sanchez
Vice President

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this ____ day of September, 2021 before me appeared Sarah Sanchez, a Vice President of UMB BANK, N.A., a national banking association, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same on behalf of said national banking association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

SCHEDULE 1

LEGAL DESCRIPTION OF REAL PROPERTY

LOT 2, LOGISTICS PARK KANSAS CITY PHASE III, A SUBDIVISION IN THE CITY OF
EDGERTON, JOHNSON COUNTY, KANSAS.

EXHIBIT B

Sample Collateral Assignment of IRB Documents

(Space above reserved for the Register of Deeds' recording information)

Title of Document: Collateral Assignment of IRB Documents

Date of Document: September ____, 2021

Grantor(s): IPXXII 193 Street LLC, a Delaware limited liability company

Grantee(s): Massachusetts Mutual Life Insurance Company, a Massachusetts corporation

Grantee's Address: c/o Barings, One Financial Plaza, Hartford, Connecticut 06103, Attn: Real Estate Loan Servicing, Loan No. 174031

Reference Book and Pages: Book 201703, Page 002210
Book 201703, Page 002211

Legal Description: See attached Schedule 1

COLLATERAL ASSIGNMENT OF IRB DOCUMENTS

This Collateral Assignment of IRB Documents ("**Assignment**") is executed as of the ____ day of September, 2021, by **IPXXII 193 STREET LLC** a Delaware limited liability company ("**Assignor**"), in favor of **MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY**, a Massachusetts corporation ("**Lender**").

W I T N E S S E T H

WHEREAS, the City of Edgerton, Kansas (the "**City**") has previously issued its \$33,000,000 aggregate maximum principal amount of Industrial Revenue Bonds (ELHC XXII, LLC Project) Series 2017 (the "**Bonds**") pursuant to a Trust Indenture dated as of March 1, 2017 (the "**Indenture**"), between the City and UMB BANK, N.A., as trustee (the "**Trustee**"), and used the proceeds of the Bonds to construct a Project (as defined in the Indenture);

WHEREAS, ELHC XXII, LLC, a Kansas limited liability company ("**Seller**"), leased the Project to the City pursuant to the Base Lease Agreement dated as of March 1, 2017 (the "**Base PILOT Lease**"), between Seller and the City, a memorandum of which was recorded March 8, 2017, in Book 201703, Page 002210, and the land that is subject to the Base PILOT Lease is set forth on **Schedule 1** (the "**Real Property**").

WHEREAS, the City subleased the Project to Seller pursuant to a Lease Agreement dated as of March 1, 2017 (the "**Sub PILOT Lease**"), between the City and Seller, a memorandum of which was recorded March 8, 2017, in Book 201703, Page 002211, which Sub PILOT Lease was subsequently collaterally assigned to Trustee pursuant to that certain Assignment of Lease Agreement dated March 2, 2017, which was recorded on March 8, 2017, in Book 201703, Page 002212, which Sub PILOT Lease covers the Real Property.

WHEREAS, the City and Seller entered into a Performance Agreement dated as of March 1, 2017 (the "**Performance Agreement**") whereby the parties set forth the terms relating to tax abatement for the Project;

WHEREAS, the City and Seller entered into an Origination Fee Agreement dated as of March 1, 2017 (the "**Origination Fee Agreement**") whereby Seller agreed to make certain origination fee payments to the City over time;

WHEREAS, the City and Seller entered into a Bond Purchase Agreement dated March 1, 2017 (the "**Bond Purchase Agreement**") whereby City agreed to issue and Seller agreed to purchase the Bonds on the terms and conditions set forth therein;

WHEREAS, Seller has negotiated the Bonds to Assignor, and, pursuant to that certain Assignment and Assumption of IRB Documents of even date herewith by and between Seller and Assignor, Seller assigned and transferred and Assignor has assumed all of Seller's interest in and to the Bonds, the Indenture, the Bond Purchase Agreement, the Base PILOT Lease, the Sub PILOT Lease, the Performance Agreement and the Origination Fee Agreement (collectively, the "**IRB Documents**") to Assignor;

WHEREAS, on or prior to the date hereof, the City has reissued the Bonds in the name of Assignor;

WHEREAS, pursuant to that certain Amended, Restated and Consolidated Promissory Note, dated of even date herewith, executed by Property Owner and a certain other borrowers (collectively, "**Borrower**"), and payable to the order of Lender in the original principal amount of \$ _____ (together with all replacements, renewals, modifications, increases, splits, and extensions thereof, the "**Note**"), Borrower has become indebted, and may from time to time be further indebted, to Lender with respect to a loan ("**Loan**") which is governed by, among other things, that certain Loan Agreement by and between Borrower and Lender of even date herewith (the "**Loan Agreement**") and secured, in part, by the lien and security interest of that certain Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing from Borrower for the benefit of Lender of even date herewith (the "**Mortgage**"), and further evidenced, secured or governed by other instruments and documents now or hereinafter executed in connection with the Loan (together with the Note, the Loan Agreement and the Mortgage, the "**Loan Documents**"); and

WHEREAS, one condition to Lender's agreement to extend credit to Assignor is that Lender must be provided a first priority perfected collateral assignment of IRB Documents;

NOW, THEREFORE, as an inducement to cause Lender to extend the Loan to Assignor, and for other valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed as follows:

1. Affirmation of Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.
2. Capitalized Terms. Capitalized terms, used but not defined herein, shall have the meaning attributed to them in the Loan Agreement.
3. Security Interest; Assignment. To secure the payment of the Indebtedness, Assignor does hereby collaterally assign, pledge, mortgage, convey, and set over unto Lender and grants Lender a security interest in all of Assignor's right, title, and interest in, to, and under the IRB Documents. Notwithstanding anything to the contrary contained herein, until such time as an Event of Default occurs, Assignor shall have a revocable license to exercise, subject to the other provisions of this Assignment and the Loan Documents, all of its rights and privileges under the IRB Documents.
4. Negotiation of Collateral Note; Perfection. Assignor shall negotiate the Bonds to Lender by endorsing an assignment of the Bonds in blank (without restriction or qualification) and delivering such endorsement to Lender. Lender shall retain such endorsement, and Trustee shall, as agent and bailee for Lender, retain possession of the Bonds to perfect Lender's security interest therein, subject to Lender's rights pursuant to the acknowledgment of the Trustee attached hereto; provided, however, that Trustee shall not be responsible for and makes no representation as to the value or condition of such Bonds or as to the validity or first priority status of Lender's security interest in such Bonds and pursuant to the Indenture shall be protected in acting upon the written direction of the registered owner of the Bonds. By its acknowledgement hereto, the Trustee agrees it shall not release or otherwise deliver the Bonds at the direction of the Assignor at any time prior to the full repayment of the Indebtedness or the term of the IRB Documents has expired absent the receipt of written consent of the Lender.
5. Financing Statements. Assignor hereby irrevocably authorizes Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto without the signature of Assignor that indicate that the IRB Documents are collateral for the Loan.
6. Termination. Upon full payment, performance and observance by Assignor of all Indebtedness or the expiration of the term of the IRB Documents, this Assignment and the lien or charge created hereby or resulting herefrom shall automatically terminate and cease to exist and Lender shall,

upon Assignor's request and at Assignor's expense, execute and deliver to Assignor such instruments of re-assignment or termination as shall be reasonably necessary to effectuate such termination and cause Trustee to, if the term of the IRB Documents has expired, deliver a copy of the cancelled Bonds to the Assignor, and if full payment, performance, and observance has been made by the Assignor of all obligations related to the Indebtedness but the Bonds remain outstanding, deliver the Bonds to the Assignor at the written request of the Assignor.

7. Assignor's Representations, Warranties, and Covenants. Assignor represents, warrants, and covenants to Lender that:

(a) Except in connection with this Assignment and the other Loan Documents, Assignor has not and shall not sell, transfer, assign, pledge, encumber or mortgage the IRB Documents or any interest therein without the prior written consent of Lender, and shall use commercially reasonable efforts to prevent anything that materially impairs the enjoyment of its rights under the IRB Documents or the security intended to be afforded by this Assignment. Except as set forth in Section 6 hereof, Assignor shall not amend, modify or terminate (other than termination by expiration of the term of the Bonds) any of the IRB Documents without the prior written consent of Lender.

(b) Assignor shall reimburse Lender for all actual out-of-pocket costs, expenses and fees, including court costs and reasonable attorneys' fees, incurred for any action taken by Lender to remedy a default of Assignor under this Assignment, together with interest on all said amounts at a per annum rate equal to the Default Rate from and after the date such amounts are incurred by Lender.

(c) Until the Indebtedness is repaid, Assignor shall remain liable for all costs, fees and expenses which may be or become due and payable under the IRB Documents and for all responsibilities of the ownership of the Real Property.

8. Limitation of Lender's Liability. Notwithstanding anything to the contrary contained in any of the IRB Documents, the interest of Assignor therein is assigned and transferred to Lender by way of collateral security only, and Lender shall not be deemed to have assumed or become liable for any of the obligations or liabilities of Assignor under the IRB Documents by Lender's acceptance hereof, whether provided for by the terms thereof, arising by operation of law or otherwise. Assignor hereby acknowledges that Assignor shall remain liable for the due performance of Assignor's obligations under the IRB Documents to the same extent as though this Assignment had not been made. It is expressly intended, understood and agreed that this Assignment, the Loan Agreement, the Note, the Mortgage, and the other Loan Documents are made and entered into for the sole protection and benefit of Lender and Assignor, and their respective successors and assigns (but in the case of assigns of Assignor, only to the extent permitted hereunder), and no other person or persons shall have any right of action hereunder or rights to the proceeds of the Loan at any time; that no third party shall under any circumstances be entitled to any equitable lien on the undisbursed proceeds of the Loan at any time. The relationship between Lender and Assignor is solely that of a lender and borrower, and nothing contained herein shall in any manner be construed as making the parties hereto partners or joint venturers or creating any other relationship other than lender and borrower.

9. Legal and Binding Agreement. Assignor warrants that to the best of its knowledge the execution and performance of this Assignment will not violate any judicial or administrative order or governmental law or regulation binding on Assignor, and that this Assignment is valid, binding and enforceable in every respect according to its terms.

10. Remedies Upon Default. Immediately upon the occurrence of an Event of Default, the license granted herein to Assignor shall automatically be revoked upon notice from Lender to Assignor,

and Lender may pursue any or all of the following remedies without notice to Assignor except as required below:

(a) Notice to the City. Lender may notify the City and the Trustee to make payments due to Assignor and give notices pertaining to the IRB Documents directly to Lender.

(b) Rights of Holder. Lender may exercise any or all rights of the holder of the Bonds and Assignor's interest under the IRB Documents. Without limiting the foregoing, Lender may initiate any administrative or judicial proceeding that it may deem necessary in the course of enforcing any rights under the IRB Documents. Any administrative or judicial action or other action taken by Lender pursuant to the IRB Documents may be taken by Lender in its own name or in Assignor's name. Lender may enter into any amendment or extension of the IRB Documents and may grant any indulgences with respect thereto that Lender may deem appropriate in the course of exercising its rights under the IRB Documents. Assignor hereby appoints Lender Assignor's attorney-in-fact to take any action authorized by this Assignment upon default. Assignor acknowledges that this power of attorney is coupled with an interest and is irrevocable.

(c) Sale of Bonds. Lender may sell the Bonds pursuant to Lender's rights under applicable law. Any such sale may be either public or private. If public, the sale may be postponed by announcement at the scheduled time and place and adjourned to another time or place, or both. It is agreed that ten (10) days' notice of any sale is commercially reasonable notice thereof. Any public sale may be adjourned to a different time, place, or both by announcement at the advertised time and place of sale, without further publication. Any advertised sale may be canceled in Lender's discretion, either before or after the opening of bidding. Lender shall transfer the Bonds to any purchaser thereof by endorsing the assignment in blank of the Bonds to the purchaser's order, without warranty or recourse on the part of Lender and in connection therewith shall assign to said purchaser its interest in the other IRB Documents. Notwithstanding anything to the contrary herein, any future sale or other transfer of the Bonds shall be subject at all times to the requirements of the Indenture.

(d) Setoff. Lender may exercise its lien upon and right of setoff against any monies, items, credits, deposits or instruments that Lender may have in its possession and which belong to Assignor or any other person or entity liable for the payments of any or all of the Indebtedness.

(e) Other Remedies. Lender may pursue any other remedies available under any other document evidencing or securing the Indebtedness or otherwise available to Lender at law or equity.

(f) Application of Proceeds. All amounts received by Lender for Assignor's account by exercise of its remedies hereunder shall be applied first, to the payment of all expenses incurred by Lender in exercising its rights hereunder, including reasonable out-of-pocket attorney's fees, and any other expenses due Lender from Assignor, and thereafter, as set forth in Section 2.7 of the Loan Agreement.

11. Notices. All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered in the manner and to the persons described in the Loan Agreement.

12. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

13. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14. Governing law. This Assignment shall be interpreted and construed under the laws of the State of Kansas, excluding any conflict of law or choice-of-law rules that might lead to the application of the internal laws of another jurisdiction.

15. Recording. Lender shall submit this Assignment for recording in the Office of the Register of Deeds of Johnson County, Kansas on or about the Effective Date.

16. Indemnity. Assignor hereby agrees that no liability shall be asserted or enforced by Assignor against Lender in its exercise of the powers and rights herein granted, all such liability being hereby expressly waived and released by Assignor except to the extent arising from Lender's gross negligence or willful misconduct. Assignor hereby indemnifies, defends and holds Lender harmless from and against all claims, demands, losses, damages, expenses and costs including, but not limited to, reasonable lawyer's fees and expenses actually incurred, arising out of or in connection with Assignor's failure to observe, perform and discharge each and every one of the covenants, obligations, and liabilities of the Assignor under the IRB Documents to be observed, performed, or discharged with respect to the period prior to Lender obtaining title to the Real Property.

17. Direction to Trustee. Assignor, as current sole owner of the Bonds hereby directs the Trustee to provide its acknowledgement of this Assignment.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives to execute this Assignment as of the Effective Date.

ASSIGNOR:

IPXXII 193 STREET LLC, a Delaware limited liability company

By _____
Howard Huang, Vice President

ACKNOWLEDGMENT

STATE OF GEORGIA)
) SS.
COUNTY OF FULTON)

BE IT REMEMBERED, that on this ____ day of September, 2021, appeared Howard Huang, to me personally known, who being duly sworn did say that he is the Vice President of IPXXII 193 Street LLC, a Delaware limited liability company (the "Company"), and that the foregoing instrument was signed for the purposes therein contained on behalf of the Company and by authority of the Company; and he further acknowledged said instrument to be the free act and deed of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

LENDER:

**MASSACHUSETTS MUTUAL LIFE INSURANCE
COMPANY**, a Massachusetts corporation

By: Barings, LLC,
as Investment Adviser

By: _____
Name: _____
Its: _____

ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2021, appeared _____, to me personally known, who being duly sworn did say that he is the _____ of Barings LLC, the Investment Adviser of Massachusetts Mutual Life Insurance Company, a Massachusetts corporation (the "**Company**"), and that the foregoing instrument was signed for the purposes therein contained on behalf of the Company and by authority of the Company; and he further acknowledged said instrument to be the free act and deed of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

CONSENT OF THE CITY OF EDGERTON, KANSAS

The City hereby acknowledges, consents and agrees to the execution and delivery of this Collateral Assignment of IRB Documents dated September ____, 2021, by IPXXII 193 Street LLC, a Delaware limited liability company, in favor of Massachusetts Mutual Life Insurance Company, a Massachusetts corporation.

Moreover, pursuant to Section 10.4 of the Sub PILOT Lease, the City hereby acknowledges that Assignor has the right to assign its rights and interest in the Sub PILOT Lease to Lender (or its designee or nominee) without the consent of the City. The City hereby consents to the assignment of the other IRB Documents by Assignor to Lender. The City further acknowledges that in the event Lender or a Purchaser (as defined in that certain Subordination/Attornment Agreement of even date herewith by and between the City, Assignor, and Lender), as the case may be, acquires ownership of the Real Property, Lender or a Purchaser, as the case may be, shall have the further right to assign the IRB Documents without the consent of the City. Notwithstanding the provisions of Section 206 of the Indenture, the City consents to any and all assignments and transfers of the IRB Documents from Assignor to Lender or a Purchaser, as the case may be, and from Lender or a Purchaser, as the case may be, to any future assignee on the condition that the Project be used in the same manner that it is now used.

The City hereby further acknowledges that the interest of Assignor in the IRB Documents is assigned and transferred to Lender by way of collateral security only, and Lender shall not be deemed to have assumed or become liable for any of the obligations or liabilities of Assignor under the IRB Documents by Lender's acceptance hereof, whether provided for by the terms thereof, arising by operation of law or otherwise.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts
Mayor

ATTEST:

Alexandria Clower
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this _____ day of September, 2021, before me, a notary public in and for said county and state, came Donald Roberts, Mayor of the City of Edgerton, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and Alexandria Clower, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

ACKNOWLEDGMENT OF TRUSTEE

UMB BANK, N.A., as trustee, hereby acknowledges to the execution and delivery of this Collateral Assignment of IRB Documents dated September ___, 2021, by IPXXII 193 Street LLC, a Delaware limited liability company in favor of Massachusetts Mutual Life Insurance Company, a Massachusetts corporation.

Subject to the terms of the Indenture, the Trustee further acknowledges that it shall hold possession of the Bonds as agent and bailee for Lender pursuant to Article 9 of the Uniform Commercial Code of the State of Kansas; provided, however, that Trustee shall not be responsible for and makes no representation as to the value or condition of such Bonds or as to the validity or first priority status of Lender's security interest in such Bonds. The Trustee agrees that it will upon request promptly deliver the Bonds to Lender.

The Trustee represents and warrants to the City of Edgerton, Kansas, Assignor, and Lender that the Trustee has no knowledge of any default, monetary or otherwise, that has occurred under the terms of the IRB Documents.

UMB BANK, N.A.

By: _____
Sarah Sanchez
Vice President

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this ____ day of September, 2021 before me appeared Sarah Sanchez, a Vice President of UMB BANK, N.A., a national banking association, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same on behalf of said national banking association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

SCHEDULE 1

LEGAL DESCRIPTION OF REAL PROPERTY

LOT 2, LOGISTICS PARK KANSAS CITY PHASE III, A SUBDIVISION IN THE CITY OF
EDGERTON, JOHNSON COUNTY, KANSAS.

EXHIBIT C

Sample Consent, Agreement and Estoppel Certificate

CONSENT, AGREEMENT AND ESTOPPEL CERTIFICATE

(City of Edgerton, Kansas and, for limited purposes as set forth below, UMB BANK, N.A.)

TO: IPXXII 193 Street LLC, a Delaware limited liability company (“**PURCHASER**”)
Massachusetts Mutual Life Insurance Company,
a Massachusetts corporation (“**LENDER**”)
ELHC XXII, LLC, a Kansas limited liability company (“**DEVELOPER**”)

RE: **INDUSTRIAL REVENUE BONDS (ELHC XXII, LLC PROJECT), SERIES 2017 (CITY OF EDGERTON, KANSAS).**

DATE: September __, 2021 (the “**Effective Date**”).

In connection with (a) the proposed sale by Developer to Purchaser of Developer’s fee interest in the industrial property known as 32901 W. 193rd Street, Edgerton, Kansas (the “**Property**”), and (b) the associated assignment by Developer and assumption by Purchaser of Developer’s rights and obligations under that certain: (i) Base Lease Agreement dated as of March 1, 2017 by and between Developer and the City of Edgerton, Kansas (“**City**”) with respect to the Property (the “**IRB Base Lease**”); (ii) Lease Agreement dated as of March 1, 2017 by and between Developer and City (the “**IRB Lease**”); (iii) Performance Agreement dated as of March 1, 2017 by and between Developer and City (the “**Performance Agreement**”); (iv) Origination Fee Agreement dated as of March 1, 2017 by and between Developer and City (the “**Origination Fee Agreement**”); (v) Bond Purchase Agreement dated March 1, 2017 by and between Developer and City (“**Bond Purchase Agreement**”); and (vi) Trust Indenture dated as of March 1, 2017, by and between UMB BANK, N.A., as Trustee (the “**Trustee**”) and City, as Issuer (the “**Indenture**”), and (c) the associated transfer to Purchaser of all outstanding bonds issued by the City pursuant to the Indenture and designated as \$33,000,000 (Aggregate Maximum Principal Amount) City of Edgerton, Kansas Industrial Revenue Bonds (ELHC XXII, LLC Project), Series 2017 (the “**Bonds**”), City and Trustee (but as to Trustee, solely for the purpose of agreeing to the provisions of the Section 10) hereby consent, agree with and certifies to Purchaser, Lender and Developer, and their respective successors and assigns, as follows:

1. **Definition of IRB Documents.** The Bonds, Bond Purchase Agreement, Indenture, IRB Base Lease, IRB Lease, Performance Agreement and Origination Fee Agreement are collectively referred to as the “**IRB Documents.**” Capitalized terms used but not defined herein shall have the meaning ascribed thereto pursuant to the IRB Documents.

2. **IRB Base Lease.** Attached hereto as **Exhibit A** is a true, correct, and complete copy of the IRB Base Lease. The IRB Base Lease has not been assigned, modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit A**. The IRB Base Lease is in full force and effect.

3. **IRB Lease.** Attached hereto as **Exhibit B** is a true, correct, and complete copy of the IRB Lease. The IRB Lease has not been assigned, modified, supplemented or amended in

any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit B**. The IRB Lease is in full force and effect.

4. **Performance Agreement**. Attached hereto as **Exhibit C** is a true, correct, and complete copy of the Performance Agreement. The Performance Agreement has not been modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit C**. The Performance Agreement is in full force and effect.

5. **Origination Fee Agreement**. Attached hereto as **Exhibit D** is a true, correct, and complete copy of the Origination Fee Agreement. The Origination Fee Agreement has not been modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit D**. The Origination Fee Agreement is in full force and effect.

6. **Indenture**. Attached hereto as **Exhibit E** is a true, correct, and complete copy of the Indenture. The Indenture has not been modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit E**. The Indenture is in full force and effect.

7. **Bond Purchase Agreement**. Attached hereto as **Exhibit F** is a true, correct, and complete copy of the Bond Purchase Agreement. The Bond Purchase Agreement has not been modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit F**. The Bond Purchase Agreement is in full force and effect.

8. **Assignment and Assumption Agreement related to IRB Documents**. City hereby consents to the assignment to, and assumption by, Purchaser, of Developer's rights and obligations under the Bond Purchase Agreement, Indenture, IRB Base Lease, IRB Lease, Performance Agreement, and Origination Fee Agreement in accordance with the Assignment and Assumption of IRB Documents to be entered into between Developer, as assignor, and Purchaser, as assignee, substantially in form and content attached hereto as **Exhibit G** (the "**Assignment and Assumption Agreement**"), and such assignment does not constitute a default, breach or violation on the part of Developer under or of any agreement, contract, document, instrument or undertaking or obligation entered into by and between City and Developer (alone or with additional parties) with respect to the development, construction, financing, operation or maintenance of the Project (as defined in the Indenture), including without limitation, the IRB Documents. City further acknowledges and agrees that Purchaser is a permitted assignee pursuant to the IRB Lease.

9. **Transfer of the Bonds**. As long as Purchaser provides to City a Representation Letter substantially in form and content attached hereto as **Exhibit H** contemporaneously with Developer's transfer of the Bonds to Purchaser, City hereby consents to Purchaser's transfer of the Bonds to Purchaser and confirms that such transfer does not constitute a default, breach or violation on the part of Developer under or of any agreement, contract, document, instrument or undertaking or obligation entered into by and between City and Developer (alone or with

additional parties) with respect to the development, construction, financing, operation or maintenance of the Project, including without limitation, the IRB Documents.

10. **Waiver of Bond Payments.** City and Trustee each agrees that so long as Purchaser is both the tenant under the IRB Lease and the Bondowner (as defined in the Indenture) of all of the outstanding Bonds on the applicable interest payment date (as set forth in the Indenture) and, with respect to repayment of principal, on the maturity date (as set forth in the Indenture), Purchaser shall have the right to waive, provided the Purchaser provides written notice to the City and Trustee of its exercise of such right, actual payment of interest due on the Bonds on such interest payment date, as well as the principal of the Bonds maturing on the maturity date, in which event it shall be deemed that Purchaser, as tenant under the IRB Lease, had paid all Basic Rent due under the IRB Lease on such interest payment date or maturity date, as applicable, and that Purchaser, as owner of all of the outstanding Bonds on such date, had received the full payment due on such outstanding Bonds on such date provided the Bonds are presented to the Trustee for cancellation on the maturity date.

11. **No Default under IRB Documents or other Agreements with City.**

(a) **IRB Documents.** City has not been notified of any default and to the best of City's information and belief as of the Effective Date, neither City nor Developer is in default under the IRB Documents, and, to the best of City's information and belief, no event has occurred and no condition exists that might, with the giving of notice or the passage of time, or both, constitute a default by City or Developer under the IRB Documents, or would otherwise permit a termination or modification by City under the IRB Documents.

(b) **Other City Agreements.** City, Edgerton Land Holding Company, LLC, a Kansas limited liability company, an affiliate of Developer ("ELHC"), and BNSF Railway Company, a Delaware corporation ("BNSF"), entered into that certain Amended and Restated Public Infrastructure Financing Plan (the "Financing Plan") dated as of July 15, 2015, that certain Amended and Restated Project Agreement (the "Project Agreement") dated as of July 15, 2015, and certain other related agreements (the "Other City Agreements"). The City has not been notified of any default and to the best of City's information and belief as of the Effective Date, neither City, ELHC, nor BNSF is in default under the Other City Agreements, and, to the best of City's information and belief, no event has occurred and no condition exists that might, with the giving of notice or the passage of time, or both, constitute a default by City, ELHC, or BNSF under the Other City Agreements, or would otherwise permit a termination or modification by City or BNSF under the Other City Agreements.

12. **Additional City Certifications.** Without limiting the generality of the foregoing certifications, City also hereby certifies that, as of the Effective Date:

(a) The final Certificate of Occupancy for the Property has been issued by City and is in full force and effect as of the Effective Date, and there are no further obligations to City on the part of Developer or any other person or entity to cause design, construction, completion or modification of, nor incur any additional costs associated with, the construction of the Project or to comply with the IRB Documents.

(b) City has been advised by the Trustee under the Indenture that the total principal amount of the outstanding Bonds as of the Effective Date is \$22,780,796. The amount held in the Bond Fund (as such term is defined in the IRB Documents) is \$0. There are no funds remaining in the Construction Fund (as such term is defined in the IRB Documents).

(c) City has not asserted any claim for indemnification from Developer under any of the IRB Documents, and City is not aware of and has not been notified of, as of the Effective Date, any fact, event or circumstance that could be the basis of any such claim for indemnification.

(d) There is no suit, action, proceeding or audit pending or, to the knowledge of City, threatened against or affecting City or the Property under the IRB Documents, at law or in equity, or before or by any court, administrative agency, or other governmental authority which brings into question the validity of the IRB Documents.

(e) Developer has provided to City all reports, certifications, notices or similar documents required to be submitted by Developer under the IRB Documents through the Effective Date.

(f) To the best of City's information and belief, the Project has been completed in accordance with the IRB Documents and all applicable laws and requirements and is being lawfully occupied. The City has received any and all notices and certificates required pursuant to Section 4.5 of the IRB Lease.

(g) There are no outstanding or unpaid fees, costs, charges, assessments or other amounts owed by Developer to City with respect to the Project or the IRB Documents.

(h) City deems this Consent, Agreement and Estoppel Certificate as constituting any and all notices of the transactions described herein that might otherwise be required under the IRB Documents.

(i) City agrees that upon and after full execution of the Assignment and Assumption Agreement, Developer shall be relieved of any liability associated with the Project, the Bonds, and the IRB Documents.

(j) City hereby confirms that the City's assignment of the City's rights and obligations under the IRB Lease to Trustee pursuant to that certain Assignment of Lease Agreements by and between City and the Trustee terminates upon full payment or cancellation of the Bonds.

13. **City Authority.** City represents and warrants that it has all right, power, and authority to bind itself, and to execute and deliver this Consent, Agreement and Estoppel Certificate.

14. **City Consents, Representations, and Covenants related to Lender.** City further agrees in favor of Lender as follows:

(a) City acknowledges that neither the execution nor delivery of the Amended, Restated and Consolidated Mortgage and Security Agreement (the “**Security Instrument**”), nor any modification thereof or assignment of the beneficial interests thereunder, will be a default under the IRB Documents.

(b) City consents to Purchaser's collateral assignment to Lender of all of Purchaser's right, title and interest in and to the IRB Documents and agrees that if Lender shall exercise its remedies under its loan documents, the party that acquires Purchaser's interest in the Project through foreclosure or other exercise of remedies under the Lender's loan documents (the “**Successor Tenant**”) and such Successor Tenant's assignee shall be a permitted assignee of the IRB Documents without further consent of City. City consent to Purchaser's transfer to Lender of all of Purchaser's right, title and interest in and to the Bonds and agrees that so long as the Successor Tenant provides a Representation Letter substantially in form and content of Exhibit A of the Indenture and attached hereto as **Exhibit H**, the Successor Tenant shall be a permitted transferee of the Bonds without further consent of City. Notwithstanding the foregoing, Lender and any Successor Tenant shall use, and permit only the use of, the Property for the Project in the same manner it is used now, unless City consents to such other use, such consent not to be unreasonably withheld.

(c) Upon and during the continuance of a default under Lender's loan documents, Lender shall have the right to exercise all rights of Purchaser under the IRB Documents.

(d) The Successor Tenant shall not be required to assume obligations under the IRB Documents, but shall be deemed to have agreed to perform all of Developer's obligations under the IRB Documents only from and after Successor Tenant's assumption of the Developer's obligations under the IRB Documents.

(e) City acknowledges that, in the event of damage to the improvements on the Property due to casualty or condemnation, the casualty insurance proceeds or condemnation proceeds, as the case may be, may be required by Lender to be applied to reduce the then balance of the Loan or may be required by Lender to be used for, and used by the tenant under the IRB Lease for, restoration of the improvements on the Property. In the event of any conflict between the provisions of the IRB Lease and the provisions of the Security Instrument with respect to application of casualty and condemnation proceeds, the provisions of the Security Instrument shall control.

(f) Notwithstanding any provisions of the IRB Documents to the contrary, no default or event of default under the Security Instrument or any other document or instrument evidencing or securing the Loan will, in and of itself, constitute a default or event of default under the IRB Documents.

(g) City shall send to Lender copies of all default or termination notices hereafter given by City to Purchaser under the IRB Documents concurrently with the sending of such notices to Purchaser and no such notice shall be effective against Lender until delivered to Lender; City shall accept from Lender a cure of any default. City will send all notices to Lender at the below address (or such other address as Lender may provide from time to time):

Massachusetts Mutual Life Insurance Company
c/o Barings
One Financial Plaza
Hartford, Connecticut 06103
Attention: Real Estate Loan Servicing
Loan No. 174031

With a copy to:

Midland Loan Services
10851 Mastin, Suite 300
Overland Park, Kansas 66210
Attention: Barings Servicing Group
Loan No. 174031

And to:

Massachusetts Mutual Life Insurance Company
c/o Barings
One Financial Plaza
Hartford, Connecticut 06103
Attention: Legal Department
Loan No. 174031

(k) City shall not agree to any amendment, modification, surrender, cancellation or termination of the IRB Documents without the prior written consent of Lender.

City, and Trustee with respect to the provisions of Section 10, make the above agreements and certifications to and for the benefit and protection of Purchaser, Developer and Lender, and with the intent and understanding that they will be justifiably relied upon by them or any of them. Developer, as current sole owner of the Bonds hereby directs the Trustee to execute this Consent, Agreement and Estoppel Certificate.

[SIGNATURE PAGE FOLLOWS]

Dated: September __, 2021.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

By: _____
Alexandria Clower, City Clerk

UMB BANK, N.A., as Trustee

By: _____

Sarah Sanchez
Vice President

EXHIBIT A

IRB Base Lease

EXHIBIT B

IRB Lease

EXHIBIT C

Performance Agreement

EXHIBIT D

Origination Fee Agreement

EXHIBIT E

Indenture

EXHIBIT F

Bond Purchase Agreement

EXHIBIT G

Assignment and Assumption of IRB Documents

EXHIBIT H

Form of Representation Letter

EXHIBIT D

Sample Subordination/Attornment Agreement

(Space above reserved for the Register of Deeds' recording information)

Title of Document: Subordination/Attornment Agreement

Date of Document: September __, 2021

Grantor(s): City of Edgerton, Kansas and IPXXII 193 Street LLC, a Delaware limited liability company

Grantee(s): Massachusetts Mutual Life Insurance Company, a Massachusetts corporation

Grantee's Address: c/o Barings, One Financial Plaza, Hartford, Connecticut 06103,
Attn: Real Estate Loan Servicing, Loan No. 174031

Reference Book and Pages: Book 201703, Page 002210
Book 201703, Page 002211

Legal Description: See attached Schedule 1

SUBORDINATION/ATTORNMENMENT AGREEMENT

This Subordination/Attornment Agreement (this "**Agreement**") is made as of the ____ day of September, 2021, by and among the City of Edgerton, Kansas (the "**City**"), **IPXXII 193 STREET LLC**, a Delaware limited liability company ("**Property Owner**") and **MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY**, a Massachusetts corporation ("**Lender**").

RECITALS

A. The City of Edgerton, Kansas (the "**City**") has previously issued its \$33,000,000 aggregate maximum principal amount of Industrial Revenue Bonds (ELHC XXII, LLC Project) Series 2017 (the "**Bonds**") pursuant to a Trust Indenture dated as of March 1, 2017 (the "**Indenture**"), between the City and UMB BANK, N.A., as trustee ("**Trustee**"), and used the proceeds of the Bonds to construct a Project (as defined in the Indenture).

B. ELHC XXII, LLC, a Kansas limited liability company ("**Seller**"), leased the Project to the City pursuant to the Base Lease Agreement dated as of March 1, 2017 (the "**Base PILOT Lease**"), between Seller and the City, a memorandum of which was recorded March 8, 2017, in Book 201703, Page 002210, and the legal description of the land that is subject to the Base PILOT Lease is set forth on **Schedule 1** (the "**Property**").

C. The City subleased the Project to Seller pursuant to a Lease Agreement dated as of March 1, 2017 (the "**Sub PILOT Lease**"), between the City and Seller, a memorandum of which was recorded March 8, 2017, in Book 201703, Page 002211, and the Sub PILOT Lease was subsequently collaterally assigned to Trustee pursuant to that certain Assignment of Lease Agreements dated March 2, 2017, which was recorded on March 8, 2017, in Book 201703, Page 002212, which Sub PILOT Lease covers the Property.

D. The City and Seller entered into a Performance Agreement dated as of March 1, 2017 (the "**Performance Agreement**") whereby the parties set forth the terms relating to tax abatement for the Project.

E. The City and Seller entered into an Origination Fee Agreement dated as of March 1, 2017 (the "**Origination Fee Agreement**") whereby Seller agreed to make certain origination fee payments to the City over time.

F. The City and Seller entered into a Bond Purchase Agreement dated March 1, 2017 (the "**Bond Purchase Agreement**") whereby City agreed to issue and Seller agreed to purchase the Bonds on the terms and conditions set forth therein.

G. Pursuant to that certain Assignment and Assumption of IRB Documents of even date herewith by and between Seller and Property Owner, Seller has agreed to assign and transfer to Property Owner and Property Owner has agreed to assume all of Seller's interest in and to the Bonds, the Indenture, the Bond Purchase Agreement, the Base PILOT Lease, the Sub PILOT Lease, the Performance Agreement and the Origination Fee Agreement (collectively, the "**IRB Documents**").

H. On or prior to the date hereof, the City has reissued the Bonds in the name of Assignor;

I. Amended, Restate and Consolidated Promissory Note, dated of even date herewith, executed by Property Owner and a certain other borrowers (collectively, "**Borrower**"), and payable to the

order of Lender in the original principal amount of \$_____ (together with all replacements, renewals, modifications, increases, splits, and extensions thereof, the "**Note**"), Borrower has become indebted, and may from time to time be further indebted, to Lender with respect to a loan ("**Loan**") which is governed by, among other things, that certain Loan Agreement by and between Borrower and Lender of even date herewith (the "**Loan Agreement**") and secured, in part, by the lien and security interest of that certain Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing from Borrower for the benefit of Lender of even date herewith (the "**Mortgage**"), and further evidenced, secured, or governed by other instruments and documents now or hereinafter executed in connection with the Loan (together with the Note, the Loan Agreement and the Mortgage, the "**Loan Documents**").

J. In connection with the Loan, pursuant to that certain Collateral Assignment of IRB Documents of even date herewith by and between Property Owner and Lender and consented to by the City and the Trustee (the "**Collateral Assignment**"), Property Owner has collaterally assigned all of its rights and interest in the IRB Documents to Lender.

K. Lender wishes to have the City and Property Owner confirm the priority of the Mortgage over the Base PILOT Lease and the Sub PILOT Lease (collectively, the "**Leases**").

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties hereto agree as follows:

1. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. The City and Property Owner hereby covenant and agree that all rights and interests whatsoever under the Leases shall be and shall remain subject and subordinate to the lien of the Mortgage, to all of the rights and interests of Lender under the Mortgage and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder or under the Note, and to any increases, renewals, extensions, modifications, substitutions, consolidations or replacements thereof or of the Note.

3. If the interest of Property Owner under the Leases shall be acquired by Lender or any purchaser ("**Purchaser**") by reason of exercise of the power of sale or the foreclosure of the Mortgage or other proceedings brought to enforce the rights of the holder thereof, by deed in lieu of foreclosure or by any other method, and Lender or Purchaser succeeds to the interest of Property Owner under the Leases, unless Lender or Purchaser, as the case may be, elects to terminate the IRB Documents pursuant to Section 4 hereof, the Base Lease shall not be terminated by said foreclosure or other proceedings, and City and Property Owner agree that Lender or Purchaser, as the case may be, shall be entitled to all of the rights and benefits of Property Owner under the Leases, and the City shall attorn to Lender or Purchaser, as the case may be, as its lessor under the Base PILOT Lease and recognize Lender or Purchaser, as the case may be, as lessee under the Sub PILOT Lease, provided that Lender or Purchaser, as the case may be, provide, within five (5) days following its acquisition of title to the Property, notice to the City of its election to assume the rights and duties under the Leases and a Representation Letter substantially in the form attached hereto as **Exhibit A**, and the Leases shall in such event continue in accordance with their respective terms. Moreover, Lender or Purchaser, as the case may be, shall have the right to further assign the Leases pursuant to Section 10.4(c) of the Sub PILOT Lease.

4. Notwithstanding anything in Section 3 to the contrary, the City hereby agrees that Lender or Purchaser, as the case may be, shall have the option within five (5) days after foreclosure of the Mortgage or any conveyance of the Property by deed-in-lieu of foreclosure upon written notice to the City

to (i) terminate the IRB Documents, in which event Lender or Purchaser, as the case may be, shall have no obligation to the City or any other party with respect to any amounts due or accruing prior, or subsequent, to the date of such foreclosure or deed-in-lieu of foreclosure or (ii) continue the IRB Documents upon all of the terms and provisions provided therein.

5. Notwithstanding anything to the contrary contained in the IRB Documents or herein, if Lender or Purchaser, as the case may be, shall succeed to the interest of Property Owner under the IRB Documents, Lender or Purchaser, as the case may be, other than for Basic Rent and Additional Rent due and payable under the Sub PILOT Lease, shall have no personal liability as successor to Property Owner, and the City shall look only to the estate and property of Lender or Purchaser, as the case may be, in the Property for the satisfaction of the City's remedies for the collection of a judgment requiring the payment of money in the event of any default under the IRB Documents.

6. In the event that the Leases terminate prior to expiration of the Lease Term (as defined in the Sub PILOT Lease), Lender shall have the right to require the City to execute new leases pursuant to Section 10.4(d)(viii) of the Sub PILOT Lease.

7. Notwithstanding anything to the contrary contained in the IRB Documents or herein, Lender or Purchaser, as the case may be, shall not be liable to the City for any liability or obligation of Property Owner under the IRB Documents unless and until Lender or Purchaser, as the case may be, shall take title to the Property and notify the City that it has assumed the obligations of Property Owner under the IRB Documents as provided above, and thereafter, upon the assignment, sale or other transfer by Lender or Purchaser, as the case may be, of its interest under the IRB Documents, Lender or Purchaser, as the case may be, shall be released from liability under the IRB Documents as of the effective date of such assignment, sale or transfer, provided that the assignee agrees to be bound by the terms and conditions of the IRB Documents for the periods of ownership by Lender or Purchaser, as the case may be.

8. The City and Property Owner shall not by agreement amend, modify, surrender, cancel or terminate any of the IRB Documents without Lender's prior written consent. Lender or Purchaser, as the case may be, shall not be bound by any agreement or modification of the IRB Documents made without Lender's or Purchaser's written consent. Notwithstanding the foregoing, upon full payment, performance and observance by Property Owner of all obligations under the Loan or the expiration of the term of the IRB Documents, this Agreement shall automatically terminate and cease to exist and Lender shall, upon Property Owner's request and at Property Owner's expense, execute and deliver to Property Owner such instruments of termination as shall be reasonably necessary to effectuate such termination and cause Trustee to, if the term of the IRB Documents has expired, deliver a copy of the cancelled Bonds to the Property Owner, and if full payment, performance, and observance has been made by Property Owner of all obligations under the Loan but the Bonds are still outstanding, deliver the Bonds to the Property Owner at the written request of the Property Owner.

9. The City hereby covenants and agrees that no notice of default given to Property Owner, and no exercise of any remedy by the City as a result of any such default under the Leases and the IRB Documents, shall be effective unless such notice shall have been sent to Lender, and Lender shall have failed to remedy such act or omission within such period of time equal to Property Owner's applicable cure period plus (i) twenty (20) days with respect to monetary defaults or (ii) the additional period of time offered "leasehold mortgage" under Sections 10.4(d)(iv) and (vii) of the Sub PILOT Lease with respect to non-monetary defaults. Any default under any of the IRB Documents which by its nature is incapable of being cured by Lender or Purchaser, as the case may be, shall be waived by the City as between the City and Lender or Purchaser, as the case may be.

10. The City acknowledges that neither the execution nor delivery of the Loan Documents, nor any modification thereof or assignment of the beneficial interests thereunder, will be a default under the IRB Documents.

11. The City acknowledges that, in the event of damage to the improvements on the Property due to casualty or condemnation, the casualty insurance proceeds or condemnation proceeds, as the case may be, may be required by Lender to be applied to reduce the Indebtedness (as defined in the Mortgage) or may be required by Lender to be used for, and used by the tenant under the Leases for, restoration of the improvements on the Property. In the event of any conflict between the provisions of the Leases and the provisions of the Loan Documents with respect to application of casualty and condemnation proceeds, the provisions of the Loan Documents shall control.

12. This Agreement shall serve as notice from Lender to the City under Section 10.4(d) of the Sub PILOT Lease of the making of the Loan, and the name and address of Lender; which are as follows:

Massachusetts Mutual Life Insurance Company
c/o Barings
One Financial Plaza
Hartford, Connecticut 06103
Attention: Real Estate Loan Servicing
Loan No. 214091

With a copy to:

Midland Loan Services
10851 Mastin, Suite 300
Overland Park, Kansas 66210
Attention: Barings Servicing Group
Loan No. 214091

And to:

Massachusetts Mutual Life Insurance Company
c/o Barings
One Financial Plaza
Hartford, Connecticut 06103
Attention: Legal Department
Loan No. 214091

The City acknowledges that Lender has complied with all requirements under Section 10.4(d) of the Sub PILOT Lease, and Lender shall be entitled to all rights, privileges, and protections afforded to "mortgagees" or "leasehold mortgagees" under the Leases (including, without limitation, under Section 10.4 of the Sub PILOT Lease). To the extent there is any conflict between the Leases and this Agreement, the provisions of this Agreement shall control.

13. Lender may at any time, without the consent of the City or Property Owner, sell, assign participate or securitize all or any portion of the Loan. This Agreement shall inure to the benefit of and shall be binding upon the City, the Property Owner and Lender, and their respective heirs, personal representatives, successors and assigns. This Agreement may not be altered, modified or amended except in writing signed by all of the parties hereto. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such

invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be governed by and construed according to the laws of the state where the Property is located.

14. Notwithstanding anything in this Agreement to the contrary, in the event Lender forecloses on the Mortgage or acquires the Property by deed-in-lieu of foreclosure, any Tax Payments (as defined in the Performance Agreement) due and payable under Section 2.3 of the Performance Agreement at the time of such foreclosure or acquisition by deed-in-lieu of foreclosure shall be the responsibility of Lender, even if Lender terminates the IRB Documents. By contrast, any Origination Fee payments that are due and payable under the IRB Documents at the time of such foreclosure or acquisition by deed-in-lieu of foreclosure shall be the responsibility of Lender only if Lender chooses not to terminate the IRB Documents.

15. Property Owner, as current sole owner of the Bonds hereby directs the Trustee to provide its acknowledgement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives to execute this Agreement as of the date hereof.

PROPERTY OWNER:

IPXXII 193 STREET LLC, a Delaware limited liability company

By _____
Howard Huang, Vice President

ACKNOWLEDGMENT

STATE OF GEORGIA)
) SS.
COUNTY OF FULTON)

BE IT REMEMBERED, that on this ____ day of September, 2021, appeared Howard Huang, to me personally known, who being duly sworn did say that he is the Vice President of IPXXII 193 Street LLC, a Delaware limited liability company (the "Company"), and that the foregoing instrument was signed for the purposes therein contained on behalf of the Company and by authority of the Company; and he further acknowledged said instrument to be the free act and deed of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts
Mayor

ATTEST:

Alexandria Clower
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

BE IT REMEMBERED that on this _____ day of September, 2021, before me, a notary public in and for said county and state, came Donald Roberts, Mayor of the City of Edgerton, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and Alexandria Clower, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

LENDER:

**MASSACHUSETTS MUTUAL LIFE INSURANCE
COMPANY**, a Massachusetts corporation

By: Barings LLC,
As Investment Adviser

By: _____
Name: _____
Its: _____

ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2021, appeared _____, to me personally known, who being duly sworn did say that he is the _____ of Barings LLC, the Investment Adviser of Massachusetts Mutual Life Insurance Company, a Massachusetts corporation (the "**Company**"), and that the foregoing instrument was signed for the purposes therein contained on behalf of the Company and by authority of the Company; and he further acknowledged said instrument to be the free act and deed of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

My commission expires _____.

ACKNOWLEDGMENT OF TRUSTEE

UMB BANK, N.A., as trustee, hereby acknowledges the receipt of this Subordination/Attornment Agreement dated September __, 2021, by IPXXII 193 Street LLC, a Delaware limited liability company in favor of Massachusetts Mutual Life Insurance Company, a Massachusetts corporation.

UMB BANK, N.A.

By: _____
Sarah Sanchez
Vice President

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this ____ day of September, 2021 before me appeared Sarah Sanchez, a Vice President of UMB BANK, N.A., a national banking association, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same on behalf of said national banking association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL]

Notary Public

Typed Name: _____

My commission expires _____.

Schedule 1

Legal Description of Property

LOT 2, LOGISTICS PARK KANSAS CITY PHASE III, A SUBDIVISION IN THE CITY OF
EDGERTON, JOHNSON COUNTY, KANSAS.

Exhibit A

Form of Representation Letter

[attached]

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: September 9, 2021

Agenda Item: Assignment of Base Leases, Lease Agreements and Other Bond Documents
Resolution Nos. 09-09-21D

Subject: ELHC VII, **XXII** and LI Assignments

The City has issued industrial revenue bonds for the ELHC VII, XXII and LI Projects. Every time the City issues bonds, the ELHC entity leases the project to the City, and the City then subleases the project back to the ELHC entity. This gives the City the necessary legal interest in the project which is required by Kansas law to issue bonds.

The City is considering three resolutions that approve the assignment of the ELHC VII, ELHC XXII and ELHC LI projects, respectively. ELHC VII, LLC is assigning its interest in the property to IPVII 185 Street LLC, a Delaware limited liability company. ELHC XXII is assigning its interest in the property to IPXXII 193 Street LLC, a Delaware limited liability company. ELHC LI is assigning its interest in the property to IPLI 207 Street LLC, a Delaware limited liability company. All of the assignees are joint venture entities between NorthPoint Development and Ares, which is a global real estate investment fund. NorthPoint will continue to manage the joint venture entities.

Each resolution approves the following documents:

- (a) Assignment and Assumption of IRB Documents. The assignment for ELHC XXII is attached to this item summary as **Exhibit A**. The assignments for ELHC VII and LI are in substantially the same form. The Assignment transfers all of ELHC's interest in the Base Lease, the Lease Agreement, the Performance Agreement, the Origination Fee Agreement and the other bond documents for each project to the new joint venture entity. Each assignment has a consent page for the Mayor to sign acknowledging the City's consent to the assignment.
- (b) Collateral Assignment of IRB Documents. The collateral assignment for ELHC XXII is attached to this item summary as **Exhibit B**. The collateral assignments for ELHC VII and LI are in substantially the same form. The acquisition of each ELHC project by the applicable joint venture entity is being financed with a loan. As a condition to making the loans, the lender is requiring that the interest of the new joint venture entities be assigned to the lender as collateral for the loans. The collateral assignment has an acknowledgement for the Mayor to sign where the City acknowledges the existence of each agreement.
- (c) Consent, Agreement and Estoppel Certificate. The estoppel for ELHC XXII is attached to this item summary as **Exhibit C**. The estoppels for ELHC VII and LI are in substantially the same form. The Lender has requested that the City deliver this estoppel certificate to certify copies of bond documents, state there are no current defaults under the bond documents, and acknowledge that the City agrees to the assignment of the bond documents for each project.
- (d) Subordination/Attornment Agreement. The subordination for ELHC XXII is attached to this item summary as **Exhibit D**. The subordination for ELHC VII and LI are in substantially the same form. In the subordination, the City agrees to subordinate its interest in the bond documents for each project to the lender's new mortgage. Accordingly, if any joint venture entity is in default with lender, lender can step into the shoes of the joint venture entity, and the City agrees to recognize the lender as the new counter party to the bond documents. The lender will then have the right to keep the bond documents in place, transfer the bond documents to a purchaser, or terminate the bond documents and the corresponding property tax abatement for that project.

RESOLUTION NO. 09-09-21D

A RESOLUTION CONSENTING TO THE ASSIGNMENT OF BOND DOCUMENTS IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (ELHC XXII, LLC PROJECT), SERIES 2017, AND AUTHORIZING A COLLATERAL ASSIGNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT

WHEREAS, the City of Edgerton, Kansas (the "City") is a duly organized and existing municipal corporation under the laws of the State of Kansas; and

WHEREAS, the City issued its Industrial Revenue Bonds (ELHC XXII, LLC Project), Series 2017 (the "Bonds"), in the aggregate maximum principal amount of \$33,000,000, pursuant to a Trust Indenture dated as of March 1, 2017 (the "Indenture"), between the City and UMB BANK, N.A., as trustee (the "Trustee"), for the purpose of providing funds to pay the cost of acquiring, purchasing, constructing, installing and equipping a commercial project, consisting of an approximately 500,000 sq. ft. warehouse and distribution facility, to be located at 32901 W. 193rd Street, Edgerton, Kansas (the "Project"); and

WHEREAS, the Project was leased by ELHC XXII, LLC, a Kansas limited liability company ("ELHC"), to the City pursuant to a Base Lease Agreement dated as of March 1, 2017 (the "Base Lease"), between ELHC and the City, and the Project was subleased by the City to ELHC pursuant to a Lease Agreement dated as of March 1, 2017 (the "Lease Agreement"), between the City and the Assignor; and

WHEREAS, pursuant to **Section 6.2** of the Base Lease and **Section 13.1** of the Lease Agreement, the Assignor may assign the Base Lease and the Lease Agreement only with the written consent of the City; and

WHEREAS, the Assignor is requesting the City's consent to the assignment of the Assignor's interest under the Base Lease, Lease Agreement, Indenture, the Performance Agreement dated as of March 1, 2017 (the "Performance Agreement"), between the City and Assignor, the Origination Fee Agreement dated as of March 1, 2017 (the "Origination Fee Agreement"), between the City and the Assignor, the Bond Purchase Agreement dated March 1, 2017 (the "Bond Purchase Agreement"), among the City, the Assignor, as purchaser, and the Assignor, as the company, and all other documents executed in connection with the Bonds that are included in the transcript of proceedings for the Bonds (collectively, the "Other Bond Documents"), to IPXXII Montrose LLC, a Delaware limited liability company (the "Assignee"); and

WHEREAS, the City desires to consent to the assignment of the Assignor's interest under the Base Lease, Lease Agreement, Indenture, Performance Agreement, Origination Fee Agreement, the Bond Purchase Agreement and the Other Bond Documents to the Assignee; and

WHEREAS, in connection with the assignment, Assignee has requested that the City deliver a collateral assignment, an estoppel and a subordination agreement, and the City desires to approve such documents;

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

Section 1. Consent to Assignment. The Governing Body of the City hereby consents to the assignment of the Base Lease, Lease Agreement, Indenture, Performance Agreement, Origination Fee Agreement, Bond Purchase Agreement and the Other Bond Documents by the Assignor to the Assignee. The foregoing consents are contingent upon the satisfaction of all other requirements for assignments expressly set forth in the Lease Agreement.

Section 2. Authorization and Execution of Consent to Assignment. The Governing Body hereby approves of the form of the Assignment and Assumption of IRB Documents (the "Assignment"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the consent to the Assignment for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the Assignment.

Section 3. Authorization and Execution of Consent to Collateral Assignment. The Governing Body hereby approves of the form of the City consent to Collateral Assignment of IRB Documents (the "Collateral Assignment"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the consent to the Collateral Assignment for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the consent to the Collateral Assignment.

Section 4. Authorization and Execution of Estoppel. The Governing Body hereby approves of the form of the Consent, Agreement and Estoppel Certificate (the "Estoppel"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the Estoppel for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the Estoppel.

Section 5. Authorization and Execution of Subordination. The Governing Body hereby approves of the form of the Subordination/Attornment Agreement (the "Subordination"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the Subordination for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the Subordination.

Section 6. Further Authority. The Mayor is hereby authorized and directed to execute and deliver such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution (copies of said documents shall be filed in the records of the

City) for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 7. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

ADOPTED this 9th day of September, 2021.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: September 9, 2021

Agenda Item: Assignment of Base Leases, Lease Agreements and Other Bond Documents
Resolution Nos. 09-09-21E

Subject: ELHC VII, XXII and LI Assignments

The City has issued industrial revenue bonds for the ELHC VII, XXII and LI Projects. Every time the City issues bonds, the ELHC entity leases the project to the City, and the City then subleases the project back to the ELHC entity. This gives the City the necessary legal interest in the project which is required by Kansas law to issue bonds.

The City is considering three resolutions that approve the assignment of the ELHC VII, ELHC XXII and ELHC LI projects, respectively. ELHC VII, LLC is assigning its interest in the property to IPVII 185 Street LLC, a Delaware limited liability company. ELHC XXII is assigning its interest in the property to IPXXII 193 Street LLC, a Delaware limited liability company. ELHC LI is assigning its interest in the property to IPLI 207 Street LLC, a Delaware limited liability company. All of the assignees are joint venture entities between NorthPoint Development and Ares, which is a global real estate investment fund. NorthPoint will continue to manage the joint venture entities.

Each resolution approves the following documents:

- (a) Assignment and Assumption of IRB Documents. The assignment for ELHC XXII is attached to this item summary as **Exhibit A**. The assignments for ELHC VII and LI are in substantially the same form. The Assignment transfers all of ELHC's interest in the Base Lease, the Lease Agreement, the Performance Agreement, the Origination Fee Agreement and the other bond documents for each project to the new joint venture entity. Each assignment has a consent page for the Mayor to sign acknowledging the City's consent to the assignment.
- (b) Collateral Assignment of IRB Documents. The collateral assignment for ELHC XXII is attached to this item summary as **Exhibit B**. The collateral assignments for ELHC VII and LI are in substantially the same form. The acquisition of each ELHC project by the applicable joint venture entity is being financed with a loan. As a condition to making the loans, the lender is requiring that the interest of the new joint venture entities be assigned to the lender as collateral for the loans. The collateral assignment has an acknowledgement for the Mayor to sign where the City acknowledges the existence of each agreement.
- (c) Consent, Agreement and Estoppel Certificate. The estoppel for ELHC XXII is attached to this item summary as **Exhibit C**. The estoppels for ELHC VII and LI are in substantially the same form. The Lender has requested that the City deliver this estoppel certificate to certify copies of bond documents, state there are no current defaults under the bond documents, and acknowledge that the City agrees to the assignment of the bond documents for each project.
- (d) Subordination/Attornment Agreement. The subordination for ELHC XXII is attached to this item summary as **Exhibit D**. The subordination for ELHC VII and LI are in substantially the same form. In the subordination, the City agrees to subordinate its interest in the bond documents for each project to the lender's new mortgage. Accordingly, if any joint venture entity is in default with lender, lender can step into the shoes of the joint venture entity, and the City agrees to recognize the lender as the new counter party to the bond documents. The lender will then have the right to keep the bond documents in place, transfer the bond documents to a purchaser, or terminate the bond documents and the corresponding property tax abatement for that project.

RESOLUTION NO. 09-09-21E

A RESOLUTION CONSENTING TO THE ASSIGNMENT OF BOND DOCUMENTS IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (ELHC LI, LLC PROJECT), SERIES 2019, AND AUTHORIZING A COLLATERAL ASSIGNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT

WHEREAS, the City of Edgerton, Kansas (the "City") is a duly organized and existing municipal corporation under the laws of the State of Kansas; and

WHEREAS, the City issued its Taxable Industrial Revenue Bonds (ELHC LI , LLC Project), Series 2019 (the "Bonds"), in the aggregate maximum principal amount of \$60,000,000, pursuant to a Trust Indenture dated as of December 1, 2019 (the "Indenture"), between the City and BOKF, N.A., as trustee (the "Trustee"), for the purpose of providing funds to pay the cost of acquiring, purchasing, constructing, installing and equipping a commercial project, consisting of an approximately 765,000 sq. ft. warehouse and distribution facility, to be located at the northeast corner of Waverly Road and 207th Street, Edgerton, Kansas (the "Project"); and

WHEREAS, the Project was leased by ELHC LI, LLC, a Kansas limited liability company ("ELHC"), to the City pursuant to a Base Lease Agreement dated as of December 1, 2019 (the "Base Lease"), between ELHC and the City, and the Project was subleased by the City to ELHC pursuant to a Lease Agreement dated as of December 1, 2019 (the "Lease Agreement"), between the City and the Assignor; and

WHEREAS, pursuant to **Section 6.2** of the Base Lease and **Section 13.1** of the Lease Agreement, the Assignor may assign the Base Lease and the Lease Agreement only with the written consent of the City; and

WHEREAS, the Assignor is requesting the City's consent to the assignment of the Assignor's interest under the Base Lease, Lease Agreement, Indenture, the Performance Agreement dated as of December 1, 2019 (the "Performance Agreement"), between the City and Assignor, the Origination Fee Agreement dated as of December 1, 2019 (the "Origination Fee Agreement"), between the City and the Assignor, the Bond Purchase Agreement dated December 17, 2019 (the "Bond Purchase Agreement"), among the City, the Assignor, as purchaser, and the Assignor, as the company, and all other documents executed in connection with the Bonds that are included in the transcript of proceedings for the Bonds (collectively, the "Other Bond Documents"), to IPLI 207 Street LLC, a Delaware limited liability company (the "Assignee"); and

WHEREAS, the City desires to consent to the assignment of the Assignor's interest under the Base Lease, Lease Agreement, Indenture, Performance Agreement, Origination Fee Agreement, the Bond Purchase Agreement and the Other Bond Documents to the Assignee; and

WHEREAS, in connection with the assignment, Assignee has requested that the City deliver a collateral assignment, an estoppel and a subordination agreement, and the City desires to approve such documents;

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

Section 1. Consent to Assignment. The Governing Body of the City hereby consents to the assignment of the Base Lease, Lease Agreement, Indenture, Performance Agreement, Origination Fee Agreement, Bond Purchase Agreement and the Other Bond Documents by the Assignor to the Assignee. The foregoing consents are contingent upon the satisfaction of all other requirements for assignments expressly set forth in the Lease Agreement.

Section 2. Authorization and Execution of Consent to Assignment. The Governing Body hereby approves of the form of the Assignment and Assumption of IRB Documents (the "Assignment"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the consent to the Assignment for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the Assignment.

Section 3. Authorization and Execution of Consent to Collateral Assignment. The Governing Body hereby approves of the form of the City consent to Collateral Assignment of IRB Documents (the "Collateral Assignment"), in substantially the form attached to the item summary presented to and reviewed by the Council of the City at this meeting (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the consent to the Collateral Assignment for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Council of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the consent to the Collateral Assignment.

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City) for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 7. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

ADOPTED this 9th day of September, 2021.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

City Council Action Item

Council Meeting Date: September 9, 2021

Department: Administration

Agenda Item: Consider the 2022 Recommended Budget

Background/Description of Item:

The 2022 Budget process began on May 28, 2021, with presentations and funding requests from outside agencies to whom the City provides funding.

On June 10th the City's Financial Advisor presented information about the changes in the tax lid law, known as Senate Bill 13. Based on that presentation and discussion, Council directed staff to prepare the 2022 Budget with a Revenue Neutral Rate adjusted for the following items:

- Roll-off of all types of incentives (i.e., property tax abatements)
- New territory/annexations
- Growth in assessed value of non-residential property
- Growth in assessed value of residential property due to inflation based on the CPI-U
- Issuance of General Obligation (GO) debt
- Errors by Johnson County.

A budget work session was held on July 15th where staff reviewed the schedules for all the City's budgeted funds. This included a detailed review of the calculation of the recommended mill rate based on the adjustments to the RNR as directed by Council on June 10th. The 2021 Utility Rate Study was presented by the City's rate consultant, Raftelis. The information for Vehicles and Equipment was also reviewed at this budget work session. The vehicle/equipment schedules are included in the budget packet for final approval to include these items in the 2022 Budget. In the future, as these vehicles/equipment items are purchased, staff will bring the bids to Council for approval in accordance with the City's Purchasing Policy.

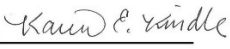
Staff published the RNR and Budget public hearing notices in the Gardner News on August 11, 2021. The RNR and Budget public hearings were held during the Council meeting on August 26, 2021. At that meeting, Council approved Resolution No. 08-26-21A authorizing a mill rate of 29.939 for the 2022 Budget.

The final step in the 2022 Budget process is to formally adopt the 2022 Budget and submit the required budget forms to the Johnson County Clerk.

Related Ordinance(s) or Statue(s): K.S.A. 79-2925 – K.S.A. 79-2937

Funding Source: N/A

Budget Allocated: N/A

x 

Finance Director Approval: Karen Kindle, Finance Director

Recommendation: Approve the 2022 Recommended Budget
--

Enclosed: 2022 Budget Certificate Page
2022 Budget Public Hearing Notice
RNR Adjustment Policy
RNR Adjustment Calculation
2022 Revenue Sources Information
2022 Fund Budget Schedules & related staff memos
Edgerton 2022 Utility Rates
Vehicles & Equipment – Current Program
Vehicles & Equipment – Fund Summary
Vehicles & Equipment – Recommended for Disposal

Prepared by: Karen Kindle, Finance Director

To the Clerk of Johnson, State of Kansas

City of Edgerton

Table of Contents:

Assisted by:

Address:

Email:

Attest: _____, 2021

County Clerk

Governing Body

CPA Summary

NOTICE OF HEARING TO EXCEED REVENUE NEUTRAL RATE AND BUDGET HEARING

2022

The governing body of

City of Edgerton

will meet on August 26, 2021 at 7:00pm for the purpose of hearing and answering objections of taxpayers relating to the Revenue Neutral Rate and the amount of ad valorem tax and the proposed use of all funds.

Detailed budget information is available at 404 E. Nelson St., Edgerton, KS 66021 and will be available at this hearing.

BUDGET SUMMARY

Proposed Budget 2022 Expenditures and Amount of Current Year Estimate for 2021 Ad Valorem Tax establish the maximum limits of the 2022 Budget. Proposed Tax Rate is subject to change dependent on the final assessed valuation.

	Prior Year Actual for 2020		Current Year Estimate for 2021		Proposed Budget Year for 2022		
FUND	Expenditures	Actual Tax Rate *	Expenditures	Actual Tax Rate *	Budget Authority for Expenditures	Amount of 2021 Ad Valorem Tax	Proposed Tax Rate *
General	4,011,947	30.881	4,067,022	30.381	5,860,925	1,624,995	29.939
Debt Service	370,177		300,788		777,878		
Library							
Special Highway	47,556		40,030		51,980		
Special Parks & Rec					40,531		
Edgerton Office TIF					31		
Homestead TIF Redev Dist A	17,060				40,015		
Homestead TIF Proj Plan A1					62,363		
Homestead TIF Redev Dist B					74,287		
Water Utility	492,128		504,015		661,224		
Sewer Utility	775,521		809,005		1,103,184		
Non-Budgeted Funds-A	2,607,759						
Non-Budgeted Funds-B	7,683,897						
Non-Budgeted Funds-C	1,394,729						
Non-Budgeted Funds-D	118,302						
Non-Budgeted Funds-E	383,526						
Totals	17,902,602	30.881	5,720,860	30.381	8,672,418	1,624,995	29.939
Revenue Neutral Rate**							23.995
Less: Transfers	918,402		444,530		587,511		
Net Expenditure	16,984,200		5,276,330		8,084,907		
Total Tax Levied	1,931,860		1,573,849		xxxxxxxxxxxxxxxxxxx		
Assessed							
Valuation	62,557,012		51,803,718		54,277,697		
Outstanding Indebtedness,							
January 1,	2019		2020		2021		
G.O. Bonds	6,830,000		8,525,000		6,550,000		
Revenue Bonds	13,312,678		20,954,679		8,224,026		
Other	9,956,491		9,337,749		334,973		
Lease Purchase Principal	76,320		39,028		0		
Total	30,175,489		38,856,456		15,108,999		

*Tax rates are expressed in mills

****Revenue Neutral Rate as defined by 2021 Kansas Senate Bill 13.**

Beth Linn

City Official Title: City Administrator

Recommend City Council direct staff to prepare the budget to capture property tax revenue for the following categories:

1. Roll-off of all types of incentives (i.e. property tax abatements)

2. New Territory/Annexations

3. Growth in assessed value of non-residential property

4. Growth in assessed value of residential property due to inflation based on the CPI-U

5. Issuance of General Obligation (GO) Debt

6. Errors by Johnson County

City of Edgerton
Calculation of the Adjustment to the RNR
for the 2022 Budget

Real Property									
Class	Description	Nov 2020	6/15/2021 AV			Change		Council Policy	
			#'s Co Clerk	Pending Exemptions	Adj #'s	Nov 2020-6/15/2021	Adj		
R	Residential Including Apartments	\$ 10,804,682	\$ 11,731,454	\$ (22,797)	\$ 11,708,657	\$ 903,975		capture revenue incr up to CIP-U	
F	Residences on Farm Homesites	\$ 271,573	\$ 313,127	\$ -	\$ 313,127	\$ 41,554		capture revenue incr up to CIP-U	
A	Agricultural Land Use & Improvements	\$ 126,771	\$ 182,152	\$ (2,484)	\$ 179,668	\$ 52,897		capture all revenue	
C	Commercial & Industrial	\$ 7,508,052	\$ 17,246,457	\$ (11,247,001)	\$ 5,999,456	\$ (1,508,596)		capture all revenue	
V	Vacant Lots	\$ 2,241,845	\$ 4,188,933	\$ (14,479)	\$ 4,174,454	\$ 1,932,609		capture all revenue	
N	Not for Profit	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
O	All Other Real Property	\$ 1,275	\$ 1,611	\$ -	\$ 1,611	\$ 336		capture all revenue	
U	Utilities	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
ED	Exempt Dam	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
EI	Exempt IRB	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
EIC	Exempt IRB for Com	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
EIR	Exempt IRB for Res	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
EIV	Exempt IRB for Vac	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
EX	Exempt Ec Dev	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
EXC	Exempt Ec Dev for Com	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
EXR	Exempt Ec Dev for Res	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
EXV	Exempt Ec Dev for Vac	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
E	All Other Tax Exempt Property	\$ -	\$ -	\$ -	\$ -	\$ -		capture all revenue	
Total Real Property		\$ 20,954,198	\$ 33,663,734	\$ (11,286,761)	\$ 22,376,973	\$ 1,422,775			

Personal Property									
Class	Description	Nov 2020	6/15/2021 AV			Change		Council Policy	
			#'s Co Clerk	Adj	Adj #'s	Nov 2020-6/15/2021	Adj		
	Personal Property	\$ 150,793	\$ 161,914	\$ -	\$ 161,914	\$ 11,121		capture all revenue	

State Assessed									
Class	Description	Nov 2020	6/15/2021 AV			Change		Council Policy	
			#'s Co Clerk	Adj	Adj #'s	Nov 2020-6/15/2021	Adj		
	State Assessed	\$ 30,698,727	\$ 31,738,810	\$ -	\$ 31,738,810	\$ 1,040,083		capture all revenue	

Grand Totals	\$ 51,803,718	\$ 65,564,458	\$ (11,286,761)	\$ 54,277,697	\$ 2,473,979
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Calculation of Adjustment to RNR			
Change in Assessed Value All Non-Residential		\$	1,528,450
Allowable Change in Assessed Value - Residential per Council Policy			
Assessed Value - Residential incl Apartments at Nov 2020	\$	10,804,682	
Assessed Value - Residences on Farm Homesites	\$	271,573	
Total Residential Assessed Value at Nov 2020	\$	11,076,255	
Allowable Increase % Per Council Policy (CPI-U)		1.4%	
Allowable Residential Assessed Value Increase Per Council Policy	\$	155,068	
Total Allowable Change in Assessed Value Per Council Policy		\$	1,683,518
Nov 2020 Mill Rate for the 2021 Budget			30.381
Allowable increase in Property Tax Revenue per Council Policy		\$	51,147
Property Tax Levied 2020 for 2021 Budget		\$	1,573,849
Total Property Tax Revenue for the 2022 Budget		\$	1,624,996
Base Mill Rate Needed			29.939
Mill Rate Needed for GO Debt Service	\$	-	-
Total Mill Rate Needed			29.939
RNR			(23.995)
Adjustment to the RNR			5.944

FY 2022 Budget Work Session: Revenue Sources

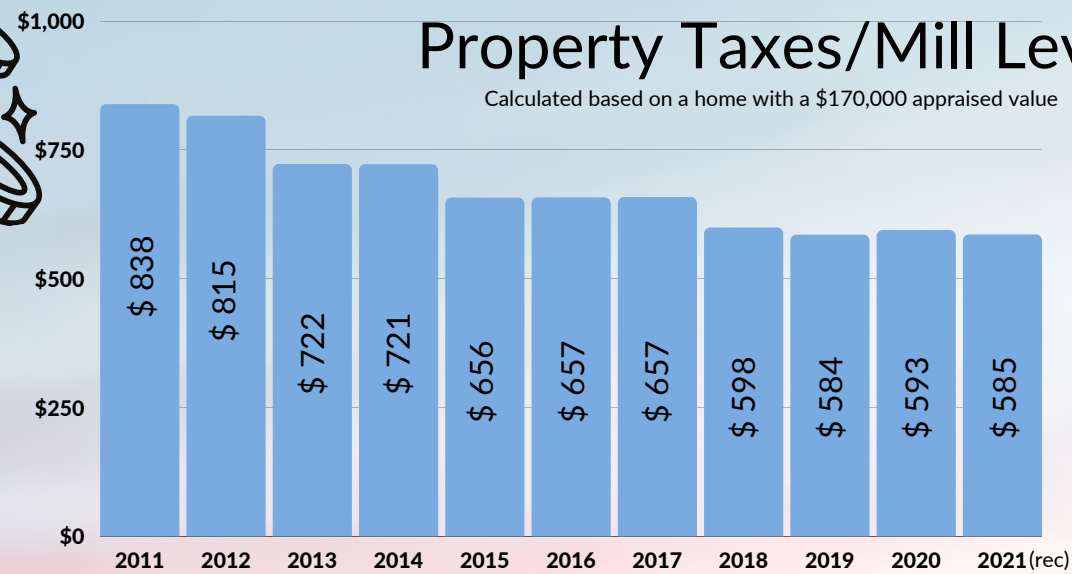
Ad Valorem

Ad valorem is a tax on all real and personal property that is not exempt. Ad valorem (from Latin) means it is based on value.

State law requires that all real and tangible personal property be assessed at fair market value.

Ad valorem taxes are calculated based on the assessed valuation of taxable real property as of January 1 each year. The Johnson County Appraiser sets the 2021 average home value in Edgerton at:

Appraised Value \$170,000
Assessment Percentage 11.5%
Assessed Value \$19,550

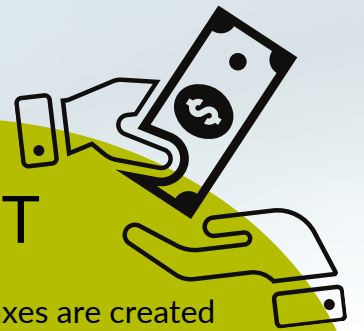


The mill levy is the dollar amount of property tax to be raised. The mill levy is calculated based on the final assessed valuation and the mill rate set by the Governing Body.

PILOT

Payments in Lieu of Taxes are created in development agreements with companies receiving tax abatements. PILOTs run for 10 years on a building. Failure to pay results in the loss of the abatement.

All taxing jurisdictions receive distributions based on their portion of the mill levy.



Liquor Tax

10% tax on liquor sold by clubs, caterers & drinking establishments.

70% of tax paid within the City is returned to the City - half into the General Fund, half to Parks & Rec



Motor Vehicle Tax

Motor Vehicle Tax is a county-wide average mill rate applied to the assessed valuation of vehicles registered in Edgerton. Paid annually at time of registration.



Sales & Use Tax

Two components: City's 1% tax on retail sales within the City & City's share of County sales taxes.

The largest portion of our sales taxes come from LPKC, especially equipment and repair services.

Use tax is a tax on goods purchased by Kansans from outside Kansas on which no sales tax was paid. Use tax fluctuates from year to year.



Other Revenue Sources

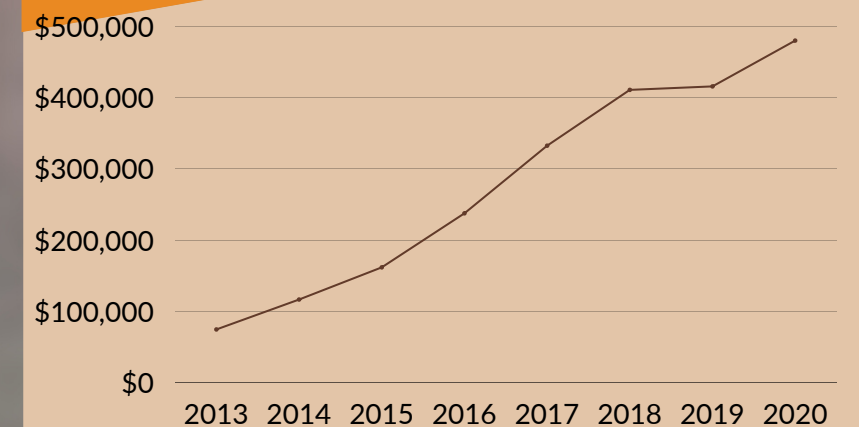
Franchise Tax - 5% of gross receipts for utilities operating within the City, includes electric, gas, cable, phone

Permits & Fees - Building permits, business licenses, animal licenses

Charges for Services - Residential trash fees and paid Parks & Rec programs

Fines and Forfeitures - Based on Municipal Court fines and forfeitures of bonds

City's 1% Sales Tax Collections





July 2, 2021

To: Mayor and City Council Members

From: Beth Linn, City Administrator
 Karen Kindle, Finance Director

Re: 2022 Recommended General Fund Budget

Please find enclosed with this memo the 2022 Recommended General Fund Budget. The General Fund contains the general operations of the City which are funded by a mixture of general-purpose revenues including property taxes, sales and use taxes, user fees and charges and payment in lieu of taxes for abated properties. Also included with this memo are (1) the calculation of the recommended mill rate for the 2022 Budget per Council direction given at the June 10, 2021, Council Meeting; and (2) the list of adjustments to the Revenue Neutral Rate (RNR) approved by Council on June 10th.

Revenues

Property Tax Revenue

In March 2021, Senate Bill 13 (SB 13) was signed by the Governor and became effective for the 2022 Budget. SB 13 repealed the previous tax lid which focused to the total property tax revenue required for the budget. SB 13 focuses on the mill rate and provides for the calculation of the RNR. This RNR calculation takes last year's property tax revenue divided by this year's estimated assessed valuation to arrive at the mill rate that would be required to receive the same property tax revenue. SB 13 doesn't provide for any adjustments to the RNR to capture economic growth, issuance of debt or County errors in the assessed valuation numbers. At the Council Meeting on June 10, 2021, the City's Financial Advisor and City staff presented information about SB 13 and asked for direction from the Council regarding suggested adjustments to the RNR. The property tax revenue amount included in the 2022 General Fund Budget was calculated based on the direction provided.

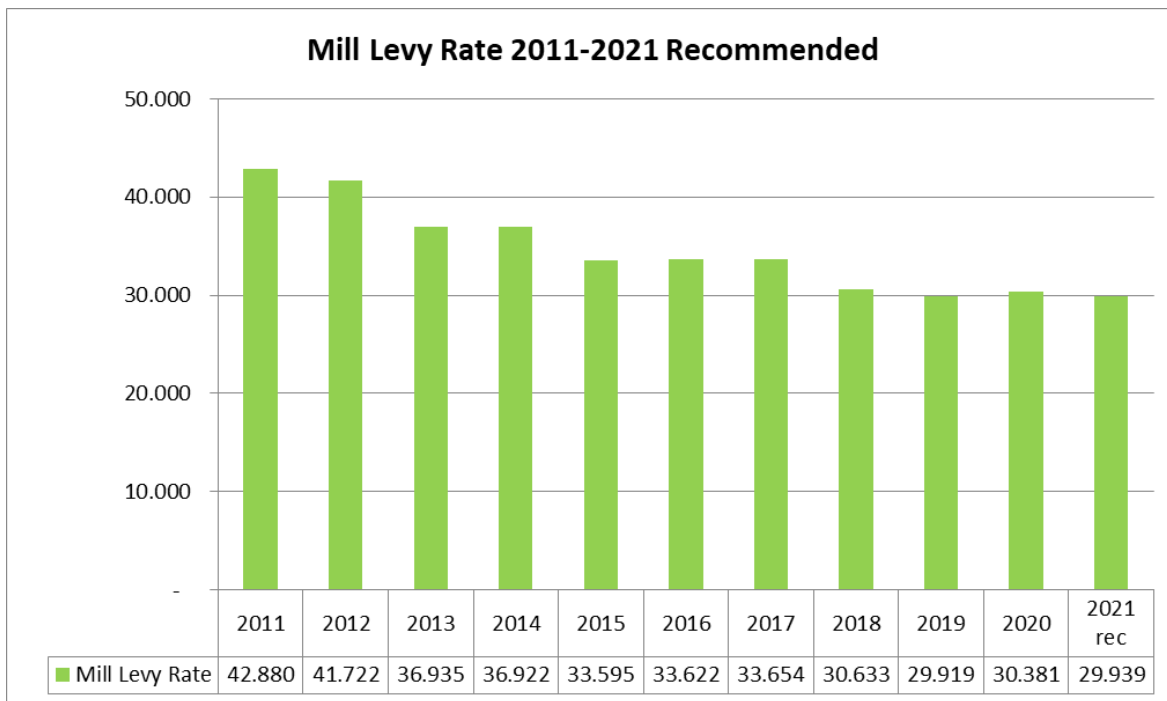
Mill Levy Rate

Since 2009, the City of Edgerton has lowered the mill levy rate over 12 mills. The ability to lower the mill levy rate while maintaining or increasing property tax revenue collection is driven by the growth in the value of one mill.

The chart below shows the information regarding the RNR, adjustments for categories approved at the June 10th Council Meeting and the recommended mill rate for the 2022 Budget. In order to levy the recommended mill rate, the City Council will have hold a public hearing and pass a resolution. The public hearing is scheduled to occur during the August 26, 2021, Council Meeting. The City must also provide a notice of intent to hold the public hearing to the County Clerk no later than July 20, 2021.

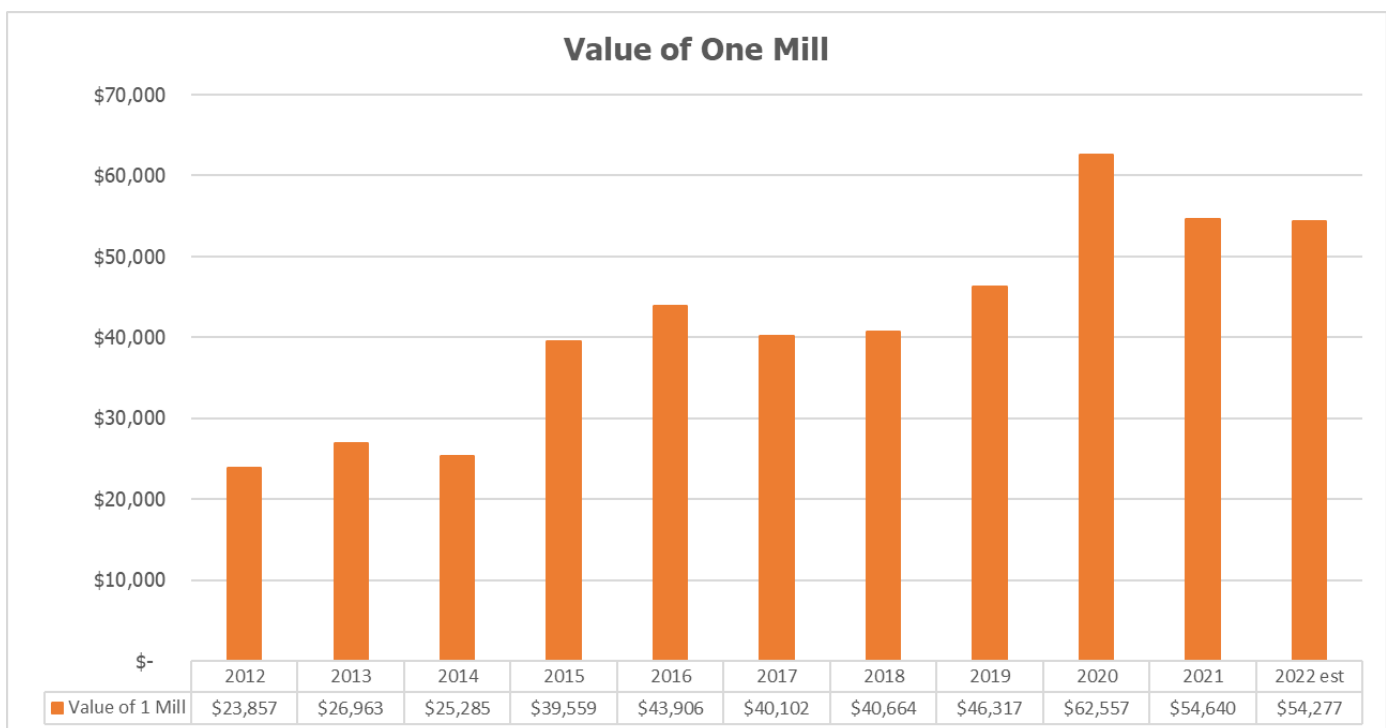
	Revenue Neutral Rate (RNR)	Recommended Adjustments To the RNR	Recommended Mill Rate for the 2022 Budget
Property Tax Revenue	\$1,573,849	\$51,147	\$1,624,996
Estimated Mill Rate	23.995	5.944	29.939

The graph below shows a history of the City's mill rate since 2011 (for the 2012 Budget).



Value of One Mill

Growth in the value of one mill results from citywide increase in appraised valuation. Since 2009, the value of one mill has grown \$44,681. The most significant factor in increasing the city's appraised valuation is the new construction at Logistics Park Kansas City and surrounding area.



Other Revenue

The chart below provides information about changes from the 2021 Budget to the 2022 Budget in the other sources of revenue for the General Fund.

Revenue Item	Change from 2021 Budget to 2022 Budget
LPKC Pilot	The revenue from payments in lieu of taxes for abated properties at LPKC has increased to reflect the addition of Inland Port VII, for which the first year of abatement is the 2022 budget.
Motor Vehicle Tax Recreational Vehicle Tax 16/20M Vehicle Tax	Very little change based on the estimate provided by the County Treasurer.
Local Alcoholic Liquor Tax	Small increase based on estimates provided by the Kansas State Treasurer.
Use Tax	Increase in both Local Use Tax and County Use Tax to match the trend of distributions so far in 2021 which are on track to match what was received in 2020.
Sales Tax	Increase in both Local Sales Tax and County Sales Tax to match the trend of distributions so far in 2021 which are on track to match what was received in 2020.
Franchise Tax	Increased to reflect the trend in the actuals for the last few years.
Licenses & Permits	For the 2021 Budget, staff developed a more detailed calculation for the estimate for this revenue item. The calculation includes revenue for 3 buildings at LPKC, one commercial project, a 15-home single family development and miscellaneous residential improvements. Staff has removed one of the 3 LPKC buildings from both the 2021 Estimate and the 2022 Recommended, thereby, reducing the expected revenue. If the number of projects included in the estimate don't come to fruition, the related contracted inspection and plan review services expenditures will also be less than estimated.
Fines & Forfeitures	The increase in this revenue source reflects the growth in the court docket over the last few years.
Charges for Services	In the past, the City accounted for public infrastructure inspection fees paid by developers and the corresponding inspection costs in the General Fund. Since these revenues and related expenditures result from economic development, staff has moved the accounting for these items to the Economic Development Fund.
Reimbursements/Miscellaneous	The City doesn't typically budget any funds in this category. This category is used to account for reimbursements for things like insurance claims, eligible grant expenditures and other small receipts not categorized elsewhere. In 2019 the City had insurance claims related to traffic signals. In 2020 the City received reimbursement for CARES Act eligible expenditures for the COVID-19 Pandemic response.
Investment Income	This revenue source has declined due to market conditions resulting from the COVID-19 Pandemic. The 2021 Estimate and the 2022 Budget reflect receiving approximately half of the revenue received in 2019.

Expenditures

The budget amount is an estimate of resources needed to carry out the level of services the Governing Body offers its citizens. The approved budget sets the legal level of budget authority at the fund level, which the City cannot exceed without going through the budget amendment process.

Actual expenditures will differ from the budget due to costs coming in lower than anticipated. Staff strives to be good stewards of the City's resources and look for opportunities to reduce costs whenever possible. Another reason for lower actual expenditures is position vacancies. Personal services are a significant portion of the City's budget since the City provides services vs. producing goods, so a vacancy can produce noticeable dollar savings. The effect on service provision and remaining staff members, however, is not as easily seen in the numbers.

Changes in expenditures between budget years can occur for several reasons: (1) inflation; (2) change in level of service, including corresponding changes in personnel; (3) more refined budgeting for a program(s) based on actual experience, etc.

Appendix A includes information about the change in each department from year to year – both between budgets and actual vs budget.

Other Sources & Uses

Transfers to/from other funds are listed in this section of the fund schedule. These transactions are more of a one-time occurrence than they are routine - like operating revenues and expenditures.

Transfers to Equipment Reserve are typically done each year to systematically save for replacement of the City's vehicles and equipment. Staff has included a \$125,000 transfer to equipment reserve in the 2022 recommended budget, which is the same as the transfer in the 2021 budget.

Transfers to capital projects will vary from year to year depending to the projects approved and the funding sources for those projects. The Governing Body reviews projects and discusses priorities and staff available capacity at the CIP work session in October each year. At a meeting following that work session, the Governing Body approves the CIP, setting the budget and timing for projects. After the CIP is approved, the budget for transfers to capital projects is updated to reflect the approved plan.

Ending Balance and Reserves

The carryforward balance from 2020 to 2021 was greater than estimated during the 2021 Budget process due to lower expenditures for 2020 than originally forecast. The projected balance at the end of 2022 exceeds the required reserves, leaving funding available for projects or other priorities.

Appendix A – Expenditures Year-to-Year Detail

General Government

2019	2020	2021	2022
	<u>2019 Budget vs 2020 Budget</u> <ul style="list-style-type: none"> Changed allocation of Finance Director to 100% General Fund Added Accountant position, which is split 1/3 with Water and Sewer and offset by the reallocation of funding for a part-time position. Added the cost for the biennial Citizen Survey. Reduced the cost for use of outside consultants. 	<u>2020 Budget vs 2021 Budget</u> <ul style="list-style-type: none"> Changed allocation for Asst. City Administrator position from 25% to 100% to reflect a change in focus for the duties of this position from project management to general administration (human resources, risk management, insurance) and reduced the number of months in 2021 that the position would be filled from 12 months to 6 months. Removed the cost for the biennial Citizen Survey. 	<u>2021 Budget vs 2022 Recommended</u> <ul style="list-style-type: none"> Reflects an entire year of the Assistant City Administrator position being filled. Added the cost for the biennial Citizen Survey. Increased legal services to reflect increase in legal matters requiring the use of the City Attorney. Reduced Marketing/Advertising to reflect spending levels the last few years since adding the Marketing/Communications Manager. Reduced consulting services since some of those items will be handled by the Asst. City Administrator position.
<u>2019 Actual vs Budget</u> Actual implementation of the Compensation and Benefits Study was less than estimated.	<u>2020 Actual vs Budget</u> <ul style="list-style-type: none"> Actual implementation of the Compensation and Benefits Study was less than estimated. Asst. City Admin position was vacant all of 2020. City Clerk position was vacant for most of 2020. 	<u>2021 Estimate vs Budget</u> <ul style="list-style-type: none"> Estimating approximately 97% of budget will be spent. 	

Law Enforcement

2019	2020	2021	2022
	<u>2019 Budget vs 2020 Budget</u> <ul style="list-style-type: none"> Reflects a 6.3% increase in the policing contract with the Sheriff's Department. Reflects the addition of the Community Officer. 	<u>2020 Budget vs 2021 Budget</u> <ul style="list-style-type: none"> Reflects a 0.8% increase in the contract with the Sheriff's Department for policing services. Maintains the Community Officer. Includes a small increase related to the prosecutor for the Municipal Court. 	<u>2021 Budget vs 2022 Recommended</u> <ul style="list-style-type: none"> Reflects a 1.00% decrease in the contract with the Sheriff's Department for policing services. Maintains the Community Officer. Includes a small increase related to the prosecutor for the Municipal Court.

<u>2019 Actual vs Budget</u> <ul style="list-style-type: none"> Court Clerk position vacant all of 2019. Expenditures for Court related legal services, such as prosecutor and as prosecutor and court appointed attorneys were less than estimated. 	<u>2020 Actual vs Budget</u> Court cancelations due to COVID-19.	<u>2021 Estimate vs Budget</u> <ul style="list-style-type: none"> Estimating approximately 97% of budget will be spent. 	<ul style="list-style-type: none"> Includes the expenditures related to the addition of a 2nd court docket.
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Public Works

2019	2020	2021	2022
	<u>2019 Budget vs 2020 Budget</u> <ul style="list-style-type: none"> Moved equipment/vehicle maintenance and fuel cost to the new Fleet Management Department. Added cost for major maintenance of the school crossing lights. Added electric cost for new streetlights on 207th/Homestead and 207th/Waverly. 	<u>2020 Budget vs 2021 Budget</u> <ul style="list-style-type: none"> Converted the Foreman position to a Maintenance Tech II position. Added dollars for career progression for Public Works staff. Reduced electric costs for streetlights and traffic signals to be more in line with actuals. Increased ice control due to the increased expenditures for responding to storms. Increased traffic control to account for the increase in sign work required. 	<u>2021 Budget vs 2022 Recommended</u> <ul style="list-style-type: none"> Moved Infrastructure Inspection costs to the Economic Development Fund.
<u>2019 Actual vs Budget</u> <ul style="list-style-type: none"> City Engineer expenditures more than anticipated due to development activity. 	<u>2020 Actual vs Budget</u> <ul style="list-style-type: none"> City Engineer expenditures more than anticipated due to development activity. 	<u>2021 Estimate vs Budget</u> <ul style="list-style-type: none"> Moved Infrastructure Inspection costs to the Economic Development Fund. Estimating approximately 97% of budget will be spent. 	

Parks

2019	2020	2021	2022
	<u>2019 Budget vs 2020 Budget</u> <ul style="list-style-type: none"> Reduced professional services to reflect reduced usage of consultants. 	<u>2020 Budget vs 2021 Budget</u> <ul style="list-style-type: none"> Increased support for the Frontier Days 50th anniversary. 	<u>2020 Budget vs 2021 Recommended</u> <ul style="list-style-type: none"> \$5,000 reduction in support for Frontier Days since it isn't an anniversary year.

<p><u>2019 Actual vs Budget</u></p> <ul style="list-style-type: none"> Maintenance Tech II position converted to Maintenance Tech I. Position vacancies throughout the year in the Maintenance Tech I/II positions. 	<ul style="list-style-type: none"> Moved equipment/vehicle maintenance and fuel cost to the new Fleet Management Department. <p><u>2020 Actual vs Budget</u></p> <ul style="list-style-type: none"> Recreation Coordinator position was vacant for 9 months of 2020. Cancellation of community events and classes due to COVID-19. 	<ul style="list-style-type: none"> Increased costs for other community events based on actual expenditures. <p><u>2021 Estimate vs Budget</u></p> <ul style="list-style-type: none"> Estimating approximately 97% of budget will be spent. 	<ul style="list-style-type: none"> Based on recent feedback from Edgerton citizens, staff included an additional \$50,000 in Parks and Recreation to add a new community-wide event. The 2020 Citizen Survey ranked City special events and festivals as the second most important priority for the City to emphasize over the next two years. This was confirmed by the Recreation Programming survey in fall 2020 which ranked community events as the top priority in the Priority Investment Ranking.
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Facilities

2019	2020	2021	2022
<p><u>2019 Actual vs Budget</u></p> <ul style="list-style-type: none"> Expenditures on target with budget. 	<p><u>2019 Budget vs 2020 Budget</u></p> <ul style="list-style-type: none"> Reflects a 10% increase in utility rates. <p><u>2020 Actual vs Budget</u></p> <ul style="list-style-type: none"> City Hall HVAC system was replaced with CARES Act funding. Other COVID-19 responses expenditures reimbursed with CARES Act funding. 	<p><u>2020 Budget vs 2021 Budget</u></p> <ul style="list-style-type: none"> Reflects a 10% increase in utility rates. Reflects a small increase in the rental rate for the Studio B. Increased cost for internet service due to upgrading the service in late 2019. Increased building and ground maintenance to cover supply costs. Increased trash service related to the dumpster and recycling at the Public Works Facility. <p><u>2021 Estimate vs Budget</u></p> <ul style="list-style-type: none"> Estimating approximately 97% of budget will be spent. 	<p><u>2021 Budget vs 2022 Recommended</u></p> <ul style="list-style-type: none"> Increased cost for internet service due to upgrading the service in 2022.

Fleet Maintenance

2019	2020	2021	2022
New department in 2020.	<p><u>2019 Budget vs 2020 Budget</u></p> <ul style="list-style-type: none"> New department in 2020. <p><u>2020 Actual vs Budget</u></p> <ul style="list-style-type: none"> Lower fuel costs due to gas prices and vacant positions. 	<p><u>2020 Budget vs 2021 Budget</u></p> <ul style="list-style-type: none"> Increased maintenance to reflect additions to the fleet and the age of some of the items in the fleet. <p><u>2021 Estimate vs Budget</u></p> <ul style="list-style-type: none"> Lower fuel costs due to gas prices and vacant positions. 	<p><u>2021 Budget vs 2021 Recommended</u></p> <ul style="list-style-type: none"> Increased maintenance to reflect additions to the fleet and the age of some of the items in the fleet. Reduced fuel costs based on spending the last few years.

Community Development

2019	2020	2021	2022
<p><u>2019 Actual vs Budget</u></p> <ul style="list-style-type: none"> Utilized professional services less than anticipated, including City Attorney services. 	<p><u>2019 Budget vs 2020 Budget</u></p> <ul style="list-style-type: none"> Decreased professional services due to less anticipated use of outside consultants Moved vehicle maintenance and fuel costs to the new Fleet Management Department. <p><u>2020 Actual vs Budget</u></p> <ul style="list-style-type: none"> Building Inspector position vacation all of 2020. Increased utilization of professional services to handle duties that would have been performed by the building inspector position. 	<p><u>2020 Budget vs 2021 Budget</u></p> <ul style="list-style-type: none"> Decrease in salaries due to budgeting Building Inspector position at lower portion of the range. Increase in veterinary services due to change in policy at the Lawrence Humane Society. Increase in legal fees to reflect increased usage of the City Attorney for various code enforcement matters. Increase in abatement costs due to potential properties that might be subject to the process. <p><u>2021 Estimate vs Budget</u></p> <ul style="list-style-type: none"> Estimating approximately 97% of budget will be spent. 	<p><u>2021 Budget vs 2022 Recommended</u></p> <ul style="list-style-type: none"> Increase in professional services due to not filling building inspector position.

Economic Development

2019	2020	2021	2022
	<u>2019 Budget vs 2020 Budget</u> <ul style="list-style-type: none"> Includes an increase in support for Elevate Edgerton!, including funding for a special marketing campaign for LPKC. The BNSF increment that is transferred to the PIF for LPKC Phase 1 increased (offset by a corresponding revenue source). The amount of utility sales tax to be transferred to the PIF was increased to reflect more tenants at LPKC (offset by a corresponding revenue source). 	<u>2020 Budget vs 2021 Budget</u> <ul style="list-style-type: none"> Small increase in the BNSF increment. Removed Chamber membership and related sponsorship for the magazine. 	<u>2021 Budget vs 2022 Recommended</u> <ul style="list-style-type: none"> Small increase in the BNSF increment.
<u>2019 Actual vs Budget</u> <ul style="list-style-type: none"> Utilized professional services for the Financial Advisor and Bond Counsel less than anticipated. 	<u>2020 Actual vs Budget</u> <ul style="list-style-type: none"> Utilized professional services for the Financial Advisor and Bond Counsel less than anticipated. 	<u>2021 Estimate vs Budget</u> <ul style="list-style-type: none"> Estimating approximately 97% of budget will be spent. 	

Information Technology

2019	2020	2021	2022
	<u>2019 Budget vs 2020 Budget</u> <ul style="list-style-type: none"> Includes a small increase for special projects outside the routine monthly services. Increase in number and cost of PCs to be replaced according to the replacement schedule and the end of life for Windows 7. 	<u>2020 Budget vs 2021 Budget</u> <ul style="list-style-type: none"> Decrease due to restructuring the contract with the IT provider which occurred after the 2020 budget was adopted. 	<u>2021 Budget vs 2022 Recommended</u> <ul style="list-style-type: none"> Estimating 10% increase in IT Provider contract Rest of increase due to first year of annual maintenance for new software system
<u>2019 Actual vs Budget</u> <ul style="list-style-type: none"> Restructuring of the IT contract in mid-2019 reduced cost of IT services. 	<u>2020 Actual vs Budget</u> <ul style="list-style-type: none"> The 2020 actual was greater than the budget due to the addition of several IT projects funded by CARES Act grant dollars. 	<u>2021 Estimate vs Budget</u> <ul style="list-style-type: none"> Estimating approximately 97% of budget will be spent. 	

<ul style="list-style-type: none"> Lower costs for software subscriptions. 			
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Employee Benefits

2019	2020	2021	2022
<p><u>2019 Actual vs Budget</u></p> <ul style="list-style-type: none"> Actual health plan increase was 17.3%. Actual dental/vision increase was 0%. Position vacancies resulted in benefits savings (Building Inspector, Asst. City Admin, Marketing/Comm) Implementation period for the 457 match resulted in a partial year for this expenditure. Actual implementation of the Compensation and Benefits Study was less than estimated 	<p><u>2019 Budget vs 2020 Budget</u></p> <ul style="list-style-type: none"> Includes benefits for the new accountant position. Estimated 20% increase in health insurance premiums. Estimated 10% increase in dental and vision premiums. First full year for the 457 Match, which was implemented in mid-2019. <p><u>2020 Actual vs Budget</u></p> <ul style="list-style-type: none"> Several positions were vacant for extended periods of time in 2020: <ul style="list-style-type: none"> City Clerk – 9 months Recreation Coordinator – 9 months Asst. City Administrator – 12 months Building Inspector – 12 months Public Works Maint Techs – 6 months Actual health plan increase was 5.8%. 	<p><u>2020 Budget vs 2021 Budget</u></p> <ul style="list-style-type: none"> Reduced budget for position vacancies <ul style="list-style-type: none"> Asst. City Admin – 6 months Building Inspector – 2 months Rec Coordinator – 2 months First year that the Asst. City Administrator was allocated 100% to the General Fund. Estimated 20% increase in health insurance premiums. Estimated 10% increase in dental and vision premiums. <p><u>2021 Estimate vs Budget</u></p> <ul style="list-style-type: none"> Estimating approximately 97% of budget will be spent. 	<p><u>2021 Budget vs 2022 Recommended</u></p> <ul style="list-style-type: none"> Estimated 10% increase in health insurance premiums. Estimated 3% increase in dental and vision premiums.

City of Edgerton
General Fund

Mill Rate: Revenue from 1 Mill:	29.919 \$46,317	30.881 \$62,557	30.381 \$51,804	29.939 calculated \$54,278 est.
	2019 Actual2019 Budget	2020 Actual2020 Budget	2021 Estimate2021 Budget	2022 Recommended
Balance 1/1	\$ 1,725,650 \$ 1,738,092	\$ 1,698,769 \$ 1,617,667	\$ 1,978,605 \$ 1,582,699	\$ 1,855,359
Revenues:				
Ad Valorem Tax	1,790,8801,385,761	2,374,1191,931,860	1,573,8491,573,849	1,624,996
City TIF Increment	- -	- -	(8,430) -	(38,157)
LPKC PILOT	- 437,123	- 483,853	545,837545,837	589,332
Delinquent Tax	1,952 -	8,832 -	480 -	-
Motor Vehicle Tax	53,36148,993	46,92052,969	52,83052,830	52,830
Recreational Vehicle Tax	1,133775	994933	835835	835
16/20M Vehicle Tax	264420	333372	375375	375
Local Alcoholic Liquor Tax	3,4632,725	1,9992,780	5,0002,780	5,000
City 1% Use Tax	182,087180,000	204,506113,600	200,000182,000	200,000
County Use Tax	72,486n/a	100,65370,000	100,00070,000	100,000
City 1% Sales Tax	415,367750,000	479,593431,000	485,000471,000	485,000
County Sales Tax	331,910n/a	372,940334,000	375,000322,000	375,000
Franchise Tax	162,372110,000	197,313110,000	180,000110,000	180,000
Licenses & Permits	429,634756,300	176,022756,300	241,000321,000	224,000
Charges for Services	84,322123,000	121,428118,000	93,700118,000	98,700
Fines & Forfeitures	42,29725,000	65,75330,000	75,00030,000	75,000
Reimbursements	46,610 -	99,058 -	7,800 -	-
Miscellaneous	- -	- -	- -	-
Investment Income	34,43815,000	26,85815,000	5,00017,000	15,000
Total Revenue	\$ 3,652,576 \$ 3,835,097	\$ 4,277,321 \$ 4,450,667	\$ 3,933,276 \$ 3,817,506	\$ 3,987,911
Expenditures:				
General Government	812,676941,959	846,356961,959	953,975983,479	1,050,748
Law Enforcement	326,894359,525	495,491502,868	502,281507,043	556,036
Public Works	617,807610,340	529,758596,688	532,300597,835	565,620
Parks	193,479282,236	154,336253,490	256,785264,727	315,043
Facilities	109,224110,740	115,949115,450	122,535126,325	143,570
Fleet Maintenance	- -	41,86851,200	52,57454,200	52,700
Community Development	305,862374,680	314,029356,153	324,028334,048	387,348
Economic Development	457,943475,200	444,551507,200	498,420502,200	506,700
Information Technology	37,97647,848	90,17257,631	48,09949,587	81,872
Employee Benefits	363,702419,274	358,582484,532	539,525556,209	555,093
Total Expenditures	\$ 3,225,563 \$ 3,621,802	\$ 3,391,092 \$ 3,887,171	\$ 3,830,522 \$ 3,975,653	\$ 4,214,730
Revenues Over(Under) Expenditures	\$ 427,013 \$ 213,295	\$ 886,229 \$ 563,496	\$ 102,754 \$ (158,147)	\$ (226,819)
Other Financing Sources & Uses				
Transfers from Other funds:				
Transfer from Capital Projects Fund	\$ 41,097 \$ -	\$ 14,462 \$ -	\$ 10,500 \$ -	\$ -
Transfer from TIF Funds-City TIF Fee	\$ - \$ -	\$ - \$ -	\$ - \$ -	\$ 17,656
Transfers to Other Funds:				
Transfer to Equipment Reserve Fund-General	(79,250)(79,250)	(325,000)(325,000)	(125,000)(125,000)	(125,000)
Transfer to Mayor's Holiday Fund	(150) -	- -	- -	-
Transfer to Capital Projects Fund	(415,591)(274,180)	(295,855)(150,000)	(111,500)(66,500)	(195,000)
Total Other Financing Sources & Uses	\$ (453,894) \$ (353,430)	\$ (606,393) \$ (475,000)	\$ (226,000) \$ (191,500)	\$ (302,344)
Total Revenue/Sources Over(Under) Expd/Uses	\$ (26,881) \$ (140,135)	\$ 279,836 \$ 88,496	\$ (123,246) \$ (349,647)	\$ (529,164)
Balance 12/31	\$ 1,698,769	\$ 1,978,605	\$ 1,855,359	\$ 1,326,195

Undesignated Reserve:	\$ 625,861	\$ 666,504
Portion Designated for Self-Insured Losses:	\$ 50,000	\$ 50,000
Reserve Per Policy - 17% of Budgeted Expenditures:	\$ 675,861	\$ 716,504
Unencumbered Cash Over(Under) Requirement:	\$ 1,179,498	\$ 609,691
Undesignated Reserve:	\$ 943,913	\$ 1,003,683
Portion Designated for Self-Insured Losses:	\$ 50,000	\$ 50,000
Reserve Per Policy - 25% of Budgeted Expenditures:	\$ 993,913	\$ 1,053,683
Unencumbered Cash Over(Under) Requirement:	\$ 861,445	\$ 272,512

Funding Sources: Property tax, sales tax, franchise fees, user fees and charges

Expenditures: General operations of the City



Utility Rates FY 2022



2022 Proposed Average Monthly Water Charge



Water

\$40.57

an increase of
\$0.91

2022 Proposed Average Monthly Sewer Charge

\$31.72

an increase of
\$1.54



Sewer



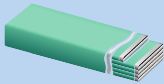
2022 Proposed Total Increase

\$2.45 per month

That's less than...



a pouch of baby wipes



a pack of gum



bag of chips



hand soap

one large coffee



a single gallon of gas

Total monthly bill is
less than...



Monthly cable plan

Concert tickets



One new
car tire

Why the increase?



*Note: Trash services will be
rebid for 2022, which may
impact total bills.*

Both water and sewer are considered enterprise funds, which means they operate like a business. The user charges are based on how much money is needed to run the utility, any debt service payments and capital costs.



July 2, 2021

To: Mayor and City Council Members

From: Beth Linn, City Administrator
Karen Kindle, Finance Director
Dan Merkh, Public Works Director

Re: 2022 Recommended Water Fund Budget

Attached please find the 2022 Recommended Budget for the Water Fund. This fund contains the water utility operation of the City.

Revenues

The water utility operations are considered an enterprise, and as such, the funding for operations come from user charges. The user charges needed to fund the utility operations are calculated based on the operation and maintenance costs required to run the utility, the debt service payments required on outstanding debt and any costs for capital outlay, such as equipment or capital improvements to the system.

Charges for Services

- The revenues are from the 2021 Rate Study Report prepared by Raftelis included in this packet for reference. Raftelis will present the study results at the budget work session on July 15th. The 2021 Rate Study Report recommends a slight increase of 91 cents per month for the average customer for 2022. At less than dollar a month, the recommended increase is lower than the price of a pack of gum or a two-liter bottle of soda. The study also includes a comparison of neighboring jurisdictions.
 - If there is consensus to adopt the recommendation in the 2021 Rate Study Report, staff would bring back the updated fee resolution for Council consideration at a meeting in September.
- This category also includes the tower rent received from AT&T.

Fines & Forfeitures

- The 2022 Budget is the same as the 2021 Budget.

Investment Income

- The 2021 Estimate and 2022 Budget reflect the low rates experienced in the current market.

Expenditures

Fleet Maintenance

- The increase is related to vehicle and equipment maintenance. Staff considered the advanced age of the equipment used by the water utility operations, as well as

information from maintenance records, in development of the maintenance cost estimates.

Information Technology

- Includes the replacement of IT equipment according to the replacement schedule.
- The majority of the increase is due to the first year fees for the new software system. The rest of the increase comes from an increase in the IT provider contract.

Production

- Includes the cost to purchase water that is sold to customers of the system.

Distribution

- No significant changes were made to this department.

Administrative-Water

- The staff allocations between the water and sewer utility operations are unchanged from the 2021 Budget. A majority of the increase in this department is due to funds added for the rate study. The water operations don't change significantly from year to year so an update to the study is only needed every other year.
- The 2022 Budget includes funds to upgrade the City's fiber connection to obtain a higher speed.

Employee Benefits

- Includes a 10% increase in health insurance premiums and a 3% increase in dental and vision insurance premiums based on information provided by the City's provider, Midwest Public Risk. The City has been fortunate that actual increases the last two years have been less than 10%.

Debt Service

- Includes the State Revolving Loan payments for water system improvements that will be paid off in 2022.
- Includes the State Revolving Loan payments for the AMI meter system. The loan is scheduled to be paid off in 2037.

Transfers to Other Funds

- The recommended budget includes a \$25,000 transfer to the Equipment Reserve Fund-Water.

Ending Balance and Reserves

The reserve calculations have been updated to reflect the Reserve Policy adopted by the Governing Body. The projected balance at the end of 2022 meets the required reserves.

Future Considerations

The financial plan presented in the 2021 Rate Study Report is a forecast that relies on assumptions made about expenditures, customer base, debt service requirements, etc. These factors can change, and as more information is obtained, the assumptions will be updated.

Staff is analyzing system components and developing a replacement plan. That plan, along with the Vehicle and Equipment Plan already in place, will provide information about future funding needs that are not currently reflected in the financial plan. Another future consideration that might affect the financial plan is the wholesale water contract renewal with the City of Baldwin City.

The Water System Analysis requested by Council during the 2021 Budget process is in progress.

City of Edgerton Water Fund

	2019 Budget	2019 Actual	2020 Budget	2020 Actual	2021 Budget	2021 Estimate	2022 Recommended
Balance 1/1	\$ 295,602	\$ 225,868	\$ 219,376	\$ 191,220	\$ 225,037	\$ 197,784	\$ 176,502
Revenues:							
Charges for Services	479,500	463,792	462,450	451,247	482,450	460,233	462,222
Fines & Forfeitures	23,000	20,866	23,000	16,548	20,000	20,000	20,000
Reimbursements	-	564	-	524	-	-	-
Investment Income	2,000	3,173	2,000	1,996	2,500	2,500	2,500
Total Revenue	\$ 504,500	\$ 488,395	\$ 487,450	\$ 470,315	\$ 504,950	\$ 482,733	\$ 484,722
Expenditures:							
Fleet Maintenance	-	-	4,200	2,720	5,700	5,415	6,075
Information Technology	30,062	24,120	32,559	20,470	25,379	24,110	49,878
Production	172,200	167,116	175,000	166,189	175,000	166,250	175,000
Distribution	50,790	50,175	46,740	53,441	54,130	51,424	54,505
Administrative - Water	152,383	146,909	125,815	120,453	132,715	126,082	143,054
Employee Benefits	35,941	37,378	32,042	31,510	35,143	33,385	36,429
Debt Service	97,345	97,345	97,345	97,345	97,349	97,349	56,153
Total Expenditures	\$ 538,721	\$ 523,043	\$ 513,701	\$ 492,128	\$ 525,416	\$ 504,015	\$ 521,094
Revenues Over(Under) Expenditures	\$ (34,221)	\$ (34,648)	\$ (26,251)	\$ (21,813)	\$ (20,466)	\$ (21,282)	\$ (36,372)
Other Financing Sources & Uses:							
Transfers from Other funds:							
Transfer from Water Reserve Fund	-	-	-	28,377	-	-	-
Transfer from Capital Projects Fund	-	-	-	-	-	-	-
Transfers to Other Funds:							
Transfer to Equipment Reserve Fund-Water	-	-	-	-	-	-	(25,000)
Transfer to Capital Projects Fund	-	-	-	-	-	-	-
Total Other Financing Sources & Uses	\$ -	\$ -	\$ -	\$ 28,377	\$ -	\$ -	\$ (25,000)
Balance 12/31	\$ 261,381	\$ 191,220	\$ 193,125	\$ 197,784	\$ 204,571	\$ 176,502	\$ 115,130
<i>Reserve Per Policy - 17% of Budgeted Expenditures:</i>					\$ 89,321		\$ 88,586
<i>Unencumbered Cash Over(Under) Requirement:</i>					\$ 87,181		\$ 26,544
<i>Reserve Per Policy - 25% of Budgeted Expenditures:</i>					\$ 131,354		\$ 130,274
<i>Unencumbered Cash Over(Under) Requirement:</i>					\$ 45,148		\$ (15,144)

Funding Sources: Charges to users of the City's water system

Expenditures: Water system operation and maintenance



July 2, 2021

To: Mayor and City Council Members

From: Beth Linn, City Administrator
Karen Kindle, Finance Director
Dan Merkh, Public Works Director

Re: 2022 Recommended Sewer Fund Budget

Attached please find the 2022 Recommended Budget for the Sewer Fund.

Revenues

The sewer utility operations are considered an enterprise, and as such, the funding for operations come from user charges. The user charges needed to fund the utility operations are calculated based on the operation and maintenance costs required to run the utility, the debt service payments required on outstanding debt and any costs for capital outlay such as equipment or capital improvements to the system.

Charges for Services

- The revenues are from the 2021 Rate Study Report prepared by Raftelis included in this packet for reference. Raftelis will present the study results at the budget work session on July 15th. The 2021 Rate Study Report recommends a slight increase of \$1.54 per month for the average customer for 2022. At less than two dollars a month, the recommended increase is lower than the price of a bag of chips or one gallon of gas. The study also includes a comparison of neighboring jurisdictions.
 - If there is consensus to adopt the recommendation in the 2021 Rate Study Report, staff would bring back the updated fee resolution for Council consideration at a meeting in September.

Investment Income

- The 2021 Estimate and 2022 Budget reflect the low rates experienced in the current market.

Expenditures

Fleet Maintenance

- The budget includes the cost for maintenance and repairs of vehicles and equipment as well as fuel costs.
- No significant change was made to this department for 2022.

Information Technology

- Includes the replacement of IT equipment according to the replacement schedule.
- The majority of the increase is due to the first year fees for the new software system. The rest of the increase comes from an increase in the IT provider contract.

Treatment Plant

- The decrease is due to a reduction in estimated property/casualty insurance premiums.

Sewer Line Maintenance

- Funds have been added for additional rental costs for a sewer line camera. Staff anticipates additional work in this area as a result of the Wastewater Master Plan.

Lift Stations/Vaults

- Added the generator maintenance contract for the BBCLS.
- Increase in trash costs anticipated with the expiration of the current contract with Gardner Disposal on 12/31/2021.
- Increase equipment maintenance costs to reflect the trend in the last few years.

Administrative-Sewer

- The staff allocations between the water and sewer utility operations are unchanged from the 2020 Budget.
- The 2022 Budget includes funds to upgrade the City's fiber connection to obtain a higher speed.

Employee Benefits

- Includes a 10% increase in health insurance premiums and a 3% increase in dental and vision insurance premiums based on information provided by the City's provider, Midwest Public Risk.

Debt Service

- Includes the payment for the Series 2016A and 2016B General Obligation Bonds for the conversion of the old treatment plant to a lift station. The project was completed in 2017. The bonds are scheduled to be paid off in 2046 and 2048, respectively.

Transfers to Other Funds

- A \$25,000 Transfer to Equipment Reserve has been included to continue funding future equipment purchases.
- A \$125,000 Transfer to Capital Projects has been included to fund future capital projects.

Ending Balance and Reserves

The reserve calculations have been updated to reflect the Reserve Policy adopted by the Governing Body. The projected balance at the end of 2022 exceeds the required reserves, leaving funding available for projects or other priorities.

Future Considerations

The financial plan presented in the 2021 Rate Study Report is a forecast that relies on assumptions made about expenditures, customer base, debt service requirements, etc. These factors can change, and as more information is obtained, the assumptions will be updated.

The Wastewater Master Plan process is currently underway. That plan, along with the Vehicle and Equipment Plan already in place, will provide information about future funding needs that are not currently reflected in the financial plan.

City of Edgerton Sewer Fund

	2019 Budget	2019 Actual	2020 Budget	2020 Actual	2021 Budget	2021 Estimate	2022 Recommended
Balance 1/1	\$ 280,081	\$ 434,960	\$ 476,681	\$ 508,001	\$ 413,698	\$ 420,138	\$ 338,155
Revenues:							
Licenses & Permits	-	350	-	250	-	-	-
Charges for Services	657,750	692,285	741,000	660,579	682,408	723,522	761,529
Reimbursements	-	564	-	1,044	-	-	-
Bond Proceeds	-	-	-	-	-	-	-
Investment Income	2,000	10,588	3,500	9,455	3,500	3,500	3,500
Total Revenue	\$ 659,750	\$ 703,787	\$ 744,500	\$ 671,328	\$ 685,908	\$ 727,022	\$ 765,029
Expenditures:							
Fleet Maintenance	-	-	4,700	2,777	5,700	5,700	6,075
Information Technology	25,295	24,671	33,326	20,470	25,499	25,499	49,879
Treatment Plant	169,100	111,722	204,945	162,103	198,330	198,330	195,674
Sewer Line Maintenance	7,000	7,409	7,100	1,767	10,700	10,700	11,700
Lift Stations/Vaults	23,300	20,445	21,114	23,697	29,967	29,967	34,562
Administrative - Sewer	257,736	297,871	223,811	165,405	214,858	214,858	224,738
Employee Benefits	44,286	44,190	56,193	54,873	61,513	61,513	63,261
Debt Service	94,438	94,438	94,438	94,438	94,438	94,438	94,438
Total Expenditures	\$ 621,155	\$ 600,746	\$ 645,627	\$ 525,530	\$ 641,005	\$ 641,005	\$ 680,327
Revenues Over(Under) Expenditures	\$ 38,595	\$ 103,041	\$ 98,873	\$ 145,798	\$ 44,903	\$ 86,017	\$ 84,702
Other Financing Sources & Uses:							
Transfers from Other funds:							
Transfer from Sewer Reserve Fund	-	-	-	16,330	-	-	-
Transfer from Capital Projects Fund	-	-	-	-	-	-	-
Transfers to Other Funds:							
Transfer to Equipment Reserve Fund-Sewer	(30,000)	(30,000)	(50,000)	(50,000)	(50,000)	(50,000)	(25,000)
Transfer to Capital Projects Fund	-	-	(100,000)	(199,991)	(118,000)	(118,000)	(125,000)
Total Other Financing Sources & Uses	\$ (30,000)	\$ (30,000)	\$ (150,000)	\$ (233,661)	\$ (168,000)	\$ (168,000)	\$ (150,000)
Balance 12/31	\$ 288,676	\$ 508,001	\$ 425,554	\$ 420,138	\$ 290,601	\$ 338,155	\$ 272,857
<i>Reserve Per Policy - 17% of Budgeted Expenditures:</i>					\$ 108,971		\$ 115,656
<i>Unencumbered Cash Over(Under) Requirement:</i>					\$ 229,184		\$ 157,201
<i>Reserve Per Policy - 25% of Budgeted Expenditures:</i>					\$ 160,251		\$ 170,082
<i>Unencumbered Cash Over(Under) Requirement:</i>					\$ 177,904		\$ 102,775

Funding Sources: Charges to users of the City's sewer system

Expenditures: Sewer system operation and maintenance



July 2, 2021

To: Mayor and City Council Members

From: Beth Linn, City Administrator
Karen Kindle, Finance Director

Re: Other Funds 2022 Recommended Budgets

Attached are the budget schedules for the other funds for which the City adopts a budget. The sections below provide additional information about the 2022 Recommended Budget for these funds.

Special Highway Fund

The Special Highway Fund is the fund the City is required to establish by state statute to track the revenues and expenditures related to the state gasoline tax.

Revenues

The portion of the gas tax that is distributed to cities is distributed on a per capita basis. The League of Kansas Municipalities provides an estimate of the gas tax revenue for the current year and the budget year. The League shows an increase in the 2021 estimated revenue and a small decrease from that amount to the 2022 estimated revenue. The original 2021 estimate was provided during the early days of the pandemic when there was a significant transition to remote working.

Expenditures

Expenditures of gas tax revenues are limited to street maintenance by state statute. The City uses the gas tax revenue to fund the Annual Street Maintenance Program. The funds are transferred to the Capital Projects Fund and deposited into the Annual Street Maintenance Project.

Special Parks and Recreation Fund

The Special Parks & Recreation Fund is the fund the City is required to establish by state statute to track the revenues and expenditures related to the tax on alcoholic beverages sold by any club, caterer or drinking establishment. A portion of the taxes paid within the City limits are returned to the City and must be allocated 50% to the General Fund and 50% to the Special Parks and Recreation Fund.

Revenues

The Kansas State Treasurer provides an estimate of the alcohol tax for the budget year. Staff reviewed that estimate as well as the two distributions received so far in 2021 and determined to increase the amount over the estimate provided by the State. The State's estimate didn't reflect the 2nd distribution in 2021. The increase in estimated revenues is due to the Full Draw opening in the 2nd half of 2020 and continuing operations for all of 2021 to date.

Expenditures

Expenditures of the portion of the alcohol tax revenue deposited in the Special Parks & Recreation Fund are limited to park and recreation programs and improvements. Council has not designated any funds from this source for new programs or capital projects, so the balance has continued to accumulate. The 2022 Recommended Budget includes a transfer to the Capital Projects fund should the Council decide later to utilize the balance in this fund.

Bond & Interest Fund

The Bond & Interest Fund contains the transactions related to some of the debt obligations of the City. Currently, this fund contains the transactions related to the Series 2020A General Obligation Bonds, which refunded the 2012A General Obligation Bonds related to the Sunflower Benefit District. Debt obligations related to water operations are paid from the Water Fund. Debt obligations related to the sewer operations are paid from the Sewer Fund. Debt obligations related to LPKC Phases 1 and 2 are paid from their respective Public Infrastructure Funds in accordance with the development agreements and master trust indentures.

Revenues

The Recommended Budget includes the amount of special assessments payable to the City from the properties within the Sunflower Benefit District for 2022. The special assessments to be received have decreased from previous years due to KDOT's right-of-way purchase and their subsequent pre-payment of the special assessments related to the land they purchased. The amount prepaid by KDOT was used to reduce the outstanding balance when refunding the series 2012A General Obligation Bonds in April 2020. Collections are at 62% so far in 2021. There are two more property tax distributions in 2021. Also, there is adequate fund balance on hand to cover debt payments in addition to a reserve that is maintained in the Series 2020A Bond Reserve Fund.

Expenditures

The expenditures in the Recommended Budget reflect the amount payable on the Series 2020A General Obligation Bonds related to the Sunflower Benefit District in 2022. Bond payments have been made according to the debt schedule each year.

TIF – Edgerton Office

On August 22, 2019, the Governing Body approved Ordinance No. 2020 which established the Edgerton Office TIF covering Project Area A and Project Area B. Both project areas will contain a multi-story office building. To date, redevelopment project plans have not been adopted for either of the two project areas.

Revenues

The majority of the revenues in this fund come from the incremental ad valorem property tax for properties included in the Project Areas. Other revenues include reimbursements for legal services and financial advisor services.

Expenditures

Expenditures include payment for legal and financial services, city administrative fee and eligible expenditures per future Disposition and Development Agreements (DDA) adopted via resolution of the Governing Body.

Budget information regarding TIFs is supplied by the County Clerk on July 1st. The information wasn't received in time to include a fund schedule for the Edgerton Office TIF Fund in the Budget Work Session packet. The fund schedule will be provided at the Budget Work Session.

TIF – Homestead Lane Retail District

On August 22, 2019, the Governing Body approved Ordinance No. 2021 which established the Homestead Lane Retail District TIF covering two project areas, Project Area A and Project Area B. On July 9, 2020, the Governing Body approved Ordinance No. 2041 adopting a redevelopment project plan for Project Plan A1, commonly known as the On-the-Go Travel Plaza. There currently aren't any redevelopment project plans for Project Area B.

Revenues

The majority of the revenues in this fund come from the incremental ad valorem property tax for properties included in the Project Areas. Other revenues include reimbursements for legal services and financial advisor services.

Expenditures

Expenditures include payment for legal and financial services, city administrative fee and eligible expenditures per the Disposition and Development Agreement (DDA) adopted by Resolution No. 07-09-20A between the City and My Store III, Inc., the developer of the On-the-Go Travel Plaza, and any future DDAs for other redevelopment project plans.

Budget information regarding TIFs is supplied by the County Clerk on July 1st. The information wasn't received in time to include a fund schedule for the Homestead Lane Retail TIF Fund in the Budget Work Session packet. The fund schedule will be provided at the Budget Work Session.

City of Edgerton Special Highway Fund

	2019 Actual	2020 Actual	2021 Estimate	2022 Recommended
Balance 1/1	\$ 4,419	\$ 1,389	\$ -	\$ 6,100
Revenues:				
Gasoline Tax	48,439	46,167	46,130	45,880
Total Revenue	\$ 48,439	\$ 46,167	\$ 46,130	\$ 45,880
Expenditures:				
Public Works	-	-	-	-
Total Expenditures	\$ -	\$ -	\$ -	\$ -
Revenues Over(Under) Expenditures	\$ 48,439	\$ 46,167	\$ 46,130	\$ 45,880
Other Financing Sources & Uses:				
Transfers to Other Funds:				
Transfer to Capital Projects Fund	51,469	47,556	40,030	51,980
Total Other Financing Sources & Uses	\$ (51,469)	\$ (47,556)	\$ (40,030)	\$ (51,980)
Balance 12/31	\$ 1,389	\$ -	\$ 6,100	\$ -
Expenditure Detail:				
Annual Street Maintenance Project	\$ 51,469	\$ 47,556	\$ 40,030	\$ 51,980
	\$ 51,469	\$ 47,556	\$ 40,030	\$ 51,980

Funding Sources: State gasoline tax (per gallon)

Expenditures: Maintenance of City streets

City of Edgerton Special Parks & Recreation Fund

	2019 Actual	2020 Actual	2021 Estimate	2022 Recommended
Balance 1/1	\$ 25,039	\$ 28,532	\$ 30,531	\$ 35,531
Revenues:				
Local Alcoholic Liquor Tax	3,493	1,999	5,000	5,000
Total Revenue	\$ 3,493	\$ 1,999	\$ 5,000	\$ 5,000
Expenditures:				
Parks	-	-	-	-
Total Expenditures	\$ -	\$ -	\$ -	\$ -
Revenues Over(Under) Expenditures	\$ 3,493	\$ 1,999	\$ 5,000	\$ 5,000
Other Financing Sources & Uses:				
Transfers to Other Funds:				
Transfer to Capital Projects Fund	-	-	-	40,531
Total Other Financing Sources & Uses	\$ -	\$ -	\$ -	\$ (40,531)
Balance 12/31	\$ 28,532	\$ 30,531	\$ 35,531	\$ -

Expenditure Detail:

Transfer to CIP	\$ 40,531
	<u>\$ 40,531</u>

Funding Sources: Special alcohol tax per K.S.A. 79-41a04 (1/2 of total alcohol tax received by the City)

Expenditures: Park & Recreation programs and improvements

City of Edgerton Bond & Interest Fund

	2019 Actual	2020 Actual	2021 Estimate	2022 Recommended
Balance 1/1	\$ 673,695	\$ 728,720	\$ 600,758	\$ 538,924
Revenues:				
Special Assessments	312,830	238,954	238,954	238,954
Investment Income	-	-	-	-
Total Revenue	\$ 312,830	\$ 238,954	\$ 238,954	\$ 238,954
Expenditures:				
Debt Service	257,805	370,177	300,788	301,580
Total Expenditures	\$ 257,805	\$ 370,177	\$ 300,788	\$ 301,580
Revenues Over(Under) Expenditures	\$ 55,025	\$ (131,223)	\$ (61,834)	\$ (62,626)
Other Financing Sources & Uses:				
Transfers from Other funds:	-	3,261	-	-
Transfers to Other Funds:	-	-	-	-
Total Other Financing Sources & Uses	\$ -	\$ 3,261	\$ -	\$ -
Balance 12/31	\$ 728,720	\$ 600,758	\$ 538,924	\$ 476,298

Funding Sources: Special assessments

Expenditures: Debt service payments on the City's 2020 outstanding GO bonds

Notes: The City's 2020 outstanding GO bonds will be paid off in 2030.



August 20, 2021

To: Mayor & City Council
From: Beth Linn, City Administrator
Karen Kindle, Finance Director
Re: 2022 Budget Packet Updates

On August 26, 2021, Edgerton City Council will hold the required public hearing for the 2022 Budget. The City Council will consider adoption of the 2022 Budget for adoption on September 9, 2021.

The 2022 Budget information for the Water Fund, Sewer Fund, Special Highway Fund, Special Parks & Recreation Fund and the Bond & Interest Fund have not changed since the Budget Work Session held on July 15, 2021. Those documents are included in this packet.

Attached to this memo are the fund schedules for the TIF Funds and a revised General Fund schedule to reflect changes needed after processing the TIF information from the County. TIF information from the County was not available at the time the Budget Work Session packet was published. Since the work session, staff has received the information and reviewed it with the City's Bond Counsel, Scott Anderson. Based on the information and discussions with Mr. Anderson, staff prepared the attached schedules for the TIF funds.

There are four (4) TIF funds:

- **TIF – Edgerton Office**
 - Revenues and expenditures related to the Edgerton Office TIF
 - Approved by the Governing Body on August 22, 2019, via Ordinance No. 2020
 - To date, redevelopment project plans have not been adopted for this TIF
- **TIF – Homestead Ln – Redevelopment District A**
 - Revenues and expenditures related to the Homestead Ln Retail TIF District, Project Area A
 - Approved by the Governing Body on August 22, 2019, via Ordinance No. 2021
 - To date, only Project Plan A1 has been adopted for this TIF
- **TIF – Homestead Ln – Project Plan A1 (On-the-Go Travel Center)**
 - Revenues and expenditures related to the Homestead Ln Retail TIF District Project Plan A1 per the Disposition and Development Agreement (DDA) with My Store III approved by the Governing Body via Resolution No. 07-09-20A
- **TIF – Homestead Ln – Redevelopment District B**
 - Revenues and expenditures related to the Homestead Ln Retail TIF District, Project Area B
 - Approved by the Governing Body on August 22, 2019, via Ordinance No. 2021
 - To date, redevelopment project plans have not been adopted for this project area

The revenues for the TIF funds come from the incremental increase in the property taxes generated by the parcels included in the applicable TIF District. There are two parts to the incremental property taxes – (1) the portion that is related to the City mill levy; and (2) the portion that is related to the mill levies of the other taxing jurisdictions for the parcels. The

City's portion is taken out of the City's total property tax revenue and deposited into the applicable TIF funds. The portion related to the other jurisdictions is deposited directly into the applicable TIF funds. TIF revenues are received from the County on the same schedule as the regular property tax distribution (January, March, June, September, October).

The expenditures for the TIF funds are prescribed by State statute and may be further limited by DDAs approved for specific project plans. Allowable expenditures include spending for public infrastructure, such as streets/stormwater, water and sewer extensions, traffic signals, etc.

TIF – Edgerton Office

Revenues

- The 2021 Estimate reflects that there wasn't an incremental increase in assessed valuation, and therefore, no increase in incremental property taxes for this TIF.
- In 2019, the City paid for the TIF study. The 2021 Estimate includes a transfer in from the General Fund to cover the cost of the study.
- The 2022 Recommended reflects the small increase in the assessed value for this property, and therefore, a small increase in the incremental property taxes for this TIF.

Expenditures

- Because there have not been any project plans adopted for this TIF, the revenues will accumulate in this fund until one is adopted.
- The 2022 Recommended column shows spending the potential balance so that the City will have budget authority to make expenditures should a project plan be adopted in 2022.

TIF – Homestead Ln – Redevelopment District A

Revenues

- Revenues include the incremental property taxes for the parcels in the Project Area A that are not part of Project Plan A1.
- For the 2021 Estimate, those parcels did not have an increase in assessed value, and therefore, did not have any incremental property taxes.
- For the 2022 Recommended, the information from the County showed an increase in assessed value. The revenue amount shown is a combination of the increment from the City's mill levy and the increment from the other jurisdictions' mill levies.

Expenditures

- Expenditures in 2019 and 2020 were related to the creation of the TIF District and fees related to establishing the Project Plan A1. Starting in 2021, Project Plan A1 transactions will be processed in a separate fund.
- The 2022 Recommended Budget includes payment to the General Fund of the down payment on the initial administration fee (\$4,375). The revenue was received in 2020 and will need to be transferred to the General Fund in 2022.
- The rest of the expenditures represent the potential remaining balance in the fund. The amount is listed on the schedule so that the City will have budget authority to make expenditures should a project plan be adopted in 2022.

TIF – Homestead Ln – Project Plan A1 (On-the-Go Travel Center)

Revenues

- Revenues include the incremental property taxes for the parcels that are part of Project Plan A1.
- For the 2021 Estimate, those parcels had a small increase in assessed value, and therefore, a small amount of incremental property taxes. The revenue amount shown is a combination of the increment from the City's mill levy and the increment from the other jurisdictions' mill levies.
- For the 2022 Recommended, the information from the County showed an increase in assessed value. The revenue amount shown is a combination of the increment from the City's mill levy and the increment from the other jurisdictions' mill levies.

Expenditures

- The 2022 Recommended Budget includes
 - Payment of the amount due to the developer per the DDA.
 - Payment of the remaining balance of the initial administration fee to the General Fund.
 - A transfer of funds to pay towards the temporary notes issued in 2020 to finance the City's cost for the 200th Street Intersection project.

TIF – Homestead Ln – Redevelopment District B

Revenues

- Revenues include the incremental property taxes for the parcels in the Project Area B.
- For the 2021 Estimate, those parcels had an increase in assessed value, and therefore, an increase in incremental property taxes. The revenue amount shown is a combination of the increment from the City's mill levy and the increment from the other jurisdictions' mill levies.
- For the 2022 Recommended, the information from the County showed an increase in assessed value. The revenue amount shown is a combination of the increment from the City's mill levy and the increment from the other jurisdictions' mill levies.

Expenditures

- The 2022 Recommended column shows spending the potential balance so that the City will have budget authority to make expenditures should a project plan be adopted in 2022.

General Fund - Revised

Revenues

- A line was added below the Ad Valorem Tax line to show the incremental City taxes that will go to the TIF funds.
- A line was added under the Transfers From Other Funds to show TIF administration fee revenue related to the Homestead Ln TIF-Project Plan A1.

Expenditures

- There were no changes made to the Expenditures or the Transfers to Other Funds.

City of Edgerton TIF - Edgerton Office

	2019 Actual	2020 Actual	2021 Estimate	2022 Recommended
Balance 1/1	\$ -	\$ (5,000)	\$ (5,000)	\$ -
Revenues:				
Ad Valorem Property Tax	-	-	-	31
Charges for Services	-	-	-	-
Reimbursements	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ 31
Expenditures:				
Administration	5,000	-	-	-
TIF Office Redevelopment	-	-	-	31
Total Expenditures	\$ 5,000	\$ -	\$ -	\$ 31
Revenues Over(Under) Expenditures	\$ (5,000)	\$ -	\$ -	\$ (0)
Other Financing Sources & Uses:				
Transfers from Other Funds:				
Transfer from General Fund	-	-	5,000	-
Transfers to Other Funds:				
None				
Total Other Financing Sources & Uses	\$ -	\$ -	\$ 5,000	\$ -
Balance 12/31	\$ (5,000)	\$ (5,000)	\$ -	\$ (0)

Funding Sources: Property tax revenue increment from area designated in TIF district documents

Expenditures: City administrative fee, reimbursements to developers per development agreements

City of Edgerton

TIF - Homestead Ln - Redevelopment District A

	2019 Actual	2020 Actual	2021 Estimate	2022 Recommended
Balance 1/1	\$ -	\$ (12,783)	\$ (8,968)	\$ (8,968)
Revenues:				
Ad Valorem Property Tax	-	-	-	48,983
Charges for Services	-	4,375	-	-
Reimbursements	-	16,500	-	-
Total Revenue	\$ -	\$ 20,875	\$ -	\$ 48,983
Expenditures:				
Administration	12,783	35	-	-
TIF Project Plan A1	-	17,025	-	-
TIF Homestead Ln Redevelopment District A	-	-	-	-
Total Expenditures	\$ 12,783	\$ 17,060	\$ -	\$ -
Revenues Over(Under) Expenditures	\$ (12,783)	\$ 3,815	\$ -	\$ 48,983
Other Financing Sources & Uses:				
Transfers to Other Funds:				
Transfer to the General Fund	-	-	-	(4,375)
Transfer to Capital Projects				(35,640)
Total Other Financing Sources & Uses	\$ -	\$ -	\$ -	\$ (40,015)
Balance 12/31	\$ (12,783)	\$ (8,968)	\$ (8,968)	\$ 0

Funding Sources: Property tax revenue increment from area designated in TIF district documents

Expenditures: City administrative fee, reimbursements to developers per development agreements

City of Edgerton
TIF - Homestead Ln Project Plan A1 (On-the-Go Travel Center)

	2019 Actual	2020 Actual	2021 Estimate	2022 Recommended
Balance 1/1	\$ -	\$ -	\$ -	\$ 117
Revenues:				
Ad Valorem Property Tax	-	-	117	62,246
Charges for Services	-	-	-	-
Reimbursements	-	-	-	-
Total Revenue	\$ -	\$ -	\$ 117	\$ 62,246
Expenditures:				
Administration	-	-	-	-
TIF Project Plan A1	-	-	-	17,959
Total Expenditures	\$ -	\$ -	\$ -	\$ 17,959
Revenues Over(Under) Expenditures	\$ -	\$ -	\$ 117	\$ 44,287
Other Financing Sources & Uses:				
Transfers to Other Funds:				
Transfer to General Fund - Admin Fee	-	-	-	(13,281)
Transfer to Capital Projects				(31,123)
Total Other Financing Sources & Uses	\$ -	\$ -	\$ -	\$ (44,404)
Balance 12/31	\$ -	\$ -	\$ 117	\$ 0

Funding Sources: Property tax revenue increment from area designated in TIF district documents

Expenditures: City administrative fee, reimbursements to developers per development agreements

City of Edgerton
TIF - Homestead Ln - Redevelopment District B

	2019 Actual	2020 Actual	2021 Estimate	2022 Recommended
Balance 1/1	\$ -	\$ -	\$ -	\$ 33,236
Revenues:				
Ad Valorem Property Tax	-	-	33,236	41,051
Charges for Services	-	-	-	-
Reimbursements	-	-	-	-
Total Revenue	\$ -	\$ -	\$ 33,236	\$ 41,051
Expenditures:				
Administration	-	-	-	-
TIF Homestead Ln Redevelopment District B	-	-	-	-
Total Expenditures	\$ -	\$ -	\$ -	\$ -
Revenues Over(Under) Expenditures	\$ -	\$ -	\$ 33,236	\$ 41,051
Other Financing Sources & Uses:				
Transfers to Other Funds:				
Transfer to Capital Projects	-	-	-	(74,287)
Total Other Financing Sources & Uses	\$ -	\$ -	\$ -	\$ (74,287)
Balance 12/31	\$ -	\$ -	\$ 33,236	\$ 0

Funding Sources: Property tax revenue increment from area designated in TIF district documents

Expenditures: City administrative fee, reimbursements to developers per development agreements

City of Edgerton
Vehicle Equipment Replacement
Recommended Current Program 2021-2022

Priority #	Equipment Description	Dept.	Equip Type	Purch Year	Model Year	Current Mileage/ Hours	Est. Yearly Mileage/ Hours	Usage Frequency	General Condition	Effectiveness	Approved Budget	Projected Replace Cost	Order Year	Payment Year	Alloc % Fund 13 General	Alloc % Fund 27 Water	Alloc % Fund 37 Sewer
Purchase Approval - Council																	
1	Ford F-250 4WD	PW	Vehicle	2000	2000	102,721	8000 +	Daily	Good	Effective	\$ 45,000	\$ 45,000	2020	2021	100%	0%	0%
2	Tandem Dump Truck	PW	Heavy Truck	New	New	New	New	New	New	New	\$ 250,000	\$250,000	2020	2021	100%	0%	0%
3	BBCWWTP Aeration Basin Diffuser Replacer	UT	Sewer Syst	2013	2013	NA	NA	Daily	Poor	Moderate	\$ -	\$ 25,500	2021	2021	0%	0%	100%
4	Storm Siren	PW	Storm Siren	New	New	New	New	New	New	New	\$ 26,000	\$ 26,000	2021	2021	100%	0%	0%
5	Edgerton Rd Tank Butterfly Valves Replacement	UT	Water Syst	1982	1982	NA	NA	Daily	Poor	Moderate	\$ -	\$ 10,230	2022	2022	0%	100%	0%
6	Storm Siren	PW	Storm Siren	New	New	New	New	New	New	New	\$ 26,000	\$ 26,000	2022	2022	100%	0%	0%
7	Traffic Counters	PW	Equipment	New	New	New	New	New	New	New	\$ 24,000	\$ 24,000	2022	2022	100%	0%	0%
8	Message Boards	PW	Equipment	New	New	New	New	New	New	New	\$ 34,000	\$ 34,000	2022	2022	100%	0%	0%
9	Compact Track/Wheel Loader	PW	Equipment	New	New	New	New	New	New	New	\$ 85,000	\$ 85,000	2023	2023	100%	0%	0%
10	Hydraulic Hammer Attachment	PW	Equipment	New	New	New	New	New	New	New	\$ 17,000	\$ 17,000	2023	2023	100%	0%	0%
11	Concrete Saw	PW	Equipment	New	New	New	New	New	New	New	\$ 20,000	\$ 20,000	2024	2024	100%	0%	0%
12	Trailer Mounted Generator	PW	Equipment	New	New	New	New	New	New	New	\$ 30,000	\$ 30,000	2025	2025	100%	0%	0%

Purchase Approval - City Administrator

None.																	

Contract Payments

None.																	
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Year changed

**City of Edgerton
Vehicle & Equipment Replacement
Fund Summary 2020-2026**

Fund 13 - General Equipment Reserve Fund

	2020	2021	2022	2023	2024	2025	2026
Beginning Balance, Jan 1	\$ 379,280	\$ 429,452	\$ 233,452	\$ 274,452	\$ 270,952	\$ 301,455	\$ 241,405
Transfers in or Other Revenues	342,574	125,000	125,000	125,000	125,000	125,000	125,000
Vehicle/Equipment Purchases	(292,402)	(321,000)	(84,000)	(128,500)	(94,497)	(185,050)	-
Ending Balance, 12/31	<u>\$ 429,452</u>	<u>\$ 233,452</u>	<u>\$ 274,452</u>	<u>\$ 270,952</u>	<u>\$ 301,455</u>	<u>\$ 241,405</u>	<u>\$ 366,405</u>

Fund 27 - Water Equipment Reserve Fund

	2020	2021	2022	2023	2024	2025	2026
Beginning Balance, Jan 1	\$ 53,006	\$ 53,006	\$ 53,006	\$ 67,776	\$ 43,376	\$ 68,376	\$ 92,976
Transfers in or Other Revenues	-	-	25,000	25,000	25,000	30,000	30,000
Vehicle/Equipment Purchases	-	-	(10,230)	(49,400)	-	(5,400)	-
Ending Balance, 12/31	<u>\$ 53,006</u>	<u>\$ 53,006</u>	<u>\$ 67,776</u>	<u>\$ 43,376</u>	<u>\$ 68,376</u>	<u>\$ 92,976</u>	<u>\$ 122,976</u>

Fund 37 - Sewer Equipment Reserve Fund

	2020	2021	2022	2023	2024	2025	2026
Beginning Balance, Jan 1	\$ 67,612	\$ 117,612	\$ 142,112	\$ 167,112	\$ 58,112	\$ 58,112	\$ 39,712
Transfers in or Other Revenues	50,000	50,000	25,000	-	-	-	-
Vehicle/Equipment Purchases	-	(25,500)	-	(109,000)	-	(18,400)	-
Ending Balance, 12/31	<u>\$ 117,612</u>	<u>\$ 142,112</u>	<u>\$ 167,112</u>	<u>\$ 58,112</u>	<u>\$ 58,112</u>	<u>\$ 39,712</u>	<u>\$ 39,712</u>

City of Edgerton
Equipment Recommended for Disposal

Items for Recommended for Disposal												
Item #	Equipment Description	VIN/Serial #	Item Number	Dept.	Equip Type	Current Mileage/ Hours	Purch Year	Date of Council Approval	Intended Method of Disposition	Alloc % Fund 13 General	Alloc % Fund 27 Water	Alloc % Fund 37 Sewer
1	Excavator Bucket - Large			PW	Equipment	n/a			Online Auction	100%		
2	Excavator Bucket - Small			PW	Equipment	n/a			Online Auction	100%		
3	Backhoe Bucket - Large			PW	Equipment	n/a			Online Auction	100%		
4	Backhoe Bucket - Small			PW	Equipment	n/a			Online Auction	100%		
5	Backhoe Bucket - Ditch			PW	Equipment	n/a			Online Auction	100%		
6	Animal Control Truck Bed Insert			CD	Equipment	n/a			Online Auction	100%		
7	Chevrolet 2 Wheel (2003) #108	1GCEC19Z43Z304694	#108	UT	Vehicle	97,183	2012		Online Auction		50%	50%

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: September 9, 2021

Agenda Item: Resolution Approving a Development Agreement

Subject: Woodstone Project – Homestead Lane

The City created the Homestead Lane Retail TIF District on property generally located at the northeast and northwest corners of Interstate 35 and Homestead Lane (the “District”). Woodstone Properties, LLC desires to construct a project on the west side of Homestead Lane within the District. The project will consist of the following:

- A hotel
- An extended stay hotel
- Conference center
- Three quick-service restaurants and a casual dining restaurant
- Travel center with truck wash and maintenance shop
- Office and Retail space

The Developer has requested the following incentives:

1. Community Improvement District. 1% CID sales tax for a term of 22 years to reimburse the Developer for eligible project costs.
2. TIF Project Plan. The property tax increment for a 20-year period will be split 50/50 between the City and the Developer. The Developer will reimburse itself for eligible expenses and the City will reimburse itself for eligible expenses. Limited to 15 years if there is not an extra 15,000 square feet beyond the TGT bump conditions.
3. Industrial Revenue Bonds. Bonds will be issued to enable the Developer to utilize a sales tax project exemption certificate. No tax abatement will be granted.
4. Transient Guest Tax. The City imposes a 6% surcharge on hotel rooms. The TGT tax for 20 years will be split between the Developer and the City. The City will make an annual economic development grant back to the Developer each year equal to 50% of the TGT tax collected.

The Developer is required to construct, at a minimum (the “project minimum improvements”)

- The travel center
- One hotel with the conference center
- A quick-service restaurant
- A casual dining restaurant

Once the Developer constructs the project minimum improvements plus a second hotel and another restaurant, the Developer will receive 75% of the annual TGT tax and the City will receive 25% for the remainder of the 20-year TGT term.

The Developer agrees to commence vertical construction by July 1, 2023 and obtain a Certificate of Occupancy (CO) for the project minimum improvements no later than December 31, 2025.

The Resolution authorizes the City to enter into the Development Agreement with Woodstone.

RESOLUTION NO. 09-09-21F

RESOLUTION AUTHORIZING THE CITY OF EDGERTON, KANSAS TO ENTER INTO A DEVELOPMENT AGREEMENT FOR A PROJECT IN THE HOMESTEAD LANE RETAIL TIF DISTRICT

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

WHEREAS, Woodstone Properties, LLC, a Missouri limited liability company (the “Developer”), desires to develop two hotels, a conference center, a travel center, restaurants, office and retail space, all as described in the form of Development Agreement attached hereto as **Exhibit A** (the “Project”) west of Homestead Lane and north of Interstate 35 in the Homestead Lane Retail TIF District; and

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

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

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

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

Section 3. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the Development Agreement.

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

ADOPTED this 9th day of September, 2021.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

EXHIBIT A

FORM OF DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

(Homestead Lane West Project)

This Development Agreement (this “Agreement”) is entered into as of September __, 2021, between the **CITY OF EDGERTON, KANSAS**, a Kansas municipal corporation (the “City”), and **WOODSTONE PROPERTIES, LLC**, a Missouri limited liability company, and its successors and assigns (the “Developer”). The City and the Developer may each be referred to herein as a “party” and collectively as the “parties.”

RECITALS

- A. The Developer desires to develop the Project on the Project Site.
- B. The City is willing to grant certain incentives for the development of the Project so long as the Developer complies with the terms of this Agreement.

AGREEMENT

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

ARTICLE I DEFINITIONS AND INTERPRETATION

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

“Annual TGT Grant” has the meaning given to such term in **Section 6.2**.

“Annual Transient Guest Tax Collection” has the meaning given to such term in **Section 6.1**.

“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.*) and the Budget Law (K.S.A. § 75-2529, *et. seq.*).

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

“Casual Dining Restaurant” means a not less than 4,500 square foot full-service restaurant that offers both table and bar service.

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

“City” means the City of Edgerton, Kansas.

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

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

“Conference Center” mean a conference center contiguous and attached to at least one of the Hotels that is no less than 7,000 total square feet in size (gross, including back-of-house space, pre-function space, restrooms, and coat check) that allows groups renting the Conference Center to offer bar alcohol service in compliance with all applicable laws.

“Developer” means Woodstone Properties, LLC, a Missouri limited liability company, or its successors or assigns as permitted by this Agreement.

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

“Excused Delay” has the meaning given to such term in **Section 12.11**.

“Extended-Stay Hotel” means a single extended-stay hotel building containing approximately 72 keyed hotel guest rooms, including such amenities as in-room kitchenettes and on premise laundry facilities, as shown on the Development Plan.

“Hotels” mean, collectively, the Regular Hotel and the Extended-Stay Hotel.

“Project” has the meaning given to such term in **Section 2.3**.

“Project Minimum Improvements” means the Travel Center, one Hotel that meets the requirements of **Section 2.5** (including the attached Conference Center), a quick-service restaurant and the Casual Dining Restaurant.

“Project Site” means certain unimproved land located at the southwest corner of Homestead Lane and 199th Street, and is legally described on the attached **Exhibit A**.

“Regular Hotel” means a single hotel building containing approximately 90 keyed hotel guest rooms, as shown on the Development Plan.

“TGT Bump Conditions” has the meaning given to such term in **Section 6.3**.

“TGT Percentage” has the meaning given to such term in **Section 6.3**.

“TGT Term” shall mean 80 calendar quarters (20 years), commencing on the first day of the calendar quarter after the calendar quarter during which the first Hotel charges any Transient Guest Tax.

“TIF Act” has the meaning given to such term in **Section 4.1**.

“TIF Revenues” means the portion of the Tax Increment (as defined in the TIF Act) generated from the Project Site as a result of the TIF project plan for the Project.

“Transient Guest Tax” has the meaning given to such term in **Section 6.1**.

“Travel Center” means an approximately 12,000 square foot gas station with food service, an approximately 10,000 square foot truck maintenance facility, and an approximately 9,000 square foot truck wash, all as shown on the Development Plan.

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

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (c) reference in this Agreement to any article, section, appendix, annex, schedule or exhibit means such article or section thereof or appendix, annex, schedule or exhibit thereto;
- (d) each of the items or agreements identified on the attached Index of Exhibits and Schedules are deemed part of this Agreement to the same extent as if set forth herein;
- (e) “hereunder”, “hereof”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;
- (f) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;
- (g) capitalized terms, not otherwise defined in the text of this agreement shall have the definitions set forth in **Section 1.1** or as otherwise provided herein.

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

ARTICLE II DEVELOPMENT OF PROJECT

2.1 Undertaking of Developer. Developer shall act as the developer of the Project Site for all purposes herein, subject to the terms and conditions of this Agreement. Developer hereby agrees, subject to the terms and conditions hereinafter provided, to pursue the construction, completion and operation of the Project with its own funds, subject to tenant/user/market demand; provided that, the parties acknowledge that Developer may sell portions of the Project Site to other parties

and that the other parties will construct and operate those portions of the Project. The performance of all activities by Developer hereunder shall be as an independent contractor and not as an agent of the City.

2.2 Development Plan. The City and Developer hereby agree that the preliminary “Development Plan” for the Project is attached hereto as **Exhibit B**. The Development Plan shall be updated by Developer from time to time with the consent of the City, and Developer and City acknowledge and agree that, subject to certain minimum requirements in this Agreement, the size, shape, location and number of buildings, as well as the mix of uses therein, customarily experience changes to the preliminary development plan for a project of this size based on tenant/user and/or customer demand and other factors. Developer covenants and agrees that all buildings, parking lots and other improvements constituting the Project shall be developed, constructed, completed and operated on the Project Site in substantial accordance and compliance with the terms and conditions of this **Article II**. Subject to the terms of this **Article II**, Developer reserves the right to make all construction and operational decisions relating to the Project without the City’s consent, but subject to the City’s normal planning and development process and subject to all Applicable Laws and Requirements.

2.3 The Project. The “Project” shall consist of the following:

1. Hotels and Conference Center;
2. Travel Center;
3. Three quick-service restaurants;
4. Casual Dining Restaurant;
5. Approximately 23,000 sq ft of retail space;
6. 12,500 sq ft of office; and
7. Other commercial buildings/uses.

2.4 Permits and Reviews. Developer hereby recognizes, stipulates and agrees that (a) in the design, construction, completion, use or operation of the Project, Developer (or its general contractors or tenants) shall procure and pay for any and all permits, licenses and fees customarily paid for by a developer, builder, property owner or business owner for development in the City, and (b) that nothing herein shall be construed as any release by the City of the responsibility of Developer to comply with, and satisfy the requirements of, all Applicable Laws and Requirements.

2.5 Hotels Minimum Requirements. The Hotels will include the following minimum requirements:

- (a) The Conference Center;
- (d) Adequate parking will be provided for both the Hotels and conference center as required by law; and
- (e) The Hotel flag for the Hotels shall be a Choice brand or another hotel brand of similar quality that is approved by the City. During any time period in which the Developer receives any incentives from the City, all changes in any Hotel flag shall be approved in writing by the City.

2.6 199th Street Right-of-Way. The Developer agrees to contribute any necessary right-of-way or easements to the City at no cost in order to permit the City to make improvements to 199th Street.

ARTICLE III

COMMUNITY IMPROVEMENT DISTRICT

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

3.2 Creation of Community Improvement District. The City agrees to submit creation of the Community Improvement District to the City Council of the City within a reasonable amount of time after receipt of the petition from the Developer that meets all legal requirements contained in the Community Improvement District Act.

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

3.4 Deposit of CID Tax. The City shall collect and disburse the CID Tax receipts in the manner required by the Community Improvement District Act to reimburse the Developer for eligible costs under the Community Improvement District Act. The City and the Developer shall work in good faith to enter into a mutually acceptable development agreement for the Community Improvement District and the CID Tax.

ARTICLE IV

TAX INCREMENT FINANCING

4.1 Tax Increment Financing. The City has authority to adopt tax increment financing (“TIF”) pursuant to the Kansas Tax Increment Redevelopment Act, codified at K.S.A 12-1770 et seq. as amended (the “TIF Act”). The Project Site is currently located within the Edgerton Homestead Lane Retail District Project TIF District. The Developer agrees to submit an application along with the applicable fees and retainers for a new TIF project plan for the Project. The City, subject to compliance with Applicable Laws and Requirements, agrees to submit the establishment of a new TIF project plan for the Project for a term of 20 years to the City Council of the City.

4.2 Disbursement of TIF Revenues. TIF Revenues shall first be used to pay the City’s annual TIF administrative fee, which shall be equal to 1% of TIF Revenues received by the City. Thereafter, TIF Revenues shall be disbursed on a “pay as you go” basis, with the Developer receiving 50% of the annual TIF Revenues for the term of the TIF (the “Developer TIF

Revenues”), until such time that the Developer has been reimbursed for all eligible expenses under the TIF Act. Interest on eligible expenses accruing from the date such eligible expenses were paid shall be a reimbursable eligible expense for the Developer at the rate of interest of 5% (per annum, non-compounding), or such other rate that the parties may mutually agree to in the TIF documents. Any TIF Revenues not paid to the Developer shall be paid to the City (the “City TIF Revenues”).

4.3 Limitation on Developer Disbursements. If, by December 31st of the 15th full calendar year following approval of the TIF project plan for the Project, the Developer has not both (a) met the TGT Bump Conditions, and (b) received certificates of occupancy on at least an additional 15,000 square feet of office, retail and restaurant space, the disbursement of Developer TIF Revenues to the Developer shall cease. In such event, the Developer TIF Revenues for the 16th full calendar year following approval of the TIF project plan for the Project and each calendar year thereafter shall be paid to the City to reimburse the City for its eligible expenditures.

ARTICLE V INDUSTRIAL REVENUE BONDS

5.1 City Issuance of Bonds. The City agrees to issue Bonds to finance the costs of acquiring, constructing and equipping the Project to enable the Developer to obtain a project exemption certificate for sales tax. The Developer shall work with the City’s Bond Counsel to issue the Bonds. The Developer shall pay all costs of issuing the Bonds. At the request of Developer, the Bonds may be issued in more than one series for the various components of the Project.

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

ARTICLE VI TRANSIENT GUEST TAX

6.1 Transient Guest Tax. The City currently imposes a transient guest tax of 6% upon all gross receipts derived from or paid by transient guests for sleeping accommodations (the “Transient Guest Tax”). The parties agree that the City may increase (but not decrease) the Transient Guest Tax at any time subject to Applicable Laws and Requirements. The amount of Transient Guest Tax collected by the City from the Hotels during any calendar year shall be the “Annual Transient Guest Tax Collection.”

6.2 Annual TGT Grant. During the TGT Term, the City agrees to make an annual economic development grant subject to annual appropriation to the Developer in an amount equal to the Annual Transient Guest Tax Collection (after taking into account the City’s 1% collection fee) multiplied by the TGT Percentage in effect as of the last day of the applicable calendar year (the product of which is called the “Annual TGT Grant”).

6.3 TGT Percentage. The “TGT Percentage” shall be 50%. If, prior to January 1, 2029, all of the Project Minimum Improvements plus the second Hotel plus an additional quick-service or Casual Dining restaurant have received certificates of occupancy (collectively, the “TGT Bump Conditions”), the “TGT Percentage” for the current calendar quarter and all future calendar years during the TGT Term shall be increased to 75%.

6.4 Payment of Annual TGT Grant. Each Annual TGT Grant shall be paid by the City to the Developer within 120 days following the end of the calendar year. The City and the Developer shall work in good faith to enter into a mutually acceptable grant agreement for the Annual TGT Grants.

ARTICLE VII ASSIGNMENT BY DEVELOPER; DEVELOPER OWNERSHIP

Any assignment of this Agreement shall require the written consent of the City. Any change in ownership of the Developer that results in J. Shannon McMurdo no longer being the majority owner of Developer shall require the written consent of the City.

ARTICLE VIII PROJECT CONSTRUCTION SCHEDULE

Subject to an Excused Delay, Developer agrees that the Project will commence vertical construction no later than July 1, 2023. Subject to an Excused Delay, Developer agrees that the Project Minimum Improvements will receive a certificate of occupancy no later than December 31, 2025.

ARTICLE IX DEFAULT; REMEDIES

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

9.2 Default by City. The City shall be in default under this Agreement if: (a) the City fails to keep or perform any material covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within sixty (60) days after the City has been given written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and

diligently pursued until the default is corrected; or (b) the City materially breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days following written notice. In the event of such default, the Developer's sole remedy shall be the termination of this Agreement.

ARTICLE X CITY TERMINATION OPTION

10.1 City Option to Terminate. The City shall have the option to terminate this Agreement if Developer is not in compliance with the project construction schedule set forth in **Article VIII**, as such schedule may be as adjusted for an Excused Delay. The Developer shall not be entitled to receive a notice of default or opportunity to cure. The City shall exercise this option by delivering written notice of such termination to the Developer at the notice address set forth in this Agreement. Said notice may be delivered at any time after the Developer is not in compliance with the project construction schedule, but prior to the time Developer is in compliance with the project construction schedule.

ARTICLE XI REPRESENTATIONS AND WARRANTIES

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

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

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

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

11.1.4 No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third

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

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

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

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

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

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

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

ARTICLE XII

MISCELLANEOUS

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

default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

12.2 Elevate Edgerton Membership. Until such time that the Project is no longer receiving any incentives from the City, the following portions of the Project shall be required to join Elevate Edgerton at the following level and provide such other stated benefits to the City:

(a) Each Hotel shall maintain a membership level of at least \$2,500 and each Hotel shall also provide \$1,000 of “in kind services” to the City (such as use of conference space or provision of rooms if the operator agrees to provide free or discounted rooms);

(b) The restaurants shall maintain a combined membership level of at least \$2,500; and

(c) The Travel Center shall maintain a membership level of at least \$5,000 and shall also sponsor at least one community event annually at a minimum \$1,000 sponsorship level.

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

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

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

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

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

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

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

12.10 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) emailed (with follow up by sending such notice within one (1) business day by United States Mail); or (iii) delivered in person, in each case if addressed to the parties set forth below:

To the City: City Administrator
Edgerton Community Building
404 East Nelson
P.O. Box 255
Edgerton, Kansas 66021
Phone: (913) 893-6231
BLinn@EdgertonKS.org

With a copy to: Scott W. Anderson
SA Legal Advisors LC
16201 W 95th Street, Suite 270
Lenexa, Kansas 66219
Phone (913) 600-2999
SAnderson@SALegalAdvisors.com

To the Developer: Shannon McMurdo
Woodstone Properties, LLC
100 E. South Street
Branson, Missouri 65721
Phone : (417) 338-0501
Shannon@woodstonebuilders.com

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

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

12.11 Excused Delay. The performance of any of Developer's obligations under this Agreement shall be excused or extended, at Developer's option, as a consequence of events caused by force majeure or excusable delay (collectively "Excused Delay") applicable to the portion of the Project on account of (i) Acts of Nature (including fire, flood, earthquake, storm, tornado, hurricane or other natural disaster), (ii) acts of war, invasion, hostilities (whether war is declared or not), or usurped power or confiscation, nationalization, blockage or embargo, (iii) terrorist activities (iv)

strikes or lockout, (v) riot or civil commotion in the Kansas City metro, (vi) any public health crisis requiring a mandatory quarantine that covers workers in the construction industry in excess of thirty consecutive days, or (vii) prolonged break-down of electric current.

12.12 Term. This Agreement shall become effective as of the date of its execution and shall remain in full force and effect throughout the term of the public incentives, unless sooner terminated as provided in this Agreement.

12.13 Entire Agreement; Conflicts with Incentive Agreements. Together with the Exhibits hereto, this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces all prior oral or written agreements concerning the subject matter hereof. The parties acknowledge that they expect to enter into specific agreements for each public incentive. In the event there is any conflict between this Agreement and the terms of any agreement relating to a specific public incentive, the terms of the agreement relating to a specific public incentive shall control.

[The Remainder of this Page Left Intentionally Blank]

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

CITY OF EDGERTON, KANSAS,
a Kansas municipal corporation

[SEAL]

By: _____
Donald Roberts
Mayor

ATTEST:

Alexandria Clower
City Clerk

WOODSTONE PROPERTIES, LLC
a Missouri limited liability company

By: _____
J. Shannon McMurdo
Member

EXHIBIT A
PROJECT SITE

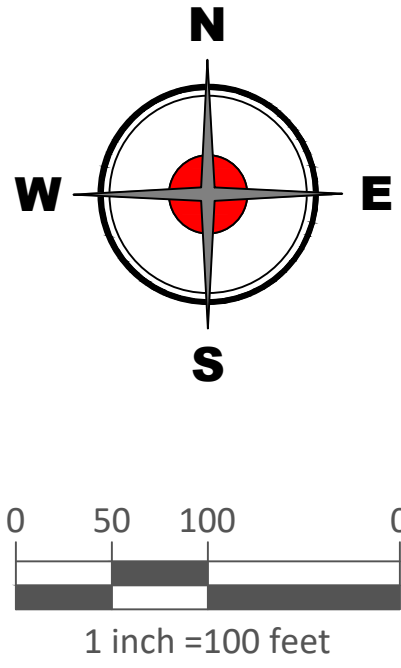
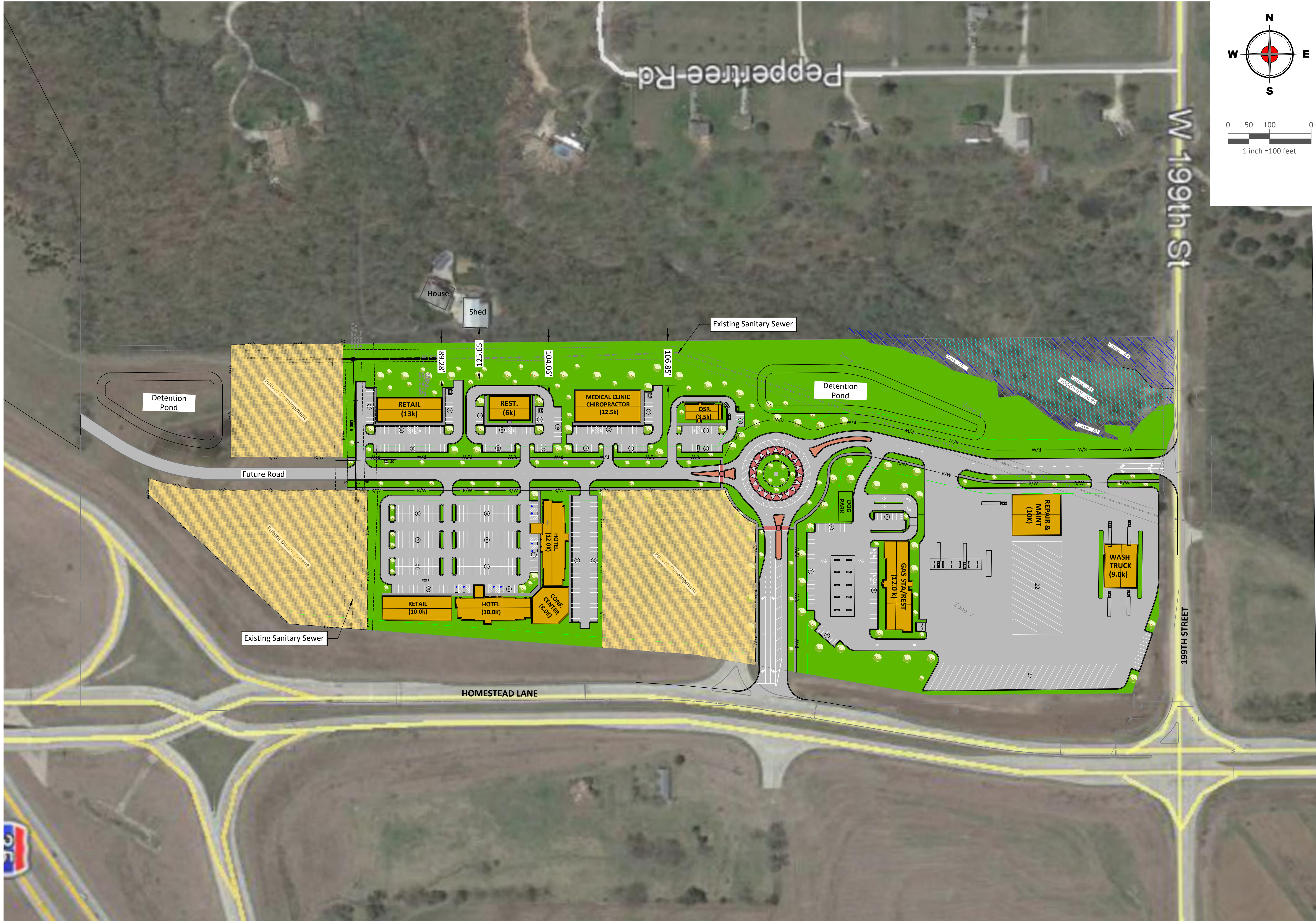
The land is described as follows:

[TO BE INSERTED]

DRAFT

EXHIBIT B
DEVELOPMENT PLAN

DRAFT



CITY OF EDGERTON, KANSAS
EDGERTON DEVELOPMENT
CONCEPT PLAN

DRIGGS DESIGN GROUP, PA
Surveying Engineering Planning
MANHATTAN - HAYS - EMPORIA - TOPEKA - GOODLAND

Project No.:

Date:
8/2/2021
Sheet No.:
1 OF 1