

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
June 28, 2018
7:00 P.M.**

Call to Order

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

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

4. Approve Minutes for May 24, 2018 Regular City Council Meeting
5. Approve Minutes for June 14, 2018 Regular City Council Meeting

Regular Agenda

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

Business Requiring Action

8. **CONSIDER APPOINTMENT OF TIM BERGER TO THE EDGERTON PLANNING COMMISSION TO FILL A VACANCY WHICH EXPIRES IN SEPTEMBER 2019**

Motion: _____ Second: _____ Vote: _____

9. **CONSIDER AN AGREEMENT WITH THE SECRETARY OF THE KANSAS DEPARTMENT OF TRANSPORTATION FOR THE HOMESTEAD LANE/207TH STREET PROJECT**

Motion: _____ Second: _____ Vote: _____

10. **CONSIDER SELECTION OF SELECTION OF MILES EXCAVATING INC./AFFINIS CORP AS THE DESIGN-BUILD TEAM FOR HOMESTEAD LANE AND 207TH STREET PROJECT**

Motion: _____ Second: _____ Vote: _____

**11. CONSIDER AGREEMENT WITH BG CONSULTANTS FOR CONSTRUCTION
ADMINISTRATION AND OBSERVATION SERVICES FOR HOMESTEAD LANE AND
207TH STREET PROJECT**

Motion: _____ Second: _____ Vote: _____

12. Report by the City Administrator

- Report on Public Comments Received for 207th Street Grade Separation

13. Report by the Mayor

14. Future Meeting/Event Reminders:

- July 3rd: 6:00 PM – Community Picnic and Firework Show
- July 12th: 7:00 PM – City Council Meeting
- July 13th: Noon – 6:00 PM – Blood Drive
- July 14th: Dusk – Summer Movie Night featuring Disney's Coco
- July 26th: 7:00 PM – City Council Meeting

15. Adjourn Motion: _____ Second: _____ Vote: _____

City of Edgerton, Kansas
Minutes of City Council Regular Session
May 24, 2018

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on May 24, 2018. The meeting convened at 7:00 p.m. with Mayor Roberts presiding.

1. ROLL CALL

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

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator Beth Linn
- Assistant City Administrator/Interim City Clerk Scott Peterson
- City Clerk Rachel James
- City Attorney Lee Hendricks
- Parks Maintenance Bob McVey
- Finance Director Karen Kindle
- Public Works Superintendent Trey Whitaker
- Parks and Recreation Coordinator Maddie Becker

2. WELCOME

3. PLEDGE OF ALLEGIANCE

CONSENT AGENDA

4. Approve Minutes for May 10, 2018 Regular City Council Meeting
5. Consider Resolution No. 05-24-18A Approving The Mayoral Appointments For The City Treasurer, City Prosecutor, Municipal Judge, And City Attorney For The City Of Edgerton, Kansas
6. Consider the Purchase of a 2018 Mahindra 2555 Compact Utility Tractor
7. Consider the Purchase of a Caterpillar CB24 Asphalt Roller
8. Consider Resolution 05-24-18B Authorizing the Closure of Certain Public Streets During the Edgerton Summer Kickoff Block Party
9. Consider Resolution 05-24-18C Recognizing the Edgerton Summer Kickoff Block Party as a "Public Festival" for Purposes of the City's Noise Restrictions
10. Consider Final Acceptance of the Dollar General/Project Eisenhower Public Infrastructure and Authorize Final Payment to Colby Series 17, LLC
11. Consider Final Acceptance of Arrowhead Sanitary Sewer and Authorize Final Payment
12. Consider Resolution 05-24-18D Appointing Rachel James as City Clerk and Scott Peterson as Deputy City Clerk

13. Consider Resolution 05-24-18E Approving Banking Resolution with Central Bank of the Midwest

Mayor Roberts requested items 7 and 11 be pulled from Consent Agenda to table until next City Council Meeting. Motion by Longanecker, Second by Brown to table Items 7 and 11 until next meeting.

Motion was approved 3-0

Motion to Approve Consent Agenda minus items 7 and 11 considered. Motion by Longanecker, Second by Brown to Approve Consent Agenda.

Motion was approved 3-0.

REGULAR AGENDA

14. Public Comments.

Dalbert Sawyer, Olathe, KS, is the owner of Willie's Wacky Gourmet, a food stand that helps raise money for Non-Profit Organizations. He requests a vending permit application for the 3rd of July Celebration in order to raise funds for the Edgerton City Museum.

Mayor Roberts requests staff to work on Vending Permit proposal to be approved by Council. Conus asks if this opens vending to anyone? Mayor Roberts notes the permit will still need to be approved by Council. City Attorney confirmed legality and will speak to Mr. Sawyer about contract.

Allen Soetaert, 29055 W 151st, Gardner, KS, introduced himself as a representative of W7 and part of the Gardner Edgerton Chamber of Commerce.

15. Declaration. None.

16. Presentation by Gardner Edgerton Chamber of Commerce for 2019 Fiscal Year Budget Request.

Gardner Edgerton Chamber of Commerce Presentation by Jason Camis. Overviewed highlights of the Chamber from the past year including the Chamber qualified from National Chamber of the Year. Requested \$5,000 from Council as in previous years. Asked for feedback from Council.

In response to the request for feedback, Mayor Roberts discussed the incomplete status of 2017 deliverables such as the Legislative Coffee, Candidate Events, as well as the SW Johnson County stakeholders event. Concerning the GE Magazine, Mayor Roberts asked why no Edgerton businesses were highlighted and why the LPKC story focused more on New Century. Mayor Roberts requested more deliverables, communication about when plans for these deliverables have changed, as well as Chamber taking a leading role in GE Magazine content. Mr. Camis requested list of priority deliverables from Edgerton Council. Mayor

Roberts suggested that member of Edgerton City Council attends future Chamber meetings to represent Edgerton interest.

17. PUBLIC HEARING REGARDING A REQUEST BY THE FRONTIER DAYS ASSOCIATION FOR A WAIVER (AS ALLOWED PURSUANT TO SECTION 3-202 OF ARTICLE 1 OF CHAPTER III OF THE CITY CODE) FROM THE PROHIBITION AGAINST SERVING ALCOHOLIC LIQUOR WITHIN 300 FEET OF THE LIBRARY FOR THE JUNE 15 AND 16, 2018 ANNUAL FRONTIER DAYS FESTIVAL

Mayor Roberts opened the Public Hearing. With no questions or comments from either the audience or the City Council the Public Hearing was closed.

18. CONSIDER RESOLUTION NO. 05-24-18F AUTHORIZING SPECIAL EVENT PERMIT FOR SALE AND CONSUMPTION OF ALCOHOLIC LIQUOR ON CERTAIN PUBLIC PROPERTY WITHIN THE CITY OF EDGERTON, KANSAS

Scott Peterson, Assistant City Administrator, presented the resolution, but had no further information from the previous Public Hearing. The resolution has been updated from previous Frontier Days Festivals, and if approved would now permit alcohol to be sold and consumed near the Library and downtown Church during Frontier Days. Resolution also grants permission to waive noise restrictions during the festival on Friday June 15 and Saturday June 16.

Motion by Brown, Second by Longanecker, to adopt Resolution No. 05-24-18F.

Motion was approved 3-0.

19. CONSIDER ORDINANCE NO. 1081 ADOPTING A RECOMMENDATION BY THE CITY OF EDGERTON PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 120 ACRES OF LAND [LOCATED ON THE NORTHEAST CORNER OF FOUR CORNERS ROAD AND 199TH STREET] IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON L-P LOGISTICS PARK ZONING DISTRICT.

Beth Linn, City Administrator, presented the ordinance, and if approved would rezone approximately 120 acres of land, located at the northeast corner of the intersection of Four Corners Road and 199th Street in Edgerton. Rezoning would be from Johnson County "RUR" Rural District to City of Edgerton "L-P" Logistics Park District.

Motion by Longanecker, Second by Brown, to adopt Ordinance No. 1081.

Motion was approved 3-0.

20. CONSIDER ORDINANCE NO. 1082 AUTHORIZING THE CREATION OF THE LPKC DISTRICT NO. 1 COMMUNITY IMPROVEMENT DISTRICT, LEVYING SPECIAL ASSESSMENTS WITHIN SUCH DISTRICT, AND APPROVING A DEVELOPMENT AGREEMENT.

Scott Anderson presented on NorthPoint's request for \$0.05 special assessment for each building constructed during Phase II. This will sunset after 10 years and limited to the Kubota site. Funds will be placed in CID and return to NorthPoint when development is certified complete.

Mayor Roberts emphasized all CID revenue comes from this project. Citizens are not "on the hook" for this CID.

Motion by Longanecker, Second by Brown, to adopt Ordinance No. 1082.

Motion was approved 3-0.

21. Report by the City Administrator

22. Report by the Mayor

23. Future Meeting/Event Reminders:

- June 2nd: 6:30-9:00 PM – Summer Kickoff Block Party
- June 2nd: 9:00-11:00 PM – Downtown Summer Movie Night
- June 7th 7:00 PM – Budget Work Session and Citizen Survey Review
- June 15th-16th – Edgerton Frontier Days
- June 20th: 12:00 PM – Senior Lunch

24. Executive Session

Motion by Longanecker, Second by Brown to recess into an executive session pursuant to K.S.A. 75-4319(b)(2) for attorney/client privilege and for contract negotiations, to include City Attorney and City Administrator for fifteen (15) minutes was considered.

Motion was approved 3-0.

Motion by Longanecker, Second by Brown to return to regular session.

Motion was approved 3-0.

25. Adjourn

Motion by Brown, Second by Conus to Adjourn the Regular Session.

Motion was approved 3-0. Meeting was adjourned at 8:15 PM.

City of Edgerton, Kansas
Minutes of City Council Regular Session
June 14, 2018

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on June 14, 2018. The meeting convened at 7:00 p.m. with Mayor Roberts presiding.

1. ROLL CALL

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

With a quorum present, the meeting commenced.

Staff in attendance:	City Administrator Beth Linn
	Assistant City Administrator/Interim City Clerk Scott Peterson
	City Clerk Rachel James
	City Attorney Lee Hendricks
	Parks Maintenance Bob McVey
	Finance Director Karen Kindle
	Public Works Superintendent Trey Whitaker

2. WELCOME

3. PLEDGE OF ALLEGIANCE

CONSENT AGENDA

- 4.** Approve Minutes for May 24, 2018 Regular City Council Meeting
- 5.** Approve Final Acceptance for CY Edgerton (Arrowhead) Sanitary Sewer Extension
- 6.** Approve Concurrence to Bid the 2018 CARS Project (4th and Nelson Street Intersection Improvements)
- 7.** Approve an Agreement Not to Protest the Formation of Benefit District for the Midwest Gateway Project located at 32180 and 32190 West 191st Street

Mayor Roberts requested item 4 be pulled from Consent Agenda. Motion by Longanecker, Second by Brown to approve remaining Consent Agenda items.

Motion was approved 3-0.

Mayor Roberts made motion to approve minutes with minor amendment to vote counts. Motion by Longanecker, Second by Lewis to approve updated minutes.

Motion was approved 3-0.

REGULAR AGENDA

8. Public Comments.

Jacob Sylva, 14600 Oak Valley Drive, Gardner, KS, 66030, presented his Eagle Scout Project to the council. Mr. Sylva requested council's permission to help update the Edgerton Museum Ramp. The updates will include fixing boards, power washing, and staining railings and posts.

Mayor Roberts commented that Jacob needs Council approval to proceed with his project.

Councilmember Longanecker asked who is supplying money for supplies and Mr. Sylva responded that a mix of fundraising and personal funds would be contributed to the project.

Charlie Troutner, 707 W. Nelson #215, Edgerton, KS, announced the sale of vintage style Edgerton license plates for \$20 each to benefit the Edgerton Museum.

9. Declaration. None.

Business Requiring Action

10. CONSIDER RESOLUTION NO. 06-14-18A RESOLUTION CONSENTING TO THE ASSIGNMENT OF A RESOLUTION OF INTENT FROM WELLSVILLE FARMS, LLC TO KUBOTA NORTH AMERICA CORPORATION, OR ITS SUCCESSORS IN INTEREST

Scott Anderson, Bond Counsel, presented the resolution, which would consent to the transfer of bonds from Wellsville Farms to Kubota North America Corporation.

Councilmember Longanecker asked whether these are the same as the previously approved bonds. Mr. Anderson confirmed this and Mayor Roberts clarified by saying Council has already passed a resolution to grant the bonds, this would just be transferring from Wellsville Farms to Kubota.

Motion by Longanecker, Second by Lewis to adopt Resolution No. 06-14-18A.

Motion was approved 3-0.

11. CONSIDER RESOLUTION NO. 06-14-18B CONSENTING TO A FIRST SUPPLEMENTAL BASE LEASE, FIRST SUPPLEMENTAL LEASE AGREEMENT AND FIRST AMENDMENT TO PERFORMANCE AGREEMENT IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (COLDPOINT LOGISTICS REAL ESTATE, LLC PROJECT), SERIES 2016

Scott Anderson, Bond Council for the City, presented the resolution, which would amend the legal descriptions on the prior two agreements with Coldpoint Logistics due to the acquisition of more ground. All abatement percentages and terms will stay the same as in previous agreements. Mr. Anderson informed the Council that this would need to be approved in order to be in compliance with the Board of Tax Appeals.

Councilmember Conus inquired if the update to the site would need to be viewed by Planning Commission. Mr. Anderson stated that the plat has already been through Planning Commission and has been approved by the city and county.

Motion by Longanecker, Second by Lewis to adopt Resolution No. 06-14-18B

Motion was approved 3-0.

12. CONSIDER RESOLUTION NO. 06-14-18C CONSENTING TO A FIRST SUPPLEMENTAL BASE LEASE, FIRST SUPPLEMENTAL LEASE AGREEMENT AND FIRST AMENDMENT TO PERFORMANCE AGREEMENT IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (COLDPOINT LOGISTICS REAL ESTATE, LLC FIRST EXPANSION PROJECT), SERIES 2017

Motion by Longanecker, Second by Lewis to adopt Resolution No. 06-14-18C.

Motion was approved 3-0.

13. CONSIDER ORDINANCE NO. 1083 ANNEXING CERTAIN LAND INTO THE CITY OF EDGERTON, KANSAS.

Beth Linn, City Administrator, introduced the Ordinance. The land owner, Thomas Smith, would like to have his land annexed into the City of Edgerton. The property is at 215th and Sunflower and the property is contiguous to Edgerton.

Mayor Roberts asked whether the property was adjoining the city. Mrs. Linn responded that the property is currently within city limits.

Motion by Longanecker, Second by Lewis to adopt Ordinance No. 1083.

Motion was approved 3-0.

14. Report by the City Administrator

15. Report by the Mayor

16. Future Meeting/Event Reminders:

- June 15th-16th – Edgerton Frontier Days
- June 20th: 12:00 PM – Senior Lunch
- June 28th: 7:00 PM – City Council Meeting
- July 3rd: 6:00 PM – Community Picnic and Fireworks Show
- July 12th: 7:00 PM – City Council Meeting

- July 14th: Dusk – Summer Movie Night featuring Disney’s Coco

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

Motion by Longanecker, Second by Lewis to adjourn into executive session for 5 minutes.

Motion was approved 3-0.

The Open Session recessed at 7:20 p.m.

The Executive Session convened at 7:25.

RECONVENE INTO OPEN SESSION

Motion by Longanecker, Second by Lewis to reconvene into Open Session. Motion was approved 3-0. The open session reconvened at 7:33 p.m.

Motion to empower Mayor Roberts to approve commercial lease agreement for 312B East Nelson, subject to changes by City Attorney. Motion by Lewis, Second by Longanecker to approve. Motion was approved 3-0.

Motion to allow City Administrator Beth Linn financing up to \$40,000 in finishings and renovation work for 321B East Nelson. Motion by Lewis, Second by Conus to approve. Motion was approved 3-0.

Motion by Lewis, Second by Longanecker to adjourn. Motion was approved 3-0. The meeting adjourned at 7:40 p.m.

City Council Action Item

Council Meeting Date: June 28, 2018

Agenda Item #:

Department: Community Development

Agenda Item: Consider Appointment of Tim Berger to the Edgerton Planning Commission to Fill a Vacancy Which Expires in September 2019.

Background/Description of Item:

On June 11, 2018 city staff received notification from Erik Erazo of his resignation from the Planning Commission effective May 9, 2018. Mr. Erazo's term does not expire until September 2019 and with his resignation an appointment is needed from Mayor Roberts.

On June 18, 2018 Mayor Roberts informed staff of his intent to bring forth for council consideration, the appointment of Tim Berger to fill the unexpired term of Mr. Erazo. If confirmed, Mr. Berger would be sworn in prior to the July 10, 2018 Planning Commission meeting.

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

Funding Source: N/A

Budget Allocated: N/A

Finance Director Approval: N/A

Recommendation: Approve Appointment of Tim Berger to the Edgerton Planning Commission to Fill the Current Vacancy Which Expires September 2019.
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Enclosed: Tim Berger Bio

Prepared by: Katy Crow, Development Services Director

Tim Berger
Berger.Tim@Gmail.com
913-486—4462

Personal Information: I am Tim Berger and I am married to Uzzi Josh, who I met while we were both assigned to do some training in Mangalore India. I have a daughter, Olivia, who is currently living in Los Angeles. Olivia and I moved to Edgerton in 2006 after my last tour in Iraq.

Current:

- Works at CenturyLink – Incident Management Operational Continuity and Governance 2001-Present
- Commander of VFW Post 11234 in Gardner, KS
- Tournament Direct of All American Catfish Tournaments

Previously:

- U.S Army 1987-2009
 - 82nd Airborne Division
 - Civil Affairs and Psychological Operations

Summary: Currently working in Information Technology for CenturyLink, primarily focused on operational processes and maintaining operational continuity across the enterprise to include our business partners.

Currently the Commander of the Gardner VFW Post 11234 and working with them to stay involved with supporting Veterans and the community.

As a side project I own and run All American Catfish Tournaments. This is a professional tournament series which involves all levels of anglers, from new to very experienced competitors.

Thank you,
Tim Berger.

City Council Action Item

Council Meeting Date: June 28, 2018

Agenda Item #:

Department: Public Works

Agenda Item: Consider An Agreement With The Secretary Of The Kansas Department Of Transportation For The Homestead Lane/207th Street Project

Background/Description of Item:

The Kansas Department of Transportation (KDOT) has partnered with the City of Edgerton on critical infrastructure in support of Logistics Park Kansas City (LPKC) Phase I including road improvements such as Homestead Lane north of I-35, the Homestead Lane interchange, Waverly Road Grade Separation, etc. This partnership for road infrastructure plays an important role in attracting tenants to LPKC and bringing approximately 4,000 new jobs to the State of Kansas and Edgerton.

On March 22, 2018, Edgerton City Council authorized the Homestead Lane/207th Street Project based on a Letter of Intent provided by KDOT describing their commitment to continue this partnership for infrastructure related to Logistics Park Kansas City Phase II south of Interstate 35.

Project Scope and Cost:

The project includes the design and construction of Homestead Lane (Interstate 35 to 207th Street) and 207th Street (Homestead Lane to Waverly Road). Homestead Lane includes a new four-lane bridge over Tributary D of Big Bull Creek, including 10-foot protected sidewalk on one side. The bridge will include similar aesthetic treatment as Waverly Road bridge such as wall treatments, lighting etc. The road improvements for both Homestead Lane and 207th Street will include four lanes (two in each direction) with a 14-foot wide median that changes to turn lanes where appropriate. A 10-foot wide concrete sidewalk will be provided on the north side.

KDOT has committed to participate in 80% of the eligible costs (including preliminary engineering, construction and construction engineering) to support LPKC Phase II and specifically Kubota (located on the northwest corner of 207th Street and Waverly Road).

The project is currently estimated at \$11.875 MM. KDOT has agreed to contribute towards 80% (not to exceed \$9.5 MM) of the eligible costs. Right-of-way acquisition and utility relocation are not eligible costs. The commitment from KDOT requires the remaining 20% of

the cost, and any ineligible costs, be funded by another party. The City's LPKC Phase II Agreements require Edgerton Land Holding Company to finance the remaining 20% of construction cost. No city general fund dollars will be used for this construction.

Method of Construction and Control of the Project:

The City will use the design-build method of construction. The project is a City of Edgerton led project, not a KDOT project. Because the project is city led, the method for acquisition of right-of-way and design criteria for the road/bridge used for construction are determined by the City.

Repayment:

This project does not require any repayment to KDOT from the City of Edgerton for the funding allocation.

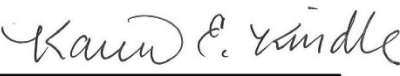
City Attorney has not yet completed review of the Agreement. Any recommendations for change will be reviewed with City Council on June 28, 2018.

Related Ordinance(s) or Statute(s):

Funding Source: Kansas Department of Transportation/Public Infrastructure Fund Phase II

Budget Allocated: Approximately \$11.875 MM

Finance Director Approval:

X 

Karen Kindle, Finance Director

Recommendation: Approve An Agreement With The Secretary Of The Kansas Department Of Transportation For The Homestead Lane/207th Street Project

Enclosed:

- Draft Agreement with Kansas Department of Transportation

Prepared by: Beth Linn, City Administrator

PROJECT NO. 46 KA-4872-01
CONSTRUCTION
CITY OF EDGERTON, KANSAS

AGREEMENT

This Agreement is between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Edgerton, Kansas** (“City”), collectively, the “Parties.”

RECITALS:

- A. The City has requested and the Secretary has authorized a construction project, as further described in this Agreement.
- B. Pursuant to the laws of Kansas, including K.S.A. 2013 Supp. 68-2314b, the Secretary is authorized to provide assistance to cities for roads and bridges not on the state highway systems, and is further authorized to provide transportation improvement assistance for transportation-sensitive economic opportunities on a local basis.
- C. Cities may, under certain circumstances, enter into agreements with the Secretary for the financing and construction of local streets.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“City”** means City of Edgerton, Kansas, with its principal place of business at 404 East Nelson Street, Edgerton, KS, 66021.
- 3. **“Construction”** means the work done on the Project, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
- 4. **“Construction Contingency Items”** means unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
- 5. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

6. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
7. **“Contractor”** means the entity awarded the Design Build contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“Design Build”** means a project for which the design and construction services are furnished under one contract.
9. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
10. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
11. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
12. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
13. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 et seq., Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 et seq., Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 et seq., Hazardous Waste.
14. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 Southwest Harrison Street, Topeka, KS, 66603-3745.
15. **“LPKC”** means Logistics Park Kansas City, Phase II, with its principal place of business located in Edgerton, KS.
16. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on his own behalf, reasonably determines are not Participating Costs.

17. **“Notice of Acceptance”** means a written notification from the City to the Contractor certifying that the Project has been completed in accordance with the Design Build contract and that the City accepts the construction provided for and contemplated by the Design Build contract.
18. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
19. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
20. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Construction.
21. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **reconstruction of Homestead Lane south of the diverging diamond interchange to 207th Street and 207th Street from Homestead Lane to approximately Waverly Road**, and is the subject of this Agreement.
22. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans and the Design Build contract.
23. **“RFP”** means the request for proposal document issued by the City, as supplemented, seeking Design Build firms to submit proposal documentation, by which the City will select the Contractor to deliver the Project.
24. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
25. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.
26. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire rights of way in accordance with the laws

of the State of Kansas, such that the City may obtain participation of state funds in the cost of the Project.

2. **Payment of Costs.** The Secretary agrees to reimburse the City for eighty (80%) of the total actual costs of Preliminary Engineering, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering, but not to exceed \$9,500,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Construction, and Construction Engineering that exceed \$11,875,000.00. The Secretary shall not be responsible for Right of Way or Utility adjustments for the Project. When the final payment is processed it will be paid by the Secretary less a maximum \$500 retainage. The \$500 retainage will be released once the closeout documents have been received and reviewed by KDOT.

3. **Reimbursement Payments.** The Secretary agrees to make partial payments to the City for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by the City that the Project is being constructed within substantial compliance of the Design Plans or the Design Build contract.

4. **Verification of Development is a Condition Precedent to Reimbursement.** The Secretary shall not reimburse the City until the Secretary receives verification from the City that development necessitating the Project is underway. Verification for the Project may consist of evidence of construction, such as a building permit, for the LPKC. Failure to submit verification of development by June 18, 2019, shall result in the Secretary cancelling the Project.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Legal Authority.** The City agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

2. **Design Build Procurement.** The City shall implement a Design Build procurement process in which the City will issue a RFP to obtain Design Build proposals for the Project.

3. **Design Build Administration by City.** The City shall administer the Project in accordance with the Design Build contract. The City further agrees to administer the construction of the Project in accordance with the documents set forth in Article III, paragraph 4 below, and to administer the payments due the Contractor, including the portion of the cost borne by the Secretary.

4. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state, local, and federal design criteria appropriate for the Project.

5. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 4 above. The Design Plans

must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

6. **Contractor Contract Language.** The City shall include language requiring conformity with Article III, paragraph 4 above, in all contracts between the City and the Contractor with whom the City has contracted to perform services for the Project. In addition, any contract between the City and the Contractor retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 4 above. In addition, any contract between the City and the Contractor with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

(a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates, exclusive of delays beyond the Consultant's control.

(b) **Progress Reports.** Language requiring the Contractor to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

(c) **Third Party Beneficiary.** Language making the Secretary a third party beneficiary in the agreement between the City and the Contractor. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Contractor. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Contractor’s negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

7. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or Secretary’s representatives is not intended to and shall not be construed to be an undertaking of the City’s and its Consultant’s duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Contractor or the City.

8. **Performance Bond.** The City further agrees to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

9. **Plan Retention.** The City will maintain a complete set of final Design Plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all the above-mentioned documents to the Secretary.

10. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Acts as applicable, the City will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, subcontractors or its consultants. The City shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or Secretary's authorized representatives or employees.

11. **Indemnification by Contractors.** The City agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

12. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

13. **Right of Way.** The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans and Design Build contract, in accordance with the schedule established by City. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements. Additionally, the City agrees to the following provisions:

(a) **Right of Way Documentation.** The City will provide all legal descriptions required for Right of Way acquisition work. Right of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws of the State of Kansas. The City agrees to provide copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or other documentation requested by the Secretary.

(b) **Relocation Assistance.** The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 et seq.

(c) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. Any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(d) Trails and Sidewalks on Right of Way. Intentionally deleted.

14. **Removal of Encroachments.** The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

15. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed no less than the distance permitted by the National Fire Code from the Right of Way line.

16. **Utilities.** The City agrees to the following with regard to Utilities:

(a) Utility Relocation. The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans or Design Build contract. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the City's utility accommodation policy, as amended or supplemented.

(b) Status of Utilities. The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when Utilities will be moved. The City shall move or adjust or cause to be moved

or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) Indemnification. To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

17. **Hazardous Waste**. The City agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and local government standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project limits.

18. **Inspections.** The City is responsible to provide Construction Engineering for the Project in accordance with the documents identified in Article III, paragraph 4 above.

(a) By City Personnel. City personnel who are fully qualified to perform the inspection services in a competent and professional manner may be utilized by the City to inspect the Project, in which case the City shall provide the Secretary with a list of such personnel who will act as the assigned inspectors and their certifications.

(b) By a Consultant. If the City does not have sufficient qualified engineering employees to accomplish the Construction Engineering on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary services. However, any Consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the FHWA, and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications.

(c) Protective Clothing. The City will require at a minimum all City personnel and all Consultant personnel performing Construction Engineering comply with the high visibility apparel requirements of the *KDOT Safety Manual*, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for Construction Engineering, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

19. **Corrective Work.** Representatives of the Secretary may make periodic inspections of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of state participation. The Secretary does not undertake (for the benefit of the City, the Contractor, the Consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the Contractor's errors, omissions or deviations from the final Design Plans.

20. **Traffic Control.** The City agrees to the following with regard to traffic control for the Project:

(a) Temporary Traffic Control. The City shall provide a temporary traffic control plan within the Design Plans or Design Build contract, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform

Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same.

(b) Permanent Traffic Control. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference.

(c) Parking Control. The City will control parking of vehicles on the City streets throughout the length of the Project covered by this Agreement. On street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) Traffic Movements. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served..

21. Access Control. The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans and in accordance with the City's access management policy, unless prior approval is obtained from the Secretary.

22. Economic Development Determination. The City shall quantify the impact of the Project on economic development and submit to the Secretary information detailing the number of jobs created, average salary, and other economic benefits generated due to economic development activities associated with the Project. This information shall be submitted within one year of Notice of Acceptance of the Project.

23. Maintenance. When the Project is completed and final acceptance is issued, the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

24. Financial Obligation. The City will be responsible for twenty (20%) of the total actual costs of Preliminary Engineering, Construction (which includes the costs of all Construction Contingency Items), and Construction Engineering, up to \$11,875,000 for the Project. The City will be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Construction, and Construction Engineering that exceed \$11,875,000.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Right of Way and Utility adjustments for the Project. The City shall also pay for any Non-Participating Costs incurred for the Project.

25. Prior Costs Incurred. The City shall be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the Secretary.

26. **Audit.** The City will participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the City for items considered Non-Participating Costs, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

27. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

28. **Cancellation by City.** If the City cancels the Project or fails to provide verification of development, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE IV

GENERAL PROVISIONS:

1. **Incorporation of Documents.** The final Design Plans, Design Build contract, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for Construction Engineering services (if applicable) and other Special Attachments are all essential documents of this Agreement and are hereby incorporated by reference and made a part of this Agreement.

2. **Compliance with Federal and State Laws.** The City agrees to comply with all appropriate state and federal laws and regulations applicable to the Project.

3. **Civil Rights Act.** The Special Attachment No. 1, Rev. 09.20.17, pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

4. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

5. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.

6. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

7. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

The signature page immediately follows this paragraph.

DRAFT

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

CITY OF EDGERTON, KANSAS

Rachel James, City Clerk (Date)

Donald Roberts, Mayor

Kansas Department of Transportation
Secretary of Transportation

(SEAL)

BY: _____
Catherine M. Patrick, P.E. (Date)
State Transportation Engineer

City Council Action Item

Council Meeting Date: June 28, 2018

Agenda Item #:

Department: Public Works

Agenda Item: Consider Selection of Miles Excavating Inc./Affinis Corp as the Design-Build Team for Homestead Lane and 207th Street Project

Background/Description of Item:

On March 22, 2018, Edgerton City Council authorized the Homestead Lane/207th Street Project based on a Letter of Intent provided by KDOT describing their commitment to continue this partnership for infrastructure related to Logistics Park Kansas City Phase II south of Interstate 35.

The Project includes the design and construction of Homestead Lane (Interstate 35 to 207th Street) and 207th Street (Homestead Lane to Waverly Road). Homestead Lane includes a new four-lane bridge over Tributary D of Big Bull Creek, including 10-foot protected sidewalk on one side. The bridge will include similar aesthetic treatment as Waverly Road bridge such as wall treatments, lighting etc. The road improvements for both Homestead Lane and 207th Street will include four lanes (two in each direction) with a 14-foot wide median that changes to turn lanes where appropriate. A 10-foot wide concrete sidewalk will be provided on the north side.

Based on that Letter of Intent and the project description above, the City of Edgerton issued a Request for Proposals (RFP) and Design Memorandum seeking proposals from three Design/Build Teams for design and construction of Homestead Lane and 207th Street Project. Due to the extremely aggressive construction schedule to provide at least two lanes of roadway open to traffic by first quarter 2019 to serve Kubota, invitations to submit a proposal were limited to three teams that had previous experience working for the City of Edgerton in concrete road construction and had demonstrated the ability to meet or exceed an expectation of schedule. Those three contractors were Clarkson Construction Company, Miles Excavating Inc, and Emery Sapp & Sons.

Requests for Proposals were issued on May 1. Proposals were due June 12, and interviews with each team completed on June 14. The selection committee (City Administrator, Assistant City Administrator, Development Services Director, City Engineer and Public Works Superintendent) recommend the Miles Excavating/Affinis/Garver team as the best, most qualified team for the project.

The Selection Committee recommends the Miles/Affinis team based on several elements of the team's proposal listed below.

- **Exceed schedule expectations:** The Miles/Affinis proposal includes construction of all bridge and roadway items of work complete by the end of 2018. This is significantly ahead of schedule set by the City. Meeting this construction timeline requires the City to timely acquire right-of-way for the construction of the south two lanes.
- **Innovative solutions to construction:** The proposal includes the construction of a single span pre-cast arch bridge. This type of structure has significant advantages for this project including speed for construction, lower long-term maintenance and lower cost than a traditional bridge(s).
- **Ability to deliver entire project under budget with additional line items to consider:** The team's proposal includes the construction of the project as detailed by the City in the design memorandum under the project budget set by the City. The proposal includes suggested additional line items for the City to consider including street lighting and sod for all areas disturbed for the entire length of the project.
- **Proven experience working adjacent to utilities and residential uses:** This project will require the contractor to perform significant work simultaneously with utility companies relocating infrastructure in conflict with the roadway and installing new utilities to serve Kubota. In addition, the uses on the south side of the roadway remain residential use and will require access throughout construction. Miles Excavating has significant experience as illustrated in their proposal working in tight corridors during reconstruction work and in coordinating with utilities. These skills and relationships will be critical to the success of the project.

Due to the aggressive schedule of this project, staff is requesting that City Council approve the selection of the Miles/Affinis team while the Design-Build Agreement is finalized. This allows staff and the D/B team to kickoff the project based on the proposal provided. Different than previous design-build projects constructed by the City, for this project the City predetermined the basic design criteria of the infrastructure and set the Guaranteed Maximum Price for the project (\$11.875 MM). Approval of the team allows the D/B team to begin with time-sensitive items of work such as permitting and utility coordination.

Staff anticipates bringing the Agreement with the Design-Build Team to the July 12, 2018 City Council meeting.

Related Ordinance(s) or Statute(s):

Funding Source: Kansas Department of Transportation/Public Infrastructure Fund Phase II

Budget Allocated: Approximately \$11.875 MM

Finance Director Approval:

X 

Karen Kindle, Finance Director

Recommendation: Approve Selection of Miles Excavating Inc./Affinis Corp as the Design-Build Team for Homestead Lane and 207th Street Project

Enclosed:

Prepared by: Beth Linn, City Administrator

City Council Action Item

Council Meeting Date: June 28, 2018

Agenda Item #:

Department: Public Works

Agenda Item: Consider An Agreement With BG Consultants For Construction Administration and Observation Services for the Homestead Lane and 207th Street Project

Background/Description of Item:

Similar to other large infrastructure projects constructed by the City of Edgerton, a critical component to the success of the Homestead Lane and 207th Street Project is partnering with a firm to perform the construction administration and observation services. For projects designed by an outside firm, Edgerton has contracted with BG Consultants to perform these services. BG Consultants has been an extremely valuable member of the infrastructure team as they have extensive knowledge of the recent infrastructure constructed in Edgerton and provide a balanced approach to construction inspection and observation.

BG Consultants has prepared the attached Agreement to provide the construction observation services for the Homestead Lane and 207th Street project. The Agreement includes a scope of work to include such services as performing inspections, notification of the City of any significant issues/changes to the plans, providing detailed daily reports of construction activity, reviewing testing reports and pay estimates, etc.

The term of the Agreement anticipates the project will be complete by December 31, 2019. The Agreement includes an hourly rate schedule applicable for the term of the Agreement. Based on the scope of the project, BG has estimated the cost at \$500,000. The Agreement is structured similar to the Agreement for City Engineer services where the City is only billed for actual hours of work performed.

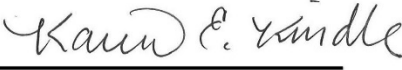
Construction administration and observation is an eligible cost for reimbursement in the Agreement with the Kansas Department of Transportation. Staff directed the Design/Build Team to reserve \$500,000 from the total \$11.875 MM in total funding for the project dedicated to construction observation and materials testing.

City Attorney has not yet reviewed the Agreement. Any recommendations for change will be reviewed with City Council on June 28, 2018.

Related Ordinance(s) or Statute(s):

Funding Source: Kansas Department of Transportation/Public Infrastructure Fund Phase II

Budget Allocated: \$500,000

Finance Director Approval: X 
Karen Kindle, Finance Director

<p>Recommendation: Approve An Agreement With BG Consultants For Construction Administration and Observation Services for the Homestead Lane and 207th Street Project</p>

Enclosed:

- Draft Agreement with BG Consultants

Prepared by: Beth Linn, City Administrator



AGREEMENT CONSULTANT-CLIENT

THIS AGREEMENT made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and CITY OF EDGERTON, KANSAS, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

Construction Administration and Observation Services for
Homestead Lane and 207 th Street Improvements
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 agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “Consultant” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. 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**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

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:	David Hamby, P.E., CFM
Address:	1405 Wakarusa Drive
	Lawrence, Kansas 66049
Phone:	785-749-4474

- 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. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.
- 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 in the following types: (i) worker’s compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance and (iv) Professional liability insurance.
- 2.2.5. **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm’s work. The Client will pay the Geotechnical firm separately from this Agreement.
- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT’s direct control, CONSULTANT’s role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT’s design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others,

CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.

- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting 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.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **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; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a 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.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) 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. Our 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:	Beth Linn
Address:	PO Box 255, 404 E. Nelson St.
	Edgerton, KS 66021
Phone:	913-893-6231

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 2 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 and shall be completed on or before December 31, 2019. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) 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 2, and reimbursable expenses not contemplated in this Agreement will be charged at actual cost ~~plus ten (10) percent~~. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.3. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.4. **Reimbursable Expenses:** Reimbursable expenses ~~plus ten (10) percent~~ shall be charged. 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. Reimbursable expenses will not include overhead costs or additional insurance premiums.
- 4.1.5. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.6. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. 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 one-half (1½) percent per month.
- 4.1.7. **Timing of Services:** CONSULTANT will perform the Services according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT,

delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays. CONSULTANT will endeavor to start its services on the anticipated start date and continue to endeavor to complete its services according to the schedule indicated in Exhibit 2. The start date, completion date and any milestone for project delivery are approximate only and CONSULTANT reserves the right to adjust its schedule and all of those dates at its sole discretion for delays caused by the CLIENT, Owner or third parties.

- 4.1.8. **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 2. 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.
- 4.1.9. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the attached hourly rate schedule attached as Exhibit 2. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost ~~plus ten (10) percent~~. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.10. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

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

The CONSULTANT reserves the right to terminate this Agreement based on any material breach by the CLIENT.

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; provided, however that CONSULTANT may retain one (1) copy of all such documents. 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; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.
- 5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG Consultants, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.

- 5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or 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 LIMITATION OF LIABILITY

- 5.9.1. CLIENT's exclusive remedy for any alleged breach of standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.
- 5.9.2. CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages in whole or in part.
- 5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

5.10 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.

5.11 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.

5.12 SEVERABILITY CLAUSE

5.12.1. 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.

5.13 FIELD REPRESENTATION

5.13.1. 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.

5.14 HAZARDOUS MATERIALS

5.14.1. 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.

5.15 AFFIRMATIVE ACTION

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

5.16 SPECIAL PROVISIONS

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

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

CONSULTANT:

CLIENT:

BG Consultants, Inc.

City of Edgerton, Kansas

By:



By:

Printed Name:

David J. Hamby, P.E., CFM

Printed Name:

Title:

Vice President

Title:

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1
SCOPE OF SERVICES

Homestead Lane and 207th Street Improvements
Edgerton, Kansas

I. PROJECT LOCATION AND DESCRIPTION

- a. Provide professional services described as follows: Provide construction administration and observation services for the construction of the Homestead Lane and 207th Street Improvements in Edgerton, Kansas.

II. INFORMATION GATHERING

- a. Meet with Edgerton staff to determine specific project needs and general project desires of the CLIENT. Receive and review available information, reports and plans.

III. CONSTRUCTION OBSERVATION

- a. Perform construction observation of the Project as required.
- b. Keep CLIENT informed of any significant issues, problems, or changes to the plans during construction.
- c. Provide detailed daily reports of construction activity, review testing reports, calculate quantities and review pay requests, provide technical support in the field to City Staff, serve as the conduit for communication between the Contractor and the CLIENT, make recommendation on disposition of questionable product and attend progress meetings with the project team.
- d. Complete and submit paperwork and documentation required during the project and final paperwork and documentation to complete the project.
- e. At completion of project, assist the Design Engineer in providing as-built drawings to CLIENT for their permanent records.

IV. SCHEDULE

- a. Provide construction observation services on days and times as required to observe and document work being performed by the contractor.

EXHIBIT 2

COST AND SCHEDULE

2018 BG CONSULTANTS STANDARD HOURLY RATES		
<u>POSITION</u>		<u>STANDARD PER HOUR 2018</u>
PRINCIPAL 3		\$255.00
PRINCIPAL 2		\$225.00
PRINCIPAL		\$204.00
PROJECT ENGINEER IV		\$186.00
PROJECT ENGINEER III		\$163.00
PROJECT ENGINEER II		\$151.00
PROJECT ENGINEER I		\$128.00
SENIOR DESIGN ENGINEER		\$151.00
DESIGN ENGINEER		\$119.00
ASSISTANT DESIGN ENGINEER		\$103.00
ARCHITECT		\$195.00
PROJECT ARCHITECT		\$151.00
DESIGN ARCHITECT		\$115.00
ASSISTANT ARCHITECT		\$93.00
TECHNICIAN II		\$113.00
TECHNICIAN I		\$95.00
SENIOR CONSTRUCTION OBSERVER		\$110.00
CERTIFIED CONSTRUCTION OBSERVER		\$98.00
CONSTRUCTION OBSERVER		\$88.00
SENIOR PROJECT SURVEYOR		\$185.00
PROJECT SURVEYOR		\$136.00
ASSISTANT PROJECT SURVEYOR		\$84.00
FIELD SUPERVISOR		\$107.00
SURVEYOR II		\$77.00
SURVEYOR I		\$65.00
CAD SYSTEM AND OPERATOR		\$105.00
CLERICAL		\$59.00
Note: 1) The hourly rates shown above are effective for services through December 31st of the contract year and are subject to revision annually.		
2) For any Federal Wage and Hour Law non exempt personnel, overtime will be billed at 1.5 times the hourly labor billing rates shown.		
3) Expert Witness and Depositions will be charged at 1.5 times the hourly labor billing rates shown.		

EXHIBIT 3
SPECIAL PROVISIONS

None.