

RESOLUTION NO. 12-13-18C

A RESOLUTION AUTHORIZING THE CITY TO EXECUTE AND DELIVER AN AGREEMENT REGARDING REIMBURSEMENT

WHEREAS, the City of Edgerton, Kansas (the “City”) has previously issued its Home Rule Revenue Bonds (Logistics Park Infrastructure Projects), Series 2015A, in the aggregate principal amount not to exceed \$10,155,000, and its Home Rule Revenue Bonds (Logistics Park Infrastructure Projects), Series 2018A, in the aggregate principal amount not to exceed \$10,000,000 (collectively, the “Bonds”); and

WHEREAS, all of the Bonds were purchased and are currently owned by Edgerton Land Holding Company, LLC (“ELHC”); and

WHEREAS, the City had planned to draw on the Bonds for certain expenses associated with various road improvements and the design of a grade separation; and

WHEREAS, the City and ELHC desire to enter into a Agreement Regarding Reimbursements (the “Agreement”), whereby the City will agree to not submit the aforementioned draws on the Bonds, subject to the terms and conditions set forth in the Agreement;

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

Section 1. Approval of Agreement. The form of the Agreement, which is attached hereto as **Exhibit A**, is hereby approved.

Section 2. Execution of Agreement. The Mayor of the City is hereby authorized to enter into the Agreement, in substantially the form attached to this Resolution but with such changes as may be approved by the Mayor, the Mayor’s signature thereon being conclusive evidence of his approval thereof. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Agreement.

Section 3. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the Agreement.

Section 4. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the City Council.

ADOPTED this 13th day of December, 2019.

CITY OF EDGERTON, KANSAS


(Seal)






Donald Roberts, Mayor

ATTEST:



Rachel A. James, City Clerk

Approved as to form:



Scott W. Anderson, Bond Counsel

EXHIBIT A

FORM OF AGREEMENT REGARDING REIMBURSEMENTS

AGREEMENT REGARDING REIMBURSEMENT

THIS AGREEMENT REGARDING REIMBURSEMENT (the “Agreement”) is made this 14th day of December, 2018, between Edgerton Land Holding Company, LLC, a Kansas limited liability company (“Developer”) and the City of Edgerton, Kansas, a municipal corporation (the “City”).

RECITALS:

A. The City, the Developer and BNSF Railway Company entered into an Amended and Restated Public Infrastructure Financing Plan dated July 15, 2015 (the “Financing Plan”).

B. The Financing Plan contemplates that the City will design and construct a Grade Separation (as defined in the Financing Plan).

C. **Section 5(d)** of the Financing Plan provides that Developer shall advance up to \$2 million to fund the cost of the design of the Grade Separation (as defined in the Financing Plan) (such \$2 million advance being referred to herein as the “Grade Separation Advance”).

D. The City entered into a Master Trust Indenture dated as of December 1, 2015 (the “Master Indenture”) with Commerce Bank, as trustee (the “Trustee”) to provide for the administration of the Public Infrastructure Fund (as defined in the Financing Plan).

E. The Financing Plan requires the City to deposit all Sources of Funds (as defined in the Financing Plan) with the Trustee.

F. The City has issued both its Home Rule Revenue Bonds (Logistics Park Infrastructure Projects), Series 2015A (the “Series 2015A Bonds”) and its Home Rule Revenue Bonds (Logistics Park Infrastructure Projects), Series 2018A (the “Series 2018A Bonds”), pursuant to the Master Indenture.

G. The City incurred \$64,788 of expenses eligible to be reimbursed under the Series 2015A Bonds (the “Series 2015A Reimbursement”) and \$872,014.59 of expenses eligible to be reimbursed under the Series 2018A Bonds (the “Series 2018A Reimbursement,” and together with the Series 2015A Reimbursement, the “Bond Reimbursements”).

H. The Developer is the owner of 100% of the Outstanding Bonds (as defined in the Master Indenture), and no Notes (as defined in the Master Indenture) have been issued under the Master Indenture.

I. The Developer and the City now desire to enter into this Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Waiver of Bond Reimbursements. The City had planned to submit a draw on the Series 2015A Bonds for the Series 2015A Reimbursement and a draw on the Series 2018A Bonds for the Series

2018A Reimbursement. The City agrees to refrain from submitting the Bond Reimbursements unless the Bond Reimbursements are allowed by **Section 4** of this Agreement.

Section 2. Reimbursement from Origination Fees. The parties agree that the City may retain all Origination Fees (as defined in the Financing Plan) in the City's possession up to an amount equal to the Bond Reimbursements to reimburse the City for the Bond Reimbursements instead of delivering such Origination Fees to the Trustee.

Section 3. Grade Separation Design Fee. The City agrees that it will not request the Developer to advance the Grade Separation Advance unless such request is permitted by **Section 4** of this Agreement.

Section 4. Submission of Bond and Grade Separation Reimbursements. Construction of the Grade Separation will commence in 2020 and be completed in 2021. The parties acknowledge that had the Bond Reimbursements not been paid from the Sources of Funds retained by the City pursuant to **Section 2** and had the City requested the Grade Separation Advance, the funds on deposit in the Grade Separation Fund (as defined in the Master Indenture) would have been increased by an amount equal to the Bond Reimbursements and the Grade Separation Advance. The parties agree that if the City obtains a written report from its financial advisor that insufficient funds (the "Shortfall Amount") are on deposit in the Grade Separation Fund to make payments that are expected to become due within 60 days thereafter related to the construction of the Grade Separation in 2020 and 2021, the City shall deliver written notice to the Developer that the City will, not less than 30 days from the date of such notice:

- (a) First, submit one or more requisition certificates under the Series 2015A Bonds and/or the Series 2018A Bonds for reimbursement of project costs in a combined amount not to exceed the Bond Reimbursements, and the City shall deliver all amounts received pursuant to this **subparagraph (a)** to the Trustee with instructions to deposit said amounts in the Grade Separation Fund; and
- (b) Second, submit one or more requisition certificates under the Series 2018A Bonds for an amount not to exceed the Grade Separation Advance, and the City shall deliver all amounts received pursuant to this **subparagraph (b)** to the Trustee with instructions to deposit said amounts in the Grade Separation Fund.

In no event shall the aggregate amount set forth in the requisition certificates submitted pursuant to paragraph (a) or (b) above exceed the Shortfall Amount.

Section 5. Bond Reimbursements Documentation. Developer acknowledges that the City has delivered to the Developer documentation on all of the Bond Reimbursements and that Developer has approved the Bond Reimbursements.

Section 6. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective officers, directors, shareholders, agents, attorneys, employees, successors and assigns. This Agreement shall be governed by and construed according to the laws of the State of Kansas. Time is of the essence with respect to the duties and obligations set forth herein.

Section 7. Representations. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; and (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions.

Section 8. No Waiver of Breach. No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

Section 9. Entire Agreement. This Agreement and the acts provided for herein is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all parties. The underlined paragraph headings are for the convenience of the reader, and are not intended to modify, expand or limit the material terms of each section or subsection in this Agreement.

Section 10. Notice Addresses. Any notice provided under this Agreement shall be delivered in the same manner as notices required by the Financing Plan.

Section 11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

Section 12. Electronic Storage. The parties agree that an electronic copy of this Agreement shall be deemed to be an authentic and valid counterpart of such original document for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date first above written.



CITY OF EDGERTON, KANSAS

By: 
Mayor

Attest:


City Clerk

EDGERTON LAND HOLDING COMPANY, LLC

By: _____
Nathaniel Hagedorn, Manager

Agreement Regarding Reimbursements

CONSENT OF EDGERTON LAND HOLDING COMPANY, LLC

Edgerton Land Holding Company, LLC, a Kansas limited liability company, as the Owner of 100% of the Outstanding Bonds issued pursuant to the Master Trust Indenture dated as of December 1, 2015, between the City of Edgerton, Kansas (the "City") and Commerce Bank, as trustee (the "Trustee"), as supplemented and amended, consents to this Agreement Regarding Reimbursement dated December 14, 2018, between the City and Edgerton Land Holding Company, LLC.

EDGERTON LAND HOLDING COMPANY, LLC
a Kansas limited liability company

By: NorthPoint Development, LLC
a Missouri limited liability company
Its: Manager

By: _____
Nathaniel Hagedorn, Manager

ACKNOWLEDGEMENT OF MASTER TRUSTEE

Commerce Bank, as master trustee under the Master Trust Indenture dated as of December 1, 2015, between the City of Edgerton, Kansas (the "City") and Commerce Bank, as trustee (the "Trustee"), as supplemented and amended, acknowledges receipt of a copy of the Agreement Regarding Reimbursement dated December 14, 2018, between the City and Edgerton Land Holding Company, LLC.

COMMERCE BANK, as Trustee

By: _____
Merry Evans
Vice President

ATTEST:

By: _____
William E. Ekey
Assistant Secretary