

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
July 8, 2021
7:00 P.M.**

Call to Order

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

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

4. Approve Minutes from June 24, 2021 Regular City Council Meeting
5. Accept Easements for Sunflower Road Crossing at Martin Creek Park

Motion: _____ Second: _____ Vote: _____

Regular Agenda

6. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.
7. **Presentation.** Presentation by ElevateEdgerton! on the Edgerton Housing Assessment.

Business Requiring Action

8. **CONSIDER ORDINANCE NO. 2084 AUTHORIZING THE CREATION OF THE LPKC DISTRICT NO. 3 COMMUNITY IMPROVEMENT DISTRICT, LEVYING SPECIAL ASSESSMENTS WITHIN SUCH DISTRICT, AND APPROVING A DEVELOPMENT AGREEMENT**

Motion: _____ Second: _____ Vote: _____

9. **CONSIDER RESOLUTION NO. 07-08-21A AUTHORIZING FIRST AMENDMENT TO PROJECT PLAN A1 DISPOSITION AND DEVELOPMENT AGREEMENT**

Motion: _____ Second: _____ Vote: _____

10. **CONSIDER RESOLUTION NO. 07-08-21B APPROVING THE CLOSURE OF THE PUBLIC STREETS NAMED HEREIN DURING THE BIKE RODEO AT SUMMER MOVIE NIGHT**

Motion: _____ Second: _____ Vote: _____

11. **CONSIDER ORDINANCE NO. 2085 AMENDING CHAPTER IX, ARTICLE 1, SECTION 9-107 OF THE CITY CODE OF THE CITY OF EDGERTON, KANSAS AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH**

Motion: _____ Second: _____ Vote: _____

12. CONSIDER AWARD OF CONSTRUCTION OF 2021 STREET MAINTENANCE PROGRAM (CHIP SEAL) TO VANCE BROTHERS AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

Motion: _____ Second: _____ Vote: _____

13. CONSIDER AWARD OF CONSTRUCTION OF 2021 STREET MAINTENANCE PROGRAM (UBAS) TO MCANANY AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT

Motion: _____ Second: _____ Vote: _____

14. CONSIDER PROJECT AUTHORIZATION FOR THE CONSTRUCTION OF CORLISS ROAD

Motion: _____ Second: _____ Vote: _____

15. CONSIDER AN AGREEMENT WITH BG CONSULTANTS FOR CONSTRUCTION ADMINISTRATION AND OBSERVATION SERVICES FOR THE CORLISS ROAD PROJECT

Motion: _____ Second: _____ Vote: _____

16. Report by the City Administrator

- Monthly Report on 502 E 2nd Street
- Request for Waiver of Fees Associated with System Development at 321 E Martin Street

17. Report by the Mayor

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

Motion: _____ Second: _____ Vote: _____

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

Motion: _____ Second: _____ Vote: _____

20. Future Meeting Reminders:

- July 13th: Planning Commission Meeting – 7:00PM
- July 15th: 2022 Budget Work Session – 7:00PM

- July 22nd: City Council Meeting – 7:00PM
- August 10th: Planning Commission Meeting – 7:00PM
- August 12th: City Council Meeting – 7:00PM
- August 26th: City Council Meeting – 7:00PM

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

EVENTS

July 23rd: Animal Wonders at City Hall

July 24th: Summer Movie Night & Open House for Glendell Acres

Renovation Project at Glendell Acres Park

August 7th: Summer Movie Night

**City of Edgerton, Kansas
Minutes of City Council Regular Session
June 24, 2021**

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas on June 24, 2021. The meeting convened at 7:02 PM with Mayor Roberts presiding.

1. ROLL CALL

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

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator Beth Linn
- Acting City Attorney Tiffany Thomas
- City Clerk Alexandria Clower
- Development Services Director Katy Crow
- Finance Director Karen Kindle
- Accountant Justin Vermillion
- Public Works Director Dan Merkh
- Public Works Superintendent Trey Whitaker
- Marketing and Communications Manager Kara Banks
- Recreation Coordinator Brittany Paddock

2. WELCOME

3. PLEDGE OF ALLEGIANCE

Consent Agenda

4. Approve Minutes from June 10, 2021 Regular City Council Meeting

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

Councilmember Longanecker joined via telephone at 7:03PM

Regular Agenda

5. Declaration. None

6. Recognition of Katee Smith, former City Council Member

*RECESS FOR RECEPTION TO RECONGIZE KATEE SMITH FOR SERVICE
AND DEDICATION TO THE CITY OF EDGERTON*

Mayor Roberts recited a proclamation to recognize Katee Smith for her service and dedication to the City of Edgerton, proclaiming June 24, 2021 as Katee Smith Day.

Ms. Smith stated it has been an honor for her to serve the community of Edgerton the last few years and she is thankful to everyone she has worked with. She stated she will miss living in Edgerton but will continue to be around for events.

Mayor Roberts requested a short recess at 7:07 PM.

Mayor Roberts returned the meeting to open session at 7:15 PM.

Business Requiring Action

7. CONSIDER APPROVAL OF U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS AND THE ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Ms. Karen Kindle, Finance Director, addressed the council. She stated in March 2021 President Biden signed the American Rescue Plan Act (ARPA), which provides grant funds for state and local governments. The grant funds are sent directly to units of government with populations greater than 50,000. She stated for units of government with less population, called Non-entitlement Units (NEUs), the funds will be sent to the state, who will then distribute the funds to the NEUs. The distribution amount is determined by population. She stated half of the amount is to be received prior to July 31, 2021 and the other half will be received 12 months later. She stated city matching funds are not required.

Ms. Kindle stated the city's allocation is \$270,644.58. She stated the Treasury Department has issued final guidance and staff is attending webinars from the Kansas Recovery Office to learn about the eligible uses for the funds and other administrative requirements. Staff will bring further information and recommendations regarding the city's allocation to the CIP discussions later this fall. She stated the attached document shows the four categories of eligible uses.

Ms. Kindle stated to receive the funds, the City Council must approve two agreements and submit the signed copies to the State of Kansas as soon as possible. These two agreements are the U.S. Department of the Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions as well as the Assurances of Compliance with the Title VI of the Civil Rights Act of 1964.

Ms. Kindle stated the City Attorney has reviewed and approved these agreements.

Councilmember Brown moved to approve the Agreements related to the American Rescue Plan Act. Seconded by Councilmember Longanecker. The Agreements were approved, 4-0.

8. CONSIDER LEASE AGREEMENT WITH JOHNSON DRIVE DUPLEX I, LLC, FOR CITY OFFICES LOCATED AT 312B E. NELSON STREET IN EDGERTON, KS

Ms. Karen Kindle addressed the council. She stated in June 2018, City Council approved a three-year lease for offices at 312B E. Nelson to provide office space for city staff that could not be accommodated at other city facilities. There are now four staff members housed at this location as well as a conference room.

Ms. Kindle stated staff has negotiated a lease renewal with Johnson Drive Duplex I, LLC, for a lease term of July 23, 2021 to July 22, 2026. The lease rates start at \$1,038 per month with an increase of 3% each year throughout the lease period.

Ms. Kindle stated the City Attorney has reviewed and approved these agreements.

Ms. Kindle stated the current lease is a 3-year lease with a 3% escalation as well.

Councilmember Longanecker moved to approve the Lease Agreement with Johnson Drive Duplex I, LLC for City Offices at 312B E Nelson St. Seconded by Councilmember Beem. The Lease Agreement was approved, 4-0.

9. CONSIDER ORDINANCE NO. 2082 AMENDING CHAPTER VIII, ARTICLE 2, SECTION 8-207 OF THE CITY CODE OF THE CITY OF EDGERTON, KANSAS AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH

Ms. Katy Crow, Development Service Director, addressed the council. She stated after a review of the City of Edgerton Municipal Code, the Judge, Prosecutor and City Staff noted that there is no minimum daily fine amount listed for a violation of Chapter VIII, Article 2, Health and Nuisance. She stated having an expressly outlined minimum daily amount sets the starting point by which fines may be assessed so that the Judge may appropriately assess a penalty amount for violations.

Ms. Crow stated the amendment provides the necessary language to update this section of the code and a draft copy of Ordinance No. 2082 is include in the packet. She stated the City Attorney has reviewed this ordinance with no changes made.

Ms. Beth Linn, City Administrator, stated as the code is written today, there is not a minimum penalty for the offenses related to this section, so the fine amount could be zero. She stated by the time a defendant gets to court, the City is looking for a fine amount and a consequence. The Codes Department alone has generally spent months already trying to work with the defendant to get into compliance.

Ms. Crow stated one section of the code has the minimum fine amount, the other two sections did not. Approving this ordinance would create a more cohesive code book and fine amounts throughout.

Mayor Roberts stated court business has increased and the city is seeing more violations. He would like to see that the consequences be painful enough that the person does not want to come back to court and that they become compliant instead of fighting City codes. He stated by this point in the process, the City has already given the resident opportunity to fix the problem.

Councilmember Longanecker moved to approve Ordinance No. 2082. Seconded by Councilmember Brown. The Ordinance was approved, 4-0.

10. CONSIDER ORDINANCE NO. 2083 AMENDING CHAPTER VIII, ARTICLE 4, SECTION 8-409 OF THE CITY CODE OF THE CITY OF EDGERTON, KANSAS AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH

Ms. Crow stated similar to the above-mentioned Ordinance, this Ordinance will be updating the Junked and Inoperable Motor Vehicles section, allowing for a minimum daily fine to be set for violations related to this section of the code.

Councilmember Brown moved to approve Ordinance No. 2083. Seconded by Councilmember Longanecker. The Ordinance was approved, 4-0.

11. Report by the City Administrator

- Monthly Report on 502 E 2nd Street

Ms. Crow stated a fifth walk through was completed by city staff on June 24, 2021 to review the status of the project. Since the last walk-through and update provided, the owner has lined the house walls and around the deck area with OSB and added new deck supports and plans to use composite decking materials for the deck floor and stair treads. She stated the owner has said over the next week they plan to focus on the roof and siding.

Ms. Crow stated in addition, Everygy has been out to disconnect service to the home so the homeowner can continue working in the area where the electrical meter and panel was located. She stated the homeowner is upgrading to a 200 AMP service so a meter set will be required when the homeowner gets to that stage. She stated additionally, Everygy removed some tree limbs that were over the power lines which posed a risk during inclement weather.

Ms. Crow stated the homeowner has been in contact with several HVAC contractors but has been unable to schedule one to come out due to the extreme heat and summer weather. The HVAC contractors he has spoken with have told him that they need to do their work before plumbing and electrical, so Mr. Abundiz is waiting to move forward with that work until the HVAC is installed.

Ms. Crow stated staff again told Mr. Abundiz that the resolution does set a deadline of July 22, 2021 for the house to no longer be considered an unsafe or dangerous structure. She requested Council's direction on how to proceed and if a new resolution should be brought forward on July 22, extending the deadline for the work to be completed. Staff will have one more walk through and report to provide at the July 8 City Council meeting which would be prior to the deadline set by the initial resolution.

Ms. Crow stated that the owner has said he believes he will be able to finish the exterior of the home by the deadline, but the interior will not be complete and believes the interior will be completed closer to the fall.

Mayor Roberts stated as long as the owners are making progress, he would like to see Council consider extending the deadline.

Councilmember Beem stated the house is looking better than it did.

All Council agreed that because work is progressing, they would like to work with Mr. Abundiz and extend the date given to allow him more time to complete the house.

Ms. Crow asked if Council would like to see a new resolution with an extension given or if Council would like to see results at the next council meeting.

Mayor Roberts stated he would like to see results and if possible, leave the time period blank to fill it in at the July 8th meeting.

Ms. Crow stated staff will work to prepare the resolution to bring back at the next meeting along with a final update on the structure.

- Presentations by Representatives for 2022 Budget Requests
 - Miami County Conservation District

Ms. Lesley Rigney with Miami County Conservation District addressed the council. She stated as part of the Hillsdale Watershed Coalition, all the work they do is done in three sub-watersheds: Rock Creek, Bull Creek and Little Bull Creek. She stated Bull Creek is the largest and contributes the most run off. She stated they currently work off a TMDL (Total Max Daily Load) which was updated in 2014. She stated in 2016, the district became the sponsor for the Hillsdale Watershed Restoration and Protection Strategy (WRAPS) which is made up of cities/counties, conservation districts, water suppliers, etc. who have a stake in the health of the watershed. She stated the newest impairment is urban development. She stated the first 2 years WRAPS met the load reduction goals related to phosphorus, nitrogen and harmful algae blooms, and in recent years they have developed new strategies to combat the pollutants such as fencing in agricultural areas, soil testing by farmers, and phosphorus subsurface placement. She stated although load reductions are being met, the state can see that they are under more challenges than just agriculture. She stated WRAPS is working to establish more wetlands near urban development and stabilize stream banks. She stated from year-to-year certain sites are monitored and because of mass volumes of flow through the streams, degradation and bank cutting is common and makes it difficult to reach those same spots. She stated although resources are out there like Stream Bank Safe Projects, they are huge and expensive projects. She stated unfortunately they are also limited in the amount of work that can be done because of the shortage of boots on the ground. She stated they just hired an Urban Conservationist that helps look for ways to maximize conservation areas in urban surroundings such as rain gardens, native landscaping, etc. She stated the budget request is the same as years past at \$5,000.

Councilmember Longanecker questioned whether the problems stemmed specifically from farming.

Ms. Rigney stated the impairment is related to farming. But they are seeing concerns change from agricultural to physical parameters such as larger flows, higher speed,

temperature, etc. She stated these new parameters create a whole different suite of pollutants.

Councilmember Longanecker asked her to clarify the different pollutants.

Ms. Rigney stated off agricultural land, pollutants would be nutrients put into the soil and applied to the field. Urban pollutants could be the temperature of the water off the roadway, roof, oils, salts, heavy metals, etc. that create a completely different impact on aquatic life.

Councilmember Longanecker stated it seems like nothing is good and everything is bad.

Ms. Rigney stated there will always be some kind of pollutant, there is no way around that.

Councilmember Longanecker asked how to deal with temperature run off.

Ms. Rigney stated a big part would be best management practices adjacent to road and around urban development, especially in large commercial developments. She stated there is 100-plus acres of roof top and pavement in this jurisdiction and currently there is no way to get the brown water recharged. She stated there needs to be a reconnect of the water table to the water source and well-established best management practices should be considered.

Councilmember Longanecker asked for clarification, stating that some practices for slowing down the runoff might be retention ponds.

Ms. Rigney stated there are options beyond retention ponds that would need to occur to fix the temperature issues.

Councilmember Conus asked if there are any other organizations that could address these issues and come to present to council.

Ms. Rigney suggested getting in touch with people from Mid America Regional Council (MARC) as well as the American Public Works Association (APWA). She stated the cities of Olathe and Lenexa have good practices in place that might be worth looking into. She stated constructed wetlands are a good practice because they digest pollutants and allow for ground recharge. She stated there are surrounding cities that are larger and required to have these in their commercial and urban development areas. She stated Edgerton is not required because their population has not met the level, although their commercial development has.

Councilmember Longanecker stated he would like to see a presentation on the numbers involved in and around this jurisdiction as well as surrounding cities that have these practices in place.

Ms. Rigney stated she would be happy to give the presentation or put the city in touch with someone who can.

Mayor Roberts requested clarifications about statements made by Chris Cardwell, who spoke during a couple public hearings on behalf of Miami County Conservation, in regards to soil health that is being dangerously compromised by runoff from rooftops and pavement.

Ms. Rigney stated Mr. Cardwell is new and generally she would not send someone to speak on her behalf, but she was out of the country. She stated she thinks he might mean that WRAPS puts so much time and effort into soil health that it is becoming touchy because some land that was recently annexed was land that was in the program in the last 5 years. She stated they are dumping thousands of dollars into soil health and in less than 5 years the soil is under pavement.

Mayor Roberts stated that the sole cause of blue-green algae is not just the change from rural to urban or even the water temperature. He stated even in non-urbanized environments, blue-green algae cases are higher. He stated it might just be climate, and until numbers are proven, how can one say that the cause is from one certain factor. He stated he has seen a reduction of the nutrient loading levels quite a bit, even in urban areas. He stated phosphorus and nitrates are in fertilizer for lawns, so it is and always will be an issue for water health, but the sources may change.

Ms. Rigney stated anyone can drive through the watershed now and see there are thousands of nutrient crops to help maintain levels. She stated lawn fertilizers used to have phosphorus in them, but most have removed that from packaging.

Mayor Roberts stated because Edgerton is a major contributor to the watershed, he would have liked to have a discussion with the Conservation District about what can be improved rather than hearing these things for the first time during a public hearing. He stated he would like to see proof of pollutants from actual testing. He stated Edgerton holds the largest bioswale in the state of Kansas, right next to BNSF. He stated Edgerton also works with the APWA to look for best management practices. He stated Edgerton is doing more than some people know and he thinks conversations need to be had.

Ms. Rigney stated she receives ten phone calls a week and she has a simple talking point for all of them. She stated WRAPS and Miami County Conservation is not against urban development, but they just want the city and citizens to be informed. She stated when this development started, she would have liked to see a plan that considers natural water resources. She stated part of the resistance that is happening is because there has not been an inclusive planning process to involve everyone. She stated when she talks to people, she tells them she would like to see a plan that has the natural resources protected and more urban best management practices (BMP), more BMP's in parking lots, etc. She stated she is concerned with this development happening because it is in a popular watershed. She stated with the recent annexations and rezonings, the watershed will be at the 20 percent threshold which is critical. She stated that threshold signifies the departure from a rural to an urban landscape and nobody is prepared to deal with that.

Mayor Roberts stated from a personal perspective and someone who has worked in the water department for 26 years, he and his family get their drinking water from Hillsdale, along with every resident in Edgerton, so he does care about this watershed. He stated he

would assume everyone in Edgerton cares. He stated he would like to see a presentation because Edgerton wants to understand and wants to do things right. He stated they could always talk about best management practices and Edgerton will strive to meet those, but there will always be a conflict between nature and urban development. He stated when Mr. Cardwell showed up and spoke during the public hearings, staff and Council were surprised because the concerns he addressed had not been brought up prior to the hearings. He stated as City Council, they have the desire to protect the best interest of the community.

Ms. Rigney stated there are great examples in the surrounding area of processes that have been taken to help maintain watersheds in development areas. She stated she thinks everyone values and recognizes the demand that is happening here in Edgerton and her organization does not take a stance on the development, they just want to inform on the watershed. She stated they would just like to see the watershed taken into account.

Mayor Roberts asked what logistics park in Lenexa is required to have BMPS on impervious surfaces.

Ms. Rigney stated the person to talk to would be Lee Kellenberger. She knows they require BMPs to be there but is not sure about specific locations. She stated she knows they have bioswales and constructed wetlands.

Councilmember Conus asked if each warehouse and parking lot reduces the amount of phosphorus and nitrogen but can create other environmental problems.

Ms. Rigney stated crop to urban eliminates most, if not all nutrient loading. Development changes and gets rid of the nutrient problems but does not get rid of all problems. She stated they would love to work and support the city in any way they can.

Mayor Roberts stated he would assume staff would be willing to meet with Mr. Cardwell and discuss matters related to watershed conservation. He would like to see numbers associated with claims made like "dangerous run off from rooftops and roads". He asked what this meant and where are the numbers to back it up. He stated if massive amounts of pollutants are seen from run off, then he assumes numbers could be shown to support this claim.

Ms. Rigney stated there is not a lot of monitoring due to degradation being so extreme. She stated there have been landowners show pictures of 6-foot bed drop in just a year, but it is difficult to pinpoint the cause when rainfall has been so extreme coupled with drought. She stated because of this, it is hard to tell where the impacts are coming from, but people will assume it is not due to the weather.

Mayor Roberts stated instead of assuming and claims being made, people need to know what is going on and see the numbers associated with them.

Ms. Rigney stated she would be happy to present or find someone to present more information to the Governing Body.

Mayor Roberts stated the request is for \$5,000 and asked if Council was in favor of moving forward with this amount. Councilmembers in attendance nodded. He stated he looks

forward to a presentation at some point and he will personally dig into the current practices in Lenexa and Olathe that have been mentioned.

Ms. Rigney stated another great idea would be stream set-back ordinances. She stated most of Johnson County is required to operate on this sort of ordinance which states development can only occur so many feet away from a stream based upon several factors.

Mayor Roberts asked if it is required or not.

Ms. Rigney stated some jurisdictions have adopted it as a requirement and it may be a positive for Edgerton to use as a city that has more development than surrounding cities with more staff.

Ms. Linn stated city staff will work to get contacts for a presentation for Council.

Ms. Linn stated as a reminder, July 3rd is coming up and closures will look slightly different this year. She stated the park will be shut down all day on Saturday and will not be open to the public until 5 PM to allow crews time to set up. She asked those Councilmembers who are volunteering to let Kara know and if they are volunteering, to show up a half hour early. She stated due to COVID, vendors will be serving the food.

12. Report by the Mayor

Mayor Roberts stated he received a call from Ms. Shirley Hill and has invited her to come speak before Council. He stated she bought Ms. Donna Bratton's old property.

Ms. Hill addressed the council. She stated she has lived in Edgerton since 1995 and purchased this property about a year ago. She stated because the structures were so worn, they had to demolish the previous home to build new. She stated when she first came into Edgerton, the total fees quoted were around \$14,000.00 for system development. She stated after construction, the city will incur no cost, and she does not understand why she would be charged development fees when the development is already there. She stated the fees are very high. She stated the previous home had functioning water and sewer and there is no effort for the city to get water to the property. She stated she is requesting the fees be waived, or a discount given.

Mayor Roberts stated he appreciates Ms. Hill coming in and speaking to council. He stated he would like to talk through this matter with staff and Council.

Ms. Linn stated several years ago, the City adopted a Fines and Fees Schedule and in that schedule all fines and fees addressed take precedence over those that might be specified in the City's Codes. She stated staff has not yet gone back through the code and pulled every reference to a dollar amount to update. She stated the city is in the process of getting new software and through that process, staff has identified properties that may have meters but are not paying the monthly service charge. She stated at one point there were meters that were turned off or terminated and the current code does not allow for this to happen. She

stated how the code reads, a site can be terminated where the meter is no longer on the property, or a meter can be turned off but still be billed for services monthly. This way allows for the property at any point to be connected to services by just coming into city hall and filling out some paperwork. She stated this is what the city calls a demand customer.

Councilmember Beem stated meters are still on the property, so why would Ms. Hill have to pay. He asked Ms. Hill if she was aware that in terminating the services when she bought the property meant she would have to repay these fees.

Mayor Roberts stated although this site has a meter, water has not been on in a long time.

Ms. Linn stated when Ms. Hill first came into City Hall a year or so ago, she was given a breakdown of the fees associated with the demolishing the structure, taking meters out, submitting for a new build, etc. Ms. Linn stated the last time this address had service was in 2012.

Councilmember Brown stated it seems like a lot of money for an existing system.

Mayor Roberts stated the System Development Fee is needed to offset future expansion of facilities and make sure the City has the necessary capital. He stated the monthly service fee is about the maintenance of the system.

Ms. Hill asked for clarification to the code book since the fees are not correct.

Ms. Linn stated that the Fee Resolution, annually updated and reviewed by Council, is the most recent and acting policy for city fees.

Mayor Roberts asked staff to bring back a presentation to help Council better understand how the fees are calculated and what the fees go toward, as well as bring back an item to the next meeting to see if there might be any resolution that the city and Ms. Hill can come to as far as the fees owed.

Mayor Roberts stated he understands the system is existing but because it was out of service for so long, the necessary upgrades and maintenance have not been done. He stated he is not opposed to a resolution waiving or decreasing the fees, but he thinks that Council should take into consideration long-term goals. He referenced Councilmember Longanecker who also built new construction and had to pay the same fees. He suggested a possible redevelopment fee instead which would be calculated differently than a new development fee.

Ms. Linn handed out the new budget calendar and highlighted the Budget Work Session on July 15th. She stated Council will have the numbers before them two weeks prior to this date and the entirety of the Budget will be presented on the 15th.

13. Future Meeting Reminders:

- July 8th: City Council Meeting – 7:00PM
- July 13th: Planning Commission Meeting – 7:00PM

- July 15th: 2022 Budget Work Session – 7:00PM
- July 22nd: City Council Meeting – 7:00PM

14. **Adjourn**

Councilmember Brown moved to adjourn, seconded by Councilmember Beem. All in favor. The meeting adjourned at 8:32 PM.

Submitted by Alexandria Clower, City Clerk

EVENTS

July 3rd: Edgerton's Community Picnic and Fireworks

July 24th: Summer Movie Night

August 7th: Summer Movie Night

PERMANENT PEDESTRIAN EASEMENT

THIS AGREEMENT, made and entered into this 16 day of April, ²⁰²¹~~2019~~, by and between **PHILLIP S. TIMMONS AND/OR CARL R. PALMER**, Co-Trustees of the **PHILLIP S. TIMMONS TRUST CREATED UNDER THE DON E. TIMMONS TRUST U/A DATED AUGUST 24, 2015** and **RICHARD D. TIMMONS AND/OR CARL R. PALMER**, Co-Trustees of the **RICHARD D. TIMMONS TRUST CREATED UNDER THE DON E. TIMMONS TRUST U/A DATED AUGUST 24, 2015**, acting pursuant to the powers to convey realty granted under said trust, its successors, administrators, and assigns, hereinafter "Grantors", and the **CITY OF EDGERTON, KANSAS**, a Municipal Corporation, located in the County of Johnson, State of Kansas, hereinafter "Grantee".

WHEREAS, on June 18, 2018 Carl R. Palmer, Successor Trustee of the Don E. Timmons Trust U/A Dated August 24, 2015, transferred an undivided one-half interest in certain real estate to the Phillip S. Timmons Trust Created Under the Don E. Timmons Trust U/A Dated August 24, 2015 and the Richard D. Timmons Trust Created Under the Don E. Timmons Trust U/A Dated August 24, 2015; and

WHEREAS, the City of Edgerton, Kansas has requested a Permanent Pedestrian Easement across said real estate; and

WHEREAS, the Co-Trustees of the Trusts are agreeable to the granting of said easement under the following conditions:

**SECTION ONE
GRANT OF PERMANENT EASEMENT**

In consideration of Six Hundred Forty Dollars and No/100 (\$640.00), in hand paid and other valuable consideration, including just compensation paid for all property damage resulting from the public improvement and from those factors set forth in K.S.A. 26-513 and other factors arising from the public improvement to be made, including but not limited to loss of trees and landscaping; and erosion, receipt of which is hereby acknowledged, the Grantors do hereby grant and convey to the Grantee, its successors and assigns, a permanent pedestrian easement to construct, maintain, alter, repair or replace a sidewalk, trail and other pedestrian appurtenances convenient for said system in, over, on, under and through the following described land in the County of Johnson, State of Kansas (such land is referred to herein as the premises):

SEE ATTACHMENT "A" ATTACHED HERETO
AND BY REFERENCE MADE A PART HEREOF.

SECTION TWO

RESTRICTED USE BY GRANTORS

Grantors shall not interfere with the exercise by Grantee of the rights granted herein. Grantors shall not construct or permit to be constructed any structure or obstruction on the above described easement area or interfere with the construction, maintenance, or operation of stormwater drainage system and appurtenances constructed pursuant to this instrument.

SECTION THREE WARRANTY OF TITLE

Grantors covenant that they are the owners of the premises and have the right, title and capacity to grant the easement granted herein.

SECTION FOUR EFFECT OF AGREEMENT

This agreement shall be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

This agreement is binding upon the heirs, executors, administrators, successors and assigns of the Grantors and Grantee, and it is understood that this agreement cannot be changed or altered in any way except by writing, legally signed by both Grantors and Grantee.

TO THESE COVENANTS, the Grantors do hereby consent and agree.

IN WITNESS WHEREOF, the parties above named have hereunto set their hands and seals the date first above written.

GRANTORS:

THE PHILLIP S. TIMMONS TRUST
CREATED UNDER THE DON E. TIMMONS
TRUST U/A DATED AUGUST 24, 2015

By: Phillip S Timmons
Printed Name: Phillip S Timmons
Title: _____
Street Address: 413 S Brittany
City, State & Zip: Olathe, KS. 66061

THE RICHARD D. TIMMONS TRUST
CREATED UNDER THE DON E. TIMMONS
TRUST U/A DATED AUGUST 24, 2015

By: Richard D. Timmons
Printed Name: Richard D. Timmons
Title: _____
Street Address: 708 W. Elm St.
City, State & Zip: Olathe, KS 66061

GRANTEE:

CITY OF EDGERTON, KANSAS,
A Municipal Corporation

(SEAL)

By: _____
Beth Linn, City Administrator

ATTEST:

Alex Clower, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF Johnson)

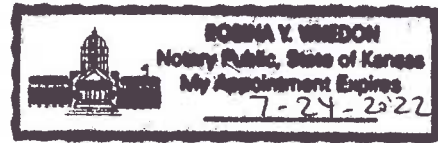
BE IT REMEMBERED, That on this 16th day of April, 2021, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **PHILLIP S. TIMMONS** and/or **CARL R. PALMER**, as Trustee(s) of the **Phillip S. Timmons Trust Created Under the Don E. Timmons Trust U/A Dated August 24, 2015** who is/are personally known to me to be the same person(s) who executed as such trustee(s) the foregoing instrument of writing on behalf of said entity and said person(s) duly acknowledged the execution of the same to be the act and deed of said entity.

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

Rosina Y Whedon
Notary Public #1150345

My Appointment Expires:

7-24-2022



ACKNOWLEDGMENT

STATE OF KANSAS)
COUNTY OF Johnson) ss:

BE IT REMEMBERED, That on this 28 day of April, 2021, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **RICHARD D. TIMMONS** and/or **CARL R. PALMER**, as Trustee(s) of the **Richard D. Timmons Trust Created Under the Don E. Timmons Trust U/A Dated August 24, 2015** who is/are personally known to me to be the same person(s) who executed as such trustee(s) the foregoing instrument of writing on behalf of said entity and said person(s) duly acknowledged the execution of the same to be the act and deed of said entity.

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

Annie Martin
Notary Public

My Appointment Expires:



ACKNOWLEDGMENT

STATE OF KANSAS)
COUNTY OF JOHNSON) ss:

BE IT REMEMBERED, That on this _____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **BETH LINN**, City Administrator of the City of Edgerton, Kansas, and **ALEX CLOWER**, City Clerk of

said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

Notary Public

My Appointment Expires:

City Project No. Martin Creek Trail
Parcel No. 4F221507-4001

TEMPORARY CONSTRUCTION EASEMENT

THIS AGREEMENT, made and entered into this 16 day of April, ~~2019~~²⁰²¹, by and between **PHILLIP S. TIMMONS AND/OR CARL R. PALMER**, Co-Trustees of the **PHILLIP S. TIMMONS TRUST CREATED UNDER THE DON E. TIMMONS TRUST U/A DATED AUGUST 24, 2015** and **RICHARD D. TIMMONS AND/OR CARL R. PALMER**, Co-Trustees of the **RICHARD D. TIMMONS TRUST CREATED UNDER THE DON E. TIMMONS TRUST U/A DATED AUGUST 24, 2015**, acting pursuant to the powers to convey realty granted under said trusts, their successors, administrators and assigns, hereinafter "Grantors", and the **CITY OF EDGERTON, KANSAS**, a Municipal Corporation, located in the County of Johnson, State of Kansas, hereinafter "Grantee".

WHEREAS, on June 18, 2018 Carl R. Palmer, Successor Trustee of the Don E. Timmons Trust U/A Dated August 24, 2015, transferred an undivided one-half interest in certain real estate to the Phillip S. Timmons Trust Created Under the Don E. Timmons Trust U/A Dated August 24, 2015 and the Richard D. Timmons Trust Created Under the Don E. Timmons Trust U/A Dated August 24, 2015; and

WHEREAS, the City of Edgerton, Kansas has requested a Temporary Construction Easement across said real estate; and

WHEREAS, the Co-Trustees of the Trusts are agreeable to the granting of said easement under certain conditions:

NOW, THEREFORE, for the sum of Three Hundred Forty-Five and 60/100 Dollars (\$345.60) and other good and valuable consideration, including just compensation paid for all property damage resulting from the public improvement and from those factors set forth in K.S.A. 26-513 and other factors arising from the public improvement to be made, including but not limited to access to the property; productivity, convenience, use to be made of the property remaining; view; severance of the tract; changes of grade; loss or impairment of access; loss of landscaping, trees and shrubbery; loss of fences; damage to property remaining due to change of grade; medians; and increased water run-off or drainage as indicated on the construction plan; the sufficiency of which is hereby acknowledged, the Grantors do hereby grant to Grantee, its successors and assigns, a Temporary Construction Easement in, on, over, under and through the following described real estate, to wit:

SEE ATTACHMENT "A" ATTACHED HERETO
AND BY REFERENCE MADE A PART HEREOF.

The above described easement is to be used for the purpose of constructing, grading, improving, reconstructing and inspecting the project shown by the plans of said proposed

improvement. This Temporary Construction Easement includes the right of ingress and egress in, on, over, under and through the above-described real estate.

This Temporary Construction Easement shall be for a two (2) year period starting with the date of the Construction Work Order (CWO) which begins the project and expiring two (2) years thereafter, or July 20, 2021, whichever is the earliest date. Grantors agree that if the project is delayed and not completed within the temporary construction easement area prior to the expiration date set forth herein, Grantee, upon the filing of an Affidavit of Notice of Extension of Temporary Construction Easement with the Record and Tax Administration in Johnson County, Kansas, shall be granted a period of time not to exceed one (1) year from the original expiration date, to complete said project within the easement area. In no event shall the actual work of the project within the temporary construction easement area exceed a time period of two years.

For one year after the expiration date or extension of the expiration date set forth in this easement, Grantee shall have the right to perform maintenance work on or repair of the improvement and to perform landscaping work related thereto.

Grantors reserve the right to fully use and enjoy the premises except for such use as may unreasonably interfere with the exercise by Grantee of the rights granted herein.

After completion of construction, Grantee shall restore the premises and improvement within the temporary construction easement to as near as possible the conditions set out in the project plans and specifications. Said improvement within the temporary construction easement shall be permanent.

Grantee agrees to restore the temporary construction easement by seeding, replacement of sod or paving as set out in the improvement plans and specifications. Grading within the temporary construction easement may result in a permanent grade change.

Grantors covenant that they are the owners of the premises and have the right, title and capacity to grant the easements herein conveyed.

This agreement is binding upon the heirs, executors, administrators, successors and assigns of the Grantors and Grantee, and it is understood that this agreement cannot be changed or altered in any way except by writing, legally signed by both Grantors and Grantee.

TO THESE COVENANTS, the Grantors do hereby consent and agree.

IN WITNESS WHEREOF, the parties above named have hereunto set their hands and seals the date first above written.

GRANTORS:

THE PHILLIP S. TIMMONS TRUST
CREATED UNDER THE DON E. TIMMONS
TRUST U/A DATED AUGUST 24, 2015

By: Philip S. Timmons
Printed Name: Philip S Timmons
Title: _____
Street Address: 413 S Brittany
City, State & Zip: Olathe, KS 66061

THE RICHARD D. TIMMONS TRUST
CREATED UNDER THE DON E. TIMMONS
TRUST U/A DATED AUGUST 24, 2015

By: Richard D. Timmons
Printed Name: Richard D Timmons
Title: _____
Street Address: 708 W. Elm St.
City, State & Zip: Olathe, KS 66061

GRANTEE:

CITY OF EDGERTON, KANSAS,
A Municipal Corporation

By: _____
Beth Linn, City Administrator

(SEAL)

ATTEST:

Alex Clower, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
COUNTY OF Johnson) ss:

BE IT REMEMBERED, That on this 16th day of April, 2021, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **PHILLIP S. TIMMONS** and/or **CARL R. PALMER**, as Trustee(s) of the **Phillip S. Timmons Trust Created Under the Don E. Timmons Trust U/A Dated August 24, 2015** who is/are personally known to me to be the same person(s) who executed as such trustee(s) the foregoing instrument of writing on behalf of said entity and said person(s) duly acknowledged the execution of the same to be the act and deed of said entity.

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

Robina Y. Whedon
Notary Public

My Appointment Expires:

7-24-2022



1150345

ACKNOWLEDGMENT

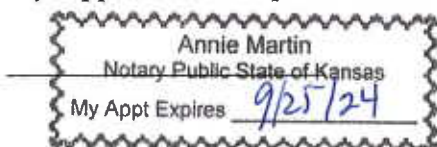
STATE OF KANSAS)
COUNTY OF Johnson) ss:

BE IT REMEMBERED, That on this 28 day of April, 2021, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **RICHARD D. TIMMONS** and/or **CARL R. PALMER**, as Trustee(s) of the **Richard D. Timmons Trust Created Under the Don E. Timmons Trust U/A Dated August 24, 2015** who is/are personally known to me to be the same person(s) who executed as such trustee(s) the foregoing instrument of writing on behalf of said entity and said person(s) duly acknowledged the execution of the same to be the act and deed of said entity.

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

Annie Martin
Notary Public

My Appointment Expires:



ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

BE IT REMEMBERED, That on this _____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **BETH LINN**, City Administrator of the City of Edgerton, Kansas, and **ALEX CLOWER**, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

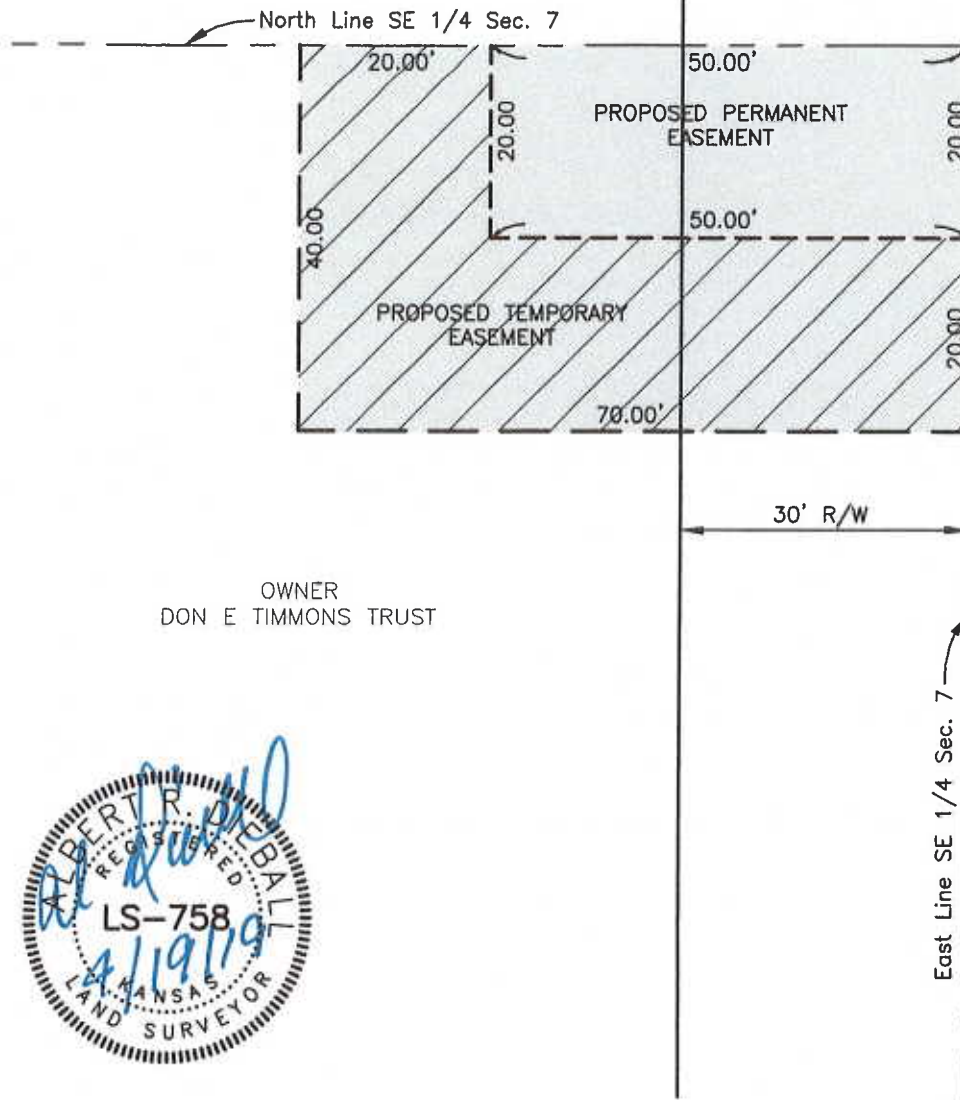
Notary Public

My Appointment Expires:

EXHIBIT A

OWNER
CITY OF EDGERTON, KS
MARTIN PARK

NE Corner
SE 1/4
Section 7, T15S, R22E

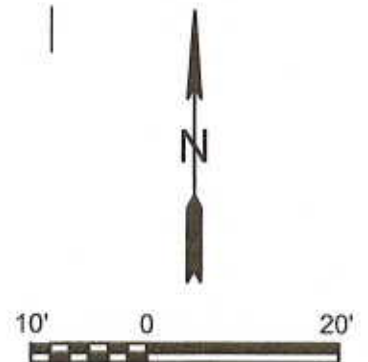


OWNER
DON E TIMMONS TRUST



LEGEND

- Section Corner
- Section Line
- R/W Line
- Proposed Permanent Easement
- Proposed Temporary Easement



Scale: 1" = 20'



CITY OF EDGERTON, KS
MARTIN PARK WALK PATH EASEMENT



EXHIBIT A

DESCRIPTION: PERMANENT EASEMENT

THE NORTH 20.00 FEET OF THE EAST 50.00 FEET OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 15 SOUTH, RANGE 22 EAST OF THE 6TH P.M. IN JOHNSON COUNTY, KANSAS, LESS THAT PART IN PUBLIC ROAD RIGHT-OF-WAY

THIS EASEMENT CONTAINS 400 SQUARE FEET EXCLUDING THE EXISTING PUBLIC ROAD RIGHT-OF-WAY

ALSO:

DESCRIPTION: TEMPORARY EASEMENT

THE NORTH 40.00 FEET OF THE EAST 70.00 FEET OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 15 SOUTH, RANGE 22 EAST OF THE 6TH P.M. IN JOHNSON COUNTY, KANSAS, LESS THAT PART IN PUBLIC ROAD RIGHT-OF-WAY AND LESS THAT PART IN THE ABOVE DESCRIBED "PERMANENT EASEMENT"

THIS EASEMENT CONTAINS 1,200 SQUARE FEET EXCLUDING THE EXCEPTIONS.

SURVEYOR CERTIFICATION:

I, ALBERT R. DIEBALL, BEING A DULY REGISTERED AND LICENSED LAND SURVEYOR IN THE STATE OF KANSAS, HEREBY CERTIFY THAT THIS REAL PROPERTY DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND IS CORRECT TO THE BEST OF MY BELIEF AND KNOWLEDGE.



CITY OF EDGERTON, KS
MARTIN PARK WALK PATH EASEMENT



CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: July 8, 2021

Agenda Item: Ordinance Authorizing Creation of LPKC District No. 3 CID

Subject: Community Improvement District and Development Agreement for LPKC District No. 3 (ELHC LII, LLC Project)

Summary:

In Article 6 of the Phase 2 Development Agreement for the Logistics Park, the City agreed to allow the Developer to petition the City for the creation of a community improvement district on some or all of the Phase Two Land. The parties agreed that the Petition could only seek financing by special assessments and would be funded on a pay-as-you go method. The Development Agreement further provided that the special assessments would be equal to \$0.05 a sq. ft. for all structures constructed within the district that are 50,000 sq. ft. or larger and constitute a warehouse, manufacturing or distribution facility. The special assessments shall run for a 10-year term.

ELHC LII, LLC submitted a Petition to create the LPKC District No. 3 Community Improvement District. The District covers what is known as the ELHC LII, LLC project. The Petition requests the City to levy the special assessments provided for in the Development Agreement. The special assessments will be used to pay for the demolition of existing improvements within the district and the design and construction of utility infrastructure improvements to accommodate industrial facilities to be constructed within the district. The total estimated cost of these projects is anticipated to be \$514,440. ELHC LII, LLC certified in the Petition that it owns 100% of the land within the District.

Ordinance:

The Ordinance creates the LPKC District No. 3 Community Improvement District and levies the special assessments. The Ordinance also approves the Development Agreement. The Development Agreement contains the mechanisms for reimbursement of project costs to ELHC LII. The Development Agreement also provides that the district will continue until such time that the City and ELHC LII agree that the project is complete.

[Published in *The Gardner News* on July 14, 2021]

ORDINANCE NO. 2084

AN ORDINANCE AUTHORIZING THE CREATION OF THE LPKC DISTRICT NO. 3 COMMUNITY IMPROVEMENT DISTRICT, LEVYING SPECIAL ASSESSMENTS WITHIN SUCH DISTRICT, AND APPROVING A DEVELOPMENT AGREEMENT.

WHEREAS, K.S.A. 12-6a26 *et seq.* (the “Act”) authorizes the Governing Body of a city to create a community improvement district to finance projects within a defined area of the city and to levy community improvement district special assessments upon receipt of a petition signed by the owners of all of the land area within the proposed district if full faith and credit bonds will not be issued; and

WHEREAS, a Petition for the Creation of a Community Improvement District (LPKC District No. 3) (the “Petition”) was filed with the City on May 21, 2021, proposing the creation of the LPKC District No. 3 Community Improvement District (the “District”) under the Act and the imposition of community improvement district special assessments (the “CID Special Assessments”) in order to pay the costs of projects as described in the Petition (the “Projects”); and

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

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

WHEREAS, the Governing Body of the City also desires to approve the LPKC District No. 3 Development Agreement dated July 14, 2021 (the “Development Agreement”), between the City and the Property Owner to provide for the financing of the Projects.

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

Section 1. Creation of Community Improvement District; Boundaries. That the Governing Body hereby finds and determines that it is advisable to create, in accordance with the provisions of the Act, the District within the City to be referred to as the LPKC District No. 3 Community Improvement District. A map generally outlining the boundaries of the proposed District is attached as **Exhibit A** hereto and incorporated by reference herein. A legal description of the boundaries of the proposed District is set forth on **Exhibit B** attached hereto and

incorporated by reference herein.

Section 2. Authorization of Community Improvement District Projects and Estimated Costs. The Projects consist of the demolition of existing improvements and the design and construction of utility infrastructure improvements to accommodate industrial facilities to be constructed within the District. The total estimated cost of the Projects is \$514,440.

Section 3. Method of Financing.

(a) The Projects will be financed with the CID Special Assessments levied pursuant to the provisions of the Act and the costs of the Projects will be reimbursed on a pay-as-you-go basis, as defined in the Act. The CID Special Assessments are hereby imposed on all vertical structures within the District that require a building permit to construct that constitute a warehouse, distribution, manufacturing, value-added assembly and/or office facility that is at least 50,000 square feet in size (each, an "Improvement"). The CID Special Assessment levied against each Improvement shall be an annual amount equal to the square footage of the Improvement multiplied by \$0.05. The CID Special Assessment shall be levied for a ten-year term, commencing during the calendar year following the year industrial revenue bonds are issued by the City for the Improvement, and may be paid in two installments in the same manner property taxes are paid.

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

(c) There will be no District sales tax.

Section 4. Segregation of CID Special Assessments. The CID Special Assessments collected shall be deposited into a special fund of the City to be designated as the LPKC District No. 3 Community Improvement District Revenue Fund. The CID Special Assessments collected shall be used to reimburse the costs of the Projects.

Section 5. Development Agreement. The Development Agreement, in substantially the form presented to the Governing Body of the City at this meeting, is hereby approved, and the Mayor and City Clerk are hereby authorized to execute and deliver the Development Agreement with the Property Owner.

Section 6. Recording. The City Clerk shall file a certified copy of this Ordinance with the Register of Deeds of Johnson County, Kansas

Section 7. Term of District. The term of the District shall continue until such time that the District is terminated in the manner set forth in the Development Agreement. The City shall record written evidence of the termination of the District with the Register of Deeds of Johnson County, Kansas when the District is terminated.

Section 8. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication once in the official City newspaper.

PASSED by the Council of the City of Edgerton, Kansas, this 8th day of July, 2021.

Donald Roberts, Mayor

[SEAL]

ATTEST:

Alexandria Clower, City Clerk

Approved as to form:

Scott W. Anderson, Bond Counsel

LPKC District No. 2 Community Improvement District

[illegible]

EXHIBIT B

LEGAL DESCRIPTION OF CID DISTRICT

All of Lot 2, LOGISTICS PARK KANSAS CITY SOUTH, Third Plat, a subdivision of land in the City of Edgerton, Johnson County, Kansas, according to the recorded plat thereof.

**LPKC CID DISTRICT NO. 3
DEVELOPMENT AGREEMENT**

**between the
CITY OF EDGERTON, KANSAS
and
ELHC LII, LLC**

July 14, 2021

Relating to the ELHC LII, LLC Project

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Exhibit A	Map of CID District
Exhibit B	Legal Description of CID
Exhibit C	Form of Certificate of CID Costs
Exhibit D	Form of Certificate of Substantial Completion

**LPKC CID DISTRICT NO. 3
DEVELOPMENT AGREEMENT**

THIS LPKC CID DISTRICT NO. 3 DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into by and between the **CITY OF EDGERTON, KANSAS**, a municipal corporation duly organized and existing under the laws of the State of Kansas as a city of the first class (the “**City**”), and **ELHC LII**, a Kansas limited liability company (the “**Developer**,” and together with the City, the “**Parties**,” and each a “**Party**”), and is dated as of July 8, 2021 (the “**Effective Date**”).

RECITALS

WHEREAS, the Developer is the owner of certain real property located at 20500 Corliss Road, Edgerton, Johnson County, Kansas (the “**Property**”); and

WHEREAS, the City has the authority to undertake community improvement district financing pursuant to the Kansas Community Improvement District Act, K.S.A. 12-6a26 *et seq.* (the “**CID Act**”); and

WHEREAS, on May 21, 2021, ELHC LII, LLC, a Kansas limited liability company (the “**Developer**”), submitted a petition (the “**CID Petition**”) to the City requesting the formation of the CID (as defined below) and the levying of CID Special Assessments (as defined below) in accordance with the CID Act; and

WHEREAS, pursuant to Ordinance ____ adopted by the City on July 8, 2021 (the “**CID Ordinance**”), the City created a Community Improvement District encompassing the Property, the boundaries of which are legally described on **Exhibit B** and generally depicted on **Exhibit A** attached hereto (the “**CID**”) and approved the imposition of the CID Special Assessments and this Agreement, all in accordance with the CID Act; and

WHEREAS, the Developer seeks to construct or improve upon the Property certain improvements described in a general manner as consisting of the demolition of existing improvements and the design and construction of utility infrastructure improvements to accommodate industrial facilities to be constructed on the Property and, subject to the terms and conditions of this Agreement, all other items allowable under the CID Act (collectively, the “**Project**”); and

WHEREAS, the Parties agree that construction and improvement of the Project and the CID financing is to their mutual benefit; and

WHEREAS, the City and the Developer now desire to enter into this Agreement to formalize the development and financing of the Project.

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

ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement.

- A. The terms defined in this Article include the plural as well as the singular.
- B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.
- C. All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
- D. All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- E. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.
- F. The Article and Section headings herein are for convenience only and shall not affect the construction hereof,
- G. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The provisions of the CID Petition, and such resolutions and ordinances of the City introduced or adopted by the City Council which create the CID and approved the CID Special Assessments, and the provisions of the CID Act, as amended, are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof.

Section 1.02. Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

“Agreement” means this LPKC CID District No. 3 Development Agreement, between the City and the Developer, as amended from time to time.

“Applicable Law and Requirements” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction,

writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities.

“Assessed Structure” means any vertical structure that requires a building permit to construct that constitutes a warehouse, distribution, manufacturing, value-added assembly and/or office facility that is at least 50,000 square feet in size.

“Bond Counsel” means SA Legal Advisors LC, Bond Counsel to the City.

“Certificate of CID Costs” means a certificate relating to CID Costs in substantially the form attached hereto as **Exhibit C**.

“Certificate of Substantial Completion” means a certificate evidencing the Substantial Completion of a distinct portion of the Project, in substantially the form attached hereto as **Exhibit D**.

“CID” means the Community Improvement District Created by the City on July 8, 2021 pursuant to Ordinance No. _____.

“CID Act” means the Kansas Community Improvement District Act, K.S.A. 12-6a26 through 12-6a36, as amended and supplemented from time to time.

“CID Costs” means all costs that are eligible to be paid from CID Revenues in accordance with the CID Act in an amount not to exceed \$514,440.

“CID Fund” means the fund created pursuant to **Section 6.02** hereof.

“CID Revenues” means 100% of the amounts received by the City from the CID Special Assessments.

“CID Special Assessments” means an amount equal to the product of \$0.05 and the square footage of the applicable Assessed Structure.

“CID Special Assessment Term” means a term equal to ten calendar years beginning on the January 1 of the calendar year following the calendar during which industrial revenue bonds are issued pursuant to K.S.A. 12-1740 *et. seq.* for any Assessed Structure.

“City” means the City of Edgerton, Kansas.

“City Event of Default” shall have the meaning set forth in **Section 9.02** of this Agreement.

“City Representative” means the Mayor or City Administrator of the City, and such other person or persons at the time designated to act on behalf of the City in matters relating to this Agreement.

“Construction Plans” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Project, together with all supplements, amendments or corrections, submitted by the Developer and (if required to be pursuant to Applicable Law and Requirements) approved by the City in accordance with this Agreement.

“County” means Johnson County, Kansas.

“Developer” means ELHC LII, LLC, a limited liability company organized and existing under the laws of the State of Kansas, and any successors and assigns permitted pursuant to this Agreement.

“Developer Event of Default” shall have the meaning set forth in **Section 9.01** of this Agreement.

“Developer Representative” means Patrick Robinson and such other person or persons designated and duly authorized to act on behalf of the Developer in matters relating to this Agreement.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Project and the CID, and consistent with this Agreement.

“Governmental Authorities” means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

“Pay As You Go” means “Pay-as-you-go financing” as defined in the CID Act.

“Permitted Subsequent Approvals” means the building permits and other governmental approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

“Plans” means Site Plans, Construction Plans and all other Governmental Approvals necessary to construct the Project in accordance with City ordinances and applicable laws of Governmental Authorities and this Agreement.

“Project” shall have the meaning described in the recitals to this Agreement.

“Substantial Completion” has the meaning set forth in **Section 4.07**.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations of City. The City makes the following representations and warranties, which are true and correct on the date hereof, to the best of the City's knowledge:

A. **Due Authority.** The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

B. **No Defaults or Violation of Law.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. **No Litigation.** There is no litigation, proceeding or investigation pending or threatened against the City with respect to the Project or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

D. **Governmental or Corporate Consents.** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

E. **No Default.** No default or City Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or a City Event of Default in any material respect on the part of the City under this Agreement.

Section 2.02. Representations of the Developer.

The Developer makes the following representations and warranties, which are true and correct on the date hereof, to the Developer's actual knowledge:

A. **Due Authority.** The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement

constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. **No Defaults or Violation of Law.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. **No Litigation.** No litigation, proceeding or investigation is pending or threatened against the Project, the Developer or any officer, director, member or shareholder of the Developer and affecting the Project. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

D. **Governmental or Corporate Consents.** As of the Effective Date, no additional consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity, in connection with the execution, delivery and performance by the Developer of this Agreement, other than Permitted Subsequent Approvals.

E. **No Default.** No default or Developer Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or a Developer Event of Default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument affecting the Property to which the Developer is a party or by which the Developer is or may be bound.

F. **Compliance with Laws.** The Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations contemplated by this Agreement.

Section 2.03. Developer's Acquisition of the Property. At the time that this Agreement is executed, Developer represents that it has fee simple title to all of the real property in the CID.

ARTICLE III REIMBURSEMENT OF DEVELOPER'S CID COSTS

Section 3.01. CID Costs, Generally. Subject to the terms of this Agreement, the City shall reimburse the Developer for CID Costs. The Developer shall be reimbursed on a Pay As You Go basis as further set forth in this Agreement. The City shall only be obligated to reimburse the Developer from the CID Fund in the manner set forth in **Article VI** hereof.

Section 3.02. Developer to Advance Costs. The Developer agrees to advance all CID Costs as necessary to complete the Project. The Developer also agrees to pay the fees and expenses of the City's legal counsel related to drafting and negotiating this Agreement and implementing the CID.

Section 3.03. City's Obligation to Reimburse Developer.

A. **Obligation to Reimburse.** Subject to the terms of this Agreement and the conditions in this Section, the City shall reimburse Developer for CID Costs. The Developer shall be reimbursed by the City for CID Costs from the CID Fund on a Pay As You Go basis.

B. **Timing of Reimbursement.** The City shall have no obligation to reimburse Developer until funds are available in the CID Fund and the conditions listed in **Section 6.01(C)** hereof are satisfied.

C. **Source of Reimbursement.** The City shall make payments from the CID Fund on a Pay As You Go basis.

Section 3.04. Developer Reimbursement Process.

A. All requests for reimbursement of CID Costs shall be made in a Certificate of CID Costs in substantial compliance with the form attached hereto as **Exhibit C**. Requests for reimbursement shall be submitted by the Developer to the City not more often than semi-annually. The Developer shall provide itemized invoices, receipts or such other information reasonably satisfactory to the City to confirm that any such cost has been paid and qualifies as a CID Cost, and shall further provide a summary sheet detailing the costs requested to be reimbursed. Such summary sheet shall show the date such cost was paid, the payee, a brief description of the type of cost paid, and the amount paid. The Developer shall provide such additional information as reasonably requested by the City to confirm that such costs have been paid and qualify as CID Costs.

B. The City reserves the right, upon reasonable written notice to Developer, to have its engineer or other agents or employees inspect all work in respect of which a Certificate of CID Costs is submitted, to examine the Developer's and others' records relating to all expenses related to the invoices to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

C. The City shall have 30 calendar days after receipt of any Certificate of CID Costs to review and respond by written notice to the Developer. If the submitted Certificate of CID Costs and supporting documentation demonstrates that (1) the request relates to the CID Costs; (2) the expense has been paid; (3) Developer is not in material default under this Agreement; (4) there is no fraud on the part of the Developer; and (5) the conditions precedent listed in **Section 6.01(C)** have been satisfied, then the City shall approve the Certificate of CID Costs and make, or cause to be made, reimbursement from the CID Fund in accordance with **Article VI** (and subject to **Section 3.06**) hereof; provided, the City shall disburse CID Funds to the Developer on no more than a semi-annual basis. If the City reasonably disapproves of the Certificate of CID Costs in accordance with this **Article III**, the City shall notify the Developer in writing of the reason for such

disapproval within such 30-day period, in which event the Developer shall have the right to revise and re-submit the Certificate of CID Costs to address the City's reason for disapproval, and the City will review and approve (or disapprove) the revised Certificate of CID Costs in accordance with this Section. Approval of the Certificate of CID Costs will not be unreasonably withheld, conditioned or delayed.

Section 3.05. Right to Inspect and Audit. The Developer agrees that, up to one year after completion of the Project, the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review and audit, from time to time, all the Developer's books and records relating to the CID Costs (including, but not limited to, all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices); provided, however, that (to the extent it may legally do so) the City agrees to maintain the confidentiality of the foregoing materials and, under no circumstances, allow the same to become public record.

Section 3.06. Limitation on City's Payment Obligations. Notwithstanding any other term or provision of this Agreement, the City's obligation to reimburse the Developer for CID Costs shall be limited to monies in the CID Fund and shall not be payable from any other source.

Section 3.07. The CID, Generally. The City shall not, under any circumstances other than by a future written agreement between the parties, terminate the CID or take any action to reduce the CID Special Assessment Term prior to such time as the Developer has been reimbursed for all CID Costs.

ARTICLE IV THE PROJECT

Section 4.01. Scope of the Project. Subject to the terms and conditions of this Agreement, the Developer shall construct, or cause to be constructed, the Project.

Section 4.02. Project Schedule.

A. Subject to the terms and conditions of this Agreement, after the Effective Date and receipt of all applicable Governmental Approvals, the Developer shall use commercially reasonable efforts to promptly commence (or cause to be commenced), and shall promptly thereafter diligently prosecute to completion, the construction of the Project.

B. The completion of the Project shall be evidenced by the Developer's delivery of a Certificate of Substantial Completion in accordance with **Section 4.06** of this Agreement.

C. The City agrees to act in good faith and use its best efforts to timely process and review all Plans and consider the issuance of all necessary permits and other approvals, including building permits, rezoning approvals, preliminary and final plat approval, and all other permits or approvals which are required for the Developer to construct the Project. To the extent the City determines that any Plans or other documents or requests submitted by the Developer for the City's

approval are unacceptable, the City shall provide a written description detailing the portions of the Plans or documents that are unacceptable.

Section 4.03. Design of Project. In order to further the development of the Project, the City hereby authorizes the Developer to construct, or cause to be constructed, the Project according to the final Plans approved by the City.

Section 4.04. Plans and Construction.

A. **Plans.** The Developer shall submit Plans for the Project for review and approval by the City pursuant to the review and approval process set forth in the City ordinances and applicable state law.

B. **Construction Permits and Approvals.** Before commencement of construction of the Project, the Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by any Applicable Law and Requirements. The City shall cooperate with and provide all usual assistance to the Developer in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law; except that the City shall not be required to issue any such permits or approvals for any portion of the Project not in conformance with this Agreement or City ordinances or policies.

C. **Development Schedule.** Subject to the terms and conditions of this Agreement, the Developer shall commence or cause to be commenced construction of the Project in good and workmanlike manner in accordance with the terms of this Agreement, and shall cause the Project to be completed with due diligence. Upon reasonable advance notice, the Developer shall meet with the City to review and discuss the design and construction of the Project in order to enable the City to monitor the status of construction and to determine that the Project is being performed and completed substantially in accordance with this Agreement.

D. **No Waiver.** Nothing in this Agreement shall constitute a waiver of the City's right to consider and approve or deny Governmental Approvals pursuant to the City's regulatory authority as provided by the City's ordinances and applicable state law.

Section 4.05. Rights of Access. Representatives of the City shall have the right of access to the Property, upon reasonable notice to Developer in advance, without charges or fees, at normal construction hours during the period of construction, for the purpose of ensuring compliance with this Agreement, including, but not limited to, the inspection of the work being performed in constructing, renovating, improving, equipping, repairing and installing the Project, so long as they comply with all safety rules. Except in case of emergency, prior to any such access, such representatives of the City will check in with the on-site manager. Such representatives of the City shall carry proper identification, shall insure their own safety, assuming the risk of injury, and shall not interfere with the construction activity.

Section 4.06. Certificate of Substantial Completion. Promptly after the Substantial Completion of a distinct portion of the Project in accordance with the provisions of this Agreement,

the Developer may submit a Certificate of Substantial Completion to the City. “**Substantial Completion**” shall mean that the Developer shall have completed a distinct portion of the Project and, if required, shall have been granted a Temporary Certificate of Occupancy by the City Building Official if such improvement requires a Temporary Certificate of Occupancy. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit D**. The City shall, within ten (10) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The City’s execution of the Certificate of Substantial Completion shall constitute evidence of the satisfaction of the Developer’s agreements and covenants to construct such distinct portion of the Project. The final Certificate of Substantial Completion to be submitted by the Developer shall contain a statement that such certificate is the final Certificate of Substantial Completion.

ARTICLE V USE OF THE CID

Section 5.01. Operation of Project.

A. **Compliance with Applicable Laws.** The Project shall comply with all applicable building and zoning, health, property maintenance, environmental and safety codes and laws and all other applicable laws, rules and regulations. The Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by City ordinances and any Applicable Law and Requirements for the construction and operation of the Project, including but not limited to obtaining all necessary licenses and paying any necessary fees to obtain required permits and licenses.

Section 5.02. Taxes, Assessments, Encumbrances and Liens.

A. So long as the Developer owns the real property within the CID, the Developer shall pay (or cause to be paid), prior to delinquency, all real estate taxes and assessments on the real property owned by the Developer within the CID. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

B. Developer agrees to use commercially reasonable efforts to ensure that no mechanics’ or other liens shall be established or remain against the Project, or the funds in connection with any of the Project, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics’ or other liens are filed or established and the Developer contests in good faith said mechanics’ liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

**ARTICLE VI
REIMBURSEMENT OF CID COSTS;
COMMUNITY IMPROVEMENT DISTRICT FINANCING**

Section 6.01. CID Fund.

A. **Creation of CID Fund; Deposit of CID Revenues.** The City shall establish and maintain a separate fund and account known as the LPKC CID District No. 3 CID Fund (the “**CID Fund**”). All CID Revenues shall be deposited into the CID Fund.

B. **Disbursements from the CID Fund.** All disbursements from the CID Fund shall be made only to reimburse CID Costs.

C. **Conditions Precedent to Reimbursements.** Developer hereby understands and agrees that it shall not receive any reimbursements from the CID Fund unless and until the conditions precedent set forth below have been fully satisfied as determined by City in its sole reasonable discretion:

1. Developer submits a Certificate of CID Costs for CID Costs of the Project;
and
2. City has approved the Certificate of CID Costs; and
3. Developer shall be in full compliance with the terms and conditions of this Agreement; and
4. With respect to the CID Costs that are the subject of the request for reimbursement, the Developer shall have advanced all costs and shall have provided evidence of such advances; and
5. One or more Certificates of Substantial Completion shall have been submitted to and approved by the City; and
6. If Developer owns the real property within the CID, Developer shall have fully paid all outstanding property taxes on the Property that are then due, subject to Developer’s legal rights to protest.

**ARTICLE VII
ASSIGNMENT; TRANSFER**

Section 7.01. Transfer of Obligations.

A. Except as otherwise provided in this Agreement, the rights, duties and obligations hereunder of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed; provided that, no City approval is required for any such assignment to any entity affiliated

with Developer or any entity in which Developer, its affiliates or its principals owns 50 percent or more of the ownership interest, or to any lender for financing purposes.

B. The Parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement.

ARTICLE VIII GENERAL COVENANTS

Section 8.01. Indemnification of City.

A. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the "**City Indemnified Parties**") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorney's fees, resulting from, arising out of, or in any way connected with:

1. The Developer's actions and undertakings in the implementation of this Agreement;
2. The negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project; and
3. Any expense incurred by the City resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor.

This section shall not apply to willful misconduct or negligence of the City or its officers, employees or agents. This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act ("RCRA"; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an “**Action**”) is begun or made as a result of which the Developer may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt notice to the Developer of the occurrence of such event.

C. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement with respect to any liability arising prior to the termination of this Agreement.

Section 8.02. Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the reimbursement of the CID Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

ARTICLE IX DEFAULTS AND REMEDIES

Section 9.01. Developer Event of Default. “**Developer Event of Default**” shall mean a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement, and continuance of such default or breach for a period of thirty (30) days after the City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall promptly upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 9.02. City Event of Default. The occurrence and continuance of any of the following events shall constitute a “**City Event of Default**” hereunder:

Default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement, and continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 9.03. Remedies Upon a Developer Event of Default.

A. Upon the occurrence and continuance of a Developer Event of Default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to terminate this Agreement or terminate Developer's rights under this Agreement.
2. The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default.
3. The City may suspend reimbursement to Developer of CID Costs until such time as the Developer Event of Default has been fully remedied.

B. Upon termination of this Agreement pursuant to this Section, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

C. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

D. The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived.

E. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

F. Notwithstanding the foregoing or anything in this Agreement (including, without limitation, this Section) to the contrary, under no circumstances will: (i) Developer be liable for any special, punitive, remote, or consequential damages, including (without limitation) lost tax revenues; or (ii) the City or any third party be entitled to specifically enforce construction of the Project (or any portion thereof) by the Developer.

Section 9.04. Remedies Upon a City Event of Default.

A. Upon the occurrence and continuance of a City Event of Default the Developer shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law or in equity:

1. The Developer shall have the right to terminate this Agreement and the Developer's obligations hereunder;
2. The Developer may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement, to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default.

B. If the Developer has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Developer, then and in every case the Developer and the City shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Developer shall continue as though no such proceeding had been instituted.

C. Each of the Developer's remedies provided hereunder shall be cumulative and in addition to each other such remedy, and the exercise by the Developer of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the Developer shall apply to obligations beyond those expressly waived.

D. Any delay by the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the Developer of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 9.05. Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

ARTICLE X GENERAL PROVISIONS

Section 10.01. Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this

Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

Section 10.02. Effect of Violation of the Terms and Provisions of this Agreement; No Partnership. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Project or the CID. Subject to the limitations set forth in Section 9.03 hereof, the City shall have the right, if this Agreement or covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

Section 10.03. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 10.04. Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 10.05. Agreement Controls, The Parties agree that the Project will be implemented as agreed in this Agreement, subject to the terms and conditions hereof. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of CID Costs and all other methods of implementing the Project. The Parties further agree that this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof (including, without limitation, any memorandum of understanding) and is a full integration of the agreement of the Parties.

Section 10.06. Conflicts of Interest.

A. No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed. Upon receiving notice of such possible conflict, the City shall promptly disclose the same to Developer in writing and, from that point forward until the Parties reach a mutually-agreeable resolution, keep Developer apprised of the status of such possible conflict.

B. The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its actual knowledge, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 10.07. Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until the Developer has been reimbursed for all CID Costs incurred in connection with the Project, unless the parties agree to terminate this Agreement at an earlier date.

Section 10.08. Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 10.09. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 10.10. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 10.11. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Representative and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or

other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Representative may seek the advice, consent or approval of the City Council before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section; provided, however, that (except as expressly provided otherwise herein or required pursuant to Applicable Law and Requirements) such supplemental agreement, request, demand, approval, notice or consent shall not require a public hearing before the City Council or formal approval thereof via resolution, ordinance or otherwise.

Section 10.12. Notice. All notices and requests required or desired to be given pursuant to this Agreement shall be sent as follows:

To the City:

Beth Linn
City Administrator
City of Edgerton, Kansas
404 E. Nelson
Edgerton, Kansas 66021

To the Developer:

ELHC LII, LLC
Attn: Nathaniel Hagedorn
4825 NW 41st Street, Suite 500
Riverside, Missouri 64150

With a copy to:

Scott Anderson
SA Legal Advisors LC
16201 W. 95th Street, Suite 270
Lenexa, Kansas 66219

With a copy to:

or at such other addresses as the Parties may indicate in writing to the other in accordance with the provisions of this Agreement (with at least 10 days' notice of such change in writing), either by personal delivery, reputable overnight delivery service (such as UPS or FedEx), or by certified mail, return receipt requested. Any notice sent by: (a) certified mail, return receipt requested, shall be deemed delivered two (2) business days after deposited in the United States Mail; (b) personal delivery shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the business day following the date the notice is deposited with the overnight delivery service.

Section 10.13. Kansas Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. Any action to enforce the provisions of this Agreement shall be brought in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

Section 10.14. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format shall also be permitted as binding signatures to this Agreement.

Section 10.15. Consent or Approval. Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld, conditioned or unduly delayed.

Section 10.16. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CITY OF EDGERTON, KANSAS

(SEAL)

By: _____
Donald Roberts, Mayor

ATTEST:

Alexandria Clower, City Clerk

ELHC LII, LLC,
a Kansas limited liability company

By: NPD Management, LLC
a Missouri limited liability company
Its: Manager

By: _____
Nathaniel Hagedorn, Manager

MAP OF CID DISTRICT

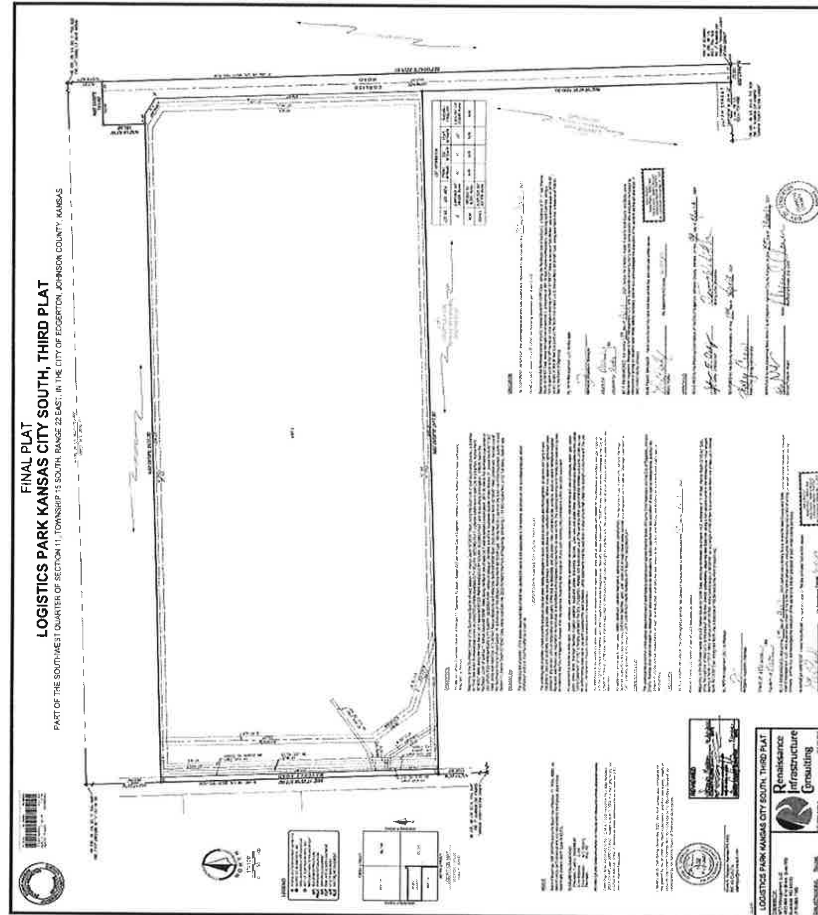


EXHIBIT B

LEGAL DESCRIPTION OF CID

All of Lot 2, LOGISTICS PARK KANSAS CITY SOUTH, Third Plat, a subdivision of land in the City of Edgerton, Johnson County, Kansas, according to the recorded plat thereof.

EXHIBIT C

FORM OF CERTIFICATE OF CID COSTS

CERTIFICATE OF CID COSTS

TO: City of Edgerton, Kansas
Attention: City Administrator

Re: LPKC CID District No. 3

Terms not otherwise defined herein shall have the meaning ascribed to such terms in that certain LPKC District No. 3 Development Agreement dated as of July 8, 2021 (the "Agreement"), between the City of Edgerton, Kansas ("City") and ELHC LII, LLC ("the Developer").

In connection with the Agreement, the undersigned hereby states and certifies that, to his or her actual knowledge:

1. Each item listed on *Schedule I* hereto is a CID Cost and was incurred in connection with the construction of the Project.
2. These CID Costs have been paid and are reimbursable under the Agreement.
3. Each item listed on *Schedule I* has not previously been paid or reimbursed from money derived from the CID Fund, and no part thereof has been included in any other certificate previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith,
5. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.
8. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this _____ day of _____, 20 ____.

ELHC LII, LLC

By: _____
Printed Name: _____
Title: _____

Approved for Payment this day of _____, 20 ____.

CITY OF EDGERTON, KANSAS

By: _____

Title: _____

EXHIBIT D

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

*Pursuant to **Section 4.06** of the Agreement, the City shall, within ten (10) days following delivery of this Certificate, carry out such inspections as it deems necessary to verify to its reasonable satisfaction as to the accuracy of the certifications contained in this Certificate.*

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, ELHC LII, LLC (the “Developer”), pursuant to that certain LPKC CID District No. 3 Development Agreement, dated as of July 8, 2021, between the City of Edgerton, Kansas (the “City”) and the Developer (the “Agreement”), hereby certifies to the City, to its actual knowledge, as follows:

1. That as of _____, 20____, the construction, renovation, repairing, equipping and constructing of a distinct portion of the Project (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. The distinct portion(s) of the Project that has been completed is described as follows:
3. The distinct portion of the Project has been completed in a workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).
4. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Project.
5. The City’s acceptance of this Certificate shall evidence the satisfaction of the Developer’s agreements and covenants to construct such distinct portion of the Project.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, 20____.

ELHC LII, LLC,
a Kansas limited liability Company

By: _____

Name: _____

Title: _____

ACCEPTED:

CITY OF EDGERTON, KANSAS

By: _____

Name: _____

Title: _____

CITY OF EDGERTON, KANSAS

COUNCIL AGENDA ITEM

Council Meeting Date: July 8, 2021

Agenda Item: Resolution Authorizing First Amendment to Project Plan A1
Disposition and Development Agreement

Subject: On the Go Travel Plaza

Summary:

The City created the Homestead Lane Retail TIF District on property generally located at the northeast and northwest corners of Interstate 35 and Homestead Lane (the “District”). The City approved Project Plan A1 for the District which consists of the construction of a truck stop, truck maintenance facility, truck wash, restaurants, and associated infrastructure improvements on property generally located on 12 acres in the northeast corner of Interstate 35 and Homestead Lane.

In order to implement Project Plan A1, the City and My Store III Inc. (the “Developer”) entered into a Project Plan A1 Disposition and Development Agreement (the “DDA”). The DDA requires the Developer to complete the project by December 31, 2021.

Construction has been delayed by delays in the delivery of structural steel and other construction materials. Current structural steel delivery is taking over 40 weeks. The Developer has requested additional time to complete the project.

The Resolution authorizes the City to enter into a First Amendment to the DDA. The First Amendment to the DDA requires the Developer to complete the project by October 1, 2022. This gives the Developer an additional 9 months to complete the project.

RESOLUTION NO. 07-08-21A

RESOLUTION AUTHORIZING THE CITY OF EDGERTON, KANSAS TO ENTER INTO A FIRST AMENDMENT TO PROJECT PLAN A1 DISPOSITION AND DEVELOPMENT AGREEMENT

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

WHEREAS, pursuant to K.S.A. 12-1770 *et seq.*, as amended, the City prepared Redevelopment Project Plan A1 (“Project Plan A1”), consisting of the construction of a truck stop, truck parking, truck maintenance facility, truck wash, restaurants, and associated infrastructure and site work (the “Project”), which is located on approximately 12.162 acres located in the northeast corner of Interstate 35 and Homestead Lane;

WHEREAS, pursuant to Ordinance No. 2041, the City established Project Plan A1 as a redevelopment project within the District;

WHEREAS, the City and My Store III Inc., a Kansas corporation (the “Developer”), entered into the Project Plan A1 Disposition and Development Agreement dated September 1, 2020 (the “DDA”) that contains the terms for implementation of Project Plan A1, including the requirement that the Project be complete by December 31, 2021; and

WHEREAS, the Developer has requested additional time to complete the Project.

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

Section 1. Approval of First Amendment to Project Plan A1 Disposition and Development Agreement. The City Council hereby approves the First Amendment to the Project Plan A1 Disposition and Development Agreement (the “First Amendment”) in substantially the form attached hereto as **Exhibit A**. The First Amendment amends the Original Agreement by extending the deadline for completion of the Project to October 1, 2022.

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

Section 3. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the First Amendment.

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

ADOPTED this 8th day of July, 2021.

CITY OF EDGERTON, KANSAS

[SEAL]

By: _____
Mayor

ATTEST:

City Clerk

EXHIBIT A

**FORM OF FIRST AMENDMENT TO
PROJECT PLAN A1 DISPOSITION AND DEVELOPMENT AGREEMENT**

**FIRST AMENDMENT TO
EDGERTON HOMESTEAD LANE RETAIL DISTRICT
REDEVELOPMENT (TIF) PROJECT PLAN A1
DISPOSITION AND DEVELOPMENT AGREEMENT**

(On the Go Travel Plaza)

THIS FIRST AMENDMENT TO EDGERTON HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) PROJECT PLAN A1 DISPOSITION AND DEVELOPMENT AGREEMENT (this “First Amendment”) is made this 10th day of July, 2021, between the **CITY OF EDGERTON, KANSAS**, a Kansas municipal corporation (the “City”), and **MY STORE III INC.**, a Kansas corporation (the “Developer”), and amends and restates the Edgerton Homestead Lane Retail District Redevelopment (TIF) Project Plan A1 Disposition and Development Agreement dated September 1, 2020 (the “Original Agreement”), between the City and the Developer. The City and the Developer may each be referred to herein as a “party” and collectively as the “parties”.

RECITALS:

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

AGREEMENTS:

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

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

Section 2. Amendment to Project Schedule. **Section 3.3** of the Original Agreement is amended by deleting the date “December 31, 2021” and replacing it with the date “October 1, 2022.”

Section 3. Representations. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this First Amendment; (b) fully understands the legal effect of this First Amendment; and (c) is duly authorized and empowered to execute, deliver and perform this First Amendment according to its terms and conditions.

Section 4. Entire Agreement. The Agreement is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of the Agreement are contractual

and not mere recitals and no alterations, amendment, modification, or interpretation thereof shall be binding unless in writing and signed by all parties.

Section 5. Effectiveness of Original Agreement. Except as amended by this First Amendment, all terms and provisions of the Original Agreement shall remain in full force and effect.

Section 6. Counterparts. This First Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, this First Amendment has been executed by the parties hereto on the date first above written.

CITY OF EDGERTON, KANSAS
a Kansas municipal corporation

By: _____
Donald Roberts
Mayor

Attest:

Alexandria Clower
City Clerk

MY STORE III, INC.
a Kansas corporation

By: _____
Moussa Sobaiti
President and CEO

EXHIBIT A
LAYOUT OF PROJECT

City Council Action Item

Council Meeting Date: July 8, 2021

Department: Parks and Recreation

Agenda Item: Consider Resolution No. 07-08-21B Approving The Closure Of The Public Streets Named Herein During The Bike Rodeo At Summer Movie Night

Background/Description of Item:

On Saturday, August 8, the City of Edgerton will host the Bike Rodeo at Summer Movie Night in Downtown Edgerton. The event is a bike rodeo that promotes children safely riding their bicycles. There will be a bike course, bike tune-ups, and bike safety giveaways. In addition to the bike rodeo we will also have an inflatable water slide and food truck from 6:30 PM to 9:00 PM. Once the sun goes down, the City will host the last Downtown Summer Movie Night featuring *Tom and Jerry*.

To support this event, City staff is requesting the closure of Nelson Street (between East 4th Street and East 3rd Street) from 5:00 PM – 11:00 PM. The intersections at both E 4th Street/Nelson Street and E 3rd Street/Nelson Street will remain open to traffic.

City staff has reviewed the proposed street closures and does not anticipate any conflicts or issues. City staff will inform the Johnson County Sheriff's Office, Johnson County Fire District No. 1 and Johnson County Med-Act of the proposed closings.

Funding Source: N/A

Budget Allocated: N/A

Finance Director Approval: N/A

Recommendation: Approval of Resolution No. 07-08-21B Approving The Closure Of The Public Streets Named Herein During The Bike Rodeo At Summer Movie Night

Enclosed: Draft Resolution No. 07-08-21B

Prepared by: Brittany Paddock, Recreation Coordinator

RESOLUTION NO. 07-08-21B

A RESOLUTION APPROVING THE CLOSURE OF THE PUBLIC STREETS NAMED HEREIN DURING THE BIKE RODEO AT SUMMER MOVIE NIGHT

WHEREAS, the City Council of the City of Edgerton, Kansas wishes to provide a safe and enjoyable Bike Rodeo at Summer Movie Night; and

WHEREAS, the City has determined that the closure of certain streets would be beneficial to the safety and enjoyment of the Bike Rodeo at Summer Movie Night; and

WHEREAS, City staff has reviewed the proposed street closures and does not anticipate any conflicts or issues that would prevent said closures; and

WHEREAS, the following public streets shall be closed to vehicular traffic during Bike Rodeo at Summer Movie Night between 5:00 PM until 11:00 PM on August 7, 2021:

- Nelson Street between East 4th Street to East 3rd Street

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EDGERTON, KANSAS that the City hereby authorizes the closure of the public streets named above for the duration named above for the Bike Rodeo at Summer Movie Night.

SECTION ONE: EFFECTIVE DATE

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

ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF EDGERTON, KANSAS ON THE 8TH DAY OF JULY, 2021.

ATTEST:

CITY OF EDGERTON, KANSAS

Alexandria Clower, City Clerk

By: _____
Donald Roberts, Mayor

APPROVED AS TO FORM:

Lee W. Hendricks, City Attorney

City Council Action Item

Council Meeting Date: July 8, 2021

Department: Administration

Agenda Item: Approval Of Ordinance No. 2085 Amending Chapter IX, Article 1, Section 9-107 Of The City Code Of The City Of Edgerton, Kansas And Repealing All Ordinances Or Parts Of Ordinances In Conflict Therewith

Background/Description of Item:

Over the past several months, the Edgerton Municipal Court Docket has had a significant number of court cases requiring appearances or hearings. For 2021, the docket numbers have been as follows:

- Jan: 118 cases
- Feb: 83 cases
- March: 109 cases
- April: 139 cases
- May: 131 cases
- June: 90 cases

For 2021, the average number of cases has been over 110 cases from January to June.

In addition to the significant rise in number of cases per docket, staff has identified a need to expedite the adjudication of citations and the court trial process, particularly related to code enforcement cases. Having only one court docket per month can add significant length of time to cases depending on factors such as defendants not appearing in court, requesting court appointed representation, requests for continuation and/or time to pay, etc.

After consultation with the Municipal Court Judge and Prosecutor, staff recommends the addition of an additional court docket per month. This would allow Edgerton to limit the number of cases heard per docket and expedite defendants through the process. Staff, together with the Municipal Judge and Prosecutor are recommending the additional docket be held on the first Tuesday of each month at 3:00 PM, the same day of week and time as the existing court docket. If approved Edgerton Municipal Court would convene on the first and third Tuesday of each month at 3:00 PM.

The cost to add an additional docket is estimated as follows beginning August 2021 (5 months 2021):

\$9,375	Prosecutor Fee (\$1,875/docket)
\$3,750	Judge Fee (\$750/docket)
\$415	Court Appointed Attorney Fee (\$83/docket)
\$0	Bailiff Fee (Use overtime allowance in the JCSO contract)
\$13,540	TOTAL FOR 2021

If approved, staff will include two court dockets in recommended 2022 Budget.

As a result of the significant rise in the number of cases, the City of Edgerton has collected additional fine revenue the last couple of years. A summary of the actual revenues versus budget is below. The 2021 1st Quarter financial report as presented to the City Council stated that the City had already received \$27,427 in fine revenue as of March 31st.


	<u>ACTUAL</u>	<u>BUDGET</u>
2019:	\$42,297	\$25,000
2020:	\$65,753	\$30,000
2021:	\$61,446 (YTD)	\$75,000 (estimate updated 7/2/21)

A copy of the redlined version of the amended code section is included. A draft copy of Ordinance 2085 is included here pending final review by the City Attorney.

Related Ordinance(s) or Statue(s): City of Edgerton Ordinances 2046 (2020), 1075 (2018), 974 (2014), 602 (1990), 581 (1988), and 456 (1978).

Funding Source: General Fund – Law Enforcement – Legal Services

Budget Allocated: No

x 

Finance Director Approval: Karen Kindle, Finance Director

Recommendation: Approval Of Ordinance No. 2085 Amending Chapter IX, Article 1, Section 9-107 Of The City Code Of The City Of Edgerton, Kansas And Repealing All Ordinances Or Parts Of Ordinances In Conflict Therewith

Enclosed: Chapter IX, Article 1, Section 9-107 – redlined version
Ordinance 2085

Prepared by: Katy Crow, Development Services Director

CHAPTER IX. MUNICIPAL COURT

Article 1. General Provisions

ARTICLE 1. GENERAL PROVISIONS

- 9-101. MUNICIPAL COURT ESTABLISHED. There is hereby established a municipal court for the City of Edgerton, Kansas. The municipal court shall have jurisdiction to hear and determine cases involving violations of the laws of the city. (Code 1984)
- 9-102. SAME; PRACTICE AND PROCEDURE. The Kansas code of procedure for municipal courts, as set forth in K.S.A. 12-4101 et seq. and all acts amendatory or supplemental thereto shall govern the practice and procedure in all cases in the municipal court. (Code 1984)
- 9-103. MUNICIPAL JUDGE; APPOINTMENT. The municipal court shall be presided over by a municipal judge who shall be appointed by the mayor with the consent of the Council. (Code 1984)
- 9-104. SAME: POWERS AND DUTIES. The municipal judge shall have such powers and duties as set forth in the Kansas code of procedure for municipal courts (K.S.A. 12-4101 et seq.) and all acts amendatory or supplemental thereto. (Code 1984)
- 9-105. SAME; SALARY. The municipal judge shall receive a salary fixed by ordinance. (1984)
- 9-106. SAME: ABSENCE; VACANCY; PRO TEM. In the event the municipal judge is temporarily unable to preside due to absence, illness or disqualification, the municipal judge shall designate an attorney or other qualified person to act as judge pro tempore. In the event the municipal judge fails to appoint a judge pro tempore, the judge pro tempore shall be appointed in the same manner as the municipal judge is selected. The judge pro tempore shall receive compensation as shall be provided by ordinance, payable in the same manner as the compensation of the regular municipal judge.
- In the event a vacancy shall occur in the office of municipal judge, a successor shall be appointed to fill the unexpired term in the same manner as the municipal judge was appointed. (K.S.A. 12-4107; Code 1995)
- 9-107. MUNICIPAL COURT; LOCATION, TIME. The municipal court of the City of Edgerton shall be held on the first and third Tuesdays of each month at 3:00 P.M. at the Edgerton Community Building, 404 E. Nelson, Edgerton, Kansas 66021. The date, time and location of municipal court may be changed on a temporary

basis by the municipal judge to accommodate holidays or other scheduling conflicts, so long as court staff and defendants scheduled to appear are notified of the change. (Ord. 2046, 2020; Ord. 1075, 2018; Ord. 974, 2014; Ord. 602, 1990; Ord. 581, 1988; Ord. 456, 1978)

- 9-108. CITY ATTORNEY. The city attorney, in person or by his assistants such as the named prosecuting attorney, shall prosecute all contested cases in Municipal Court, and shall appear to prosecute such other cases as the Judge of the Municipal Court for the City of Edgerton shall deem necessary. (Charter Ordinance No 8, 1982)
- 9-109. COURT COSTS. (a) Every person found guilty of a violation of the ordinances of the City of Edgerton, Kansas shall be assessed costs for the administration of justice in the Municipal Court and such costs shall be determined by provisions of this Code. (Ord. 968, 2014; Charter Ordinance No. 20, 2014; Charter Ordinance No. 8, 1982)
- (b) In all Municipal Court cases where the accused person or persons plead guilty or nolo contendere, or is found guilty, such person shall be assessed costs as established by the Municipal Court Judge by Administrative Order. (Ord. 968, 2014; Charter Ordinance No. 20, 2014; Charter Ordinance No. 8, 1982)
- (c) In all Municipal Court cases where the accused person or persons plead guilty or nolo contendere, or is found guilty, such person shall pay training assessments established by the State of Kansas. (Ord. 968, 2014; Code 1995)
- 9-110. FAILURE TO APPEAR. (a) For the purpose of subsection (b), Failure to Appear shall mean: Failure to appear or willfully incurring a forfeiture of an appearance bond and failing to surrender oneself within thirty (30) days following the date of such forfeiture by one who is charged with a public offense, has been released on bond for appearance before the Municipal Court of this city for trial or other proceeding prior to conviction, or willfully incurring a ~~forfeiture~~forfeiture of an appearance bond and failing to surrender oneself within thirty (30) days after his conviction of a public offense has become final by one who has been released on an appearance bond by any Court. Any person who is released upon his own recognizance, without surety, or who fails to appear in response to a summons or traffic citation, is a person released on bond for appearance within the meaning of this section. The provisions of this section do not apply to any person who forfeits a cash bond supplied pursuant to law or city ordinance upon an arrest for a traffic offense.
- (b) Any person or persons who “fail to appear” as defined in subsection (a) shall be punished by serving up to but no more than thirty (30) days in either the city or county jail and/or up to but not exceeding a \$500.00 fine, or both. (Ord. 500, 1981)

ORDINANCE NO. 2085

AN ORDINANCE AMENDING CHAPTER IX, ARTICLE 1, SECTION 9-107 OF THE CITY CODE OF THE CITY OF EDGERTON, KANSAS AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH

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

SECTION 1. Chapter IX, Article 1, Section 9-107 of the City Code of the City of Edgerton, Kansas, is hereby amended to read as follows:

9-107. MUNICIPAL COURT; LOCATION, TIME. The municipal court of the City of Edgerton shall be held on the first and third Tuesdays of each month at 3:00 P.M. at the Edgerton Community Building, 404 E. Nelson, Edgerton, Kansas 66021. The date, time and location of municipal court may be changed on a temporary basis by the municipal judge to accommodate holidays or other scheduling conflicts, so long as court staff and defendants scheduled to appear are notified of the change. (Ord. 2085, 2021; Ord. 2046, 2020; Ord. 1075, 2018; Ord. 974, 2014; Ord. 602, 1990; Ord. 581, 1988; Ord. 456, 1978)

SECTION 2. REPEAL OF CONFLICTING ORDINANCES. All ordinances or sections of ordinances in conflict herewith are hereby repealed.

SECTION 3. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its passage, approval and publication once in the City's official paper.

PASSED by the Council and APPROVED by the Mayor on this 8th day of July, 2021.

DONALD ROBERTS, Mayor

ATTEST:

ALEXANDRIA CLOWER, City Clerk

APPROVED AS TO FORM:

LEE W. HENDRICKS, City Attorney

City Council Action Item

Council Meeting Date: July 8, 2021

Department: Public Works

Agenda Item: Consider Award of Construction of 2021 Street Maintenance Program (Chip Seal) to Vance Brothers and Authorize the Mayor to Execute the Contract.

Background/Description of Item:

In June, 2021, the City of Edgerton published a request for proposal (RFP) for the 2021 Street Maintenance Program. Included in the RFP are quantities to bid two (2) methods of street maintenance, Chip Seal and UBAS. On June 20, 2021, the City of Edgerton held a public RFP/bid opening.

For Chip Seal, a total of two (2) bids were received, opened and read aloud to the public. This project consisted of the base bid, with three (3) alternates. The base bids ranged from a low of \$ 47,500 to a high of \$ 50,400. Vance Brother submitted the low bid for the project. Vance Brothers has been in the region performing this type of work for many years. Based upon review of the bids, staff recommendation is Vance Brothers is qualified to perform the scope of work included in this project.

For UBAS, a total of three (3) bids were received, opened and read aloud to the public. This project consisted of the base bid, with three (3) alternates. In the bids, base repair of the roadway (Item #1) is removed due to an error. Therefore the base bids ranged from a low of \$ 44,885 to a high of \$ 52,640. McAnany submitted the low bid for the project. McAnany has performed this work in Edgerton in prior years as part of cooperative contract from a neighboring municipality. Based upon review of the bids, staff recommendation is McAnany is qualified to perform the scope of work included in this project.

Both low bids total to \$92,385. Any remaining funds within the project can be utilized to increase line-item quantities, or to include one of the bid alternates. Bid alternates for Chip Seal included a fog seal addition and stripping. Bid alternates for UBAS included a pavement repair/rebuild and stripping.

The City of Edgerton in conjunction with City Staff will administer the project including the construction oversight.

Funding for this project is from the Special Highway Fund, as identified in the 2021 CIP. Special Highway Funds from 2020 are also allocated for this project.

Related Ordinance(s) or Statue(s):

Funding Source: Special Highway Fund

Budget Allocated: \$94,214

x Karen E. Kindle

Finance Director Approval: Karen Kindle, Finance Director

Recommendation: Approve Award of Construction of 2021 Street Maintenance Program (Chip Seal) to Vance Brothers and Authorize the Mayor to Execute the Contract.

Enclosed: Bid Tabulation

Prepared by: Dan Merkh, Public Works Director

BID TABULATIONS
2021 Street Maintenance Program
Edgerton, Kansas
Bid Letting June 30, 2021

				Vance Brothers		Harbour Construction			
Item #	Description	Quantity	Unit	Unit Price		Unit Price			
Base Bid									
1.	Chip Seal	14000	SY	\$	2.75	\$	2.85		
2.	Chip Seal Sweeping (Clean-up)	2	LS	\$	3,750.00	\$	4,500.00		
3.	Traffic Control (All Remaining Areas)	1	LS	\$	1,500.00	\$	1,500.00		
					\$	47,500.00	\$	50,400.00	
1. Bid Alternate #1									
2.	Fog Seal	14000	LS	\$	0.92	\$	0.70		
					\$	12,880.00	\$	9,800.00	
					\$	12,880.00	\$	9,800.00	
1. Bid Alternate #2									
2.	Pavement Markings, 4" Solid White Line (Paint-non thermo)	1000	LF	\$	7.15	\$	1.10		
3.	Pavement Markings, 6" Solid White Channelization Line (Paint-non thermo)		LF	\$	-	\$	1.65		
4.	Pavement Markings, 12" Solid White Crosswalk Line (Paint-non thermo)	125	LF	\$	22.00	\$	6.60		
5.	Pavement Markings, 24" Solid White Stop Line (Paint-non thermo)	50	LF	\$	45.00	\$	13.20		
6.	Pavement Markings, Eradication	1	LS	\$	2,800.00	\$	2,750.00		
					\$	14,950.00	\$	5,335.00	
1. Bid Alternate #2a									
2.	Pavement Markings, 4" Solid White Line Thermoplastic	1000	LF	\$	7.15	\$	2.20		
3.	Pavement Markings, 6" Solid White Channelization Line Thermoplastic		LF	\$	-	\$	2.20		
4.	Pavement Markings, 12" Solid White Crosswalk Line Thermoplastic	125	LF	\$	22.00	\$	11.00		
5.	Pavement Markings, 24" Solid White Stop Line Thermoplastic	50	LF	\$	45.00	\$	22.00		
6.	Pavement Markings, Handicap Symbol Preformed Thermoplastic	5	EA	\$	600.00	\$	250.00		
7.	Pavement Markings, Eradication	1	LS	\$	2,800.00	\$	2,750.00		
					\$	17,950.00	\$	8,675.00	
					\$	93,280.00		\$	74,210.00

City Council Action Item

Council Meeting Date: July 8, 2021

Department: Public Works

Agenda Item: Consider Award of Construction of 2021 Street Maintenance Program (UBAS) to McAnany and Authorize the Mayor to Execute the Contract.

Background/Description of Item:

In June, 2021, the City of Edgerton published a request for proposal (RFP) for the 2021 Street Maintenance Program. Included in the RFP are quantities to bid two (2) methods of street maintenance, Chip Seal and UBAS. On June 20, 2021, the City of Edgerton held a public RFP/bid opening.

For Chip Seal, a total of two (2) bids were received, opened and read aloud to the public. This project consisted of the base bid, with three (3) alternates. The base bids ranged from a low of \$ 47,500 to a high of \$ 50,400. Vance Brother submitted the low bid for the project. Vance Brothers has been in the region performing this type of work for many years. Based upon review of the bids, staff recommendation is Vance Brothers is qualified to perform the scope of work included in this project.

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Both low bids total to \$92,385. Any remaining funds within the project can be utilized to increase line-item quantities, or to include one of the bid alternates. Bid alternates for Chip Seal included a fog seal addition and stripping. Bid alternates for UBAS included a pavement repair/rebuild and stripping.

The City of Edgerton in conjunction with City Staff will administer the project including the construction oversight.

Funding for this project is from the Special Highway Fund, as identified in the 2021 CIP. Special Highway Funds from 2020 are also allocated for this project.

Related Ordinance(s) or Statute(s):

Funding Source: Special Highway Fund

Budget Allocated: \$94,214

x Karen E. Kindle

Finance Director Approval: Karen Kindle, Finance Director

Recommendation: Approve Award of Construction of 2021 Street Maintenance Program (UBAS) to McAnany and Authorize the Mayor to Execute the Contract.

Enclosed: Bid Tabulation

Prepared by: Dan Merkh, Public Works Director

BID TABULATIONS
2021 Street Maintenance Program
Edgerton, Kansas
Bid Letting June 30, 2021

				Superior Bown		McAnany		Bettis Asphalt	
Item #	Description	Quantity	Unit	Unit Price		Unit Price		Unit Price	
Base Bid									
1.	Asphalt Patching (Full-Depth 8" Minimum)	1500	SY	\$ 66.05	\$ 99,075.00	\$ 55.00	\$ 82,500.00	\$ 72.13	\$ 108,195.00
2.	Ultrathin Bonded Assphalt Surface (UBAS)	4700	SY	\$ 6.65	\$ 31,255.00	\$ 7.30	\$ 34,310.00	\$ 8.59	\$ 40,373.00
3.	Macrotexturing	4700	SY	\$ 3.45	\$ 16,215.00	\$ 2.25	\$ 10,575.00	\$ 2.61	\$ 12,267.00
ITEM #1 REMOVED FROM SCOPE					\$ 47,470.00	\$ 44,885.00	\$ 52,640.00		
					\$ 146,545.00	\$ 127,385.00	\$ 160,835.00		
1.	Bid Alternate #1								
2.	Asphaltic Concrete Surface, 2" (KDOT 12.5mm or Approved Equivalent)	300	SY	\$ 34.90	\$ 10,470.00	\$ 30.00	\$ 9,000.00	\$ 19.61	\$ 5,883.00
3.	Asphaltic Concrete Intermediate, 4"	300	SY	\$ 136.55	\$ 40,965.00	\$ 50.00	\$ 15,000.00	\$ 32.72	\$ 9,816.00
4.	Macrotexturing (Total Width Cut) 2"	300	SY	\$ 9.65	\$ 2,895.00	\$ 15.00	\$ 4,500.00	\$ 12.78	\$ 3,834.00
5.	Curb and Gutter, (All Types)	150	LF	\$ 142.15	\$ 21,322.50	\$ 60.00	\$ 9,000.00	\$ 85.00	\$ 12,750.00
					\$ 75,652.50	\$ 37,500.00	\$ 32,283.00		
1.	Bid Alternate #2								
2.	Pavement Markings, 4" Solid White Line (Paint-non thermo)	1000	LF	\$ 1.20	\$ 1,200.00	\$ 1.10	\$ 1,100.00	\$ 1.00	\$ 1,000.00
3.	Pavement Markings, 6" Solid White Channelization Line (Paint-non thermo)		LF	\$ 1.80	\$ -	\$ 1.75	\$ -	\$ -	\$ -
4.	Pavement Markings, 12" Solid White Crosswalk Line (Paint-non thermo)	125	LF	\$ 7.20	\$ 900.00	\$ 6.50	\$ 812.50	\$ 6.00	\$ 750.00
5.	Pavement Markings, 24" Solid White Stop Line (Paint-non thermo)	50	LF	\$ 14.40	\$ 720.00	\$ 15.00	\$ 750.00	\$ 12.00	\$ 600.00
6.	Pavement Markings, Eradication	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 2,500.00	\$ 2,500.00
					\$ 5,820.00	\$ 5,662.50	\$ 4,850.00		
1.	Bid Alternate #2a								
2.	Pavement Markings, 4" Solid White Line Thermoplastic	1000	LF	\$ 2.40	\$ 2,400.00	\$ 2.50	\$ 2,500.00	\$ 2.00	\$ 2,000.00
3.	Pavement Markings, 6" Solid White Channelization Line Thermoplastic		LF	\$ 3.00	\$ -	\$ 2.75	\$ -	\$ -	\$ -
4.	Pavement Markings, 12" Solid White Crosswalk Line Thermoplastic	125	LF	\$ 12.00	\$ 1,500.00	\$ 12.00	\$ 1,500.00	\$ 10.00	\$ 1,250.00
5.	Pavement Markings, 24" Solid White Stop Line Thermoplastic	50	LF	\$ 24.00	\$ 1,200.00	\$ 25.00	\$ 1,250.00	\$ 20.00	\$ 1,000.00
6.	Pavement Markings, Handicap Symbol Preformed Thermoplastic	5	EA	\$ 270.00	\$ 1,350.00	\$ 500.00	\$ 2,500.00	\$ 225.00	\$ 1,125.00
7.	Pavement Markings, Eradication	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 2,500.00	\$ 2,500.00
					\$ 9,450.00	\$ 10,750.00	\$ 7,875.00		
					\$ 237,467.50	\$ 181,297.50	\$ 205,843.00		



EDGERTON
global routes. local roots.

404 East Nelson
Edgerton, KS 66021
P: 913.893.6231
EDGERTONKS.ORG

City Council Action Item

Council Meeting Date: July 8, 2021

Department: Public Works

Agenda Item: Consider Project Authorization for the Construction of Corliss Road

Background/Description of Item:

In January 2018, the Edgerton City Council approved a Development Agreement with Edgerton Land Holding Company (ELHC) for the development of Phase II of Logistics Park Kansas City (LPKC) located south of Interstate 35. Similar to LPKC Phase I, this Agreement established a new Public Infrastructure Fund (Ph II PIF) with for the collection of certain revenues associated with the development and payment of project expenditures as allowed by the Agreement.

The Development Agreement includes Exhibit E which describes Public Infrastructure Improvements and Costs that are allowed project expenses to be paid from Ph II PIF. The construction of Corliss Road for approximately 0.5 miles, adjacent to Inland Port 52, is included as allowable project expense in LPKC Phase II.

Staff and City Engineer have reviewed the proposed public infrastructure road plans related to Corliss Road, shown in the map in the attached exhibit. The proposed construction of Corliss Road would serve the semi-truck loading and parking areas of Inland Port 52, along with residents in the area.

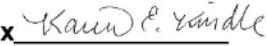
The proposed section of road is 42' back-to-back and will be installed with curb and gutter. A 14' center turn lane will be included with the two 12' drive lanes.

Edgerton Land Holding Company has submitted the Recommendation for Contractor Award to Emery Sapp and Sons, Inc. at \$1,904,771.00. This cost will be borne entirely by ELHC until such time the project is converted to funding from Home Rule Revenue Bonds. If the project is approved, staff will work with Intermodal Bond Counsel and ELHC to include the allowable project costs into the next Home Rule Revenue Bond series.

Related Ordinance(s) or Statue(s): n/a

Funding Source: LPKC Phase II Public Infrastructure Fund

Budget Allocated: \$1,904,771.00

x 

Finance Director Approval: Karen Kindle, Finance Director

Recommendation: Approve Project Authorization for the Construction of Corliss Road

Enclosed: Recommendation for Contractor Award
Exhibit E for construction of Corliss Road
Map of construction area

Prepared by: Dan Merkh, Public Works Director

Recommendation for Contractor Award

Project: Public Street & Storm Sewer Improvements Corliss Road
Edgerton, Kansas

July 6, 2021

Mr. Dan Merkh

We appreciate the opportunity to work with the City of Edgerton on the above referenced project. We have reviewed the three contractor bids received, and the lowest qualified bidder was Emery Sapp and Sons, Inc. ('ESS'). We recommend moving forward with ESS if there are no questions or concerns from the city regarding the low contractor. Below is a summary of the associated costs for this project.

<u>Items</u>	<u>Associated Costs</u>
Mass Grading	\$ 81,123
Storm Sewer and Street Improvements Corliss Road	\$ 1,631,766
Design and Survey Fees	\$ 64,500
Geotechnical Inspection Fees	\$ 5,000
Contingency (7.5% on Construction Costs)	\$ 122,382
Project Total	\$ 1,904,771

Sincerely,

Travis Rudisill
NorthPoint Development

EXHIBIT E

PUBLIC INFRASTRUCTURE IMPROVEMENT NOTICE

The parties agree to proceed with the following Public Infrastructure Improvement(s):

<u>Public Infrastructure Improvement</u>	<u>Public Infrastructure Improvement Description</u>	<u>Estimated Cost</u>	<u>Funding Mechanism</u>	<u>Responsible Party</u>
Corliss Road	Storm and Pavement	\$1,904,771.00	Private	Edgerton Land Holding Company, LLC

This Public Infrastructure Improvement Notice is dated July 6, 2021.

CITY OF EDGERTON, KANSAS, a
Kansas municipal corporation

[SEAL]

By: _____
Mayor

ATTEST:

City Clerk

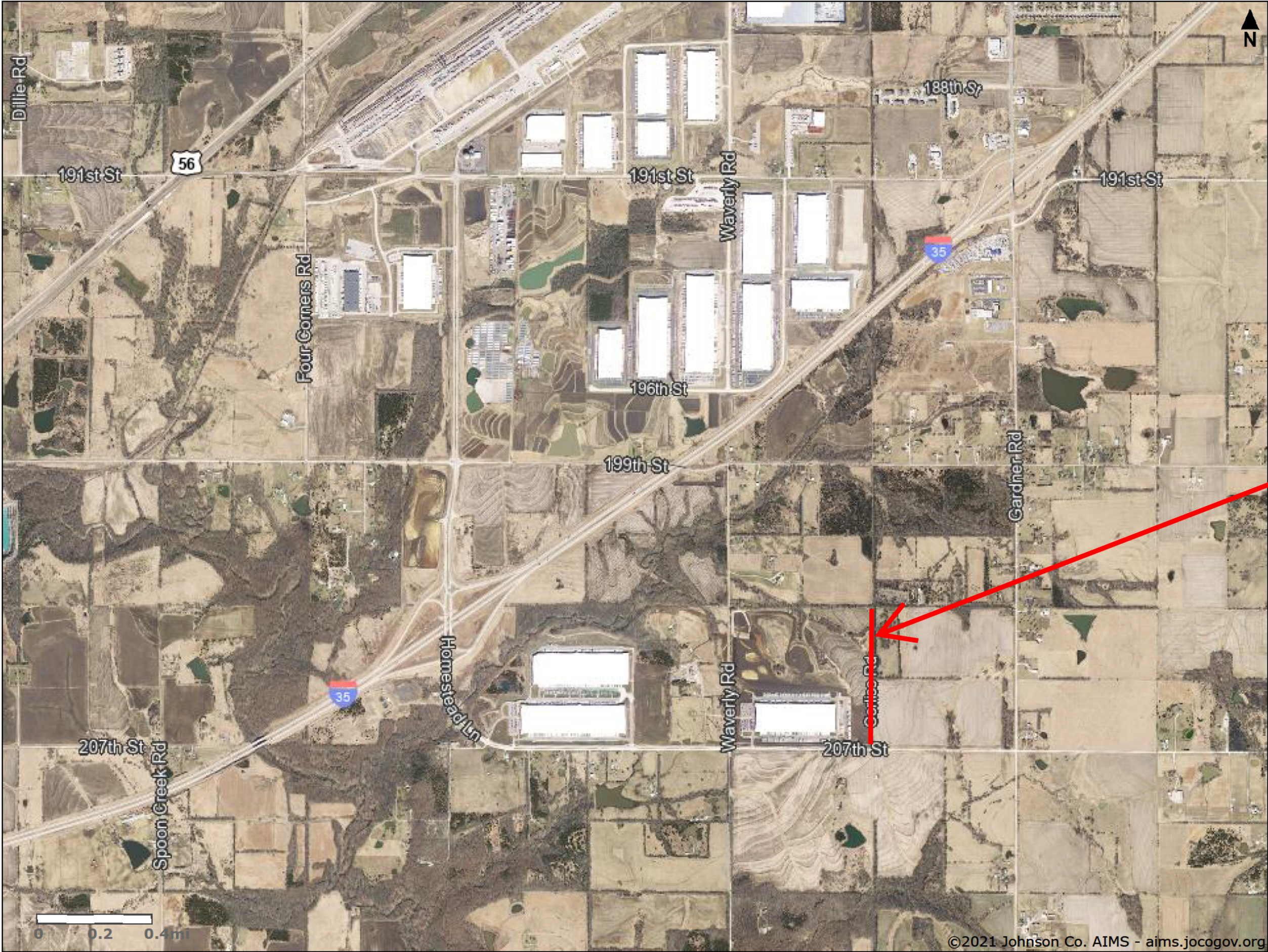
**EDGERTON LAND HOLDING
COMPANY, LLC**, a Kansas limited
liability company

By: Northpoint Development, LLC, a Missouri limited liability company

By: _____

Printed Name: Nathaniel Hagedorn

Title: Manager



Corliss Rd

Map of Construction Area

City Council Action Item

Council Meeting Date: July 8, 2021

Department: Public Works

Agenda Item: Consider An Agreement With BG Consultants For Construction Administration and Observation Services for the Corliss Road Project

Background/Description of Item:

At the July 8th City Council will consider the project authorization for the construction of Corliss Road for approximately 0.5 miles, adjacent to Inland Port 52, as an allowable public infrastructure project in LPKC Phase II. This project is needed to provide adequate road infrastructure to the upcoming IP 52 Spec building and any future development along the 207th Street corridor.

Similar to other large infrastructure projects constructed by the City of Edgerton, a critical component to the success of the expansion of a major road and utility relocation 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 Corliss Road 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 June 1, 2022. The Agreement includes an hourly rate schedule applicable for the term of the Agreement. The Agreement is structured similar to the Agreement for City Engineer services where the City is only billed for actual hours of work performed.

This project will be paid for initially by the City of Edgerton, but the City will be reimbursed at full cost by Edgerton Land Holding Company.

The Agreement is under review by the City Attorney. Any revisions will be presented at the City Council meeting.

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

Funding Source: Reimbursed Costs Paid by ELHC

Budget Allocated: N/A

Finance Director Approval:

x Karen E. Kindle
Karen Kindle, Finance Director

Recommendation: Approve An Agreement With BG Consultants For Construction Administration and Observation Services for the Corliss Road Project

Enclosed: Draft Agreement with BG Consultants

Prepared by: Dan Merkh, Public Works Director



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
Corliss Road 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 J. Hamby, P.E., CFM
Address:	1405 Wakarusa Drive
	Lawrence, KS 66049
Phone:	785-727-7278

- 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: a) workers compensation insurance in an amount at least equal to that required by applicable law; (b) comprehensive general liability insurance in the amount of at least \$1,000,000.00; (c) automobile liability insurance in the amount of at least \$1,000,000.00; and (d) professional liability insurance in the amount of at least \$1,000,000.00. Such insurance will be with insurance carriers that are acceptable to the CLIENT and the policies evidencing such insurance will be in a form acceptable to the CLIENT. The comprehensive general liability insurance policy will name CLIENT as an additional insured. CONSULTANT will provide certification evidencing the insurance coverages named above. CONSULTANT agrees to inform CLIENT at least 30 days in advance of any termination or expiration of any of its insurance policies named above.
- 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:** Except as otherwise set forth herein, 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:	Dan Merkh
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 June 1, 2022. 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; and (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents.
- 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 harmless from loss to the extent caused or incurred by 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. CONSULTANT's Liability Limited to Stated Amount, or Amount of CONSULTANT's Compensation: To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of CONSULTANT and CONSULTANT's officers, directors, members, partners, agents, employees, and Consultants, to CLIENT and anyone claiming by, through, or under CLIENT for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, CONSULTANTS or its Consultants' services or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of CONSULTANT or CONSULTANT's officers, directors, members, partners, agents, employees, or Consultants, shall not exceed the total amount of \$500,000.00 or the total compensation received by CONSULTANT under this Agreement, whichever is greater. Higher limits are available for an additional fee.
- 5.9.2. 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 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:

BG Consultants, Inc.

By:



Printed Name: David J. Hamby, P.E., CFM

Title: Vice President

CLIENT:

City of Edgerton, Kansas

By: _____

Printed Name: _____

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1
SCOPE OF SERVICES

Corliss Road 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 Corliss Road 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.
- 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 during the project and final paperwork and documentation to complete the project.
- e. At completion of project, provide documented construction plan changes to the Design Engineer so they can provide record drawings to CLIENT for their permanent records.

IV. SCHEDULE

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

EXHIBIT 2

COST AND SCHEDULE

Professional Fee:

For the services set forth in EXHIBIT 1, the CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the hourly rates indicated in the attached Fee Schedule (EXHIBIT 3).

Reimbursable Expenses:

Reimbursable expenses are in addition to the fee above and will be billed at the amount expended by BG Consultants in the interest of the project.

Schedule:

The work will commence after receipt of the signed agreement. The CONSULTANT will coordinate the work schedule with the CLIENT.

EXHIBIT 3

SPECIAL PROVISIONS

2021 BG CONSULTANTS STANDARD HOURLY RATES		
POSITION		STANDARD PER HOUR 2021
PRINCIPAL III		\$274.00
PRINCIPAL II		\$240.00
PRINCIPAL I		\$216.00
ENGINEER/ARCHITECT V		\$198.00
ENGINEER/ARCHITECT IV		\$173.00
ENGINEER/ARCHITECT III		\$162.00
ENGINEER/ARCHITECT II		\$146.00
ENGINEER/ARCHITECT I		\$125.00
INTERN ENGINEER/ARCHITECT IV		\$151.00
INTERN ENGINEER/ARCHITECT III		\$141.00
INTERN ENGINEER/ARCHITECT II		\$131.00
INTERN ENGINEER/ARCHITECT I		\$112.00
TECHNICIAN IV		\$129.00
TECHNICIAN III		\$119.00
TECHNICIAN II		\$101.00
TECHNICIAN I		\$88.00
TECHNICIAN		\$61.00
SENIOR CONSTRUCTION OBSERVER		\$117.00
CERTIFIED CONSTRUCTION OBSERVER		\$105.00
CONSTRUCTION OBSERVER		\$94.00
SENIOR PROJECT SURVEYOR		\$196.00
PROJECT SURVEYOR		\$146.00
ASSISTANT PROJECT SURVEYOR		\$123.00
FIELD SUPERVISOR		\$113.00
FIELD SURVEYOR II		\$83.00
FIELD SURVEYOR I		\$70.00
CLERICAL II		\$66.00
CLERICAL I		\$56.00
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.		

MEMORANDUM

Date: July 8, 2021
To: City of Edgerton Governing Body
From: Katy Crow, Development Services Director
Re: Status Update – 502 E. 2nd Street, Edgerton, Kansas

On January 14, 2021 the Edgerton City Council passed Resolution 01-14-21D which requires the owners of 502 E. 2nd Street, Edgerton, Kansas to resolve the dangerous and unfit structure which exists on said property by July 22, 2021. As part of the requirements in bringing the home into compliance with the code, the Governing Body required monthly updates from owners which show adequate progress is being made.

A sixth walkthrough was performed by City staff with the owner Juan Abundiz on July 8, 2021 to review the status of the project. The last update was provided to the Governing Body on June 24, 2021. Since the last walk-through the owner has performed work on the front porch area of the home. He has removed the old roof, the decking and replaced the porch roof supports. He is going to install new roofing and the floor decking will match the material used on the side porch.

Additionally, he has cut the window and door openings to a standard size in preparation for the new windows and front door that he will be installing.

Mr. Abundiz will be at the July 22, 2021 City Council meeting to review the requirements of Resolution 01-14-21D with the Governing Body and to request additional time to abate the conditions which led to the house being considered an unsafe or dangerous structure.

At council's direction from the June 24, 2021 meeting, staff will present a resolution at the July 22, 2021 council meeting where a new deadline for resolution will be discussed. Another walk-through of the property will be performed prior to the July 22, 2021 meeting.



Interior door and window openings set to standard sizing



Adding new decking, support posts and roof to front porch



Adding new decking, support posts and roof to front porch