EL DORADO CITY COMMISSION – REGULAR MEETING AGENDA
CITY HALL – 220 E. FIRST AVENUE
November 2, 2020 – 6:30 PM

1. **Call to Order**
2. **Roll Call**
3. **Invocation –** Pastor Jurdon Counts, Park Avenue Baptist Church
4. **Pledge of Allegiance**

Proclamations and Recognition

5. Veteran's Day Proclamation

6. Personal Appearances. Personal appearances are opportunities for organizations or citizens to make special presentations before the City Commission. Such appearances are scheduled in advance of the meeting by calling City Clerk Tabitha Sharp at (316) 321-9100 by 5:00 pm the Tuesday preceding the meeting. Presentations are limited to ten minutes. Any presentation is for information purposes only; no action will be taken.

7. Public Comments. Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon the Mayor. Comments on personnel matters and matters pending in court are not permitted. Speakers are limited to three minutes. Any presentation is for information purposes only; no action will be taken. Citizens with information for the City Commission are encouraged to contact City Clerk Tabitha Sharp at (316) 321-9100 for instructions on alternative ways of communicating with the City Commission.

Consent Agenda *(Consent agenda items will be acted on by one motion unless a majority of the City Commission votes to remove an item for discussion and separate action.)*

8. Approval of City Commission Minutes from October 19, 2020

Old Business

9. None

New Business

10. Land Bank Ordinance
11. Evergreen Agreement
12. Prairie Trails Golf Course Agreement

Items for Discussion

13. None

Reports

14. City Commission and Advisory Board Updates
15. City Manager

Executive Session
16. None

Adjournment
17. Motion to adjourn the November 2, 2020 regular meeting

PUBLIC COMMENT POLICY:
Citizens are encouraged to address the City Commission during regularly scheduled meetings. This policy is intended to provide some guidelines to ensure that all El Dorado citizens have a chance to address the Commission.

1. Each citizen will state their name and address before making comments.
2. There are no residency requirements.
3. Each citizen will have 3 minutes to present his or her comments.
4. An extension of time, if necessary, may be approved but must be by a majority of the City Commission.
5. Comments or questions will be directed only to the City Commission.
6. Citizens will follow the decorum policy.
7. Debate or argument between parties in the audience will not be allowed.
8. Certain legal issues may not be discussed. (Examples include but are not limited to personnel issues, lawsuits, etc.)
9. Violation of this public comment policy will result in the citizen being directed to cease or resume sitting.

   Approved by the Commission this 2nd day of May 2005.

P R O C L A M A T I O N

WHEREAS, Veterans Day has its origins in the November 11, 1918 armistice which brought World War I to a conclusion; and

WHEREAS, the people of the United States caused, through their elected representatives, the designating of November 11 as a federal legal holiday which in 1954 became officially known thereafter as Veterans Day; and

WHEREAS, Veterans Day continues to be celebrated and commemorated with solemn observances in honor of all Americans who have served their country in times of war and conflict; and

WHEREAS, the courage, honor, sacrifice, and dedication which veterans of the United States armed forces have displayed in the cause of justice, freedom, and democracy are most worthy of recognition; now,

WHEREAS, in serious times of war and conflict, the members of the United States military have always performed their duties with courage, valor and dedication; and

WHEREAS, whether on home soil or in foreign lands, our men and women in uniform have given their time and lives to keep their promise to America: to preserve our heritage of freedom; and

WHEREAS, today, we salute these veterans throughout Kansas and the nation, who continue to distinguish their profession and demonstrate their commitment to America by continuing to answer the call of their civil duties; and

WHEREAS, on this day of honor, we have the opportunity and responsibility to pay tribute to these great veterans, who answered the call to keep America free so that her flag may always wave.

THEREFORE, I Bill Young, Mayor of El Dorado, do hereby call upon all citizens to commend America's veterans and observe with solemn pride November 11, 2020 as ***Veterans Day.***

IN WITNESS THEREOF, I have hereunto set my hand and caused to be affixed the official seal of the City of El Dorado, Kansas to be affixed this 2nd day of November, 2020.

____
Bill Young, Mayor

ATTEST:

____
Tabitha Sharp, City Clerk

EL DORADO CITY COMMISSION MEETING **October 19, 2020**

The El Dorado City Commission met in a regular session on October 19, 2020 at 6:30 p.m. in the Commission Room with the following present: Mayor Bill Young, Commissioner Matt Guthrie, Commissioner Gregg Lewis, Commissioner Nick Badwey, Commissioner Kendra Wilkinson, City Manager David Dillner, and City Clerk Tabitha Sharp. Absent: City Attorney Ashlyn Lindskog and City Engineer Scott Rickard.

VISITORS

Curt Zieman	128 Vine	El Dorado, KS
Curtis Lill	1331 Lawndale	El Dorado, KS
Jay Shivers	220 E 1st	El Dorado, KS

CALL TO ORDER

Mayor Bill Young called the October 19, 2020 meeting to order.

INVOCATION

Mother Christine Gilson, Trinity Episcopal Church, opened the meeting with an invocation.

PLEDGE OF ALLEGIANCE

The City Commission led the Pledge of Allegiance.

PROCLAMATIONS AND RECOGNITION

The City Commission drew prizes for the 2020 Strategic Planning Survey. The following individuals were drawn:

Year of Free Utilities – Ted and Susan Wrench
Month of Free Utilities – John Perott
Walmart Gift Card $100 – Ted McGowin
Dillons Gift Card $100 – Gerald Wittenberg
$50 Walnut Valley Packing – Barb Smith
$50 Ace Hardware – Deborah Adolph Espinosa
$25 Willies – Steve Appleman
$25 Beijing – April Scott
2 - $25 Chamber Bucks Checks – Ragan Lytton and Herb Llewellyn

PUBLIC COMMENT

Mayor Bill Young opened the floor for public comments.

There were no comments.

CONSENT AGENDA

Approval of the City Commission minutes from October 5, 2020 and Special City Commission Minutes from September 30, 2020.

Appropriation Ordinance No. 09-20 in the amount of $4,873,605.04.

Commissioner Nick Badwey moved to approve the consent agenda as presented.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 5 – 0.

NEW BUSINESS

CDBG-CV GRANT AWARDS

City Clerk Tabitha Sharp stated that the City was awarded $120,000 in CDBG grant funds to assist small businesses in re-opening after the COVID-19 pandemic. She stated that the City has received applications from 12 local businesses. She stated that once these funds are distributed, there will likely be a little less than half of the funds remaining for other businesses.

Commissioner Gregg Lewis moved to authorize staff to request funding from the State of Kansas Community Development Block Grant Program for the CDBG-CV funds once all proper paperwork has been submitted to the Grant Administrator.

Commissioner Matt Guthrie seconded the motion.

Mayor Bill Young encouraged small businesses to submit applications if they experienced hardships in the previous months due to COVID-19.

Motion carried 5 – 0.

EMPLOYEE POLICY CHANGE

City Clerk Tabitha Sharp stated that staff have been reviewing the policy manual and are providing some new policies for approval by the City Commission. The policies being requested were:

- Bereavement Leave – The previous policy did not provide specific direction for KP&F employees, as their schedules differ from other employees in the City, staff recommend clarifying their Bereavement Leave allotment. Staff also added other family members not currently covered such as grandchildren, in-laws, and children living outside of the home.
- Holiday/Personal Leave – The current leave accrual for employees covers the 9 holidays offered by the City of El Dorado. Staff are recommending that holidays be removed from the accrual and be treated separately from personal leave. This will decrease the personal leave accrual for each employee, but will not decrease the number of vacation days given each year. Staff hope that this will make the leave policy easier for new employees to

understand and will allow others to take holidays without having to ensure they have saved enough leave for said holiday. KP&F employees will remain under the previous personal leave policy due to the differences in their work schedules.

- Parental Leave – The City Manager met with small groups of employees over the period of about a year and asked them for recommendations. One such recommendation was a parental leave policy, this policy will offer four weeks of paid leave for each new mother and one week to each spouse or partner. This leave will not be subtracted from their accrued personal or sick leave balance.
- Shared Leave – This suggestion also came from the City Manager's meetings with employees. Staff will be able to donate leave into a pool at the end of each year. This pool will be used to assist employees who have significant health issues or are caring for an immediate family member who has a significant health issue, and are unable to cover the required leave with their current leave bank.
- Tuition Reimbursement – The previous tuition reimbursement policy was very generous, but given current budgetary constrictions, staff felt it best that the reimbursement amount be reduced and the policy be re-written to provide better direction. The previous policy allowed for reimbursement of up to $5,250 per year, the new policy would allow for up to $1,000 in one year with prior budget approval from the Department Head.

Commissioner Nick Badwey moved to approve the amendments to the employee manual effective January 1, 2021.

Commissioner Kendra Wilkinson seconded the motion.

Mayor Bill Young asked if the tuition would affect employees who were doing training required for their position.

City Clerk Sharp stated that this would not affect that portion of the training budget. This was only for those seeking a degree.

Motion carried 5 – 0.

2021 SALARY SCHEDULE

City Clerk Tabitha Sharp stated that staff had reviewed the salary schedule and compared it to other cities of similar size in Kansas. She stated that the work lead staff to believe that applying a cost of living increase to the beginning and end of the schedule would provide the City with the necessary increase to be competitive with others. She stated that staff have also removed the police and fire departments from the regular schedule and placed them in their own due to the differences in their pay schedules. She stated that the police schedule has a significant change attributed to the additional $50,000 provided by the Commission in the 2021 budget to attract more candidates.

City Clerk Sharp stated that only a few positions outside of the changes to the police schedule, only three or four current employees would be effected by the increase.

Commissioner Nick Badwey moved to approve Resolution No. 2910, a Resolution amending Resolution No. 2881, which established 2020 salaries and wages paid to various employees of the City of El Dorado and allocated the various funds of said City, charges and debits for the payment of compensation of wages of all City officials and employees.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 5 – 0.

APPLICATION TO REZONE 737 N GORDY STREET

Jay Shivers, Planning and Zoning, stated that the City has received an applications for a rezone of 737 N Gordy Street from Low Density Residential to I-1 Light Industrial. He stated that one of the lots originally contained a home that was torn down by the City of El Dorado. He stated that the lot is currently under contract by the applicant. He stated that the lots on the sides and to the south are Commercial and Industrial, railroad right of way and residential to the north.

Mr. Shivers stated that staff are recommending approval of the application and the Planning Commission recommended approval as well.

Mayor Bill Young confirmed that the lots to the north were residential and the immediate lot to the north was the applicant's residence.

Mr. Shivers stated that they were. He stated that they will have to put a fence, landscape berm or trees to the north to split the land uses.

Commissioner Gregg Lewis moved to approve Case No. 20-03-REZ, requesting a rezoning of 737 N. Gordy Street to I-1 Light Industrial District and that Ordinance No. G-1337 be approved.

Commissioner Matt Guthrie seconded the motion.

Roll Call Vote

Position No. 1	Commissioner Matt Guthrie	Yes
Position No. 2	Commissioner Gregg Lewis	Yes
Position No. 3	Commissioner Nick Badwey	Yes
Position No. 4	Commissioner Kendra Wilkinson	Yes
	Mayor Bill Young	Yes

SPECIAL USE PERMIT APPLICATION FOR 1331 LAWNDALE AVENUE

Jay Shivers, Planning and Zoning, stated that the City has received an application for an accessory structure measuring 2,400 square feet at 1331 Lawndale. He stated that the lot to the east of the residence was purchased and combined with the owner's lot. He stated that the surrounding lots are homes that are approximately 1,500 square feet. He stated that the primary concern is compatibility. He stated that staff have not made a recommendation because this case is not clearly one way or the other. He stated that reasons to approve it include that the width will be more narrow and that there will be landscaping and fencing around the accessory. He stated that reasons to decline it would be that the primary zoning in the area is residential.

Mr. Shivers stated that the Planning Commission tied 3 – 3 and so there is no recommendation from the Planning Commission either. He stated that the Commission must provide a simple majority vote to either approve or disprove the issue. He stated that the difference in the ability to build is 900 square feet, he could build a 1,500 square foot building with just a building permit. He reviewed the previous structures that have been approved in the last year.

Mayor Young asked how many people were on the board.

Mr. Shivers stated that the board typically has nine individuals, but we are current short one due to a resignation.

Commissioner Gregg Lewis thanked Mr. Lill for cleaning this lot up and stated that he thought the lot would be cared for well as he did the others he owned.

Commissioner Nick Badwey moved to approve Case No. 20-08-SUP, requesting a SUP for a 2,400 square foot accessory structure at 1331 Lawndale Avenue and that Ordinance No. G-1338 be approved.

Commissioner Gregg Lewis seconded the motion.

Commissioner Kendra Wilkinson stated that she has trouble with large size in a residential area. She stated that she voted against the last two oversized buildings and didn't feel that she could vote in favor this time. She stated that she has no doubt that he was going to keep it up well, but was concerned about something large in that area.

Curtis Lill, 1331 Lawndale, stated that he reviewed this as well today. He stated that if you consider the house and garage on his lot, he is over 2,600 square feet and the building he is requesting is 2,400 square feet.

Commissioner Nick Badwey asked how large the structure that was demolished on that property.

Mr. Lill stated that the front was the same as him, but the back was two stories because the back of the lot slants down. He stated that coming from the west you can't see his lot and coming from the east, you won't see the building behind the trees. He stated the building wouldn't look that big because it was the same height as the surrounding homes. He stated that one of the previous buildings approved is large and there is a large home on one side and a smaller one on the other.

Mayor Young stated that he drove by to look at the property as well. He stated that he didn't feel that it was going to interrupt the flow because of its placement. He felt that it would be a nice structure in the area. He stated that he wished the Planning Commission could have given an actual recommendation.

Roll Call Vote

Position No. 2	Commissioner Gregg Lewis	Yes
Position No. 3	Commissioner Nick Badwey	Yes
Position No. 4	Commissioner Kendra Wilkinson	No
	Mayor Bill Young	Yes
Position No. 1	Commissioner Matt Guthrie	Yes

REPORTS
CITY COMMISSION AND ADVISORY BOARD UPDATES

Commissioner Nick Badwey stated that the library board met. He stated that they will open at 9 and close at 6 Monday through Friday and Saturday 9 to noon. He stated that they will review the hours at their January meeting. He stated that from 4:30 to 6 p.m. on Halloween, they will pass candy out in their drive. He stated that any businesses that want to help or donate should contact the library.

Commissioner Matt Guthrie stated that there is a large stump sticking out under the pedestrian bridge at Walnut River and children were playing on it over the weekend. He asked that staff try to address that.

Commissioner Guthrie congratulated the USD 490 football team in their wins over Augusta and Circle this year.

Commissioner Gregg Lewis asked if we could put some signs on Oak for no dumping. He stated that there have been several items left on the side of the road near the railroad.

Mayor Bill Young encouraged people to support the Halloween celebrations.

Mayor Young offered condolences to the family of Mayor Dean Schmidt and citizens of Potwin on the loss of their Mayor.

Mayor Young stated that the City Manager will be providing some updates in the near future on EFABC.

Mayor Young thanked staff for the efforts they have put into the items on the Commission agenda.

CITY MANAGER

City Manager David Dillner stated that the irrigation inside of McDonald Stadium will be replaced by staff soon. He stated that staff spend a lot of time on repairs to that system and are replacing it so that it will function better and decrease staff time on that system.

City Manager Dillner stated that the City received three bids for Riverview Playground replacement. He stated that the funds are from the excess sales tax fund and will come to the Commission for approval after the Parks and Recreation board makes a recommendation.

City Manager Dillner stated that the area around this playground is going to be repaired soon with funds received from FEMA after the flooding in 2019.

City Manager Dillner stated that the work session next week will be on Tuesday the 27^{th} because the Bajillion Agency will be attending to discuss the Community Branding initiative. He stated that we hope to send the comments from the survey to the Commission this week for their review.

City Manager Dillner encouraged citizens to vote. Advance voting began today at the Butler County Courthouse. He stated that citizens could vote through noon on November 2^{nd} and then again on November 3^{rd}.

City Manager Dillner stated that the City is hosting a virtual Halloween Costume Contest. He stated that submissions could be made to cvb@eldoks.com.

City Manager Dillner stated that the Veteran's parade has been canceled this year.

ADJOURNMENT

Commissioner Nick Badwey moved to adjourn the meeting at 7:37 p.m.

Commissioner Kendra Wilkinson seconded the motion.

Motion carried 5 – 0.

City Clerk Tabitha D. Sharp	Mayor Bill Young

"Enhancing Quality of Life by Embracing Service Excellence"

City Manager's Office
David B. Dillner
City Manager
220 E. First Avenue
El Dorado, KS 67042

EL DORADO
THE FINE ART OF LIVING WELL

Phone: (316) 321-9100
Fax: (316) 321-6282
Email: ddillner@eldoks.com
Web: www.eldoks.com
Twitter: @EldoCityMgr

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Land Bank Ordinance
DATE: October 30, 2020

Background: Kansas authorized municipalities to create land banks beginning in 2009. El Dorado, like many cities throughout Kansas, is challenged with reversing the detrimental impact caused by vacant and abandoned properties. A common denominator of many of these properties is that their ad valorem taxes are delinquent. This soon evolves into a cycle of "Speculation/Abandonment/Delinquency."

The City needs the legal authority to address the components of this cycle by having a formalized process for the forgiveness and temporary exemption of property taxes. This will in turn make vacant and abandoned properties more attractive to those willing to invest new capital into our neighborhoods once these properties are transferred out of the Land Bank.

Land Banks are governmental or nonprofit entities that acquire, temporarily retain ownership, manage and dispose of tax-delinquent or abandoned property. They can also receive property or resources through donations or direct transfers from other governmental agencies. Land banks are granted the authority under state law to facilitate the resale of these properties or execute a redevelopment plan to mitigate the negative impacts that vacant properties have on communities and their neighborhoods. Through these efforts, long-term planning goals can be achieved such as enhanced property tax base and affordable housing provisions.

The Land Bank may acquire property in three ways: 1) Purchase or transfer at the Sheriff's sale for tax delinquent properties; 2) Direct purchase from the property owner of a property that is strategically located to assist with a redevelopment plan; and 3) Donation or transfer from a government agency.

The Land Bank will not utilize condemnation through eminent domain to take property from one private individual and transfer it to another private individual. It will also not be a vehicle for the City to acquire and retain permanent ownership of property.

Fiscal Impact: Administering a land bank will have some expenses, although it is difficult to estimate these expenses on an annual basis. The City presently spends money to raze abandoned structures and maintain properties it acquires through the code enforcement or tax sale processes. The City also occasionally acquires properties that property owners do not want to maintain. The expense of administering the land bank will largely coincide with expenses of the City to address vacant and abandoned structures.

Legal Review: The City Attorney has reviewed the proposed ordinance. The ordinance complies with state statutes with respect to the establishment of land banks.

Trade-offs: A land bank allows cities to suspend outstanding special assessments and property taxes while a property is in the land bank. It also allows a city to forgive any outstanding property tax liabilities that may obstruct the productive use or redevelopment of the property. Without a land bank, the City will have limited ability to resolve outstanding tax issues and may lose the ability to collect special assessments.

Staff Recommendation: The City Manager recommends adoption of the proposed ordinance establishing a land bank for the City of El Dorado.

Commission Actions:

Commissioner ________________ moved to approve Ordinance No. _____, an Ordinance establishing Chapter 15, Article 50 of the Municipal Code of the City of El Dorado, Kansas, pertaining to the establishment of a land bank for the City of El Dorado, Kansas.

Commissioner ________________ seconded the motion.

Return to Agenda

ORDINANCE NO. ______

AN ORDINANCE ESTABLISHING CHAPTER 15, ARTICLE 50 OF THE MUNICIPAL CODE OF THE CITY OF EL DORADO, KANSAS, PERTAINING TO THE ESTABLISHMENT OF A LAND BANK FOR THE CITY OF EL DORADO, KANSAS

WHEREAS, the City of El Dorado ("City") recognizes that the steady economic decline of areas of the community have the potential of creating vacant and abandoned properties that would stress healthier areas of the community;

WHEREAS, land banking provides the City with a viable tool to address abandoned and tax-delinquent properties; and

WHEREAS, the City desires to establish a Land Bank as a proactive measure to return such properties to productive use.

NOW, THEREFORE, BE IT ORDAINED, BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

Section 1: That Chapter 15, Article 50 of the City Code of the City of El Dorado, Kansas, be established as follows:

15.50.010 **DEFINITIONS.**

For the purposes of this Article, the words set out in this Section shall have the following meanings:

"Bank" shall mean the El Dorado Land Bank established pursuant to this Chapter.

"Board" shall mean the Board of Trustees of the El Dorado Land Bank.

"City" shall mean the City of El Dorado, Kansas.

"County" shall mean Butler County, Kansas.

"Governing Body" shall mean the governing body of the City of El Dorado, Kansas.

15.50.020 **AUTHORITY AND GOVERNANCE**.

The governing body of the City hereby establishes the City of El Dorado Land Bank. The Land Bank shall be governed by a five-member Board of Trustees who each shall serve a three-year term following appointment by the City Commission. Vacancies on the Board shall be filled by appointment for the vacant unexpired term. The City Commission shall serve as the Board until such time as appointments may be made. Primary staff support to the Board will be assigned by the City Manager. City staff will provide technical and professional support for Bank operations; additional support may be contracted as deemed necessary. The City Commission may appropriate operating funds to the Bank to pay the expenses of the Bank. The Bank may be dissolved by ordinance of the governing body for any reason. In such case, all property of the Bank shall be transferred to and held by the City and may be disposed of as otherwise provided by law.

15.50.030 **GOVERNING LAW.**

a. The Bank shall be subject to the provisions of the Kansas cash basis law, K.S.A. 10-1101 et seq., and amendments thereto. The budget of the Bank shall be prepared, adopted and published as provided by law for other political subdivisions of the state. The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included and become part of the annual report of the Board. All records and accounts shall be subject to public inspection pursuant to K.S.A. 45-216 et seq., and amendments thereto. All monies of the Bank which are not immediately required for the purposes of the Bank shall be invested in the manner provided by K.S.A. 12-1675, and amendments thereto.

b. The Bank shall make an annual report to the City Commission on or before January 31 of each year, showing the receipts and disbursements from all funds under its control and showing all property transactions occurring in each year. Such report shall include an inventory of all property held by the Bank. A copy of such inventory also shall be published on the official City newspaper on or before January 31 of each year. The Bank shall be subject to the provisions of K.S.A. 9-1401 et seq., and amendments thereto.

15.50.040 **OFFICERS AND MEETINGS.**

a. The Board shall annually select from its membership, a chairperson, vice-chairperson, and secretary. The City's Finance Director shall serve as treasurer, who shall be bonded in such amounts as the governing body may require.

b. The Board shall fix the time and place at which its meetings shall be held.

c. Meetings shall be held within the City and shall be subject to the provisions of the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., and amendments thereto. A majority of the Board shall constitute a quorum for the transaction of business. No action of the Board shall be binding unless taken at a meeting at which at least a quorum is present. The members of the Board shall be subject to the provisions of the laws of the state of Kansas, which relate to conflicts of interest, including, but not limited to, K.S.A. 75-4301 et seq., and amendments thereto.

15.50.050 **BOARD INDEMNIFICATION.**

Subject to the provisions of K.S.A. 75-6101 et seq., and amendments thereto, if any action at law or equity, or other legal proceeding, shall be brought against any member of the Board for any act or omission arising out of the performance of duties as a member of the Board, such member shall be indemnified in whole and held harmless by the Board for any judgment or decree entered against such member and, further, shall be defended at the cost and expense of the Bank in any such proceeding.

15.50.060 **POWERS OF THE BOARD.**

Pursuant to state law, the Board may exercise the following powers: a) sue and be sued; b) enter into contracts; c) acquire, by purchase, gift or donation, and convey any real property, including easements and reversionary interests, and personal property subject to the provisions of state law; e) rebate all, or any portion thereof, the taxes on any property sold or conveyed by the Bank; f) exercise any other power which may be delegated to the Land Bank by the governing body; and g) exercise any other incidental power which is necessary to carry out the purposes of the Land Bank and this Article.

15.50.070 **TRANSFER OF PROPERTY TO THE LAND BANK.**

a. Except as otherwise provided in this Article, any property located within the corporate limits of the City and acquired by the City, Butler County, or other taxing subdivision within Butler County may be transferred to the Bank. The Board may accept or refuse to accept any property authorized to be transferred pursuant to this subsection. The transfer of any property pursuant to this subsection shall not be subject to any bidding requirement and shall be exempt from any provision of law requiring a public sale.

b. The fee simple title to any real estate which is sold to Butler County in accordance with the provisions of K.S.A. 79-2803 and 79-2804, and amendments thereto, and upon acceptance by the Board may be transferred to the Bank by a good and sufficient deed by the County Clerk upon a written order from the Board of County Commissioners.

c. Property subject to a foreclosure sale may only be acquired by the Board if: a) such property is located within a designated Neighborhood Revitalization District, or following a finding, adopted by resolution, by the City Commission that such acquisition serves the public interest; or b) but for acquisition of the property by the Board (at the sole discretion of the Board), the property would not otherwise be put to productive use.

15.50.080 **LAND BANK PROPERTY ADMINISTRATION.**

The Board shall assume possession and control of any property acquired by it under this Article and shall hold and administer such property. In the administration of property, the Board shall: a) manage, maintain and protect or temporarily use for a public purpose such property in the manner the Board deems appropriate; b) compile and maintain a written inventory of all such property, and make such inventory available for public inspection and distribution at all times; c) study, analyze and evaluate potential, present and future uses for such property which would provide for the effective re-utilization of such property; d) plan for and use the Board's best efforts to consummate the sale or other disposition of such property at such times and upon such terms and conditions deemed appropriate; e) establish and maintain records and accounts reflecting all transactions, expenditures and revenues relating to the Bank's activities, including separate itemizations of all transactions, expenditures and revenues concerning each individual parcel of property acquired; f) no less than thirty days prior to the sale of any property owned by the Bank, publish a notice in the official City publication announcing such sale.

15.50.090 **LAND BANK PROPERTY DISPOSITION.**

The Board, without competitive bidding, may sell any property acquired by the Board at such times, to such persons, and upon such terms and conditions, and subject to such restrictions and covenants deemed necessary or appropriate to assure the property's effective reutilization. The sale of any real property by the

Board under the provisions of this Article on which there are delinquent special assessments to finance public improvements levied by the governing body shall be conditioned upon the approval of the governing body. The Board, for purposes of land disposition, may consolidate, assemble or subdivide individual parcels of property acquired by the Bank.

15.50.100 **TAXES AND ASSESSMENTS.**

a. Until sold or otherwise disposed of by the Bank and except for special assessments levied by the City Commission to finance public improvements, any property acquired by the Bank shall be exempt from the payment of ad valorem taxes levied by the state and any other political or taxing subdivision of the state. Except for special assessments levied by the City Commission to finance public improvements, when the Board acquires property pursuant to this Article, the County Treasurer shall remove from the tax rolls all taxes, assessments, charges, penalties and interest that are due and payable on the property at the time of acquisition by the Board.

b. Property held by the Bank shall remain liable for special assessments levied by a municipality to finance public improvements, but no payment thereof shall be required until such property is sold or otherwise conveyed by the Bank.

c. The City Commission may abate part or all of the special assessments it has levied, and the Bank and City Commission may enter into agreements related thereto. Any special assessments that are abated shall be removed from the tax rolls by the County Treasurer as of the effective date of the abatement.

15.50.110 **USE OF PROCEEDS FROM SALE OF LAND BANK PROPERTY.**

Except as provided in this Chapter, any moneys derived from the sale of property by the Bank shall be retained by the Bank for the purposes and operations thereof. The Board may use all or any part of the proceeds from the sale described in this Chapter to reimburse the City's Bond and Interest Fund for delinquent special assessments due on such property.

Section 2: This Ordinance shall become effective and in full force and effect from and after its passage, adoption and publication in the official City newspaper one time.

PASSED AND ADOPTED by the Governing Body of the City of El Dorado, Kansas this 2nd day of November, 2020.

CITY OF EL DORADO, KANSAS

____

Bill Young, Mayor

ATTEST

Tabitha Sharp, City Clerk

APPROVED AS TO FORM:

Ashlyn Lindskog, City Attorney

TO: City Commission
FROM: Kurt Bookout
SUBJ: Evergreen Agreement
DATE: October 27, 2020

Background:
El Dorado's Water Reclamation Facility (WRF) utilizes woodchips, approximately 1000 cubic yards per year, to process bio-solids generated from the treatment process. Woodchips are added to the organic bio-solids material to improve decomposition and insure the process remains aerobic. Our source of woodchips for the last 13 years has primarily been commercial trimmers working for Westar, now Evergy. Most of the initial trimming has been completed and maintenance trimming is not providing enough wood chips to satisfy the needs of our treatment process.

At the same time, recently there have been requests from local tree trimmers to utilize the City's compost area for disposal of tree material. City staff began working on sources for woodchips and discovered utilizing Evergreen could solve two problems. Grinding up accumulated tree material would give the WRF the woodchips needed to process bio-solids, and it would allow commercial tree trimmers to dispose of tree material without the concern of filling up the site and having to burn the material more frequently. Burning impairs air quality and when the pile is burned, it is a frequent complaint in the community. Woodchips are also currently purchased annually by the Parks and Recreation department for use at playgrounds and flower beds. The contract with Evergreen would also supply a comparable quality woodchip product for these uses.

Project Schedule:
Evergreen would mobilize and grind up tree material anytime the designated area at the compost site fills up. The contract specifies an unlimited number of visits, or as necessary

Attachments:
Compost site aerial photo

Alternatives:
We have looked into purchasing wood chips for the bio-solids composting operation and this would be at a higher cost than the contract with Evergreen.

Fiscal Impact:
The contract with Evergreen is to provide unlimited tree grinding for the annual sum of $20,000. The Parks and Recreation department currently spends about $8,000 per year purchasing wood chips. The Water Reclamation Facility has never had to pay for wood chips, so the remainder, $12,000, will be a new expense. However, this is less than the alternative of purchasing and trucking in wood chips.

Staff Recommendation:
Staff recommends proceeding with the agreement with Evergreen for the sum of $20,000 per year.

Commission Actions:
Commissioner ________________ moved to approve a Service Agreement with Evergreen Feedstock, LLC, and authorizes the Mayor to execute said agreement.

Commissioner ________________ seconded the motion.

Return to Agenda

Service Agreement

This SERVICE AGREEMENT (this "Agreement"), dated as of this ___ day of ___________, 2020, (the "Effective Date"), is by and between Evergreen Feedstock LLC, a Kansas limited liability company with offices located at 302 W. 53rd Street North, Park City, Kansas 67204 ("Evergreen") and the City of El Dorado, a municipal corporation ("Customer"). Magill Truck Line, LLC, a Kansas limited liability company, ("Magill"), is a limited party to this Agreement, as further described herein. Evergreen, Magill, and Customer may collectively be referred to herein as the "Parties", and each a "Party").

WHEREAS Evergreen and Magill are each owned by or under the common control of Jeff Ralls;

WHEREAS Evergreen has the capability and capacity to provide certain equipment and personnel to provide grinding and/or hauling of wood waste, as more particularly described in this Agreement and/or in a Statement of Work (defined below), (for purposes of this Agreement, such services are referred to herein as the "Services");

WHEREAS Magill owns and/or operates the trucks, trailers, or other vehicles that Evergreen intends to utilize to move equipment onto and about Customer's premises in support of the Services, and, further, Magill owns or operates the trucks, trailers, or other vehicles Evergreen intends to utilize to remove the wood waste and other material from the Customer's property(ies) as part of the performance of the Services; and

WHEREAS Customer desires to retain Evergreen to provide the said Services, and Evergreen is willing to perform such Services under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Evergreen and Customer agree as follows:

1. Services/Title to Wood Waste.

1.1 Services. Evergreen shall provide to Customer the services (the "Services") set out in one or more statements of work to be issued by Customer and accepted by Evergreen (each, a "Statement of Work"). The initial accepted Statement of Work is attached hereto as **Exhibit A**. Additional Statements of Work shall be deemed issued and accepted only if signed by the Evergreen Contract Manager and the City Manager, appointed pursuant to Section 2.1 and Section 3.1, respectively.

1.2 Title to Wood Waste. Customer shall retain all right, claim, or interest in or to a certain amount of wood waste, even after Evergreen has processed such wood waste with Evergreen's grinding machine, as described in the Statement of Work (Customer's certain amount referred to herein and in the Statement of Work as "Customer's Mulch"). Any and all right, claim, or interest in or to Evergreen-processed wood waste in amounts in excess of Customer's Mulch, (the "Excess Mulch"), shall pass to Evergreen immediately upon the time such wood waste is processed with Evergreen's grinding machine, as described and set forth in the Statement of Work. Customer acknowledges and agrees that it shall have no right, claim, title, or interest in and to such Excess Mulch and that Evergreen may utilize such

Excess Mulch for Evergreen's business purpose(s), which includes, but is not limited to, Evergreen's delivery of such Excess Mulch to Element, LLC, a Kansas limited liability company, ("Element"). Customer shall execute and deliver an affidavit to Evergreen, in a form substantially similar to the form attached hereto as **Exhibit C**, upon Evergreen's request.

2. Evergreen Obligations. Evergreen shall:

2.1 Designate a primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "Evergreen Contract Manager").

2.2 Evergreen, in Evergreen's discretion, may utilize one or more, or a combination of the following equipment and personnel, to perform the Services:

Heavy duty truck(s)	Walking floor trailer(s)	Service vehicle(s) (for fuel and equipment repair(s)
Horizontal grinding machine(s)	Excavator(s)	Loader(s)
Trailer(s) for transporting equipment	Heavy Equipment Operator(s)	Experienced drivers and other personnel

2.3 Maintain accurate records relating to the provision of the Services under this Agreement. During the Term, upon Customer's written request, Evergreen shall allow Customer or Customer's representative to inspect and make copies of such records in connection with the provision of the Services; provided that Customer provides Evergreen with at least five (5) business days advance written notice of the planned inspection and any such inspection shall take place during regular business hours.

3. Customer Obligations. Customer shall:

3.1 Designate one of its employees or agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the "Customer’s Designee"), with such designation to remain in force unless and until a successor is appointed by the City Manager.

3.2 Require that the Customer's Designee respond promptly to any reasonable requests from Evergreen for instructions, information, or approvals required by Evergreen to provide the Services.

3.3 Cooperate with Evergreen and Magill in Evergreen's performance of the Services and provide Evergreen and Magill with access to Customer's premises, employees, contractors, and equipment as provided in this Agreement to enable Evergreen and Magill to provide and otherwise perform the Services.

3.4 Take all steps necessary, including obtaining any required licenses or consents, to prevent Customer-caused delays in Evergreen's provision of the Services.

4. Fees and Expenses.

4.1 In consideration of the provision of the Services by Evergreen and the rights granted to Customer under this Agreement, Customer shall pay an annual fee of $20,000.00, (the "Annual Fee"), within 30 days of the signing of this Agreement, for the initial Term of this Agreement. This Annual Fee is required for each year of the Term, as further described below in Section 6.1.

4.2 Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or regarding, Evergreen's income, revenues, gross receipts, personnel, or real or personal property or other assets.

4.3 Except for invoiced payments that the Customer has successfully disputed, all late payments shall bear interest at the lesser of the rate of one and one/half percent (1.5%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Evergreen for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Evergreen does not waive by the exercise of any rights hereunder), Evergreen shall be entitled to suspend the provision of any Services if the Customer fails to pay any amounts/fees when due hereunder and such failure continues for seven (7) days following written notice thereof.

5. Limited Warranty and Limitation of Liability.

5.1 Evergreen warrants that it shall perform the Services:

(a) In accordance with the terms and subject to the conditions set out in the respective Statement of Work and this Agreement.

(b) Using personnel of industry standard skill, experience, and qualifications.

(c) In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.

5.2 EVERGREEN MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 5.1, ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

6. Term, Termination, and Survival.

6.1 This Agreement shall commence as of the Effective Date and shall continue thereafter for a period of one (1) year (the "Term"), unless sooner terminated pursuant to Section . This Agreement shall automatically renew for successive one (1) year terms unless either Party provides the other Party with written notice of nonrenewal at least sixty (60) days prior to the end of the then-current term (each, a "Renewal Term" and together with the initial Term, the "Term"), or unless sooner terminated pursuant to Section 6.2 or Section 6.3. If the Term is renewed for any Renewal Term(s) pursuant to this Section, the terms and conditions of this Agreement during each such Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal. If either Party provides timely notice of its intent not to renew this Agreement, then, unless otherwise sooner terminated in accordance with its terms, this Agreement shall terminate on the expiration of the then-current Term. Customer shall pay the Annual Fee (defined in the Statement of Work), to Evergreen within the first thirty (30) days of any Renewal Term.

6.2 Either Party may terminate this Agreement upon sixty (60) days written notice to the other party in the event of a breach of any provision of this Agreement by the other party, provided that during that sixty (60) day period, the breaching party fails to cure such breach. If this Agreement is terminated as a result of a breach on Evergreen’s part, Evergreen shall refund the pro rata portion of any fee that may have been paid by Customer for the portion of the Services not furnished to Customer.

6.3 In the event of any dispute between the Parties concerning the terms and conditions of this Agreement, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

6.4

6.5 The rights and obligations of the parties set forth in this Section 6, Section 7, and Section 8, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

7. Limitation of Liability.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT EVERGREEN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

8. Insurance. During the term of this Agreement, Evergreen shall obtain and maintain the insurance described and in the amounts set forth in the "General" and "Workers Compensation" sections of **Exhibit B** – Insurance Requirements, attached hereto and incorporated herein by this reference. Magill shall obtain and maintain the insurance described and in the amounts set forth in the "Automobile Liability" section of **Exhibit B** – Insurance Requirements. Customer shall, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect that includes, but is not limited to, commercial general liability in amounts no less than the amounts set forth on **Exhibit B** – Insurance Requirements. Upon the reasonable request of a Party, each Party shall provide such requesting Party with a certificate of insurance from such Party's insurer evidencing the insurance coverage specified in this Agreement.

9. Entire Agreement. This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. The parties acknowledge and agree that if there is any express conflict between the terms and conditions of this Agreement and the terms and conditions of any applicable Statement of Work, the terms and conditions of such applicable Statement of Work shall supersede and control.

10. Notices. All notices required or permitted hereunder (each, a "Notice", and with the correlative meaning "Notify") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or U.S. Mail (in each case, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 10.

Notice to Customer:	City of El Dorado, Kansas Attn: City Manager 220 E. First Avenue El Dorado, KS 67042
Notice to Evergreen:	302 W. 53rd Street North Park City, Kansas 67204 Attention: Jeff Ralls

11. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

12. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of the Party to be charged.

13. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14. Assignment. Customer shall not assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Evergreen. Any purported assignment or delegation in violation of this Section 14 shall be null and void. No assignment or delegation shall relieve the Customer of any of its obligations under this Agreement. Evergreen may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of Evergreen's assets without customer's consent.

15. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

16. Relationship of the Parties. The relationship between the Customer, on the one hand, and Evergreen and Magill, on the other, is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, join venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for, or bind the other Party in any manner whatsoever.

17. Choice of Law. This Agreement and all related documents, including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the State of Kansas.

18. Choice of Forum. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Kansas, in each case located in the City of Wichita, Sedgwick County, Kansas, and each party irrevocably submits to the exclusive jurisdiction of such court(s) in any such suit, action, or proceeding.

19. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

Notwithstanding anything to the contrary in Section 10, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

20. Force Majeure. Evergreen and/or Magill shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond Evergreen's, or Magill's, reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of ninety (90) days that materially limits or prevents Evergreen's performance of this Agreement, Customer shall be entitled to give notice in writing to Evergreen to terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized officers.

CITY OF EL DORADO, KANSAS

By_____________________

Name:

Title:

EVERGREEN FEEDSTOCK LLC

By_____________________

Name:

Title:

MAGILL TRUCK LINE, LLC

By_____________________

Name:
Title:

EXHIBITS

EXHIBIT A

INITIAL STATEMENT OF WORK

1. Evergreen will grind El Dorado's tree material wood waste, as needed, but defined as each time the material has accumulated to fill the site shown in the shaded area of the attached map, attached hereto as **Exhibit D** and incorporated herein by this reference. The location where Evergreen will be performing the grinding services is referred to as the "Job Site". This will be performed for unlimited grinding events, although it is anticipated by each of the Parties that Evergreen will be at the Job Site one (1) time per year to perform the grinding Services. In consideration of Customer's payment to Evergreen a one-time annual fee of $20,000.00 (the "Annual Fee") to be paid within 30 days of the execution of this Agreement, the Parties agree as follows:

    a. Included in the Annual Fee will be 450 cubic yards of Evergreen's "fine light" material, that Evergreen will deliver to a singular site within the city limits of El Dorado, as specified by the Customer's Designee. This "fine light" material will come from Evergreen's inventory and will not be sourced from tree material wood waste located at the Job Site.

    b. Included in the Annual Fee will be up to 1000 cubic yards of the ground tree material from tree material wood waste located at the Job Site, for El Dorado's Biosolids program. Such tree material wood waste will be ground to a 3"-4" size (the "Customer's Mulch"). Evergreen shall provide its own excavator, loader, operator(s), and/or such other equipment and labor to perform the Services. Evergreen will transport Customer's Mulch to one (1) single designated area determined by Customer and located approximately one mile away from the Job Site (this single location is the wastewater bio-solids site, which is about 1.3 miles from the Job Site). In the event Customer desires Customer's Mulch to be delivered to a site further away from the Job Site, or in the event Customer desires Customer's Mulch to be delivered to any location(s) other than this wastewater bio-solids site, Customer shall be responsible for the payment of additional delivery charges beyond the Annual Fee.

    c. As a community relations project, Customer has determined to leave a pile of the Customer's Mulch at the Job Site so that local residents can come to the Job Site and take some of Customer's Mulch home for their personal use. A reasonable amount of Customer's Mulch, such amount to be mutually determined between Customer and Evergreen.

d. The Parties' anticipate that the tree material wood waste at the Job Site will generate at least 1,000 cubic yards of Customer's Mulch during each Term or Renewal Term of this Agreement. In the event that the tree material wood waste at the Job Site generates in excess of 1,000 cubic yards of Customer's Mulch, such excess shall be considered as the Excess Mulch, and all right, title and interest in and to such Excess Mulch shall pass to Evergreen, pursuant to the terms of this Agreement. If the tree material wood waste at the Job Site does NOT generate at least 1,000 cubic yards of Customer's Mulch during any Term or Renewal Term, Evergreen shall have no obligation to make up such shortfall of Customer's Mulch.

EXHIBIT B – INSURANCE REQUIREMENTS

1. General:

Commercial General Liability providing coverage for bodily injury, personal injury, property damage, products liability, and completed operations with the following minimum limits:

Bodily Injury Liability	$500,000 each occurrence
	$500,000 each aggregate
Property Damage Liability	$500,000 each occurrence
	$500,000 each aggregate
Or	
Bodily Injury and Property Damage Liability	$500,000 each occurrence
(Combined Single Limit)	$500,000 each aggregate

2. Automobile Liability:

Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	$500,000 each accident
Property Damage Liability	$500,000 each accident
or	
Bodily Injury and Property Damage Liability - (Combined Single Limit)	$500,000 each accident

3. Workers Compensation:

$100,000 Each Accident

$500,000 Aggregate

$100,000 Occupational Disease

EXHIBIT C

AFFIDAVIT CERTIFYING COLLECTION OF WOOD WASTE

I, ______________________________, of legal age, make the following statement upon information, belief, and personal knowledge that the facts below are true and correct:

1. The City of El Dorado, Kansas is a Kansas municipality, (the "Customer"), with a principal place of business at El Dorado, Kansas.

2. I am an employee and a duly authorized representative of the Customer.

3. The Customer has an agreement with Evergreen Feedstock LLC, ("Evergreen"), that allows Evergreen to remove certain wood waste located at or upon Customer facilities. This agreement allows Evergreen to deliver this wood waste to Element, LLC, ("Element"), for Element to use for its own purposes.

4. The following is a description of the wood waste and/or a description of the event generating the wood waste that Evergreen has or will be collecting from the Customer and/or collecting from Customer facilities:

(Briefly describe the source of the wood waste or a description of the wood waste)

- Tree materials located in a designated land fill area in El Dorado, Kansas.

5. Prior to the Customer's agreement with Evergreen to remove the wood waste, the Customer would have burned, buried, or otherwise disposed of this wood waste. Or, alternatively, prior to the Customer's agreement with Evergreen, the wood waste would not have been used by the Customer.

I declare under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct. Executed on this ___ day of __________, 20____.

____

Printed Name: __________________

EXHIBIT D

SITE PLAN FOR TREE DUMPING & GRINDING AREA

City Manager's Office
David B. Dillner
City Manager
220 E. First Avenue
El Dorado, KS 67042

Phone: (316) 321-9100
Fax: (316) 321-6282
Email: ddillner@eldoks.com
Web: www.eldoks.com
Twitter: @EldoCityMgr

EL DORADO
THE FINE ART OF LIVING WELL

TO: City Commission
FROM: David Dillner, City Manager
SUBJ: Prairie Trails Golf Course Agreement
DATE: October 30, 2020

Background: The City Commission authorized the City Manager to solicit proposals from parties interested in acquiring Prairie Trails Golf Course. The deadline to submit proposals was set for 3:00 pm on July 31, 2020, and the City received one proposal from Mr. Troy Palmer owner and operator of Augusta Country Club and Fitness, LLC. At the direction of the City Commission, the city manager and city attorney negotiated an agreement to sell Prairie Trails Golf Course to Mr. Palmer.

Fiscal Impact: The purchase price for the golf course and related facilities and equipment is $500,000. Mr. Palmer will make a down payment and then pay a monthly payment of $2,000 until the end of the chosen term, at which time a balloon payment will be made on the remaining balance. The proposed financing comes with no interest paid to the City.

Per Mr. Palmer's proposal, the City will be responsible for the payment of property taxes assessed to the property until the note is paid in full. Staff estimates the property taxes at $60,000 per year. Mr. Palmer would pay for raw water use, which would generate approximately $10,000 per year if the course watering reflects current usage. The mortgage payment comes to $24,000 per year, so the City may have an outstanding property tax liability upwards of $26,000 per year for the duration of the financing period. The estimated annual liability of $26,000 is less than the subsidy currently provided by the General Fund, which amounts to approximately $175,000 per year.

In addition to the operational liability, selling Prairie Trails reduces the City's future liability for equipment replacement and building maintenance on the clubhouse and various maintenance and storage buildings on the property. The City does not have a good assessment of the cost needed to properly maintain the buildings, although equipment replacement is anticipated to cost upwards of $250,000 over the next few years.

Legal Review: The City Attorney has been integrally involved in the negotiations and has drafted the agreement as written.

Trade-offs: Selling Prairie Trails Golf Course will free up public resources for other uses within the municipal operation. On the other hand, selling the golf course will remove the City's control of the management and operation of the facility and place it under the management of a third party with no accountability to the City.

Staff Recommendation: The City Manager recommends moving forward with negotiations on the sale of Prairie Trails Golf Course to Prairie Trails Golf, LLC.

Commission Actions:

Commissioner ________________ moved to approve an Installment Contract for Deed with Prairie Trails Golf, LLC, and authorizes the Mayor to execute any documents necessary to fulfill the sale of Prairie Trails Golf Course.

Commissioner ________________ seconded the motion.

Return to Agenda

INSTALLMENT CONTRACT FOR DEED

This INSTALLMENT CONTRACT FOR DEED ("Agreement") is made and entered into as of this __day of ____________, 2020 ("Effective Date"), by and between Prairie Trails Golf, LLC, a limited liability company of the State of Kansas (hereinafter "Purchaser"), and the City of El Dorado, Kansas, a municipal corporation of the State of Kansas (hereinafter "the City").

WHEREAS, the City acquired Prairie Trails Golf Course and Facilities (collectively the "Property") in 2009, and has provided for the operation of said Facilities for the benefit of the community;

WHEREAS, the City desires to preserve the opportunity for citizens to benefit from continued use of the Property as a golf course and related recreational amenities; and

WHEREAS, this Agreement shall define the terms and conditions of the sale of the Property to Purchaser.

NOW, THEREFORE, in consideration of the premises and the performance of the covenants herein contained, the parties agree as follows:

1. **Purchase Price.** The City agrees to sell to Purchaser, for consideration of FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS ($500,000.00), the Property as defined in this Agreement. Purchaser also agrees to provide reciprocal agreements between Prairie Trails and August Country Club on golf and fitness.

2. **Terms of Financing.** The Purchaser will make the payments in the following manner:

    a. The sum of $50,000, less the Escrow Funds described herein, at the time of Closing.

    b. The balance of the Purchase Price in the amount of Four Hundred and Fifty Thousand Dollars ($450,000.00), inclusive of interest, paid in monthly installments of Two Thousand Dollars ($2,000.00) per month paid by the Purchaser to the City on or before the 15th day of each month for sixty (60) months following the Closing Date, with the balance of Three Hundred and Thirty Thousand Dollars ($330,000.00) payable in full on or before November 30, 2025.

    c. Purchaser may prepay any amount due hereunder in whole or in part at any time without penalty.

    d. In the event Purchaser assigns this Agreement, with City consent, to a subsidiary or a separate entity, Purchaser agrees to execute a guaranty of the payment and performance of this Agreement.

3. **Property Taxes**. On and after Closing, the City agrees to pay any ad valorem taxes for the Property, if any, for five (5) years from the Closing Date or until such time the balance is paid in full and ownership is transferred to Purchaser.

4. **Escrow Funds.** Within ten business days of the Effective Date of this Agreement, the Purchaser shall submit to Security First Title an Escrow Check in the amount of FIVE THOUSAND DOLLARS ($5,000) to be held in escrow until Closing. The Escrow Funds shall be credited to the purchase amount specified in this Agreement at Closing, provided all required terms and conditions are met by both parties. Purchaser agrees to forfeit the Escrow Funds in the event that the transaction is terminated by Purchaser prior to Closing. The Escrow Funds will be returned to

Purchaser in the event the City does not approve of the Agreement, and provide Purchaser a special warranty deed to the property, on the day of Closing.

5. **Installment Contract for Deed**.

   a. **Special Warranty Deed; Remedies Upon Default.** The City shall execute a Special Warranty Deed in favor of Purchaser at Closing. The City shall hold the Special Warranty Deed in escrow, until Purchaser has fulfilled all of Purchaser's duties and obligations hereunder. In the event Purchaser fails to pay the amounts due pursuant to Paragraph 2, when and as due, or fails to maintain the required insurance, or if Purchaser commits waste, or in any other way violate or breach the terms and conditions of this Agreement, then the City may, if such default is not cured within thirty (30) days from the date City delivers written notice of such default to Purchaser, may, at the City's option, declare this Agreement null and void, and all rights of Purchaser hereunder shall end, and all money and improvements and the Personal Property and Property and all money, improvements, proceeds, and substitutions made hereunder shall then be retained by the City as rent and liquidated damages for said nonperformance, the City shall thereupon be entitled to immediate possession of the Property. In the event the City exercises its option to cancel this Agreement, upon cancellation and repossession by the City, all parties shall be released from further liability hereunder. If the City does not exercise their option to terminate this Agreement, the City may declare this Agreement to be in default and all amounts due the City by the Purchaser shall immediately become due and payable. The City may thereupon pursue any remedy allowed by law.

   b. **Affidavit of Equitable Interest**.

   An Affidavit of Equitable Interest executed by Purchaser, in the form attached hereto as Exhibit A, shall be recorded at Closing.

   c. **Insurance and Utilities.**

      i. Risk of loss shall pass to the Purchaser at closing. At Closing, Purchaser shall obtain and constantly maintain insurance with a company licensed to do business in the State of Kansas, which shall include fire and extended coverage insurance insuring the improvements now located on the Property for an amount not less than their full replacement value. The policy shall show the City as an additional insured.

      ii. Purchaser shall provide the City with evidence of insurance coverage in certificate form prior to taking possession of the Property. Purchaser covenants that it will not do any act or voluntarily suffer or permit any act to be done on the Property, the effect of which would be to impair, suspend or defeat the insurance coverage required hereunder.

      iii. In the event Purchaser fails for any reason to renew or replace the insurance required hereunder at least thirty (30) days prior to the expiration thereof, or fails to keep such policy in full force and effect, the City may at its option pay the premiums on such policy or take out a new policy, in type, amount, coverage and terms satisfactory to the City. Any sum so paid for any such insurance shall be immediately due and payable together with interest at the rate of twelve percent (12%) per annum.

d. **Mortgages; Encumbrances; Improvements.** Throughout the term of this Agreement, neither the City nor the Purchaser shall permit any encumbrance, mortgage or lien to attach to the Property, nor shall Purchaser allow any waste to be committed on the Property. Until the Purchase Price is fully paid, Purchaser shall maintain the Property in as good a condition as of the date of closing, ordinary wear and tear expected. All improvements and replacements shall remain with the Property in the event of a default by Purchaser under this Agreement.

e. **Protective Mortgage**. The parties agree that this transaction constitutes an Installment Sales Contract for Deed. However, the payment of the Purchase Price shall be secured by a Protective Mortgage and Security Agreement executed by Purchaser in the form attached hereto as **Exhibit B**.

6. The Property. The "Property," consisting of the following, shall be conveyed to Purchaser in accordance with Paragraph 5:

a. Real Property. The real property upon which the golf course is located, with the final legal description to be determined in accordance with the platting process described in Paragraph 9.

b. Personal Property. Personal Property to be included with the Property shall be provided "as is" as described in **Exhibit C.** Purchaser agrees to maintain this Property in reasonable condition, ordinary wear and tear excepted, until payment has been made in full.

c. Intangible Property. All of City's right, title and interest in the name "Prairie Trails Golf Course" advertising signs, and its telephone and facsimile numbers associated with such name, and the goodwill arising from the name. In addition, the use of the telephone numbers and website address shall be conveyed. Such property is collectively referred to herein as the "Intangible Assets."

d. Contracts and Leases. All of the City's rights, to the extent assignable or transferable, in and to all leases, licenses, contract and agreements with respect to Prairie Trails Golf Course. Such property is collectively referred to herein as the "Assumed Contracts." The Assumed Contracts are listed on **Exhibit D**.

7. Nature of Conveyance. All real and personal property conveyed to Purchaser by this Agreement shall be conveyed "as is," and the parties agree that the City shall not be obligated to make any improvements or repairs to the Property unless otherwise provided in this Agreement.

8. Proposal. The Proposal, prepared by Purchaser, shall be incorporated into this Agreement as **Exhibit E**. This Agreement shall supersede any and all deviations from the contents of the Proposal.

9. Ownership and Operation.

a. Right of First Refusal if Purchaser Ceases to Operate Golf Course in Accordance With Terms of This Agreement. Purchaser agrees that it will operate an eighteen-hole golf course on the Property following Closing. In the event that Purchaser is unable or unwilling to meet its obligations outlined in this Agreement, or elects to discontinue operating a golf course, Purchaser agrees that the City shall have a first right of refusal to purchase the Property, as described herein, at a purchase price equal to the Purchase Price described in Paragraph 1 and including any documented capital investments made to the Property. The purchase price for the first right of refusal shall adjust to the market value of the Property after five years or when the mortgage is paid in full, whichever occurs first. The City shall have thirty days to exercise this option after it receives written notice of Purchaser's intention to cease operation of the golf course.

b. <u>Right of First Refusal if Purchaser intends to sell the Property.</u> In the event Purchaser receives a bona fide offer from a prospective buyer to purchase the Property, which offer Purchaser intends to accept, Purchaser shall first transmit to the City, not less sixty days prior to the time the proposed sale is to be consummated, written notice (hereinafter referred to as the "Notice") by certified mail of its intention to make such sale of the Property. The Notice shall set out the terms and conditions of the intended sale, including the purchase price for the Property by the prospective buyer. The City shall have a right of first refusal to purchase the Property which shall be exercised, if at all, in writing within thirty days of the date of the Notice from Purchaser. The City shall be entitled to purchase the Property at a purchase price equal and upon the same terms and conditions as are set forth in the Notice. If the City does not exercise its rights and the sale, transfer, or assignment is made to the third party as originally proposed, provided however, that such sale must occur upon the same terms and conditions set forth in the Notice, otherwise, the right of first refusal herein granted shall be reinstated.

10. **<u>Raw Water.</u>** The City agrees that it will sell Purchaser raw water to irrigate the Property at a rate of $0.42 per 1,000 gallons for five years following the Closing Date of this Agreement ("Initial Rate Period"). From and after this Initial Rate Period, the City will sell Purchaser raw water at the then current ordinance rate for raw water.

11. **<u>Existing Employees.</u>** Purchaser agrees to make a good faith effort to employ current employees of the City who work at Prairie Trails Golf Course. The City agrees that Purchaser may exercise its discretion in deciding whether to extend offers of employment to current employees of the City.

12. **<u>Rates and Charges.</u>** From and after the Closing Date of this Agreement, Purchaser shall have the ability to operate the Property as it sees fit, to include establishing and setting rates and charges necessary to ensure continued and sustainable operation of the Property. Purchaser agrees that it shall establish and maintain a daily green fee to allow non-members to access the Property during regular playing times.

13. **<u>Contractual Commitments and Liabilities.</u>** Purchaser agrees to honor all contractual commitments related to membership agreements, tournament agreements, and all other event agreements or prior commitments of the Property made on or before the Closing Date, provided such commitments have been made for standard prices and at reasonable times. All prepaid fees for such services shall be prorated and credited to Purchaser at Closing. Purchaser also agrees to honor the allowance and use of privately owned golf carts on the Property in accordance with its rules and subject to certain fees.

14. **<u>Management Oversight.</u>** The City agrees that it shall exercise no oversight of the operation and use of the Property, except as otherwise provided herein.

15. **<u>Inspection Period.</u>** For a period of thirty days from the Effective Date, the Purchaser shall be allowed for the Purchaser to inspect the Property, including, without limitation, to review all environmental studies, surveys, title inspection, irrigation analysis, all leases, utility bills, property tax statements, vendor/service contracts and personal property and any other matters Purchaser deems appropriate in its sole discretion. The aforesaid period shall be referred to herein as the "Inspection Period." At any time on or prior to the expiration of the Inspection Period, Purchaser may elect, in its sole discretion, to terminate this Agreement by delivery of a written notice (the "Termination Notice") to City, delivered prior to the expiration of the Inspection Period whereupon neither party shall have any further liability to the other hereunder.

    Any tests conducted in connection with such inspections shall be conducted so as not to damage the Property and/or interfere with the use of the Property by City. Purchaser agrees to repair or restore promptly any damage as near as practicable, to the Property caused by Purchaser, its agents, contractors and invitees. All such entries onto the Property shall be at the risk of Purchaser, and City shall have no liability for any injuries sustained by Purchaser or any of Purchaser's agents, contractors or invitees. Purchaser agrees to indemnify and hold City harmless from and against any and all loss, claim, action, demand or liability which may arise against City from any injury to the Property or persons occurring on or about the Property arising or alleged to have arisen from Purchaser's entry upon the Property, which such indemnity shall survive Closing or termination of this Agreement. Upon completion of Purchaser's investigations and tests, Purchaser shall restore the Property to substantially the same condition as it existed before Purchaser's entry upon the Property. All costs incurred performing such inspections shall be paid by the Purchaser.

16. **<u>Due Diligence Materials.</u>** City shall provide Purchaser, within seven days after execution of this Agreement, and to the extent reasonably available to the current officers of City, a copy of all plans and specifications, all contracts, leases, soil reports, surveys, title insurance policy, hazardous waste research and reports, all Phase I and other Environmental studies, the most recent survey for the Property, architectural or engineering analyses of all structures on the Property, the books and records of City showing all operating income and expenses, utility bills, membership accountings including delinquent member reports, property tax statements, vendor/service contracts and personal property , all documents relating to the Assumed Contracts, the last three years and year to date financial statements for the Property and any miscellaneous materials in City's possession relating to the Property requested by the Purchaser. If any of the above documents are not available as of the date of execution of this Agreement, Purchaser shall bear the cost for acquiring copies of any and all studies and reports that were created prior to the execution of this Contract, but City shall fully cooperate in facilitating the provision of the same. Any documents that are in the possession or control of City's agents that would otherwise be produced as part of this Inspection, shall be produced by or on behalf of the City.

17. **<u>Title Insurance.</u>** The cost of owner's title insurance shall be paid by City. Within seven days following execution of the Agreement, City shall cause the Title Company to issue a title insurance commitment to issue an owner's policy of title insurance stating that the amount of insurance is to be determined in accordance with this Agreement, naming Purchaser as insured, which policy shall insure Purchaser's title to the Land to be in the condition called for by this contract; be written by the Title Company and be issued immediately upon recordation of City's Deed at closing to Purchaser. Following receipt of the same, Purchaser shall have five business days to make in writing any objections to any exceptions contained in the commitment. If the City does not remedy the objections prior to the expiration of the Inspection Period, Purchaser may elect to waive the objections or cancel this Agreement as provided herein and the earnest money paid to the Title Company shall be returned to Purchaser.

18. <u>City's Warranties.</u> City makes the following representations and warranties to Purchaser, each of which is based solely upon the actual knowledge, information and belief, without investigation, of the City Commission, is true and correct on the date hereof and will be true and correct on the Closing Date, except as the same may be modified by any investigation made by Purchaser prior to the Closing Date:

a. <u>Assets Owned by City, Free of Debt.</u> City represents and warrants that it has good and marketable title to all the Property conveyed pursuant to this Agreement (or will have as of Closing Date), and, except for those liabilities specifically disclosed, are free and clear of all agreements, obligations, liabilities, security interests, pledges, restrictions, mortgages, liens, claims or encumbrances of any kind or any conditional sale agreement or other title retention agreement except as stated herein or as disclosed on the title commitment. Except for those obligations set forth herein, City shall transfer to Purchaser good and marketable title to all the Property to be conveyed under this Agreement free and clear of all agreements, obligations, liabilities, security interests, pledges, restrictions, mortgages, liens, claims or encumbrances of any kind or nature whatsoever except as stated herein or the title commitment.

b. <u>No Judgments.</u> City represents and warrants that it is not subject to any judgment, decree or order, which does or may materially and adversely affect the business, assets or operation.

c. <u>No Breach or Default.</u> City represents and warrants that it is not in default under any commitment, contract, agreement, lease or other document to which it is a party, and no event has occurred which, with the giving of notice or lapse of time, or both, would constitute a default thereunder

d. <u>Employment Contracts.</u> Except as otherwise provided in this Agreement, Purchaser does not have, and neither this Agreement nor the consummation of the transactions contemplated by this Agreement shall be construed as imposing upon Purchaser, any obligation to offer or negotiate for the employment of any employee of the City. City represents that it has no agreements to pay any broker for this transaction.

e. <u>Environmental.</u> To City's Knowledge, it has not received a notice of and City is not aware of any violation of any federal, state or local environmental law with respect to the Property. This warranty shall survive the closing hereof. "City's Knowledge" means any public official, representative, or agent of City at the time of execution of this Agreement or on the Closing Date who is actually aware of such fact or other matter.

f. <u>Financial Statements.</u> To City's Knowledge, City's financial records provided to Purchaser in accordance with this Agreement present fairly the financial condition of the operation of the golf course as of their respective dates and the results of its operations for the respective periods then ended and have been prepared in conformity with generally accepted accounting principles consistently applied throughout the respective periods. To City's Knowledge, City has no material liabilities as it relates to the Property being sold, absolute or contingent, which are not disclosed on the documents produced.

g. Property Condition. Except as expressly set forth in this Agreement, the Exhibits attached hereto and in the Special Warranty Deed, Purchaser acknowledges and agrees that City has not made, does not make and specifically negates and disclaims any representation, warranty, promise, covenant of any kind or character.

h. No Other Transfer. City has made no other contract or agreement nor granted any option to sell or otherwise transfer the Business or the Property.

19. Closing; Closing Costs. Both parties agree that Closing shall occur on or before November 30, 2020 ("Closing Date"), unless otherwise extended, in writing, by both parties. Purchaser agrees to pay half the closing costs, and other applicable closing fees and charges associated with the transaction. Both parties agree that Security First Title, located at 114 E. Central Avenue, El Dorado, Kansas, shall provide closing services for the transaction, to include title insurance and escrow services.

20. Due Diligence. Purchaser agrees to supply the City with a pro forma to allow the City to determine the financial standing of Purchaser. The City agrees that such pro forma shall constitute a trade secret of Purchaser, and that such documentation shall only be used by management for good faith due diligence proceedings and shall not be made available to the public as provided by the Kansas Open Records Act.

21. Compliance with Laws and Regulations. Purchaser agrees that it will uphold all current and future laws, statutes, ordinances, and regulations applicable to the ownership and operation of a golf course and business operation within the State of Kansas and the City of El Dorado. Purchaser agrees that it will maintain the property in such a manner as to not become a public nuisance to surrounding properties and the general community. In the event Purchaser decides to develop any portion of the Property for uses other than recreation, it agrees to comply with all existing zoning and development regulations that may then be in effect.

22. City's Obligations. At the Closing, City shall deliver to Purchaser the following:

a. Compliance with Agreement. City shall perform and comply with all of its obligations under this Agreement which are to be performed or complied with by it prior to or on the Closing Date, and shall provide the following at Closing:

i. A Special Warranty Deed for the Property, including land and buildings executed by City, to be held by the City in escrow for the Purchaser in accordance with Paragraph 5;

ii. An Assignment for the Intangible Assets, Assignment and Assumption of the Assumed Contracts and a Bill of Sale for the Equipment, to be delivered at Closing; and

iii. Such other documents or instruments as Purchaser or its counsel reasonably require to complete the Closing and the transactions contemplated by this Agreement.

b. City Resolutions. City shall deliver or cause to be delivered to Purchaser a resolution of City approving the sale of assets and making the transfers contemplated hereby.

c. Further Assurances. City agrees to execute and deliver or cause to be executed and delivered such further instruments and take such other action as Purchaser may require to remedy any misrepresentation or any breach of warranty made by City herein and to more effectively carry out the transfer of the assets and the Property and the consummation of the matters contemplated by this Agreement. City agrees to operate the Property in its usual and customary manner through the Date of Closing and shall not make extraordinary purchases or enter into contracts without the written authorization of Purchaser, unless an unforeseeable emergency requires prompter action.

23. Purchaser's Obligations. At the Closing, Purchaser shall deliver to City the following:

a. Compliance with Agreement. Purchaser shall perform and comply with all of its obligations under this Agreement which are to be performed or complied with by it prior to or on the Closing Date, and shall provide the following at Closing:

i. The Purchase Price as provided herein;

ii. Execute an Assignment for the Intangible Assets, Assignment and Assumption of the Assumed Contracts and a Bill of Sale for the Equipment; and

iii. Such other documents or instruments as City or its counsel reasonably require to effect the Closing and the transactions contemplated by this Agreement.

b. Purchaser Resolutions. Purchaser shall deliver or cause to be delivered to City a resolution of Purchaser approving the purchase of assets and this Agreement.

c. Further Assurances. Purchaser agrees to execute and deliver or cause to be executed and delivered such further instruments and take such other action as City may require to remedy any misrepresentation or any breach of warranty made by Purchaser herein and to more effectively carry out the transfer of the assets and the Property and the consummation of the matters contemplated by this Agreement.

24. Proration of Specified Expenses. All rentals, insurance, membership fees, provided such policies are acceptable to Purchaser, and utilities shall be adjusted and prorated through the Date of Closing.

25. Notices. Notices and communications required to be in writing pursuant to this Agreement shall be effective only if delivered personally, or sent by facsimile, electronic mail, or certified mail, to the following:

Prairie Trails Golf, LLC
Attn: Mr. Troy Palmer
PO Box 130
Augusta, KS 67010

City of El Dorado, Kansas
Attn: City Manager
220 E. First Avenue
El Dorado, KS 67042

26. **Indemnification.** Purchaser shall defend, indemnify, and hold the City harmless from, against, and in respect of any and all claims, which arise or result from or relate to:

a. the breach by Purchaser of, or failure by Purchaser to perform, any of Purchaser's covenants, commitments, agreements, or obligations under this Agreement; and

b. any claims related to the Property existing, conducted, or arising out of conduct occurring after Closing.

The City shall defend, indemnify, and hold the Purchaser harmless from, against, and in respect of any and all claims, which arise or result from or relate to:

a. the breach by the City of, or failure by the City to perform, any of the City's covenants, commitments, agreements, or obligations under this Agreement; and

b. any claims related to the Property existing, conducted, or arising out of conduct occurring before closing.

Notwithstanding any provision herein to the contrary, it is expressly agreed between the City and Purchaser that the City has not waived any rights it may be entitled to under the Kansas Tort Claims Act, K.S.A. 75-6101 et. seq., as amended, and any agreements made by the City found to be inconsistent with the provisions of such Act are hereby declared to be inapplicable to the City. The parties agree that they will attempt to mediate any such dispute in good faith prior to any action being filed and each will use its best efforts to schedule said mediation within sixty days following written notice from the other that it is requesting mediation of the same.

27. **Successors and Assigns.** The covenants, terms and conditions of this Agreement shall extend to and be binding upon the successors and assigns of the parties.

28. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas. Venue and jurisdiction for any interpretation or action arising hereunder shall be exclusively in the state courts of Butler County, Kansas.

29. **Non-Transferrable.** This Agreement may not be transferred or assigned, in whole or in part and without exception, without the written approval of the City.

30. **No Brokers.** The parties represent and warrant to each other that no real estate broker or sales person has been involved in the transaction contemplated by this Agreement, and each party agrees to hold the other harmless from the claim of any person or entity claiming a sales commission or similar right to payment by or through the indemnifying party.

31. **Electronic Signatures and Fax Signatures.** Hand signatures transmitted by fax or electronic mail, such as PDF, are permitted as binding signatures to this Agreement. Signatures may be signed in counterpart, on separate pages, and then assembled as the complete agreement of the parties.

32. **Contingent Upon City Obtaining Approval.** This Agreement is contingent upon the City obtaining the necessary approval to sell the Property under Kansas law. In the event the City is unable to obtain the necessary approval, this Agreement shall be null and void, and the Escrow Funds shall be returned to Purchaser.

33. <u>Entire Agreement.</u> This Agreement supersedes all prior and contemporaneous oral and written agreements and understandings pertaining to hereto. Any changes to this Agreement must be approved in writing by both parties.

34. <u>Attorney Fees.</u> Should an action be brought to enforce or otherwise seek relief related to this Agreement, the prevailing party shall be entitled to all of its attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each copy to be treated as an original, the day and year first above written.

PRAIRIE TRAILS GOLF, LLC

____

Troy Palmer

CITY OF EL DORADO, KANSAS

____

Bill Young, Mayor

Attest:

____

Tabitha Sharp, City Clerk

Approved as to Form:

____

Ashlyn Lindskog, City Attorney

EXHIBIT A

Affidavit of Equitable Interest

Mr. Troy Palmer, on behalf of the Prairie Trails Golf, LLC, a limited liability company of the State of Kansas ("Buyer"), after being first duly sworn upon his/her oath, deposes and states as follows:

1. Pursuant to an Installment Contract for Deed (the "Contract"), Buyer has agreed to purchase the Property (as defined in the Contract), including the real property described on **Exhibit A-1**, attached hereto, from the City of El Dorado, Kansas, a municipal corporation.

2. This Affidavit is given for the purpose of providing notification to the public that the undersigned claims an equitable and legal interest in the above-described real estate.

FURTHER AFFIANT SAITH NAUGHT.

Prairie Trails Golf, LLC

By:____
Name: ______________________________________
Title: ______________________________________

STATE OF KANSAS)
) ss:
COUNTY OF _____________)

This instrument was acknowledged before me on this _____ day of ____________, 2020.

____
Notary Public

My Appointment Expires:

<u>**EXHIBIT A-1**</u>

[INSERT LEGAL DESCRIPTION]

Exhibit B

REAL ESTATE MORTGAGE

This Mortgage is made and granted this ___ day of ____ 2020, by and between PRAIRIE TRAILS GOLF, LLC, a Kansas Limited Liability Company (the "Mortgagor"), and the City of El Dorado, a municipal corporation of the State of Kansas (the "Mortgagee").

WHEREAS, Mortgagor as Buyer and Mortgagee as Seller have entered into and executed an Installment Contract for Deed (the "Contract") dated as of _______________ ___, 2020 relating to the real property described on **Exhibit B-1** attached hereto (the "Real Estate"); and

WHEREAS, Mortgagee and Mortgagor intend the Contract to set forth the rights between the parties. However, if despite the parties' intent, it is determined or adjudged by a court for any reason that the Contract is recharacterized, then the Contract, together with this Mortgage, shall be considered a secured financing agreement and Mortgagor's title to the Real Estate and this Mortgage shall constitute a perfected first priority lien in Mortgagee's favor on the Real Estate to secure the payment and performance of all the obligations under the Contract and this Mortgage;

Now, therefore, to secure the performance of Mortgagor's duties and obligations under the Contract and this Mortgage, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor hereby grants, bargains, conveys, mortgages and warrants unto Mortgagee all of Mortgagor's title and interest in the real estate located in Butler County, Kansas described on **Exhibit B-1** hereto, together with all the improvements now existing or hereafter erected on the Real Estate, and all easements, rights, appurtenances, rents, and all fixtures now or hereafter attached to the Real Estate, all of which, including replacements and additions thereto (collectively the "Real Estate").

The occurrence of any of the following events shall constitute an event of "Default" under this Mortgage and the Contract:

A. Mortgagor fails to fulfill any obligation called for herein or in the Contract.

B. Mortgagor fails to maintain the Real Estate in good repair.

C. Mortgagor fails to maintain the fire and extended coverage insurance required under the Contract.

D. Mortgagor fails to pay all taxes imposed against the Real Estate when and as due in accordance with the Contract.

E. Mortgagor allows any lien, encumbrance or adverse claim to attach to the Real Estate.

F. The existence of any inaccuracy or untruth in any material adverse respect in any representation or warranty contained in this Mortgage or the Contract at the time such representation or warranty was made.

Should an event of Default occur, which default is not cured within fifteen (15) days after receiving written notice by certified mail from the Mortgagee, Mortgagee may declare the entire amount due and owing under the Contract immediately due and payable and employ all remedies allowed by law including, but not limited to, filing an action in the Butler County District Court seeking foreclosure of this Mortgage. If suit is brought to enforce this Mortgage or to collect the amounts due under the Contract, Mortgagee shall be entitled to collect all reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection therewith.

Time is of the essence with respect to all the provisions of this Mortgage.

Upon payment of all sums due under the Contract secured by this Mortgage, Mortgagee shall promptly release this Mortgage.

IN WITNESS WHEREOF, the Mortgagor has executed and delivered this Real Estate Mortgage as of the date and year first set forth above.

Prairie Trails Golf, LLC

By: ________________________________

Name: _____________________________

Title: ______________________________

STATE OF KANSAS)

) ss.

COUNTY OF ___________)

This instrument was acknowledged before me on the ___ day of ______, 2020, by ______________, the ____________ of Prairie Trails Golf, LLC, a Kansas limited liability company.

____

Notary Public

My appointment expires:___________________

<u>**EXHIBIT B-1**</u>

[INSERT LEGAL DESCRIPTION]

EXHIBIT C

Personal Property

Item	Make & Model	Model Year	Original Cost	Serial No.	2020 Hours
Greens Mower	Jacobsen Eclipse 322	2017	$34,900	6280303893	511
Greens Mower	Jacobsen Eclipse 322	2017	$34,900	6280303891	558
Greens Mower F1	Jacobsen Greens King IV Plus	2012	$21,165	6230601965	1,117
Greens Mower B2	Jacobsen Greens King IV Plus	2015	$21,165	6230602002	1,311
Walking Greens Mower	John Deere 220C	2008	$500	M0220CA011478	NA
Walking Greens Mowers	John Deere 220C	2008	$500	M0220CA011477	NA
Fairway Mower	Jacobsen Super SLF 1880			67924-00001763	2,201
Fairway Mower	Jacobsen 1800	2014	$34,869	068007-10657	4,764
Rough Mower	Jacobsen 311	2014	$44,839	069171-02302	1,117
Rough Mower	Hustler 104	2014	$20,191	931733	1,525
Sand Pro	Jacobsen Groom Master II	2006		8800902049	1,759
Turf Roller	Tru Turf	2013	$12,875	RS48-116 R11398	NA
Truckster	Cushman Truckster	2001		898546C00006139	NA
Beverage Cart	EZ Go	2010		2718655	135
Range Cart	EZ Go Terrain 1000G	2012	$3,500	2804390	
Work Cart	Yamaha G-16-A	1999		JN6-306298	
Utility Vehicle	John Deere TX Gator 113	2009	$5,500	W0TURFC011556	1,141
Utility Vehicle	John Deere TX Gator 120	2009	$5,500	W0TURFC011580	1,292
Tractor	Kubota L3130	2010		L3130D 31822	3,194

EXHIBIT D

Assumed Contracts and Agreements

1. Agreement with Marc Myers providing Marc Myers lifetime use of the Property at no cost for membership and personal food and drink (non-alcohol) at a 50% discount.

2. Agreement with Marc Myers, George Myers, and Max Myers, and their immediate families, special lifetime membership with golf privileges at no charge and food and beverage (non-alcohol) at 50% discount as long as golf course is in existence.

3. First time homebuyers, or new build owners at the Greens at Prairie Trails will receive one year of free membership dues at golf course.

4. If PNC Equipment Finance, LLC consents, the lease of forty-eight (48) E-Z-GO TXT Electric Golf Carts between the City and PNC shall be assigned to Purchaser.

EXHIBIT E

The Proposal

[To be included with final, executed agreement]