

**AMENDED EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
October 13, 2022
7:00 P.M.**

Call to Order

1. **Roll Call** _____ Roberts _____ Longanecker _____ Lewis _____ Beem _____ Lebakken
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 September 22, 2022 Regular City Council Meeting
5. Approve Final Acceptance of the Stormwater Master Plan

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. **Public Comments.** The City of Edgerton encourages public participation in local governance issues. To facilitate an efficient and effective meeting, persons wishing to address the City Council must sign-up before the meeting begins. Speakers must provide their name and address for the record and are limited to three (3) minutes. The maximum time limit for all speakers will be thirty (30) minutes. Comments on personnel matters or matters pending before court/other outside tribunals are not permitted. Any comments are for informational purposes only. No action will be taken.

The Mayor may modify these provisions, as necessary. The Mayor may limit any unnecessary, off-topic, or redundant comments or presentations. Speakers should address their comments to City Council members only and should not speak to fellow audience members. City Council members will not engage in a dialogue or debate with speakers. Speakers and audience members should conduct themselves in a civil and respectful manner. Disruptive conduct may result in removal from the meeting.

8. **Presentation.** Project Update – Water System Study

Business Requiring Action

9. **CONSIDER ORDINANCE NO. 2121 ADOPTING THE RECOMMENDATION OF THE CITY OF EDGERTON PLANNING COMMISSION TO APPROVE APPLICATION ZA2022-02 FOR THE REZONING OF APPROXIMATELY 5.61 ACRES OF LAND LOCATED ON 8TH STREET/EDGERTON ROAD SOUTH OF NELSON STREET AND NORTH OF MERIWOOD LANE, FROM CITY OF EDGERTON "R-1" (SINGLE FAMILY RESIDENTIAL) TO CITY OF EDGERTON "R-2" (TWO FAMILY RESIDENTIAL) ZONING**

Motion: _____ Second: _____ Vote: _____

10. **CONSIDER ORDINANCE NO. 2122 ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE A CONDITIONAL USE PERMIT (CU2022-01) ALLOWING A CARGO CONTAINER STORAGE, REPAIR OR MAINTENANCE FACILITY ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF 191ST STREET AND MONTROSE STREET (30650/30700 WEST 191ST STREET), EDGERTON, KANSAS**

Motion: _____ Second: _____ Vote: _____

11. **CONSIDER ORDINANCE NO. 2123 AMENDING ORDINANCE NO. 2100 IN CONNECTION WITH THE COMMUNITY IMPROVEMENT DISTRICT (EDGERTON CROSSING WOODSTONE PROJECT)**

Motion: _____ Second: _____ Vote: _____

12. **CONSIDER RESOLUTION NO. 10-13-22A AUTHORIZING A FIRST AMENDMENT TO A COMMUNITY IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT FOR THE EDGERTON CROSSING WOODSTONE PROJECT**

Motion: _____ Second: _____ Vote: _____

13. **CONSIDER AN AGREEMENT WITH GKW GROUP FOR THE LIBRARY BRICK PROJECT**

Motion: _____ Second: _____ Vote: _____

14. **CONSIDER AN AGREEMENT WITH 435 ROOFING FOR THE LIBRARY ROOF REPLACEMENT**

Motion: _____ Second: _____ Vote: _____

15. **Report by the City Administrator**

16. **Report by the Mayor**

- November/December Council Meeting Schedules

17. **Future Meeting Reminders:**

- October 13th: CIP Budget Work Session – Following Regularly Scheduled Meeting
- October 27th: City Council Meeting – 7:00PM
- November 8th: Planning Commission Meeting – 7:00PM
- November 10th: City Council Meeting – 7:00PM

18. **CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319(B(2)) UNDER THE ATTORNEY/CLIENT EXCEPTION TO INCLUDE THE CITY ATTORNEY, CITY ADMINISTRATOR AND ECONOMIC DEVELOPMENT COUNSEL TO DISCUSS CONTRACT NEGOTIATIONS.**

Motion: _____ Second: _____ Vote: _____

19. **Adjourn** Motion: _____ Second: _____ Vote: _____

EVENTS

October 22: Family Pumpkin Yoga
October 30: Edgerton Frontier Days Halloween Party
November 4: Trivia Night at White Tail Run Winery
November 8: Tales for Tots
November 17: Homemade Pumpkin Pie Class
November 19: Breakfast with Santa at Edgerton Elementary

City of Edgerton, Kansas
Minutes of City Council Regular Session
September 22, 2022

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on September 22, 2022. The meeting convened at 7:01 PM with Mayor Roberts presiding.

1. ROLL CALL

Clay Longanecker	present
Josh Lewis	present
Josh Beem	present
Josie Stambaugh	absent
Deb Lebakken	present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator, Beth Linn
- City Attorney, Lee Hendricks
- City Clerk, Alex Clower
- Public Works Director, Dan Merkh
- Public Works Superintendent, Trey Whitaker
- Finance Director, Karen Kindle
- Capital Improvement Project Manager, Brian Stanley
- Recreation Coordinator, Brittany Paddock
- Accountant, Justin Vermillion
- Maintenance Tech I, Darren Ross
- Maintenance Tech I, Tristan Godinez

2. WELCOME

3. PLEDGE OF ALLEGIANCE

Mayor Roberts stated he received an email earlier in the week from Councilmember Stambaugh officially resigning from council. He further stated that Ms. Stambaugh noted she would return her iPad, in which he responded the iPads purchased for Councilmembers are for their use to better stay connected with the city and do not need to be returned should a member leave. He stated the next step in this process is the same as the past, he will go to Planning Commission and ask for volunteers. If there is interest, he will bring them forward for appointment, if there is no interest, there will be a broader community request and interview of candidates. He stated members of Planning Commission have shown to be true community supporters as they are in a volunteer position for the time they serve.

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 September 8, 2022 Regular City Council Meeting

5. Consider Application FP2021-04, Final Plat for 30650 W. 191st Street Located Near the Northeast Corner of 191st Street and Montrose Street, Edgerton, Kansas
6. Approve Resolution No. 09-22-22A Establishing Fees and Rates for Permits, Licenses and Services with the City of Edgerton, Kansas
7. Approve Final Acceptance of the Nelson Street from East 3rd Street to West 8th Street (CARS) Project, Including Street Maintenance Program 2022 Roadway Sections (West 5th Street & West Martin Street)

Councilmember Longanecker moved to approve the consent agenda, seconded by Councilmember Beem. The Consent Agenda was approved, 4-0.

Regular Agenda

8. **Declaration.** There were no declarations made.
9. **Public Comments.** There were no public comments made.
10. **Introduction.** Dan Merkh, Public Works Director, Introduces New Employees for the Public Works and Utilities Departments, Tristan and Darren.

Darren Ross stated he was born and raised in Wellsville and currently resides in Baldwin. He stated he enjoys outdoor activities and is excited to be a part of the Edgerton team.

Tristan Godinez stated he is from Ottawa and has lived there all his life. He stated he is new to this type of work, but he is learning as the tasks come along and he is glad to be aboard.

Mayor and Councilmembers welcomed them to the team.

Business Requiring Action

11. **CONSIDER ORDINANCE NO. 2120 AMENDING CITY OF EDGERTON ORDINANCE 2113 WHICH ADOPTED THE RECOMMENDATION OF THE CITY OF EDGERTON PLANNING COMMISSION TO APPROVE APPLICATION ZA2022-01 FOR THE REZONING OF APPROXIMATELY 80.4 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF 207TH STREET/BRAUN STREET AND 8TH STREET/EDGERTON ROAD, FROM JOHNSON COUNTY "RUR" (RURAL DISTRICT) TO CITY OF EDGERTON "PUD" (PLANNED UNIT DEVELOPMENT) ZONING TO CURE A DEFECTIVE LEGAL DESCRIPTION**

Ms. Linn stated this Ordinance was added to the agenda this morning. She stated in preparing documents, it was noticed that the legal description had been truncated, this ordinance corrects that error.

With no questions or comments, Mayor Roberts requested motion to approve Ordinance No. 2120, amending City of Edgerton Ordinance No. 2113, to cure a defective legal description.

Councilmember Longanecker moved to approve the ordinance, seconded by Councilmember Lebakken. Ordinance No. 2120 was approved, 5-0.

12. CONSIDER RESOLUTION NO. 09-22-22B AUTHORIZING THE CITY OF EDGERTON, KANSAS TO ENTER INTO A DEVELOPMENT AGREEMENT FOR A HOUSING DEVELOPMENT PROJECT

Mr. Scott Anderson, Bond Counsel, addressed the Council. He stated Rausch Coleman Homes also known as, Kansas LD, LLC desires to develop a single-family housing division on an 80.4-acre parcel located at the southwest corner of 207th St./Braun St. and 8th St./Edgerton Rd. He stated this subdivision will be known as Dwyer Farms and will have approximately 275 single-family homes once complete. He stated the resolution for approval, will approve the development agreement between the City and Kansas LD.

He stated the developer has agreed to develop the housing subdivision in four phases, with the first having at least 63 homes built within five years of recording the final plat. He stated the remainder of the subdivision will be built out based on demand. He stated the developer has agreed to pay for and install all infrastructure within the property to serve the houses. The City has agreed to install and pay for all necessary off-site improvements, including streets, sewer and water. He stated the city has discretion to determine when these improvements need to be installed. He stated the principal improvement is the extension of the sewer infrastructure. While there is no specific timeline, it is agreed to be completed in such a time that the City's improvements will not slow down the development of the housing division. He stated the agreement has a blank date, but it is recommended the housing development be established by the end of 2025. He stated this means one house will have to be complete by the end of 2025 or they cancel the agreement. He stated the city intends to reimburse itself for the costs of making the improvements by establishing a Rural Housing Incentive District, but if for some reason the RHID is not approved and put in place, the city is still obligated to install that infrastructure. He stated the Development Agreement requires the developer to post a payment bond. In the event the developer does not build housing at a sufficient rate to generate enough RHID increment to reimburse the city, this bond provides adequate security.

Mr. Coleman stated he is excited to take this next step and ready to get going on the project.

Mayor Roberts stated development pays for development and he feels like this is another partnership, but now on the housing side. He stated this is something the community needs and has needed for a very long time.

Councilmember Lewis asked if money is spent for infrastructure as phases continue or if it is all at once.

Ms. Linn stated the most critical piece to complete is sanitary sewer. She stated work was done with BG Consultants to make sure infrastructure could be placed under the pipeline, but they still intend to study the water line.

Mr. Merkh stated there is a point in the lines that require further study due to a connection point that would be looped on high and normal pressure. He stated this means that an appropriate line would need to be placed to serve this area.

Ms. Linn stated the road on 8th Street would likely be in the first phase of updates due to traffic counts indicating some work needing to be completed there. She stated the City did submit on the BASE Grant and still hopeful it is a possibility to receive funds from that for the sewer extension.

Mayor Roberts stated the Surety Bond ensures the city receives revenue to pay back any necessary costs. He stated the sewer itself is tied to a Benefit District and Mr. Coleman will be paying into that, as well as their yearly dues. He stated he is obligated to do that by law.

Ms. Linn stated this agreement really allows for Mr. Coleman to focus on development inside the four corners and the City to provide the back support and provide necessary improvements in the exterior portion.

Councilmember Lewis asked when the other Benefit District will be paid off.

Ms. Linn stated the last year of assessments is 2032.

Councilmember Longanecker asked if the repairs will be held up at Edgerton Rd.

Ms. Linn stated work has been continuing to progress. She added all easements have been complete besides one.

Mr. Merkh stated the design for 8th and Braun can easily accommodate the development. The City is currently on schedule to begin as early as October for street improvements.

Ms. Linn stated the valve vault had to be fabricated and laid before roadwork could begin.

Mayor Roberts stated work has already begun, it is just not work that is as noticeable as roadways being constructed, etc.

Councilmember Lebakken ask if delays are due to supply issues.

Mr. Merkh stated yes, the vault had significant delays but so has acquiring easements.

Ms. Linn stated there will be a point where traffic will be detoured for tie ins in the roadway and the City will try to overcommunicate for those that live in and use that area daily.

With no further questions or comments, Mayor Roberts requested motion to approve Resolution No. 09-22-22B, authorizing the City to enter into a Development Agreement for a Housing Development Project with Kansas LD, LLC.

Councilmember Lewis moved to approve the resolution, seconded by Councilmember Longanecker. Resolution No. 09-22-22B was approved, 4-0.

13. CONSIDER RESOLUTION NO. 09-22-22C MAKING CERTAIN FINDINGS AND DETERMINATIONS AS TO THE NEED FOR HOUSING WITHIN THE CITY OF EDGERTON, KANSAS AND SETTING FORTH THE LEGAL DESCRIPTION OF REAL PROPERTY PROPOSED TO BE DESIGNATED AS A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY

Mr. Anderson stated Kansas law allows for a city to establish a RHID with a population of 60,000 or less. This is very similar to a tax increment finance district. He stated in a RHID, the tax increment generated from the new housing units is captured and can be used to reimburse the city for eligible project costs, such as streets and utility infrastructure. He stated in a TIF the increment is captured for up to 20 years, a RHID can capture the increment for up to 25 years. He stated unlike a TIF, RHID does capture the 8 mills for the school capital levy. He stated RHID has not been seen in Johnson County until now due previous restrictions on county population. He stated there are six steps to complete when establishing an RHID, the first step is completion of a housing needs analysis. He stated the housing analysis was completed in December 2020 and presented by ElevateEdgerton!. He stated step two is adoption of this resolution which states certain finding such as housing being limited in Edgerton. He stated once the resolution is approved by the Governing Body, it then goes to the Secretary of Commerce for approval and agreement with the findings listed in the resolution. He stated just like a TIF, the RHID is subject to veto by the county and school district, which is why a Public Hearing for the creation of such district must be held.

Councilmember Longanecker asked if the capturing of 8 mills means the school gets that amount.

Mr. Anderson stated unlike a TIF, the RHID gets to capture those mills.

Mayor Roberts stated they will still see revenue from students who will attend in the district.

Councilmember Lewis asked why the county and school get to veto.

Mr. Anderson stated the county and school have 30 days to adopt a resolution to veto. He stated this has been in the law for many years, it is just part of the process and has not changed.

Mayor Roberts stated to date, no county or school has vetoed it.

With no further questions or comments, Mayor Roberts requested motion to approve Resolution No. 09-22-22C Making Certain Findings and Determinations for establishment of a Rural Housing Incentive District.

Councilmember Longanecker moved to approve the resolution, seconded by Councilmember Lebakken. Resolution No. 09-22-22C was approved, 4-0

14. CONSIDER AN AGREEMENT BETWEEN BG CONSULTANTS AND THE CITY OF EDGERTON, KANSAS FOR THE ENGINEERING SERVICES FOR DWYER FARMS SANITARY SEWER IMPROVEMENTS

Mr. Merkh stated in August this year, the City Council approved the recommendation of the Planning Commission to approve an application for a Planned Unit Development for Dwyer Farms. He stated this project is proposed single family residential and will need sanitary sewer improvements at the onset of development. He stated the Sanitary Sewer project will have several hurdles as the proposed alignment crosses beneath existing rail, high pressure pipeline and an existing lake.

He stated BG Consultants has worked with the City on numerous occasions. They are available to start immediately and handle the coordination with both the rail and pipeline personnel. He stated city staff along with BG have worked to outline the needed easements.

With no questions or comments, Mayor Roberts requested motion to approve the Agreement with BG Consultants for Engineering Services for Dwyer Farms Sanitary Sewer Improvements.

Councilmember Longanecker moved to approve the agreement, seconded by Councilmember Beem. The agreement with BG Consultants was approved, 4-0.

15. CONSIDER RESOLUTION NO. 09-22-22D APPROVAL OF INDEMNITY AGREEMENT BETWEEN THE CITY AND THE EDGERTON UNITED METHODIST CHURCH FOR USE OF THE CHURCH PARKING LOTS DURING THE MEAT INFERNO EVENT

Ms. Paddock stated Meat Inferno is coming up on October 7 and 8 and the City is finalizing details as more teams are registering for the event. She stated to allow for more contestant parking, the City has asked the Church to use their parking lots for the event. To be covered by the City insurance, the indemnity agreement must be approved. She stated the agreement has been signed by a member of the church and must now approved by the governing body. She stated they have made a few requests, in addition to being covered under the City's insurance. They have requested the lots be cleaned prior to services the following Sunday and that if they should decide, the Church would be allowed a booth during the event.

With no questions or comments Mayor Roberts requested motion to approve Resolution No. 09-22-22D, approving the Indemnity Agreement with Edgerton United Methodist Church for use of their parking lots during the Meat Inferno event.

Councilmember Lewis moved to approve the motion, seconded by Councilmember Beem. Resolution No. 09-22-22D was approved, 4-0.

16. Report by the City Administrator

- Project Update: Stormwater Master Plan

Ms. Linn invited Public Works Director Dan Merkh to give an update on the Stormwater Master Plan.

Mr. Merkh addressed the Council. He stated staff has been working with Olsson to finalize the Stormwater Master Plan with updates from Council and the community. He stated in the discussion, Council had questions about the process of identifying Public vs. Private stormwater concerns. He stated in the draft Stormwater Master Plan provided to the Governing Body, five parameters are laid out that will help determine the difference. He stated it is important to note that not all five parameters listed have to be present to be a Public/Private concern, but they are used to help determine the level of concern and prioritize the project. He stated this method will be applied to future concerns when called in to City Hall, which will better help staff classify and track concerns.

He stated staff reviewed the project list with the revised parameters. He stated some projects changed, some were divided into more manageable sizes, and some had portions removed that would be considered private. He stated while a project size is set with this master plan, there is more capability of right-sizing the project scope in the future to match the conditions at that time.

He stated as the next steps, staff will work with Olsson to ensure all deliverables from the contract are complete and training will take place to begin applying the master plan. He stated going forward, staff will discuss the recommendations made by the master plan and develop a plan to address them. He stated the draft plan given to council to review is 99% complete and because of no major revisions from discussion, staff would plan to put the item on the agenda at the next council meeting for final acceptance.

Ms. Linn stated the idea behind this is to provide the city with a lens when reviewing community concerns. She stated when someone calls members of the governing body, they can be directed to city hall where staff will ask them to complete a questionnaire. She stated this will be given to help track the problem and prioritize the issue for further discussion which allows for more productivity and better understanding of what projects need to be addressed most quickly.

Councilmember Beem asked if there has been enough rain to study the new bridge on co-op.

Mr. Merkh stated there has not been a specific study, but staff at City Hall has not had any calls regarding water holding, drainage issues, etc. since the project has been complete.

Mayor Roberts stated the issues heard in the past were related to the project not yet being complete and having no established vegetation.

Mr. Merkh stated the intention is to mitigate what concerns they can at a staff level with the new process and procedure. He stated what is listed as projects will be seen at the CIP Work Session as unfunded where council can then decide what items will need to be funded vs. unfunded.

- Comprehensive Plan update

Ms. Linn stated she would like to remind everyone of the Envision Edgerton Comprehensive Plan and asks councilmembers to complete the survey and tell their neighbors to complete as well. She stated the more feedback received, the better.

17. Report by the Mayor

Mayor Roberts stated he had no report to give at this time.

18. Future Meeting Reminders:

- October 11th: Planning Commission Meeting – 7:00PM
- October 13th: City Council Meeting – 7:00PM
- October 13th: CIP Budget Work Session – Following Regularly Scheduled Meeting
- October 27th: City Council Meeting – 7:00PM
- November 8th: Planning Commission Meeting – 7:00PM
- November 10th: City Council Meeting – 7:00PM

Mayor Roberts stated he would like to talk about the holiday schedule at the next meeting. He stated it is likely that there will need to be two meetings in November. He stated the meeting on Thanksgiving is typically canceled and Council only meets once in November, but they will need to have a special meeting likely the week before Thanksgiving on November 17th. He stated he will request motions for approval of those meeting changes at the next council meeting.

19. Adjourn

Councilmember Lewis moved to adjourn, seconded by Councilmember Beem. All in favor. The meeting was adjourned at 7:56 PM.

Submitted by Alexandria Clower, City Clerk

City Council Action Item

Council Meeting Date: October 13, 2022

Department: Public Works

Agenda Item: Consider Final Acceptance of the Stormwater Master Plan

Background/Description of Item:

On May 14, 2020 City Council approved the professional services agreement (PSA) with Olsson Inc. to complete the Stormwater Master Plan.

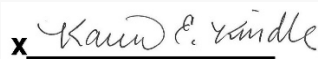
On November 18, 2021, City staff and Olsson presented an initial draft of the Master Plan to City Council. During the presentation several questions were presented from the City Council. The project team refined the definitions of public vs private issues as well as a closer look at proposed CIP projects.

On September 22, 2022 City Council heard the final report from Olsson.

The project was within the budget of \$160,000.

Related Ordinance(s) or Statue(s):

Funding Source: CIP Project Budget

x 

Finance Director Approval: Karen Kindle, Finance Director

Recommendation: Approve Final Acceptance of the Stormwater Master Plan

Enclosed: Draft Final Stormwater Master Plan distributed to City Council previously

Prepared by: Dan Merkh, Public Works Director

City Council Action Item

Council Meeting Date: October 13, 2022

Department: Community Development

Agenda Item: Consider Ordinance No. 2121 Adopting The Recommendation Of The City Of Edgerton Planning Commission To Approve Application ZA2022-02 For The Rezoning Of Approximately 5.61 Acres Of Land Located On 8th Street/Edgerton Road South Of Nelson Street And North Of Meriwood Lane, From City Of Edgerton "R-1" (Single Family Residential) To City Of Edgerton "R-2" (Two Family Residential) Zoning

Background/Description of Item: The City of Edgerton received rezoning Application ZA2022-02 from Shawn Faruqi, property owner of a parcel of land totaling approximately 5.61 acres, generally located on 8th Street/Edgerton Road south of Nelson Street and north of Meriwood Lane, requesting to rezone that property from City of Edgerton "R-1" (Single Family Residential) to City of Edgerton "R-2" (Two Family Residential).

The property owner/applicant states that this rezoning request is to allow for the future development of two-family residential dwellings, duplexes. The R-2 zoning district does have the same permitted uses of that of R-1, so the possibility of single-family residential development is not lost with the rezoning.

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 September 13, 2022 regarding this rezoning request and voted to recommend approval of Application ZA2022-02 subject to the following stipulations:

1. All infrastructure requirements of the City are met.

Copies of the staff report and draft minutes are included with this packet.

The City Attorney has not yet reviewed the draft enclosed Ordinance No. 2121. Any changes will be provided at the October 13, 2022 City Council meeting.

Related Ordinance(s) or Statue(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: Approve Ordinance No. 2121 Adopting The Recommendation Of The City Of Edgerton Planning Commission To Approve Application ZA2022-02 For The Rezoning Of Approximately 5.61 Acres Of Land Located On 8th Street/Edgerton Road South Of Nelson Street And North Of Meriwood Lane, From City Of Edgerton "R-1" (Single Family Residential) To City Of Edgerton "R-2" (Two Family Residential) Zoning

Enclosed:

- Draft Ordinance No. 2121
- Staff Report from September 13, 2022 Planning Commission Meeting
- Draft minutes from the September 13, 2022 Planning Commission Meeting

Prepared by: Beth Linn, City Administrator

ORDINANCE NO. 2121

AN ORDINANCE ADOPTING THE RECOMMENDATION OF THE CITY OF EDGERTON PLANNING COMMISSION TO APPROVE APPLICATION ZA2022-02 FOR THE REZONING OF APPROXIMATELY 5.61 ACRES OF LAND LOCATED ON 8TH STREET/EDGERTON ROAD SOUTH OF NELSON STREET AND NORTH OF MERIWOOD LANE, FROM CITY OF EDGERTON "R-1" (SINGLE FAMILY RESIDENTIAL) TO CITY OF EDGERTON "R-2" (TWO FAMILY RESIDENTIAL) ZONING

WHEREAS, the Planning Commission of the City of Edgerton, Kansas received a request from Shawn Faruqi, property owner of a parcel of land totaling approximately 5.61 acres, generally located on 8th Street/Edgerton Road south of Nelson Street and north of Meriwood Lane, to rezone that property from City of Edgerton "R-1" (Single Family Residential) to City of Edgerton "R-2" (Two Family Residential); and

WHEREAS, following a public hearing in front of the Planning Commission on September 13, 2022, the Planning Commission has recommended that the rezoning request for that property – from City of Edgerton "R-1" (Single Family Residential) to City of Edgerton "R-2" (Two Family Residential) -- 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 on 8th Street/Edgerton Road south of Nelson Street and north of Meriwood Lane, is hereby rezoned from City of Edgerton "R-1" (Single Family Residential) to City of Edgerton "R-2" (Two Family Residential), and that City Staff is hereby directed to reflect said rezoning in the City's Official Zoning map and other City records:

A Tract of land being located in the west 370 feet of the North 660 feet of Lot 24 in County Clerks Subdivision of the Northwest Quarter of Section 7, Township 15 South, Range 22 East of the 6th P.M. in the City of Edgerton, Johnson County, Kansas.

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

- a) All infrastructure requirements of the City shall be met.

Section 3. That the Governing Body, in making its decision on the rezoning, based its decision on City Staff's comments and recommendations as they relate to the Golden criteria and otherwise, which are attached hereto. 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 13th DAY OF OCTOBER, 2022.

CITY OF EDGERTON, KANSAS

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

APPROVED AS TO FORM:

Lee Hendricks, City Attorney

FARUQI PROPERTY

Application ZA2022-02

8th Street/Edgerton Road Between Nelson Street and Meriwood Lane

QUICK FACTS

PROJECT SUMMARY AND REQUESTED APPROVALS

The Applicant is requesting approval to rezone a parcel of land located on 8th Street/Edgerton Road south of Nelson Street and north of Meriwood Lane from R-1 to R-2.

A Public Hearing is required.

Owner and Applicant

Shawn Faruqi, Applicant

Zoning and Land Use

Currently R-1 (City of Edgerton Single Family Residential) with no existing improvements

Legal Description

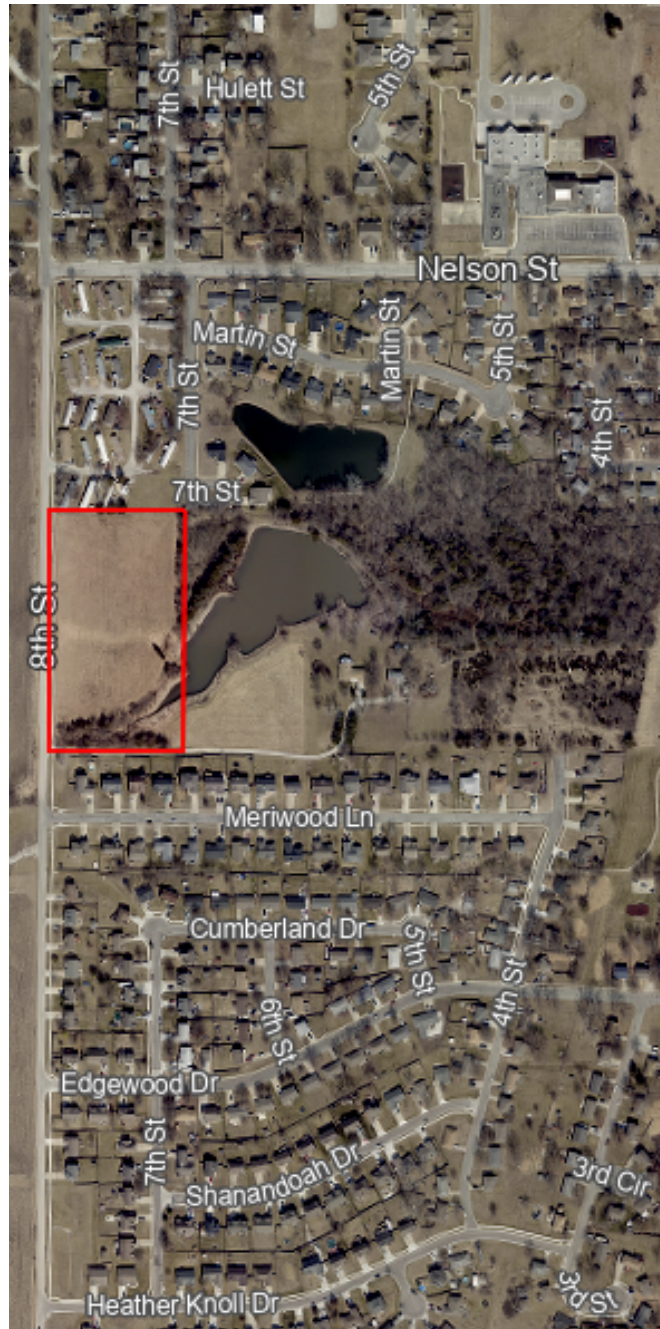
The west 370 feet of the north 660 feet of Lot 24, County Clerks Subdivision of the northwest ¼ of Section 17, Township 15 South, Range 21 East, in the City of Edgerton, Johnson County, Kansas

Parcel Size

5.61 acres

Staff Report Prepared by

Chris Clinton



BACKGROUND

Subject Site

The parcel is located within the Bull Creek watershed.

Utilities and service providers:

- a. Water Service – City of Edgerton.
- b. Sanitary Sewer - City of Edgerton.
- c. Electrical Service - Evergy.
- d. Gas Service – Kansas Gas Service.
- e. Police protection is provided by the City of Edgerton through the Johnson County Sheriff's Office.
- f. Fire protection is provided by Johnson County Fire District #1.

Site History and Past Approvals

The subject parcel has not had any applications submitted to the City for approval in recent history. The subject parcel was platted in 1912 and has been undeveloped and used for agricultural purposes since 2006 per Johnson County AIMS. City staff was unable to determine when the zoning designation of R-1, Single Family Residential, was assigned to the parcel.

Proposed Use

The applicant is requesting to rezone the parcel from City of Edgerton R-1 to R-2, Two Family Residential. The Edgerton Unified Development Code (UDC) states the purpose of the R-2 district "is to provide two family residential structures in neighborhood locations close to the community facilities and services." The property owner/applicant states that this rezoning request is to allow for the future development of two-family residential dwellings, duplexes. The R-2 zoning district does have the same permitted uses of that of R-1, so the possibility of single-family residential development is not lost with the rezoning.

Project Timeline

- Application submitted to the City: August 9, 2022
- Public Hearing Notice Published: August 24, 2022
- Public Hearing Notices Mailed: August 19, 2022 (sent to 11 properties)

REZONING REVIEW

Figure 1 below shows the current zoning of the neighboring properties:

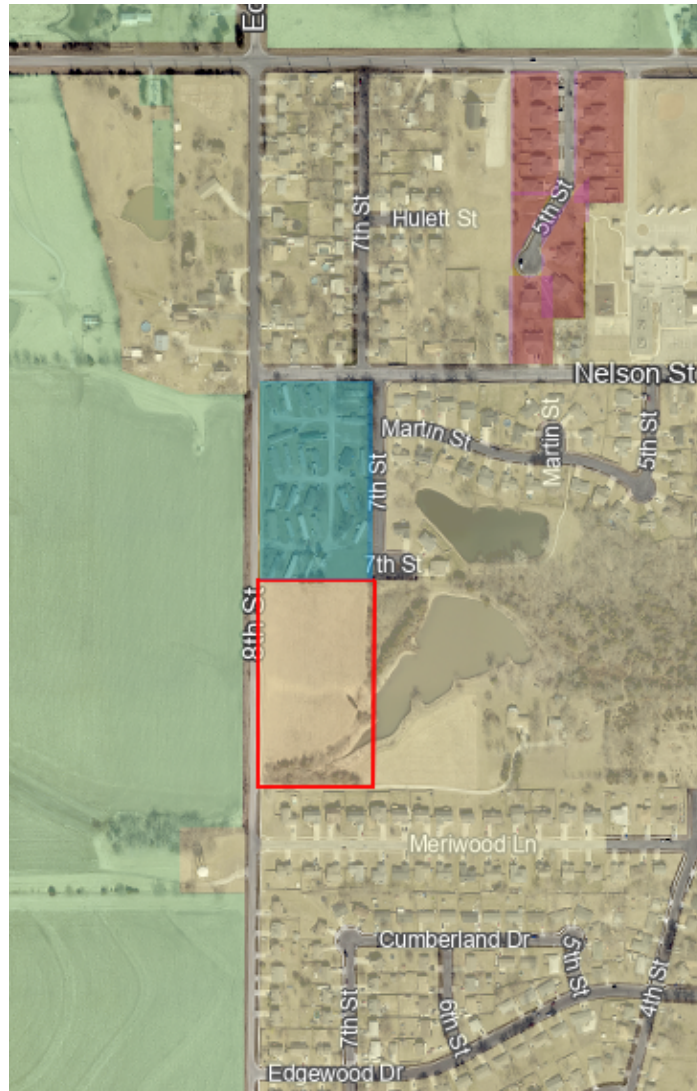


Figure 1 – Subject Parcel Outlined in Red

Green: Johnson County RUR
Beige: City of Edgerton Single-Family Residential (R-1)
Blue: City of Edgerton Manufactured Home Park (MHP)
Pink: City of Edgerton R-2

Staff has reviewed the rezoning application with respect to the Edgerton UDC, the laws of Kansas, and the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. Review comments are listed below.

1. **Need for the Proposed Change** –The applicant has requested that this parcel be rezoned to R-2 to allow for the future development of two-family residential dwellings, (i.e. duplexes). The current zoning of R-1 does not allow for the development of duplexes on this parcel.
2. **Magnitude of the Change** – This parcel borders a parcel that is zoned Manufactured Home Park (MHP) to the north and Single Family Residential (R-1) to the south. There is a R-2 zoned parcel located less than two tenths of a mile (0.2) to the northeast. The requested R-2 zoning designation is a common request to serve as transitional zoning between traditional single family (R-1) zoning and more dense zoning classifications such as MHP. Therefore, the magnitude of change would not be considered unusual.
3. **Whether or not the change will bring harm to established property rights** - The subject property is located near and adjacent to other residential uses. The proposed development has a similar density than those of surrounding residential areas and will not change any property rights to the neighboring properties.
4. **Effective use of Land** –This would be an effective use of the land as it meets two goals of the City’s Comprehensive Plan to (1) promote compact and well-connected infill development adjacent to existing neighborhoods and (2) direct urban growth to locations where water and sewer services are located nearby.
5. **The extent to which there is a need in the community for the uses allowed in the proposed zoning** – A 2021 Edgerton housing study indicated that there is a need for all types of housing in Edgerton. One strategic objective of the housing study was to provide a range of housing environments by offering moderately priced housing types which meet the housing need for households that are at different points in their life. A critical component for housing in the Edgerton community is ‘move-up’ housing – new housing that will allow existing residents to move into housing that better fits their needs while allowing them to continue living in the community they have become an integral part of. Additionally, the City’s Comprehensive Plan Housing Policies encourage the City to provide a variety of housing types including multi-family, duplex and single-family detached units. Rezoning this parcel to R-2 for residential development could help to fulfill some of Edgerton’s housing need.
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** – As shown in Figure 1 of this Staff Report, the subject parcel is near other parcels which currently contain a residential zoning designation. Directly north is an existing manufactured home park that would have a higher density than that of single-family homes. The parcel to the south does contain single-family homes and a R-1 zoning designation. The parcels abutting the west boundary of the subject parcel are currently zoned Johnson County RUR and the parcel to the east is currently zoned R-1 with no existing development. The parcel also contains a small portion of private pond (mostly on adjacent property) and some areas within Zone AE of the floodway which will require special consideration during development.
7. **Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties** – As noted in #6 above, the proposed zoning is compatible with the existing zoning of neighboring and nearby parcels. The proposed zoning would allow for two-family dwelling units (i.e. duplexes), single family attached dwellings or single family detached units. The proposed zoning and land use is consistent with the City’s Future Land Use Map.
8. **Suitability of the uses to which the property has been restricted under its existing zoning** – The current zoning of R-1 allows for the development of single-

family homes among other uses. The applicant has proposed duplexes be constructed on this parcel, which is not an approved use for the current zoning.

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 dating back to at least 2006.
10. **The extent to which the zoning amendment may detrimentally affect nearby property** - This parcel is located north of parcels which today contain a City of Edgerton R-1 zoning designation and south of a manufactured home park. The addition of duplexes between the two uses would allow for a transition between the zoning classifications and densities of housing. Edgerton's Comprehensive Plan encourage the allowance of higher density housing to occur within established neighborhoods provided that "careful attention is paid to site design and neighborhood capability." If rezoned 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 overall density and size of project, building size and scale, buffering, screening, open space, lighting, traffic, and on-site parking. This Site Plan review will help mitigate impact that might occur to adjacent properties.
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** - Edgerton's Comprehensive Plan directs urban growth to locations where water and sewer services exist or can be economically extended. Water, electric, and gas utilities are located in the right-of-way adjacent to this parcel. The sanitary sewer main is nearby off of 7th Street. Adjacency of utilities is one of the most compelling reasons for infill development of this property as the cost to extended adjacent utilities is typically more economical and additional users of the utility systems can make the systems operative more efficiently.
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** - Edgerton Unified Development Code (UDC) prohibits the individual lots on this parcel to connect directly to West 8th Street. If rezoned 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 how the development would impact the capacity of safety of the adjacent road network such as overall density and size of project, traffic, on-site parking, etc. This would the requirement for construction of street to serve future lots on this property. The Site Plan review will help mitigate impact that might occur to adjacent properties.
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 (SWPPP) that is reviewed by the City and the State. A full stormwater study of the site is also required and will be reviewed by the City Engineer prior to the issuance of a Land Disturbance Permit. Finally, there is a portion of the parcel within Zone AE of the floodway, in addition to a small portion within Zone X Future Conditions. These areas would require additional review and regulations related to the development during the site plan process.

15. **The economic impact on the community from the uses allowed in the proposed zoning** –The additional lots created by future development would generate additional property taxes would benefit the community. Additionally as stated in #5, a 2021 Edgerton housing study indicated that there is a need for all types of housing in Edgerton. One strategic objective of the housing study was to provide a range of housing environments by offering moderately priced housing types which meet the housing need for households that are at different points in their life.
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.
17. **Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton** - The Edgerton Comprehensive Plan lists this area (between West 8th St to West 1st St; McDonald to Meriwood) as an opportunity for infill development. The Comprehensive Plan stresses the importance of thinking about how each parcel connects and relates to adjacent and nearby sites. There are tremendous opportunities to develop a unique land use pattern to serve both the community and compliment nearby subdivisions. The proposed rezoning would also meet several urban growth policies to (1) direct urban growth to locations where water and sewer services exist or can be economically extended; (2) promote infill development, when possible, for new residential and commercial uses; (3) promote compact growth and prevent scattered development and (4) require new urban development to connect to municipal utility service and infrastructure.
18. **The recommendation of professional staff** - See Recommendation below.

NOTICE OF CITY CODES AND PERMITS

The Applicant is subject to all applicable City codes – whether specifically stated in this report or not – including, but not limited to, Zoning, Buildings and Construction, Subdivisions, and Sign Code. The Applicant is also subject to all applicable local, State, and Federal laws.

Various permits may be required in order to complete this project. Please contact the Building Codes Division of the Community Development Department for more information about City permits. The project may also be subject to obtaining permits and/or approvals from other local, County, State, or Federal agencies.

DOCUMENTS INCLUDED IN PACKET

Sheet #	Title	Date on Document
Application	Application for ZA2022-02	08/09/2022
1	Future Land Use Map	03/10/2011

STAFF RECOMMENDATION

City Staff recommends approval of Rezoning **Application ZA2022-02** for *Faruqi Property*, subject to the following stipulations:

1. All infrastructure requirements of the City are met.

Note: For Application ZA2022-02 the Planning Commission will be recommending either approval or denial of the application to the Governing Body. If the Planning Commission recommends approval, the Application will be presented to the Governing Body on October 13, 2022.

1. **PUBLIC HEARING REGARDING APPLICATION ZA2022-02 FOR REZONING 5.61 ACRES GENERALLY LOCATED ALONG 8TH STREET/EDGERTON ROAD, NORTH OF MERIWOOD LANE AND SOUTH OF NELSON STREET FROM CITY OF EDGERTON SINGLE FAMILY RESIDENTIAL (R-1) TO TWO FAMILY RESIDENTIAL (R-2)**

Applicant: Shawn Faruqi, Property Owner

Chairperson Daley opened the public hearing.

Mr. James Oltman, President of ElevateEdgerton!, addressed the Commission. He said he is speaking to them to urge the recommend approval of this rezoning. He explained there is a housing need in Edgerton. The approval of the Concept Plan for the Planned Unit Development was a start to addressing this need, but it is not enough. The City also needs housing options to fit different needs and different age ranges. The best solution is to have housing option of all types. He explained that not everyone can own home or maintain a whole house, and others do not want to own at this time. Mr. Oltman stated over 80% of the homes in Edgerton are owner-occupied single-family homes and less than 1% of homes are town homes or duplexes. He said the approval of this rezoning is a start to address all of the community's housing needs.

Chairperson Daley closed the public hearing.

2. **CONSIDER APPLICATION ZA2022-02 FOR REZONING 5.61 ACRES GENERALLY LOCATED ALONG 8TH STREET/EDGERTON ROAD, NORTH OF MERIWOOD LANE AND SOUTH OF NELSON STREET FROM CITY OF EDGERTON SINGLE FAMILY RESIDENTIAL (R-1) TO TWO FAMILY RESIDENTIAL (R-2)** Applicant is Shawn Faruqi, Property Owner

Mr. Shawn Faruqi, Property Owner, addressed the Commission. He stated he has been in Edgerton for twenty (20) years and owns rental properties. He said this property is south of the mobile home park and is a good transition between that and single family residential. He said traffic will have an easy access point to 8th Street/Edgerton Road.

Ms. Linn addressed the Commission. She stated the application for rezoning is to change the zoning from R-1, which is Single Family Residential to R-2, which is Two Family Residential. She explained the zoning map shown in the packet.

Ms. Linn explained City staff reviewed the rezoning application with respect to the Edgerton UDC, the law of Kansas, and the "Golden Criteria" as established by the Supreme Court of Kansas in 1978. She went through the Golden Criteria:

1. **Need for the Proposed Change** –The applicant has requested that this parcel be rezoned to R-2 to allow for the future development of two-family residential dwellings, such as duplexes. The current zoning of R-1 does not allow for the development of duplexes on this parcel.
2. **Magnitude of the Change** – This parcel borders a parcel that is zoned Manufactured Home Park (MHP) to the north and Single Family Residential (R-1) to the south. There is a R-2 zoned parcel located less than two tenths of a mile (0.2) to the northeast. The

requested R-2 zoning designation is a common request to serve as transitional zoning between traditional single family (R-1) zoning and more dense zoning classifications such as MHP. Therefore, the magnitude of change would not be considered unusual.

3. **Whether or not the change will bring harm to established property rights** - The subject property is located near and adjacent to other residential uses. The proposed development has a similar density than those of surrounding residential areas and will not change any property rights to the neighboring properties.
4. **Effective use of Land** –This would be an effective use of the land as it meets two goals of the City’s Comprehensive Plan to (1) promote compact and well-connected infill development adjacent to existing neighborhoods and (2) direct urban growth to locations where water and sewer services are located nearby.
5. **The extent to which there is a need in the community for the uses allowed in the proposed zoning** – A 2021 Edgerton housing study indicated that there is a need for all types of housing in Edgerton. One strategic objective of the housing study was to provide a range of housing environments by offering moderately priced housing types which meet the housing need for households that are at different points in their life. A critical component for housing in the Edgerton community is move-up housing which is new housing that will allow existing residents to move into housing that better fits their needs while allowing them to continue living in the community they have become an integral part of. Additionally, the City’s Comprehensive Plan Housing Policies encourage the City to provide a variety of housing types including multi-family, duplex and single-family detached units. Rezoning this parcel to R-2 for residential development could help to fulfill some of Edgerton’s housing need.
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** – As shown in Figure 1 of the Staff Report, the subject parcel is near other parcels which currently contain a residential zoning designation. Directly north is an existing manufactured home park that would have a higher density than that of single-family homes. The parcel to the south does contain single-family homes and a R-1 zoning designation. The parcels abutting the west boundary of the subject parcel are currently zoned Johnson County RUR and the parcel to the east is currently zoned R-1 with no existing development. The parcel also contains a small portion of private pond, mostly on adjacent property, and some areas within Zone AE of the floodway which will require special consideration during development.
7. **Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties** – As noted in #6 earlier, the proposed zoning is compatible with the existing zoning of neighboring and nearby parcels. The proposed zoning would allow for two-family dwelling units, single family attached dwellings or single family detached units. The proposed zoning and land use is consistent with the City’s Future Land Use Map.

8. **Suitability of the uses to which the property has been restricted under its existing zoning** – The current zoning of R-1 allows for the development of single-family homes among other uses. The applicant has proposed duplexes be constructed on this parcel, which is not an approved use for the current zoning.
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 dating back to at least 2006.
10. **The extent to which the zoning amendment may detrimentally affect nearby property** - This parcel is located north of parcels which today contain a City of Edgerton R-1 zoning designation and south of a manufactured home park. The addition of duplexes between the two uses would allow for a transition between the zoning classifications and densities of housing. Edgerton's Comprehensive Plan encourage the allowance of higher density housing to occur within established neighborhoods provided that "careful attention is paid to site design and neighborhood capability." If rezoned as requested, a separate Site Plan review and approval would be required prior to the issuance of any building permits. Ms. Linn reminded the Commission that the zoning of a parcel determines the appropriate use of land, and a plat will divide the land. She stated part of a Site Plan review would include attention to overall density and size of project, building size and scale, buffering, screening, open space, lighting, traffic, and on-site parking. This Site Plan review will help mitigate impact that might occur to adjacent properties.
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** – Edgerton's Comprehensive Plan directs urban growth to locations where water and sewer services exist or can be economically extended. Water, electric, and gas utilities are located in the right-of-way adjacent to this parcel. The sanitary sewer main is nearby off of 7th Street. Adjacency of utilities is one of the most compelling reasons for infill development of this property as the cost to extended adjacent utilities is typically more economical and additional users of the utility systems can make the systems operative more efficiently.
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** – The UDC prohibits the individual lots on this parcel to connect directly to West 8th Street. If rezoned 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 how the development would impact the capacity of safety of the adjacent road network such as overall density and size of project, traffic, on-site parking, etc. This would be the requirement for construction of street to serve future lots on this property. The Site Plan review will help mitigate impact that might occur to adjacent properties.

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 (SWPPP) that is reviewed by the City and the State. A full stormwater study of the site is also required and will be reviewed by the City Engineer prior to the issuance of a Land Disturbance Permit. Finally, there is a portion of the parcel within Zone AE of the floodway, in addition to a small portion within Zone X Future Conditions. These areas would require additional review and regulations related to the development during the site plan process.
15. **The economic impact on the community from the uses allowed in the proposed zoning** –The additional lots created by future development would generate additional property taxes would benefit the community. Additionally, as stated in #5, a 2021 Edgerton housing study indicated that there is a need for all types of housing in Edgerton. One strategic objective of the housing study was to provide a range of housing environments by offering moderately priced housing types which meet the housing need for households that are at different points in their life.
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.
17. **Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton** - The Edgerton Comprehensive Plan lists this area, between West 8th Street to West 1st Street and McDonald Street to Meriwood Lane, as an opportunity for infill development. The Comprehensive Plan stresses the importance of thinking about how each parcel connects and relates to adjacent and nearby sites. There are tremendous opportunities to develop a unique land use pattern to serve both the community and compliment nearby subdivisions. The proposed rezoning would also meet several urban growth policies to (1) direct urban growth to locations where water and sewer services exist or can be economically extended; (2) promote infill development, when possible, for new residential and commercial uses; (3) promote compact growth and prevent scattered

development and (4) require new urban development to connect to municipal utility service and infrastructure.

18. **The recommendation of professional staff** – City staff's recommendation will be provided shortly.

Chairperson Daley said it is possible to get six (6) to eight (8) duplex per acre. Ms. Linn stated this is a good opportunity to work with applicant to work potential layouts for the lots. Chairperson Daley said it could provide homes for around forty (40) individuals.

Commissioner Draskovich inquired if the driveway north of Meriwood Lane was on this property. Ms. Linn answered it is and a traffic study will need to be done to see best location for the connection of the driveway to allow access to the house that is on another parcel. Commissioner Draskovich stated it would be interesting to have a roadway to a house.

Chairperson Daley asked if the R-2 zoning designation would allow duplexes be constructed next to single family houses. Ms. Linn answered it would and allows more flexibility as to what housing is constructed. Commissioner Little stated the main change to the rezoning is to allow duplexes instead of houses and asked why the applicant is making the request for rezoning. Mr. Ben Gasper, SMH Consulting, owner representative, replied that the rezoning would allow duplexes with smaller lot setbacks and more density than just single-family homes. He stated the current zoning would allow single-family residential to be built, but the applicant would like the opportunity to construct duplexes as well. Ms. Linn explained the duplexes can be together to where single-family residences have to have a side yard setback. Chairperson Daley asked if the lot width would stay the same. Ms. Linn answered it would. Commissioner Draskovich asked there would be any distance between structures. Mr. Gasper said there would still be setbacks that have to be adhered to. Ms. Linn stated it is not an application for a Planned Unit Development so the requirements in the UDC will have to be followed for development.

Commissioner Little stated the Staff Report mentions that the R-2 zoning would be a good transition from MHP to R-1. He asked if there is a section of code that requires that type of transition. Ms. Linn replied it is not required by code, but it is an industry standard and planning best practice to have transitions like that. She explained it is typical to see steps in the zoning designations. If there is a big box store, it is typically near apartments, then duplexes or condos before single-family residential areas. She said there is no requirement for the transition, but it is what is often seen in standard development. Ms. Linn explained the R-2 zoning designation would allow duplexes and single-family residential development as well.

Commissioner Little stated there were upgrades to the stormwater system last year at 8th Street and Meriwood Lane. He explained that the area still has flooding in backyards. Ms. Linn inquired if the work was done during street reconstruction. Commissioner Little said the work was only at 8th Street and Meriwood Lane. Ms. Linn stated that work was not part of street reconstruction. Commissioner Crooks asked if any stormwater information was provided. Ms. Linn replied that a full stormwater study will need to be completed prior to development. She explained the applicant will need to show the current conditions in terms of flow and how it is kept the same after development. The City Engineer will be able for questions later in the development process. She stated there will be more pavement and

that means the area is wet longer but the places to where the stormwater goes and how quickly it gets there will need to remain the same. Commissioner Crooks stated there is floodplain to the east and development would bring more concrete and structures. Commissioner Draskovich said the pond could actually dry out, which is just as bad. Ms. Linn said that is correct and why a stormwater study will need to be done, but single-family residences can still be developed as it is currently zoned for that. Commissioner Draskovich clarified the site could be developed at any time. Ms. Linn stated that is correct.

Chairperson Daley stated he believes this parcel is a good spot for the R-2 zoning.

Commissioner Little said in Golden Criteria number 17, the Staff Report reads that the rezoning would promote infill development, when possible, for new residential and commercial uses. He inquired as to why the Staff Report mentions commercial uses. Ms. Linn explained that is a direct quote from the Comprehensive Plan. Commissioner Draskovich stated the commercial component does not apply for this application. Commissioner Crooks said it is confusing how it is written. Ms. Linn reminded the Commission that the City is currently working on updating the Comprehensive Plan and it will change how it reads. She then reminded the Commission that when a motion is made, the Commission needs to add rationale behind the motion.

Commissioner Crooks asked if there were any plans submitted with the rezoning application. Chairperson Daley explained this application is to decide if the land use makes sense, not what is to be built.

Commissioner Draskovich moved to recommend approval of Application ZA2022-02 with the stipulations outlined by City staff to the Governing Body based on the Golden Criteria in the Staff Report. Commissioner Crooks seconded the motion. Application ZA2022-02 was recommended for approval with the stipulations outlined by City staff based on the Golden Criteria, 2-1, Commissioner Little was the dissenting vote.

City Council Action Item

Council Meeting Date: October 13, 2022

Department: Community Development

Agenda Item: Consider Ordinance No. 2122 Adopting The Planning Commission's Recommendation To Approve A Conditional Use Permit (CU2022-01) Allowing A Cargo Container Storage, Repair Or Maintenance Facility On Property Located On The Northeast Corner Of 191st Street And Montrose Street (30650/30700 West 191st Street), Edgerton, Kansas

Background/Description of Item:

The City of Edgerton has received Application CU2022-01 requesting a Conditional Use Permit (CUP) to operate a cargo container storage, repair or maintenance facility at 30650/30700 West 191st Street (northeast corner of 191st Street and Montrose Street). The applicant and landowner is JB Hunt Transport, Inc. As outlined in approved Final Site Plan (FS2022-03), the Project is for the expansion of the current JB Hunt facility and operations. The current operations include a cargo container storage lot. Expansion of these operations would require the issuance of a new Conditional Use Permit (CUP) that would encompass existing and new operations on the site.

Pursuant to City of Edgerton Unified Development Code (UDC), Article 7, Section 7.2.(G)(7), cargo container storage, repair or maintenance facilities are considered a conditional use on parcels which contain an L-P zoning designation.

In order to recommend approval or disapproval of a proposed CUP, the Governing Body shall determine whether the proposed use is found to be generally compatible with surrounding development and is in the best interest of the City. In making such determination, Article 7, Section 7.1(C) of the UDC states that the Governing Body may consider all factors they deem relevant. In addition, Section 7.2(G) of the UDC details additional requirements to be considered when approving a CUP for a cargo container storage, repair or maintenance facility. City Staff has reviewed Application CU2022-01 with respect to all these requirements. The staff report presented to the Planning Commission outlining the findings of staff's review is included in the packet.

On September 13, 2022 the City of Edgerton Planning Commission held a public hearing regarding Application CU2022-01. Upon conclusion of the public hearing, the Planning Commission recommended approval of Application CU2022-01 with the following stipulations:

1. The Conditional Use Permit CU2022-01 approval shall be transferable, but it must stay with the ownership of these parcels for which its use is approved (Final Plat Application FP2021-04);
2. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements. The applicant shall comply with height requirements by limiting cargo container stacking to not exceed the maximum of 5 (five) cargo containers. This condition shall be continually met for the duration of the conditional use permit.
3. The property shall be developed in accordance with the Final Site Plan Application FS2022-03 and any stipulations, to be approved by the Planning Commission, prior to commencement of the cargo container storage use.
4. Landscaping material shall be continuously maintained and replaced when dead.
5. No other outside storage of equipment or materials shall be allowed on the property.
6. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a new, revised Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.
7. This Conditional Use Permit shall be valid for 10 (ten) years from date of approval by the City of Edgerton Governing Body.

Staff recommends approval of CU2022-01 for a period of ten (10) years subject to the stipulations outlined by the Planning Commission and the additional stipulation required by City Staff.

The City Attorney has not yet reviewed the draft enclosed Ordinance No. 2122 Any changes will be provided at the October 13, 2022 City Council meeting.

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

Funding Source: N/A

Budget Allocated: N/A

Finance Director Approval: N/A

Recommendation: Approve Ordinance No. 2122 Adopting The Planning Commission's Recommendation To Approve A Conditional Use Permit (CU2022-01) Allowing A Cargo Container Storage, Repair Or Maintenance Facility On Property Located On The Northeast Corner Of 191st Street And Montrose Street (30650/30700 West 191st Street), Edgerton, Kansas

Enclosed:

- Draft Ordinance No. 2122
- CU2022-01 Staff Report prepared for the September 13, 2022 Planning Commission Meeting
- Excerpt from draft Minutes – September 13, 2022 Planning Commission Meeting.
- FS2022-03 Staff Report prepared for September 13, 2022 Planning Commission Meeting.

Prepared by: Beth Linn, City Administrator

ORDINANCE NO. 2122

AN ORDINANCE ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE A CONDITIONAL USE PERMIT (CU2022-01) ALLOWING A CARGO CONTAINER STORAGE, REPAIR OR MAINTENANCE FACILITY ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF 191ST STREET AND MONTROSE STREET (30650/30700 WEST 191ST STREET), EDGERTON, KANSAS

WHEREAS, the City of Edgerton received Application CU2022-01 for a Conditional Use Permit from JB Hunt Transport, Inc. (the "Applicant") on or about March 3, 2022 for property located at 30650/30700 West 191st Street (Northeast Corner of 191st Street and Montrose Street), Edgerton, Kansas (the "Property"); and

WHEREAS, both at the time of application and at the time of the signing of this Ordinance, the Property is owned JB Hunt Transport, Inc.; and

WHEREAS, the Applicant is requesting permission to operate, pursuant to the specific terms of a Conditional Use Permit, a cargo container storage, repair or maintenance facility; and

WHEREAS, the Edgerton Planning Commission held a public hearing on September 13, 2022 on the requested Conditional Use Permit in accordance with the requirements as set forth in the Edgerton Zoning Regulations; and

WHEREAS, the Edgerton Planning Commission voted to approve the Conditional Use Permit request, for a period of ten (10) years, conditioned on the following being adhered to by the Applicant and any future owner or tenant of the Property within that ten-year period (hereinafter referred to as "Applicant/Owner"):

1. The Conditional Use Permit CU2022-01 approval shall be transferable, but it must stay with the ownership of these parcels for which its use is approved (Final Plat Application FP2021-04);
2. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements. The applicant shall comply with height requirements by limiting cargo container stacking to not exceed the maximum of 5 (five) cargo containers. This condition shall be continually met for the duration of the conditional use permit.
3. The property shall be developed in accordance with the Final Site Plan Application FS2022-03 and any stipulations, to be approved by the Planning Commission, prior to commencement of the cargo container storage use.
4. Landscaping material shall be continuously maintained and replaced when dead.
5. No other outside storage of equipment or materials shall be allowed on the property.

6. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a new, revised Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.
7. This Conditional Use Permit shall be valid for 10 (ten) years from date of approval by the City of Edgerton Governing Body.

WHEREAS, the City Governing Body, after reviewing the Conditional Use Permit and considering the criteria set forth in Article 7 of the City Zoning Regulations and the recommendations of the Planning Commission, finds the Conditional Use Permit should be approved upon the terms described above.

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

Section 1. The proposed Conditional Use Permit for a cargo container storage, repair or maintenance facility is hereby approved for the property located at 30650/30700 West 191st Street, Edgerton, Kansas.

Section 2. The Conditional Use Permit approved by this Ordinance is expressly conditioned on the Applicant's/Owner's strict compliance with the seven (7) Conditions set forth above, which were recommended by the Edgerton Planning Commission City Staff and approved by the City of Edgerton City Council.

Section 3. The validity of this Conditional Use Permit is conditioned upon the strict compliance by the Applicant/Owner with the provisions contained herein as well as strict compliance with the City of Edgerton Zoning Regulations. Should Applicant/Owner fail to comply with any term or provision thereof and should such failure continue following written notice from City to Applicant/Owner specifying the breach and actions to be taken to cure the same, then, at the direction of the City Administrator, Applicant/Owner will be notified that this Conditional Use Permit is revoked, and all uses permitted herein on the Property must immediately cease. Reinstatement following default may only occur through action of the Governing Body. Wholly separate and apart from the specific conditions of the City's Zoning Regulations are the City's interest and duties to protect the public health, safety and welfare. Applicant/Owner agrees that this Ordinance shall not operate or be construed to impede or impair the lawful function of City government operation in this area.

Section 4. This Ordinance shall take effect and be enforced from and after its publication once in the official city newspaper. All Zoning and Regulations of the City of Edgerton, Kansas affecting the use of the Property heretofore described which are inconsistent with this Ordinance are hereby made inapplicable to said Property until the Conditional Use Permit is vacated or is declared null and void.

PASSED by the Governing Body of the City of Edgerton, Kansas and approved by the Mayor on the 13th day of October, 2022.

CITY OF EDGERTON, KANSAS

DONALD ROBERTS, Mayor

ATTEST:

ALEXANDRIA CLOWER, City Clerk

APPROVED AS TO FORM:

LEE W. HENDRICKS, City Attorney

JB HUNT TRANSPORT

Application CU2022-01

30650/30700 W. 191st Street (Northeast corner of 191st Street and Montrose Street)

QUICK FACTS

PROJECT SUMMARY AND REQUESTED APPROVALS

The Applicant is requesting approval of a Conditional Use Permit for 30650/30700 W. 191st Street (northeast corner of 191st Street and Montrose Street).

**This application requires a
Public Hearing.**

Owner and Applicant

JB Hunt Transport, Inc.
represented by Derek Kennemer,
Agent and Property Owner

Zoning and Land Use

L-P (Logistics Park) which has been developed with a cargo container storage lot on the eastern side of the property.

Legal Description

The S ½ of the SW ¼ of Section 35, Township 14 S, Range 22 E, in the City of Edgerton, Johnson County, Kansas; please see attached application for complete Legal Description

Parcel Size

29.62 acres

Staff Report Prepared by

Chris Clinton



BACKGROUND

Subject Site

The parcel is located within the Bull Creek watershed and was annexed into the City of Edgerton on June 10, 2021.

Utilities and service providers:

- a. Water Provider - Johnson County Rural Water District #7.
- b. Sanitary Sewer - City of Edgerton.
- c. Electrical Service - Evergy.
- d. Gas Service – Kansas Gas Service.
- e. Police protection is provided by the City of Edgerton through the Johnson County Sheriff's Office.
- f. Fire protection is provided by Johnson County Fire District #1.

Site History and Past Approvals

The Edgerton City Council gave final approval to rezone the original platted parcel from Johnson County *RUR* to Edgerton *L-P, Logistics Park* zoning on January 9, 2014. The Planning Commission approved Final Site Plan FS-11-18-2013 on December 10, 2013 and Amended Final Site Plan FS2016-05 on August 9, 2016. These Final Site Plans were for a cargo container storage facility. A Conditional Use Permit was approved by the Governing Body on January 9, 2014 and approved the cargo container facility for ten (10) years.

On August 8, 2021, the City of Edgerton Planning Commission approved Applications ZA2021-07 and ZA2021-08 for the rezoning of the two (2) eastern parcels. Edgerton City Council granted final approval for this rezoning on September 9, 2021. On December 14, 2021, the Planning Commission approved the Preliminary Plat and recommended approval of the Final Plat to the Governing Body. The Final Plat has not been presented to the Governing Body as the applicant was finalizing easements and other information on the Final Plat. The updates do not require reapproval as they were listed as stipulations by the Planning Commission.

Proposed Use

This Final Site Plan request is being made in preparation for future expansion of the JB Hunt facility and operations. These operations include a cargo container storage lot, which would require a Conditional Use Permit (CUP). The applicant has submitted that application and it will be presented to the Planning Commission on August 9, 2022.

Current access to the site is from W. 191st Street and will remain that way.

Project Timeline

- Application submitted to the City: February 23, 2022
- Public Hearing Notice Published: August 24, 2022
- Public Hearing Notices Mailed: August 23, 2022 (sent to 13 properties)

CONDITIONAL USE PERMIT REVIEW

City Staff reviewed the Site Plan under the requirements outlined in Article 7 – *Conditional Uses* of the Unified Development Code (UDC).

The purpose of this article is to provide for certain uses, which because of their unique characteristics cannot be distinctly listed as a permitted use in a particular zoning district. The Planning Commission may recommend approval of conditional uses to the Governing Body after consideration in each case, of the impact of such uses upon neighboring uses, the surrounding area, and the public need for the particular use at the particular location. Limitations and standards are herein established to ensure the use's consistency with the character, uses and activities in the zoning district. Before any conditional use shall be approved, the Governing Body shall review the record of the public hearing held by the Planning Commission.

The Planning Commission, in accordance with the procedures and standards of the UDC, may recommend the Governing Body authorize buildings, structures, and uses as conditional uses in specific instances and in particular districts set forth provided that:

- a. the location is appropriate and consistent with the Comprehensive Plan;
- b. that the public health, safety, morals, and general welfare will not be adversely affected;
- c. the necessary safeguards will be provided to surrounding property, persons, and neighborhood values; and
- d. further provide that additional standards of this Article be specified as a condition of approval.

No Conditional Use shall be authorized unless the Planning Commission finds that the establishment, maintenance, or operation of the Conditional Use meets the standards set forth in the UDC. The burden of proof and the burden of persuasion is on the applicant to bring forth the evidence on all questions of fact that are determined by the Planning Commission.

Section 7.1 Issuance of Conditional Uses

1. **Criteria.** In order to recommend approval or disapproval of a proposed conditional use permit, both the Planning Commission and the Governing Body shall determine whether the proposed use is found to be generally compatible with surrounding development and is in the best interest of the City. In making such determination, the Planning Commission and Governing Body may consider all factors they deem relevant to the questions of compatibility and the best interest of the City, including the following:
 - a. The extent to which there is a need in the community for the proposed use.
 - i. *Demand for businesses to store and maintain cargo containers and chassis, such as the facility proposed here, is a by-product of the activity in and around the intermodal facility. The primary function of LPKC is to transport and redistribute containers and the products they contain. The proposed use would fill a need for this type of support services in LPKC. Staff determination: **Positive***
 - b. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
 - i. *The neighborhood is established as a transportation and logistics hub. The Burlington Northern Santa Fe (BNSF) Intermodal Facility is roughly 1.2 miles to the west of the subject parcel. The parcel contains the correct zoning designation for the proposed use. The site would be wholly contained within Application FS2022-03 as submitted for Planning Commission review. Staff determination: **Positive***
 - c. The nature and intensity of the proposed use and its compatibility with the zoning and

uses of nearby properties. Such determination should include the location, nature, and height of structures, walls, fences, and other improvements connected with the proposed use, their relation to adjacent property and uses, and the need for buffering and screening.

- i. The current zoning of L-P and the parcel's adjacency to similar uses supports the need for this kind of use. Application FS2022-03 was reviewed to ensure compliance with the UDC regarding requirements for L-P zoned parcels. Staff determination:*

Positive

- d. Suitability of the uses of the property without the proposed conditional use permit.
 - i. Cargo container and chassis storage are an important function to serve LPKC. This important support service continues to be a much-needed use within LPKC and the supply chain in general. The existing cargo container storage facilities are seeing an increased demand for such services. Staff determination: ***Positive****
- e. Length of time the subject property has remained vacant without the proposed conditional use permit.
 - i. The western portion of the parcel has been used as a cargo container storage lot since it was developed in 2014. The eastern portion of the parcel has been used as agricultural land since 2006, per Johnson County AIMS. The expansion of this cargo container storage and maintenance facility serves a need in the Logistics Park. Staff determination: ***Neutral****
- f. The extent to which the proposed use may detrimentally affect nearby property.
 - i. No long-term detrimental effects are expected for the use of the property as the use requested is not extraordinary at LPKC. There are currently three (3) other cargo container storage facilities in operation at LPKC and the approval another facility will be beneficial to the BNSF Intermodal. Staff determination: ***Positive****
- g. The adequacy of ingress and egress to and within the site of the proposed use, traffic flow and control, the adequacy of off-street parking and loading areas, the adequacy of required yard and open space requirements and sign provisions.
 - i. The existing drive from 191st Street will still be utilized for the expansion. Staff determination: ***Positive****
- h. The availability and adequacy of required utilities and services to serve the proposed use. 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.
 - i. Due to a portion of the property being developed, most utilities are onsite. The applicant will be responsible for expanding sanitary sewer to the site and decommissioning of the current septic tank. Staff determination: ***Positive****
- i. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the proposed use, or present parking problems in the vicinity of the property.
 - i. The road network nearby has been constructed to serve this type of heavy truck traffic and the site is currently developed for this type of operation. Staff determination: ***Positive****
- j. The environmental impacts that the proposed use 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.
 - i. This project will increase the amount of impervious surface. During Site Plan review, the stormwater report is reviewed by the City Engineer to ensure all stormwater stays on site and does not impact nearby properties. 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. Staff determination: **Neutral***

- k. The economic impact of the proposed use on the community.
 - i. *Prior to the development of the BNSF intermodal facility and LPKC, there were few commercial and industrial uses within the City. Warehousing and related uses in the L-P District have the potential to benefit the residents and the community in a positive way by providing much needed jobs and tax revenues. This type of use is seen as necessary support for warehousing and other related LPKC uses. Staff determination: **Positive***
- l. The relative gain (if any) to the public health, safety, and welfare from a denial of the application for conditional use permit as compared to the hardship imposed upon the conditional use applicant from such denial.
 - i. *If approved with the stipulations stated, Application FS2022-03 meets the requirements of the UDC. Due to the nature of the request, there would be little gain to the public health, safety, and welfare of the City of Edgerton and the property owner should this request be denied. Staff determination: **Positive***
- m. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton, and the general safety, health, comfort and general welfare of the community.
 - i. *The Future Land Use Map within the Comprehensive Plan designates the subject property for industrial development. Staff determination: **Positive***
- n. In addition to the above criteria, the recommendation of professional staff is also required per Ordinance 798 (2005). Staff recommendation is addressed in the Recommendations Section of this Staff Report.

Section 5.2.G.7 L-P Specific District Requirements for Cargo Container Storage, Repair or Maintenance

- 1. All cargo container storage and cargo container repair and maintenance facilities (collectively referred to as “facilities”) shall be subject to the following performance provisions:
 - a. Access: No cargo containers or semi-trailers (either on or off a chassis), or a chassis, may be stored in a manner that impedes access to public rights-of-way, public utility or drainage easements, structures, and buildings.
 - i. *The applicant has stated the existing development provides an access driveway to 191st Street from incoming and outgoing cargo containers and semi-trucks. All containers and trucks are stored back into the existing storage and access to 191st Street is not impeded or blocked.*

Site Plan FS2022-03 complies.

- b. Exterior Lighting: Facilities shall provide lighting on-site, including at all vehicular entrances and exists. A lighting plan shall be submitted and approved.
 - i. *The applicant has provided a photometric that does not comply with the standards outlined in the UDC. The applicant has submitted an application for a variance that will be presented to the Board of Zoning Appeals (BZA) in September of 2022.*

If the BZA does not grant the variance as requested, the applicant will then need to update the Final Site Plan to be in compliance with the UDC.

- c. Minimum Lot Size: Facilities shall have a minimum lot size of twenty (20) acres.
- i. The applicant stated the existing lot is 19.58 acres and the property owner is adding ten (10) acres to that for a total of 29.58. The legal description that was approved for the platting of this property confirms the acreage.*

Site Plan FS2022-03 complies.

- d. Noise: Noise from businesses and facilities shall not exceed 60 dB(A) in any adjacent residential district or 70 dB(A) in any adjacent commercial or industrial district or property.
- i. Noise issues are not addressed in the applicant's proposal; however, if approved, the use must continuously comply with these parameters in the conduction of business.*

Applicant has acknowledged this requirement.

- e. Paving: All interior driveways, parking, loading, and storage areas shall be paved and dust-free. For purposes of this stipulation: 1) Paving shall mean concrete or asphalt and 2) Dust-free shall mean that all interior driveway and storage area surfaces shall be kept free of dust, dirt, or other materials to prevent the migration of dust off-site.
- i. The applicant has indicated the site will be paved with two (2) inches of asphaltic cement concrete (ACC) on top of four (4) inches of ACC base with a twelve (12) inch aggregate base on top of a nine (9) inch treated subgrade. Some areas will be paved with eleven (11) inches of 4,000 pounds per square inch (PSI) PC concrete with six (6) inches of aggregate compacted base on top of the 9-inch treated subgrade.*

Site Plan FS2022-03 complies.

- f. Parking: Facilities shall comply with the Article 5.2 L-P District Off Street Parking and Loading regulations. No portion of any required off-street parking or loading/unloading areas shall be used for the storage of cargo containers, semi-trailers (either on or off a chassis), chassis or similar storage devices.
- i. The proposed use shall continuously comply with parking requirements.*
 - ii. The applicant has stated a total of 622 off-street parking spaces will be provided to meet this requirement.*

Site Plan FS2022-03 complies.

- g. Cargo Container Stacking: Cargo containers shall not be stacked more than five (5) in number.
- i. The proposed use must continually comply with and not exceed the maximum stacking number.*

Applicant has acknowledged this requirement.

- h. Chassis Stacking/Racking: Empty chassis may be stored on end (racking) or may be stacked. When stacked, chassis shall not be more than five (5) in number.
- i. The proposed use must continually comply with and not exceed the maximum stacking number.*

Applicant has acknowledged this requirement.

- i. Screening and Landscaping: Screening may be required on the perimeter of the property. Screening shall be a combination of fencing and landscaping or berming and landscaping. Screening shall comply with requirements Article 5.2 L-P District Landscape Standards.
- i. The comments regarding the landscaping in the Staff Report for Application FS2022-03 must be addressed and the proposed use shall continuously comply with the landscaping requirements.*

Updated Final Site Plan required.

- j. Setbacks and Separation Distance: All buildings, structures, parking and other uses on the property shall be subject to the setback requirements in Article 5.2 L-P District

Setback, Yard, Area Regulations, except however, the parking or storage of cargo containers or semi-trailers (either on or off a chassis), and chassis (racked or stacked) shall be subject to the following setback standards that may vary depending upon the difference scenarios set forth below:

- i. When abutting (touching), or across the street from non-residentially zoned property, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo container or semi-trailer (either on or off a chassis), and chassis (racked and stacked)
- ii. When abutting (touching) public right-of-way, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo container or semi-trailer (either on or off a chassis), and chassis (racked and stacked);
- iii. When abutting (touching), or across the street from residentially zoned property, such parking or storage shall be setback a minimum of 250 feet from the nearest property line of the residentially zoned property;
- iv. When abutting (touching), or across the street from a habitable dwelling, such parking or storage shall be setback a minimum of 300 feet from the nearest dwelling; and
- v. For purposes of Stipulations 3 and 4 above, measurements shall be made between the nearest property line of the residentially zoned property or the nearest edge of a dwelling, and the nearest cargo container, semi-trailer (either on or off a chassis), or chassis.

1. *The applicant has provided a map of the setback from the residentially zoned parcels as 175 feet and the setback from L-P zoned parcels as fifty (50) feet.*

Site Plan FS2022-03 complies for the area that abuts L-P zoned parcels. The applicant has submitted an application for a variance to the BZA regarding the setback abutting residentially zoned parcels. If the BZA does not approve the variance, the setbacks required by the UDC will need to be adhered to and the Final Site Plan Application FS2022-03 will need to be updated.

- k. Signage: Business signs shall be allowed according to Article 12 L-P District Signage regulations. No signage, other than shipping company identification logos and placards, shall be allowed on any cargo container, semi-trailer or chassis.
 - i. *The applicant has not indicated any new signage will be placed on the site at this time. All new signage will require the submittal of a Sign Permit Application which will be reviewed by staff for compliance with Article 12 of the UDC.*

Applicant has acknowledged this requirement.

- l. Site Plan: A site plan shall be submitted with the application. The site plan shall be prepared in accordance with the requirements of Article 9.1 (B) (3) of these regulations.
 - i. *Application FS2022-03 has been submitted.*

Submittal of updated Site Plan Application FS2022-03, as stipulated when approved, is a condition of this permit's approval. Applicant acknowledges.

- m. Other Rules and Regulations: All facilities shall abide by any and all governmental rules, regulations, codes and specifications now in effect or hereafter adopted that would be applicable to this permit or the use of the property by the applicant/landowner.
 - i. *The proposed use must continuously comply with these requirements.*

Applicant has acknowledged these requirements.

- n. Deviations: In the event that an applicant desires to deviate from the above performance standards and provisions for certain Conditional Uses, the applicant shall submit written information to the Governing Body indicating the circumstances which are believed to necessitate the need for a deviation(s), and the applicant shall provide a

list of alternative materials, designs or methods that are equivalent to the performance standards and provisions for the L-P Zoning District, Section 5.4, Section G through Q in the regulations. The application may only be approved if findings are made by the Governing Body that a) due to the circumstances of the application, it would be unnecessary to impose the standard(s) and equivalent alternatives should be allowed, b) that the spirit and intent of the regulations are being met, c) that granting the deviation shall not adversely affect adjacent or nearby property and d) the application shall otherwise comply with all building code(s) and safety requirements. (Ordinance No. 915, 2012).

i. The proposed use must continuously comply with these requirements.

Applicant has acknowledged these requirements.

NOTICE OF CITY CODES AND PERMITS

The Applicant is subject to all applicable City codes – whether specifically stated in this report or not – including, but not limited to, Zoning, Buildings and Construction, Subdivisions, and Sign Code. The Applicant is also subject to all applicable local, State, and Federal laws.

Various permits may be required in order to complete this project. Please contact the Building Codes Division of the Community Development Department for more information about City permits. The project may also be subject to obtaining permits and/or approvals from other local, County, State, or Federal agencies.

DOCUMENTS INCLUDED IN PACKET

Sheet #	Title	Date on Document
Application	Application for CU2022-01	02/22/2022
1	C1.1 CUP Site Plan	8/4/2022
2	CUP Request Letter	6/16/2022

STAFF RECOMMENDATION

Based upon the above staff analysis, City staff recommends **approval** of Application **CU2022-01** for a cargo container storage, repair or maintenance as shown in Final Site Plan application FS2022-03 for a period of ten (10) years with the following stipulations:

1. The Conditional Use Permit CU2022-01 approval shall be transferable, but it must stay with the ownership of these parcels for which its use is approved (Final Plat Application FP2021-04);
2. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements. The applicant shall comply with height requirements by limiting cargo container stacking to not exceed the maximum of 5 (five) cargo containers. This condition shall be continually met for the duration of the conditional use permit.

3. The property shall be developed in accordance with the Final Site Plan Application FS2022-03 and any stipulations, to be approved by the Planning Commission, prior to commencement of the cargo container storage use.
4. Landscaping material shall be continuously maintained and replaced when dead.
5. No other outside storage of equipment or materials shall be allowed on the property.
6. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a new, revised Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.
7. This Conditional Use Permit shall be valid for 10 (ten) years from date of approval by the City of Edgerton Governing Body.

Note: For Application CU2022-01 the Planning Commission will be recommending either approval or denial of the application to the Governing Body. If the Planning Commission recommends approval, the Conditional Use Permit will be presented to the Governing Body on October 13, 2022, subject to the applicant making the necessary corrections to Application FS2022-03 in a timely manner.

1. **PUBLIC HEARING REGARDING APPLICATION CU2022-01 FOR A CONDITIONAL USE PERMIT FOR JB HUNT TRANSPORT, INC FOR A CARGO CONTAINER STORAGE LOT LOCATED AT 30650/30700 W. 191ST STREET** Applicant: Derek Kennemer, Agent – JB Hunt Transport, Inc.

Chairperson Daley opened the public hearing.

There were no public comments made at this time.

Chairperson Daley closed the public hearing.

2. **CONSIDER APPLICATION CU2022-01 FOR A CONDITIONAL USE PERMIT FOR JB HUNT TRANSPORT, INC FOR A CARGO CONTAINER STORAGE LOT LOCATED AT 30650/30700 W. 191ST STREET** Applicant: Derek Kennemer, Agent – JB Hunt Transport, Inc.

Mr. Waldrum stated they are extending the CUP to the additional acreage.

Ms. Linn explained the applicant wants to remove the current CUP and replace it with a new one that has the land that was purchased included on the CUP. She explained City staff reviewed the Site Plan under the requirements outlined in Article 7 – *Conditional Uses* of the UDC.

She said the purpose of this article is to provide for certain uses, which because of their unique characteristics cannot be distinctly listed as a permitted use in a particular zoning district. The Commission may recommend approval of conditional uses to the Governing Body after consideration in each case, of the impact of such uses upon neighboring uses, the surrounding area, and the public need for the particular use at the particular location. Limitations and standards are herein established to ensure the use's consistency with the character, uses and activities in the zoning district. Before any conditional use shall be approved, the Governing Body shall review the record of the public hearing held by the Commission.

The Commission, in accordance with the procedures and standards of the UDC, may recommend the Governing Body authorize buildings, structures, and uses as conditional uses in specific instances and in particular districts set forth provided that:

- a. the location is appropriate and consistent with the Comprehensive Plan;
- b. that the public health, safety, morals, and general welfare will not be adversely affected;
- c. the necessary safeguards will be provided to surrounding property, persons, and neighborhood values; and
- d. further provide that additional standards of this Article be specified as a condition of approval.

No Conditional Use shall be authorized unless the Commission finds that the establishment, maintenance, or operation of the Conditional Use meets the standards set forth in the UDC. The burden of proof and the burden of persuasion is on the applicant to bring forth the evidence on all questions of fact that are determined by the Commission.

Ms. Linn stated Section 7.1 of the UDC lists criteria that is reviewed for the issuance of a CUP. The following statements and staff determinations were noted:

1. Criteria. In order to recommend approval or disapproval of a proposed conditional use permit, both the Planning Commission and the Governing Body shall determine whether the proposed use is found to be generally compatible with surrounding development and is in the best interest of the City. In making such determination, the Planning Commission and Governing Body may consider all factors they deem relevant to the questions of compatibility and the best interest of the City, including the following:
 - a. The extent to which there is a need in the community for the proposed use.
 - i. Demand for businesses to store and maintain cargo containers and chassis, such as the facility proposed here, is a by-product of the activity in and around the intermodal facility. The primary function of LPKC is to transport and redistribute containers and the products they contain. The proposed use would fill a need for this type of support services in LPKC. Staff determination: Positive
 - b. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
 - i. The neighborhood is established as a transportation and logistics hub. The Burlington Northern Santa Fe (BNSF) Intermodal Facility is roughly 1.2 miles to the west of the subject parcel. The parcel contains the correct zoning designation for the proposed use. The site would be wholly contained within Application FS2022-03 as submitted for Planning Commission review. Staff determination: Positive
 - c. The nature and intensity of the proposed use and its compatibility with the zoning and uses of nearby properties. Such determination should include the location, nature, and height of structures, walls, fences, and other improvements connected with the proposed use, their relation to adjacent property and uses, and the need for buffering and screening.
 - i. The current zoning of L-P and the parcel's adjacency to similar uses supports the need for this kind of use. Application FS2022-03 was reviewed to ensure compliance with the UDC regarding requirements for L-P zoned parcels. Staff determination: Positive
 - d. Suitability of the uses of the property without the proposed conditional use permit.
 - i. Cargo container and chassis storage are an important function to serve LPKC. This important support service continues to be a much-needed use within LPKC and the supply chain in general. The existing cargo container storage facilities are seeing an increased demand for such services. Staff determination: Positive
 - e. Length of time the subject property has remained vacant without the proposed conditional use permit.
 - i. The western portion of the parcel has been used as a cargo container storage lot since it was developed in 2014. The eastern portion of the parcel has been used as agricultural land since 2006, per Johnson County AIMS. The expansion of this cargo container storage and maintenance facility serves a need in the Logistics Park. Staff determination: Neutral

- f. The extent to which the proposed use may detrimentally affect nearby property.
 - i. No long-term detrimental effects are expected for the use of the property as the use requested is not extraordinary at LPKC. There are currently three (3) other cargo container storage facilities in operation at LPKC and the approval another facility will be beneficial to the BNSF Intermodal. Staff determination: Positive
- g. The adequacy of ingress and egress to and within the site of the proposed use, traffic flow and control, the adequacy of off-street parking and loading areas, the adequacy of required yard and open space requirements and sign provisions.
 - i. The existing drive from 191st Street will still be utilized for the expansion. Staff determination: Positive
- h. The availability and adequacy of required utilities and services to serve the proposed use. 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.
 - i. Due to a portion of the property being developed, most utilities are onsite. The applicant will be responsible for expanding sanitary sewer to the site and decommissioning of the current septic tank. Staff determination: Positive
- i. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the proposed use, or present parking problems in the vicinity of the property.
 - i. The road network nearby has been constructed to serve this type of heavy truck traffic and the site is currently developed for this type of operation. Staff determination: Positive
- j. The environmental impacts that the proposed use 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.
 - i. This project will increase the amount of impervious surface. During Site Plan review, the stormwater report is reviewed by the City Engineer to ensure all stormwater stays on site and does not impact nearby properties. 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. Staff determination: Neutral
- k. The economic impact of the proposed use on the community.
 - i. Prior to the development of the BNSF intermodal facility and LPKC, there were few commercial and industrial uses within the City. Warehousing and related uses in the L-P District have the potential to benefit the residents and the community in a

positive way by providing much needed jobs and tax revenues. This type of use is seen as necessary support for warehousing and other related LPKC uses. Staff determination: Positive

- l. The relative gain (if any) to the public health, safety, and welfare from a denial of the application for conditional use permit as compared to the hardship imposed upon the conditional use applicant from such denial.
 - i. If approved with the stipulations stated, Application FS2022-03 meets the requirements of the UDC. Due to the nature of the request, there would be little gain to the public health, safety, and welfare of the City of Edgerton and the property owner should this request be denied. Staff determination: Positive
- m. Consistency with the Comprehensive Plan, Capital Improvement Plan, ordinances, policies, and applicable City Code of the City of Edgerton, and the general safety, health, comfort and general welfare of the community.
 - i. The Future Land Use Map within the Comprehensive Plan designates the subject property for industrial development. Staff determination: Positive
- n. In addition to the above criteria, the recommendation of professional staff is also required per Ordinance 798 (2005). Staff recommendation will be addressed after all of City staff's findings have been presented.

Ms. Linn said the CUP application was also reviewed under the scope of Section 7.2.G.7 which lists the L-P zoning specific district requirements for a cargo container storage, repair, or maintenance facility. Those comments are as follows:

1. All cargo container storage and cargo container repair and maintenance facilities (collectively referred to as "facilities") shall be subject to the following performance provisions:
 - a. Access: No cargo containers or semi-trailers (either on or off a chassis), or a chassis, may be stored in a manner that impedes access to public rights-of-way, public utility or drainage easements, structures, and buildings.
 - i. The applicant has stated the existing development provides an access driveway to 191st Street from incoming and outgoing cargo containers and semi-trucks. All containers and trucks are stored back into the existing storage and access to 191st Street is not impeded or blocked. Site Plan FS2022-03 complies.
 - b. Exterior Lighting: Facilities shall provide lighting on-site, including at all vehicular entrances and exists. A lighting plan shall be submitted and approved.
 - i. The applicant has provided a photometric that does not comply with the standards outlined in the UDC. The applicant has submitted an application for a variance that will be presented to the Board of Zoning Appeals (BZA) in September of 2022. If the BZA does not grant the variance as requested, the applicant will then need to update the Final Site Plan to be in compliance with the UDC.
 - c. Minimum Lot Size: Facilities shall have a minimum lot size of twenty (20) acres.
 - i. The applicant stated the existing lot is 19.58 acres and the property owner is

adding ten (10) acres to that for a total of 29.58. The legal description that was approved for the platting of this property confirms the acreage. Site Plan FS2022-03 complies.

- d. Noise: Noise from businesses and facilities shall not exceed 60 dB(A) in any adjacent residential district or 70 dB(A) in any adjacent commercial or industrial district or property.
 - i. Noise issues are not addressed in the applicant's proposal; however, if approved, the use must continuously comply with these parameters in the conduction of business. Applicant has acknowledged this requirement.
- e. Paving: All interior driveways, parking, loading, and storage areas shall be paved and dust-free. For purposes of this stipulation: 1) Paving shall mean concrete or asphalt and 2) Dust-free shall mean that all interior driveway and storage area surfaces shall be kept free of dust, dirt, or other materials to prevent the migration of dust off-site.
 - i. The applicant has indicated the site will be paved with two (2) inches of asphaltic cement concrete (ACC) on top of four (4) inches of ACC base with a twelve (12) inch aggregate base on top of a nine (9) inch treated subgrade. Some areas will be paved with eleven (11) inches of 4,000 pounds per square inch (PSI) PC concrete with six (6) inches of aggregate compacted base on top of the 9-inch treated subgrade. Site Plan FS2022-03 complies.
- f. Parking: Facilities shall comply with the Article 5.2 L-P District Off Street Parking and Loading regulations. No portion of any required off-street parking or loading/unloading areas shall be used for the storage of cargo containers, semi-trailers (either on or off a chassis), chassis or similar storage devices.
 - i. The proposed use shall continuously comply with parking requirements.
 - ii. The applicant has stated a total of 622 off-street parking spaces will be provided to meet this requirement. Site Plan FS2022-03 complies.
- g. Cargo Container Stacking: Cargo containers shall not be stacked more than five (5) in number.
 - i. The proposed use must continually comply with and not exceed the maximum stacking number. Applicant has acknowledged this requirement.
- h. Chassis Stacking/Racking: Empty chassis may be stored on end (racking) or may be stacked. When stacked, chassis shall not be more than five (5) in number.
 - i. The proposed use must continually comply with and not exceed the maximum stacking number. Applicant has acknowledged this requirement.
- i. Screening and Landscaping: Screening may be required on the perimeter of the property. Screening shall be a combination of fencing and landscaping or berming and landscaping. Screening shall comply with requirements Article 5.2 L-P District Landscape Standards.
 - i. The comments regarding the landscaping in the Staff Report for Application FS2022-03 must be addressed and the proposed use shall continuously comply with the landscaping requirements. An updated Final Site Plan is required.

- j. Setbacks and Separation Distance: All buildings, structures, parking and other uses on the property shall be subject to the setback requirements in Article 5.2 L-P District Setback, Yard, Area Regulations, except however, the parking or storage of cargo containers or semi-trailers (either on or off a chassis), and chassis (racked or stacked) shall be subject to the following setback standards that may vary depending upon the difference scenarios set forth below:
- i. When abutting (touching), or across the street from non-residentially zoned property, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo container or semi-trailer (either on or off a chassis), and chassis (racked and stacked)
 - ii. When abutting (touching) public right-of-way, such parking or storage shall be setback from any exterior property line of the subject property a distance equal to the height of the cargo container or semi-trailer (either on or off a chassis), and chassis (racked and stacked);
 - iii. When abutting (touching), or across the street from residentially zoned property, such parking or storage shall be setback a minimum of 250 feet from the nearest property line of the residentially zoned property;
 - iv. When abutting (touching), or across the street from a habitable dwelling, such parking or storage shall be setback a minimum of 300 feet from the nearest dwelling; and
 - v. For purposes of Stipulations 3 and 4 above, measurements shall be made between the nearest property line of the residentially zoned property or the nearest edge of a dwelling, and the nearest cargo container, semi-trailer (either on or off a chassis), or chassis.
 1. The applicant has provided a map of the setback from the residentially zoned parcels as 175 feet and the setback from L-P zoned parcels as fifty (50) feet. Site Plan FS2022-03 complies for the area that abuts L-P zoned parcels. The applicant has submitted an application for a variance to the BZA regarding the setback abutting residentially zoned parcels. If the BZA does not approve the variance, the setbacks required by the UDC will need to be adhered to and the Final Site Plan Application FS2022-03 will need to be updated.
- k. Signage: Business signs shall be allowed according to Article 12 L-P District Signage regulations. No signage, other than shipping company identification logos and placards, shall be allowed on any cargo container, semi-trailer or chassis.
- i. The applicant has not indicated any new signage will be placed on the site at this time. All new signage will require the submittal of a Sign Permit Application which will be reviewed by staff for compliance with Article 12 of the UDC. Applicant has acknowledged this requirement.
- l. Site Plan: A site plan shall be submitted with the application. The site plan shall be prepared in accordance with the requirements of Article 9.1 (B) (3) of these regulations.
- i. Application FS2022-03 has been submitted. Submittal of updated Site Plan Application FS2022-03, as stipulated when approved, is a condition of this permit's approval. Applicant has acknowledged this requirement.
- m. Other Rules and Regulations: All facilities shall abide by any and all governmental

rules, regulations, codes and specifications now in effect or hereafter adopted that would be applicable to this permit or the use of the property by the applicant/landowner.

- i. The proposed use must continuously comply with these requirements. Applicant has acknowledged these requirements.
- n. Deviations: In the event that an applicant desires to deviate from the above performance standards and provisions for certain Conditional Uses, the applicant shall submit written information to the Governing Body indicating the circumstances which are believed to necessitate the need for a deviation(s), and the applicant shall provide a list of alternative materials, designs or methods that are equivalent to the performance standards and provisions for the L-P Zoning District, Section 5.4, Section G through Q in the regulations. The application may only be approved if findings are made by the Governing Body that a) due to the circumstances of the application, it would be unnecessary to impose the standard(s) and equivalent alternatives should be allowed, b) that the spirit and intent of the regulations are being met, c) that granting the deviation shall not adversely affect adjacent or nearby property and d) the application shall otherwise comply with all building code(s) and safety requirements. (Ordinance No. 915, 2012).
- i. The proposed use must continuously comply with these requirements. Applicant has acknowledged these requirements.

Ms. Linn then stated City staff does recommend approval of this application with the following stipulations:

1. The Conditional Use Permit CU2022-01 approval shall be transferable, but it must stay with the ownership of these parcels for which its use is approved (Final Plat Application FP2021-04).
2. The property owner shall continuously comply with all performance criteria in Article 7 pertaining to Cargo Container Storage Facilities and Cargo Repair and Maintenance Facilities, including, but not limited to, noise maximums and cargo container and chassis stacking height requirements. The applicant shall comply with height requirements by limiting cargo container stacking to not exceed the maximum of 5 (five) cargo containers. This condition shall be continually met for the duration of the conditional use permit.
3. The property shall be developed in accordance with the Final Site Plan Application FS2022-03 and any stipulations, to be approved by the Planning Commission, prior to commencement of the cargo container storage use.
4. Landscaping material shall be continuously maintained and replaced when dead.
5. No other outside storage of equipment or materials shall be allowed on the property.
6. Any future phases or additional areas used for cargo container maintenance and repair uses shall not commence until a new, revised Site Plan is submitted and approved by the City for that phase, including photometric and landscaping plans.
7. This Conditional Use Permit shall be valid for 10 (ten) years from date of approval by the City of Edgerton Governing Body.

Chairperson Daley clarified the applicant is expanding the CUP to encompass the Final Site Plan that was approved. Ms. Linn stated that is correct and the CUP is required for the storage container yard to operate.

Commissioner Draskovich stated the stacking will be higher than the lighting luminaries. He inquired if the stacking is going to be on eastern half of the project site. Ms. Linn explained the UDC dictates where and how high stacking can be and the BZA has an item regarding where the stacking will take place. Mr. Waldrum stated a Site Plan where the stacking is proposed was provided in the packet. Chairperson Daley inquired what would happen if the variances were not approved by the BZA. Ms. Linn answered the applicant will have to redesign the site and that can be administratively approved. Commissioner Draskovich asked if the current operations meet the UDC requirements. Ms. Linn replied that it does.

Commissioner Crooks moved to recommend approval of Application CU2022-01 with the stipulations outlined by City staff to the Governing Body. The motion was seconded by Commissioner Draskovich. Application CU2022-01 was recommended for approval, 3-0.

JB HUNT TRANSPORT

Application FS2022-03

30650/30700 W. 191st Street (Northeast corner of 191st Street and Montrose Street)

QUICK FACTS

PROJECT SUMMARY AND REQUESTED APPROVALS

The Applicant is requesting approval of a Final Site Plan for 30650/300700 W. 191st Street (northeast corner of 191st Street and Montrose Street).

**This application requires a
Public Hearing.**

Owner and Applicant

JB Hunt Transport, Inc.
represented by Derek Kennemer,
Agent and Property Owner

Zoning and Land Use

L-P (Logistics Park) which has been developed with a cargo container storage lot on the eastern side of the property.

Legal Description

The S ½ of the SW ¼ of Section 35, Township 14 S, Range 22 E, in the City of Edgerton, Johnson County, Kansas; please see attached application for complete Legal Description

Parcel Size

29.62 acres

Staff Report Prepared by

Chris Clinton



BACKGROUND

Subject Site

The parcel is located within the Bull Creek watershed and was annexed into the City of Edgerton on June 10, 2021.

Utilities and service providers:

- a. Water Provider - Johnson County Rural Water District #7.
- b. Sanitary Sewer - City of Edgerton.
- c. Electrical Service - Evergy.
- d. Gas Service – Kansas Gas Service.
- e. Police protection is provided by the City of Edgerton through the Johnson County Sheriff's Office.
- f. Fire protection is provided by Johnson County Fire District #1.

Site History and Past Approvals

The Edgerton City Council gave final approval to rezone the original platted parcel from Johnson County *RUR* to Edgerton *L-P, Logistics Park* zoning on January 9, 2014. The Planning Commission approved Final Site Plan FS-11-18-2013 on December 10, 2013 and Amended Final Site Plan FS2016-05 on August 9, 2016. These Final Site Plans were for a cargo container storage facility. A Application CU-11-18-2013 for a Conditional Use Permit was approved by the Governing Body on January 9, 2014 and approved the cargo container facility for ten (10) years.

On August 8, 2021, the City of Edgerton Planning Commission approved Applications ZA2021-07 and ZA2021-08 for the rezoning of the two (2) eastern parcels from Johnson County *RUR* to Edgerton *L-P, Logistics Park* zoning. Edgerton City Council granted final approval for this rezoning on September 9, 2021. On December 14, 2021, the Planning Commission approved the Preliminary Plat and recommended approval of the Final Plat to the Governing Body. The Final Plat has not been presented to the Governing Body as the applicant was finalizing easements and other information related to this Final Site Plan. The Final Plat updates do not require reapproval by the Planning Commission as they were listed as stipulations for approval.

Proposed Use

This Final Site Plan request is being made in preparation for expansion of the current JB Hunt facility and operations. As noted above, current operations include a cargo container storage lot. Expansion of these operations would require the issuance of a new Conditional Use Permit (CUP) that would encompass existing and new operations on the site. Understanding this requirement, the applicant has submitted application CU2022-01 which will be presented to the Planning Commission on September 12, 2022.

Current access to the site is from W. 191st Street and it will remain that way.

Project Timeline

- Application submitted to the City: February 23, 2022
- Public Hearing Notice Published: August 24, 2022
- Public Hearing Notices Mailed: August 23, 2022 (sent to 13 properties)

FINAL SITE PLAN REVIEW

Staff has reviewed the Final Site Plan submittal for compliance with the requirements in Section 10.1 of Article 10 and Section 5.2 of Article 5 of the Edgerton Unified Development Code (UDC). Review comments are as follows:

Section 10.1 Contents of Site Plan Drawings

1. Parking areas, paths, sidewalks with sizes and surface material specifications.
 - a. *Currently there is no sidewalk on the north side of 191st Street. When this parcel was initially developed, the applicant entered an agreement not to protest the formation of a benefit district for the construction of any future sidewalk. This agreement will need to be updated to include the legal description for the entirety of the new parcel.*

Applicant acknowledged.

2. Exterior lighting specification including a preliminary photometric plan. A final photometric plan will be required at the time the applicant applies for a Building Permit. Lighting should be installed in an effort to minimize spillover onto adjacent properties and streets. The maximum light level at any point on a property line shall not exceed 0.0 foot-candles when adjacent to an agricultural or residential property or 0.2 foot-candles when adjacent to a nonresidential district, measured five (5) feet above grade. Lights shall be aimed away from adjacent properties and streets and may need to be shielded to meet the foot-candle requirements. The maximum height for luminaries shall not exceed 25 feet as measured between the bottom of the luminaire and grade.
 - a. *The provided plans show the foot-candle readings at the property lines at 5 feet above grade meeting the requirements. However, the applicant has indicated that forty (40) foot high poles will be on top of six (6) foot high bases are to be used. The applicant has filed an application for a variance of this section of code to the Board of Zoning Appeals (BZA). The application for a variance will be heard at the September 13, 2022 meeting.*

If the BZA does not grant the variance for the height of the luminaries, the applicant will be required to redesign the lot to accomplish proper lighting with luminaries at the appropriate height. City staff will monitor the sight to ensure the foot-candle readings are always in compliance with the UDC.

3. Connection point for utilities and the location and size of all utility lines including but not limited to sewer lines and manholes; water lines and fire hydrants; telephone, cable, fiber, and electrical systems; and storm drainage systems including inlets, catch basins, lines and other appurtenances, existing and proposed.

a. The City Engineer has provided sanitary sewer plan comments separately.

Update Final Site Plan as needed to encompass the approved sanitary sewer plan.

4. Scale drawings of all proposed signage including location, height, size, area, material, and design to be used on the premises with construction drawings required when applying for a sign permit in accordance with Article 12, *Sign Regulations*, of the UDC.
 - a. *No signage has been proposed with this application.*

Any proposed signage will be reviewed by City Staff to ensure all requirements set forth in the UDC are met. Applicant acknowledges.

5. The location of any HVAC systems (roof or ground), utility boxes and any other above ground facilities. Include line of sight drawings which indicate view from the street, public right-of-way, and/or adjacent properties. Ground-based mechanical equipment shall be located away from property lines adjacent to public streets and residential property. Include type of screening that will be used around equipment.

a. The applicant has proposed a set area for all ground mounted equipment and has screened it from public view.

City Staff will continue to monitor the site to ensure this requirement is met at all times. Applicant acknowledges.

6. Area or facilities used for trash, trash compacting, recycling containers, service and loading are to be located out of view from streets, adjacent to residential properties, and other highly visible areas such as parking lots, access drives, and similar areas.

a. The applicant has stated the proposed dumpster enclosure is located west of the building.

City Staff will continue to monitor the site to ensure this requirement is met at all times. Applicant acknowledges.

Section 5.2 Logistics Park District

1. **Building Materials.** One hundred percent (100%) of the surface of each exterior wall (excluding doors and windows) facing a public street, residential use or public open space shall consist of material including but not limited to stone, brick, glass block, tile, cast metal, cast or cultured stone, concrete (tilt-up walls), glass, or a combination of these materials.

a. The proposed building is mostly covered by a brick veneer, except for the north façade.

The metal on the building needs to be covered on all sides of the proposed building.

2. Façade Guidelines

- a. **Horizontal Articulation.** Walls facing a public right-of-way or a residentially zoned property shall not extend for a distance greater than four (4) times the wall's height without having an off-set of ten percent (10%) of the wall's height (maximum of five (5) feet); the new plane shall extend for a distance equal to a minimum of twenty percent (20%) of the maximum length of the first plane. The City may allow exceptions to this requirement upon review and approval of a typical façade elevation. Walls not facing a public right-of-way or a residentially zoned property and loading dock doors are exempt from the horizontal articulation requirement.

i. Three of the façades face public right-of-way or residentially zoned property. Those are the north, east and south façades. The west façade faces a property that is zoned L-P, Logistics Park. The north and south façades do not span the required 4 times the height of the building to require any horizontal articulation. The east façade of the building does have dock doors and is exempt from this requirement.

Horizontal articulation requirement is met.

- b. **Vertical Articulation.** Walls facing a public right-of-way or a residentially zoned property shall not extend for a distance greater than four (4) times the height of the wall without changing height by a minimum of ten percent (10%) of the wall's height (maximum of five (5) feet). The City may allow exceptions to this requirement upon review and approval of a typical façade elevations. Walls not facing a public right-of-way or a residentially zoned property are exempt from the vertical articulation requirement.

- i. *Three of the façades face public right-of-way or residentially zoned property. Those are the north, east and south façades. The west façade faces a property that is zoned L-P, Logistics Park. The north and south façades do not span the required 4 times the height of the building to require any vertical articulation. The east façade does span the distance to require vertical articulation. While there is no proposed vertical articulation shown on the façade, the applicant has provided changes in the color of the brick that surrounds the dock doors. The applicant has also proposed some changes of materials to a smooth finished, grooved cementitious material above the dock doors. The cementitious material is proposed to be white, and the second color of brick is to be gray.*

City staff feels the changes of materials coupled with the changes of the color of the brick meets the spirit and intent of the code and recommends the approval of this deviation.

- c. **Screening of Rooftop Equipment.** For buildings within the L-P District, all rooftop mounted mechanical, air conditioning, electrical, and satellite dish equipment shall not be visible. Rooftop equipment shall be screened from ground and street level view with parapets or other architectural design features constructed of the same materials used on the exterior walls.
 - i. *There are proposed solar panels to be placed on the roof of the building. These units will need to be in compliance of this requirement.*

City Staff will continue to monitor the site to ensure this requirement is met at all times. Applicant acknowledges.

3. Landscape Standards.

- a. **Buffer Composition Requirements.** Required plant material within each type of landscape buffer shall be in accordance with the provisions set forth in Table 3, Buffer Planting Standards.
 - i. No single species of tree or plant material shall comprise more than 30% of the cumulative total of plantings on a site.
 - i. *The proposed number of Wichita Blue Junipers exceeds this limit. It comprises 31.8%*

Update Final Site Plan

General Comments

- 1. A storm water management report has been submitted. The following comments should be addressed prior to approval (Provide response comments providing a detailed response of how item was addressed not just Revised):
 - a. General
 - i. The flows to each Study Point should not exceed existing flows (where developed) or APWA requirements (where undeveloped).
 - ii. Provide a summary table for each Study Point that details existing flows (considering detention), existing area to Study Point, allowable flows to Study Point (based upon existing area), post-development area to Study Point and post-development design flows to each Study Point. It is unclear whether the limits are being met by the proposed plan.
 - iii. The 2014 Stormwater Study should be used as a reference. The study indicates that the flowing leaving the existing detention at Study Point A was 2.85 cfs in the 1% storm. The flow in the 1% storm should not exceed that rate. The same applies for Study Points E and F.

- iv. The study does not clearly indicate what is happening in Basin E. The drainage patterns are changing and it appears that the changes will cause a smaller amount of water to go to the existing basin. That would create a larger runoff that proceeds from the site undetained. Please consult the 2014 study and clearly demonstrate that the existing flow rates to Study Point E are not increasing.
- b. Summary Memo
 - i. Paragraph 8 under Existing Conditions (page 4) states that the site was analyzed under the “undeveloped” condition, but the CNs do not reflect the undeveloped condition. Possibly change “undeveloped” to “existing”.
 - ii. Table A, Page 5, is called “Pre-Developed Runoff Summary” but this doesn’t appear to be the case. Is this meant to be 2022 existing conditions? If so, these numbers should reflect the existing detention basins in place for Pre-A, Pre-E and Pre-F.
 - iii. The existing conditions of Basin E is still unclear. Two flumes exist that were not shown on the original site plan. Also, a detention area was shown on the north side of the parking lot but it is unclear whether that exists or not. Please review and address in the stormwater study.
- c. Proposed Hydrographs
 - i. The Stage/Storage Table for Pond A (2.1/1035.10) on the Pond Report is not correct.
- d. Detention Basins
 - i. The bottom of the detention basins should have 1% minimum slope toward the outlet structure.
 - ii. Confirm that the slope on the south side of the Basin D is 3:1 or flatter. The contours seem to make it appear steeper.
- e. Outlet structure and pipes
 - i. What is the size of the Outlet Structure for Basin D? The weir calculations shown on the pond report indicate that it is larger than 4’x4’ ID.
- 2. An erosion control plan and SWPPP has been submitted. The following comments should be addressed prior to approval:
 - a. The KDHE NOI permit should be provided to the City once acquired.
- 3. All comments related to drainage easements must be resolved and the Final Plat must reflect all changes prior that document being presented to Council for final acceptance.

NOTICE OF CITY CODES AND PERMITS

The Applicant is subject to all applicable City codes – whether specifically stated in this report or not – including, but not limited to, Zoning, Buildings and Construction, Subdivisions, and Sign Code. The Applicant is also subject to all applicable local, State, and Federal laws.

Various permits may be required in order to complete this project. Please contact the Building Codes Division of the Community Development Department for more information about City permits. The project may also be subject to obtaining permits and/or approvals from other local, County, State, or Federal agencies.

DOCUMENTS INCLUDED IN PACKET

Sheet #	Title	Date on Document
Application	Application for FS2022-03	2/22/2022
1	CO Cover Sheet	8/24/2022
2	C1 Site Plan Overall	8/24/2022
3	C1.1 CUP Site Plan	8/4/2022
4	C2 Demolition Plan West	8/24/2022
5	C2.1 Demolition Plan East	8/24/2022
6	C2.2 Demolition Plan South	8/24/2022
7	C3 Site Plan West	8/24/2022
8	C3.1 Site Plan Center	8/24/2022
9	C3.2 Site Plan East	8/24/2022
10	C3.3 Site Plan South	8/24/2022
11	C4 Grading Plan Overall	8/25/2022
12	C4.1 Grading Plan West	8/25/2022
13	C4.2 Grading Plan Center	8/25/2022
14	C4.3 Grading Plan East	8/25/2022
15	C4.4 Grading Plan South	8/25/2022
16	C5 Erosion Control Plan West	8/25/2022
17	C5.1 Erosion Control Plan Center	8/25/2022
18	C5.2 Erosion Control Plan East	8/25/2022
19	C5.3 Erosion Control Plan South	8/25/2022
20	C5.3 Erosion Control Plan Notes	8/25/2022
21	C6 Utility Plan West	8/5/2022
22	C6.1 Utility Plan South	8/5/2022
23	C7 Detail Sheet 1	8/24/2022
24	C7.1 Detail Sheet 2	8/24/2022
25	C7.2 Detail Sheet 3	8/24/2022
26	L1 Landscape Plan	8/3/2022
27	L2 Landscape Plan	8/3/2022
28	L3 Landscape Plan	8/3/2022
29	L4 Landscape Plan	8/3/2022
30	L5 Landscape Notes	8/3/2022
31	A5 Exterior Elevations	8/30/2022

STAFF RECOMMENDATION

City Staff recommends approval of Final Site Plan **Application FS2022-03** *JB Hunt Transport*, subject to the following stipulations:

1. The staff recommendations and comments noted related to infrastructure, landscaping, the stormwater plan and all else discussed as included in this Staff Report are included as stipulations as part of approval of this Final Site Plan.
2. All construction plans for any public infrastructure shall be prepared to City standards and approved by the City. The applicant has submitted a drainage easement to the City Engineer for review. Upon approval, the easement will be recorded either before or with the Final Plat.

3. Applicant/Owner Obligation. The site plan, a scale map of proposed buildings, structures, parking areas, easements, roads, and other city requirements (landscaping/berm plan, lighting plan) used in physical development, when approved by the Planning Commission shall create an enforceable obligation to build and develop in accordance with all specifications and notations contained in the site plan instrument. The applicant prior to the issuance of any development permit shall sign all site plans. A final site plan filed for record shall indicate that the applicant shall perform all obligations and requirements contained therein.

Note: For Application FS2022-03 the Planning Commission is the final authority for approval.

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: October 13, 2022

Agenda Item: Ordinance Amending Ordinance No. 2100
Resolution Authorizing a First Amendment to a Development Agreement

Subject: Edgerton Crossing Woodstone Project Community Improvement District

Summary:

Woodstone Properties, LLC (“Developer”) is constructing hotels, a conference center, travel center, casual dining restaurant, quick-service restaurants, retail space, office space, and other commercial buildings/uses on unimproved land located at the southwest corner of Homestead Lane and 199th Street.

Pursuant to a development agreement with the Developer, the City approved Ordinance No. 2100 creating a community improvement district and levying a 1% CID sales tax. The CID sales tax was set to commence January 1, 2023.

The City and the developer desire to delay the commencement of the CID sales tax until retail businesses open at the project. The Ordinance delays the commencement of the CID sales tax until the date the first retail user within the CID opens for business.

The CID Development Agreement is being amended to align the start date of the CID sales tax with the amending ordinance.

The CID sales tax will be levied for a term of 22 years once it commences.

ORDINANCE NO. 2123

AN ORDINANCE AMENDING ORDINANCE NO. 2100 IN CONNECTION WITH THE COMMUNITY IMPROVEMENT DISTRICT (EDGERTON CROSSING WOODSTONE PROJECT).

WHEREAS, K.S.A. 12-6a26 *et seq.* (the “Act”) authorizes the Governing Body of a city to create a community improvement district to finance projects within a defined area of the city and to levy a community improvement district sales tax; and

WHEREAS, pursuant to the Act and Ordinance No. 2100 of the City of Edgerton, Kansas (the “City”) passed on November 18, 2021, the Governing Body of the City established a community improvement district known as the “Community Improvement District (Edgerton Crossing Woodstone Project)” (the “CID”); and

WHEREAS, Section 3 of Ordinance No. 2100 levied a community improvement district sales tax within the CID in the amount of 1.00% (the “CID Sales Tax”) and stated that collection of the CID Sales Tax would commence on January 1, 2023; and

WHEREAS, the Governing Body of the City hereby finds and determines that it is in the best interest of the City to delay the commencement of the CID Sales Tax;

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

Section 1. Section 3(a) of Ordinance No. 2100 is hereby deleted in its entirety and replaced with the following:

- (a) The Projects will be financed with the CID Sales Tax levied pursuant to the provisions of the Act and the costs of the Projects will be reimbursed on a pay-as-you-go basis, as defined in the Act. The CID Sales Tax shall commence on: (i) the date that the first retail user within the CID is open for business; (ii) such other date as determined by the City; or (iii) the earliest date following the forgoing (i) or (ii) on which the Kansas Department of Revenue agrees to being the imposition of the CID Sales Tax. The CID Sales Tax shall be administered, collected and subject to the provisions of K.S.A. 12-187 *et seq.*, this Ordinance (as amended from time to time), and the development agreement between the City and the developer.

Section 2. The City Clerk shall file a certified copy of this Ordinance with the Register of Deeds of Johnson County, Kansas.

Section 3. The Mayor, City Clerk and other appropriate officers of the City are hereby

authorized and directed to execute, attest, acknowledge and deliver for and on behalf of and as the act and deed of the City, any other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 4. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication once in the official City newspaper. After publication of this Ordinance, the City Clerk is directed to provide the Kansas Department of Revenue with a copy of this Ordinance.

PASSED by the Governing Body of the City of Edgerton, Kansas, this 13th day of October, 2022.

Donald Roberts, Mayor

[SEAL]

ATTEST:

Alexandria Clower, City Clerk

Scott W. Anderson
Economic Development Counsel

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: October 13, 2022

Agenda Item: Ordinance Amending Ordinance No. 2100
Resolution Authorizing a First Amendment to a Development Agreement

Subject: Edgerton Crossing Woodstone Project Community Improvement District

Summary:

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Pursuant to a development agreement with the Developer, the City approved Ordinance No. 2100 creating a community improvement district and levying a 1% CID sales tax. The CID sales tax was set to commence January 1, 2023.

The City and the developer desire to delay the commencement of the CID sales tax until retail businesses open at the project. The Ordinance delays the commencement of the CID sales tax until the date the first retail user within the CID opens for business.

The CID Development Agreement is being amended to align the start date of the CID sales tax with the amending ordinance.

The CID sales tax will be levied for a term of 22 years once it commences.

RESOLUTION NO. 10-13-22A

RESOLUTION AUTHORIZING A FIRST AMENDMENT TO A COMMUNITY IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT FOR THE EDGERTON CROSSING WOODSTONE PROJECT

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

WHEREAS, the City has created the Community Improvement District (Edgerton Crossing Woodstone Project) (the “District”) and imposed a 1% community improvement district sales tax; and

WHEREAS, the City and Woodstone Properties, LLC, a Missouri limited liability company (the “Developer”), previously entered into a CID Development Agreement dated December 1, 2021 (the “Original Agreement”) to administer the community improvement district sales tax; and

WHEREAS, the City and the Developer desire to amend the Original Agreement to provide for a delayed start in the collection of the community improvement district sales tax;

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

Section 1. Approval of First Amendment to Development Agreement. The Governing Body hereby approves the First Amendment to CID Development Agreement (the “First Amendment”) in substantially the form attached hereto as **Exhibit A**.

Section 2. Execution of First Amendment to CID Development Agreement. The Mayor of the City is hereby authorized to enter into the First Amendment, in substantially the form presented to and reviewed by the Governing Body at this meeting (a copy of which upon execution shall be filed in the office of the City Clerk), with such changes therein as shall be approved by the Mayor, the Mayor’s signature thereon being conclusive evidence of his approval thereof. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the First Amendment.

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 First Amendment.

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

ADOPTED this 13th day of October, 2022.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

Scott W. Anderson
Economic Development Counsel

EXHIBIT A

FORM OF FIRST AMENDMENT TO CID DEVELOPMENT AGREEMENT

FIRST AMENDMENT TO CID DEVELOPMENT AGREEMENT
(Edgerton Crossing Woodstone Project)

THIS FIRST AMENDMENT TO CID DEVELOPMENT AGREEMENT (this “**First Amendment**”) is made this 14th day of October, 2022, between the **CITY OF EDGERTON, KANSAS**, a municipal corporation duly organized and existing under the laws of the State of Kansas (the “**City**”), and **WOODSTONE PROPERTIES, LLC**, a Missouri limited liability company (the “**Developer**”), and amends the CID Development Agreement dated December 1, 2021 (the “**Original Agreement**”), between the City and the Developer.

RECITALS:

- A.** The City and the Developer have previously entered into the Original Agreement.
- B.** The parties desire to amend the Original Agreement as set forth herein (the Original Agreement, as amended by this First Amendment, the “**Agreement**”).

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Definitions. Capitalized terms used in this First Amendment but not defined herein shall have the meanings given to such terms as set forth in the Original Agreement.

Section 2. Amendment to Definitions. The definitions of “**CID**” and “**CID Sales Tax Term**” in **Section 1.02** of the Original Agreement are deleted and replaced with the following definitions:

“**CID**” means the Community Improvement District created by the City on November 18, 2021 pursuant to the CID Ordinance.

“**CID Sales Tax Term**” means a term equal to twenty-two (22) calendar years, commencing on the date the CID Sale Tax commences pursuant to the CID Ordinance.

Section 3. New Definition. **Section 1.02** of the Original Agreement is hereby amended by adding the following definition:

“**CID Ordinance**” Ordinance No. 2100 approved by the City on November 18, 2021, as amended by Ordinance No. 2123 approved by the City on October 13, 2022, and as further amended from time to time.

Section 4. Representations. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this First Amendment; (b) fully understands the legal effect of this First Amendment; and (c) is duly

authorized and empowered to execute, deliver and perform this First Amendment according to its terms and conditions.

Section 5. Entire Agreement. The Agreement is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of the Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation thereof shall be binding unless in writing and signed by all parties.

Section 6. Effectiveness of Original Agreement. Except as amended by this First Amendment, all terms and provisions of the Original Agreement shall remain in full force and effect.

Section 7. Counterparts. This First Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment as of the date first written above.

CITY OF EDGERTON, KANSAS

(SEAL)

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

WOODSTONE PROPERTIES, LLC,
a Missouri limited liability company

By: _____
J. Shannon McMurdo, Member

City Council Action Item

Council Meeting Date: October 13, 2022

Department: Public Works

Agenda Item: Consider an Agreement With GKW Group for The Library Brick Project

Background/Description of Item:

On October 28, 2021 Edgerton City Council approved the adoption of the 2022-2026 Capital Improvement Program (CIP), including the Library Brick Project. The CIP lists a budget of \$63,500, with the sources listed as General Fund and shared costs with Johnson County Library.

On August 11, 2022 requests for Letters of Interest were sent out to multiple Masonry contractors. The City received one response back from these requests. The one request came from GKW Group. City Staff has not worked with GKW Group yet, they have consulted the City several times to assist in developing this CIP project scope.

Construction of the project is projected to begin during November 2022, pending weather conditions. The term of the Agreement anticipates the project will be complete by May 31, 2023.

This project will be funded by the City of Edgerton with fifty percent (50%) reimbursement by Johnson County Library (JCL). Staff has been coordinating with the JCL staff with the project and will bring at a future council meeting a memorandum of understanding with JCL for project cost sharing.

This project is one of two proposed projects for this facility. The CIP budget for Library Roof Project is \$75,600 and for the Library Brick Project is \$63,500, for a total of \$139,100. The current project estimate for the Library Roof Project is less than \$63,500. This would leave unused funds within the project budget. Staff would recommend re-allocating any unused budgeted dollars from the Library Roof Project to the Library Brick Project to maximize the improvement to the facility itself.

The Agreement is under review by the City Attorney. City Staff recommends approving this agreement pending City Attorney approval.

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

Funding Source: General Fund & Johnson County Library

Budget Allocated: \$63,500

Finance Director Approval:

x Karen E. Kindle

Karen Kindle, Finance Director

Recommendation: Approve an Agreement With GKW Group for The Library Brick Project And Approve The Re-Allocation Of Any Unused Budgeted Dollars To The Library Brick Project

Enclosed: Draft Agreement with GKW Group

Prepared by: Dan Merkh, Public Works Director

**PROFESSIONAL
SERVICES
AGREEMENT
CONSULTANT-CLIENT**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made and entered into as of the _____ day _____, _____ (the "Effective Date") by and between GKW Group., party of the first part, (the CONSULTANT), and CITY OF EDGERTON, KANSAS, party of the second part, (the CLIENT).

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

Masonry Rehabilitation and Sealant Application

Library Brick Project

Edgerton, Kansas

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

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

SECTION 1 – DEFINITIONS

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

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

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

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

Name:	Garrett Wilson
Address:	5400 Chouteau Trafficway
	Kansas City, MO 64119
Phone:	(816) 437-9999 (Office) (816) 462-5868 (Cell)

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

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

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

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

Name:	Garrett Wilson
Address:	5400 Chouteau Trafficway
	Kansas City, MO 64119
Phone:	(816) 437-9999 (Office) (816) 462-5868 (Cell)

SECTION 4 – PAYMENT

4.1 COMPENSATION

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

correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.

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

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

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

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

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

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

5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation.

If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

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

5.4 INDEMNIFY AND HOLD HARMLESS

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

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

5.5 ENTIRE AGREEMENT

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

5.6 APPLICABLE LAW

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

5.7 ASSIGNMENT OF AGREEMENT

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

5.8 NO THIRD-PARTY BENEFICIARIES

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

5.9 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and

regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.10 TITLES, SUBHEADS AND CAPITALIZATION

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

5.11 SEVERABILITY CLAUSE

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

5.12 FIELD REPRESENTATION

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

5.13 HAZARDOUS MATERIALS

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

5.14 AFFIRMATIVE ACTION

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

5.15 SPECIAL PROVISIONS

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

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

CONSULTANT:

GKW Group
(Firm Name)

By: _____

Printed Name: Garrett Wilson

Title: Owner

CLIENT:

**City of Edgerton,
Kansas**

By: _____

Printed Name: _____

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1

SCOPE OF SERVICES

SCOPES OF WORK

Masonry

- Includes removal and replacement of deteriorated brick where face has spalled off or is cracked or broken.
 - Includes a large area on the East wall at the South patio area.
 - Includes many miscellaneous brick near the roof line on the West elevation
 - New replacement brick to match existing as closely as possible
- Includes miscellaneous tuckpointing at South, West, and North elevations and patio elevations where mortar is cracked, missing, or otherwise deteriorated at GKW discretion.
 - Custom mortar matching and repointing with Type N mortar to match original in color and profile
 - Excludes tuckpointing at East elevation at 4th street as this area requires approximately 40% tuckpointing and will be included in a secondary phase of this project. Any open holes in joints will be plugged in this phase.
- Includes pinning existing stair wing walls to perpendicular patio walls with 8-10" stainless steel Prosoco Stitch-Tie helical anchors
- Includes grinding and repointing 100% of joints at stair walls at patio
- Includes miscellaneous stone patching with Jahn Stone Repair Mortar by Cathedral Stone Products
 - Patches to match as closely as possible in color and texture
- Includes biological wash down of exterior brick to remove dirt, grime, and black biological staining on brick.
- Includes provisions to comply with OSHA's Crystalline Silica Rule. All team members hold Silica Training Certifications.
- Exclusions: Cold weather protection, joint sealants, drilling/epoxy of rebar, stone replacement, unforeseen conditions, repairs at backside of parapet walls, interior masonry.

Joint Sealants

- Includes grinding mortar at skyward-facing joints in parapet cap stones, arch stones over windows, and band head joints at stone band below parapet caps on North and East elevations.
- Includes sealing these joints with a stone-colored polyurethane sealant
- Includes joint sealant at vertical inside corners at patio where brick meets brick (2 joints at patio)
- Includes joint sealant at vertical joints at brick pilasters at corners of building (existing mortar joint is continuous and is cracked. Polyurethane sealant will allow these joints to flex during contraction and expansion due to temperature)
- Includes new sealant at perimeter of wood window frames and doors at exterior of building.
- Exclusions: Interior sealants, sealants integral to roofing or roofing transitions, painting, removal of roofing material.

EXHIBIT 2

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

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

(1) COMMERCIAL GENERAL LIABILITY

\$1,000,000 Per Occurrence

\$2,000,000 Aggregate

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

(2) WORKERS COMPENSATION - STATUTORY & EMPLOYERS LIABILITY

\$100,000 Each Accident

\$500,000 Policy Limit - Disease

\$100,000 Each Employee – Disease

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

(3) PROFESSIONAL LIABILITY / ERRORS & OMISSIONS

\$1,000,000 Per Claim

\$2,000,000 Aggregate

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

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

(4) WAIVER OF SUBROGATION

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

(5) CERTIFICATE OF INSURANCE

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

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

EXHIBIT 3

COST AND SCHEDULE

Schedule

GKW Group will complete the Library Brick Project by May 1, 2023.

Cost

Masonry rehabilitation and joint sealant : \$66,900

Alternate 1 +	\$6,675
Alternate 2 +	\$26,435
Alternate 3 +	\$1,550

EXHIBIT 4
SPECIAL PROVISIONS

No special provisions required for this project.

City Council Action Item

Council Meeting Date: October 13, 2022

Department: Public Works

Agenda Item: Consider an Agreement With 435 Roofing for The Library Roof Replacement

Background/Description of Item:

On October 28, 2021, Edgerton City Council approved the adoption of the 2022-2026 Capital Improvement Program (CIP), including the Library Roof Replacement. The CIP lists the budget of \$75,600, with the sources listed as General Fund and shared costs with Johnson County Library.

On August 11, 2022, requests for Letters of Interest were sent out to multiple roofing contractors. The City received two responses back from these requests. Of the two requests, 435 Roofing was the only contractor to list the work details, to provide a manufacturer warranty and to provide a warranty on the work provided by the contractor.

Construction of the project is projected to begin during November 2022, pending weather conditions. The term of the Agreement anticipates the project will be complete by May 31, 2023.

This project will be funded by the City of Edgerton with fifty percent (50%) reimbursement by Johnson County Library (JCL). Staff has been coordinating with the JCL staff with the project and will bring at a future council meeting a memorandum of understanding with JCL for project cost sharing.

This project is one of two proposed projects for this facility. The CIP budget for Library Roof Project is \$75,600 and for the Library Brick Project is \$63,500, for a total of \$139,100. The current project estimate for the Library Roof Project is less than \$63,500. This would leave unused funds within the project budget. Staff would recommend re-allocating any unused budgeted dollars from the Library Roof Project to the Library Brick Project to maximize the improvement to the facility itself.

The Agreement is under review by the City Attorney. City Staff recommends approving this agreement pending City Attorney approval.

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

Funding Source: General Fund & Johnson County Library

Budget Allocated: \$75,600

Finance Director Approval:

x Karen E. Kindle

Karen Kindle, Finance Director

Recommendation: Approve An Agreement With 435 Roofing For The Library Roof Replacement Pending Approval By The City Attorney And Approve The Re-Allocation Of Any Unused Budgeted Dollars To The Library Brick Project

Enclosed: Draft Agreement with 435 Roofing

Prepared by: Dan Merkh, Public Works Director

**PROFESSIONAL
SERVICES
AGREEMENT
CONSULTANT-CLIENT**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made and entered into as of the _____ day _____, _____ (the "Effective Date") by and between 435 Roofing., party of the first part, (the CONSULTANT), and CITY OF EDGERTON, KANSAS, party of the second part, (the CLIENT).

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

Roof Replacement

Library Roof Replacement

Edgerton, Kansas

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

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

SECTION 1 – DEFINITIONS

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

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

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

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

Name:	Brian Kramer
Address:	9265 Flint Street
	Overland Park, Kansas 66214
Phone:	(913) 579-0718

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

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

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

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

Name: Brian Kramer
Address: 9265 Flint Street
Overland Park, Kansas 66214
Phone: (913) 579-0718

SECTION 4 – PAYMENT

4.1 COMPENSATION

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

correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.

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

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

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

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

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

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

5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation.

If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

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

5.4 INDEMNIFY AND HOLD HARMLESS

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

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

5.5 ENTIRE AGREEMENT

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

5.6 APPLICABLE LAW

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

5.7 ASSIGNMENT OF AGREEMENT

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

5.8 NO THIRD-PARTY BENEFICIARIES

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

5.9 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and

regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.10 TITLES, SUBHEADS AND CAPITALIZATION

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

5.11 SEVERABILITY CLAUSE

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

5.12 FIELD REPRESENTATION

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

5.13 HAZARDOUS MATERIALS

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

5.14 AFFIRMATIVE ACTION

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

5.15 SPECIAL PROVISIONS

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

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

CONSULTANT:

435 Roofing
(Firm Name)

By: _____

Printed Name: Brian Kramer

Title: Vice President of Sales

CLIENT:

**City of Edgerton,
Kansas**

By: _____

Printed Name: _____

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1 SCOPE OF SERVICES

Summary:

Job Supervision: Daily Job Site Supervision

Compliance: Fully Comply with Local Codes & Ordinances; Pull Permits as Needed

No Leak Guarantee: Ten Year Guarantee on Roof Leaks & Defective Installation

Protection: Roof Fully Covered & Protected Each Night

Cleanup: Daily and Upon Job Completion Magnet Nail Pickup and Gutter Clean Out

Payment: No Payment Prior to Completion of Job

Scope:

- Remove the bubbles from the current modified bitumen roof materials.
- Remove all debris from the roof.
- Install one (1) layer of 2.6" Poly ISO over the entire roof surface mechanically fastened to achieve an additional 15 R-Value.
- Mechanically fasten MuleHide 60ml TPO roof membrane
- Fully adhere membrane to all walls.
- Install Termination Bar in the middle of the perimeter stone cap and seal caulk edge.
- Install new 24g gutter apron on the rear of the building shedding water into the gutters.
- Flash gutter apron with a TPO cover strip.
- Flash all penetrations with TPO detail accessories.

EXHIBIT 2

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

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

(1) COMMERCIAL GENERAL LIABILITY

\$1,000,000 Per Occurrence

\$2,000,000 Aggregate

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

(2) WORKERS COMPENSATION - STATUTORY & EMPLOYERS LIABILITY

\$100,000 Each Accident

\$500,000 Policy Limit - Disease

\$100,000 Each Employee – Disease

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

(3) PROFESSIONAL LIABILITY / ERRORS & OMISSIONS

\$1,000,000 Per Claim

\$2,000,000 Aggregate

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

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

(4) WAIVER OF SUBROGATION

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

(5) CERTIFICATE OF INSURANCE

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

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

EXHIBIT 3

COST AND SCHEDULE

Schedule

Mobilization to site, and set up of site will occur the week of October 31-November 4, 2022.
Construction and clean-up will occur week of November 7-November 11, 2022.

Cost

OVERLAY OR REMOVE EXISTING ROOF PER OPTIONS BELOW. INSTALL ALL NEW 60ML TPO ROOF MEMBRANE.

INSTALL ALL NEW TPO ROOF ACCESSORIES (PIPE BOOTS, PITCH PANS, COVER STRIP).
WRAP ALL PARAPET WALLS WITH TPO AND TERMINATE TPO PER OPTIONS BELOW.

ALL ROOF OPTIONS INCLUDE 20 YEAR MANUFACTUTER WARRANTY AND 10 YEAR 435 ROOFING WARRANTY

OVERLAY EXISTING ROOF WITH 1/2" FIBERBOARD AND MECHANICALLY FASTEN 60ML TPO -
\$24,435.00

REMOVE EXISTING ROOF AND INSTALL 3" POLY ISO 18 R-VALUE AND MECHANICALLY FASTEN 60ML TPO - **\$33,435.00**

OPTIONAL ADD ON - INSTALL ALL NEW 24G PARAPET COPING ON THE ENTIRE PERIMETER OF THE BUILDING - **ADD - \$4,760.00**

ESTIMATE INCLUDES ALL MATERIALS, LABOR, TAXES AND PERMIT FEES.

EXHIBIT 4
SPECIAL PROVISIONS

No special provisions required for this project.