

TURN LANE CONSTRUCTION & REIMBURSEMENT AGREEMENT

COMES NOW the **City of Olathe, Kansas**, a municipal corporation duly organized under the laws of the State of Kansas (hereinafter referred to as "City"), and **HEARTLAND COCA-COLA BOTTLING COMPANY, LLC**, a Kansas Limited Liability Company (hereinafter referred to as "HCC") (collectively, the "Parties", and each, individually, a "Party"), and enter into this Turn Lane Construction & Reimbursement Agreement (the "Agreement") this _____ day of _____, 2023 concerning the construction of three turn lanes (the "Turn Lanes") to serve the development of the property owned by HCC located west of Hedge Lane, north of 171st Street (so as to alleviate traffic congestion along Hedge Lane once the Development is constructed), as more particularly identified in **Exhibit A**, attached hereto and incorporated herein by reference, and reimbursement of the City's costs to construct the Turn Lanes by HCC.

WHEREAS, on October 4, 2022, the governing body of the City approved Resolution No. 22-1073, creating a benefit district to finance the improvement of Hedge Lane from 171st Street to 167th Street (the "Benefit District"); and

WHEREAS, the Hedge Lane improvements financed by the Benefit District include construction of a 40 feet wide, 3-lane arterial roadway (known as Hedge Lane) from 171st Street to 167th Street, terminating near the intersection of 167th and Erickson Street; clearing and grading, 10" asphaltic pavement, curb and gutter, concrete sidewalk, curb inlets, storm sewer, a reinforced concrete box where the proposed roadway crosses the 100-year floodplain near the existing intersection of 167th and Hedge Lane, street lights, and related work necessary to complete the project (the "Hedge Lane Improvements") but excludes the Turn Lanes; and

WHEREAS, on June 1, 2023, the plat for HEARTLAND COCA-COLA BOTTLING OLATHE FACILITY was recorded in the Johnson County Land Records, including 1 lot on approximately 116.880 +/- acres, establishing the lot lines and easements necessary for construction of HCC's bottling plant facility in the City (the "Development"); and

WHEREAS, the Development is within the Boundaries of the Benefit District; and

WHEREAS, the City is contracting for the design and construction of the Hedge Lane Improvements and intends to issue general obligation bonds to finance the Benefit District; and

WHEREAS, the Development requires construction of the Turn Lanes; and

WHEREAS, the Turn Lanes benefit HCC but do not benefit other properties within the Benefit District; and

WHEREAS, the City intends for the Turns Lanes to be constructed concurrently with the Hedge Lane Improvements; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms under which HCC will reimburse the City for the cost of the Turn Lanes.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES:

1. The Turn Lanes will be designed and constructed by the City as part of the Hedge Lane Improvements, but the special assessments levied against all properties within the Benefit District when the Hedge Lane Improvements are completed will not include the Turn Lanes. The cost of such Turn Lanes is estimated to be \$333,964.98, including all items described in **Exhibit B** (the "Cost Breakdown"). The City will maintain an itemized, separate list of all costs of the Turn Lanes and will separately account for all such costs from all costs associated with construction of the Hedge Lane Improvements.

2. HCC agrees to reimburse the City all actual costs incurred by the City to construct the Turn Lanes within forty-five (45) days of receiving an itemized invoice or receipt from the City which details in reasonable specificity the final cost of the Turn Lanes. Such invoice or receipt will be submitted to HCC by the City after the City certifies the Hedge Lane Improvements as complete and accepts such improvements. Such costs related to the Turn Lanes will also include reasonable costs actually incurred by the City associated with any contingencies, change orders, inspection fees, and any utility relocation costs necessitated by construction of the Turn Lanes. The Parties agree and acknowledge that the Cost Breakdown is an illustrative estimate of the cost of both the Hedge Lane Improvements and the Turn Lanes and is neither the actual cost of such improvements nor a cost cap for HCC's reimbursement to the City hereunder; provided, however, the City shall obtain HCC's prior written approval (not to be unreasonably withheld, conditioned, or delayed) for any costs incurred by the City (and to be reimbursed by HCC) exceeding five percent (5%) of the total amount of the estimated Cost Breakdown. In the event HCC fails to reimburse the City pursuant to this Section 2 for such amounts exceeding five percent (5%) of the total amount of the estimated Cost Breakdown, the City may withhold its issuance of a temporary certificate of occupancy for the Development until such payment is made by HCC.

3. The Turn Lanes will be designed and constructed in accordance with the City's Technical Specification and Design Criteria.

4. By virtue of entering into this Agreement, the City will not require HCC to make any additional contributions toward the design and construction of the Hedge Lane Improvements nor any additional costs associated with the Benefit District than were identified in the petition submitted by HCC to create the Benefit District as HCC's share of such Benefit

District costs, unless an amended Benefit District petition is submitted to and approved by the governing body of the City.

5. The Parties agree that each party shall cause this Agreement to be executed in duplicate. Each party hereto shall receive one (1) duly executed copy of this Agreement for its official records.

6. This Agreement cannot be altered or modified except by written agreement signed by all Parties.

7. This Agreement shall be construed according to the laws of the State of Kansas and may be enforced by any court of competent jurisdiction.

8. The Parties hereto agree that should any provision of the Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision shall be null and void, however, the remaining provisions of the Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

9. Each Party hereby confirms that it has the power to enter into and execute this Agreement. This Agreement shall be binding upon the Parties and their respective successors and assigns. HCC may not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld; provided no consent shall be necessary if such assignee is an Affiliate of HCC or in which HCC or its principals own or control at least 51% of such assignee.

10. This Agreement shall terminate upon completion and acceptance of the Hedge Lane Improvements by the City and receipt of the reimbursement for the cost of the Turn Lanes by the City from HCC.

11. Time is of the essence.

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IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate the day and year first above written.

CITY OF OLATHE, KANSAS

By:_____

Name:_____

Title:_____

HEARTLAND COCA-COLA BOTTLING COMPANY, LLC

By:_____

Name:_____

Title:_____

EXHIBIT A

Turn Lanes

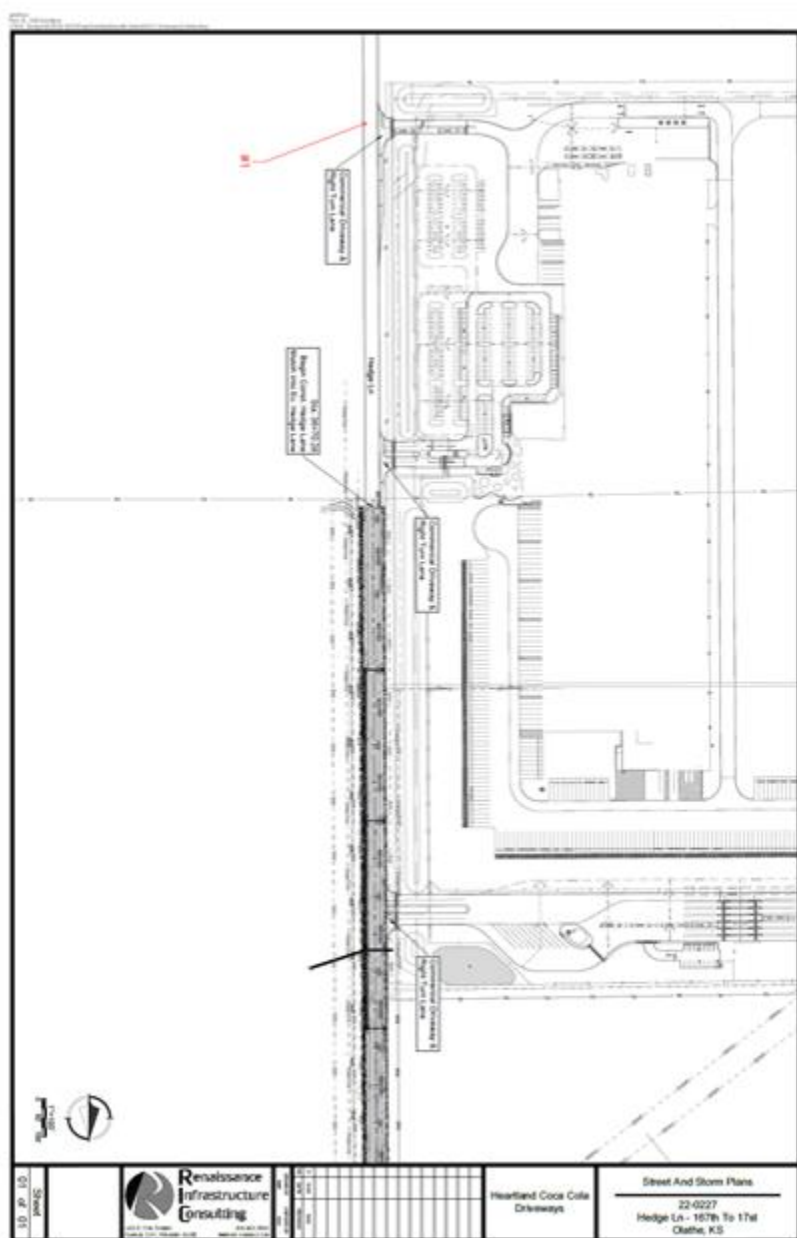


Exhibit B

Cost Breakdown

Summary of Quantities

| Item | Description | Benefit Dist. | Turn Lane | Quantity | Unit | Unit Cost | Benefit Dist. Total | Turn Lane Total | Total |
|--------------------|---|---------------|-----------|----------|------|--------------|---------------------|-----------------|----------------|
| 1 | Mobilization | 94% | 6% | 1 | L.S. | \$90,000.00 | \$84,600.00 | \$5,400.00 | \$90,000.00 |
| 2 | Clearing & Grubbing | 94% | 6% | 1 | L.S. | \$75,000.00 | \$70,500.00 | \$4,500.00 | \$75,000.00 |
| 3 | Demolition | 89% | 11% | 1 | L.S. | \$56,000.00 | \$49,840.00 | \$6,160.00 | \$56,000.00 |
| 4 | Milling | 259 | - | 259 | S.Y. | \$10.00 | \$2,590.00 | \$0.00 | \$2,590.00 |
| 5 | Unclassified Excavation | 9,505 | 1,537 | 11,042 | C.Y. | \$13.00 | \$123,565.00 | \$19,981.00 | \$143,546.00 |
| 6 | Embankment | 16,105 | 100 | 16,205 | C.Y. | \$5.00 | \$80,525.00 | \$500.00 | \$81,025.00 |
| 7 | Embankment (Contractor Furnished) | 8,026 | (1,206) | 6,819 | C.Y. | \$15.00 | \$120,390.00 | (\$18,090.00) | \$102,285.00 |
| 8 | Asphalt Concrete Surface (2") (Superpave) | 1,667 | 128 | 1,795 | Tons | \$100.00 | \$166,718.55 | \$12,809.26 | \$179,527.82 |
| 9 | Asphalt Concrete Base (8") (Superpave) | 7,000 | 406 | 7,406 | Tons | \$100.00 | \$700,015.65 | \$40,625.71 | \$740,641.37 |
| 10 | Aggregate Base Course (8") (Modified AB-3) (Roadway) | 16,984 | 1,367 | 18,351 | S.Y. | \$14.00 | \$237,776.00 | \$19,138.00 | \$256,914.00 |
| 11 | 6" Modified AB-3 (Sidepath) | 3,491 | - | 3,491 | S.Y. | \$10.00 | \$34,910.00 | \$0.00 | \$34,910.00 |
| 12 | Tensar TX-160 Triaxle Geogrid or Approved Equal | 16,984 | 1,367 | 18,351 | S.Y. | \$6.00 | \$101,904.00 | \$8,202.00 | \$110,106.00 |
| 13 | Concrete Base (8") | - | 338 | 338 | S.Y. | \$20.00 | \$0.00 | \$6,760.00 | \$6,760.00 |
| 14 | Curb and Gutter, (Concrete) (Type B) | 7,442 | 643 | 8,086 | L.F. | \$30.00 | \$223,273.47 | \$19,293.45 | \$242,566.92 |
| 15 | Curb and Gutter, (Concrete) (Type C) | 183 | 272 | 455 | L.F. | \$30.00 | \$5,490.06 | \$8,152.56 | \$13,642.62 |
| 16 | Curb and Gutter, (Concrete) (Type E) | - | 205 | 205 | L.F. | \$30.00 | \$0.00 | \$6,150.00 | \$6,150.00 |
| 17 | Concrete Sidewalk (4") (5') | 2,056 | - | 2,056 | S.Y. | \$50.00 | \$102,800.00 | \$0.00 | \$102,800.00 |
| 18 | Concrete Sidepath (4") (10') | 3,324 | - | 3,324 | S.Y. | \$50.00 | \$166,200.00 | \$0.00 | \$166,200.00 |
| 19 | Curb Access Ramp (Type 1) | 2 | 10 | 12 | EA | \$2,500.00 | \$5,000.00 | \$25,000.00 | \$30,000.00 |
| 20 | Concrete Residential Driveway (6") | 22 | - | 22 | S.Y. | \$60.00 | \$1,320.00 | \$0.00 | \$1,320.00 |
| 21 | Concrete Commercial Driveway (7") | 77 | 790 | 867 | S.Y. | \$70.00 | \$5,390.00 | \$55,300.00 | \$60,690.00 |
| 22 | Aggregate Surface Course (8") (Modified AB-3) (Driveways) | 154 | - | 154 | S.Y. | \$20.00 | \$3,080.00 | \$0.00 | \$3,080.00 |
| 23 | HPS - 8 Pavement Marking, Solid White (6") | 697 | 447 | 1,144 | L.F. | \$1.00 | \$697.00 | \$447.00 | \$1,144.00 |
| 24 | HPS - 8 Pavement Marking, Solid Yellow (4") | 7,525 | - | 7,525 | L.F. | \$0.60 | \$4,515.00 | \$0.00 | \$4,515.00 |
| 25 | HPS - 8 Pavement Marking, Broken Yellow (4") | 1,332 | - | 1,332 | L.F. | \$0.60 | \$799.20 | \$0.00 | \$799.20 |
| 26 | Thermoplastic Pavement Marking, Diagonal Yellow (12") | 38 | - | 38 | L.F. | \$4.00 | \$152.00 | \$0.00 | \$152.00 |
| 27 | Thermoplastic Pavement Marking, Solid White (6") | 106 | - | 106 | L.F. | \$1.00 | \$106.00 | \$0.00 | \$106.00 |
| 28 | Thermoplastic Pavement Marking, Solid White (24") | 28 | - | 28 | L.F. | \$21.00 | \$588.00 | \$0.00 | \$588.00 |
| 29 | Thermoplastic Pavement Marking, Left Turn Symbol | 25 | - | 25 | EA | \$200.00 | \$5,000.00 | \$0.00 | \$5,000.00 |
| 30 | Thermoplastic Pavement Marking, Right Turn Symbol | - | 9 | 9 | EA | \$200.00 | \$0.00 | \$1,800.00 | \$1,800.00 |
| 31 | Permanent Signing | 1 | - | 1 | L.S. | \$3,000.00 | \$3,000.00 | \$0.00 | \$3,000.00 |
| 32 | Handrail | 103 | - | 103 | L.F. | \$165.00 | \$16,995.00 | \$0.00 | \$16,995.00 |
| 33 | Concrete (Grade 4.0) (RCB) | 164 | - | 164.00 | C.Y. | \$1,450.00 | \$237,800.00 | \$0.00 | \$237,800.00 |
| 34 | Concrete (Grade 4.0) (A/E) (RCB) | 42 | - | 42.00 | C.Y. | \$1,260.00 | \$52,920.00 | \$0.00 | \$52,920.00 |
| 35 | Bridge Backwall Protection System | 156 | - | 156 | S.Y. | \$49.00 | \$7,644.00 | \$0.00 | \$7,644.00 |
| 36 | Reinforcing Steel (Gr. 60) | 23,786 | - | 23,786 | LBS | \$2.05 | \$48,761.30 | \$0.00 | \$48,761.30 |
| 37 | Reinforcing Steel (Gr. 60) (Epoxy Coated) | 10,188 | - | 10,188 | LBS | \$2.50 | \$25,470.00 | \$0.00 | \$25,470.00 |
| 38 | Foundation Stabilization | 41 | - | 41 | C.Y. | \$82.00 | \$3,362.00 | \$0.00 | \$3,362.00 |
| 39 | Granular Backfill (Wingwalls) | 134 | - | 134 | C.Y. | \$101.00 | \$13,534.00 | \$0.00 | \$13,534.00 |
| 40 | RipRap (Light Stone) (24") (2' Depth) | 135 | 0 | 135 | S.Y. | \$108.00 | \$14,592.00 | \$0.00 | \$14,592.00 |
| 41 | RipRap (Light Stone) (24") (3' Depth) | 50 | - | 50 | S.Y. | \$108.00 | \$5,400.00 | \$0.00 | \$5,400.00 |
| 42 | RipRap (1/4 Ton) (3' Depth) | 232 | - | 232 | S.Y. | \$130.00 | \$30,160.00 | \$0.00 | \$30,160.00 |
| 43 | 15" RCP Storm Sewer | - | 15 | 15 | L.F. | \$100.00 | \$0.00 | \$1,504.00 | \$1,504.00 |
| 44 | 18" RCP Storm Sewer | 1,498 | 169 | 1,667 | L.F. | \$100.00 | \$149,816.00 | \$16,896.00 | \$166,712.00 |
| 45 | 24" RCP Storm Sewer | 807 | - | 807 | L.F. | \$120.00 | \$96,819.60 | \$0.00 | \$96,819.60 |
| 46 | 30" RCP Storm Sewer | 605 | 359 | 964 | L.F. | \$140.00 | \$84,712.60 | \$50,316.00 | \$135,028.60 |
| 47 | 36" RCP Storm Sewer | 223 | 58 | 281 | L.F. | \$160.00 | \$35,739.20 | \$9,280.00 | \$45,019.20 |
| 48 | 60" RCP Storm Sewer | 24 | - | 24 | L.F. | \$240.00 | \$5,760.00 | \$0.00 | \$5,760.00 |
| 49 | 18" RCP End Section | 3 | - | 3 | EA | \$2,000.00 | \$6,000.00 | \$0.00 | \$6,000.00 |
| 50 | 36" RCP End Section | 2 | - | 2 | EA | \$3,500.00 | \$7,000.00 | \$0.00 | \$7,000.00 |
| 51 | 6' x 4' Curb Inlet | 17 | - | 17 | EA | \$6,000.00 | \$102,000.00 | \$0.00 | \$102,000.00 |
| 52 | 6' x 5' Curb Inlet | 5 | - | 5 | EA | \$7,000.00 | \$35,000.00 | \$0.00 | \$35,000.00 |
| 53 | 7' x 5' Curb Inlet | - | 1 | 1 | EA | \$8,000.00 | \$0.00 | \$8,000.00 | \$8,000.00 |
| 54 | 8' x 5' Curb Inlet | 1 | - | 1 | EA | \$8,500.00 | \$8,500.00 | \$0.00 | \$8,500.00 |
| 55 | 5' x 6' Area Inlet | 1 | - | 1 | EA | \$9,000.00 | \$9,000.00 | \$0.00 | \$9,000.00 |
| 56 | 4' x 4' Junction Box | - | 1 | 1 | EA | \$6,500.00 | \$0.00 | \$6,500.00 | \$6,500.00 |
| 57 | 5' x 5' Junction Box | - | 1 | 1 | EA | \$6,500.00 | \$0.00 | \$6,500.00 | \$6,500.00 |
| 58 | Convert Junction Box to Area Inlet | 1 | - | 1 | EA | \$10,000.00 | \$10,000.00 | \$0.00 | \$10,000.00 |
| 59 | Concrete Ditch Liner | 188 | - | 188 | S.Y. | \$65.00 | \$12,220.00 | \$0.00 | \$12,220.00 |
| 60 | Sanitary Sewer Manhole (Raise Lid) | 1 | - | 1 | L.S. | \$5,000.00 | \$5,000.00 | \$0.00 | \$5,000.00 |
| 61 | Erosion Control | 94% | 6% | 1 | L.S. | \$90,000.00 | \$84,600.00 | \$5,400.00 | \$90,000.00 |
| 62 | Temporary Seeding | 5.58 | 0.23 | 5.81 | AC | \$2,250.00 | \$12,555.00 | \$517.50 | \$13,072.50 |
| 63 | Permanent Seeding | 5.58 | 0.23 | 5.81 | AC | \$2,250.00 | \$12,555.00 | \$517.50 | \$13,072.50 |
| 64 | Street Lighting | 1.00 | - | 1 | L.S. | \$135,000.00 | \$135,000.00 | \$0.00 | \$135,000.00 |
| 65 | Traffic Control | 99% | 1% | 1 | L.S. | \$10,500.00 | \$10,395.00 | \$105.00 | \$10,500.00 |
| 66 | Contractor Furnished Staking | 94% | 6% | 1 | L.S. | \$5,000.00 | \$4,700.00 | \$300.00 | \$5,000.00 |
| 67 | Contingency Allowance | 94% | 6% | 1 | L.S. | \$100,000.00 | \$94,000.00 | \$6,000.00 | \$100,000.00 |
| Total Construction | | | | | | | \$3,678,755.63 | \$333,964.98 | \$4,012,705.63 |