

**EDGERTON CITY COUNCIL  
MEETING AGENDA  
CITY HALL, 404 EAST NELSON STREET  
July 10, 2025  
7:00 P.M.**

**Call to Order**

**1. Roll Call**

\_\_\_\_ Roberts \_\_\_\_ Longanecker \_\_\_\_ Lewis \_\_\_\_ Conus \_\_\_\_ Lebakken \_\_\_\_ Malloy

**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 12, 2025, Regular City Council Meeting
5. Resolution Approving an Assignment of Bond Documents, Collateral Assignment, and Subordination Agreement
6. Consider Final Acceptance for Emergency Repair on Culvert Pipe on 191st Street for \$29,790.00 to Kansas Heavy Construction and Return Remaining Funds of \$770.00 to the Unencumbered Fund Balance in the General Fund

**Regular Agenda**

7. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.
8. **Public Comments.** Members of the public are welcome to present their items of concern to the City Council. The Council will not discuss or debate these items, nor will the Council make decisions on items presented during this time. Speakers should address their comments to City Council only not members of the audience or staff.

Persons wishing to address the City Council must sign-up before the meeting begins. Speakers must provide their name and address for the record and are limited to three (3) minutes. The maximum time limit for all speakers will be a total of thirty (30) minutes.

Written comments must be submitted by close of business on the day prior to the meeting at [CityClerk@edgertonks.org](mailto:CityClerk@edgertonks.org). Written comments shall include name and address for the record.

**Business Requiring Action**

**9. Report by the City Administrator**

**10. Report by the Mayor**

**11. Future Meeting Reminders:**

July 24: City Council Meeting  
August 12: Planning Commission Meeting  
August 14: City Council Meeting  
August 28: City Council Meeting  
September 9: Planning Commission Meeting  
September 11: City Council Meeting

## 12. Adjourn

### EVENTS

July 10: Outdoor Movies – Movie Night-Moana 2  
July 12: Popsicles and Puzzle Race  
July 14: Culinary Kids Series-Marshmallows & Chocolate Truffles  
July 16: Senior Lunch and BINGO 55+  
July 17: Bunco  
July 18: Summer Gym Jam  
July 23: Dog Bite Prevention

**City of Edgerton, Kansas**  
**Minutes of City Council Regular Session**  
**June 12, 2025**

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson, Edgerton, Kansas June 12, 2025. The meeting convened at 7:00 PM with Mayor Roberts presiding.

**1. ROLL CALL**

Donald Roberts	Present
Clay Longanecker	Present
Josh Lewis	Present
Deb Lebakken	Present
Bill Malloy	Present
Ron Conus	Present

With a quorum present, the meeting commenced.

Staff in attendance:

- City Administrator, Beth Linn
- Assistant to the City Administrator, Kara Banks
- Assistant to the City Administrator, Trey Whitaker
- Interim City Clerk, Alex Firth
- City Attorney, Todd Luckman
- Finance Director, Karen Kindle
- Senior Accountant, Justin Vermillion
- Development Services Director, Zach Moore
- Parks and Recreation Director, Levi Meyer
- Construction Inspector, Todd Veeman
- Public Works Foreman, Chase Forester
- Utilities Superintendent, Mike Mabrey

**2. WELCOME.** Mayor Roberts welcomed all in attendance.

**3. PLEDGE OF ALLEGIANCE.** All present participated in the 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 May 22, 2025, Regular City Council Meeting

Councilmember Longanecker moved to approve, seconded by Councilmember Lebakken. The minutes were approved, 5-0.

**Regular Agenda**

5. **Declaration.** Council members had nothing to declare.

## 6. Public Comments.

- Mr. Bill LaFalce at 516 W 4<sup>th</sup> St addressed the Council. Mr. La Falce brought his bread to council again, as a symbol to Council that when his issue is resolved he will break bread with them. He thanked Council for bringing IHOP to Edgerton, but he requested more family and adult dining like Greek, Italian, or fine dining. He voiced concerns about the "No Kings" protests and the potential for the intermodal and surrounding businesses to be targeted. Mr. La Falce referenced a Kansas statute that says that a Mayor can call forth any 18+ male in the city to form of a militia to aid law enforcement. Mr. La Falce reached his maximum time to speak, so Mayor Roberts asked Mr. La Falce to wrap things up and Mr. La Falce thanked the Council.
- Darel Mason, Home Sales Consultant for Rausch Coleman homes at Dwyer Farms, thanked the City Council for the Grand Opening and stated that there was a great turnout. They were able to sell another four homes during the week.

## 7. Presentation by Kevin O'Brien

Kevin O'Brien addressed the council. He is an insurance agent with the Riley Company, which handles the City's insurance. He congratulated Council and presented the city with a dividend check. He stated that the City has been awarded this because they provide an excellent safety culture. The check is for \$7,065.52. Mr. O'Brien states that EMC is one of the only companies that celebrate the City and their staff for their efforts to mitigate risk and provide a better job environment.

Mayor Roberts stated this is the second year in a row that we have had insurance money come back to the City and he is astounded that we are able to receive this.

## **Business Requiring Action**

### **8. CONSIDER AWARD OF AN EMERGENCY REPAIR ON CULVERT PIPE ON 191ST STREET BETWEEN WAVERLY ROAD AND MONTROSE STREET TO KANSAS HEAVY CONSTRUCTION LLC**

Mr. Dan Merkh, Public Works Director, presented to Council. He stated that during a recent storm, the culvert that runs under 191<sup>st</sup> Street between Waverly and Montrose washed away base rock and a section of drainage pipe. He stated the damage requires an urgent repair to avoid subsidence and undermining of the road section along 191<sup>st</sup> Street.

The repair would remove approximately 40 linear feet of 36" CMP and replace with 36" RCP as well as install a new 36" RCP end section and rip rap. The Public Works Department will provide traffic control and detours for this project. Staff anticipate the road closure to be one week. Staff requested bids from three contractors and received two responses and recommend approving the bid from Kansas Heavy Construction to complete the work. He stated staff recommends using unencumbered fund balance from the General Fund for this work.

Mr. Longanecker asked how long the temporary patch will hold up. Mr. Merkh answered that the plates should span the undermining of the pavement the temporary patch may last weeks, but because of the heavy use of the road, it is important that we get this fixed immediately.

Mayor Roberts asked if the City does the improvement now, would it last 5 years until the city planned for the next improvements on this road. Mr. Merkh answered that most likely this improvement would stay but may need to be widened when improvements are done next on that road. Ms. Linn adds that the location of the culvert is where the natural drainage is today.

Mayor Roberts asked if this project is a hindrance to the city and the businesses surrounding it and questioned why the City should spend \$30,000 on a project that could get ripped out in five years. Ms. Lebakken asked what kind of traffic does the road get now. Mr. Merkh stated that there are lots of 18-wheeler and warehouse employee traffic due to LPKC. He stated the road count is high enough it has added to the issue. Every winter there are also issues with trucks falling into the ditch area due to the drop on the shoulder, which leads to road closures.

Mr. Longanecker asked if it would make more sense to make the culvert longer now instead of later. Mr. Merkh answered making it longer now could be a challenge with the surrounding businesses, but adding pipe to the end of it can be done.

Mr. Lewis asked what short-term and more cost-effective options will fix the issue if we think there is something that could change in the next five years. Mr. Merkh answered that the short-term options for this kind of repair are limited, the best is to dig it out and put it back properly. There are a few very short term solutions, but you would have to do multiple solutions over time that would not be as effective. Ms. Linn stated that this project is like finding the goldilocks zone, the right amount of money right now for it to last long enough but not be too temporary that the fix does not work. She added that due to the type of traffic that goes over this spot we are trying to make sure that it is the right level of investment in this emergency project. Mr. Merkh stated that there is a high likelihood of this project being reused on the next road project. Ms. Lebakken stated that she has seen first-hand what happens when the repair does not take place and it does not end well.

Mayor Roberts asked if the City could shut down the road and detour. Mr. Merkh stated shutting down the road and detouring would deteriorate the roads adjacent to the problem and create more to repair in the future due to additional traffic to those roads. Ms. Linn stated anything that shuts down the road for any reason would make the solution more complicated.

Mr. Longanecker asked for clarification on whether the culvert is a concrete pipe culvert and not a box; Mr. Merkh answered that it would be a round pipe culvert. Mr. Lewis asked what about corrugated pipe there instead. Mr. Merkh says that corrugate today is now frowned upon, and it is not an approved material anymore. Mr. Lewis stated he was unaware of the new standards.

Mr. Conus said that he feels that the City should fix the culvert now and start planning financially for the longer road project in the future. Mr. Malloy stated that he does not see how this project can wait with the emergent nature of this issue. Mayor Roberts said that he thinks

that we could detour, but Mr. Malloy countered that this would impact warehouse employees negatively who are driving into Gardner for lunch.

With no further discussion, Councilmember Malloy moved to approve the bid from Kansas Heavy, seconded by Councilmember Lebakken. The motion carried, 5-0.

**9. CONSIDER AN AGREEMENT WITH THE KANSAS DEPARTMENT OF COMMERCE TO ACCEPT AWARD OF A TOWNS PROGRAM GRANT OF \$10,000.00 FOR PARK FURNISHINGS**

Mr. Levi Meyer, Park and Recreation Director presented to Council. He stated the City applied to the Kansas Department of Commerce (KDC) TOWNS Grant Program, which supports small cities who make investments into quality of life initiatives. The City applied for a grant to buy bike racks/skateboard racks at The Greenspace and Glendell Acres and the replacement and upgrade of the trash receptacle and park bench at Bridgewater Park. Park furnishings were budgeted in the 2025 Parks budget and \$3,000 of this budget was included as a grant match if awarded.

Mr. Meyer stated the City was notified that we won the award in May. He added the project will require staff time to procure and install the park furnishings as well as manage the grant. The projects must be completed within 12 months.

City Staff recommend accepting this award pending City Attorney review and approval. City Attorney Todd Luckman gave a thumb up and stated that he has already looked at this and approved.

Councilmember Lewis moved to approve, seconded by Councilmember Longanecker. The motion carried, 5-0.

**10. CONSIDER APPROVAL OF ENCROACHMENT AGREEMENT WITH KPC PIPELINE LLC RELATED TO THE EAST 2ND STREET RECONSTRUCTION PROJECT**

Mr. Merkh introduced the item but informed council that he will be making a different recommendation than the CAI states. Mr. Merkh's recommendation is to table this item for the City Attorney to review and remove certain language. Mr. Merkh presented the item to council.

He stated staff recommends tabling this item for City Attorney to do two things: first, to find out the implications of not having an encroachment agreement, and two, to remove the language which specifies private utilities that are not city owned.

Mr. Luckman noted that this is likely a canned agreement that is used regularly by the company. He added that when the City is improving a road, they can ask for utilities to be moved but you can't be unreasonable about it. Once the utilities get out of the way, he is uncertain that the city can say anything more on specifics than you can't be within a certain amount of feet from the line.

Mayor Roberts stated that he thinks it is wrong for the company to ask this of the utility companies. If the pipeline wants those agreements that they should ask the private utility companies themselves about agreements with them to be moving the utilities for the pipeline.

Councilmember Longanecker moved to table, seconded by Councilmember Lebakken. The motion carried, 5-0.

### **11. CONSIDER AN AGREEMENT WITH AERIAL FX FOR FIREWORKS SHOW FOR JULY 3, 2025**

Because he is the pyro shooting the July 3<sup>rd</sup> fireworks show, Mayor Roberts requested Mr. Longanecker preside over this item and then removed himself from the room.

Ms. Linn presented the item to Council. She stated annually, the City of Edgerton contracts with Aerial FX to provide the fireworks show on July 3<sup>rd</sup> at the annual Community Picnic and Fireworks Show. This year, Aerial FX requested to formalize the terms with the attached agreement. The terms of the Agreement match the services provided to the City of Edgerton for the last 10+ years.

City Staff recommends accepting this award pending City Attorney review and approval.

Mr. Conus asked if this is the same price as last year, Ms. Linn answered that it is the same and it is the budgeted amount.

Councilmember Conus moved to approve, seconded by Councilmember Malloy. The motion carried, 5-0.

Mayor Roberts returned to the room once the vote was completed.

### **12. Report by the City Administrator**

- Public Works and Utilities Q1 Report was presented by Assistant to the City Administrator Trey Whitaker, who reviewed the stats for Public Works from January through May. He highlighted the City's snow operations and the new streetsweeper that the City recently purchased.
- The Utilities Quarterly Update was presented by Utilities Superintendent Mike Mabrey. He reviewed the amount of water purchased and flushed, the gallons treated at the wastewater treatment plant, the number of utility locates and emergency locates as well as maintenance and compliance efforts undertaken by staff between January and May.
- Mr. Merkh announced to the council that the City was awarded a \$25,000 grant from the Kansas Department of Transportation for an innovative transportation project. The funding will support the use of artificial intelligence to create a road condition index for city streets. This grant was secured through the efforts of Holly Robertson, who was recognized for her continued success in writing competitive grant applications.
- Ms. Linn encouraged folks to look at Parks and Rec guide. She stated it is very robust program this summer.

### **13. Report by the Mayor**

- Mayor Roberts thanked Ms. Lebakken for the email from a resident that said the tornado siren had failed. A resident was concerned that tornado sirens were not alarmed during a recent June 3rd Tornado warning. City staff confirmed with Johnson County Emergency Management that the sirens functioned correctly but clarified that sirens are intended for outdoor use and not reliable for indoor warnings. The council encouraged residents to sign up for Notify JoCo, a free emergency alert system that provides weather and utility notifications. Staff and Council members emphasized the importance of personal responsibility and the use of multiple alert systems.
- Mayor Roberts announced Scoopy's Café ribbon cutting will be held on Friday, June 13. He wants to encourage everyone to go and support Scoopy's.

### **14. Future Meeting Reminders**

Mayor Roberts reminded the Council of the future meetings for the Council and Planning Commission.

### **15. Adjourn**

Councilmember Lewis moved to adjourn, seconded by Councilmember Lebakken. The meeting was adjourned at 8:24 pm with a 5-0 vote.

Submitted by Alex Firth, Interim City Clerk.



## **CITY OF EDGERTON, KANSAS**

### **COUNCIL AGENDA ITEM**

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**Council Meeting Date:** July 10, 2025

**Agenda Item:** Resolution Approving an Assignment of Bond Documents, Collateral Assignment, and Subordination Agreement

**Subject:** ELHC XV Project (previously assigned to IPXV Montrose LLC)

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ELHC XV, LLC (“ELHC”) previously constructed an approximately 548,000 sq. ft. warehouse and distribution facility located at 19351 Montrose Street. The City financed the project with \$25,200,000 of industrial revenue bonds issued in 2016.

In 2017, ELHC assigned the project to IPXV Montrose LLC (“Montrose”). This entity is a joint venture between NorthPoint Development and Ares, which is a global real estate investment fund.

The joint venture entity now desires to assign the project to SKY KS LLC, a Delaware limited liability company. Northpoint will no longer be involved in the ownership or management of this building.

Property tax abatement on this project runs from 2017 through 2026. The assignment does not alter the amount or term of tax abatement.

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## **RESOLUTION NO. 07-10-25A**

### **A RESOLUTION CONSENTING TO THE ASSIGNMENT OF A BASE LEASE, LEASE AGREEMENT, AND OTHER BOND DOCUMENTS IN CONNECTION WITH THE CITY'S INDUSTRIAL REVENUE BONDS (ELHC XV, LLC PROJECT), SERIES 2016, AND AUTHORIZING A COLLATERAL ASSIGNMENT AND SUBORDINATION/ATTORNMENMENT AGREEMENT**

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**WHEREAS**, the City of Edgerton, Kansas (the "City") is a duly organized and existing municipal corporation under the laws of the State of Kansas; and

**WHEREAS**, the City issued its Industrial Revenue Bonds (ELHC XV, LLC Project), Series 2016, in the aggregate maximum principal amount of \$25,200,000 (the "Bonds"), pursuant to a Trust Indenture dated as of January 1, 2016, by and between the City and UMB Bank, N.A., as trustee (the "Trustee"), for the purpose of acquiring, constructing, installing, and equipping an approximately 548,000 square foot warehouse and distribution facility, including land, buildings, structures, improvements, fixtures, machinery, and equipment generally located at 19351 Montrose Street, Edgerton, Kansas (the "Project"); and

**WHEREAS**, the Project was leased by ELHC XV LLC, a Kansas limited liability company ("ELHC"), to the City pursuant to a Base Lease Agreement dated as of January 1, 2016, as modified by a First Supplemental Base Lease Agreement dated as of May 15, 2017 (together, the "Base Lease Agreement"), between ELHC and the City, and the Project was simultaneously subleased by the City to ELHC pursuant to a Lease Agreement dated as of January 1, 2016, as modified by a First Supplemental Lease Agreement dated as of May 15, 2017 (together, the "Lease Agreement"), between the City and ELHC; and

**WHEREAS**, pursuant to an Assignment and Assumption of IRB Documents dated May 15, 2017, ELHC, with the consent of the City, assigned its interest in the Base Lease, Lease Agreement, Indenture, the Performance Agreement dated as of January 1, 2016, as modified by a First Amendment to Performance Agreement dated as of May 15, 2017 (together, the "Performance Agreement"), between the City and ELHC, the Origination Fee Agreement dated as of January 1, 2016 (the "Origination Fee Agreement"), between the City and ELHC, the Bond Purchase Agreement dated January 1, 2016 (the "Bond Purchase Agreement"), among the City and ELHC, as purchaser and as the company, and all other documents executed in connection with the Bonds that are included in the transcript of proceedings for the Bonds (collectively, the "Other Bond Documents"), to IPXV MONTROSE LLC, a Delaware limited liability company (the "Assignor"); and

**WHEREAS**, the Assignor is now requesting the City's consent to the assignment of the Assignor's interest under the Base Lease, Lease Agreement, Indenture, the Performance Agreement, the Origination Fee Agreement, the Bond Purchase Agreement, and the Other Bond Documents to SKY KS LLC, a Delaware limited liability company (the "Assignee"); and

**WHEREAS**, pursuant to **Section 6.2** of the Base Lease and **Section 13.1** of the Lease Agreement, the Assignor may assign the Base Lease and the Lease Agreement only with the written consent of the City; and

**WHEREAS**, the City desires to consent to the assignment of the Assignor's interest under the Base Lease, Lease Agreement, Indenture, Performance Agreement, Origination Fee Agreement, the Bond Purchase Agreement, and the Other Bond Documents to the Assignee.

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

**Section 1. Consent to Assignment.** The Governing Body of the City hereby consents to the assignment of the Base Lease, Lease Agreement, Indenture, Performance Agreement, Origination Fee Agreement, Bond Purchase Agreement, and the Other Bond Documents by the Assignor to the Assignee. The foregoing consents are contingent upon the satisfaction of all other requirements for assignments expressly set forth in the Lease Agreement.

**Section 2. Authorization and Execution of Consent to Assignment.** The Governing Body hereby approves of the form of the Assignment and Assumption of IRB Documents (the "Assignment") in substantially the form attached hereto as **Exhibit A** (a copy of which document, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver the consent to the Assignment for and on behalf of and as the act and deed of the City, in substantially the form presented to and reviewed by the Governing Body. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to the Assignment.

**Section 3. Authorization and Execution of Collateral Assignment and Subordination/Attornment Agreement.** The Governing Body hereby approves the Collateral Assignment of IRB Documents and Subordination/Attornment Agreement in substantially the forms presented to and reviewed by the Governing Body at this meeting (copies of such documents, upon execution thereof, shall be filed in the office of the City Clerk). The Mayor of the City is hereby authorized and directed to execute and deliver such documents for and on behalf of and as the act and deed of the City, in substantially the forms presented to and reviewed by the Governing Body. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City, if required, to such documents.

**Section 4. Further Authority.** The Mayor is hereby authorized and directed to execute and deliver such other documents, certificates, and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution (copies of said documents shall be filed in the records of the City) for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

**Section 5. Effective Date.** This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City.

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**ADOPTED** this 10<sup>th</sup> day of July, 2025.

**CITY OF EDGERTON, KANSAS**

By: \_\_\_\_\_  
Donald Roberts, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Alex Firth, Interim City Clerk

Approved as to form:

\_\_\_\_\_  
Gilmore & Bell, P.C.,  
Bond Counsel to City

Assignment Resolution  
ELHC XV, LLC Project

## **EXHIBIT A**

### **ASSIGNMENT AND ASSUMPTION OF IRB DOCUMENTS**

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*(Space above reserved for the Register of Deeds' recording information)*

Title of Document: Assignment and Assumption of IRB Documents

Date of Document: July \_\_, 2025

Grantor(s): IPXV MONTROSE LLC, a Delaware limited liability company

Grantee(s): SKY KS LLC, a Delaware limited liability company

Grantee's Address: 320 Park Avenue, 26<sup>th</sup> Floor, New York, New York 10022

Reference Book and Pages: Book 201605, Page 007968  
Book 201605, Page 007969  
Book 201705, Page 005955

Legal Description: See attached Schedule 1

## ASSIGNMENT AND ASSUMPTION OF IRB DOCUMENTS

**THIS ASSIGNMENT AND ASSUMPTION OF IRB DOCUMENTS** (the “**Assignment**”) entered into on July \_\_, 2025 (the “**Effective Date**”) is by and between IPXV MONTROSE LLC, a Delaware limited liability company (the “**Assignor**”), and SKY KS LLC, a Delaware limited liability company (the “**Assignee**”).

### **RECITALS**

**WHEREAS**, the City of Edgerton, Kansas (the “**City**”) has previously issued its \$25,200,000 aggregate maximum principal amount of Industrial Revenue Bonds (ELHC XV, LLC Project) Series 2016 (the “**Bonds**”) pursuant to a Trust Indenture dated as of January 1, 2016 (the “**Indenture**”), between the City and UMB Bank, n.a, as trustee (the “**Trustee**”), and used the proceeds of the Bonds to construct a Project (as defined in the Indenture);

**WHEREAS**, ELHC XV, LLC, a Kansas limited liability company (“**ELHC**”) leased the Project to the City pursuant to the Base Lease Agreement dated as of January 1, 2016 (together with the First Supplemental Base Lease Agreement described below, the “**Base Lease**”), between ELHC and the City, a memorandum of which was recorded May 23, 2016, in Book 201605, Page 007968; and the Base Lease was modified by that certain First Supplemental Base Lease Agreement dated as of May 15, 2017 in order to revise the legal description of the land that is subject to the Base Lease, and such revised legal description is set forth on **Schedule 1** (the “**Real Property**”);

**WHEREAS**, the City subleased the Project to ELHC pursuant to a Lease Agreement dated as of January 1, 2016 (together with the First Supplemental Lease Agreement described below, the “**Lease Agreement**”), between the City and ELHC, a memorandum of which was recorded May 23, 2016, in Book 201605, Page 007969, and the Lease Agreement was modified by that certain First Supplemental Lease Agreement dated as of May 15, 2017 in order to revise the legal description of the land that is subject to the Lease Agreement to describe the Real Property;

**WHEREAS**, the City and ELHC entered into a Performance Agreement dated as of January 1, 2016 (together with the First Amendment to Performance Agreement described below, the “**Performance Agreement**”) whereby the parties set forth the terms relating to tax abatement for the Project, and the Performance Agreement was modified by that certain First Amendment to Performance Agreement dated as of May 15, 2017 in order to revise the legal description of the land that is subject to the Performance Agreement to describe the Real Property;

**WHEREAS**, the City and ELHC entered into an Origination Fee Agreement dated as of January 1, 2016 (the “**Origination Fee Agreement**”) whereby ELHC agreed to make certain origination fee payments to the City over time;

**WHEREAS**, the City and ELHC entered into a Bond Purchase Agreement dated as of January 1, 2016 (the “**Bond Purchase Agreement**”) whereby City agreed to issue and ELHC agreed to purchase the Bonds on the terms and conditions set forth therein;

**WHEREAS**, Assignor assumed all of ELHC’s right, title, and interest to the Indenture, the Bonds, the Bond Purchase Agreement, the Base Lease, the Lease Agreement, the Performance Agreement, and the Origination Fee Agreement pursuant to an Assignment and Assumption of IRB Documents dated as of May 15, 2017, between ELHC and Assignor, which was recorded on May 17, 2017, in Book 201705, Page 005955 (the “**Assignment and Assumption**”);

**WHEREAS**, Assignor now desires to assign and transfer to Assignee all of Assignor's right, title, and interest in and to the Bonds, Bond Purchase Agreement, the Base Lease, the Lease Agreement, the Performance Agreement, and the Origination Fee Agreement and the Assignment and Assumption (collectively, the "**IRB Documents**");

**WHEREAS**, Assignee desires to accept such assignment subject to the terms and conditions set forth below; and

**WHEREAS**, the City and the Trustee desire to consent to such assignment and assumption.

## **AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Assignment.** As of the Effective Date, Assignor hereby sells, transfers, conveys, assigns, and delivers to Assignee all of Assignor's rights and obligations under the IRB Documents (collectively, the "**Assigned Interests**").

2. **Assumption.** Assignee accepts all of the Assigned Interests assigned by Assignor in **Section 1** and assumes and agrees to pay, perform, and discharge promptly and fully when and as required all obligations and liabilities under the IRB Documents that accrue on or after the Effective Date.

3. **Delivery of documents; representations.** Pursuant to **Section 13.1(a)** of the Lease Agreement, Assignor represents that all conditions precedent to the assignment have been satisfied. Assignor represents that there has been no damage or destruction to the Project that has not been repaired, restored, and replaced in accordance with the terms of the Lease Agreement.

4. **Consent and release.** Pursuant to **Section 13.1(a)** of the Lease Agreement, the City consents to the Assignment of the IRB Documents from Assignor to Assignee. Pursuant to **Section 206** of the Indenture, the City consents to the assignment and transfer of the Bonds from Assignor to Assignee. The City releases Assignor from all liability under the IRB Documents occurring on and after the Effective Date.

5. **Representations.** Assignor represents and warrants that Assignor has not transferred, sold, encumbered, or otherwise disposed of the Bonds or any other IRB Document nor has Assignor, with the exception of any collateral assignments to previous lenders, assigned the Base Lease or any other IRB Document or transferred or encumbered or otherwise disposed of its interest in the Project. Assignor further represents and warrants that Assignor is not aware of any default which exists on this date by it or the counterparty under the IRB Documents. As of the Effective Date, Assignor and Assignee represent to and for the benefit of the City that Assignor has conveyed to Assignee its interest in the Project, including the buildings, structures, improvements, fixtures, machinery, and equipment owned by Assignor and situated on the Project and all additions, alterations, modifications, and improvements thereof.

6. **Notice Address.** The Assignee represents that the notice address of the Assignee for purposes of the IRB Documents is:



Sky KS, LLC  
320 Park Avenue, 26<sup>th</sup> Floor  
New York, NY 10022  
Attention: Jacob Dembitzer  
Email@ [jacob@skyrem.com](mailto:jacob@skyrem.com)

With a copy to:

Grossberg, Yochelson, Fox & Beyda, LLP  
1200 New Hampshire Avenue, N.W., Suite 555  
Washington, D.C. 20036  
Attention: Richard F. Levin, Esq.  
E-mail: [levin@gyfb.com](mailto:levin@gyfb.com)

7. **Successors and Assigns.** This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

8. **Receipt of Transcript; Delivery of Insurance Certificates.** The Assignee hereby represents that it has received and reviewed complete copies of the IRB Documents and has delivered to the City and Trustee evidence of insurance as required under **Sections 7.2 and 7.3** of the Lease Agreement

9. **Counterparts.** This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

10. **Governing law.** This Assignment shall be interpreted and construed under the laws of the State of Kansas, excluding any conflict of law or choice-of-law rules that might lead to the application of the internal laws of another jurisdiction.

11. **Recording.** Assignee shall submit this Assignment for recording in the Office of the Register of Deeds of Johnson County, Kansas on or about the Effective Date.

12. **Indemnity.** Assignor hereby indemnifies and holds Assignee harmless from and against all claims, demands, losses, damages, expenses and costs including, but not limited to, reasonable lawyer's fees and expenses actually incurred, arising out of or in connection with Assignor's failure to observe, perform and discharge each and every one of the covenants, obligations, and liabilities of the Assignor under the IRB Documents to be observed, performed, or discharged with respect to the period prior to the Effective Date. Assignee hereby indemnifies and holds Assignor harmless from and against all claims, demands, losses, damages, expenses, and costs including, but not limited to, reasonable lawyer's fees and expenses actually incurred, arising out of or in connection with Assignee's failure, from and after the date of this Assignment, to observe, perform and discharge all covenants, obligations, and liabilities under the IRB Documents with respect to the period on and after the Effective Date.

13. **Direction to Trustee.** Assignor, as current sole owner of the Bonds hereby directs the Trustee to provide its acknowledgement of this Assignment. Upon the assignment of the Lease Agreement to the Assignee and the registration of the Bonds in the name of the Assignee, Assignee hereby provides written notice to the Trustee that it waives its right to actual payment of interest due on the Bond on such interest payment date, as well as the principal of the Bonds maturing on the maturity date.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have caused their respective duly authorized representatives to execute this Assignment as of the Effective Date.

**ASSIGNOR:**

**IPXV MONTROSE LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Susan Rohrbach  
Title: Vice President & Assistant Secretary

**ACKNOWLEDGMENT**

STATE OF NEW YORK        )  
  ) SS.  
COUNTY OF NEW YORK    )

BE IT REMEMBERED, that on this \_\_\_\_ day of July, 2025, appeared Susan Rohrbach, to me personally known, who being duly sworn did say that she is the Vice President & Assistant Secretary of IPXV MONTROSE LLC, a Delaware limited liability company (the “Company”), and that the foregoing instrument was signed for the purposes therein contained on behalf of the Company and by authority of the Company; and she further acknowledged said instrument to be the free act and deed of the Company.

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

[SEAL]

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

My commission expires \_\_\_\_\_

**ASSIGNEE:**

**SKY KS LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_)  
\_\_\_\_\_) SS.  
COUNTY OF \_\_\_\_\_)

BE IT REMEMBERED, that on this \_\_\_\_ day of July, 2025, appeared \_\_\_\_\_, to me personally known, who being duly sworn did say that he is the \_\_\_\_\_ of SKY KS LLC, a Delaware limited liability company (the "Company"), and that the foregoing instrument was signed for the purposes therein contained on behalf of the Company and by authority of the Company; and he further acknowledged said instrument to be the free act and deed of the Company.

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

[SEAL]

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

**CONSENT OF THE CITY OF EDGERTON, KANSAS**

The City hereby acknowledges, consents and agrees to the execution and delivery of this Assignment and Assumption of IRB Documents dated as of the date first set forth above between IPXV MONTROSE LLC, a Delaware limited liability company, and SKY KS LLC, a Delaware limited liability company.

**CITY OF EDGERTON, KANSAS**

[SEAL]

By: \_\_\_\_\_  
Name: Donald Roberts  
Its: Mayor

ATTEST:

\_\_\_\_\_  
Name: Alex Firth  
Its: Interim City Clerk

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF JOHNSON        )

BE IT REMEMBERED that on this \_\_\_\_ day of July, 2025, before me, a notary public in and for said county and state, came Donald Roberts, Mayor of the City of Edgerton, Kansas, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and Alexandria 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 official seal, the day and year last above written.

[SEAL]

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

My commission expires \_\_\_\_\_

## ACKNOWLEDGMENT OF TRUSTEE

UMB Bank, n.a, as trustee, hereby acknowledges the execution and delivery of this Assignment and Assumption of IRB Documents dated as of the date first set forth above, between IPXV MONTROSE LLC, a Delaware limited liability company (“Assignor”), and SKY KS, LLC, a Delaware limited liability company (“Assignee”).

The Trustee represents and warrants to the City of Edgerton, Kansas, Assignor, and Assignee that the Trustee has no knowledge of any default, monetary or otherwise, that has occurred under the terms of the IRB Documents.

**UMB BANK, n.a.,**

By: \_\_\_\_\_  
Name: Jason McConnell  
Title: Vice President

## ACKNOWLEDGMENT

STATE OF \_\_\_\_\_) )  
 ) SS.  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_ day of July, 2025 before me appeared Jason McConnell, a Vice President of UMB, n.a., a national banking association, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same on behalf of said national banking association.

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

[SEAL]

Notary Public  
Printed Name:

My commission expires \_\_\_\_\_

## **SCHEDULE 1**

### **LEGAL DESCRIPTION OF REAL PROPERTY**

Lot 5, LOGISTICS PARK KANSAS CITY - SOUTHEAST, THIRD PLAT, a subdivision in the City of Edgerton, Johnson County, Kansas.

## City Council Action Item

**Council Meeting Date:** July 10, 2025

**Department:** Public Works

**Agenda Item: Consider Final Acceptance for Emergency Repair on Culvert Pipe on 191<sup>st</sup> Street for \$29,790.00 to Kansas Heavy Construction and Return Remaining Funds of \$770.00 to the Unencumbered Fund Balance in the General Fund**

**Background/Description of Item:**

On June 12, 2025, City Staff presented the emergency repair on the culvert pipe on 191<sup>st</sup> due to the storm from June 3, 2025. During this rain event, the culvert under 191<sup>st</sup> had base rock and a section of drainage pipe wash away. City Council approved the emergency repair on the culvert pipe on 191<sup>st</sup> Street with funding identified from the unencumbered fund balance from the general fund. The project budget of \$30,560.00 was approved.

The entirety of the construction was performed under supervision of our City Inspector, with all activity done according to specifications. Staff recommends City Council approve final acceptance for the Emergency Repair on Culvert Pipe on 191<sup>st</sup> Street of \$29,790.00 to Kansas Heavy Construction. City Staff recommends returning these unused funds to the unencumbered fund balance in the General Fund.

**Related Ordinance(s) or Statue(s):**

**Funding Source:** Unencumbered Fund Balance from the General Fund

**Budget Allocated:** \$30,560 (approved June 12, 2025)

**Finance Director Approval:** x   
Karen Kindle, Finance Director

**Recommended Motion: Approve Final Acceptance for Emergency Repair on Culvert Pipe on 191<sup>st</sup> Street for \$29,790.00 and Return Remaining Funds of \$770.00 to the Unencumbered Fund Balance in the General Fund.**

**Enclosed:**

NA

**Prepared by:**

Todd Veeman – Construction Inspector