

**EDGERTON CITY COUNCIL  
MEETING AGENDA  
CITY HALL, 404 EAST NELSON STREET  
SEPTEMBER 11, 2014  
7:00 PM**

**Call to Order**

1. **Roll Call** \_\_\_ Roberts \_\_\_ Longanecker \_\_\_ Brown \_\_\_ Crooks \_\_\_ Cross \_\_\_ Troutner
2. **Welcome**
3. **Pledge of Allegiance**

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

4. Agenda Approval
5. Meeting Minutes for August 28, 2014
6. Approve the re-appointment of Missy Drinkard, Chuck Davis and Cliff Withrow to Planning Commission

**Regular Agenda**

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

**Business Requiring Action**

9. **CONSIDER TESTIMONY AT JOHNSON COUNTY BOARD OF COUNTY COMMISSION REGARDING CONDITIONAL USE PERMIT FOR ASPHALT AND CONCRETE PLANT AT 20125 SUNFLOWER ROAD**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

10. **PUBLIC HEARING REGARDING RESOLUTION OF INTENT FOR INLAND PORT XI**

11. **CONSIDER RESOLUTION NO. 09-11-2014A DETERMINING THE INTENT OF THE CITY OF EDGERTON, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN THE APPROXIMATE AMOUNT OF \$34,000,000 TO PAY THE COST OF ACQUIRING, CONSTRUCTING AND EQUIPPING A COMMERCIAL FACILITY FOR THE BENEFIT OF ELHC XI, LLC**

Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

**12. Report by the City Administrator**

- Report from Staff regarding Citizen Concern of Truck Traffic along 1<sup>st</sup> Street
- Update regarding Quiet Zones

**13. Report by the Mayor**

- Appointment of Voting Delegate for League of Kansas Municipalities Annual Conference, October 11-13, Wichita, KS

**14. Future Meeting/Event Reminders:**

- September 16<sup>th</sup> 8 AM – SWJCEDC Quarterly Event at Smart Warehouse
- September 17<sup>th</sup> Noon – Senior Lunch
- September 25<sup>th</sup> 7:00 PM – City Council Meeting and Work Session regarding Sidewalk Maintenance and Snow Removal
- October 9<sup>th</sup> 7:00 PM – City Council Meeting
- October 14<sup>th</sup> 7:00 PM – Planning Commission Meeting

**15. Adjourn** Motion: \_\_\_\_\_ Second: \_\_\_\_\_ Vote: \_\_\_\_\_

City of Edgerton, Kansas  
Minutes of City Council Regular Session  
August 28, 2014

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton Kansas on August 28, 2014. The meeting convened at 7:00 p.m. with Mayor Roberts presiding, and City Clerk Janeice L. Rawles recording.

**1. ROLL CALL**

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

With a quorum present, the meeting commenced.

Staff in attendance:           City Administrator Beth Linn  
  City Attorney Patrick Reavey

Consultants in attendance:       Johnson County Sheriff Representative

**2. PLEDGE OF ALLEGIANCE**

**3. CONSENT AGENDA**

A. Agenda Approval

Motion by Crooks, seconded by Longanecker, to approve the consent agenda.

The motion was approved, 5-0.

**4. PUBLIC COMMENTS**

A. None

**5. DECLARATIONS BY COUNCIL MEMBERS**

A. None

**6. REQUEST FOR DONATION TO COPS AND BOBBERS**

City Administrator Beth Linn presented information about the Cops and Bobbers fishing derby scheduled for September 27, 2014 from 10:00am until noon.

Motion by Cross, seconded by Brown, to make a donation in the amount of \$750.00 to Cops and Bobbers for the fishing derby.

The motion was approved, 5-0.

**7. ORDINANCE NO. 976 GRANTING ANNEXATION FOR SPECIFIC LAND TO THE CITY OF EDGERTON, KANSAS, PURSUANT K.S.A.12-520 WAS CONSIDERED.**

The City Administrator presented background information concerning Homestead Lane from Interstate 35 to 191<sup>st</sup> Street. In February 2014, KDOT transferred title to right-of-way for Homestead Lane to the City of Edgerton.

Motion by Longanecker, seconded by Crooks, to approve Ordinance No. 976 granting annexation for specific land to the City of Edgerton, Kansas, pursuant K.S.A. 12-250.

The motion was approved, 5-0.

**8. ORDINANCE NO. 977 AMENDING CHAPTER XI, ARTICLE 1, SECTION 11-101 OF THE CODE OF THE CITY OF EDGERTON, KANSAS, CONCERNING THE UNIFORM PUBLIC OFFENSE CODE WAS CONSIDERED.**

Annually, the League of Kansas Municipalities prepares and publishes the code know as the Uniform Public Offence Code (UPOC) for Kansas Cities. This Ordinance will adopt the UPOC 2014 Edition save and except such articles, sections, parts or portions as are omitted, deleted, modified, or changed by Section 11-102 of the existing Code of the City of Edgerton.

Motion by Longanecker, seconded by Brown, to approve Ordinance No. 977 amending Chapter XI, Article 1, Section 11-101 of the Code of the City of Edgerton, Kansas.

The motion was approved, 5-0.

**9. ORDINANCE NO. 978 AMENDING CHAPTER XIV OF THE EDGERTON, KANSAS MUNICIPAL CODE TO INCORPORATE THE 2014 STANDARD TRAFFIC ORDINANCE, TO AMEND CERTAIN SECTIONS THEREOF, AND TO AMEND LOCAL TRAFFIC REGULATIONS, WHICH SHALL INCLUDE INCORPORATION OF ARTICLE 19 OF CHAPTER 8 OF THE KANSAS STATUTES ANNOTATED ON COMMERCIAL MOTOR VEHICLE SAFETY WAS CONSIDERED.**

The Kansas League of Municipalities prepares and publishes the code known as the Standard Traffic Ordinance (STO) for Kansas Cities. This Ordinance adopts the STO 2014 Edition, except such articles, sections, parts or portions as are omitted, deleted, modified, or changed by Sections 14-102 through 14-105 of the Code of the City of Edgerton. Other changes in Ordinance No. 978 include Section 14-201 Speed Limits and Compression Release Engine Braking System. Section 14-202 Idling Prohibited; Motor Vehicles and 14-203 Miscellaneous Truck Restrictions, such as Heavy Trucks Prohibited, Truck Routes, Parking of Truck Tractor, Hazardous Materials. Section 14-204 Commercial Motor Vehicle Safety, and Section 14-205 Parking Restrictions.

Motion by Brown, seconded by Troutner, to approve Ordinance No. 978 amending Chapter XIV of the Edgerton, Kansas Municipal Code to incorporate the 2014 Standard Traffic Ordinance, to amend certain sections thereof, and to amend local traffic regulations, which shall include incorporation of Article 19 of Chapter 8 of the Kansas Statutes annotated on commercial motor vehicle safety.

The motion was approved, 5-0.

- 10. ORDINANCE NO. 979 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 179 ACRES OF LAND (LOCATED ON THE SOUTHEAST CORNER OF 191<sup>ST</sup> STREET AND WAVERLY ROAD) IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON L-P LOGISTICS PARK ZONING DISTRICT WAS CONSIDERED.**

The City of Edgerton received an application RZ-06-23-2014 for rezoning from Patrick Robinson, Edgerton Land Holding Company (ELHC), requesting to rezone 179 acres located on the southeast corner of 191<sup>st</sup> Street and Waverly Road. They are requesting to rezone from Johnson County RUR to City of Edgerton Logistics Park (L-P) zoning. A public hearing was held on August 12, 2014 and the Planning Commission recommended approval of the application with the following stipulations; All Site Plan application requirements of the City shall be met, All infrastructure requirements of the City shall be met, and prior to issuance of building permits, the property shall be developed in accordance with a Site Plan review and approved by the City.

Motion by Longanecker, seconded by Troutner, to approve Ordinance No. 979 adopting a recommendation by the City Planning Commission to approve rezoning of approximately 179 acres of land (located on the southeast corner of 191<sup>st</sup> street and Waverly road) in Edgerton, Kansas from Johnson County RUR, Rural zoning to City of Edgerton L-P Logistics Park Zoning District.

The motion was approved, 6-0 including the Mayor's vote.

- 11. ORDINANCE NO. 980 ADOPTING A RECOMMENDATION BY THE CITY PLANNING COMMISSION TO APPROVE REZONING OF APPROXIMATELY 107 ACRES OF LAND (LOCATED AT THE SOUTHWEST CORNER OF 191<sup>ST</sup> STREET AND HOMESTEAD LANE ) IN EDGERTON, KANSAS FROM JOHNSON COUNTY RUR, RURAL ZONING TO CITY OF EDGERTON L-P LOGISTICS PARK ZONING DISTRICT WAS CONSIDERED.**

The City of Edgerton received an application RZ-07-11-2014 for rezoning from Patrick Robinson, Edgerton Land Holding Company (ELHC), requesting to rezone 107 acres located on the southwest corner of 191<sup>st</sup> Street and Homestead Lane from Johnson County RUR to City of Edgerton Logistics Park (L-P) zoning. A public hearing was held on August 12, 2014 and the Planning Commission recommended approval of the application with the following stipulations: All Site Plan application requirements of the City shall be met, All infrastructure requirements of the City shall be met, Prior to issuance of building permits, the property shall be developed in accordance with a Site Plan reviewed and approved by the City.

Motion by Longanecker, seconded by Cross, to approve Ordinance No. 980 adopting a recommendation by the City Planning Commission to approve rezoning of approximately 107 acres of land located on the southwest corner of 191<sup>st</sup> Street and Homestead Lane in Edgerton, Kansas from Johnson County RUR, Rural Zoning to City of Edgerton L-P Logistics Park Zoning District.

The motion was approved, 6-0 including the Mayor's vote.

**12. RENEWAL AND AMENDMENT TO RESIDENTIAL SOLID WASTE AGREEMENT WITH DEFFENBAUGH INDUSTRIES WAS CONSIDERED.**

The City Administrator presented some background information about the agreement with Deffenbaugh Industries, to renew the terms must be agreed upon by September 1, 2014. After discussion the City Council decided to go out for bids for trash service. The current agreement ends on December 31, 2014.

Motion by Cross, seconded by Crooks, to solicit bids through a formal bid process.

The motion was approved, 5-0.

**13. A HAND-OUT FROM KEITH BUNTEMEYER WAS PASSED OUT.**

**14. REPORT BY THE CITY ADMINISTRATOR**

- City Administrator present City Council with a resident concern from Keith Buntmeyer regarding truck traffic, parking and idling on 1<sup>st</sup> Street. City Council asked for staff to research and present at the next regular Council meeting on the 11<sup>th</sup> of September, 2014.
- The Fall Park & Recreation Brochure will be coming out with the September 1 water bills. The community and volunteers are coming together such as New City Church and Methodist Church for after school activities.
- An update regarding Conditional Use Permit application for an asphalt and concrete plant at 20125 Sunflower Road was presented by Beth Linn, City Administrator. Ms. Linn attended the Johnson County Board of County Commissioners meeting earlier today as directed by City Council. The Johnson County Board of County Commissioners (BOCC) table the application until Thursday, September 25<sup>th</sup> at 9:30 AM. In addition, the BOCC directed Johnson County planning staff to facilitate a meeting between the applicant and Edgerton residents to understand the residents' concerns.
- A City Council workshop has been scheduled for September 25<sup>th</sup>, 2014 after the regular Council meeting, to discuss the Sidewalk Maintenance and Snow Removal.
- City Administrator reported that Public Works has identified the equipment and vehicles no longer needed or usable and a source for auction of that equipment, Purple Wave auction. Staff requested a formal for the disposition of the identified vehicles and equipment.

Motion by Longanecker, seconded by Cross, to approve the disposition of vehicles and equipment as presented by staff using Purple Wave Auction.

The motion was approved, 5-0.

**15. REPORT BY THE MAYOR**

- The Kansas League of Municipalities Meeting is October 11-13, 2014 in Wichita, a delegate from the City of Edgerton is needed to attend the meeting. Council member Troutner expressed desire to attend, if possible.

- September 4<sup>th</sup>, 2014 is the Southwest Johnson County Elected Officials Forum at the District Office for Gardner Edgerton School District.
- Deputy Shoop arrived at the meeting at 8:30 p.m. to support the Cops and Bobbers Fishing Derby.

**16. FUTURE MEETING/EVENT REMINDERS:**

- September 1<sup>st</sup> – City Hall Closed for Labor Day
- Week of September 1<sup>st</sup> – Trash Pickup Friday
- September 4<sup>th</sup> 6:00-7:30 pm – Southwest Johnson County Elected Official Forum – Hosted by USD 231 at District Office Building, 231 E. Madison St.
- September 9<sup>th</sup> 7:00 pm Planning commission Meeting
- September 11<sup>th</sup> 7:00 pm City Council Meeting
- September 17<sup>th</sup> Noon – Senior Lunch
- September 25<sup>th</sup> 7:00 City Council Meeting and Workshop

**17. ADJOURN**

Motion by Crooks, seconded by Cross, to adjourn.

The motion was approved, 5-0.

Meeting adjourned at 8:38 p.m.

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Janeice L. Rawles, CMC  
City Clerk

Approved by the Governing Body on

## AGENDA ITEM INFORMATION FORM

**Agenda Item:** Consider Testimony at Johnson County Board of County Commission Regarding Conditional Use Permit for Asphalt and Concrete Plant at 20125 Sunflower Road

**Department:** Administration

**Background/Description of Item:** On August 14, 2014, the Edgerton City Council made a motion for City Administrator and the Mayor to provide written testimony to the Johnson County Board of County Commissioners (BOCC) regarding the application for a conditional use permit for operation of concrete and asphalt plant at 20125 Sunflower Road. On August 28, 2014, City Administrator provided said testimony.

The BOCC tabled consideration of the application to September 25, 2014. The BOCC also directed Johnson County Planning Staff to facilitate a meeting between the applicant and Edgerton residents to understand the residents' concerns with the application. At time of preparation of this packet, an official meeting date and time has not been confirmed. Once a meeting date/time is confirmed, Edgerton staff will post that information on the city's website.

Enclosed with this packet is a copy of that testimony submitted to BOCC.

Enclosure: Written Testimony Submitted to Johnson County Board of County Commissioners on August 28, 2014

**Related Ordinance(s) or Statute(s):** n/a

**Recommendation:**

**Funding Source:** N/A

Prepared by: Beth Linn, City Administrator  
Date: September 9, 2014



August 28, 2014

Johnson County Board of County Commissioners  
 111 South Cherry Street  
 Olathe, KS

Dear Chairman Eilert and Commissioners:

On August 28, 2014, the Johnson County Board of County Commissioners will consider a request from Bettis Asphalt & Construction, Inc., applicant, and Mid-States Ventures, LLC, landowner, for a Conditional Use Permit for an asphalt and concrete plant and related auxiliary operations at an existing quarry located at 20125 Sunflower Road. This property is directly adjacent to the City of Edgerton corporate city limits.

During the process of consideration of this application by both the Southwest Consolidated Zoning Board and the Board of County Commissioners, the City of Edgerton has previously expressed in writing several concerns regarding the application. Following the July 23<sup>rd</sup> Southwest Consolidated Zoning Board meeting, the City was approached by Bettis Asphalt & Construction with a proposal to address the city's concerns. That proposal is outlined below.

City Concern	Proposed Solution	Additional Details
Sight Distance at the Entrance	Move Existing Entrance to Location between Concrete Batch Plant and Asphalt Batch Plant	Applicant agrees to move the existing ingress/egress entrance for the property south to location between proposed concrete batch plant and asphalt batch plant subject to approval by Johnson County. Current entrance for property will be closed once the new entrance is opened. Applicant would have twelve months from the date the asphalt plant becomes operational to move the entrance. The KDHE Relocation Notice will trigger the twelve month completion period.
Tracking of Materials	Add Rumble Strips at New Entrance	Applicant agrees to add rumble strips at the new entrance as previously agreed to in CUP application.
Dust Control	Pave portion of internal haul road with asphalt	Applicant agrees to pave unpaved areas of an internal haul route leading from the existing quarry scales to the new entrance with asphalt. The newly paved route

		will start where the existing pavement intersects with the new haul road route. Applicant would have twelve months from the date the asphalt plant becomes operational to pave the above described portion of the haul road. The KDHE Relocation Notice will trigger the twelve month completion period. The internal haul route from the asphalt plant to the new entrance will not be paved. Applicant agrees to progressive dust abatement program as outlined in the CUP application, and that program will govern remaining portion of unpaved haul route.
Future Road Maintenance	Impact Fee to City of Edgerton for future road maintenance	Applicant agrees to pay the City of Edgerton an Impact Fee in the amount of five (5) cents per ton of asphalt produced and sold up to a reasonable cap. Dollars collected allocated only for funding maintenance, repair or replacement of truck routes in Edgerton (not including those adjacent to LPKC)

The Edgerton City Council considered the proposal from the applicant and landowner to address the City's concerns at the August 14<sup>th</sup> Edgerton City Council meeting. At that council meeting, a motion was made and seconded authorizing a letter or testimony by Mayor Donald Roberts and City Administrator Beth Linn as described in the attached excerpt of minutes.

Based on that application, this letter is being presented for consideration by the Board of County Commissioners during the August 28<sup>th</sup> meeting.

Sincerely,

Donald Roberts  
Mayor

Beth Linn  
City Administrator

**EXCERPT OF DRAFT MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
THE CITY OF EDGERTON, KANSAS  
HELD ON AUGUST 14, 2014**

The governing body met in regular session at the usual meeting place in the City, at 7:00 P.M., the following members being present and participating, to-wit:

Mayor Donald Roberts, Council Member Brown (arrived 7:15 PM), Council Member Crooks, Council Member Cross, Council Member Longanecker, Council Member Troutner (sworn in at 7:10 PM)

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

\* \* \* \* \*

(Other Proceedings)

Item No. 16. Report of City Administrator: Update of the conditional use permit application at Johnson County by Bettis Asphalt and Construction, applicant, and Mid-States Ventures, LLC, landowner, for an asphalt and concrete plant and related auxiliary operations at 20125 Sunflower Road.

City Administrator Linn provided an update from the Consolidated Southwest Zoning Board meeting held on July 23, 2014 regarding the application for a conditional use permit at 20125 Sunflower Road by Bettis Asphalt and Construction, applicant, and Mid-States Ventures, LLC, landowner, for an asphalt and concrete plant and related auxiliary operations. Ms. Linn also presented a proposal from the applicant and landowner to the City of Edgerton for consideration. Ms. Linn reviewed the items of consideration that included moving of existing entrance into the property (include timeframes for that construction), addition of rumble strips at the new entrances, asphalt pavement of a portion of the internal haul road and an impact fee of five (5) cents per ton of asphalt produced and sold up to a reasonable cap be paid to the City to be used for maintenance, repair and replacement of truck routes within the City of Edgerton (not including those routes adjacent to LPKC). The proposal was discussed. Councilmember Cross motioned and Council Member Crooks seconded to adopt the following:

**RESOLUTION AUTHORIZING LETTER AND/OR TESTIMONY BY MAYOR ROBERTS AND CITY ADMINISTRATOR LINN CONSISTENT WITH THE FOLLOWING RESOLUTION: EDGERTON CITY COUNCIL HEREBY RESOLES THAT WITH CONCESSIONS, AGREED TO BY BETTIS ASPHALT AND CONSTRUCTION, THE COUNCIL IS SUPPORTIVE OF THE CONDITIONAL USE PERMIT APPLICATION. THIS RESOLUTION SHOULD NOT BE CONSTRUED AS REPRESENTING SUPPORT BY ALL LANDOWNERS WITHIN THE CITY OF EDGERTON AS THE CITY HAS NOT BEEN AUTHORIZED TO SPEAK ON THEIR BEHALF.**

Thereupon, the Resolution was read and considered, and, the question being put to a roll call vote, the vote thereon was as follows:

Aye: Council Member Brown, Council Member Crooks, Council Member Cross, Council Member Longanecker, Council Member Troutner.

Nay: None.

The Mayor declared the motion passed.

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(Other Proceedings)

**CITY OF EDGERTON, KANSAS**

**COUNCIL AGENDA ITEM**

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**Council Meeting Date:** September 11, 2014

**Agenda Item:** Public Hearing  
Resolution of Intent

**Subject:** Property Tax Abatement for ELHC XI, LLC Project

**Hearing Notice Published:** September 3, 2014 in the *Gardner News*

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**Summary:**

ELHC XI, LLC has submitted an industrial revenue bond and tax abatement application for a new 657,000 sq. ft. warehouse and distribution facility to be located on 39.5 acres of land at the southeast corner of 191st and Waverley Road. This project is located outside the current Logistics Park boundaries but within a one-mile radius of the boundary of the Logistics Park. Accordingly, pursuant to the Logistics Park development agreement and the City's IRB policy, the project is eligible for 75% property tax abatement and the origination fee will be deposited in the public infrastructure fund. In order for the City to grant property tax abatement, the City must first hold a public hearing, consider the cost-benefit report and then approve the Resolution of Intent.

**Public Hearing**

A notice of the public hearing has been published at least seven days prior to the date of this meeting. Written notice of the public hearing has also been provided to the County and the School District. The Council should take comments from the public.

**Cost-Benefit Report**

Columbia Capital Management, LLC has prepared a cost-benefit report for the proposed project. Please find a copy of that report enclosed. The City Council should consider the cost-benefit report and ask any questions the Council may have about the report.

**Resolution of Intent**

The Resolution of Intent evidences the City's intent to issue approximately \$34 million of industrial revenue bonds for the project, subject to the conditions set forth in the Resolution. The Resolution provides that the City intends to grant a 75% property tax abatement for the project. The Resolution requires ELHC XI, LLC to pay the City's 8% origination fee.

**RESOLUTION NO. 09-11-2014A**

**A RESOLUTION DETERMINING THE INTENT OF THE CITY OF EDGERTON, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS IN THE APPROXIMATE AMOUNT OF \$34,000,000 TO PAY THE COST OF ACQUIRING, CONSTRUCTING AND EQUIPPING A COMMERCIAL FACILITY FOR THE BENEFIT OF ELHC XI, LLC**

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

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

**WHEREAS**, ELHC XI, LLC, a Kansas limited liability company (the "Company"), has requested the City to issue its industrial revenue bonds in the approximate principal amount of \$34,000,000 (the "Bonds"), for the purpose of financing the cost of acquiring, constructing, improving and equipping an approximately 657,000 sq. ft. warehouse and distribution facility (the "Project") located on 39.5 acres of land at the southeast corner of 191<sup>st</sup> Street and Waverley Road in Edgerton, Kansas, and to sublease the Project to the Company all pursuant to the Act; and

**WHEREAS**, it is found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that the City issue the Bonds pursuant to the Act, such Bonds to be payable solely out of rentals, revenues and receipts derived from the sublease of the Project by the City to the Company, or its successors or assigns, as lessee; and

**WHEREAS**, the Company has also requested that the City consider granting an exemption from ad valorem taxes for the Project in accordance with K.S.A. 79-201a *Twenty-Fourth* and has indicated its intent to make payments in lieu of taxes upon terms to be mutually agreed to by the City and the Company in the amount set forth herein;

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

**Section 1. Approval of Project.** The Governing Body of the City finds and determines that the acquisition, construction and equipping of the Project will promote, stimulate and develop the general welfare and economic prosperity of the City through the promotion and advancement of commercial development of the City and the issuance of the Bonds to pay such costs will be in furtherance of the public purposes set forth in the Act.

**Section 2. Intent to Issue Bonds.** The Governing Body of the City determines and declares the intent of the City to assist the Company in completing the Project through the issuance of the Bonds pursuant to the Act.

**Section 3. Provision for the Bonds.** Subject to the conditions of this Resolution, the City will (i) issue its Bonds to pay the costs of acquiring, constructing, improving and equipping the Project, with such maturities, interest rates, redemption terms and other provisions as may be determined by ordinance of the City; (ii) provide for the sublease (with an option to purchase) of the Project to the Company; and (iii) to effect the foregoing, adopt such resolutions and ordinances and authorize the execution and delivery of such instruments and the taking of such action as may be necessary or advisable for the authorization and issuance of the Bonds by the City and take or cause to be taken such other action as may be required to implement this Resolution.

**Section 4. Ad Valorem Tax Exemption.** The Company has requested an exemption from ad valorem taxes for the Project in exchange for making certain payments in lieu of taxes. In consideration of the Company's decision to construct and equip the Project and subject to the further terms and conditions of this Resolution, the City intends to request the Kansas Board of Tax Appeals to approve an ad valorem tax exemption, exclusive of special assessments, for all real property financed with the Bonds; provided, however, that no tax exemption shall be requested for any portion of the Project that is not eligible for property tax exemption pursuant to K.S.A. 79-201a *Twenty-Fourth*. The Project financed with the proceeds of the Bonds will be eligible for a 10-year property tax exemption with the first year of the exemption commencing on January 1 of the calendar year following the year in which the Bonds are issued. In consideration for the City's agreement to request a property tax exemption for the Project, the Company agrees to make payments in lieu of taxes to the City for the Project for the duration of any approved tax exemption and such payments shall be in an amount equal to 25% of the amount of taxes that would have otherwise been payable but for the property tax exemption; provided, however, that amount of payments in lieu of taxes may be subject to adjustment in accordance with a payment in lieu of tax agreement to be entered into between the City and the Company. The Company agrees to pay an 8% origination fee to the City in exchange for the City agreeing to issue the Bonds pursuant to the City's existing industrial revenue bond policy.

**Section 5. Conditions to Issuance.** The issuance of the Bonds and the execution and delivery of any documents related to the Bonds are subject to:

- (i) obtaining any necessary governmental approvals;
- (ii) agreement by the City, the Company and the purchaser of the Bonds upon (a) mutually acceptable terms for the Bonds and for the sale and delivery thereof, and (b) mutually acceptable terms and conditions of any documents related to the issuance of the Bonds and the Project, including, but not limited to, provisions relating to the security for the payment of the Bonds and provisions relating to the maintenance of the Project;
- (iii) agreement by the City and the Company on mutually acceptable terms and conditions of a payment-in-lieu of tax agreement;
- (iv) payment of all costs of issuance of the Bonds and all other costs and fees of the City, including the City's origination fee; and
- (v) compliance with the Act relating to the issuance of industrial revenue bonds and ad valorem tax exemption.

**Section 6. Sale of the Bonds/Authority to Proceed.** The sale of the Bonds shall be the responsibility of the Company, but arrangements for the sale of the Bonds shall be subject to the City's approval. The Company is authorized to proceed with the acquisition and completion of the Project (provided all other City approvals and permits have been obtained) and to advance such funds as may be necessary to accomplish such purposes, and to the extent permitted by law, the City shall reimburse the Company for such expenditures out of the proceeds of the Bonds, when and if issued. Notwithstanding such authorization, the Company proceeds at its own risk and if for any reason, the Bonds are not issued, the City shall have no liability to the Company for any reason. The Act provides that the City may only issue the Bonds by adoption of an ordinance authorizing the Bonds and providing for the terms and details of the Bonds. The City has not yet adopted an ordinance. This Resolution only evidences the intent of the current Governing Body to issue Bonds for the Project and to approve a tax exemption for the Project. Nothing herein shall be construed as a guaranty by the City that the Bonds will be issued or tax exemption approved for the Project.

**Section 7. Assignment.** The Company may, without the consent of the City but with advance written notice to the City, assign all or a portion of its interest in this Resolution to any Affiliated Entity or, with the prior written consent of the City, to another entity, provided such assignee intends to acquire, equip and construct the Project. For the purposes of this Resolution, "Affiliated Entity" means any entity or person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. "Control," when used with respect to a particular entity or person, means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such entity whether through the ownership of voting stock, by contract or otherwise. The Company may assign all or a portion of its interest in this Resolution to any party that is not an Affiliated Entity only with the consent of the City.

**Section 8. Limited Obligations of the City.** The Bonds and the interest thereon shall be special, limited obligations of the City payable solely out of the rents, revenues and receipts of the City derived from the sublease of the Project to the Company. The Bonds shall not constitute a general obligation of the City, the State of Kansas or any other political subdivision thereof, shall not constitute a pledge of the full faith and credit of the City, the State of Kansas or any other political subdivision thereof and shall not be payable in any manner by taxation.

**Section 9. Further Action.** SA Legal Advisors LC, Bond Counsel for the City, and officers and employees of the City, are authorized to work with the purchaser of the Bonds, the Company, their respective counsel and others, to prepare for submission to and final action by the City all documents necessary to effect the authorization, issuance and sale of the Bonds and other actions contemplated hereunder.

**Section 10. Effective Date.** This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

**ADOPTED** September 11, 2014.

**CITY OF EDGERTON, KANSAS**

(Seal)

\_\_\_\_\_  
Donald Roberts, Mayor



ATTEST:

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Janeice Rawles, City Clerk

APPROVED AS TO FORM:

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Scott Anderson, Bond Counsel