

**EDGERTON CITY COUNCIL  
MEETING AGENDA  
CITY HALL, 404 EAST NELSON STREET  
May 14, 2020  
7:00 P.M.**

To reduce the spread of COVID-19, Edgerton City Hall  
is closed to the public **EXCEPT FOR DURING OPEN PUBLIC MEETINGS.**

In compliance with the guidance issued by the State of Kansas Attorney General,  
the City of Edgerton remains subject to the Kansas Open Meetings Act (KOMA) and is taking  
actions as necessary and reasonable under the circumstances of the emergency declaration to  
advance the conduct of governmental affairs and ensure the transaction of government  
business is open to the public.

Any resident wishing to attend City Council meeting may do so and is required to practice the  
social distancing guidelines as established by the State of Kansas and Center for Disease  
Control (CDC). The room will be set up to be in compliance with these requirements. The City  
Council members will not be physically present in the room.

Any member of the public wishing to provide general public comment or comment about an  
agenda item without attending the meeting in person may do so by email to Kara Banks  
(kbanks@edgertonks.org). If you are unable to email the comments, you may call the following  
number, and staff will report your comment on your behalf. (913) 893-6231. Any comments  
should be submitted by phone or email by noon (12:00 PM) on day of the scheduled meeting.

**Call to Order**

1. **Roll Call** \_\_\_\_ Roberts \_\_\_\_ Longanecker \_\_\_\_ Conus \_\_\_\_ Lewis \_\_\_\_ Smith \_\_\_\_ Beem
2. **Welcome**
3. **Pledge of Allegiance**

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

4. Approve Minutes for April 23, 2020 Regular City Council Meeting
5. Approve Resolution No. 05-14-20A Updating the Fee Schedule for the City of Edgerton
6. Consider Agreement with Simplifile

**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.

**9. PROCLAMATION BY MAYOR ROBERTS DESIGNATING MAY AS FAIR HOUSING MONTH IN THE CITY OF EDGERTON, KANSAS**

**Business Requiring Action**

**10. CONSIDER PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF EDGERTON AND OLSSON, INC FOR 2020 STORMWATER MASTER PLAN**

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

**11. CONSIDER REVISING 2019 STREET MAINTENANCE PROGRAM TO INCLUDE THE RECONSTRUCTION OF 8<sup>TH</sup> STREET AND EDGEWOOD INTERSECTION**

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

**12. AGENDA ITEM: CONSIDER RESOLUTION NO. 05-14-20B PURSUANT TO K.S.A. § 26-201 SETTING FORTH THE NECESSITY FOR CONDEMNATION OF PRIVATE PROPERTY AND AUTHORIZING PREPARATION OF A SURVEY AND LEGAL DESCRIPTIONS OF THE PROPERTY TO BE CONDEMNED**

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

**13. Report By The City Administrator**

**14. Report By the Mayor**

- Report on Impact of COVID-19 to City Operations

**15. Future Meeting Reminders:**

- May 28<sup>th</sup>: City Council Meeting – 7:00 PM
- June 9<sup>th</sup>: Planning Commission Meeting – 7:00 PM
- June 11<sup>th</sup>: City Council Meeting – 7:00 PM
- June 25<sup>th</sup>: City Council Meeting – 7:00 PM
- July 9<sup>th</sup>: City Council Meeting – 7:00 PM
- July 14<sup>th</sup>: Planning Commission Meeting – 7:00 PM
- July 23<sup>rd</sup>: City Council Meeting – 7:00 PM

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

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

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

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

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

## EVENTS

May 4<sup>th</sup>: Youth Art Class – CANCELED

May 11<sup>th</sup>: Youth Cooking Class – CANCELED

May 16<sup>th</sup>: City Wide Clean-Up

May 26<sup>th</sup>: Municipal Court

**City of Edgerton, Kansas  
Minutes of City Council Regular Session  
April 23, 2020**

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on April 23, 2020. The meeting convened at 7:03 PM with Mayor Roberts presiding.

**1. ROLL CALL**

Ron Conus	present via videoconference
Clay Longanecker	present via teleconference
Josh Lewis	present via videoconference
Katee Smith	present via videoconference
Josh Beem	present via videoconference

With a quorum present, the meeting commenced.

Staff in attendance:

City Administrator Beth Linn
City Attorney Lee Hendricks via videoconference
City Clerk/Planning and Zoning Coordinator Chris Clinton
Development Services Director Katy Crow via videoconference
Finance Director Karen Kindle via videoconference
Accountant Justin Vermillion via videoconference
Public Works Director Dan Merkh
Marketing and Communications Manager Kara Banks via videoconference

**2. WELCOME**

**3. PLEDGE OF ALLEGIANCE**

**CONSENT AGENDA**

**4. Approve Minutes for April 9, 2020 Regular City Council Meeting.**

Councilmember Smith motioned to approve the Consent Agenda, motion seconded by Councilmember Longanecker. The Consent Agenda was approved, 5-0.

**REGULAR AGENDA**

**5. Public Comments.**

There were no public comments made at this time.

**6. Declaration.**

None of the Councilmembers had any declarations at this time.

**7. Discussion Regarding Possible Changes to the Fee Resolution**

Ms. Katy Crow, Development Services Director, spoke to the Council. She said the Council requested City Staff review the Fee Resolution and provide an analysis related to fee reductions for senior residents at the meeting on March 26, 2020. The specific fees requested for review were chicken permits and building permits for home maintenance items. Ms. Crow stated that the Fee Resolution does have a fee reduction for residents sixty (60) and over for pet registration. City Staff will use the age of 60 as the qualifying age for the proposed fee reductions. Ms. Crow explained the requirements for obtaining a chicken permit and at this time, the City has issued two (2) chicken permits with a possible third one currently under review. Three (3) inquiries for chicken permits have been fielded by City Staff within the last week. Councilmember Longanecker said he appreciates the time City Staff has put into the review of the Fee Resolution. He was unaware of the review it takes for a resident to obtain a chicken permit but believes the reduction of the fee for seniors would still cover most, if not all, of the City's expense. Councilmember Longanecker stated this is a good way to help seniors stay active and obtain locally sourced food. Councilmember Smith asked if the fee reduction was just for seniors. Ms. Crow answered it is and the 2 issued permits do not belong to seniors. Mayor Roberts asked how many of the permits have been renewed. Ms. Crow replied the 2 issued permits will be up for renewal soon. Mayor Roberts agrees this is a great way for seniors to get a local source of food and stated other municipalities have chicken permits get applied for then residents see how much work is needed and do not preceded very far. Ms. Crow restated the requirements residents need to follow to obtain a chicken permit and said City Staff recommends to lowering the fee for seniors aged 60 and over to twenty-five dollars (\$25) per year.

Ms. Crow said the Council also directed City Staff review building permits pertaining to home maintenance. She explained the current Fee Resolution has a fee of fifty dollars (\$50) for permits for residential fuel gas, plumbing, mechanical, and electrical permits. Those permits include project such as water heater replacement, furnace and air conditioning replacement, sewer repairs, basic electric work. Ms. Crow explained there are usually connections to a utility and involve a life safety component that could impact adjacent homeowners. Larger scale projects like decks, room additions, pools, are based on the valuation of the project on a sliding scale and are mostly seen as home improvement and not maintenance. City Staff recommends a reduction of the home maintenance permits to \$25 for seniors. Councilmember Longanecker stated he agrees with City Staff's recommendation as it still covers the City's expense to inspect the work and still gives seniors a more affordable way to maintain their home. Councilmember Beem asked if a water heater needs a permit to be replaced. Ms. Crow stated it does per the City's Code. Mayor Roberts said it is a life safety issue as it connects to gas or electric utility and requires an inspection. The Council directed City Staff to update the Fee Resolution and present it to the Council next meeting.

### **BUSINESS REQUIRING ACTION**

#### **8. CONSIDER THE AUDIT OF FINANCIAL STATEMENTS AS PRESENTED BY VARNEY & ASSOCIATES**

Ms. Karen Kindle, Finance Director, addressed the Council. She stated City Staff completed the 2019 audit of financial statements with Varney and Associates. A letter was provided to the Councilmembers that outlines the audit, showing the City did receive a clean audit

opinion. She thanked City Staff and the Council for helping achieve the clean opinion. She explained a hard copy of the full audit was delivered to each Councilmember today that includes the letter. Ms. Beth Linn, City Administrator shared the letter. She said the letter states it was a smooth audit that issued a clean opinion. Ms. Linn understands there is a lot of information in the audit for the Councilmembers to take in. Due to technical issues, a representative from Varney and Associates was unable to join the meeting. Ms. Linn said it is also a disadvantage of not being able to meet in person, but any questions that are asked will be answered. Ms. Linn explained the volume and complexity of the business Edgerton has makes the clean opinion that much more rewarding. Mayor Roberts thanked City Staff for their amazing work to obtain great audit opinions. Councilmember Conus asked if fourth quarter financial report is not provided since the audit is done. Ms. Linn replied that is correct.

Councilmember Conus motioned to approve the 2019 audit of financial statements as presented by Varney and Associates, Councilmember Longanecker seconded the motion. The 2019 audit was approved, 5-0.

9. **CONSIDER RESOLUTION 04-23-20A SETTING A DATE FOR A PUBLIC HEARING REGARDING THE EDGERTON HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT PROJECT PLAN A1**

Mr. Scott Anderson, Economic Development Council, thanked the Council for allowing him to present. He explained the Resolution is to set the date for a public hearing. He said the Homestead Lane Retail Tax Increment Financing (TIF) District was established on August 22, 2019 at the northeast and northwest corners of Homestead Lane and Interstate 35. At the northeast corner, an agreement was reached between the City and My Store III, Inc for a redevelopment of just over twelve (12) acres.

Mr. Anderson explained what is needed for the City to create a project plan within a TIF District. He went over the findings of the feasibility study, which is the first step. My Store III, Inc. has completed the second step by preparing a project plan. The Planning Commission satisfied the third step when it approved a Resolution on April 14, 2020 that found Project Plan A1 consistent with the Comprehensive Plan. The fourth step is to set a date for the public hearing, which is what this Resolution will achieve by setting the date for the public hearing as May 28, 2020. The City Clerk will do the fifth step by notifying the County, School District, and property owners and publish the notice of the public hearing. The final step will be an Ordinance creating the project plan.

Councilmember Longanecker motioned to approve Resolution No. 04-23-20A, seconded by Councilmember Smith. Resolution No. 04-23-20A was approved and a public hearing was scheduled on May 28, 2020, 5-0.

10. **CONSIDER USING JOHNSON COUNTY'S COOPERATIVE CONTRACT LANGUAGE TO UTILIZE MAX RIEKE BROS. AND UPMIKE PAVING CORP. FOR THE CONSTRUCTION PHASE I OF THE 56 HIGHWAY MULTI-USE TRAIL**

Mr. Dan Merkh, Public Works Director, spoke before the Council. He stated in 2019, the City completed the design of the Highway 56 Trail Project. The Council allocated a total of

\$150,000 for the entire project. In September of 2019, the City held a public letting where six (6) contractors provided bids. All of the bids received were above the allocated budget and the City rejected all of the bids. City Staff was directed to look for options such as phasing this project with others, look for cooperative purchasing options and any other cost saving measures available.

Mr. Merkh stated during the design phase of the 56 Highway Multi-Use Trail project, City Staff looked at the option of constructing the trail out of asphalt or concrete. The City used a typical section of 6 inches of concrete reinforced with fibermesh and the alternate was eight (8) inches of asphalt. Mr. Merkh said City Staff pursued the base bid for the concrete section. While the materials offer similar life expectancies, there is a difference in the maintenance. He explained the concrete does not need as much maintenance as the asphalt requires. The maintenance will be done by City Staff and can be lumped in with the annual street maintenance program.

Mr. Merkh said when the City works with Johnson County Parks and Recreation, access to cooperative purchasing for asphalt trail work became available. This includes hourly cost for site work and the trail paving. This process is similar to the one used to complete the reconstruction of the Martin Creek Park Project in 2018. Mr. Merkh explained the basic cost structure that is available this route. This first phase will cost an estimated \$80,000, and the allocated budget for this phase was \$85,300. City Staff will continue the condemnation process to secure the necessary easements for Phase II. Once the easements have been acquired, City Staff will present the Phase II costs to the Council.

Mayor Roberts requested clarification of the location of the trail for Phase I. Mr. Merkh replied the trail will be on the south side of 56 Highway and start at First Street and continue to the west property line of Edgerton Elementary School, approximately 1,123 linear feet. Councilmember Longanecker asked for if the price was for the entire trail. Mr. Merkh answered it is only for Phase I.

Councilmember Longanecker motioned to approve using Johnson County's cooperative contract language to utilize Max Rieke Bros. and Updike Paving Corp. for the construction of Phase I of the 56 Highway Multi-Use Trail, seconded by Councilmember Beem. The motioned carried, 5-0.

**11. CONSIDER PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF EDGERTON AND BURNS & MCDONNELL INC. FOR 2020 WASTEWATER MASTER PLAN**

Mr. Merkh presented the item to the Council. He stated on February 19, 2020, the City issued a Request for Qualifications seeking engineering teams for the analysis of the wastewater system and development of a Master Plan. The Project includes inventory and analysis of the existing collections system, existing lift stations, and existing wastewater treatment plant. He explained the Project will also review existing development patterns, as well as target future development and system expansion. Inflow and Infiltration (I&I) will also be reviewed. Mr. Merkh stated I&I is the wastewater system receiving stormwater, then conveying it to the plant for treatment. The Project is to provide a list of prioritized projects to add to the City's Capital Improvement Project (CIP) list. This serves as a

roadmap to the City's wastewater system, prioritizing projects to improve existing infrastructure and propose appropriately timed installation of new infrastructure, both to improve efficiencies and be better suited to receive development as it arises.

Mr. Merkh said the Requests for Qualifications were submitted by March 23, 2020 and interviews with the short-listed teams were conducted on April 2, 2020. The selection committee, comprised of the City Administrator, City Engineer, Public Works Director, and Utilities Superintendent, recommends Burns & McDonnell Engineering Company Inc. as the best, most qualified team for the project. The selection committee recommends the team based on their existing experience providing these services to municipalities both of similar size and larger populations. Burns & McDonnell is partnering with a known expert in I&I, TREKK. Mr. Merkh informed the Council Burns & McDonnell were the engineers of record for the current Big Bull Creek Wastewater Treatment Plant.

Mr. Merkh stated the Professional Services Agreement is still under review by both Burns & McDonnell and the City. All revisions are pending approval from the City Engineer, the City's Insurance representative, and the City Attorney. Mr. Merkh explained the funding of the project is identified as the System Development Fee – Sewer, by the CIP. The budget for this project listed in the CIP is \$275,000. He said City Staff has reviewed the proposed scope, initially making adjustments to end up with a scope that balances good stewardship of funds while having a bill of work that still provides a reliable analysis of the City's system and tools to use in the future. After negotiating the scope and fees with the consultant, the price for services is \$279,073. Mr. Merkh explained the available funds to find the additional cost of \$4,073 can be absorbed by the System Development Fee – Sewer.

Ms. Linn stated the funds are not coming out of the operating fund and is not funded by the resident's utility fees. The funds for this project are provided when there is a new connection to the sewer system. Ms. Linn said a representative from Burns & McDonnell is available for questions. Councilmember Lewis inquired to how often a study like this is done. Mr. Merkh replied the industry standard is once every ten (10) years, but the City has not had a complete Master Plan done in fifteen (15) to twenty (20) years. Ms. Linn added a small study was performed when negotiations started with Burlington Northern Santa Fe (BNSF) and Logistics Park Kansas City (LPKC). Mayor Roberts said this is more encompassing and will look at the residential area of the City. It would help in conversations in getting more residential development to the City. He said Master Plans do not expire, but some issues can arise like I&I and a new Master Plan focuses on the whole system and how to provide maintenance in a logical and financially reasonable order. Councilmember Longanecker asked if the study will impact the utility rates. Ms. Linn answered the Master Plan does not affect rates. Mayor Roberts said the current system needs to be reviewed and a Master Plan is needed for the future of Edgerton as it would aid developers find the best location for their development. Councilmember Longanecker if the Master Plan would help lower the rates. Mr. Merkh replied it would not.

Councilmember Longanecker motioned to approve the Professional Services Agreement between the City of Edgerton and Burns & McDonnell Inc for the 2020 Wastewater Master Plan pending changes from the City Attorney and authorize the Mayor to execute the Agreement. The motion was seconded by Councilmember Conus. The motion carried, 5-0.



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

- Quarterly Updates

Ms. Linn stated there are two items for her report. Ms. Kindle spoke to the Council regarding the first quarter financial report. She explained this encompasses January through March. She went through each item with the Council. All of the revenues are projected on track, except for the liquor tax as the Full Draw Bar and Grill is closed and permits and licensing, but that will most likely increase as the weather changes to allow for more construction. Ms. Kindle stated sales tax revenues are looking good for the first quarter, but City Staff will continue reviewing what might be happening with future submissions from Johnson County. Councilmember Conus voiced his concerns about the revenue streams due to the pandemic. He stated the recession started last September and outlooks say this recession is going to be a lot worse than the 2008 recession. He says it is estimated the recession will be four (4) times deeper and a slower recovery. Councilmember Conus wants the City to monitor its spending and revenue streams and stated the licenses and permits fees are on track to be lower similar to 2019. Ms. Kindle stated City Staff will monitor it closely. She informed the Council expenditures are also on track. The General Fund has a good balance and is in the range of the reserve policy and budget. Ms. Kindle explained the water fund and sewer fund to the Council. She stated all of the funds are in range of the policy and meet the 2020 Budget.

- Ms. Linn stated there was an inspection done at 36790 W 207<sup>th</sup> Street. She informed the Council asbestos was found in the house and state procedure has to be followed before demolition can take place. Once that is completed, the building will be demolished.

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

- Mayor Roberts congratulated Councilmember Smith on the birth of her son.
- Report on Impact of COVID-19 to City Operations

Mayor Roberts said he and City Staff are trying to stay on top of all of the new and changing information. He stated conversations have been started on reopening businesses on the County level. Mayor Roberts encouraged the Council to review the White House and Centers for Disease Control and Prevention (CDC) websites on how to start the process reopening.

He stated the State executive order prohibiting gatherings of more than 10 people and the statewide stay home order has been extended to May 3, 2020. Mayor Roberts stated everybody still needs to practice social distancing. He explained Johnson County is testing more and does have a Dashboard that shows the results of that testing. It shares valuable information and shows cases per ZIP code. He said an extremely useful chart shows the hospital capacity. The stay at home order was implemented to keep the hospitals from becoming inundated with patients. He explained the United States is the first country to not run out of ventilators, so the stay at home order has been successful

on that aspect. Mayor Roberts said he has watched these numbers for a few weeks, and they have stayed consistent. He feels reopening might be a possibility with this information.

Mayor Roberts said a Recovery Task Force has been formed and encouraged residents with input to reach out to County Commissioner Mike Brown, who represents Edgerton. He said this Task Force is moving rapidly and want to have recommendations next Thursday. Scott Anderson, Development Bond Council, is also involved with the task force. Mayor Roberts recommended that people take the health survey to help select random testing. More testing will allow the doctors to better understand the virus. The City's Facebook page has shared it twice. Mayor Roberts asked if it has been shared on Twitter. Ms. Kara Banks, Marketing and Communications Manager, replied it has and she is sharing it again now.

Ms. Linn provided an update to City operations. She explained Mayor Roberts issued an executive order to cancel all City events in May. This does include a new bike event and the summer kickoff party. Events by community groups, like the Senior Lunch, will be canceled for May, as well as City Hall rentals. She stated there will be no Planning Commission meeting in May due to a lack of agenda items. The City is working on a phased return to work plan based on the criteria outlined in the White House/CDC Guidance for Opening Up America Again to implement once the Stay at Home Orders are lifted. Ms. Linn explained the 2021 budget calendar has been updated to have work sessions after the stay at home order is allowed to expire. City Council meetings could look differently but having all of the Councilmembers in one place would be a better place to have those work sessions. Ms. Linn informed the Council when the work sessions will be held and stated the budget hearing is still scheduled for August 13, 2020 at this time. She explained the City has activated a login for the Federal Emergency Management Agency (FEMA) portal for reimbursement for eligible costs. City Staff will provide an update once more information is known. She stated City Staff is looking for virtual court options for May as it was continued from April. City Staff is also continuing its monitoring of revenues and the implications of COVID-19 has had on the finances of the City.

Mayor Roberts thanked the efforts of City Staff for helping the City stay on top of all the information and monitoring the finances. Councilmember Conus inquired as to what type of expenses that are reimbursable. Ms. Linn answered FEMA sent out a list for City Staff to review. She knows personal protective equipment is on the list as well as some information technology items, and some overtime City Staff has accumulated. She said if there is a direct linear connection to the pandemic, then City Staff anticipates it to be reimbursable. Mayor Roberts stated guidance is to track everything above and beyond what is normally done. He said the State has authorized the funds of \$50,000,000 for the pandemic and cannot use any federal funds until that fund has been used. Councilmember Conus said he worked for FEMA and the important thing to do is document everything. Mayor Robert said there is a lot of guidance to private businesses, but not as much guidance has been provided to local governments. He said some stimulus funding has been granted to large population areas and those governments do not know what to do with those funds. Johnson County received around \$161,000,000 and Mayor Roberts hopes that is distributed to the municipalities in a fair manner.

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

- May 12<sup>th</sup>: Planning Commission Meeting – 7:00 PM – CANCELED
- May 14<sup>th</sup>: City Council Meeting – 7:00 PM
- May 28<sup>th</sup>: City Council Meeting – 7:00 PM
- June 9<sup>th</sup>: Planning Commission Meeting – 7:00 PM
- June 11<sup>th</sup>: City Council Meeting – 7:00 PM
- June 25<sup>th</sup>: City Council Meeting – 7:00 PM

#### 15. **Adjourn**

Mayor said City Hall is open during meetings, requests people bring PPE and social distance.

Councilmember Longanecker motioned to adjourn the meeting, seconded by Councilmember Smith. The motion carried and the meeting adjourned at 8:31 PM, 5-0.

## EVENTS

April 27<sup>th</sup>: Camping Day – CANCELED

April 28<sup>th</sup>: Municipal Court – CONTINUED to May 26<sup>th</sup>

May 4<sup>th</sup>: Youth Art Class: Kinetic Sand and Sand Painting – CANCELED

May 11<sup>th</sup>: Youth Cooking Class: Cinnamon Disks and Rock Candy – CANCELED

## City Council Action Item

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**Council Meeting Date:** May 14, 2020

**Department:** Administration

**Agenda Item: Consider Resolution No. 05-14-20A Establishing Fees and Rates for Permits, Licenses and Services Within the City of Edgerton, Kansas**

**Background/Description of Item:**

On December 10, 2015, the City Council approved Ordinance No. 1006 which included the authorization for the City to create a Fee Resolution. The purpose for the resolution is to consolidate the fees in one location and remove the fees from the Edgerton Municipal Code "Code Book," thereby eliminating the need for continual ordinance amendments. The following resolution, No. 05-14-20A, contains updates to the Fee Resolution.

At the March 26, 2020 Edgerton City Council meeting the Governing Body requested staff review the Fee Resolution and provide an analysis related to fee reductions for senior residents. The specific fees requested for review were 1) chicken permits and 2) building permits for home maintenance items.

Staff provided an analysis of those fees and presented those findings at the April 23, 2020 City Council meeting. After a review of that analysis and a brief discussion, council recommended the following changes to the Fee Resolution:

- Chicken permit fees (Edgerton Municipal Code Article 2, Section 2-201) be reduced from \$50 to \$25 annually for residents 60 years of age and older;
- Building permits for basic fuel code, plumbing code, mechanical code, and electrical code (Code of Regulations for Buildings and Construction, Article 2, Section 4) be reduced from \$50 to \$25 annually for residents 60 years of age and older.

As a housekeeping item, it was noted during the review of the Code of Regulations for Buildings and Construction for this item, that the fees related to plans review are outlined in Article 2, Section 4 of that code but have not been specifically outlined in the Fee Resolution. This update does not make any change to the fee amount, it only updates the Fee Resolution to include a list of fees already adopted by City Code.

**Related Ordinance(s) or Statue(s):** Ordinance No. 1006, Ordinance 891

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**Funding Source:** N/A

**Budget Allocated:** N/A

x Karen E. Kindle

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

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**Recommendation: Approve Resolution No. 05-14-20A Establishing Fees and Rates for Permits, Licenses and Services Within the City of Edgerton, Kansas.**

**Enclosed:** Draft Resolution No. 05-14-20A redline version  
Draft Resolution No. 05-14-20A clean version

**Prepared by:** Katy Crow, Development Services Director

## **RESOLUTION NO. 05-14-20A**

### **A RESOLUTION ESTABLISHING FEES AND RATES FOR PERMITS, LICENSES AND SERVICES WITHIN THE CITY OF EDGERTON, KANSAS.**

**WHEREAS**, pursuant to Ordinance No. 1006, the City Council indicated that all City Fees that previously were spread throughout the City Code, and would require an Ordinance amending that particular part of the Code to change the fee, would instead be consolidated into a City Fee Resolution such that all fees could be better monitored and, any revisions thereto, could be accomplished via resolution instead of an ordinance; and

**WHEREAS**, City Staff continues to work on consolidating said fees into this Fee Resolution and, as those fees are added in, revised versions of this Resolution will be presented for Council approval.

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

#### **SECTION 1: FEES.**

The following fees shall be due and payable to the City Clerk:

#### **OPEN RECORDS**

Inspection Fee, if item is not readily available	\$20.00 per request
Copying Fee (no charge for first ten (10) pages)	\$0.10 per page after first ten
Mailing Fee	Actual mailing costs
Facsimile charges	\$1.00 / \$0.10 per page
Searches by staff, three (3) hours or more	\$25.00 per hour

#### **ANIMAL CONTROL**

##### **Animal Registration Fees:**

Neutered/Spayed dog or cat	\$5.00
Unneutered/Non-spayed dog or cat	\$25.00
Seniors (60 plus) with neutered/spayed dog or cat	\$No Charge
Chicken registration	\$50.00
Chicken registration for senior residents (60 plus)	<b>\$25.00</b>
Breeder Fee	\$500.00
Late Registration Fee	\$25.00
Duplicate Tag Fee	\$1.00

##### **Animal Redemption Fees:**

Registered	
First pick up	\$No charge
Second pick up	\$50.00

Third pick up	\$100.00
Non-Registered, Neutered/Spayed First pick up	\$50.00
Non-Registered, Unneutered/unspayed First pick up	\$100.00
City provided rabies vaccination	\$50.00
Habitual Violator (dog picked up more than three times in one year)	\$250.00
Boarding Fee	\$10.00 per day

## **BEVERAGES**

### **Cereal Malt Beverages**

General Retailer	\$100.00	
Limited Retailer		\$35.00
Change of Location Fee		\$5.00

### **Drinking Establishments**

License Fee – Biennial occupation tax	\$500.00
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### **Private Club**

License Fee – Class A Biennial occupation tax	\$500.00
License Fee – Class B Biennial occupation tax	\$500.00

### **Special Event**

Permit Fee	\$50.00
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### **Caterer**

Permit Fee	\$250.00
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### **Retail**

Permit Fee Biennial occupation tax	\$500.00
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## **BUILDINGS AND CONSTRUCTION**

### **Permit Fees – Non-Residential Building**

<i>Total Valuation</i>	<i>Fee</i>
\$1.00 to \$500	\$22.00
\$501.00 to \$2,000.00	\$22.00 for the first \$500.00 plus \$2.75 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$63.00 for the first \$2,000.00 plus \$12.50 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001 to \$50,000.00	\$352.00 for the first \$25,000.00 plus \$9.00 for each additional \$1,000.00, or fractions thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$580.00 for the first \$50,000.00 plus \$6.25 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$895.00 for the first \$100,000.00 plus \$5.00 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,000.00 to \$1,000,000.00	\$2,855 for the first \$500,000.00 plus \$4.25 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,000.01 and up	\$4,955.00 for the first \$1,000,000.00 plus \$2.75 for each additional \$1,000.00, or fraction thereof

A plan review fee shall be assessed at sixty-five percent (65%) of the calculated building permit fee.



### Other Inspections and Fees

Inspections outside of normal business hours (minimum charge – two hours)	\$50.00 per hour
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Re-inspection fees assessed	\$50.00 per hour
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Inspections for which no fee is specifically indicated (minimum charge – one-half hour)	\$50.00 per hour
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Additional plan review required by changes, additions or revisions to plans (or total hourly cost to the juris- diction, whichever is greatest. Cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of employees involved)	\$50.00 per hour
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For use of outside consultants for plan checking Actual Costs  
or inspections (costs include administrative and  
overhead costs)

### **Permit Fees – Residential Building**

<i>Total Valuation</i>	<i>Fee</i>
\$1 to \$500	\$13
\$501 to \$2,000	\$13 for first \$500.00 plus \$1.50 for each additional \$100.00 or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$35.50 for the first \$2,000.00 plus \$8.00 for each additional \$1,000 or fraction thereof, to and including \$25,000.
\$25,001 to \$50,000	\$219.50 for the first \$25,000 plus \$6.50 for each additional \$1,000 or fraction thereof, to and including \$50,000.
\$50,001 to \$100,000	\$381.00 for the first \$50,000 plus \$4.00 for each additional \$1,000 or fraction thereof, to and including \$100,000.

\$100,001 to \$500,000	\$582.00 for the first \$100,000 plus \$3.00 for each additional \$1,000 or fraction thereof, to and including \$500,000.
\$500,000 and up	\$1782.00 for the first \$500,000 plus \$2.00 for each additional \$1,000 or fraction thereof.

A plan review fee shall be assessed at sixty-five percent (65%) of the calculated building permit fee.

#### Other Inspections and Fees

Inspections outside of normal business hours (minimum charge – two hours)	\$50.00 per hour
Re-inspection fees assessed	\$50.00 per hour
Inspections for which no fee is specifically indicated (minimum charge – one-half hour)	\$50.00 per hour
Additional plan review required by changes, additions or revisions to plans (or total hourly cost to the jurisdiction, whichever is greatest. Cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of employees involved)	\$50.00 per hour
For use of outside consultants for plan checking or inspections (costs include administrative and overhead costs)	Actual Costs
Certificate of Occupancy	\$10.00
Fire Review and Inspection - Core and Shell 100 square feet to 12,500 square feet Multi-Family (R-3) Commercial Zoning Districts (C-D, C-1, C-2) Industrial Zoning Districts (B-P, L-P, I-G, I-H)	\$250.00
Fire Review and Inspection - Tenant Finish 100 square feet to 12,500 square feet Multi-Family (R-3) Commercial Zoning Districts (C-D, C-1, C-2)	\$250.00

Industrial Zoning Districts (B-P, L-P, I-G, I-H)	
Fire Review and Inspection	\$0.02 per square foot
- Core and Shell	
12,501.00 square feet or greater	
Multi-Family (R-3)	
Commercial Zoning Districts (C-D, C-1, C-2)	
Industrial Zoning Districts (B-P, L-P, I-G, I-H)	
Fire Review and Inspection	\$0.02 per square foot
- Tenant Finish	
12,501 square feet or greater	
Multi-Family (R-3)	
Commercial Zoning Districts (C-D, C-1, C-2)	
Industrial Zoning Districts (B-P, L-P, I-G, I-H)	

### **Permit Fees - Fuel Gas Code**

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

### **Permit Fees – Plumbing Code**

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

### **Permit Fees – Mechanical Code**

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

#### **Permit Fees – Electrical Code**

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Issuance of annual permit	\$250.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

#### **Moving Buildings**

House/building/derrick or other structure permit	\$5.00
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#### **Oil and Gas Wells**

Permit Fee	\$150.00 per well
License Fee	\$25.00 per well

#### **Fire Insurance Proceeds Fund**

Final Settlement Funds (K.S.A. 40-3901 <u>et seq.</u> )	\$5000.00 or 10% of covered claim payment, whichever is less
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## **BUSINESS LICENSE**

General License	\$5.00
Solicitor's License – Investigation Fee	\$50.00
Solicitor's License – Issuance Per day	\$25.00
Solicitor's License – Six Months	\$250.00
Adult Entertainment Business License	\$250.00
Adult Entertainment Manager's License	\$20.00
Adult Entertainers License	\$20.00
Adult Entertainment Service's License	\$20.00
Mobile Food Vender License	\$100.00
Block Party	\$25.00

## **FIREWORKS**

Fireworks – Temporary Retail Sale Application Fee	\$500.00
Fireworks – Temporary Retail Sale Bond	\$1000.00
Public Display Application Fee	\$100.00

## **SOLID WASTE**

Customer Unit Charge – Monthly (One trash container and one recycle container)	\$7.50
Extra Container Charge – Monthly	\$5.00
Extra Recycle Container – Monthly	\$1.00

## **PUBLIC PROPERTY**

Community Hall Rental – Residents (24-hrs midnight)	\$100.00
Community Hall Rental – Non-Residents (24 -hrs midnight)	\$150.00
Rental Deposit Required for Rental (Refundable) (Due at time of Reservation)	\$50.00
Overnight Camping (by special permit)	\$10.00
Martin Creek Park Lights	
-Ball field #1 Lights	\$20 / hour
-Horse Shoe Pit Lights	\$20 / hour
Right-Of-Way Permit	\$100.00

## **PUBLIC OFFENSES**

Worthless Check/Returned Check/Dishonored Instrument	\$25.00
Abatement Administrative Fee	\$50.00 per abatement

## **UTILITIES - WATER**

### **Water Rate**

#### **WATER**

**[Customer Service Charge + Vol. Rate = Monthly Bill]**

#### **Customer Service Charge**

<b>Meter Size</b>	<b>Inside City</b>	<b>Outside City</b>
5/8"	\$20.83	\$31.23
1"	\$24.76	\$37.13
1 1/2"	\$31.30	\$46.95
2"	\$39.17	\$58.75
3"	\$57.52	\$86.26
4"	\$83.71	\$125.57
6"	\$149.22	\$223.82
8"	\$227.84	\$341.76

#### **Volumetric Rate**

<b>Tiers</b>	<b>Inside City</b>	<b>Outside City</b>
0-2,000	\$4.29	\$6.43
2,001-10,000	\$9.64	\$14.45
>10,000	\$13.30	\$19.93

### **Water System Development Fees**

System Development Fee (based on size of water meter)

<u>METER SIZE</u>	<u>CHARGES</u>
5/8"	\$4,300
1"	\$10,750
1.5"	\$21,500
2"	\$34,400
3"	\$64,500
4"	\$107,500
6"	\$215,000
8"	\$344,000

**Water Connection Fees**

Connections Charge: Inside City - Regular ( $\frac{3}{4}$ -inch service, with $\frac{3}{4}$ -inch by 5/8 inch-meter)	\$1,250.00
Connections Charge: Outside City - Regular ( $\frac{3}{4}$ -inch service, with $\frac{3}{4}$ -inch by 5/8-inch meter)	\$7,500.00
Connections Charge: Other Sizes	TBD by Governing Body
Water Service Application (inside city limits)	\$30.00
Water Service Application (outside city limits)	\$75.00
Reconnection Fee, during normal business hours	\$25.00
Reconnection Fee, during non-business hours	\$100.00
Meter Testing (if meter is correct)	\$10.00
Hydrant Meter Refundable Deposit	\$1,500.00

## UTILITIES - WASTEWATER

### Wastewater Rate

#### WASTEWATER

[Customer Service Charge + Vol. Rate = Monthly Bill]

#### Customer Service Charge

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\$6.55

#### Volumetric Rate

\$7.58 [per 1,000 gallons]<sup>1</sup>

LPKC Infrastructure

\$1.00 [per 1,000 gallons]

<sup>1</sup> For residential use properties, Section 15-305(b) of Article 3 of Chapter XV of the City Code will determine the level of gallons.

### Wastewater System Development Fees

System Development Fee (based on size of water meter)

<u>METER SIZE</u>	<u>CHARGES</u>
5/8"	\$4,800
3/4"	\$6,600
1"	\$12,000
1.5"	\$24,000
2"	\$38,400
3"	\$72,000
4"	\$120,000
6"	\$240,000
8"	\$384,000

### Wastewater Connection Fees

Connection Charge and Inspection Fee \$750.00

### Wholesale Wastewater Rate

\$3.36 [per 1,000 gallons]

### Private Disposal System Fees

Installation Permit	\$250.00
Significant Alteration and Repair Permit	\$100.00
Minor Repair	\$50.00
Non-Residential Annual Operation Permit	\$50.00
(first year fee included in Installation Permit Fee)	

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Septic/Holding Tank Removal	\$100.00
Inspection, non-business hours (2-hour charge minimum, additional to inspection fee)	\$15.00 per hour

## **ZONING AND DEVELOPMENT FEES**

Manufactured Home Park License	\$100.00
Temporary Mobile Home Fee	\$25.00
Planned Unit Development: Conceptual Plan/Preliminary Plat Fee	\$200.00 plus \$2.00 per lot
Final Plan/Final Plat Fee	\$300.00 plus \$5.00 per lot
Board of Zoning Appeals Variance or Appeal Fee	\$250.00 plus publication fees
Rezoning Fee	\$250.00
Conditional/Special Use Permit Fee	
Residential Zoning Districts	\$100.00 plus publication fees
Non-Residential Zoning Districts	\$1,000.00 plus publication fees
Temporary Construction Activities	
Permit Fee	\$500.00
Amended Application Requiring Another Planning Commission Review, Post Approval	\$250.00
Expired Permit – treated as a new permit	\$500.00
Blasting Permit (one (1) year)	\$500.00
Home Occupation Permit Fee	\$5.00
Preliminary/Final Site Plan Fee	\$200.00 plus \$10.00 per acre plus publication fees
Site Plan Re-review Fee	\$200.00 plus \$1.00 per acre
Revised Site Plan Fee	
Requiring Planning Commission Approval	\$250.00
Requiring Zoning Administrator Approval	\$100.00
Preliminary Plat Fee	\$300.00 plus \$10.00 per lot plus publication fees
Preliminary Plat Re-review Fee	\$300.00 plus \$10 per lot

Final Plat Fee	\$300.00 plus \$10.00 per lot plus publication fees
Final Plat Re-review Fee	\$300.00 plus \$10 per lot
Lot Split Fee	\$100.00
Street Excise Tax	\$0.10 per square foot of final plat
Park Impact Fee/Residential	\$300.00 per lot
Park Impact Fee/Commercial	\$0.08 per square foot of building
Park Impact Fee/Industrial	\$0.08 per square foot of building
New Street Light Fee	\$250.00
New Public Improvement Inspection Fee	
Street/Stormwater	Actual cost of inspection + 2% administrative fee
Water/Sewer	Actual cost of inspection
Land Disturbance (greater than one acre)	\$250.00
Flood Plain Development Permit	\$75.00
Zoning Verification Letter	\$75.00 per request

### **Sign Fees**

Home Occupation Sign	\$35.00
Temporary/Banner Sign	\$35.00
Pole Sign	\$125.00
Monument Sign	\$35.00
Façade/Wall Sign	\$35.00
Mobile Home Park Sign	\$35.00
Subdivision Name Sign	\$35.00
Apartment Complex Name Sign	\$35.00

**SECTION 2: Effective Date.** This Resolution shall become effective upon adoption by the Governing Body.

**SECTION 3: Repealer.** Any fees or resolutions inconsistent herewith are hereby repealed and said City Code references (along with other specific fee references throughout the City

Code that will now be controlled by the Fee Resolution) will be formally withdrawn via a future ordinance.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS ON THIS 14<sup>th</sup> DAY of MAY, 2020.

\_\_\_\_\_  
DONALD ROBERTS, MAYOR

ATTEST:

\_\_\_\_\_  
CHRISTOPHER CLINTON, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
LEE W. HENDRICKS, CITY ATTORNEY

## **RESOLUTION NO. 05-14-20A**

### **A RESOLUTION ESTABLISHING FEES AND RATES FOR PERMITS, LICENSES AND SERVICES WITHIN THE CITY OF EDGERTON, KANSAS.**

**WHEREAS**, pursuant to Ordinance No. 1006, the City Council indicated that all City Fees that previously were spread throughout the City Code, and would require an Ordinance amending that particular part of the Code to change the fee, would instead be consolidated into a City Fee Resolution such that all fees could be better monitored and, any revisions thereto, could be accomplished via resolution instead of an ordinance; and

**WHEREAS**, City Staff continues to work on consolidating said fees into this Fee Resolution and, as those fees are added in, revised versions of this Resolution will be presented for Council approval.

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

#### **SECTION 1: FEES.**

The following fees shall be due and payable to the City Clerk:

#### **OPEN RECORDS**

Inspection Fee, if item is not readily available	\$20.00 per request
Copying Fee (no charge for first ten (10) pages)	\$0.10 per page after first ten
Mailing Fee	Actual mailing costs
Facsimile charges	\$1.00 / \$0.10 per page
Searches by staff, three (3) hours or more	\$25.00 per hour

#### **ANIMAL CONTROL**

##### **Animal Registration Fees:**

Neutered/Spayed dog or cat	\$5.00
Unneutered/Non-spayed dog or cat	\$25.00
Seniors (60 plus) with neutered/spayed dog or cat	\$No Charge
Chicken registration	\$50.00
Chicken registration for senior residents (60 plus)	\$25.00
Breeder Fee	\$500.00
Late Registration Fee	\$25.00
Duplicate Tag Fee	\$1.00

##### **Animal Redemption Fees:**

Registered	
First pick up	\$No charge
Second pick up	\$50.00

Third pick up	\$100.00
Non-Registered, Neutered/Spayed First pick up	\$50.00
Non-Registered, Unneutered/unspayed First pick up	\$100.00
City provided rabies vaccination	\$50.00
Habitual Violator (dog picked up more than three times in one year)	\$250.00
Boarding Fee	\$10.00 per day

## **BEVERAGES**

### **Cereal Malt Beverages**

General Retailer	\$100.00	
Limited Retailer		\$35.00
Change of Location Fee		\$5.00

### **Drinking Establishments**

License Fee – Biennial occupation tax	\$500.00
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### **Private Club**

License Fee – Class A Biennial occupation tax	\$500.00
License Fee – Class B Biennial occupation tax	\$500.00

### **Special Event**

Permit Fee	\$50.00
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### **Caterer**

Permit Fee	\$250.00
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### **Retail**

Permit Fee Biennial occupation tax	\$500.00
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## **BUILDINGS AND CONSTRUCTION**

### **Permit Fees – Non-Residential Building**

<i>Total Valuation</i>	<i>Fee</i>
\$1.00 to \$500	\$22.00
\$501.00 to \$2,000.00	\$22.00 for the first \$500.00 plus \$2.75 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$63.00 for the first \$2,000.00 plus \$12.50 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001 to \$50,000.00	\$352.00 for the first \$25,000.00 plus \$9.00 for each additional \$1,000.00, or fractions thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$580.00 for the first \$50,000.00 plus \$6.25 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$895.00 for the first \$100,000.00 plus \$5.00 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,000.00 to \$1,000,000.00	\$2,855 for the first \$500,000.00 plus \$4.25 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,000.01 and up	\$4,955.00 for the first \$1,000,000.00 plus \$2.75 for each additional \$1,000.00, or fraction thereof

A plan review fee shall be assessed at sixty-five percent (65%) of the calculated building permit fee.

### Other Inspections and Fees

Inspections outside of normal business hours (minimum charge – two hours)	\$50.00 per hour
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Re-inspection fees assessed	\$50.00 per hour
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Inspections for which no fee is specifically indicated (minimum charge – one-half hour)	\$50.00 per hour
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Additional plan review required by changes, additions or revisions to plans (or total hourly cost to the juris- diction, whichever is greatest. Cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of employees involved)	\$50.00 per hour
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For use of outside consultants for plan checking Actual Costs  
or inspections (costs include administrative and  
overhead costs)

### **Permit Fees – Residential Building**

<i>Total Valuation</i>	<i>Fee</i>
\$1 to \$500	\$13
\$501 to \$2,000	\$13 for first \$500.00 plus \$1.50 for each additional \$100.00 or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$35.50 for the first \$2,000.00 plus \$8.00 for each additional \$1,000 or fraction thereof, to and including \$25,000.
\$25,001 to \$50,000	\$219.50 for the first \$25,000 plus \$6.50 for each additional \$1,000 or fraction thereof, to and including \$50,000.
\$50,001 to \$100,000	\$381.00 for the first \$50,000 plus \$4.00 for each additional \$1,000 or fraction thereof, to and including \$100,000.

\$100,001 to \$500,000	\$582.00 for the first \$100,000 plus \$3.00 for each additional \$1,000 or fraction thereof, to and including \$500,000.
\$500,000 and up	\$1782.00 for the first \$500,000 plus \$2.00 for each additional \$1,000 or fraction thereof.

A plan review fee shall be assessed at sixty-five percent (65%) of the calculated building permit fee.

#### Other Inspections and Fees

Inspections outside of normal business hours (minimum charge – two hours)	\$50.00 per hour
Re-inspection fees assessed	\$50.00 per hour
Inspections for which no fee is specifically indicated (minimum charge – one-half hour)	\$50.00 per hour
Additional plan review required by changes, additions or revisions to plans (or total hourly cost to the jurisdiction, whichever is greatest. Cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of employees involved)	\$50.00 per hour
For use of outside consultants for plan checking or inspections (costs include administrative and overhead costs)	Actual Costs
Certificate of Occupancy	\$10.00
Fire Review and Inspection - Core and Shell 100 square feet to 12,500 square feet Multi-Family (R-3) Commercial Zoning Districts (C-D, C-1, C-2) Industrial Zoning Districts (B-P, L-P, I-G, I-H)	\$250.00
Fire Review and Inspection - Tenant Finish 100 square feet to 12,500 square feet Multi-Family (R-3) Commercial Zoning Districts (C-D, C-1, C-2)	\$250.00



Industrial Zoning Districts (B-P, L-P, I-G, I-H)

Fire Review and Inspection	\$0.02 per square foot
- Core and Shell	
12,501.00 square feet or greater	
Multi-Family (R-3)	
Commercial Zoning Districts (C-D, C-1, C-2)	
Industrial Zoning Districts (B-P, L-P, I-G, I-H)	

Fire Review and Inspection	\$0.02 per square foot
- Tenant Finish	
12,501 square feet or greater	
Multi-Family (R-3)	
Commercial Zoning Districts (C-D, C-1, C-2)	
Industrial Zoning Districts (B-P, L-P, I-G, I-H)	

**Permit Fees - Fuel Gas Code**

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

**Permit Fees – Plumbing Code**

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

**Permit Fees – Mechanical Code**

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

#### **Permit Fees – Electrical Code**

Issuance of Permit	\$50.00
Issuance of Permit for senior residents (60 plus)	\$25.00
Supplemental Permit	\$50.00
Issuance of annual permit	\$250.00
Inspection outside normal business hours	\$50.00 per hour
Re-inspection	\$50.00 per hour
Additional plan review required by changes, additions or revisions to approved plans (minimum charge – one hour)	\$50.00 per hour

#### **Moving Buildings**

House/building/derrick or other structure permit	\$5.00
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#### **Oil and Gas Wells**

Permit Fee	\$150.00 per well
License Fee	\$25.00 per well

#### **Fire Insurance Proceeds Fund**

Final Settlement Funds (K.S.A. 40-3901 <u>et seq.</u> )	\$5000.00 or 10% of covered claim payment, whichever is less
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## **BUSINESS LICENSE**

General License	\$5.00
Solicitor's License – Investigation Fee	\$50.00
Solicitor's License – Issuance Per day	\$25.00
Solicitor's License – Six Months	\$250.00
Adult Entertainment Business License	\$250.00
Adult Entertainment Manager's License	\$20.00
Adult Entertainers License	\$20.00
Adult Entertainment Service's License	\$20.00
Mobile Food Vender License	\$100.00
Block Party	\$25.00

## **FIREWORKS**

Fireworks – Temporary Retail Sale Application Fee	\$500.00
Fireworks – Temporary Retail Sale Bond	\$1000.00
Public Display Application Fee	\$100.00

## **SOLID WASTE**

Customer Unit Charge – Monthly (One trash container and one recycle container)	\$7.50
Extra Container Charge – Monthly	\$5.00
Extra Recycle Container – Monthly	\$1.00

## **PUBLIC PROPERTY**

Community Hall Rental – Residents (24-hrs midnight)	\$100.00
Community Hall Rental – Non-Residents (24 -hrs midnight)	\$150.00
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Overnight Camping (by special permit)	\$10.00
Martin Creek Park Lights	
-Ball field #1 Lights	\$20 / hour
-Horse Shoe Pit Lights	\$20 / hour
Right-Of-Way Permit	\$100.00

## **PUBLIC OFFENSES**

Worthless Check/Returned Check/Dishonored Instrument	\$25.00
Abatement Administrative Fee	\$50.00 per abatement

## **UTILITIES - WATER**

### **Water Rate**

#### **WATER**

**[Customer Service Charge + Vol. Rate = Monthly Bill]**

#### **Customer Service Charge**

<b>Meter Size</b>	<b>Inside City</b>	<b>Outside City</b>
5/8"	\$20.83	\$31.23
1"	\$24.76	\$37.13
1 1/2"	\$31.30	\$46.95
2"	\$39.17	\$58.75
3"	\$57.52	\$86.26
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6"	\$149.22	\$223.82
8"	\$227.84	\$341.76

#### **Volumetric Rate**

<b>Tiers</b>	<b>Inside City</b>	<b>Outside City</b>
0-2,000	\$4.29	\$6.43
2,001-10,000	\$9.64	\$14.45
>10,000	\$13.30	\$19.93

### **Water System Development Fees**

System Development Fee (based on size of water meter)

<u>METER SIZE</u>	<u>CHARGES</u>
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1"	\$10,750
1.5"	\$21,500
2"	\$34,400
3"	\$64,500
4"	\$107,500
6"	\$215,000
8"	\$344,000

**Water Connection Fees**

Connections Charge: Inside City - Regular (¾-inch service, with ¾-inch by 5/8 inch-meter)	\$1,250.00
Connections Charge: Outside City - Regular (¾-inch service, with ¾-inch by 5/8-inch meter)	\$7,500.00
Connections Charge: Other Sizes	TBD by Governing Body
Water Service Application (inside city limits)	\$30.00
Water Service Application (outside city limits)	\$75.00
Reconnection Fee, during normal business hours	\$25.00
Reconnection Fee, during non-business hours	\$100.00
Meter Testing (if meter is correct)	\$10.00
Hydrant Meter Refundable Deposit	\$1,500.00

## UTILITIES - WASTEWATER

### Wastewater Rate

#### WASTEWATER

[Customer Service Charge + Vol. Rate = Monthly Bill]

#### Customer Service Charge

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\$6.55

#### Volumetric Rate

\$7.58 [per 1,000 gallons]<sup>1</sup>

LPKC Infrastructure

\$1.00 [per 1,000 gallons]

<sup>1</sup> For residential use properties, Section 15-305(b) of Article 3 of Chapter XV of the City Code will determine the level of gallons.

### Wastewater System Development Fees

System Development Fee (based on size of water meter)

<u>METER SIZE</u>	<u>CHARGES</u>
5/8"	\$4,800
3/4"	\$6,600
1"	\$12,000
1.5"	\$24,000
2"	\$38,400
3"	\$72,000
4"	\$120,000
6"	\$240,000
8"	\$384,000

### Wastewater Connection Fees

Connection Charge and Inspection Fee \$750.00

### Wholesale Wastewater Rate

\$3.36 [per 1,000 gallons]

### Private Disposal System Fees

Installation Permit	\$250.00
Significant Alteration and Repair Permit	\$100.00
Minor Repair	\$50.00
Non-Residential Annual Operation Permit	\$50.00
(first year fee included in Installation Permit Fee)	

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Septic/Holding Tank Removal	\$100.00
Inspection, non-business hours (2-hour charge minimum, additional to inspection fee)	\$15.00 per hour

## **ZONING AND DEVELOPMENT FEES**

Manufactured Home Park License	\$100.00
Temporary Mobile Home Fee	\$25.00
Planned Unit Development:	
Conceptual Plan/Preliminary Plat Fee	\$200.00 plus \$2.00 per lot
Final Plan/Final Plat Fee	\$300.00 plus \$5.00 per lot
Board of Zoning Appeals Variance or Appeal Fee	\$250.00 plus publication fees
Rezoning Fee	\$250.00
Conditional/Special Use Permit Fee	
Residential Zoning Districts	\$100.00 plus publication fees
Non-Residential Zoning Districts	\$1,000.00 plus publication fees
Temporary Construction Activities	
Permit Fee	\$500.00
Amended Application Requiring Another Planning Commission Review, Post Approval	\$250.00
Expired Permit – treated as a new permit	\$500.00
Blasting Permit (one (1) year)	\$500.00
Home Occupation Permit Fee	\$5.00
Preliminary/Final Site Plan Fee	\$200.00 plus \$10.00 per acre plus publication fees
Site Plan Re-review Fee	\$200.00 plus \$1.00 per acre
Revised Site Plan Fee	
Requiring Planning Commission Approval	\$250.00
Requiring Zoning Administrator Approval	\$100.00
Preliminary Plat Fee	\$300.00 plus \$10.00 per lot plus publication fees
Preliminary Plat Re-review Fee	\$300.00 plus \$10 per lot

Final Plat Fee	\$300.00 plus \$10.00 per lot plus publication fees
Final Plat Re-review Fee	\$300.00 plus \$10 per lot
Lot Split Fee	\$100.00
Street Excise Tax	\$0.10 per square foot of final plat
Park Impact Fee/Residential	\$300.00 per lot
Park Impact Fee/Commercial	\$0.08 per square foot of building
Park Impact Fee/Industrial	\$0.08 per square foot of building
New Street Light Fee	\$250.00
New Public Improvement Inspection Fee	
Street/Stormwater	Actual cost of inspection + 2% administrative fee
Water/Sewer	Actual cost of inspection
Land Disturbance (greater than one acre)	\$250.00
Flood Plain Development Permit	\$75.00
Zoning Verification Letter	\$75.00 per request

### **Sign Fees**

Home Occupation Sign	\$35.00
Temporary/Banner Sign	\$35.00
Pole Sign	\$125.00
Monument Sign	\$35.00
Façade/Wall Sign	\$35.00
Mobile Home Park Sign	\$35.00
Subdivision Name Sign	\$35.00
Apartment Complex Name Sign	\$35.00

**SECTION 2: Effective Date.** This Resolution shall become effective upon adoption by the Governing Body.

**SECTION 3: Repealer.** Any fees or resolutions inconsistent herewith are hereby repealed and said City Code references (along with other specific fee references throughout the City



Code that will now be controlled by the Fee Resolution) will be formally withdrawn via a future ordinance.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS ON THIS 14<sup>th</sup> DAY of MAY, 2020.

\_\_\_\_\_  
DONALD ROBERTS, MAYOR

ATTEST:

\_\_\_\_\_  
CHRISTOPHER CLINTON, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
LEE W. HENDRICKS, CITY ATTORNEY

## City Council Action Item

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**Council Meeting Date:** May 14, 2020

**Department:** Administration

### **Agenda Item: Consider Master Services Agreement (MSA) with Simplifile for Electronic Document Recording Services at the Johnson County Records and Tax Administration (RTA)**

**Background/Description of Item:**

The City of Edgerton must record several types of executed documents (plats, deeds, lot splits, easements, right of ways, etc.) with the Johnson County Records and Tax Administration (RTA). This process involves a staff member traveling to the Johnson County offices in Olathe and waiting while the document is reviewed for recording. If the document needs a correction, the staff must return to Edgerton, make the correction and travel back to RTA offices. This back and forth travel time and having to wait in for RTA staff to review the document prior to recording is unproductive down time for City staff members. Additionally, during the recent stay-home order for COVID-19, the conducting of in person business became difficult.

In conversations with staff at other municipalities, Edgerton staff has learned about Simplifile, an organization which can assist in the recording of documents with the RTA electronically. Founded in 2000, Simplifile is a nationwide organization with 2,073 participating county recording offices which represent more than 80% of the U.S. population. They recently celebrated the recording of their one millionth document, and they conduct transactions for both the public and private sectors. If this agreement is approved, staff would have the ability to upload a document through the Simplifile portal, and they would handle the recording of it with the County. Documents which require corrections could be passed back and forth electronically rather than staff traveling back and forth to county offices.

Attached is the proposed Master Services Agreement with Simplifile. The proposed agreement is for a one-year period which will automatically renew and be extended for additional one-year terms until either the City of Edgerton or Simplifile terminates the agreement with a 60-day written notification. The City may terminate the agreement at any time. There are no up-front fees. The City will remit to Simplifile the actual cost of recording the documents with the RTA plus a \$2 handling fee per document. The costs associated with recording documents will be charged to their associated projects.

The City Attorney has reviewed the agreement and provided feedback which was incorporated into this final version.

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

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**Funding Source:** N/A – recording fees are charged to individual projects

**Budget Allocated:** N/A

**Finance Director Approval:**

x Karen E. Kindle

Karen Kindle, Finance Director

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**Recommendation: Approve Master Services Agreement (MSA) with Simplifile for Electronic Document Recording Services at the Johnson County Records and Tax Administration (RTA)**

**Enclosed:**

- Simplifile MSA with Fee and Payment Terms

**Prepared by:** Katy Crow, Development Services Director

# Master Services Agreement (MSA)

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This Master Services Agreement (the "Agreement") is entered into and made effective as of this \_\_\_\_ day of April, 2020 (the "Effective Date"), by and between Simplifile, LC, a Utah limited liability company located at 5072 North 300 West, Provo, Utah 84604 ("Service Provider"), and City of Edgerton, located at 404 East Nelson, Edgerton, KS 66021 ("Customer") with respect to the facts set forth below. Throughout this Agreement, any reference to "Customer" shall include not only Customer but also any Affiliate, employee, contractor, manager, member, director, officer, shareholder, agent or representative of Customer; provided that as set forth in Section 2(d) below, Customer shall have no right to sub-subscribe any part of this Agreement to any party without the express written consent of Service Provider.

## RECITALS

- A. Service Provider may provide, as part of the Customer Services, certain services. These services may be delivered through their web-based software applications and web-based services, which are considered Confidential Information of Service Provider, as that term is defined herein; and
- B. Customer recognizes and acknowledges that Service Provider's Confidential Information constitutes a valuable, special and unique asset and that the provisions of this Agreement are necessary to protect it; and
- C. Customer desires to obtain access to Service Provider's web-based software application and services pursuant to the terms and conditions of this Agreement; and
- D. Pursuant to the terms and conditions of this Agreement, Customer desires to subscribe the Right to Use from Service Provider and Service Provider desires to subscribe the Right to Use and the Customer Application to Customer under the terms and conditions set forth below.

## AGREEMENT

NOW THEREFORE, in exchange for their mutual covenants and promises contained herein, each intending to be legally bound hereby, and in consideration of the following mutual promises and covenants, the parties hereby agree as follows:

1. Definitions. Capitalized terms shall have the meaning set forth herein.

- a. Affiliate. The term "Affiliate" shall mean any entity which directly or indirectly controls, or is controlled by Customer. The term "control" as used herein means (1) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares entitled to vote for the election of directors; or (2) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity interest with the power to direct the management and policies of such non-corporate entities. Unless otherwise specified, the term Customer includes Affiliates.
- b. Confidential Information. The term "Confidential Information" shall mean this Agreement and all data, trade secrets, business information and other information of any kind and in whatever form whatsoever, including data developed or produced through access to Confidential Information that a party ("Discloser") discloses, in writing, orally, visually or in any other medium, to the other party ("Recipient") or to which Recipient obtains access and that relates to Discloser. A "writing" shall include an electronic transfer of information by e-mail, in written form over the Internet or otherwise. Information shall not be considered confidential to the extent that Recipient can establish by competent proof that it:
  - 1. Is publicly disclosed through no fault of Recipient, either before or after it becomes known to Recipient; or
  - 2. Was known to Recipient prior to the date of this Agreement, which knowledge was acquired independently and not from Discloser (or Discloser's employees); or
  - 3. Is subsequently disclosed to Recipient in good faith by a third party who has a right to make such disclosure; or
  - 4. Has been published by a third party as a matter of right.

In the event that Confidential Information is required to be disclosed by law or court order, in which event Recipient shall limit the same to the minimum required to comply with the law or court order, and prior to making such

disclosure Recipient shall notify Discloser, not later than ten (10) days before the disclosure in order to allow Discloser to comment and/or to obtain a protective or other order, including extensions of time and the like, with respect to such disclosure.

- c. Customer Application. The term “Customer Application” shall mean any applications of Service Provider that allow the Customer to access Customer Services rendered by Service Provider under the terms of this Agreement.
- d. Customer Services. The term “Customer Services” shall mean any services provided by Service Provider pursuant to this Agreement, limited to those services selected by Customer in the applicable Service Addendum, which is attached to this Agreement and is incorporated herein by reference.
- e. Intellectual Property Right. The term “Intellectual Property Right” shall mean any patent, patent application, copyright, moral right, trade name, trademark, service mark, trade secret, and any applications or right to apply for registration therefor, internet domain names, logos, designs, slogans, and general intangibles of like nature, computer software programs or applications, tangible or intangible proprietary information, know-how, proprietary processes, formulae, algorithms, or any other intellectual property right, whether registered or unregistered, and whether first created before or after the effective date of this Agreement that is owned by Service Provider.
- f. Right to Use. The term “Right to Use” shall mean Customer’s collective right to use the Customer Application and the Customer Services.
- g. User. The term “User” shall mean each person or entity that has access to any of the Customer Services through the Customer Application.

## 2. Grant of Right to Use; Intellectual Property Rights.

- a. Grant of Right to Use. Subject to the terms and conditions of this Agreement, and in consideration of Customer’s payment of all applicable fees set forth in Section 3 below, Service Provider grants to Customer a non-subscribable, nonexclusive, nontransferable right to internally use and access the Customer Services vis-à-vis the Customer Application solely for Customer’s business operations as referenced in this Agreement during the term of this Agreement.
- b. Retention of Rights. As between the parties, Service Provider retains all right, title, and interest to all Intellectual Property Rights in its Customer Application and the Customer Services, and any copies thereof. Customer shall only be entitled to use the Right to Use as specified herein. Nothing in this Agreement grants Customer any right, title, license or interest in or relating to the source code of the Customer Application. Any third-party software embedded, included or otherwise provided by Service Provider for use with the Customer Application may only be used in conjunction with such Customer Application.
- c. Maintenance of Intellectual Property Rights; Protection of Customer Application. Customer agrees to maintain all of the Intellectual Property Rights included in the Right to Use and shall not (nor shall it allow any third party to: (i) reverse engineer, decompile, translate, disassemble or attempt to discover any source code or underlying ideas or algorithms of any part or all of the Customer Application (except to the extent such restriction is prohibited by applicable local law in order to obtain interoperability), (ii) sell, lease, lend, disclose, or use for timesharing or service bureau purposes any part or all of the Customer Application, (iii) use, provide, or allow others to use the Customer Application for the benefit of any third party, or (iv) except as otherwise set forth in this Agreement reset or disable the Customer Application.
- d. Sub-Subscribing Prohibited. Customer shall have no right to subscribe or sub-subscribe any of the foregoing to any party with respect to the rights conferred upon Customer under this Agreement without the express written consent of Service Provider.
- e. No Other Right to Use. This Agreement confers no additional rights to use or other rights by implication, estoppel, or otherwise under any patent applications or patents of Service Provider other than the Right to Use regardless of whether such patents are dominant or subordinate to the Right to Use.

## 3. Right to Use Fees. Customer agrees to pay the following fees and costs to Service Provider in exchange for the Right to Use:

- a. Fees. Customer shall pay to Service Provider those fees (the “Fees”) for those services set forth in the applicable Service Addendum, as amended or added to.

- b. Payment of Fees and Taxes. Customer agrees to pay the Fees set forth in the applicable Services Addendum, as amended or added to. Service Provider reserves the right to suspend its service to Customer upon two (2) days' notice to Customer if Customer's account becomes delinquent (meaning, any payment of Fees set forth in an Invoice is not paid within the time frame set forth in the applicable Services Addendum, as amended or added to). Customer agrees that it shall be liable for all costs of collection of any delinquency, including collection agency fees, reasonable attorney's fees, and court costs. The parties acknowledge that Customer may be subject to certain sales, use or other taxes. As such, the parties agree and acknowledge that the Service Provider's fees listed herein have been quoted exclusive of all sales, use or other taxes assessed directly on the Customer Services and/or the use of the Customer Application, as the case may be, and any attendant services rendered to Customer. Therefore, Customer agrees to pay to Service Provider all taxes, fees, duties, licenses, tariffs, and levies imposed directly by a governmental entity upon the provision of Customer Services or the use of the Customer Application or any services provided herein by Service Provider to Customer.

4. Ownership.

- a. Ownership by Service Provider. Service Provider retains all rights, title and interest in and to the Customer Services and the Customer Application as delivered by Service Provider to Customer hereunder, along with all updates, modifications or improvements and all documentation related thereto and all intellectual property rights embodied in any of the foregoing.
- b. Service Provider Trademark Ownership. Customer acknowledges that Service Provider owns or holds exclusive rights in and to any and/or all of its Intellectual Property Rights. As such, without the express written consent of Service Provider, Customer will not use any Intellectual Property Rights as part of any of its product, service, domain, sub-domain or company names and will not take nor authorize any action inconsistent with Service Provider's exclusive trademark rights during the term of this Agreement or thereafter. Nothing in this Agreement grants Customer ownership or any rights in or to use the Intellectual Property Rights. Subject to Customer's rights under and except as otherwise set forth in this Agreement, Service Provider will have the exclusive right to own, use, hold, apply for registration for, and register its Intellectual Property Rights during the term of this Agreement and after the expiration or termination of this Agreement, in any country worldwide. Customer shall not use any brands or trademarks to identify any component of the Right to Use other than those designated by Service Provider.

5. Indemnity. Customer hereby agrees to indemnify, defend and hold harmless Service Provider and any Affiliate of Service Provider (collectively, the "Indemnitees") from and against all damages, claims, liabilities, losses and other expenses, including without limitation reasonable attorney's fees, expert witness fees and costs, arising from claims asserted by third parties ("Claim"), that arise out of or relate to (a) Customer's or Customer's Affiliates' (collectively, the "Indemnitors") misuse of any part of the Right to Use, (b) Indemnitors' transactions with third parties or the operation of their respective businesses, (c) the negligent or willful acts or omissions of an Indemnitor; and/or (d) any and all liabilities resulting from use of any part of the Right to Use; except to the extent any Claim arises out of any negligent action, or failure to act, by Service Provider or Service Provider's breach of any law or regulation, or breach of this Agreement by Service Provider. An Indemnitor shall not enter into any settlement of such Claims that admits liability on behalf of Service Provider without Service Provider's prior written consent, which consent shall not be unreasonably withheld or denied. Indemnitees, at their expense, shall have the right to retain separate independent counsel to assist in defending any such Claims. In the event Customer fails to promptly indemnify and defend such Claims and/or pay Indemnitees' expenses as provided above, Indemnitees shall have the right to defend themselves, and in that case, Customer shall reimburse Indemnitees for all of their reasonable attorney's fees, costs and damages incurred in settling or defending such Claims.

Service Provider agrees to indemnify and pay all costs to defend the Customer in the event the Customer is named as a Defendant in any Claim by a third party pertaining to the Right to Use or any alleged infringement of any patent, trademarks, service mark, logo or copyrights or related rights of a third party which are protected under law and that would materially affect the Right to Use. In any such case, in which Customer is named, Customer shall provide prompt notice to Service Provider of such.

6. Limited Warranty; Limitation of Liability.

- a. Limited Warranty. OTHER THAN THE WARRANTIES ALREADY SET FORTH IN THIS AGREEMENT, SERVICE PROVIDER MAKES NO OTHER WARRANTIES CONCERNING THE RIGHT TO USE OR ANY OTHER MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR ARISING OUT OF COURSE OF CONDUCT OR TRADE CUSTOM OR USAGE, AND SERVICE PROVIDER DISCLAIMS ALL SUCH EXPRESS OR IMPLIED WARRANTIES. SERVICE PROVIDER MAKES NO WARRANTY OR REPRESENTATION AS TO THE VALIDITY OR SCOPE OF RIGHT TO USE, OR THAT SAID RIGHT TO USE WILL BE FREE FROM AN INFRINGEMENT ON PATENTS OR OTHER INTELLECTUAL

PROPERTY RIGHTS OF THIRD PARTIES, OR THAT NO THIRD PARTIES ARE IN ANY WAY INFRINGING UPON ANY RIGHTS INCLUDED IN THE RIGHT TO USE COVERED BY THIS AGREEMENT. FURTHER, SERVICE PROVIDER HAS MADE NO INVESTIGATION AND MAKES NO REPRESENTATION THAT THE RIGHT TO USE IS SUITABLE FOR CUSTOMER'S PURPOSES.

- b. Limitation of Liability. EXCEPT WITH RESPECT TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SERVICE PROVIDER OR SERVICE PROVIDER'S PERSONNEL ARISING OUT OF SERVICE PROVIDER'S OBLIGATIONS AS SET FORTH IN THIS AGREEMENT OR SERVICE PROVIDER'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 5 ABOVE, AS TO WHICH THE FOLLOWING LIMITATIONS DO NOT APPLY, IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR EXPECTED SAVINGS OR OTHER ECONOMIC LOSSES, OR FOR INJURY TO PERSONS OR PROPERTY) IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER.
- c. IN ADDITION, EXCEPT FOR MISUSE OF CUSTOMER CONFIDENTIAL AND/OR FINANCIAL INFORMATION OF ANY KIND, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SERVICE PROVIDER OR SERVICE PROVIDER'S PERSONNEL ARISING OUT OF SERVICE PROVIDER'S OBLIGATIONS AS SET FORTH IN THIS AGREEMENT OR SERVICE PROVIDER'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 5 ABOVE, THE CUMULATIVE LIABILITY OF SERVICE PROVIDER AND ITS PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, MANAGERS, ATTORNEYS OR AGENTS FOR DAMAGES FOR CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, WILL NOT EXCEED ONE-HUNDRED PERCENT (100%) OF THE FEES PAID, BY CUSTOMER FOR THE MOST RECENT 12 MONTHS AS DETERMINED BY SERVICE PROVIDER, FOR THE RIGHT TO USE AND RELATED SERVICES UNDER THIS AGREEMENT.

THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS SECTION 6.b SHALL APPLY TO ALL CLAIMS AND ACTIONS OF ANY KIND AND ON ANY THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER GROUNDS, AND REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY

Notwithstanding anything to the contrary in any Schedule or any other documents or agreements exchanged between the parties, this Section 6 sets forth the only limitation of liability in effect between the parties.

## 7. Confidentiality.

- a. Treatment of Confidential Information. The parties agree that during the term of this Agreement, and for a period of five (5) years after this Agreement expires or terminates, any Recipient (as that term is defined in Section 1(b) above) receiving Confidential Information of the Discloser (as that term is defined in Section 1(b) above) will maintain in confidence such Confidential Information to the same extent such party maintains its own proprietary information; not disclose such Confidential Information to any third party without the prior written consent of the other party; and not use such Confidential Information for any purpose except those permitted by this Agreement; provided that Service Provider may use Customer's Confidential Information as necessary in the performance of Service Providers services for the benefit of the Customer as set forth in this Agreement. Service Provider agrees that Customer and its subcontractors shall be permitted to disclose information that relates to the subject matter claimed in the Right to Use in connection with the exercise of the rights included in the Right to Use hereunder by Service Provider to Customer as long as the disclosure of such information is protected under written obligations of confidentiality which are at least as restrictive as those contained in this Agreement. A "third party" shall not include (1) Affiliates of Customer; (2) Recipient's employees or officers; (3) Affiliates of Recipient, its independent contractors at any level, agents and consultants, provided that all such persons are subject to a written confidentiality agreement that shall be no less restrictive than the provisions of this Section 9(a), evidence of which shall be provided to Customer upon request; and (4) as required by law or as otherwise expressly permitted by this Agreement. Upon expiration or termination of this Agreement for any reason, Discloser shall promptly return to Customer, at Customer's election, all Customer Confidential Information in the possession of Discloser, subject to and in accordance with the terms and provisions of this Agreement; provided, however, that no party shall be obligated to provide the other party with any information that the party can show it independently developed.
- b. Non-Disclosure of Confidential Information. A Recipient shall take reasonable steps to prevent unauthorized disclosure or use of Discloser's Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Recipient shall not disclose Confidential Information of Discloser to any person or entity other than its employees, contractors and consultants who need access to such Confidential Information in order to affect the intent of this Agreement and who have entered into confidentiality agreements



which protect the Confidential Information of Discloser sufficient to enable Recipient to comply with this Section 7(b). Recipient shall immediately give notice to Discloser of any unauthorized use or disclosure of Discloser's Confidential Information. Recipient agrees to assist Discloser to remedy such unauthorized use or disclosure of its Confidential Information. It is understood that Service Provider shall have the right to use information relating to any statements of errors and other error reports in connection with its products and services, including without limitation for purposes of modifying its products and resolving problems with other customers and developers; provided that Service Provider will treat the identity of Customer as the source of the respective error report as Confidential Information of Customer in accordance with this Section 7(b).

- c. Acknowledgement. Discloser acknowledges that Recipient has a responsibility to its customers and other consumers using its services to keep Confidential Information strictly confidential.
- d. Notice of Action Affecting Confidential Information. To the extent legally permitted, Recipient shall notify Discloser of any actual or threatened requirement of law to disclose Confidential Information promptly upon receiving actual knowledge thereof and shall cooperate with Discloser's reasonable, lawful efforts to resist, limit or delay disclosure. Nothing in this Section 7(d) shall require any notice or other action by Recipient in connection with requests or demands for Confidential Information by bank external examiners, regulators or others with lawful enforcement and oversight powers with respect to Recipient or its Affiliates.
- e. Use of Logos; Disclosure of Relationship. Without the prior written approval of the other party hereto, neither party shall issue any media releases, public announcements and public disclosures, relating to this Agreement or use the name or logo of the other party, including, without limitation, in promotional or marketing material or on a list of customers, provided that nothing in this paragraph shall restrict any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the releasing party.
- f. Confidential Information Property of Discloser. All Confidential Information disclosed by a Discloser and any results of processing such Confidential Information or derived in any way therefrom shall at all times remain the property of Discloser. The Recipient shall have responsibility for and bear all risk of loss or damage to Confidential Information and damages resulting from improper or inaccurate processing of such data arising from the gross negligence or willful misconduct of the Recipient, its representatives, Affiliates or subcontractors.
- g. Protection of Confidential Information. During the course of performance under this Agreement, a Recipient shall ensure adequate governance and risk assessment processes are in place to maintain controls over Confidential Information.
- h. Virus/Malicious Code Prevention. Service Provider shall use the latest, commercially available virus and malicious code detection and protection products on all workstations and servers used to provide goods and services to Customer; and shall report all occurrences of viruses and malicious code that are not successfully resolved by deployed detection and protection measures on any workstation or server used to provide goods or services to Customer as soon as possible after discovery.

Service Provider shall promptly notify Customer if it becomes the subject of any regulatory or other investigation or of any government or other enforcement or private proceeding relating to its data handling practices.

## 8. Term and Termination.

- a. Term. Unless terminated early in accordance with the provisions of Section 8(b) or 8(c), this Agreement shall take effect on the date of its acceptance by Service Provider and shall continue in effect for one (1) year, subject to an automatic renewal unless either party gives written termination notice to the other party sixty (60) days prior to each yearly anniversary date of execution of this Agreement.
- b. Termination by Customer. Customer may terminate this Agreement for any reason. Upon termination, Customer agrees to cease use of Services and pay all outstanding fees in total.
- c. Termination by Service Provider. Service Provider may terminate this Agreement as follows:
  - 1. If Customer does not make a payment due hereunder and fails to cure such non-payment within ten (10) days after the date of notice in writing of such non-payment by Service Provider;
  - 2. If Customer defaults in its indemnification obligations under Section 5;



3. If Customer becomes insolvent, makes an assignment for the benefit of creditors, or has a petition in bankruptcy filed for or against it. Such termination shall be effective immediately upon Service Provider giving written notice to Customer;
4. If, in the reasonable opinion of Service Provider, Customer (i) takes any action, or fails to act, that will likely cause substantial financial harm or substantial injury to the reputation of Service Provider, or (ii) engages in any willful violation of any law, rule or regulation applicable to Customer's duties hereunder, or material breach of any provision of this Agreement.
5. Except as provided in subparagraphs (1)–(4) above, if Customer defaults in the performance of any obligations under this Agreement and the default has not been remedied within sixty (60) days after the date of notice in writing of such default by Service Provider.

- d. Rights Upon Expiration or Termination. Upon the termination or expiration of this Agreement, neither party shall have any further rights or obligations except the following provisions of this Agreement shall survive the termination or expiration of this Agreement unless otherwise agreed to in writing by both parties: (1) Section 3 (Right to Use Fees); (2) Section 4 (Ownership); (3) Section 5 (Indemnification); (5) Section 6 (Limited Warranty; Limitation of Liability); (6) Section 7 (Confidentiality); (7) this Section 8 (Term and Termination); (8) Section 9 (Assignment; Successors); (9) Section 10 (General Provisions); and (10) either party's other obligations that have accrued by the date of such expiration or termination. Notwithstanding any of the foregoing, Customer shall have no right to a refund for any Fees that are already paid but are unearned.
- e. Suspension of Rights. Service Provider may elect to suspend service to Customer, rather than terminate this Agreement, at Service Provider's sole election, for Customer's failure to make a payment due hereunder coupled with Customer's failure to cure such non-payment within ten (10) days after the date of notice in writing of such non-payment by Service Provider. Such suspension may be lifted at any time at the discretion of Services Provider; however, once all past due payments hereunder have been brought current, Service Provider shall lift the suspension immediately.

9. Assignment; Successors.

- a. Assignment. This Agreement may not be assigned or otherwise transferred (whether voluntarily, by operation of law or otherwise) by Customer without the prior written consent of Service Provider which shall not be unreasonably withheld; provided however that Customer may, without such consent, assign this Agreement and its rights and obligations hereunder to an Affiliate or in connection with the transfer or sale of all of its business, or in the event of its merger, consolidation, change in control, or other similar transaction. Any and all other assignments of this Agreement or any rights granted hereunder by Customer without the prior written consent of Service Provider are void.
- b. Binding Upon Successors and Assigns. Subject to the limitations on assignment herein, this Agreement shall be binding upon and inure to the benefit of any successors in interest and assigns of Service Provider and Customer. Any such successor or assignee of Customer's interest shall expressly assume in writing the performance of all the terms and conditions of this Agreement to be performed by Customer and such written assumption shall be delivered to Service Provider as a condition to Service Provider's agreement to consent to any such assignment.

10. General Provisions.

- a. Independent Contractors. The relationship between Service Provider and Customer is that of independent contractors. Service Provider and Customer are not joint venturers, partners, principal and agent, master and servant, employer or employee, and have no other relationship other than independent contracting parties. Service Provider and Customer shall have no power to bind or obligate each other in any manner, other than as is expressly set forth in this Agreement.
- b. Entire Agreement; Modification. This Agreement and all of the attached Addenda set forth the entire agreement and understanding between the parties as to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. There shall be no amendments or modifications to this Agreement, except by a written document that is signed by both parties.
- c. Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah without regard to the conflicts of laws principles thereof.

- d. Headings. The headings for each article and section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular article or section.
- e. Severability. Should any one or more of the provisions of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, it shall be considered severed from this Agreement and shall not serve to invalidate the remaining provisions thereof. The parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by them when entering this Agreement may be realized.
- f. No Waiver. Any delay in enforcing a party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time.
- g. Name. Whenever there has been an assignment by Customer as permitted by this Agreement, the term "Customer" as used in this Agreement shall also include and refer to, if appropriate, such assignee or subcontractor.
- h. Attorneys' Fees. In the event of a dispute between the parties hereto or in the event of any default hereunder, the party prevailing in the resolution of any such dispute or default shall be entitled to recover its reasonable attorneys' fees and other costs incurred in connection with resolving such dispute or default.
- i. Force Majeure. Neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by riot, fire, flood, earthquake, natural disaster, electronic virus, electronic attack or infiltration, internet disturbance, government act or other similar cause beyond such party's (the "Affected party") control (collectively, a "Force Majeure Event").
- j. Notices. Any notices required by this Agreement shall be in writing, shall specifically refer to this Agreement and shall be forwarded to: (i) Customer using Primary Contact Person information as set out in the Simplifile Organization contact Information within the Customer Application and (ii) to Service Provider at the following address unless subsequently changed by written notice to Customer:
- Simplifile, LC  
5072 North 300 West  
Provo, Utah 84604  
Attention: Auri Burnham  
Email: [aburnham@simplifile.com](mailto:aburnham@simplifile.com)
- k. Terms of Use. The parties acknowledge that before any customer or other party accesses the Customer services through the Customer Application, said customer or third party is agreeing to those Terms of Use of Service Provider set forth at [Simplifile.com](http://Simplifile.com), which terms are incorporated into this Agreement by reference.

The parties have executed this Agreement by their duly authorized representatives as of the date set forth.

**SERVICE PROVIDER:**

By: \_\_\_\_\_  
Name (print): \_\_\_\_\_  
Job Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CUSTOMER:**

By: \_\_\_\_\_  
Name (print): \_\_\_\_\_  
Job Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## FEES AND PAYMENT TERMS

Services	Description	System Costs ("Fees")
Year 1 License and Support (per physical location)	License fee - year 1	\$ .00 per license
Annual Renewal of a Current License System and Support (per physical location)	License fee Renewal	\$ .00 per license
Document Submission Fees	Submission fee for each document recorded using the System.	\$2.00 per document
Training	Fees for web, phone based or on-site training to Customer.	Web and phone based: \$0 Onsite: Quoted upon request
Billing Cycle	Frequency receiving an invoice for fees earned by the Service Provider.	Daily
Payment Term	The maximum time to remit and Service Provider to receive payment for the invoiced fees.	Net 1
Date of Delinquency	The date upon which an interest rate will be applied to any unpaid balance.	5 days after the expiration of the Payment Term due date.
Dishonored charges fees	Processing fee for dishonored ACH charges or other payments.	\$25 per item
Receiver fees, if any. (recording, taxes, non-conforming, e-recording, rejection, etc.)	Any/all additional fees charged by others for e-recording processing.	Exact cost only. Service Provider does not control or add to receiver fees, if any. Document Submission quoted exclusive of these fees
Other fees, if any, (sales, use, or other taxes)	Taxes that may be assessed against either the Customer Services or the sale of the Customer Application.	Exact cost only. Service Provider does not control or add to these fees. Document Submission Fee is quoted exclusive of these fees.

Accepted by Katy Crow on May 01, 2020 1:01 PM



**A PROCLAMTION DESIGNATING MAY AS FAIR HOUSING MONTH  
IN THE CITY OF EDGERTON, KANSAS**

**WHEREAS**, the Congress of the United States of America passed the Civil Rights Act of 1968, of which Title VIII declared that the law of the land would now guarantee the rights of equal housing opportunity; and

**WHEREAS**, the City of Edgerton, Kansas is committed to the mission and intent of Congress to provide fair and equal housing opportunities for all, and today, many realty companies and associations support fair housing laws; and

**WHEREAS**, the Fair Housing groups and the U.S. Department of Housing and Urban Development have, over the years, received thousands of complaints of alleged illegal housing discrimination and found too many that were proven upon investigation to be violations of the fair housing laws; and

**WHEREAS**, equal housing opportunity is a condition of life in our City that can and should be achieved.

**NOW, THEREFORE BE IT RESOLVED**, that I, Donald Roberts, Mayor of the City of Edgerton, Kansas, do hereby proclaim the month of May 2020 as FAIR HOUSING MONTH to promote fair housing practices throughout the City. In witness whereof, I have hereunto set my hand and caused the Seal of the City of Edgerton, Kansas to be affixed this 14<sup>th</sup> day of May 2020.

**CITY OF EDGERTON, KANSAS**

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

**ATTEST:**

\_\_\_\_\_  
Chris Clinton, City Clerk

## City Council Action Item

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**Council Meeting Date:** May 14, 2020

**Department:** Public Works

### **Agenda Item: Consider Professional Services Agreement between City of Edgerton and Olsson Inc. for 2020 Stormwater Master Plan**

**Background/Description of Item:**

On February 19, 2020, the City of Edgerton issued a Request for Qualifications seeking engineering teams for the analysis of the stormwater system and development of a Master Plan. The Project includes inventory and analysis of the existing storm collections system, existing structures, and existing stormwater corridors. There will be a component to the project involving public involvement. The consultant and staff will work to request flooding concerns, compile the data, and develop an appropriate response. The Project will review existing development patterns, as well as target future development and system expansion. The Project is to provide a list of prioritized projects to add to the City's CIP list. This serves as a roadmap to our stormwater system, prioritizing projects to improve existing infrastructure and propose appropriately timed installation of new infrastructure, both to improve efficiencies and be better suited to receive development as it arises.

Requests for Qualifications were due April 8, 2020 and interviews with the short-listed teams were conducted on April 20. The selection committee (City Administrator, City Engineer, Public Works Director, and Public Works Superintendent) recommends Olsson Inc. as the best, most qualified team for the project. The selection committee recommends the team based on their existing experience providing these services to municipalities both of similar size and larger populations.

Enclosed is the draft Professional Services Agreement between the City of Edgerton and Olsson for the project. The Professional Services Agreement is still under review by both Olsson and the City. All revisions are pending approval from City Engineer, City's Insurance representative, and City Attorney.

The project budget included in the 2020-2024 Adopted CIP is \$160,000, with 100% funding from the General Fund. Staff has reviewed the proposed scope, initially making adjustments to end up with a scope that balances good stewardship of funds while having a bill of work that still provides a reliable analysis of our system and tools to use in the future. After negotiating scope and fee with the consultant, the price for services is \$159,895.

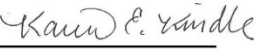
**Related Ordinance(s) or Statue(s):**

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**Funding Source:** CIP Project Budget

**Budget Allocated:** \$160,000

**Finance Director Approval:**

x   
Karen Kindle, Finance Director

**Recommendation: Approve Professional Services Agreement between City of Edgerton and Olsson Inc. for 2020 Stormwater Master Plan pending changes from City Attorney and authorize the Mayor to execute the Agreement.**

**Enclosed:** Draft Agreement w/ scope

**Prepared by:** Dan Merkh, Public Works Director



## LETTER AGREEMENT FOR PROFESSIONAL SERVICES

Date

Company or Firm Name

Attn:

Address

City, State Zip

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**

Project Description and Location (the "Project")

Insert Project Description or Address

Dear \_\_\_\_\_:

It is our understanding that \_\_\_\_\_ ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the following services ("Scope of Services") to Client for the Project: (describe the type of service) or (as more specifically described in "Scope of Services" attached hereto). Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

### SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: \_\_\_\_\_  
Anticipated Completion Date: \_\_\_\_\_

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

## **COMPENSATION**

See **INSTRUCTIONS FOR SELECTING COMPENSATION TYPE FOR LETTER AGREEMENTS**  
on the O: Drive

## **TERMS AND CONDITIONS OF SERVICE**

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be \_\_\_\_\_.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of maximum 30 days from the date set forth above, unless changed by us in writing.

**OLSSON, INC.**

By \_\_\_\_\_  
Type Name Here (Optional)

By \_\_\_\_\_  
Typed Name Here (Optional)



By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

**NAME OF CLIENT**

By \_\_\_\_\_  
Signature

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

Attachments

General Provisions

Scope of Services

Standard Labor Rate Schedule

Special Labor Rate Schedule (If applicable - Please note there may be more than 1 Labor Rate  
Schedule attached to Letter Agreement)

Reimbursable Expense Schedule

Resident Project Representative Duties

**Scope of Services  
Stormwater Master Plan  
Edgerton, KS**

**1. PROJECT MANAGEMENT AND FACILITATION**

Close collaboration between Olsson, City staff (including representatives from various departments as needed), City Council, the public, and other interest groups are essential to the success of this effort. This task includes coordination meetings with staff, Council and applicable agencies, as well as assisting City staff with publicity and outreach efforts, including public/stakeholder meetings, and related graphics and materials.

- 1.1 Hold kick-off meeting with City staff to develop project goals, vision, objectives and criteria at the outset of the project. Determine applicable project interest groups and outreach methods.
- 1.2 Facilitate coordination (5) meetings throughout the project with:
  - Public Works staff
  - Project interest groups (Johnson County Parks and Recreation District, Miami County Conservation District, Johnson County Stormwater Master Plan Consultant, Wastewater Master Plan Consultant, Northpoint Development
  - Other City Departments and other appropriate public agencies
- 1.3 Prepare an initial “stormwater issues” questionnaire to residents to determine historical flooding, erosion or drainage problems experienced. Questionnaires will be mailed by the City. Questionnaire will provide background information on the purpose of it and what it will be used for. Responses will be mapped in Task 2.
- 1.4 Two open house meetings will be coordinated by the city. Olsson shall attend the meeting, prepare exhibits, boards and materials prior to the meeting. The initial meeting will be geared to collecting feedback from residents and also educating them on the master planning process. A follow-up open house meeting will be held towards the completion of the masterplan. Results and findings will be shared with the residents and property owners.
- 1.5 Present at two City Council Meetings.

**2. DATA COLLECTION, WATERSHED INVENTORY & SYSTEM ASSESSMENT**

- 2.1 Collect, compile and evaluate available City data including but not limited to the following:
  - Existing zoning map and comprehensive plan(s) for future planned

- land uses
  - Stormwater complaint logs/map
  - Known problem areas for flooding, erosion, water quality, and maintenance
  - As-built data
  - City GIS data
  - Proposed development plans/plats on file
  - Storm sewer outfalls
  - Existing and proposed bridges/culverts
  - Existing detention/retention ponds/basins
- 2.2 Collect, compile and evaluate available public domain watershed data:
- Soil data
  - Sub-basin delineations
  - Perennial and intermittent stream reaches
  - Existing and proposed FEMA floodway and floodplain
- 2.3 Storm Sewer System Survey and Inventory
- 2.3.1 Locate existing visible storm sewer outfalls along major streams and locate visible storm sewer system structures, throughout approximately 7.4 square miles of area within the City. It is assumed that there will be roughly:
- 500 structures in the urban areas (total area is 404 acres)
  - 300 structures in the rural areas (total area is 934 acres)
  - 50 structures in the industrial areas, location to be determined during the project (total area is 3400 acres)
- Olsson will provide a horizontal location, size, type, and direction of incoming and outgoing pipes 12" and larger. This work will be performed by a 2 person crew with the benefit of institutional knowledge provided by City Staff and structure access assistance when needed.
- 2.3.2 Complete a structure condition assessment of all structures located within the +/-7.4 square miles inventory area. The assessment includes visual evaluation of the pipe invert, walls, sides, and top of the inlet and the inlet opening. A picture of each structure and pipe will also be collected.
- 2.3.3 Input the gathered field data into a GIS database. Information from the condition assessments will also be linked to each structure for future use by the City. The database will be provided to the City in a format compatible with the existing City and County GIS system.
- 2.4 Compile and enter results of resident stormwater questionnaires from Task 1.3 and combine with City record data into project database to

establish initial stormwater problem areas. Highlight key problem areas in project base map.

- 2.5 Compile all the above data into a GIS project base map that is fully compatible with the City's established computerized geographic information system (GIS). Provide metadata for all Consultant created files and databases, generally including source/origination, quality, qualifications, attribute coding, and other relevant information mutually agreed to by the City and Consultant.

### **3. LOGISTICS PARK SYSTEM REVIEW**

- 3.1 Review existing development stormwater studies within the Logistics Park and map constructed detention basins located within the 1700-acre site. Compare FEMA watershed hydrological model (approximate completion date of 1998) with data from the development stormwater studies to determine potential peak and volume increases that may impact areas downstream. Review current detention strategies. Provide a recommendation as to the effectiveness of the current detention strategy or is a more (or less) restrictive approach recommended to address current or future flooding problems. Review undeveloped areas for the feasibility of a larger regional detention basin.

Prepare a section within the final deliverable summarizing the findings and recommend further analysis if needed. The scope of work is limited to reviewing existing hydrologic and hydraulic studies already created, no new hydrologic or hydraulic modelling will be completed.

### **4. STORMWATER PLANNING (LARGE AND SMALL CAPITAL PROJECTS & MAINTENANCE RECOMMENDATIONS)**

- 4.1 In collaboration with City staff, develop a problem severity scoring system that forms the basis for assessing and quantifying a project benefit in a cost-benefit analysis for each project. Project needs may be based upon flooding, erosion, water quality, maintenance, or any combination thereof.
- 4.2 For ten (max.) stormwater problem areas, develop a conceptual solution that addresses the problems to meet established criteria and/or needs of the City and impacted citizens. It is anticipated that there will be three larger problem areas and potentially 4 smaller areas to evaluate. Prior to beginning the evaluation, meet with city staff and provide a recommendation for the 7 locations. City staff will provide input on the project areas.

Solutions will also be evaluated on flood and/or erosion reduction, water quality benefits, environmental impacts, aesthetics, benefits or impacts to

other city infrastructure, private property impacts, land/easement acquisition, and cost.

- 4.3 Develop final recommendations and associated costs. The final recommended capital projects will be based upon the general consensus of the public and City staff with a prioritization of projects based upon costs versus benefits.
- 4.4 Develop an outline of capital projects to address water quantity (flooding & erosion). The capital project plan shall be developed with a focus on implementation with clear guidance for city staff on the recommended order of project implementation, and the following information on each project in a concise, orderly format:
  - Project priority
  - Total project costs (construction, design, permitting)
  - Problem severity and project benefit
  - Additional information and areas of study needed
  - Required permitting and agency coordination
  - Overlap with other city projects

Regular maintenance needs that do not require a capital improvement project will be also be identified with specific guidelines for work required.

## **5. FUTURE DEVELOPMENT AND GROWTH**

- 5.1 Review the city's comprehensive plans, Johnson County Parks and Recreation plans, Logistics Park plans and zoning requirements. Provide recommendations pertaining to planning requirements that can achieve the city's stormwater goals and encourage smart growth within the city. Potential recommendations could include regional stormwater detention and water quality improvements, multi-objective projects that include recreational opportunities, low-impact development, protection of natural resources, etc. Coordinate with Johnson County's stormwater masterplan consultant on opportunities and constraints identified through their effort.

## **6. PERMITTING AND CODES (STANDARDS, REGULATORY REQUIREMENTS, NPDES)**

- 6.1 Review the city's current ordinances, policies codes and permit requirements. Provide recommendations on refining the city's ordinances and policies to mitigate future stormwater problems and create a sustainable stormwater system. Examples of policy reviews will include:
  - Floodplain management
  - Stream buffers
  - Stormwater design criteria and ordinances

- MS4 permit (future scenario considerations as the city is not under a permit)

## **7. FUNDING**

- 7.1 Review capital projects for outside funding considerations. Funding sources could include the Johnson County Stormwater Program, USACE, FEMA, EPA and Kansas Water Office or Division of Water Resources. Make recommendations to the city on projects that are eligible and strong candidates to receive funding from these outside sources.
- 7.2 Review the city's current funding level for stormwater related projects and maintenance against the anticipated capital projects and maintenance recommendations from the masterplan. Determine if funding levels are adequate or recommend increased rates as appropriate. Include adequate reserves for emergency repairs. Funding analysis will include providing the city information on stormwater utilities, sufficiency and fairness with the distribution of rates, and comparisons between other Johnson County cities. The scope of work excludes assisting the city with establishing a stormwater utility.

## **8. PRESENTATION, ADOPTION AND IMPLEMENTATION**

- 8.1 Upon completion of all tasks, the Olsson will submit three (3) printed copies and one (1) digital pdf of the stormwater masterplan report to the city for review and comment. Consultant shall incorporate city review and comments of the draft materials and resubmit upon completion.
- 8.2 Present the stormwater masterplan at a city council meeting. Prepare a presentation for the meeting and be available to answer any questions following the meeting.
- 8.3 Consult with the city following the completion of the stormwater masterplan on the implementation of projects and maintenance recommendations (assumed 40 hours).

## **SCHEDULE**

Olsson will complete the stormwater masterplan by May 1, 2021.

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated DATE between Client Name ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

### **SECTION 1—OLSSON'S SCOPE OF SERVICES**

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

### **SECTION 2—ADDITIONAL SERVICES**

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

### **SECTION 3—CLIENT'S RESPONSIBILITIES**

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson



harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

#### **SECTION 4—MEANING OF TERMS**

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the

construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with

diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

## **SECTION 5—TERMINATION**

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any

fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

## **SECTION 6—DISPUTE RESOLUTION**

### **6.1. Mediation**

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

### **6.2 Arbitration or Litigation**

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

### **6.3 Certification of Merit**

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

## **SECTION 7—MISCELLANEOUS**

### **7.1 Reuse of Documents**

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent

professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

### **7.2 Electronic Files**

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

### **7.3 Opinion of Probable Cost**

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed

in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

#### **7.4 Prevailing Wages**

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

#### **7.5 Samples**

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

#### **7.6 Standard of Care**

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

#### **7.7 Force Majeure**

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

#### **7.8 Equal Employment Opportunity**

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in

employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

#### **7.9 Confidentiality**

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and

photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

#### **7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination**

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous

Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

#### **7.11 Controlling Law and Venue**

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

## **7.12 Subconsultants**

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

## **7.13 Assignment**

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

## **7.14 Indemnity**

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

## **7.15 Limitation on Damages**

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s)

or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

## **7.16 Entire Agreement**

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

## City Council Action Item

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**Council Meeting Date:** May 14, 2020

**Department:** Public Works

### **Agenda Item: Consider Revising 2019 Street Maintenance Program to Include the Reconstruction of 8<sup>th</sup> and Edgewood Intersection**

**Background/Description of Item:**

On May 23, 2019, the City of Edgerton City Council approved the recommendation for the 2019 Streets Maintenance Program to include UBAS of East 3<sup>rd</sup> Street (56 Highway to East Nelson Street), East 4<sup>th</sup> Street (56 Highway to East Hulett Street) and the first progression of joint sealing of concrete roadway in LPKC.

On September 26, 2019, City Council accepted the UBAS portion of the program. This work was estimated at \$67,890, and the actual work billed came in at \$38,202, leaving \$29,688.

Staff has contracted Millers Pro Cut to do the joint sealing work in LPKC and that is currently scheduled to be completed by mid-summer. This work is estimated at \$10,000.

At the same meeting on September 26, 2019, City Council approved the change order for the 2019 Street Reconstruction Project to include the milling of portions of Edgewood and overlaying portions with varying depths of pavement to repair the significant damage from the previous winter and from the construction activities to the surrounding areas.

The intersection of 8<sup>th</sup> and Edgewood did receive new overlay asphalt but did not receive significant grade changes. At the time of the change order, staff could not verify the cause of the degradation to be holding water or insufficient depth of asphalt. Now that construction is complete, staff observes that the intersection holds water, which causes significant damage to the top course of asphalt.

Staff is recommending utilizing the savings from the UBAS portion of the project to have Miles Excavating Inc. rebuild the intersection with concrete. This work includes regrading portions of the intersection to increase cross slope, causing water to runoff the pavement. Miles Excavating is the contractor that completed the work for the street reconstruction, so they have previously been vetted out by staff and Council. Miles Excavating has submitted a proposal and scope in the price of \$27,223.25. This price is within the cost savings noted above.

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

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**Funding Source:** 2019 Street Maint. Program-UBAS portion  
Budgeted: \$67,890  
Actual: \$38,202  
Total Available: **\$29,688**

**Budget Allocated:** N/A

x Karen E. Kindle

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

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**Recommendation: Approve Revising 2019 Street Maintenance Program to Include the Reconstruction of 8<sup>th</sup> Street and Edgewood Intersection not to exceed \$29,688**

**Enclosed:**

**Prepared by:** Dan Merkh, Public Works Director



## City Council Action Item

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**Council Meeting Date:** May 11, 2020

**Department:** Public Works

**Agenda Item: Consider Resolution No. 05-14-20B Pursuant To K.S.A. § 26-201 Setting Forth The Necessity For Condemnation Of Private Property And Authorizing Preparation Of A Survey And Legal Descriptions Of The Property To Be Condemned**

**Background/Description of Item:**

The City of Edgerton is constructing a new full access intersection at Homestead Lane and 200<sup>th</sup> Street just north of Interstate 35. The City needs a temporary construction easement on the property located at 20080 Homestead Lane (northwest corner of Homestead Lane and Interstate 35) to remove the existing right-in/right-out entrances and construct the new intersection. Staff has contacted the property owner and requested the dedication of the easement by June 4, 2020.

In addition, a new public sanitary sewer main is being constructed from the existing gravity sewer interceptor on the west side of the property at 20080 Homestead Lane to near east side of Homestead Lane at 200<sup>th</sup> Street. The City needs a permanent sanitary sewer easement and temporary construction easement for this Project. Staff has contacted the property owner and requested the dedication of these easements by June 4, 2020.

Prior to June 4, staff will continue to negotiate easements with the property owner as the preferred method to acquire the easements. However, in case negotiations do not reach a conclusion that satisfies both parties, staff recommends moving forward with the condemnation process.

The first step in that process would be for City Council to pass a resolution confirming the necessity for condemnation and authorizing the preparation of survey and legal description. In an effort to meet the tight project schedule, staff is requesting that City Council approve this resolution for all easements necessary. Passing the resolution does not prohibit the City from continuing to negotiate and/or acquire the easements – it simply authorizes the preparation of the descriptions.

Enclosed with the packet is a resolution as reviewed and approved by the City Attorney that includes easements necessary for both Projects.

Related Ordinance(s) or Statue(s): K.S.A. 26-201

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**Funding Source:** N/A

**Budget Allocated:** N/A

**Finance Director Approval:** N/A

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<p><b>Recommendation: Approve Resolution No. 05-14-20B Pursuant To K.S.A. § 26-201 Setting Forth The Necessity For Condemnation Of Private Property And Authorizing Preparation Of A Survey And Legal Descriptions Of The Property To Be Condemned</b></p>
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**Enclosed:** Resolution No. 05-14-20B

**Prepared by:** Beth Linn, City Administrator

## **RESOLUTION NO. 05-14-20B**

### **A RESOLUTION PURSUANT TO K.S.A. § 26-201 SETTING FORTH THE NECESSITY FOR CONDEMNATION OF PRIVATE PROPERTY AND AUTHORIZING PREPARATION OF A SURVEY AND LEGAL DESCRIPTIONS OF THE PROPERTY TO BE CONDEMNED**

WHEREAS, K.S.A. § 26-201 authorizes a City to acquire by condemnation any interest in real property when it is deemed necessary, for use by the City, by the governing body of the City; and

WHEREAS, the City wishes to construct a full access intersection at Homestead Lane and 200<sup>th</sup> Street and a sanitary sewer main extension from west of Homestead Lane (north of Interstate 35) to 200<sup>th</sup> Street, (hereinafter "the Projects") said location being within the city limits of the City of Edgerton, Kansas; and

WHEREAS, the City has determined it necessary to acquire sanitary sewer easements and temporary construction easements on property located within the City limits of the City of Edgerton, more specifically at 20080 Homestead Lane, to ensure that city sanitary sewer lines to be constructed on that property are fully within sanitary sewer easement held by the City; and

WHEREAS, in order to complete the construction of the intersection and city sanitary sewer lines, the City needs to obtain permanent sanitary sewer and temporary construction easements generally located across property at 20080 Homestead Lane within the City and Johnson County, Kansas; and

WHEREAS, the City has attempted, and will continue to attempt, to negotiate with the private landowner for the easements needed for the Projects but to date such negotiations have been unsuccessful with the owner.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Edgerton, Kansas:

**SECTION 1:** That pursuant to K.S.A. § 26-201, the City declares that the easements described below are necessary for the Projects.

**SECTION 2:** That the locations of the permanent sanitary sewer and temporary construction easements needed are generally located across property at 20080

Homestead Lane, within the city limits of the City of Edgerton, Johnson County, Kansas, and are more specifically described below.

### **TEMPORARY CONSTRUCTION EASEMENT - INTERSECTION**

A TRACT OF LAND IN NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 15 SOUTH, RANGE 22 EAST OF THE 6TH P.M. IN THE CITY OF EDGERTON, JOHNSON COUNTY, KANSAS

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 9; THENCE ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 9  
S.02°03'46"E. (BEING AN ASSUMED BEARING) 889.10 FEET; THENCE  
S.87°56'14"W. 70.68 FEET TO THE POINT OF BEGINNING AND A POINT ON THE WEST RIGHT-OF-WAY LINE OF HOMESTEAD LANE; THENCE ALONG THE WEST RIGHT-OF-WAY LINE OF HOMESTEAD LANE  
S.08°14'50"W. 250.00 FEET; THENCE  
N.81°45'10"W. 50.00 FEET; THENCE  
N.08°14'50"E. 250.00 FEET; THENCE  
S.81°45'10"E. 50.00 FEET TO THE POINT OF BEGINNING, CONTAINING 12,500 SQUARE FEET.

### **PERMANENT SANITARY SEWER EASEMENT**

A TRACT OF LAND 40 FEET IN WIDTH ACROSS A PART OF THE NE1/4 OF SECTION 9, TOWNSHIP 15, RANGE 22, IN JOHNSON COUNTY, KANSAS, LYING 20 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE SOUTHEAST CORNER OF THE NE1/4 OF SAID SECTION 9; THENCE N 2° 03' 46" W, ALONG THE EAST LINE OF THE NE1/4 OF SAID SECTION 9, A DISTANCE OF 659.94 FEET; THENCE S 86° 33' 57" W, A DISTANCE OF 193.72 FEET, TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 35, AS NOW ESTABLISHED, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING S 86° 33' 57" W, A DISTANCE OF 8.02 FEET; THENCE N 89° 21' 09" W, A DISTANCE OF 300.00 FEET; THENCE S 86° 59' 55" W, A DISTANCE OF 333.58 FEET, TO THE POINT OF TERMINUS ON THE EAST LINE OF THE VARIABLE WIDTH SANITARY SEWER EASEMENT RECORDED IN BOOK 201210 AT PAGE 000189, IN THE OFFICE OF THE REGISTER OF DEEDS, JOHNSON COUNTY, KANSAS, CONTAINING 25,664 SQUARE FEET, MORE OR LESS.

THE LIMITS OF SAID EASEMENT SHALL EITHER EXTEND OR TERMINATE AS NECESSARY TO PRODUCE A CONTINUOUS BOUNDARY THAT IS CONTIGUOUS WITH THE CORRESPONDING LINES AS DESCRIBED.

**TEMPORARY CONSTRUCTION EASEMENT – SANITARY SEWER**

A TRACT OF LAND 100 FEET IN WIDTH ACROSS A PART OF THE NE1/4 OF SECTION 9, TOWNSHIP 15, RANGE 22, IN JOHNSON COUNTY, KANSAS, LYING 50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE SOUTHEAST CORNER OF THE NE1/4 OF SAID SECTION 9; THENCE N 2° 03' 46" W, ALONG THE EAST LINE OF THE NE1/4 OF SAID SECTION 9, A DISTANCE OF 659.94 FEET; THENCE S 86° 33' 57" W, A DISTANCE OF 193.72 FEET, TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 35, AS NOW ESTABLISHED, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING S 86° 33' 57" W, A DISTANCE OF 8.02 FEET; THENCE N 89° 21' 09" W, A DISTANCE OF 300.00 FEET; THENCE S 86° 59' 55" W, A DISTANCE OF 378.45 FEET, TO THE POINT OF TERMINUS ON THE WEST LINE OF THE EAST THIRD OF THE NE1/4 OF SAID SECTION 9, CONTAINING 68,646 SQUARE FEET, MORE OR LESS.

THE LIMITS OF SAID EASEMENT SHALL EITHER EXTEND OR TERMINATE AS NECESSARY TO PRODUCE A CONTINUOUS BOUNDARY THAT IS CONTIGUOUS WITH THE CORRESPONDING LINES AS DESCRIBED.

**SECTION 3:** City Staff is authorized to have a survey conducted and a description of the land and easements to be condemned to be prepared by a competent engineer. Both the survey and the description of the property to be condemned shall be filed with the City Clerk upon their completion.

**SECTION 4:** The City Clerk is hereby directed to publish this Resolution once in the City's official newspaper.

**SECTION 5:** This Resolution shall be effective upon its approval and adoption.  
ADOPTED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS ON THIS 14<sup>TH</sup> DAY OF MAY, 2020.

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DONALD ROBERTS, MAYOR

ATTEST:

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CHRIS CLINTON, CITY CLERK

APPROVED AS TO FORM:

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LEE W. HENDRICKS, CITY ATTORNEY