

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
June 11, 2020
7:00 P.M.**

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 May 28, 2020 Regular City Council Meeting
5. Approve Agreement with BG Consulting for Engineering Design Services for the 1st Street and West Meriwood Lane Stormwater Repair Project
6. Approve Ordinance No. 2039 Amending Section 14-205 of Article 2 Of Chapter XIV of the City Code to Include Parking Restrictions on East Nelson Street/Sunflower Road

Regular Agenda

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

Business Requiring Action

9. **CONSIDER ADDING A LOAN PROVISION TO THE CITY'S 457 RETIREMENT PLAN**

Motion: _____ Second: _____ Vote: _____

10. **CONSIDER MASTER SERVICES AGREEMENT WITH GEORGE BUTLER ASSOCIATES, INC. (GBA) FOR BUILDING PERMIT PLAN REVIEW AND BUILDING PERMIT INSPECTION SERVICES**

Motion: _____ Second: _____ Vote: _____

11. **Report By The City Administrator**

12. **Report By the Mayor**

- Report on Impact of COVID-19 to City Operations

13. **Future Meeting Reminders:**

- June 25th: City Council Meeting – 7:00 PM
- July 9th: City Council Meeting – 7:00 PM
- July 14th: Planning Commission Meeting – 7:00 PM
- July 23rd: City Council Meeting – 7:00 PM
- August 11th: Planning Commission Meeting – 7:00 PM
- August 13th: City Council Meeting – 7:00 PM
- August 27th: City Council Meeting – 7:00 PM

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

EVENTS

June 23rd: Municipal Court

June 27th: Low-Cost Animal Vaccination Clinic – 8:30 AM to 1:30 PM RESERVATIONS ARE REQUIRED – Visit petvaccinationclinic.eventbrite.com to make a reservation

July 3rd: Community Picnic and Fireworks Show (Park Opens at 5:00 PM, Fireworks around 9:45 PM)

City of Edgerton, Kansas
Minutes of City Council Regular Session
May 28, 2020

A Regular Session of the City Council (the Council) was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on May 28, 2020. The meeting convened at 7:02 PM with Mayor Roberts presiding.

1. ROLL CALL

Ron Conus	present
Clay Longanecker	present
Josh Lewis	present
Katee Smith	present
Josh Beem	absent

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
- Public Works Director Dan Merkh
- Marketing and Communications Manager Kara Banks via videoconference

- 2. WELCOME** Mayor Roberts welcomed everybody and stated he is happy to be holding the meeting in person. He thanked those joining via videoconference to maintain social distancing.

3. PLEDGE OF ALLEGIANCE

CONSENT AGENDA

- 4. Approve Minutes for May 14, 2020 Regular City Council Meeting.
- 5. Approve Resolution No. 05-28-20A Approving The Mayoral Appointments For The City Treasurer, City Attorney/City Prosecutor, And Municipal Judge, And Designation Of The Official City Newspaper For The City Of Edgerton.

Councilmember Smith motioned to approve the Consent Agenda, motion seconded by Councilmember Lewis. The Consent Agenda was approved, 4-0.

REGULAR AGENDA

6. Public Comments.

There were no public comments made at this time.

7. Declaration.

Councilmember Smith asked if there would be any conflict with her approving any budget requests from the Frontier Days Committee as she is a member of that committee. Mayor Roberts said he is part of that committee as well but there is no monetary loss or gain so there is not any conflict.

8. Presentations by Representatives for Budgetary Requests For the 2021 Budget

- **Project Grad**

Ms. Brenda Cloud, 105 West Martin Street Edgerton, Kansas, came before the Council. She requests the Council set aside \$2,000 for Project Grad in 2021. Mayor Roberts inquired to what was budgeted for the past. Ms. Beth Linn, City Administrator, answered the request is for the same amount as this last year.

Mayor Roberts asked what Project Grad is doing this year with the pandemic. Ms. Cloud stated signs were made for this year's graduates that she put the names on, and a parade of graduates will be held on June 20, 2020 from 11:00 AM to 1:00 PM. There will be one (1) graduate or family per car. Graduation is set for July 25, 2020 with the hopes of an in-person ceremony but it may be done virtually. A party is still being planned at either the New Century Fieldhouse or Celebration Park in Gardner. The idea of holding the event at Big Bull Creek Park was discussed but there are too many trails to monitor. Ms. Cloud stated donations are still coming in. Mayor Roberts said the event is planned to go on and the donated funds are going to a great cause.

Councilmember Lewis motioned to approve a \$2,000 allocation for Project Grad in the 2021 Budget. The motion was seconded by Councilmember Longanecker. The allocation was approved, 4-0.

- **Johnson County Human Services**

Ms. Brandy Hodge, Community Relations Manager for Johnson County Human Services, spoke before the Council via videoconference. She provided a history of the Johnson County Utility Assistance Program (the Program) to the Council. Ms. Hodge explained why some residents need assistance on their utility bills. She said there is a high probability there will be an increase to the number who need assistance due to the impacts of COVID-19. Ms. Hodge explained that residents who qualify reside in Johnson County and the City must be at or below the 200% poverty level with a past due bill in their name and can provide a history of the account showing recent payments. She explained the Program uses the last thirty (30) days of income to see if residents qualify.

Ms. Hodge showed the Council the previous pledges the City has done in the previous years. Councilmember Longanecker inquired to what happens to the funds that are not used in the pledged year. Ms. Hodge replied the funds roll over into the next year. Ms. Linn stated the funds are put into an account that is earmarked for Edgerton residents. Ms. Hodge said that is correct and no funds pledged for 2020 have been used thus far. Ms. Linn explained the pledged funds are requested only when the funds are low in the

account. Ms. Hodge stated said some cities pay it upfront in one lumpsum and others pay quarterly.

Ms. Hodge showed the Council how the contributions per agency were divided. She explained the available funds from 2019 and what utility the dollars went to. The utilized funds for the City were shown to the Council. Ms. Hodge then showed the Council the last five (5) years of how many households requested assistance each year and how much was provided. She stated they expect to see more people needing assistance with utilities and requested the City help raise awareness of the assistance program through social media and the City's website and newsletter.

Ms. Hodge provided a Program update to the Council where she stated Johnson County Services would like to raise the City allocation per qualifying household from \$100 to \$150. She requested the City pledge \$2,000 for 2021.

Mayor Roberts inquired if the federal stimulus payments are counted as income for somebody who is needing assistance. Ms. Hodge answered any unemployment benefit is considered income, but the stimulus payments are not considered income as it is not taxable. Ms. Linn stated the City did send the pledged amount for 2020 on May 11, 2020. Councilmember Longanecker motioned to approve the requested \$2,000 for the Utility Assistance Program and to increase the City's allocation per qualifying household to \$150. The motion was seconded by Councilmember Conus. The motion carried, 4-0.

- **Miami County Conservation**

Ms. Lesley Rigney, Coordinator of the Hillsdale Watershed Coalition (the Coalition), addressed the Council via videoconference. She stated the Coalition is going through unique times right now and is having to cancel events. She said they could always use more volunteers as well. Ms. Rigney stated this is the fifth-year overall effort of the Coalition and they will be entering the second stage of a grant that was awarded to them from Kansas Department of Health and Environment (KDHE). The Coalition has increased the amount of funds that needed to be raised to \$200,000.

Ms. Rigney stated the Coalition has had close to 2,500 acres treated with best management practices and the Coalition has doubled its outreach and education. Ms. Rigney requested \$5,000 from each Johnson County city that uses the Hillsdale Lake Watershed for their water. She is aware Edgerton does pledge money into the Hillsdale Area Water Cooperative (HAWC). She acknowledged the increase from last year's contribution of \$4,000 to \$5,000 this year. Ms. Rigney stated the long-term goals have not changed and the increase of funds would aid the Coalition is completing their new strategies that she highlighted.

Mayor Roberts inquired as to why the Miami County cities are not contributing as much as the Johnson County cities. Ms. Rigney answer it is because Johnson County is upstream which is where the nutrients need to be reduced and education is key

upstream and not downstream in Miami County. Mayor Roberts clarified the conservation is requesting \$5,000. Ms. Rigney replied that is correct. Councilmember Longanecker motioned to approve the requested \$5,000 be set aside in the 2021 Budget. Councilmember Smith seconded the motion. The requested \$5,000 will be set aside in the 2021 Budget, 4-0.

- **United Community Services of Johnson County**

Ms. Christina Ashie Guidry, Director of Resource Allocation for United Community Services (UCS) of Johnson County, thanked the Council for the opportunity to present via videoconference and recognized the City for the long-time contributions. She stated UCS is participating in the Kansas City Region's COVID-19 response recovery fund which recently announced the Edgerton food pantry is receiving \$5,000 from that fund. She explained the UCS Human Service Fund is a voluntary fund that fourteen (14) cities and Johnson County contribute to.

Ms. Ashie Guidry provided a 2019 year-end report for the Council. She stated UCS is requesting level funding for 2021 to match last year's contribution of \$2,000. She stated about 60,000 Johnson County residents received aid from UCS in 2019 and 251 of those residents lived in Edgerton. Mayor Roberts said he is a board member of UCS and appreciates the grant funding they obtain and the data that is gathered to help the residents of Edgerton. Councilmember Lewis motioned to approve the request for \$2,000. The motioned was seconded by Councilmember Longanecker. The budget request of \$2,000 was approved, 4-0.

- **Frontier Days Association**

Mr. Glyn Powers, President of the Frontier Days Committee (the Committee), 1606 West 8th Street, spoke to the Council. He stated Frontier Days will not be held this year due to the pandemic. He explained everyone who was booked for this year will be rebooked for next year which is the 50th Anniversary of Frontier Days. Mr. Powers said the Committee is aiming for the biggest Frontier Days yet. He stated the Committee is requesting \$30,000 to help get a big-name entertainer for Saturday night. The Committee hopes to have the festival next year. Mayor Roberts said it is a lot of work and hopes there are more volunteers. He said there are some people who show up the day of the event, which is great, but there is a lot of planning of the event and the Committee needs more help.

Councilmember Longanecker inquired to what the City's typical donation is. Ms. Linn answered it is usually \$18,000. Councilmember Longanecker asked how the Committee came up with the \$30,000 figure to request. Mr. Powers answered the increase of funds from all of the major donors would help book a big-name entertainer. Councilmember

Lewis said a typical entertainer is usually \$10,000 to \$15,000 per night. A more popular entertainer would require a higher amount. Mayor Roberts agreed and said lesser known entertainers go about that rate. Mr. Powers said a fairly popular musician once cost about \$20,000. Mayor Roberts acknowledged that country entertainers seem to be a little more popular than the rock-and-roll entertainers in Edgerton and generally cost more. Councilmember Smith said Gardner may not be doing an event, so a larger crowd could show up. Mayor Roberts stated a more popular name could draw a larger crowd as well. The extra funds could also be used to acquire some other entertainment or giveaways.

Mayor Roberts highlighted the history of Frontier Days by stating it was started by the Boy Scouts and it eventually grew so big that a new committee had to be formed. The City has always helped to some degree and if the City wants to be more involved, then the City should donate more funds. Mayor Roberts said this event has attracted many people to Edgerton and it gives families time to come back to Edgerton if they have moved out. Mayor Roberts said he is in favor giving more if the City can afford it. Mr. Powers acknowledged the Committee is lucky to have the same entertainment booked for the same amount for next year, but they still want the biggest and best event possible. All of the funding and volunteers are needed and welcomed. Councilmember Lewis motioned to approve to requested amount of \$30,000. Councilmember Longanecker seconded the motion. The requested amount of \$30,000 was approved, 4-0.

- **ElevateEdgerton!**

Mr. James Oltman, President of ElevateEdgerton! (Elevate) approached the Council. He stated the budget request form last year included funds for a Logistics Park Kansas City (LPKC) magazine, which was completed and delivered early April 2020. The LPKC Magazine is different than the magazine published by the Gardner-Edgerton Chamber of Commerce. The LPKC magazine is a business to business marketing piece that gives stories of some of the tenants in LPKC and why they have decided to work in Edgerton. Mr. Oltman said the magazine has not been sent to very many places as the pandemic has made it difficult figuring out who is working in the office and who is working from home. The magazine is geared for people who find locations for their business and will not be sent out to the community like a chamber magazine. The Council commended Mr. Oltman on the magazine. Mr. Oltman stated he and City Staff worked diligently with the publishers on getting the stories right and showcasing what Edgerton has to offer businesses.

Mr. Oltman informed the Council that during the pandemic, Elevate has been primarily focusing on aiding the current tenants of LPKC. He said while there are people losing jobs, LPKC is actually growing in employment and business due to the changes of habits

in shopping. Many places in LPKC are hiring in large numbers to keep up with demand of shipping orders. Elevate has been spreading the word that there are jobs available in LPKC with some places were offering a two dollar (\$2) an hour increases to attract applicants and employees. Mr. Oltman explained social media, radio advertising in the Kansas City metropolitan area and southwest of that area, and a digital billboard ad has been used to inform people there are jobs available in LPKC. Mr. Oltman stated any resources through the state are being shared with the tenants.

Mr. Oltman said Edgerton is well positioned on industrial and residential development. The pandemic has also forced some companies to start bringing their manufacturing back to the United States. Mr. Oltman explained this is because many companies had their product locked down in international locations where the pandemic started before it began in the US. He stated residential development is poised to change as affordable housing is going to become more important than it was before. Some companies will allow employees to work from home and people will want to migrate away from the higher cost of living areas. Mr. Oltman said there is reason for optimism for Edgerton as it continues to navigate towards the new normal.

Mr. Oltman stated the budgetary request for Elevate is similar to the past few years. He stated the City is starting to see some of the rewards of the labor and partnership with Elevate as more commercial development is coming to Edgerton with On the Go Travel Center having broken ground. Elevate expects to see more and more retail and commercial development in the City as they continue to work on recruiting residential development. Mr. Oltman said Elevate will continue to work with employers in LPKC to increase and enhance the workforce there. Last year Elevate increased its focus on rail serve businesses and is starting to see an escalation in leads. Elevate is working with regional partners and Burlington Northern Santa Fe (BNSF) Railway to attract rail served business to Edgerton.

Mr. Oltman indicated with the changes to the City's involvement in the Gardner-Edgerton Chamber of Commerce, Elevate wants to create the new resident bags that the Chamber of Commerce used to provide for new residents. He said partners of Elevate are being contacted to see if they want to put any offers or information in the bags to be given out. This also creates an outlet for community news and event alerts. Mr. Oltman said he and City Staff are working on a podcast so people can get updates about what is being done in LPKC and what Elevate is working on. It will also allow City Staff to highlight City events and bring in guests to highlight the bigger events. It is a way to connect with the residents and get the word out what Elevate is doing for Edgerton.

Mr. Oltman stated there are three (3) areas of funds he is requesting. The first one (1) is a \$55,000 cash contribution. The second area is \$10,000 in-kind contributions from

the City's Marketing and Communications Manager, Kara Banks. The final area is \$10,000 targeted allocation which will be used on Residential Development Housing Fund. This provides the ability to leverage money from other partners for the purpose of residential development recruitment activities. Those activities can be a housing study, residential development-related marketing, and/or data collection. Mr. Oltman informed the Council some other economic development partners are willing to participate in some of these opportunities.

Mayor Roberts stated he is on the Elevate board as well and sees the benefit of the partnership. Councilmember Conus stated the magazine emphasized Edgerton and he was grateful for that. Mayor Roberts said the magazine was specific for the business community and the residential piece the Chamber of Commerce was doing did not focus on Edgerton enough and maybe the City should do something similar in the future for its residents. Councilmember Lewis inquired to how leveraging funds works. Mr. Oltman answered the budget is a limited amount and if an opportunity such as a housing study would come along, the funds would have to be found in the budget instead of having other partners help fund the study. This fund would be a reimbursement-style situation as Elevate would pay for it then ask the City for reimbursement. It is possible that only a portion of the requested amount is used, but the total amount of funds is available if the opportunity does arise. Ms. Linn stated there are some grants Elevate can apply for that the City cannot. Mayor Roberts said a housing study does not only look at single family residential but also multi-family like condos and apartments. Councilmember Longanecker motioned to approve the requested funds. Councilmember Conus seconded the motion. The requested funds were approved, 4-0.

BUSINESS REQUIRING ACTION

9. CONSIDER ORDINANCE NO. 2037 LEVYING SPECIAL ASSESSMENTS ON PARCELS OF GROUND FOR THE PURPOSE OF PAYING PROJECT COSTS WITHIN LOGISTICS PARK KANSAS CITY (LPKC) DISTRICT NO. 1 COMMUNITY IMPROVEMENT DISTRICT

Mr. Scott Anderson, Bond Counsel, spoke before the Council. He stated the City has previously created the LPKC District No. 1 Community Improvement District (CID) to finance certain property at the northwest quadrant of 207th Street and Waverly Road. Pursuant to the CID and the related Development Agreement, the City levies special assessments against the property in an amount equal to 5 cents (\$0.05) per square-foot per year for all vertical improvements that exceed 50,000 square-feet for a ten-year term. The assessments are to commence in the calendar year in which property tax abatement commences for the vertical structures.

Mr. Anderson stated Kubota North America Corporation (Kubota) has constructed 1,958,919 square-feet of improvements within the CID. The Ordinance assesses \$979,459.50 of

special assessments against Kubota. One-tenth of the special assessments are paid each December, without interest, commencing December 2020.

Councilmember Longanecker motioned to approve Ordinance No. 2037 levying special assessments on parcels of ground for the purpose of paying project costs within LPKC District No. 1 CID. Councilmember Smith seconded the motion. Ordinance 2037 was approved, 4-0.

10. CONSIDER ORDINANCE NO. 2038 LEVYING SPECIAL ASSESSMENTS ON PARCELS OF GROUND FOR THE PURPOSE OF PAYING PROJECT COSTS WITHIN LPKC DISTRICT NO. 2 COMMUNITY IMPROVEMENT DISTRICT

Mr. Anderson addressed the Council. He stated the City has previously created the LPKC District No. 2 CID to finance certain property at the northeast quadrant of 207th Street and Waverly Road. Pursuant to the CID and the related Development Agreement, the City is to levy special assessments against the property in an amount equal to \$0.05 per square foot per year for all vertical improvements that exceed 50,000 square feet for a ten-year term. The maximum amount of the assessment is \$382,500. The assessments are to commence in the calendar year in which property tax abatement commences for the vertical structures.

Mr. Anderson stated ELHC LI, LLC has constructed 764,500 square feet of improvements within the CID. The Ordinance assesses \$382,500 which is the maximum amount of special assessments that may be assessed against ELHC, LI, LLC. One-tenth of the special assessments are paid each December, without interest, commencing December 2020.

Councilmember Lewis motioned to approve Ordinance No. 2038 levying special assessments on parcels of ground for the purpose of paying project costs within LPKC District No. 2 CID. Councilmember Longanecker seconded the motion. Ordinance No. 2038 was approved, 4-0.

11. CONSIDER RESOLUTION NO. 05-28-20B AUTHORIZING THE CITY OF EDGERTON, KANSAS TO ENTER INTO A FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF A TRUCK STOP AND RELATED FACILITIES

Mr. Anderson briefed the Council. He stated My Store III, Inc. (the Developer) proposes to construct a truck stop, truck parking, truck maintenance facility, truck wash, restaurants, and associated infrastructure improvements on the property generally located at the northeast and northwest corners of Interstate 35 and Homestead Lane. The Developer and the City previously entered into an Amended and Restated Development Agreement to set forth certain agreements with respect to the development. The Amended and Restated Development Agreement provided the Developer would develop the project and the City would consider the following incentives:

1. 1% CID sales tax with proceeds going to the City to reimburse the City for certain public infrastructure improvements.
2. Tax Increment Financing (TIF) project plan with TIF revenues being split 50/50 between the Developer and the City, and setting the maximum Developer reimbursement at \$1,440,362; and

3. Industrial Revenue Bonds (IRB) for the purpose of allowing the Developer to utilize a sales tax project exemption certificate.

The Developer has proposed that the initial project be expanded by including an additional 4,200 square feet of retail space. In exchange for expanding the project, the Developer is requesting that the TIF cap be increased to \$1,750,000.

The Resolution authorizes the City to enter into a First Amendment to the Amended and Restated Development Agreement. The First Amendment expands the definition of the project in the original agreement and increases the Developer TIF cap to \$1,750,000.

Councilmember Longanecker inquired as to why the location is the northeast and northwest corners and if the northwest side was to be for the sanitary sewer. Mr. Anderson answered the project is on the northeast corner and the northwest corner is an error. Mayor Roberts said the sanitary sewer does cross Homestead Lane but is not part of this particular development. Mr. Anderson stated the TIF district is composed of both the northeast and northwest corners of the intersection. Councilmember Conus inquired if the agreement will be amended each time a new building is proposed. Mr. Anderson said it seems this project is fully built out and the City is not any under obligation to amend an agreement, but the Developer can always ask. Ms. Linn said this agreement is for the first part of the project, but additional phases could be brought back to the Council for consideration. Mayor Roberts stated a lot of the burden of the cost is still placed on the Developer overall and the developer wants to capitalize the twenty (20) years of the TIF benefits.

Councilmember Lewis motioned to approved Resolution No. 05-28-20B authorizing the City of Edgerton, Kansas to enter into a First Amendment to Amended and Restated Development Agreement for the development of a truck stop and related facilities. Councilmember Conus seconded the motion. Resolution No. 05-28-20B was approved, 4-0.

12. CONSIDER RESOLUTION NO. 05-28-20C SETTING A DATE FOR A PUBLIC HEARING REGARDING THE EDGERTON HOMESTEAD LANE RETAIL DISTRICT REDEVELOPMENT (TIF) DISTRICT PROJECT PLAN A1

Mr. Anderson spoke before the Council. He stated on August 22, 2019, the City created the Homestead Lane retail TIF District on property generally located at the northeast and northwest corners of Interstate 35 and Homestead Lane (the District). Pursuant to an Amended and Restated Development Agreement with the Developer, the City agreed to consider a TIF project plan for the redevelopment of 12.162 acres located in the northeast corner of Interstate 35 and Homestead Lane (the Project Plan Area) that is within the District.

Mr. Anderson stated the Developer proposes to construct a truck stop, truck parking, truck maintenance facility, truck wash, restaurants, and associated infrastructure improvements on the Project Plan Area. The City proposes to construct an interchange and other necessary public infrastructure improvements. Together, these improvements are referred to as Project Plan A1. Mr. Anderson explained in order to create a project plan within a TIF District, the City needs to take the following actions:

1. Prepare a feasibility study;
2. Prepare a project plan;
3. Have the project plan considered by the Planning Commission;
4. Set a date for a public hearing on the project plan;
5. Notify the county, school district and property owners and publish notice of the public hearing; and
6. Approve an ordinance creating the project plan.

Mr. Anderson stated the City has caused a feasibility study to be prepared by Columbia Capital. The City has also caused Project Plan A1 to be prepared. On April 14, 2020, the Edgerton Planning Commission approved a resolution finding that Project Plan A1 is consistent with the intent of the comprehensive plan for development of the City. On April 23, 2020, the City approved Resolution No. 04-23-20A providing for notice of a public hearing to consider Project Plan A1. The City decided to delay the hearing and notices of the prior hearing were not mailed to the County or School District or published in the paper. This Resolution replaces Resolution No. 04-23-20A and set the new date for the public hearing as June 25, 2020.

Mr. Jeff White, Columbia Capitol, completed the feasibility study and stated the changes to development agreement does not change the conclusion of the feasibility study. He said Project Plan A1 meets the requirements under state law. He asked Mr. Anderson if June 25, 2020 is the correct date for the public hearing per the state statutes. Mr. Anderson answered it needs to be over thirty (30) days from the current meeting so it would not meet that requirement. He stated the earliest the public hearing can be held is July 9, 2020.

Councilmember Longanecker motioned to approve Resolution No. 05-28-20C setting a date for a public hearing regarding Project Plan A1 with the stipulation that the date be changed to July 9, 2020 for the public hearing. Councilmember Smith seconded the motion with the stipulation. Resolution No. 05-28-20C was approved with the stipulation the date for the public hearing be changed to July 9, 2020, 4-0.

13. PUBLIC HEARING TO RECEIVE INPUT FROM THE PUBLIC ON THE POSSIBLE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS IN RESOLVING LOCAL COMMUNITY DEVELOPMENT AND HOUSING NEEDS IN THE CITY OF EDGERTON

Mr. Dan Merkh, Public Works Director, spoke before the Council. He said each year Johnson County invites cities to apply for Community Development Block Grant (CDBG) funds that are made available by the federal government. Johnson County stated that the primary goal of the County's Community Development program is to provide federal financial assistance to eligible applicants for the purpose of community development. Towards this goal, the County has identified a number of strategic priorities. Mr. Merkh said those priorities are:

1. Complete/advance existing projects approved by voters and the Board of County Commissioners with efficiency and effectiveness.
2. Strengthen and finance the appropriate level of service to meet the needs of the County's vulnerable populations, pursuing innovative strategies.
3. Develop a creative and innovative vision for a transit plan that is fiscally stable.

4. Focus on developing innovative initiatives that enhance operational effectiveness and efficiency, levels of customer service and stewardship.

Mr. Merkh stated a step in the application is to hold a public hearing to obtain public opinion on the matter.

Mayor Roberts opened the Public Hearing 8:43 PM. No public comments were made. Mayor Roberts closed the Public Hearing at 8:44 PM.

14. CONSIDER SUBMITTAL OF APPLICATION TO JOHNSON COUNTY FOR 7TH STREET AND NELSON STREET SANITARY SEWER PROJECT FOR CDBG FUNDING FOR 2021

Mr. Merkh addressed the Council. He stated during the work session held on October 10, 2019, the Council identified the 7th Street and Nelson Street Sanitary Sewer Project as a priority for completion. This project would be an eligible Public Facilities and Improvement project by definition for use of CDBG funds. Mr. Merkh added all of Edgerton is within a Census Block Group that qualifies for funding by area benefit.

Mr. Merkh explained cities who are interested in submitting a CDBG application to the County are required to obtain the view of citizens through at least one public hearing held before the Council and advertised at least fourteen (14) days in advance in the City's newspaper of record. Mr. Merkh said the public comment period begins on the day after publication. The City published a Public Hearing Notice in the Gardner News on May 13, 2020. At the time of preparation of the packet, City Staff has received no comments from the public. Mr. Merkh stated the public hearing just held was regarding this project.

Mr. Merkh stated CDBG is a reimbursement program in which cities may apply for up to \$200,000. If the City applies for \$200,000 in 2021, the City would be ineligible to apply for a grant in 2022. He explained CDBG funds do not have a required match. However, the City is expected to provide leveraged funds in accordance with its financial capability. The application must contain verifiable statements indicating that the local leverage funds represent the maximum amount available for the activity and that without the requested CDBG funds, the activity could not be completed. However, those costs may be documented and used as local leverage funds.

Mr. Merkh said in preparation for the CIP work session, City Engineer and City Staff prepared an Engineer's Estimate of Probable Project Costs. The total project cost is estimated at \$468,000 which includes design, construction, inspection and other project deliverables. Mr. Merkh explained CDBG funds may only be applied to the construction aspect of the project.

Mr. Merkh informed the Council City that Staff recommends using sewer funds as leverage dollars for the \$268,000 over the \$200,000 allowed by CDBG. The final source of leverage funds will be determined by the Council if CDBG funding is awarded.

Councilmember Lewis motioned approving the submission of an application to Johnson County for the 7th Street and Nelson Street Sanitary Sewer Project for CDBG funding for

2012 and authorizing Mayor Roberts to sign the application. Councilmember Longanecker seconded the motion. The submittal of an application for the 7th Street and Nelson Street Sanitary Sewer Project for CDBG funding for 2021 and authorization of Mayor Roberts to sign the application was approved by the Council, 4-0.

15. CONSIDER ORDINANCE NO. 2039 APPROVING THE DESCRIPTION AND SURVEY OF LANDS NECESSARY FOR ACQUISITION OF EASEMENTS NEEDED FOR CONSTRUCTING AN INTERSECTION AND CITY SANITARY SEWER LINES AT 20080 HOMESTEAD LANE (200TH STREET SANITARY SEWER PROJECT)

Ms. Linn informed the Council the City is constructing a new full access intersection at Homestead Lane and 200th Street just north of Interstate 35. She said 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. City staff has contacted the property owner and requested the dedication of the easement by June 4, 2020.

Ms. Linn explained 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 the east side of Homestead Lane at 200th Street. The City needs a permanent sanitary sewer easement and temporary construction easement for this Project. City Staff has contacted the property owner and requested the dedication of these easements by June 4, 2020.

Ms. Linn stated prior to June 4, 2020, City 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, City Staff recommends moving forward with the condemnation process.

Ms. Linn said on May 14, 2020 the Council took the first step by passing Resolution 05-14-20B, confirming the necessity for condemnation and authorizing the preparation of a survey and legal descriptions. Passing that resolution did not prohibit the City from continuing to negotiate and/or acquire the easements. It simply authorized the preparation of the legal descriptions. That Resolution with the associated right-of-way and easement descriptions was published in the Gardner News on May 20, 2020. City Attorney has prepared the ordinance as the next step in the condemnation process.

Councilmember Longanecker motioned to approve Ordinance No. 2039 approving the description and survey of lands necessary for acquisition of easements needed for constructing an intersection and City sanitary sewer lines at 20080 Homestead Lane. Councilmember Lewis seconded the motion. Ordinance No. 2039 was approved, 4-0.

16. Report By The City Administrator

Ms. Linn stated she does not have anything to report at this time.

17. Report by the Mayor

- Report on Impact of COVID-19 to City Operations

Mayor Roberts stated things have moved quickly and have changed rapidly.

Ms. Linn stated the White House and Centers for Disease Control and Prevention have not had any changes since the last update.

Ms. Linn stated Governor Laura Kelly vetoed House Bill 2054 which would have limited her Executive Powers during an emergency. The veto also eliminated the second Emergency Disaster Declaration, but she signed a new one and called a special session to begin on June 3, 2020. This will task the Legislature with extending the state disaster declaration until January 2021. The state disaster declaration is what allows the City to apply for funding from the Federal Emergency Management Agency. Ms. Linn explained Governor Kelly reissued several executive orders but did not extend the suspension of utility disconnections or evictions for nonpayment. She stated the Ad Astra Plan for Reopening Kansas is no longer mandatory but is now seen as a guideline. The Kansas Corporation Commission (KCC) ordered all utilities under their jurisdiction of the KCC suspend disconnections due to nonpayment until May 31, 2020. Ms. Linn explained the City of Edgerton is a public utility and is not under their jurisdiction.

Ms. Linn informed the Council the Board of County Commissioners (BOCC) voted to renew and extend the State of Emergency Order until the threat of coronavirus is over, or the BOCC decides to rescind the order. The BOCC also voted to move into Phase 3 of the Ad Astra Plan starting May 29, 2020. The voluntary guidelines for Phase 3 for Johnson County will be in place for two weeks until June 11, 2020. The County is offering appointment-based testing for both people with and without symptoms. Ms. Linn stated there are few tests available and people who are interested should follow up with the County on their website.

Ms. Linn said the City's playgrounds were opened back up to the public on May 22, 2020. The ball fields will reopen for practices and private play on June 19, 2020. Teams will need to sign up for timeslots by June 10, 2020. Ms. Linn explained there will be a fifteen (15) minute break between each slot so teams can leave the area before the new team arrives. Due to the pandemic, City Staff consulted with Mayor Roberts and found it prudent to open the fields for a single summer season.

Ms. Linn stated due to the expiration of the Governor's Executive Order regarding the suspension of utility disconnects for nonpayment, Edgerton will resume both assessment of late penalties and disconnect for nonpayment beginning July 1, 2020. The City allows residents to request a payment plan for large balances they are unable to pay. Typically, those payment plans do not exceed 3 months; however, City Staff will allow six (6) months for payments. Residents wishing to request a payment plan may contact City Hall for an application. Any resident that does not make the required monthly payment for the payment plan will be subject to disconnect. Typically, late penalty charges continue to accrue during payment plans; however, COVID-19 balances will not accrue penalties. Ms. Linn stated the bills that are being sent on May 29, 2020 are for May and under the Executive Order.

Mayor Roberts inquired to the households that did not pay the utility bill at all during the Executive Order. Ms. Linn highly recommends those residents contact the City so they can apply for a payment plan. Councilmember Longanecker asked if the penalties included interest. Ms. Linn replied there is no interest charged to the penalties. Councilmember Smith inquired if a resident decides not to pay their bill if they are on a payment plan, what would happen. Mayor Roberts answered they will be disconnected if no payment is made. Councilmember Lewis asked if residents inform City Staff how to distribute the payment. Ms. Linn answered the form is filled out so an agreement can be agreed upon between the City and the resident. Mayor Roberts stated it is the current month's dues plus an added amount for the payment plan and if the resident is disconnected, then the payment has to be made in full before they can be reconnected. Councilmember Lewis inquired if residents are encouraged to contact Johnson County Human Services for utility assistance. Ms. Linn replied they should contact Johnson County Human Services to see if they qualify. Mayor Roberts said this is only one utility bill and these residents could be in more trouble than that one utility shows. Ms. Linn said the best thing a resident can do is contact the City early. Mayor Roberts stated he will sometimes get calls for assistance from the Christmas Tree Fund, but that fund is not used for that purpose.

Future Meeting Reminders:

- June 9th: Planning Commission Meeting – 7:00 PM
- June 11th: City Council Meeting – 7:00 PM
- June 25th: City Council Meeting – 7:00 PM
- July 9th: City Council Meeting – 7:00 PM
- July 14th: Planning Commission Meeting – 7:00 PM
- July 23rd: City Council Meeting – 7:00 PM

Mayor Roberts stated the Senior Lunch and BINGO on June 17, 2020 has been canceled.

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

Councilmember Lewis motioned to recess 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 the City Attorney, Public Works Director, and the City Administrator for the purposes of pending litigation for five (5) minutes. Councilmember Longanecker seconded the motion. The meeting recessed into executive session at 9:12 PM after a vote of 4-0.

Councilmember Smith motioned to return to open session with no action being taken. Councilmember Conus seconded the motion. Open session resumed at 9:17 PM after a vote of 4-0.

19. Adjourn

Mayor Roberts stated he has received questions about typical off-road vehicle such as All-Terrain Vehicles (ATVs) and dirt bikes being allowed on City streets. He requested Council provide feedback on whether or not this should be a future agenda item. Councilmember Lewis stated he has been in contact with many members of the public who are formulating a plan to present to the Council. He requested what the law currently allows. Mayor Roberts answered is it state law that ATVs and other off-road vehicles are not allowed on public streets and tickets have been written. Councilmember Lewis said the discussion should be held for a legal licensed driver using those vehicles on City streets. Mayor Roberts requested City Staff compile some information together regarding this issue. Mr. Lee Hendricks, City Attorney, said he has seen this topic come up in other municipalities. Mr. Hendricks stated he is happy to help City Staff compile information on this topic.

Councilmember Smith motioned to adjourn the meeting, seconded by Councilmember Lewis. The motion carried and the meeting adjourned at 9:23 PM, 4-0.

EVENTS

June 17th: Senior Lunch and BINGO – CANCELED

June 23rd: Municipal Court

City Council Action Item

Council Meeting Date: June 11, 2020

Department: Public Works

Agenda Item: Consider an Agreement with BG Consultants for Engineering Design Services for the 1st Street and W Meriwood Street Stormwater Repair Project.

Background/Description of Item: During the Capital Improvement Budget Work Session on October 10, 2019, City Council provided direction to move forward with the design of the stormwater project at 1st Street and W Meriwood Street.

The 1st Street and W Meriwood Street Stormwater Repair Project consists of replacement of the cross-road pipe in the west road right-of-way of 1st Street and crossing under W Meriwood Street. This section of storm-pipe (approximately 45 linear feet) has caused issues in the area including water overtopping the roadway, residential flooding issues, degradation of stormwater network in the area and damage to the edge of the adjacent roadways.

The scope of services included in this agreement include in the Design Phase of Services: topographical survey, design of the project, development of an Engineer's Opinion of Probable Costs; design of final construction plans with final plan quantities and bid items; and preparation of the project manual. Construction Phase Services could be considered in the future by an addendum to this agreement.

The Agreement for Design Services is a lump sum fee of \$9,000. Staff recommends using CIP Budget for this agreement.

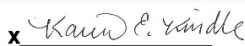
This Agreement is pending City Attorney review, all comments will be addressed prior to executing signatures.

Related Ordinance(s) or Statue(s):

Funding Source: CIP Budget

Budget Allocated: \$72,550 General Fund

Finance Director Approval:

x 
Karen Kindle, Finance Director

Recommendation: Approve an Agreement with BG Consultants for Engineering Design Services for the 1st Street and W Meriwood Street Stormwater Repair Project pending changes from the City Attorney and authorize the Mayor to sign the Agreement.

Enclosed: Agreement for Design Services

Prepared by: Dan Merkh, Public Works Director



AGREEMENT CONSULTANT-CLIENT

THIS AGREEMENT made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and CITY OF EDGERTON, KANSAS, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

Storm Water Drainage Improvements
1 st and Meriwood Intersection
Edgerton, Kansas

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 “Additional Services” means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.
- 1.2 “Agreement” means this contract and includes change orders issued in writing.
- 1.3 “CLIENT” or “Client” means the agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “Consultant” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 “Engineering Documents” or “Architectural Documents” or “Survey Documents” means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

- 1.7 “Consulting Services” or “Engineering Services” or “Architectural Services” or “Survey Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 “Services” is a description of the required work as shown in **Exhibit 1**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 **SCOPE OF SERVICES:** The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.
- 2.2 **GENERAL DUTIES AND RESPONSIBILITIES**
- 2.2.1 **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.
- Name: David Hamby, P.E., CFM
- Address: 1405 Wakarusa Drive
Lawrence, KS 66049
- Phone: 785-749-4474
- 2.2.2 **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT’s profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.
- 2.2.3 **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the Client.
- 2.2.4 **Insurance:** CONSULTANT will maintain: a) workers compensation insurance in an amount at least equal to that required by applicable law; (b) comprehensive general liability insurance in the amount of at least \$1,000,000.00; (c) automobile liability insurance in the amount of at least \$1,000,000.00; and (d) professional liability insurance in the amount of at least \$1,000,000.00. Such insurance will be with insurance carriers that are acceptable to the CLIENT and the policies evidencing such insurance will be in a form acceptable to the CLIENT. The comprehensive general liability insurance policy will name CLIENT as an additional insured. CONSULTANT will provide certification evidencing the insurance coverages named above. CONSULTANT agrees to inform CLIENT at least 30 days in advance of any termination or expiration of any of its insurance policies named above.
- 2.2.5 **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms

who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm's work. The Client will pay the Geotechnical firm separately from this Agreement.

- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT's direct control, CONSULTANT's role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT's design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

- 3.1.1. **Communication:** The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. Our review and use of the information will be to

the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.

- 3.1.2. **Access:** The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that Consultant is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** Except as otherwise set forth herein, the CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name:	Dan Merkh
Address:	404 E. Nelson
	Edgerton, KS 66021
Phone:	913-893-6231

SECTION 4 – PAYMENT

4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to **Exhibit 2** of this Agreement. The Lump Sum Fee for this project is a total of **\$9,000.00** Dollars plus reimbursable expenses as outlined in **Exhibit 2** and for the Scope of Services as shown in **Exhibit 1** of this Agreement. Payment of the Lump Sum Fee and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.2. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of BG Consultants, Inc. standard hourly rate schedule in effect at the time of services, unless stated otherwise in a properly executed addendum to this contract for Additional Services. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.3. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each

value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.

- 4.1.4. **Reimbursable Expenses:** An estimate of reimbursable expenses plus ten (10) percent shall be included in the total estimate of cost for this project and as shown in **Exhibit 2**. Total estimated cost is calculated as Lump Sum plus reimbursable expenses plus ten (10) percent. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.
- 4.1.5. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.6. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall state the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.7. **Timing of Services:** CONSULTANT will perform the Services according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT, delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays. CONSULTANT will endeavor to start its services on the anticipated start date and continue to endeavor to complete its services according to the schedule indicated in Exhibit 2. The start date, completion date and any milestone for project delivery are approximate only and CONSULTANT reserves the right to adjust its schedule and all of those dates at its sole discretion for delays caused by the CLIENT, Owner or third parties.
- 4.1.8. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.
- 4.1.9. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, and an hourly or lump sum fee adjustment. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the mutually agreed adjustment to the CONSULTANT's fee. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent.

Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.

- 4.1.10. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on any material breach by the CLIENT.

Upon receipt of such notice from CLIENT, the CONSULTANT shall, at CLIENT's option as contained in the notice; Immediately cease all Services and meet with CLIENT to determine what Services shall be required of the CONSULTANT in order to bring the Project to a reasonable termination in accordance with the request of the CLIENT. The CONSULTANT shall also provide to the CLIENT digital and/or mylar copies of drawings and documents completed or partially completed at the date of termination. The CONSULTANT is entitled to terminate this agreement by providing thirty (30) days written notice.

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.
- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot

be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

- 5.3.1. Reports, drawings, plans or other documents (or copies) furnished to CONSULTANT by the CLIENT shall, at CLIENT's written request, be returned upon completion of the Services hereunder; provided, however that CONSULTANT may retain one (1) copy of all such documents. Reports, drawings, plans, documents, software, field notes and work product (or copies thereof) in any form prepared or furnished by CONSULTANT under this Agreement are instruments of service. Exclusive ownership, copyright and title to all instruments of service remain with CONSULTANT. CLIENT is hereby granted a License to Use instruments of service with use limited to use on this project. The instruments of service are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work or on any other project.

5.4 INDEMNIFY AND HOLD HARMLESS

- 5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand, or cause of action to the extent caused by: (i) CLIENT's breach of this Agreement; and (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents.
- 5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG Consultants, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.
- 5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials harmless from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.

5.5 ENTIRE AGREEMENT

- 5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

5.6 APPLICABLE LAW

- 5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

5.7 ASSIGNMENT OF AGREEMENT

- 5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

5.8 NO THIRD PARTY BENEFICIARIES

- 5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

5.9 LIMITATION OF LIABILITY

- 5.9.1. CONSULTANT's Liability Limited to Stated Amount, or Amount of CONSULTANT's Compensation: To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of CONSULTANT and CONSULTANT's officers, directors, members, partners, agents, employees, and Consultants, to CLIENT and anyone claiming by, through, or under CLIENT for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, CONSULTANTS or its Consultants' services or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of CONSULTANT or CONSULTANT's officers, directors, members, partners, agents, employees, or Consultants, shall not exceed the total amount of \$500,000.00 or the total compensation received by CONSULTANT under this Agreement, whichever is greater. Higher limits are available for an additional fee.
- 5.9.2. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

5.10 COMPLIANCE WITH LAWS

- 5.10.1 CONSULTANT shall abide by applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.11 TITLES, SUBHEADS AND CAPITALIZATION

- 5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.12 SEVERABILITY CLAUSE

- 5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.13 FIELD REPRESENTATION

- 5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their

employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.14 HAZARDOUS MATERIALS

5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this _____ day
of _____, 20__.

CONSULTANT:

CLIENT:

BG Consultants, Inc.

City of Edgerton, Kansas

By: _____



By: _____

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

Printed Name: _____

Title: Vice President

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1

SCOPE OF SERVICES

The Scope of Services described in this Exhibit 1 is for the engineering design of storm water improvements at the 1st and Meriwood intersection. The project will involve evaluating the storm water flows in the ditches adjacent to 100 & 101 W Meriwood Lane, recommending improvements to the CLIENT and preparing construction plans for the improvements. The "PROJECT" is anticipated to include a new curb inlet on 1st Street at the south property line of 101 W Meriwood, a new entrance pipe at 101 W Meriwood, a new cross road pipe under Meriwood Lane at 1st Street and a new entrance pipe at 100 W Meriwood (1st Street driveway) along with associated ditch grading.

i. DESIGN PHASE SERVICES

CONSULTANT will provide the following Design Phase Services.

1. Receive any available information from CLIENT applicable to the PROJECT.
2. CONSULTANT will perform design of the PROJECT to prepare construction plans and project special provisions referencing the most current edition of the following design guides and specifications:
 - a. Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Admin.
 - b. Standard Specifications for State Road and Bridge Construction, 2015 Edition and applicable Special Provisions prepared by KDOT.
3. Perform a topographic survey of the PROJECT location to supplement the existing topographic survey. The survey will include:
 - a. Property monuments and section corners (if needed) to establish property lines. Missing property pins will not be set.
 - b. Utility information as detailed in Item 4 below.
 - c. Topographic information extending 30' beyond the north and south ends of the existing survey along 1st Street.
4. Receive information from utility companies having facilities within the PROJECT limits. CONSULTANT will contact ONE CALL to request utility companies locate existing utility infrastructure within the area of the PROJECT. Existing utilities that are marked at the time of the topographic survey may be included in the topographic survey.
5. Perform engineering design of storm water infrastructure improvements. CONSULTANT and CLIENT anticipate the storm water infrastructure will primarily include the following:
 - a. Storm sewer improvements.
 - b. Grading plan.
 - c. Surfacing replacement details.
6. Pavement design is not included. CONSULTANT will discuss with CLIENT the options for pavement replacement.
7. Prepare a Storm Water Pollution Prevention Plan (SWPPP).

8. Prepare a temporary traffic control plan to be used during construction of the PROJECT. Temporary traffic control plan will conform to the KDOT Traffic Engineering standards and the MUTCD.
9. Prepare construction plans on 24"x36" sheets. Construction Plans will be prepared to Concept Check, Preliminary Check, and Final Check stages. Each stage will be reviewed by CLIENT and CONSULTANT will address CLIENT's review comments.
10. Assist the CLIENT with compiling a list of known utilities in the PROJECT limits and summarizing utility adjustment coordination for CLIENT records. Provide one set of construction plans to each utility owner having facilities located within the PROJECT limits.
11. Prepare project special provisions for improvements included in the PROJECT which are not specified in the KDOT Standard Specifications.
12. Prepare a Project Manual containing bidding documents, construction contract documents, and technical specifications.
13. Prepare an opinion of probable construction costs at the Concept Design, Preliminary Check and Final Check project development stages.
14. Prepare the permit application and applicable exhibits for known permits required for construction. CONSULTANT will deliver permit application(s) to CLIENT for CLIENT to submit for approval. Permit application fees will be the CLIENT's responsibility. CONSULTANT and CLIENT anticipate the following permits will be needed:
 - a. None.
15. CLIENT and CONSULTANT anticipate up to four (4) meetings to discuss PROJECT.
16. Applying for and obtaining a Section 404 Permit from the U.S. Army Corps of Engineers is not anticipated or included in this scope of services.
17. Environmental Assessment or Environmental Impact Statement services concerning the National Environmental Policy Act are specifically excluded from this AGREEMENT. The CONSULTANT does not anticipate these services will be necessary for the PROJECT. Should the need for such services arise, the CONSULTANT can provide these services by supplemental agreement.
18. Geotechnical engineering services are not included within this scope of services.

ii. PROPERTY ACQUISITION PHASE SERVICES

CONSULTANT will provide the following Property Acquisition Phase Services.

1. CONSULTANT will prepare property descriptions of PROJECT easements on up to three (3) private properties abutting the PROJECT.
2. Surveying of PROJECT easements is not included.

iii. BID PHASE SERVICES

CONSULTANT will provide the following Bid Phase Services.

1. Assist CLIENT with advertising the PROJECT to Construction Contractors.
2. Address questions from prospective bidders regarding the PROJECT bid documents.
3. If necessary, issue addenda prior to the bid opening.

4. Review bids and provide a recommendation to CLIENT regarding awarding the construction contract.

iv. **CONSTRUCTION PHASE SERVICES** – Construction Phase Services are not included but can be added by Supplemental Agreement.

END OF EXHIBIT 1

EXHIBIT 2

COST AND SCHEDULE

A. ENGINEERING FEE

1. CONSULTANT will provide services in Exhibit 1 for a lump sum fee of **nine thousand and NO/100 dollars (\$9,000.00)** which includes transportation expenses in connection with the PROJECT. CLIENT will be invoiced for services in Exhibit 1 in accordance with Section 4 of this AGREEMENT. Monthly invoicing will be based on the percentage of the scope of services performed.
2. Reimbursable expenses not included in the Engineering Fee above may include, but are not limited to, expenses such as the purchase of maps, expenses of printing and reproductions, expenses to obtain copies of deeds, plots, plats, prints, plans, or other direct costs incurred by CONSULTANT. CONSULTANT and CLIENT agree to a reimbursable expenses allowance of **five hundred and NO/100 dollars (\$300.00)**.

B. ESTIMATED PROJECT SCHEDULE

1. CONSULTANT will perform services in an effort to meet CLIENT scheduling goals. The estimated project schedule is for completion of final plans by June 1, 2020 based upon a receipt of a signed agreement by April 27, 2020.

END OF EXHIBIT 2

EXHIBIT 3

SPECIAL PROVISIONS

The hydrologic and hydraulic analysis will be limited to the storm water conveyance features within the PROJECT limits.



EDGERTON
global routes. local roots.

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

City Council Action Item

Council Meeting Date: June 11, 2020

Department: Public Works

Agenda Item: Consider Ordinance No. 2039 Amending Section 14-205 Of Article 2 Of Chapter XIV Of The City Code To Include Parking Restrictions On East Nelson Street/Sunflower Road

Background/Description of Item:

As part of the 2019 annual Community Picnic and Fireworks Show held on July 3rd, Edgerton City Council approved a resolution temporarily prohibiting parking on E Nelson Street/Sunflower Road from East 6th Street (at the entrance to the lake) around the curve to the entrance of Martin Creek. That temporary no parking was important to help with traffic around the curve and protect the ability for public safety to safely maneuver this area.

In preparing for the 2020 Community Picnic and Fireworks Show and the 2020 GEHS Graduation Parade it was suggested that there should never be parking in this area. This ordinance would add this same area of E Nelson Street/Sunflower Road to other areas listed in Edgerton Municipal Court that prohibits parking.

City Attorney has reviewed and approved enclosed draft ordinance.

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

Funding Source: n/a

Budget Allocated: n/a

Finance Director Approval: n/a

Recommendation: Approve Ordinance No. 2039 Amending Section 14-205 Of Article 2 Of Chapter XIV Of The City Code To Include Parking Restrictions On East Nelson Street/Sunflower Road

Enclosed: Draft Ordinance
Map

Prepared by: Beth Linn, City Administrator

ORDINANCE NO. 2039

AN ORDINANCE AMENDING SECTION 14-205 OF ARTICLE 2 OF CHAPTER XIV OF THE CITY CODE TO INCLUDE PARKING RESTRICTIONS ON EAST NELSON STREET/SUNFLOWER ROAD

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

Section 1. The Governing Body hereby adopts the following new Subsection (d) as part of Section 14-205 of Article 2 of Chapter XIV of the Code of the City of Edgerton:

(d) On-street parking prohibited on East Nelson Street/Sunflower Road from East 6th Street to the entrance to Martin Creek Park at 20200 Sunflower Road .

Section 2. This ordinance shall take effect upon its adoption by the City Council, approval by the Mayor and publication in the City's official newspaper.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF EDGERTON, KANSAS
AND APPROVED BY THE MAYOR ON THE 11th DAY OF JUNE, 2020.

(SEAL)

Donald Roberts, Mayor

ATTEST:

Chris Clinton, City Clerk

APPROVED TO FORM:

Lee W. Hendricks, City Attorney



City Council Action Item

Council Meeting Date: May 28, 2020

Department: Administration

Agenda Item: Consider Adding a Loan Provision to the City's 457 Retirement Plan

Background/Description of Item:

In May 2013, the City of Edgerton partnered with the Kansas Public Employees Retirement System (KPERs) to offer an IRS Section 457 retirement plan to City employees. The 457 plan is a way for employees to voluntarily contribute pretax dollars to their retirement savings via payroll deduction. Employees are immediately 100% vested in their account balance since it is their money that is contributed.

Under IRS Guidelines, the City may add a provision to the plan to allow loans. There are two types of loans:

- General Purpose Loans
 - The purpose for the loan can be anything
 - The term can be 12-60 months
 - The maximum loan amount is \$50,000 or 50% of the employee's account balance, whichever is less
- Loans for the Purchase of a Principal Residence
 - The loan can only be used to purchase a principal residence. There are documentation requirements the employee has to meet in order to obtain this type of loan.
 - The term can be 12 to 240 months
 - The maximum loan amount is \$50,000 or 50% of the employee's account balance, whichever is less.

Loan payments must be made at least quarterly. If not, the loan could be deemed a distribution and taxed accordingly.

Administration of the loans is handled by Empower Retirement, the company with whom KPERs contracts for 457/401a retirement plan administration. Employees apply on-line directly with Empower. All loan approvals are handled by Empower. There is a \$100 loan fee paid by the employee from the loan amount at the time the loan is approved.

Loan repayment can be handled one of two ways: (1) via payroll deduction; or (2) ACH debit from the employee's personal bank account. The City can only offer one repayment method for all loans. If repayment is handled via payroll deduction, when an employee leaves City

employment, staff and the employee work with Empower to set up ACH payments. If the employee is already on ACH payments, nothing further is required when an employee leaves employment. Staff would recommend the ACH payment method as it is the simplest and requires the least amount of staff resources.

To add the loan provision to the plan, the Governing Body needs to approve the addition of the provision, and an authorized representative of the plan must sign the KPERS loan policy document, which is attached. The City must also notify Empower of the loan repayment method selected.

For hardship situations, employees automatically have the option for a hardship withdrawal per plan documents and IRS regulations. Hardship withdrawals are not loans – the amounts are not repaid and are treated as distributions and taxed accordingly. There are special circumstances employees must prove in order to obtain a hardship withdrawal. The main test is that it is an extraordinary and unforeseeable circumstance resulting from events beyond the employee's control that isn't covered by insurance, liquidating the employee's assets or stopping contributions to the plan. Some examples are funeral expenses for the employee or a dependent, medical expenses, property loss caused by a natural disaster that isn't covered by insurance, etc.

The 401a plan established in February 2019 to hold the City's matching contributions is not eligible for loans. The loan provisions, if added, would only apply to the 457 plan.

For all details regarding the loan provision, please refer to the attached KPERS 457 Plan Loan Policy Document. The City Attorney has reviewed and approved this document.

Related Ordinance(s) or Statute(s): Resolution 05-09-13A

Funding Source: n/a

Budget Allocated: n/a

Finance Director Approval:  x
Karen Kindle, Finance Director

<p>Recommendation: Approve the Addition of a Loan Provision to the City's 457 Retirement Plan and Approve ACH Debit as the Loan Repayment Method</p>

Enclosed: KPERS 457 Loan Policy Document

Prepared by: Karen Kindle, Finance Director



Plan Number: 130001-01 through 131000-01

State of Kansas Public Employees Deferred Compensation Plan – Participating Local Employers

Loan Policy Administration

Article I. Eligibility

Section 1.01 Only active employees who participate in a deferred compensation plan or defined contribution plan that permits loans may request a loan. The participant must have a minimum vested account balance of \$2,000.

Article II. Minimum and maximum loan amounts

Section 2.01 The minimum loan amount that a participant may request is \$1,000.

Section 2.02 The maximum loan amount that a participant may request is \$50,000 or 50% of the vested account balance – whichever is less. The \$50,000 maximum loan amount is reduced by the greater of the outstanding loan balance on any loan from the Plan to the Participant on the date the loan is made or the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period).

Section 2.03 If a participant has an outstanding loan through another qualified plan, 403(b) plan, or a 457 plan maintained by the same employer, the maximum loan amount available must be reduced by the highest outstanding loan balance during the past 12 months. The participant is responsible for ensuring that the aggregated loan amount on all plans sponsored by the same employer is the lesser of \$50,000 or 50% of the vested account balance.

Article III. Number of loans permitted

Section 3.01 The number of loans a participant may have outstanding at one time is one (1). If a participant has an outstanding loan and wishes to initiate another loan, the participant must first repay the current outstanding loan via a cashier's check or money order.

Article IV. Cost

Section 4.01 A loan origination fee in the amount of \$100.00 shall be deducted from the loan amount.

Section 4.02 If a participant requests their loan check to be sent express delivery, an additional \$25.00 charge will be deducted from the loan check amount.

Article V. Loan Initiation

Section 5.01 Empower Retirement uses a two-step loan process. The first step of the loan process begins by the participant applying for a loan via paper, the Web site or KeyTalk®. The second step combines the Promissory Note and Loan Check into one document, eliminating the step of returning the signed Promissory Note prior to issuing the Loan Check. By endorsing the check, the participant agrees to the terms of the Note and the repayment obligation.

Section 5.02 Plans will be required to sign the Loan Administration Policy document prior to loans being made available. The signed Loan Administration Policy document will allow the participant to initiate and complete a loan request electronically without the plan's signature. If a paper application is used, the plan must sign each loan application submitted by its participants or the plan will be required to sign a letter of instruction authorizing the processing of loan applications without an authorized plan signature.

Article VI. Distribution of loan amount

Section 6.01 Loan distribution amounts will be prorated across all available money types.

Article VII. Types of loans available

Section 7.01 A General Purpose Loan has a term of twelve to sixty (12-60) months. No reason or documentation (other than a signed promissory note) is required when a participant requests a General Purpose Loan. The interest rate for this type of loan is fixed for the life of the loan. The interest rate is 1% over the Prime Rate published in the Wall Street Journal on the first business day of the month before the loan is originated.

Section 7.02 A Principal Residence Loan has a term of seventy-two to two hundred forty (72-240) months. This loan must be utilized for the purchase of a primary residence ONLY. The interest rate is 1% over the Prime Rate published in the Wall Street Journal on the first business day of the month before the loan is originated.

Article VIII. Interest

Section 8.01 Interest paid on loans is not income tax deductible.

Article IX. Payment Requirements

Section 9.01 The plan can choose to allow either repayments by payroll deduction or repayments by Automated Clearing House (ACH). Only one repayment method can be selected for each plan.

Section 9.02 For plans that have selected repayment by ACH, scheduled payments must be made by Automated Clearing House deduction from the individual participant's bank account or via personal check with coupon (process depends on the individual carrier). Loan repayments will be allocated to the participant's account according to current allocation percentages on EASY.

Once a new loan has been initiated, the participant will be sent an amortization schedule to begin loan payments. Loan repayments must begin on time or the loan payments will be in arrears. If loan payments are not caught up in time, the loan may default. Loan default results in adverse tax consequences to the participant.

Section 9.03 For plans that have selected repayment by payroll deduction, scheduled payments must be made by payroll deduction or in some circumstance by cashier's check or bank money order. Loan repayments will be allocated to the participant's account according to current allocation percentages on EASY.

Once a new loan has been initiated, the payroll department will be sent a report or an electronic file to begin loan payments. Loan repayments must begin on time or the loan payments will be in arrears. If loan payments are not caught up in time, the loan may default. Loan default results in adverse tax consequences to the participant.

Section 9.04 *Basic Rules Regarding Loans to Ensure They Do Not Default*

- (a) Any amount paid out of a plan will be treated as a taxable distribution unless the plan loan rules under Code section 72(p) and the applicable Treasury regulations are followed.
- (b) Payments must be made in level amortized amounts and must be made at least quarterly.
- (c) Missed payments must be received prior to the end of the calendar quarter following the quarter in which the payment was missed.
- (d) If a participant fails to make a loan repayment on time, and the missed loan repayment(s) is/are not made by the end of the following calendar quarter (or within the plan's more restrictive cure period), the loan is in default and ceases to comply with section 72(p).
- (e) The entire outstanding loan balance plus accrued interest at the time of the default is taxable to the participant as a deemed distribution.
- (f) The plan loan rules under Code section 72(p) do not provide a mechanism to ignore missed payments or to reverse a loan that has already defaulted.

Section 9.05 Loans are in arrears and delinquent when any payment is missed. A late loan payment notice will be issued after the end of the calendar quarter in which the payment is delinquent. If all missed payments are not made by the end of the calendar quarter after the calendar quarter in which a payment is first missed such that the loan is totally paid up to date, the loan will be in default. In that event, the entire outstanding loan balance, consisting of the missed payments, all accrued but unpaid interest and the remaining principal, will be reported to the IRS as taxable income on a Form 1099-R for the year in which the loan default occurs. At plan sponsor's instruction and effective as of the first day of the calendar month following the month in which any such loan default occurs, the interest rate for such loan shall be (if higher than the rate otherwise applicable) the rate being charged on loans from the Plan that are approved by the Administrator in the month in which such default occurs.

Section 9.06 In addition, if a loan has not been fully repaid by the end of its term, the outstanding balance will be taxable and will be reported to the IRS on Form 1099-R as taxable income. There is no opportunity to cure a late payment once the term has expired. The payroll department will be notified of the final loan payment amount prior to the final payment due date.

Section 9.07 If the participant has a loan that defaulted at any time in the past, their eligibility for a new loan is revoked.

Section 9.08 Participants who leave service prior to the end of the loan term shall be allowed to continue repayment of their loan via ACH.

Section 9.09 When a participant takes a leave of absence of not longer than 1 year, either without pay from the employer or at a rate of pay that is less than the amount of the installment payments required under the terms of the loan, the plan should provide leave of absence information for a leave start and stop dates. The loan may be reamortized when the participant returns from leave to pay the loan in full by the maturity date of the loan. The entire outstanding loan balance, including all accrued but unpaid interest, will be reamortized.

Section 9.10 If the participant takes a military leave of absence, the interest rate on the loan will be reduced to 6%, during the period of military service provided the interest rate on the loan is greater than 6%. Loan payments must resume upon the participant's return from military leave. The term of the loan may be extended by the term of the military leave. The entire outstanding loan balance, including all accrued but unpaid interest, will be reamortized.

Section 9.11 As required by federal tax regulations, the participant's outstanding loan balance will be offset upon receiving a full withdrawal distribution after severance of employment. Partial and periodic distributions do not require an offset of the loan unless the participant selects this. As required by federal tax regulations, a participant's defaulted loan will remain on the books until a qualifying event occurs, even though income has been reported to the IRS.

Section 9.12 Partial lump sum loan repayments, via a cashier's check or money order, are permitted in order to catch up on a past-due amount or to reduce the principal amount of the loan. If a participant remits a partial payment, the loan payment amount will not change but the loan would be paid off earlier.

Article X. Early Loan Payoff

Section 10.01 A loan can be paid in full at any time, in the form of a cashier's check or bank money order. The participant may obtain a loan payoff quote via KeyTalk®. The loan payoff quote is valid for 15 days from the date it is obtained.

Article XI. Outstanding Loan at Death

Section 11.01 All outstanding loan principal and accrued interest shall be treated as a distribution from the plan when Empower Retirement is notified of a participant's death. A deceased participant's loan may not be transferred or assumed by the participant's beneficiary (ies). If a participant's loan has not been repaid as of the date of the participant's death, any distributions made from the deceased participant's plan account will be made net of any outstanding loan obligations. The amount of the outstanding loan as of the participant's date of death will be tax reported as a distribution to the participant or to the participant's estate as applicable.

Article XII. Future additions

Section 12.01 Future tax laws regarding plan loans will be incorporated into this loan policy and the Promissory Note.

Article XIII. Enforcement

Section 13.01 Empower Retirement is required to enforce these rules. The loan policy and loan administration procedures have been developed to comply with the requirements of Internal Revenue Code section 72(p) and the federal Treasury regulations thereunder, as amended from time to time.

The Plan Administrator/Employer hereby authorizes Service Provider to implement participant initiated loans based on the Loan Policy outlined above.


Authorized Plan Administrator/Employer Signature

12/16/19
Date

City of Edgerton, Kansas

Date

Title

City Council Action Item

Council Meeting Date: June 11, 2020

Department: Community Development

Agenda Item: Consider Master Services Agreement with George Butler Associates, Inc. (GBA) for Building Permit Plan Review and Building Permit Inspection Services.

Background/Description of Item:

The City of Edgerton currently has a consulting agreement with IBTS (Institute for Building Technology and Safety) for site plan review and building inspection services. This contract has been in place since August 23, 2018 and was initially entered into as a backup for the full-time building inspector to cover inspections if he was out of the office. In October of 2019 the City's full time Building Inspector resigned his position to move out of state. IBTS has been performing the plans review and inspection portion of the Building Inspector position, but there are other aspects to the position that are not being adequately fulfilled (i.e., codes interpretation, answering of codes requirement questions, paperwork completion, document filing, etc.)

At this time city staff would like to establish services with GBA in order to efficiently handle building permit plan review and building inspection requests. Current city staff do not have the expertise necessary to perform building permit plans review or building inspection services. Having an additional third-party service provider in place, will provide a seamless service delivery to Edgerton residents, business owners, and commercial developers.

Attached is a draft of the proposed service agreement with GBA which has been reviewed by the City Attorney. At this time, it is in draft form as there are some edits required pursuant to his and staff's review. Exhibit A is the "Task Order" document which allows the City flexibility in selecting which specific services GBA would perform. Exhibit B of the agreement outlines the fee schedule for services rendered. The contract is designed so that if additional services are needed, they may be added at any time through amendment of the Task Order form. The proposed agreement is for a five-year period, but it may be canceled within 14-days should there be a material breach, a transfer of ownership or a material change in conditions.

City staff asks that the Governing Body be approved with the stipulation to incorporate any changes or recommendations from the City Attorney.

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

Funding Source: General Fund – Community Development – Professional Services

Budget Allocated: \$40,000 annual budget allocation

Finance Director Approval:

x Karen E. Kindle

Karen Kindle, Finance Director

Recommendation: Approve Master Services Agreement with George Butler Associates, Inc. (GBA) for Building Permit Plan Review and Building Permit Inspection Services pending any changes from the City Attorney and authorize Mayor to sign the Agreement.

Enclosed: Draft GBA Master Services Agreement

Prepared by: Katy Crow, Development Services Director



9801 Renner Boulevard
Lenexa, KS 66219

June 4, 2020

Katy Crow
Development Services Director
404 East Nelson
Edgerton, KS 66021

SUBJECT: Proposal for Code Consulting Services

Ms. Katy Crow,

GBA is excited for the opportunity to be a part of your code enforcement team for Edgerton. Our team of Life Safety and Building professionals has experience providing code consulting services to similar clients with similar projects. We are eager to apply that experience to successfully integrate and deliver code services for the City and the surrounding community.

We recognize the importance of working with our clients to understand the unique needs of each project. Public welfare, especially in a fast-growing commercial economy is paramount. Our team is uniquely positioned as a qualified, independent reviewer with life safety as our top priority.

For nearly 35 years, our team has provided plan review and building inspection services for municipalities in Missouri and Kansas and have the capacity and capability to provide the permitting services you desire.

Should you have questions or require additional information, please contact us at any time.

Sincerely,

GEORGE BUTLER ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read "By Rasmussen", is placed over the printed name.

Bryan Rasmussen, FPE, CFPS
GBA Associate

Cc:	Daniel L. Abitz, P.E.	Joe Kmetz
	Executive Vice President/Principal	GBA Project Lead

MASTER SERVICES AGREEMENT
BETWEEN
CITY OF EDGERTON, KANSAS
AND
GEORGE BUTLER ASSOCIATES, INC. (GBA)

June 4, 2020

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into on the 4th Day of June, 2020, between the City of Edgerton, Kansas, "City," and George Butler Associates, Inc., "Consultant." The parties to this Agreement are referred to individually as a "Party" and collectively as the "Parties."

In consideration of the acts and promises contained in this Agreement and other valuable consideration, the Parties agree as follows:

SECTION 1 – RESPONSIBILITY OF CONSULTANT

- A. BASIC SERVICES.** The City of Edgerton has determined to the satisfaction of its Governing Body that George Butler Associates, Inc. is qualified to undertake and perform services commonly performed in a Master Service Agreement for Professional Services and hereby selects and employs the Consultant to perform these tasks, including, but not limited to municipal ministerial functions including; building inspection, code review and enforcement, permit issuance and general professional services associated with the City's Code Enforcement Division services (SERVICES). The City is engaging the Consultant to act as the Building Permitting Agent on their behalf for Services including but not limited to the following:
1. Serve as coordinator for the building permit services, including communication with the responsible parties of the Project as well as coordination with the City staff and other involved public agencies, such as the City Services, Public Works Department, and other agencies that serve the City.
 2. Establish procedures to manage the building permit process with the Edgerton Code Enforcement Division and the Johnson County Fire District.
 3. Receive applications for building permits
 4. Review plans, specifications and construction documents for compliance with the current building codes, municipal code, Unified Development Code, plumbing code, electrical code and any other adopted codes in order to protect public safety. Current adopted codes include; the International Code Council (ICC) 2006 editions, the International Fire Code (IFC) 2000 edition, the NFPA 70 National Electric Code 2005 edition, and Johnson County Code 2010.
 5. Issue Building Permits.
 6. Attend design, pre-construction, and coordination meetings.
 7. Review deferred submittals
 8. Provide Building Inspections
 9. Issue Temporary Certificates of Occupancy (TCO)
 10. Issue Final Certificates of Occupancy (COO)
 11. Provide assistance and recommendations for code variances, equivalencies, deviations, and interpretations
 12. Keep records, according to the Kansas Municipal Records Retention Schedule, compile and deliver all final electronic documentation including:
 - Plan review comments
 - Permits

- Rulings on variances, equivalencies, and deviations
 - Inspection Reports
 - TCO (Temporary Certificates of Occupancy)
 - COO (Certificate of Occupancy)
13. Provide assistance and make recommendations on enhancements for code enforcement, existing practices, policies, procedures and ordinances to improve the code enforcement program
 14. Track, measure, and report on performance standards, as agreed upon.
 15. Attend Code Administrator meetings as needed to provide data on projects.
 16. Prepare quarterly reports on a date agreed upon between the City Representative and the Consultant Representative.
 17. Provide statistical and narrative information needed for the City's Financial Report on a monthly basis to ensure transparency.
 18. Coordinate and participate in necessary enforcement actions with City Code Administrator Director of Finance, City Attorney, and Municipal Court.

B. CLARIFICATIONS OF SERVICES.

1. Any requests for code variances, equivalencies, or deviations will be referred to the City. The consultant will document and provide a recommendation only.
2. Special Inspections or third party structural tests and inspections will be provided and performed by an independent third party as dictated by applicable codes. Consultant will review special inspection tests and reports for verification of compliance and approval.
3. Any specialty permitting, review, or inspections by other regulatory agencies will be the responsibility of the Architect/Engineer of Record, the Owner of the Project, or the Contractor as applicable. The Consultant will advise on when special permitting, review, or inspections are required and will provide recommendations for withholding Certificates of Occupancy, or directly withholding Certificates of Occupancy when granted that authority, until proper documentation is provided by the regulatory agency that the permitting, review, or inspections are approved or complete. Such specialty permitting, review, or inspections include, but are not limited to:
 - a. Any Food Establishments or related occupancies requiring a Health Department permit, review, or inspection will be coordinated with and provided by the Kansas Department of Agriculture.
 - b. The State Elevator Inspector or approved representative of the State will be responsible for any related permitting and inspections of any elevators.
 - c. The Architect and/or Engineer of Record will submit Code Footprint submittals, including forms C.2.2 and C.2.2.A as applicable to the Kansas Office of the State Fire Marshall for any projects with related occupancies requiring a Code Footprint.
 - d. Any boilers and pressure vessels installations, second hand, relocated, and/or repaired, that fall under the Kansas Boiler Safety Act will be registered by the respective contractor with the National Board of Boiler and Pressure Vessel Inspectors and reported, including any required submittals, information and schedules, to the Kansas Office of the State Fire Marshall, which will oversee, inspect, permit, and certify.

- e. Any project requiring licensing or review by the Kansas Department of Health and Environment (KDHE), the application, process, information, and submittals will be provided by the Architect/Engineer of Record or the Owner of the project as applicable.
 - 4. Any comments from plan reviews and inspections of the Staff of the City Code Enforcement or Johnson County Fire District will be incorporated into the review and inspection reports of the Consultant.
 - 5. Plan reviews, review for permitting and inspections are not a substitution for the professional responsibilities of a project Architect or Engineer of record, as required by the professional licensing board of the State of Kansas.
- C. No warranty, expressed or implied, is included in this Agreement or in the Instruments of Service produced by Consultant
- D. **MUNICIPAL MINISTERIAL FUNCTIONS.** Consultant, when performing a municipal ministerial function, shall perform to the standard of care and function as a municipal official. Consultant shall assume the roles and duties of the municipal official when the TASK ORDER assigns consultant to that role.
- E. **PLAN REVIEW IMMUNITY.** The Consultant, acting as the Client's plan reviewer, when acting in good faith in the discharge of its duties, shall not thereby render itself liable and shall be, to the maximum extent permitted by law, relieved from all liability for any damages that may accrue to persons or property by reason of any act, error or omission in the discharge of its duties. Any suit, claim or action against the Consultant because of acts, errors or omissions by Consultant acting in its capacity of Plan Reviewer shall be defended by the City until final termination of the proceedings. The Consultant shall be entitled to all defenses and municipal immunities that are, or would be, available to the City plan reviewers if the same services were provided by a City employee.
- F. **STANDARD OF CARE.** In providing services under this Agreement, Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.
- G. **COMPLIANCE WITH LAWS.** Consultant agrees to comply with applicable federal, state, and local laws; regulatory requirements; and codes. Consultant shall procure the professional licenses necessary to allow Consultant to perform the Services. The City shall likewise comply with such laws to the extent applicable to the City's role and performance of this Agreement.

SECTION 2 – SERVICE TASKS

- A. TASK ORDERS.** Upon execution of this Agreement by the City, the City shall issue TASK ORDERS that define the specific services requested by the City. The TASK ORDER shall ascribe the desired service, schedule, and compensation. The TASK ORDER shall follow the general form in Exhibit A. Upon execution by the City representation in Section 3-A, the TASK ORDER shall be deemed a binding contract between the Consultant and the City. The TASK ORDER shall govern the parties' rights and responsibilities specifically incorporating the terms of this Master Agreement and operating within the framework of this Master Agreement.
- B. SUBCONTRACTED SERVICES.** Those Services not normally self-performed by the Consultant, but essential to the successful completion of a TASK ORDER, will be subcontracted by the Consultant to subconsultants, who will be selected by the Consultant and the City.
- C. TYPICAL RATES AND CHARGES.** Exhibit B contains Consultant's Hourly Rates and Estimated Permitting Charges. The City acknowledges receipt of Exhibit B. Rates and charges for specific tasks shall be agreed upon within each TASK ORDER. Charges for ADDITIONAL SERVICES or agreed upon services outside each TASK ORDER will follow these rates and charges or as agreed upon as an amended TASK ORDER. The Consultant will present a revised version of Exhibit B annually and the new Exhibit B shall become effective with execution of any TASK ORDER following the presentation of the schedule to the City, including its attachment to that TASK ORDER.
- D. ADDITIONAL SERVICES.**
- Consultant shall provide the following additional Services ("Additional Services") as agreed upon by the Parties in a TASK ORDER or as requested thereafter:
1. Services resulting from significant changes in the general scope of a TASK ORDER, including a project or its design, including, without limitation, changes in size, complexity, City's schedule, Project's schedule or character of construction; excessive reinspections, plan reviews and meetings beyond those previously approved within a Task Order by City including preparation of change orders.
 2. Time spent in preparing for and attending public hearings at the request of the City.
 3. Preparing to serve or serving as a consultant or witness for the City in any litigation or other legal or administrative proceeding involving a Project or Task Order.
 4. Full-time construction observation services.

SECTION 3 – RESPONSIBILITIES OF CITY

- A. CITY REPRESENTATIVE**
1. The City hereby designates the following representative who is authorized to act on City's behalf with respect to executing TASK ORDERS: **Beth Linn, City Administrator**. The City or such authorized representative will make decisions in a timely manner pertaining to documents and questions submitted by the Consultant, in order to avoid delay in the orderly and sequential progress of the Services.

2. The City shall accept the decisions of the City representative as final and definitive project direction. The City may employ any process of its choice to inform the City representative of desired project outcomes.
3. The Consultant may accept TASK ORDERS executed by a City official with a similar title until informed that a new representative is appointed.

B. AUTHORIZATIONS

1. The City shall furnish approval, consents, and letters of authority as may be necessary for performing the Services in a timely manner.
2. The City shall furnish to the Consultant a certified copy of the legislation, ordinance or resolution authorizing signing of this Agreement and delegation of TASK ORDER signature authority.

C. INFORMATION

1. The City shall provide to the Consultant the following:
 - a. All available procedures, policies, reports, plans, specifications, background information, and other data pertinent to the Services or performance of a Task Order;
 - b. The names, addresses, and phone numbers of all entities, regulatory agencies or governing authorities required for coordination or performance of Services within a Task Order.
2. The Consultant shall be entitled to rely on the accuracy and completeness of all information and data provided by the City.

D. ACCESS TO SITES (FACILITIES). The City shall assist the Consultant in arranging for access to TASK ORDER facilities or sites for the purpose of performing the Services.

E. USE OF CITY OFFICE SPACE OR FURNITURE. The Consultant will not be entitled to use City office space or furniture unless the City and the Consultant reach agreement as to office space and furniture rental. The Consultant shall be permitted to utilize City conference rooms solely for City related business or conducting activities on behalf of the City..

F. NOTICE OF DEFICIENCY OR CHANGE.

1. The City shall report to the Consultant any suspected deficiency in the Services within twenty-one (21) days after the City becomes aware of the potential defect. City further agrees to impose a similar notification requirement in its agreements with all contractors, design professionals, subcontractors, and consultants involved in the Project. The failure of the City to notify the Consultant as required herein shall relieve the Consultant of any liability for costs of remedying the defects.
2. The City shall give prompt written notice to Consultant whenever City becomes aware of any change, fact or circumstance that is likely to affect the scope or timing of the Services.

G. MISCELLANEOUS.

1. The City shall obtain advice of an attorney, insurance counselor or other consultant as is necessary for the City to make decisions within a reasonable time and not delay the Services.
2. If requested by the Consultant the City shall furnish evidence of financial arrangements that have been made to fulfill City's obligations under this Agreement.
3. The City shall provide and pay, if required by the TASK ORDER, for the cost of any mutually-agreed upon subconsultants, testing, or laboratory Services identified in the Scope of Services, Section 2.
4. The Consultant shall have no obligation to the City to execute any document subsequent to the signing of this Agreement, including, without limitation, lender consent or certification, requiring knowledge, services, or responsibilities beyond the scope of this Agreement. The proposed language of any such document will be submitted to Consultant at least ten (10) days in advance of the requested date of execution. The execution of any such document shall not create any rights in favor of a lender or other third party.

SECTION 4 - COMPENSATION

A. COMPENSATION.

1. City shall compensate the Consultant for the TASK ORDER in the form agreed to in the TASK ORDER.
2. Services requested by the City outside the scope of a TASK ORDER (Additional Services) shall be compensated based on actual hours worked plus direct expenses in accordance with the Consultant's Hourly Rates schedule as shown in attached Exhibit "B", which is incorporated herein, unless another form is agreed to prior to initiating the associated Additional Services.

- B. PAYMENTS.** The City shall make payments to the Consultant on a monthly basis upon receipt of an invoice from the Consultant. The City shall make payment to the Consultant within thirty (30) days following the date of each invoice. If the City does not make payment by the due date, the City shall pay interest at the rate of 1.5 percent per month and the collection costs, attorneys' fees and court costs, if any, of the Consultant.

SECTION 5 – INSURANCE

- A. COVERAGE.** Consultant will procure and maintain, at its own expense, for the duration of the Agreement, and for three (3) years thereafter, the types of insurance specified below:

1. Commercial General Liability including premises operations, products & completed operations, blanket contractual liability, personal injury and property damage;
2. Commercial Automobile Liability for owned, hired and non-owned motor vehicles;
3. Excess Liability including products liability;

4. Workers' Compensation in accordance with applicable statutory requirements and shall provide a waiver of subrogation in favor of Consultant; and
 5. Professional Liability Insurance (shall remain in effect for 2 years after the expiration of said Agreement).
- B. ADDITIONAL INSURED.** The City and its divisions, subsidiaries, affiliates, directors, officers, and employees shall be an additional insured with respect to Commercial General Liability, Commercial Automobile Liability and Excess Liability. Upon acceptance, Consultant will prepare certificates naming the City as an additional insured.
- C. CERTIFICATES.** Prior to commencement of services, and annually thereafter, GBA shall furnish Owner with certificates of insurance evidencing the insurance coverages stated above.
- D. MUTUAL WAIVER OF SUBROGATION.** To the extent that damages are covered by property insurance maintained during or after the completion of the Services, the City and the Consultant waive all rights, including rights of subrogation, against each other and all contractors, consultants, sub-consultants, agents and employees of the other, except for rights they may have to the proceeds of that insurance. The City and the Consultant shall require the same waiver by their respective contractors, subcontractors, consultants and sub-consultants.

SECTION 6 - TERMINATION

- A. TERM.** The term of this Agreement shall commence on the Effective Date and terminate five (5) years thereafter, unless terminated sooner by either Party pursuant to Section 6.B or Section 6.C. The parties may extend this Agreement by mutual written consent. If the term of any Task Order extends beyond the termination or expiration date of this Agreement, the applicable terms and conditions of this Agreement shall extend automatically for such Task Order until such Task Order's termination or expiration date.
- B. TERMINATION BY CITY.** The City may terminate this Agreement as follows:
1. The City may terminate this Agreement at any time without cause, or with cause due to a material breach of this Agreement, upon giving the Consultant fourteen (14) calendar days' prior written notice.
 2. Within thirty (30) calendar days of a termination for convenience, the City shall pay the Consultant for all Services rendered to the date of termination and all costs incurred or that Consultant could not reasonably avoid, including, without limitation, demobilization, reassignment of personnel, and space and equipment costs.
- C. TERMINATION BY CONSULTANT.** The Consultant may terminate this Agreement for cause upon giving the City fourteen (14) calendar days' prior written notice, for any of the following reasons:

1. A material breach by the City of this Agreement, including, without limitation, failure to make payment as required by this Agreement;
 2. A transfer of ownership of this Agreement or Task Order by the City to any other persons or entities not a party to this Agreement without the prior written agreement of the Consultant; and/or
 3. A material change in the conditions under which this Agreement was entered into, coupled with the failure of the Parties to agree on the fees and charges for the Additional Services required because of such change.
- C. SUSPENSION FOR NON-PAYMENT.** The Consultant may, at its option and without waiving the right to terminate, suspend all services for non-payment on seven (7) days' written notice to the City.

SECTION 7 - MISCELLANEOUS

- A. INSTRUMENTS OF SERVICE.** The Consultant's reports and other deliverables, including all documents on electronic media, are instruments of professional service ("Instruments of Service") and shall remain the property of the Consultant which also retains the copyrights. During the Project, and conditioned on the City satisfying its payment obligations under this Agreement, City shall have a non-exclusive license to use the Instruments of Service with respect to the Project. City shall not assign its license to third parties without the written consent of the Consultant. However, City may provide copies of the Instruments of Service to contractors and consultants for the purpose of bidding, building or completing a project and to governmental authorities for the purpose of securing or executing permits, licenses, and approvals.
- B. REUSE OR MODIFICATION.** The Instruments of Service prepared by Consultant are not intended or represented to be suitable for reuse by the City or others on extensions to or modifications of a project or on any other project, unless such Instruments of Service were specifically developed by a Task Order for the intent of City's reuse or modification as identified specifically in the Task Order. Any reuse or modification without the prior written consent of the Consultant will be at the City's sole risk and without any liability of Consultant. The City agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the Instruments of Service by the City or any person or entity that acquires or obtains the Instruments of Service from or through the City without the written authorization of the Consultant.
- C. CONFIDENTIALITY.** The Consultant agrees to keep confidential and not disclose to any person or entity any data and information not previously known to the Consultant and marked "CONFIDENTIAL" by the City. These provisions shall not apply to disclosure to the Consultant's employees and subconsultants, the general contractor, subcontractors, and permit authorities. Confidential information shall not include information that otherwise comes into the public

domain. The Consultant will not be restricted from giving notices required by law, complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or reasonably using any information in the defense of any suit or claim. Consultant shall not (i) disclose to City any information which is confidential and/or proprietary to a third party without first obtaining the written consent of both such third party and City or (ii) use Confidential Information for any purpose other than that indicated in this Agreement without City's prior written approval.

- D. LIMITATION OF LIABILITY.** To the maximum extent permitted by law and for adequate consideration, the total liability of Consultant and its employees and sub-consultants for City's damages, in any way arising out of the services of Consultant, shall be limited to Consultant's fee for the subject Task Order. This limitation shall apply regardless of the cause of action or legal theory pled or asserted. Such claims and causes include, but are not limited to, negligence, professional errors or omissions, strict liability, and breach of contract or warranty. The parties acknowledge sufficient consideration has been given for this limitation. The City shall assert all appropriate municipal defenses when the Consultant is performing a TASK ORDER that can reasonably be defined as a municipal ministerial role.
- E. INDEMNIFICATION BY CONSULTANT.** Subject to the limitation of liability provision above, to the fullest extent permitted by law, the Consultant agrees to indemnify and hold the City harmless from any loss, damage, or cost, to the extent caused by the negligent acts, errors or omissions in the performance of services under this Agreement.
- F. INDEMNIFICATION BY CITY.** The City agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any loss, damage, or cost, to the extent caused by the negligent acts, errors or omissions of the City or its contractors, subcontractors, consultants or employees.
- G. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, City and Consultant waive any and all claims against each other and their respective officers, directors, partners, employees, contractors and subcontractors for any incidental, indirect or consequential damages, including, but not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, punitive, or any other consequential damages that either Party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both City and Consultant 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 Agreement or Task Orders.
- H. PARTIAL SERVICES.** If the Consultant is not authorized by a TASK ORDER to perform all required or specific Services for complete execution and closure of a permit for any project, the City is responsible for all Services including, without limitation, those Services required for complete execution and closure of a permit. The City shall defend, indemnify, and hold harmless the Consultant against all claims, losses, damages, injuries, and expenses arising out of or resulting from the performance of such Services by City or others.

I. CONSTRUCTION ISSUES.

1. The Parties agree the Consultant shall not be responsible for:
 - a. the contractor's construction means, methods, techniques, sequences, procedures, safety precautions, and any programs incidental thereto, which shall remain the sole responsibility of the contractor;
 - b. the contractor's failure to perform the Work in accordance with the Approved Permit Documents;
 - c. acts or omissions of the contractor, its subcontractors or suppliers, or any other persons performing any of the Work.
2. The construction contractor is responsible for means and methods and to ensure the construction or constructed facility meets the requirements of the permit documents.
3. The construction contractor is responsible for all construction related activities, including job site safety.
4. The Consultant will not have the authority to stop the Work of a contractor.
5. Consultant shall not be required to execute any document that would result in Consultant guaranteeing or warranting the existence of any conditions or construction.

J. DELIVERY OF SERVICES. Except as provided herein, the Services shall be carried to completion without undue interruption in accordance with the schedule in the TASK ORDER.

K. DELAY.

1. The Consultant shall not be responsible for a delay in a project or performance of the Services when the delay is caused by the City, its employees, consultants or contractors, or other circumstance beyond the reasonable control of Consultant including, without limitation, abnormal weather condition, flood, earthquake, fire, pandemic, epidemic, war, riot, civil disturbance, terrorism, strike, lockout, work slowdown, and other labor disturbance, judicial restraint, and inability to procure permits, licenses, or authorization from any local, state, or federal agency.
2. The Consultant shall reject any work identified that does not meet code, including but not limited to plans, specifications, documents, reports, construction, materials, equipment, or components. Such rejection of work shall not subject the Consultant to any liability or cause of action to or from the project owner, consultants, sub-consultants, contractors, sub-contractors, construction team, including but not limited to a claim for delay.

L. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas, without regard to its principles of conflicts of laws.

M. ACCRUAL OF CAUSES OF ACTION. Causes of action between the Parties shall accrue and applicable statutes of limitation shall commence to run on the earliest of the date the Services are substantially complete under this Agreement or the date as provided by law.

- N. DOCUMENTS PREPARED BY OTHERS.** The Consultant shall not be responsible for any permits, certificates, estimates, reports, surveys, tests, or other documents or instruments, or any part thereof, prepared by the City, the City's other consultants, other regulatory agencies or authorities, or project related entities.
- O. RECOMMENDATIONS OF THE CONSULTANT.** If the City requires that any deviation, variance, equivalency, assembly, system, product, item of material, or design be included in any project without (or against) the Consultant's recommendation, the Consultant shall have no responsibility for such decision by the City or for the performance of such items, nor shall the Consultant be required to issue any opinion or certificate with respect to such items.
- P. HAZARDOUS MATERIALS.** The Consultant does not provide any Service related to asbestos or hazardous or toxic materials. In the event Consultant or any other party encounters asbestos or hazardous or toxic materials at a facility or site, or should it become known in any way that such materials may be present at a facility or site or any adjacent areas that may affect the performance of the Services, the Consultant may, at its option and without liability for any damages, suspend performance of its Services until the appropriate specialist consultant(s) or contractor(s) are retained by the appropriate party to identify, abate, and/or remove the asbestos or hazardous or toxic materials, and verifies that the facility or site is in full compliance with applicable laws and regulations. Hazardous materials permitting, plan/document review, or inspections or related Services are not included or covered under this Agreement.
- Q. BETTERMENT/ADDED VALUE.** If the Consultant negligently omits a required service, item or component of a Task Order, the City will be responsible for the amount it would have paid if the service, item or component had been included in the original Task Order. In addition, the Consultant will not be responsible for any upgrade or enhancement of Services.
- R. NOT A MUNICIPAL ADVISOR.** Consultant will not be acting as a fiduciary of the City and will not be serving as a "municipal advisor" to the City within the meaning of the Dodd–Frank Wall Street Reform and Consumer Protection Act and the rules and regulations of the United States Securities and Exchange Commission.
- S. NOTICES AND COMMUNICATIONS.** All notices and communications required by this Agreement shall be made in writing and delivered in person by overnight courier, or sent by certified or registered mail, return receipt requested, postage prepaid, to the respective Party at the following address:

City:

Edgerton Code Enforcement
404 East Nelson, Edgerton, KS 66021
Attention: Beth Linn

Consultant:

George Butler Associates, Inc.
9801 Renner Boulevard
Lenexa, KS 66219-9745
Attention: Daniel L. Abitz

All notices, communications, contacts and parties and the manner for which delivered, communicated or required for performance of Services on a Task Order will be identified in the Task Order.

SECTION 8 – DISPUTE RESOLUTION

- A. DIRECT DISCUSSIONS.** The Parties shall attempt to amicably resolve all disputes through direct discussion and negotiation between the designated representatives of each Party.
- B. NON-BINDING MEDIATION.** If direct discussion and negotiation required by the preceding paragraph is not successful, the Parties will submit any claim or dispute arising out of or related to this Agreement or Task Order to non-binding mediation. Unless the parties mutually agree otherwise, the mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Each Party shall pay their own legal fees associated with the mediation, but shall equally share the mediator's fees. It is agreed that all contractors, design professionals, subcontractors, and consultants who are involved in, and potentially liable for any claim being asserted, may participate in the mediation.
- C. LITIGATION.** If the parties are unable to resolve a dispute through negotiation and mediation required by the preceding paragraphs, the Parties may resort to litigation in a court of competent jurisdiction in the location of the project.

SECTION 9 – OTHER PROVISIONS

- A. FACSIMILE OR ELECTRONIC SIGNATURES.** The Parties agree that a facsimile or electronic (PDF) copy of a signature to this Agreement or a subsequent Task Order shall be deemed to have the same force and effect as an original signature.
- B. WAIVER.** A waiver by either the City or the Consultant of any breach of this Agreement shall not affect the waiving Party's rights with respect to any other or further breach.
- C. SEVERABILITY.** The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void.
- D. INTEGRATION.** This Agreement and documents made a part hereof by reference represent the entire Agreement between the City and the Consultant. This supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. If the City issues a purchase order or work order to the Consultant at any time, no preprinted terms thereon shall become part of this Agreement. Any purchase order or work order, whether or not signed by the Consultant will be for the sole purpose of facilitating the City's operations.

- E. HEADINGS.** The headings of the sections and subparagraphs of this Agreement are inserted for the convenience of the Parties and are neither to be taken to any part of the provisions hereof nor to control nor affect their meaning, construction, or effect.
- F. ASSIGNMENT.** Neither Party shall assign this Agreement or any rights or duties under the same without the prior written consent of the other Party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent the Consultant from employing independent consultants, associates, and subcontractors to assist in the performance of the Services or from assigning any receivables to a third party.
- G. THIRD PARTIES.** Nothing in this Agreement shall be construed to provide any rights or benefits to anyone other than the City and the Consultant

IN WITNESS WHEREOF, City of Edgerton and George Butler Associates, Inc., by their authorized representatives, have hereunto subscribed their names this, 4th day of June 2020. Executed in duplicate with copies to the City and Consultant.

City

City of Edgerton

Consultant

George Butler Associates, Inc.

Beth Linn

City Administrator

Daniel L. Abitz, P.E.

Executive Vice President/Principal

ATTEST: City

Consultant

City Clerk

Name

Title

I certify that sufficient funds of the City treasury have been appropriated and are otherwise unencumbered to meet the City's financial obligation under this Agreement.

City Treasurer

DRAFT

Exhibit A – TASK ORDER

TASK ORDER NUMBER _____

This TASK ORDER is made as of this _____ day of _____, 20__, under the terms and conditions established in the MASTER SERVICES AGREEMENT, dated the 4th day of June, 2020, between the City of Edgerton, Kansas, (City) and George Butler Associates, Inc. (Consultant). This TASK ORDER is made for the following purpose, consistent with the purpose of the MASTER SERVICES AGREEMENT and for the purpose of:

(Insert Project Description)

Section A. Scope of Services

The Consultant will furnish to the City the following described services:

- a.
- b.
- c.

Clarifications and Exclusions to Services:

- a.
- b.
- c.

Section B. Anticipated Schedule

The following is an estimated schedule based on the scope of services and information provided:

Section C. Compensation

1. In return for the performance of the foregoing obligations, the City shall pay the Consultant the fee of \$_____, payable according to the terms in the Master Service Agreement.
2. The City shall pay the Consultant in accordance with the Schedule of Fees described in Exhibit B attached to the Master Agreement for all ADDITIONAL SERVICES not specifically included in Section A of this TASK ORDER.

Section D. City Responsibilities

The City will provide or perform the following to facilitate the project described in this TASK ORDER.

- a.
- b.
- c.

Section E. Notification and Communication

The following GBA personnel will be the point(s) of contact for correspondence related to this TASK ORDER:

IN WITNESS WHEREOF, the City Representative and the Consultant have executed this TASK ORDER.

City of Edgerton, Kansas (City)

By: _____

Name: _____

Title: _____

Date: _____

George Butler Associates, Inc. (Consultant)

By: _____

Name: _____

Title: _____

Date: _____

I certify that sufficient funds of the City treasury have been appropriated and are otherwise unencumbered to meet the City's financial obligation under this Agreement.

Name, Title

Exhibit B

CONSULTANT'S HOURLY RATES

STANDARD HOURLY RATE SCHEDULE

Title	Hourly Rate
Associate	200
Senior Plan Review-Inspector 1/Senior Lead AES	200
Senior Plan Review-Inspector 2/Senior Specialist	184
Permit Coordinator/Project Leader	175
Permit-Code Specialist 1/Lead AES	175
Permit-Code Specialist 2/Senior AES	164
Permit-Code Specialist 3/Specialist	150
Plan Reviewer-Inspector 1/Senior Technician	140
Plan Reviewer-Inspector 1/Project AES	140
Plan Reviewer-Inspector 2/Design AES	126
Plan Reviewer-Inspector 3/Staff AES	114
Project Technician	108
Design Technician	92
Staff Technician	78
Senior Administrative Assistant	98
Administrative Assistant	85
General Office 2	85

EXPENSES

Reimbursable expenses (travel, vehicle mileage, vehicle rental, printing, subsistence, long distance telephone, etc.) incurred will be charged at cost plus 10% to cover administrative overhead.

The following items will be charged as shown:

Company Pick-up Truck	0.58	per mile
Personal and Company Cars	0.58	per mile

Rates effective July 1, 2019 through September 30, 2020.

ESTIMATED PERMITTING CHARGES

PERMITTING FEES (CONSTRUCTION VALUATION)

Construction

Valuation	Fee
<\$200,000	Calculated based on estimated effort (hours*rates + expenses)
>\$200,000	Plan Review Fee = \$1.50 per \$1,000 of construction
	Permitting/Inspection = \$4.00 per \$1,000 of construction

SINGLE INSPECTION VISIT (Estimated for a 2 Hour Inspection)

1 hour travel	\$140.00
2 hour inspection	\$240.00
.5 hour reporting/filing	\$ 70.00
48 miles @ \$0.58/mi	\$ 27.84
	<u>\$477.84</u>