

**City of Edgerton, Kansas
Minutes of City Council Regular Session
August 24, 2017**

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on August 24, 2017. The meeting convened at 7:00 p.m. with Mayor Roberts presiding.

1. ROLL CALL

Jody Brown	present
Ron Conus	present
Cindy Crooks	Present

Darius Crist	absent
Clay Longanecker	absent

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator Beth Linn
- Assistant City Administrator Scott Peterson
- City Attorney Lee Hendricks
- Public Works Superintendent Trey Whitaker
- Finance Director Karen Kindle
- Parks & Recreation Bob McVey
- Johnson County Fire District #1
- Johnson County Sheriff Department

2. WELCOME

3. PLEDGE OF ALLEGIANCE

CONSENT AGENDA

4. Agenda Approval was considered.
5. Minutes from August 10, 2017 City Council Meeting were considered.
6. Application FP2017-06, Final Plat, Logistics Park Kansas City Phase VI, Lot 3 and accept any dedications was considered
7. Application FP2017-007, Final Plat Logistics Park Kansas City Phase VI, Second Plat, and accept any dedications was considered.

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

Motion was approved, 3-0.

8. PUBLIC COMMENTS

None at this time.

Mayor Roberts acknowledged the Kiwanis representatives and is saving time for them later in the meeting.

9. DECLARATION

None

BUSINESS REQUIRING ACTION

9.5 INFORMATION CONCERNING THE FLOOD OF AUGUST 21-22, 2017

Mayor Roberts announced to the public that Johnson County Kansas has been declared a disaster area. The City of Edgerton being in Johnson County will be covered under the Johnson County Umbrella for disaster relief. Mayor Roberts offered a big "Thank You" to Johnson County Sheriff's Office Captain Jeremy Campbell; Johnson County Fire District 1 Chief Kirk; Johnson County Commissioner Mike Brown; and to all City Staff who have done a tremendous job. Mayor Roberts stated that this is the first time ever in his life that he has seen this much flooding. He noted more people need to sign up for Notify Jo. Co., to get the most up to date information about the city. Mayor and council are considering a community wide clean up day in the near future.

City Administrator Beth Linn spoke next about the flood information and that the City of Edgerton had approximately ten inches of rain from Monday night to Tuesday morning. The flood waters crested with approximately fourteen feet of water at the public works department. Ms. Linn announced that the insurance companies for the City of Edgerton have been notified and some have already been on site. City of Edgerton has a large amount of damage and has lost several vehicles and equipment. Some neighboring partners have loaned some equipment to the City of Edgerton so that work in the city may carry on. Ms. Linn also expressed her "Thank you" to the Mayor and her team (city staff) for all the hours and hard work dealing with the flood waters. A memorandum for the temporary suspension of purchasing authority was presented to the Mayor and council. This would be a temporary suspension of the purchasing authority policies for the purchases directly related to the flood. Mr. Lee Hendricks, City Attorney, spoke about all of our snowplows which are under water and with winter coming the city needs to purchase new snow plows now. He stated there is not time to take bids and bring to council and then get some ordered. Staff needs to act quickly.

Motion by Crooks, seconded by Brown, to approve the temporary suspension of purchasing authority policies for purchases directly related to the flood, subject to the terms described in the Memorandum from Lee Hendricks dated 08/24/2017.

Motion was approved, 3-0.

CARS PROJECT EAST NELSON STREET QUIET ZONE

10. RECOMMENDATION OF ENGINEER TO AWARD CONSTRUCTION OF THE 2017 CARS E NELSON ST QUIET ZONE PROJECT TO MILES EXCAVATING INC. AND AUTHORIZE THE MAYOR TO EXECUTE THE CONTRACT INCLUDING THE RAILROAD AGREEMENT WITH BNSF RAILWAY WAS CONSIDERED.

Trey Whitaker, Public Works Superintendent, was present to talk about the 2017 CARS East Nelson Street Quiet Zone Project. On August 17, 2017, the City of Edgerton held a public bid opening, a total of five bids were received, opened and read aloud to the public. Miles Excavating, Incorporated of Basehor, Kansas submitted the low bid. Based upon review of the bids and prior direct experience with Miles, for both staff and City Engineer, staff recommendation is Miles Excavating, Inc. is qualified to perform the scope of work included in this project. Mayor Roberts asked about the earliest time to bid for next year's CARS project. The City should proceed early.

Motion by Brown, seconded by Crooks, to approve the award construction of the 2017 CARS East Nelson Street Quiet Zone Project to Miles Excavation, Inc. and authorize the Mayor to execute the contract including the railroad agreement with BNSF Railway.

Motion was approved, 3-0.

PUBLIC HEARING-2018 BUDGET

11. PUBLIC HEARING REGARDING 2018 RECOMMENDED BUDGET WAS CONSIDERED.

Mayor Roberts opened the Public Hearing at 7:47 pm.
He asked if there any questions or comments about the 2018 Budget.
There being no questions or comments, the public hearing was closed.
The Public Hearing was closed at 7:48 pm.

2018 BUDGET

12. 2018 RECOMMENDED BUDGET WAS CONSIDERED.

Mayor Roberts thanked Beth Linn, City Administrator and Karen Kindle, Finance Director, for their work on the 2018 Budget. Council member Conus thanked Beth Linn and Karen Kindle for an excellent job.

Motion by Brown, seconded by Conus, to approve the 2018 Budget.

Motion was approved, 3-0.

ORDINANCE NO 1061 INDUSTRIAL REVENUE BONDS (ELHC VI, LLC)

13. ORDINANCE NO 1061 AUTHORIZING THE CITY OF EDGERTON, KANSAS, TO ISSUE INDUSTRIAL REVENUE BONDS (ELHC VI, LLC PROJECT) SERIES 2017, IN AN AGGREGATE MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$442,600,000, FOR THE PURPOSE OF FINANCING A WAREHOUSE AND DISTRIBUTION FACILITY; AUTHORIZING THE CITY TO ENTER INTO A TRUST INDENTURE WITH BOKF, N.A., AS TRUSTEE; AUTHORIZING THE CITY TO ENTER INTO A BASE LEASE AND LEASE AGREEMENT WITH ELHC VI, LLC; AND AUTHORIZING AND APPROVING THE EXECUTION OF ADDITIONAL DOCUMENTS AND THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS WAS CONSIDERED.

City Administrator Beth Linn introduced Scott Anderson, Bond Attorney for the City of Edgerton. Mr. Anderson spoke about Industrial Revenue Bonds and Property Tax Abatement for ELHC VI Project. The City received an application for property tax abatement from ELHC VI, LLC for a project

located in the Logistics Park, consisting of approximately 777,000 square foot warehouse and distribution facility, to be located at 18451 Montrose Street, Edgerton, Kansas.

Motion by Crooks, seconded by Brown, to approve Ordinance Number 1061.

Motion was approved, 3-0.

ORDINANCE NO 1062-CU2017-002 (TEMPORARY GRAVEL LOT, IPXXI)

14. ORDINANCE NO. 1062 ADOPTING THE PLANNING COMMISSION'S RECOMMENDATION TO APPROVE CONDITIONAL USE PERMIT CU-2017-002 FOR TRANSPORTATION, STORAGE AND TRUCKING YARD TO TEMPORARILY ALLOW A GRAVEL LOT, SUBJECT TO CERTAIN CONDITIONS, IN THE CITY OF EDGERTON, KANSAS, LOGISTICS PARK ZONING DISTRICT, MORE SPECIFICALLY ON THE NORTH SIDE OF LPKC BUILDING XXI WAS CONSIDERED.

The Planning Commission's Recommendation to approve Conditional Use Permit CU-2017-002 was presented to the Mayor and council. The Conditional Use Permit is for transportation, storage and trucking yard to temporarily allow a gravel lot, subject to certain conditions in the City of Edgerton, Kansas, Logistics Park Zoning District. Following the Planning Commission's public hearing they recommended approval of the conditional Use Permit with the following conditions. The parking lot shall be either paved in accordance with the Edgerton Unified Development Code (asphalt or concrete) or the gravel lot is returned to pre-existing condition (grass), one of these options needs to happen sixty days following the expiration of the twelve-month conditional Use Permit.

Motion by Conus, seconded by Crooks, to approve Ordinance No 1062.

Motion was approved, 3-0.

15. REPORT BY THE CITY ADMINISTRATOR

The new job description for the Development Services Director was presented to Mayor and council for review. With changes in red. No comments or questions were received.

Motion by Crooks, seconded by Brown, to approve the job description for the Development Services Director.

Motion was approved, 3-0.

16. REPORT BY THE MAYOR

The Downtown Discovery Week open house had a great attendance and the interaction was really good. Thanks to all who have participated in this great opportunity to revive the downtown.

There were several representatives from the Kiwanis here to inform Mayor and council of their status. The Kiwanis will have a club in the City of Edgerton, they are still open to new members and the meetings will probably start in October, 2017.

Council member Crooks asked about the mosquito problems that are in town. She was advised that there are lots of problems that arise from spraying and or fogging for mosquitoes.

17. FUTURE MEETING/EVENT REMINDERS

- September 4th – City Offices Closed for Labor Day
- September 12th 7:00 pm – Planning Commission and Board of Zoning Appeals
- September 14th 7:00 pm – City Council Meeting
- September 20th Noon – Senior Lunch
- September 28th 7:00 pm – City Council Meeting

Motion by Crooks, seconded by Conus, to recess into executive session for ten minutes under the Attorney/Client privilege for Contract Negotiations.

Motion was approved, 3-0.

Meeting recessed at 8:25 pm.

Meeting reconvened at 8:35 pm.

Motion by Crooks, seconded by Conus, to recess for five more minutes, under same exception.

Motion was approved, 3-0.

Meeting recessed at 8:35 pm.

Motion by Brown, seconded by Crooks, to return from executive session, no action taken.

Motion was approved, 3-0.

Meeting reconvened at 8:41pm.

18. ADJOURN MOTION: 1st Crooks 2nd Brown Vote 3-0

The meeting adjourned at 8:45 pm.

Janeice L. Rawles
City Clerk

Approved by the Governing Body on

After recording please return to:

Teresa Shepardson
45537 Road 786
Mason City, NE 68855
402-694-8599

Prepared by:

Teresa Shepardson
45537 Road 786
Mason City, NE 68855
402-694-8599

EASEMENT AGREEMENT

City of Edgerton, a municipal corporation duly organized and existing under the laws of the State of Kansas (“Grantor”), having an address of 404 E. Nelson Street, Edgerton, Kansas 66021, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, hereby grants and conveys to United Telephone Company of Eastern Kansas, a Delaware corporation d/b/a CenturyLink, its successors, assigns, lessees, licensees, agents and affiliates (“Grantee”), having an address of 100 CenturyLink Drive, Monroe, Louisiana 71203, Attn: Construction Services, a perpetual, non-exclusive easement (“Easement”) to construct, operate, maintain, repair, expand, replace and remove a communication system that Grantee from time to time may require, consisting of but not limited to, cables, wires, conduits, manholes, drains, splicing boxes, vaults, surface location markers, equipment cabinets and associated wooden or concrete pads, aerial lines, poles and cables, and other facilities and structures, including utility service if required to operate such system, facilities and structures (collectively, the “Facilities” over, under and across the following real property located in the County of Johnson, State of Kansas which Grantor owns (“Easement Tract”):

SEE THE DESCRIPTION SET FORTH ON **EXHIBIT A** ATTACHED TO, AND BY THIS REFERENCE MADE A PART OF, THIS AGREEMENT.

Grantor further grants and conveys to Grantee the following incidental rights:

- (1) A temporary right of way adjacent to the Easement Tract to be used during all periods of construction, reconstruction, upgrade, reinforcement, repair and removal of the Facilities upon a strip of land 10’ feet wide measured from the exterior boundaries of the Easement Tract;

(2) The right of ingress and egress over and across Grantor's lands to and from the Easement Tract; and

(3) The right to clear all trees, roots, brush and other obstructions that interfere with Grantee's use and enjoyment of the Easement Tract.

Grantor reserves the right to use and enjoy the Easement Tract including the right to construct driveways or roads across the easement tract so long as Grantor's use does not materially interfere with the rights granted in this Easement Agreement. Grantor will not erect any structure or plant trees or other vegetation within the Easement Tract and will not alter the surface or subsurface of the Easement Tract or the ground immediately adjacent to the Easement Tract by grading or otherwise excavating, without providing Grantee plans and receiving Grantee's written approval or consent. Such consent will not be unreasonably withheld. In the event that Grantee's facilities need to be relocated within the Easement Tract to accommodate Grantor's grading or excavating for construction of driveways or roads, Grantee will relocate its facilities at its own expense only once during the life of the Easement.

Grantor warrants that Grantor is the owner of the Easement Tract and will defend title to the Easement Tract against all claims. Grantee will have no responsibility for environmental contamination unless caused by Grantee.

The rights, conditions and provisions of this Easement Agreement will run with the land and will inure to the benefit of and be binding upon Grantor and Grantee and their respective successors and assigns.

GRANTOR:

City of Edgerton,
a Kansas municipal corporation

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____, as _____, of City of Edgerton, a Kansas municipal corporation.

My commission expires: _____

WITNESS my hand and official seal.

Notary Public

(SEAL)

GRANTOR:

The Delong Co., Inc.,
a Wisconsin corporation

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____, as _____, of The Delong Co., Inc., a Wisconsin corporation.

My commission expires: _____

WITNESS my hand and official seal.

Notary Public

(SEAL)

EXHIBIT A TO EASEMENT AGREEMENT

Legal Description of Easement Tract

Being a Ten (10) feet utility easement and being part of the SW $\frac{1}{4}$ of Section Thirty-four (34), Township Fourteen (14), Range Twenty-two (22), Johnson County Kansas. Said 10.00 feet easement being 5.00 feet each side of the following described centerline:

Commencing at the Southwest corner of the Southwest Quarter of said Section 34; thence North $88^{\circ}10'27''$ East, along the south line of said quarter section a distance of 749.38 feet, more or less, to the POINT OF BEGINNING: Thence northerly and parallel with and 5.00 feet west of the east property line a distance of 871' more or less to the POINT OF TERMINATION.

EXHIBIT A CONTINUED

Drawing of Easement Tract



N
Not to Scale

EASEMENT PURCHASE LETTER AGREEMENT

Date: August 30, 2017

The Delong Grain Co., Inc.
Attn: Patrick Delong
214 Allen Street
PO: Box 552
Clinton, WI 53525

RE: Easement Purchase Letter Agreement ("Letter Agreement")

Dear Mr. Patrick Delong:

For good and valuable consideration, the sufficiency of which is acknowledged by the parties to this Letter Agreement, United Telephone Company of Eastern Kansas, a Delaware corporation d/b/a CenturyLink ("Company") and The Delong Grain Co., Inc., a Wisconsin corporation ("Owner") agree that Company may purchase an easement from Owner upon the terms and conditions set forth in this Letter Agreement.

Owner owns certain real property located in Edgerton, County of Johnson, State of Kansas, as described in Exhibit "A" attached to and incorporated by reference in this Letter Agreement ("Property"). Company desires to purchase from Owner, and Owner desires to grant to Company, an easement upon, under, through, over and along a portion of the Property ("Easement Tract"), such easement being in form and substance the same as that set forth in Exhibit "B" attached to and incorporated by reference into this Letter Agreement ("Easement"). The Easement Tract is approximately located on the Property as set forth on the sketch attached to and incorporated into this Letter Agreement as Exhibit "C."

Prior to purchasing the Easement, Company is entitled to a period of 30 days ("Review Period") during which Company, its employees, agents or contractors ("Authorized Parties") can enter upon the Property for the limited purpose of conducting any survey, title work, environmental testing or other due diligence necessary, in Company's sole discretion, for Company to determine if the Easement Tract is acceptable to Company ("Permitted Activities"). The Review Period will begin to run on the date this Letter Agreement is last signed by both Owner and Company where indicated below ("Effective Date"). Owner will make the Property and access to the Property available to the Authorized Parties during the Review Period for such Permitted Activities. Upon completion of the Permitted Activities, Company will, if applicable, at its sole cost and expense, restore the Property to substantially the same condition it was in before the Authorized Parties' entry onto the Property, except for reasonable wear and tear.

If, on or before the expiration of the Review Period, Company determines, in its sole discretion, that the Easement Tract is acceptable to Company, Company will, within

a reasonable time after the expiration of the Review Period, pay **\$10,000.00** ("Purchase Price") to Owner. In exchange for the Purchase Price, Owner will deliver to Company an original signed and notarized Easement.

In the event Owner consists of two or more parties and the Purchase Price will not be delivered to Owner by a title company or other entity performing as closing agent for the disbursement of the Purchase Price, then Owner will designate one of the Owner parties to accept delivery of the Purchase Price on behalf of all of the Owner parties. Owner hereby designates **The DeLong Grain Co., Inc.**, as the Owner party to accept delivery of the Purchase Price ("Owner's Agent"). Owner's Agent will be solely responsible for any further disbursement of the Purchase Price to the other Owner party or parties. Owner will indemnify, defend and hold Company harmless from and against any liability for any further disbursement of the Purchase Price to or among the Owner party or parties not designated by Owner as the Owner Agent, and such indemnity, duty to defend and hold harmless obligations will survive the termination of this Agreement and the closing of the Easement purchase. The owner designated party shall furnish to Company a completed W-9 form with a valid TIN or EIN.

If on or before the expiration of the Review Period Company determines, in its sole discretion, that the Easement Tract is not acceptable to Company, Company will, within a reasonable amount of time after the expiration of the Review Period, communicate to Owner in writing that it will not purchase the Easement. In that event, Company will have no further obligations under this Letter Agreement and no rights in or to Owner's Property under this Letter Agreement.

This Letter Agreement will become effective upon the Effective Date. The parties to this Letter Agreement evidence their agreement to and acceptance of the terms and conditions of this Letter Agreement by signing below where indicated.


“COMPANY”

United Telephone Company of Eastern Kansas,
a Delaware corporation d/b/a CenturyLink

By: _____
Name: _____
Title: _____
Date: _____

“OWNER”

The DeLong Grain Co., Inc.
a Wisconsin corporation

By: 
Name: William P. DeLong
Title: Operations MGR
Date: 9-1-17

City of Edgerton,
a municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A TO EASEMENT PURCHASE LETTER AGREEMENT

DESCRIPTION OF PROPERTY

ALL THAT PART OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 14 SOUTH, RANGE 22 EAST, JOHNSON COUNTY, KANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 34; THENCE NORTH $88^{\circ}10'27''$ EAST, ALONG THE SOUTH LINE OF SAID QUARTER SECTION, A DISTANCE OF 232.30 FEET, TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT; THENCE CONTINUING NORTH $88^{\circ}10'27''$ EAST, ALONG THE SOUTH LINE OF SAID QUARTER SECTION, A DISTANCE OF 522.08 FEET TO THE SOUTHWEST CORNER OF THE TRACT OF LAND DESCRIBED AS J.A. PEARCE TRACT IN THE 1892 RE-SURVEY OF SAID SECTION 34, THENCE NORTH $01^{\circ}52'40''$ WEST, ALONG THE WEST LINE OF SAID J.A. PEARCE TRACT, A DISTANCE OF 871.01 FEET; THENCE SOUTH $53^{\circ}52'24''$ WEST, NO LONGER ALONG THE WEST LINE OF SAID J.A. PEARCE TRACT, A DISTANCE OF 407.79 FEET, TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY AND SOUTHERLY, ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 461.00 FEET AND A CENTRAL ANGLE OF $40^{\circ}11'05''$, A DISTANCE OF 323.33 FEET; THENCE SOUTH $01^{\circ}49'33''$ EAST, A DISTANCE OF 383.68 FEET, TO THE TRUE POINT OF BEGINNING, EXCEPT ANY PART USED OR DEDICATED FOR STREETS, ROADS OR PUBLIC RIGHTS OF WAY.

EXHIBIT B TO EASEMENT PURCHASE LETTER AGREEMENT

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- (3) The right to clear all trees, roots, brush and other obstructions that interfere with Grantee's use and enjoyment of the Easement Tract.

Grantor reserves the right to use and enjoy the Easement Tract so long as Grantor's use does not materially interfere with the rights granted in this Easement Agreement. Grantor will not erect any structure or plant trees or other vegetation within the Easement Tract and will not alter the surface or subsurface of the Easement Tract or the ground immediately adjacent to the Easement Tract by grading or otherwise excavating, without Grantee's written consent.

Grantor warrants that Grantor is the owner of the Easement Tract and will defend title to the Easement Tract against all claims. Grantee will have no responsibility for environmental contamination unless caused by Grantee.

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EXHIBIT A TO EASEMENT AGREEMENT

Legal Description of Easement Tract

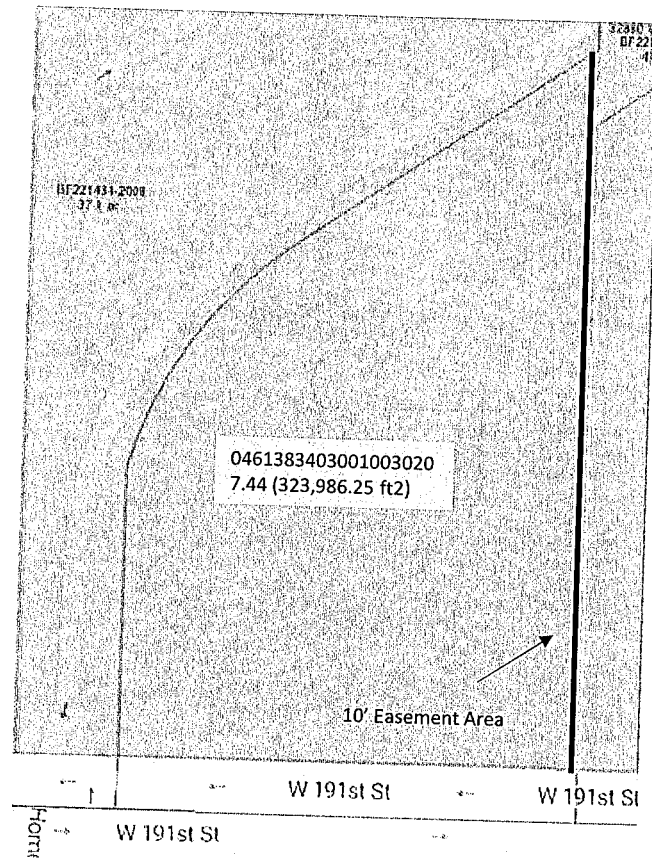
Being a Ten (10) feet utility easement and being part of the SW $\frac{1}{4}$ of Section Thirty-four (34), Township Fourteen (14), Range Twenty-two (22), Johnson County Kansas. Said 10.00 feet easement being 5.00 feet each side of the following described centerline:

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EXHIBIT C TO EASEMENT PURCHASE LETTER AGREEMENT

SKETCH OF APPROXIMATE LOCATION OF EASEMENT TRACT

EXHIBIT A CONTINUED
Drawing of Easement Tract



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N
Not to Scale