

Agenda
Elk Point City Council
Special Meeting
Monday, October 11, 2021 @ 7:00am
Elk Point City Hall via Zoom
Join Zoom Meeting

<https://zoom.us/j/95971123534?pwd=a1g3Qk9nR2RpeEJyZFBUSzdRNTVmQT09>

Meeting ID: 959 7112 3534

Passcode: Hzy4R7

- (1) Call to Order and Roll Call
- (2) Approve Agenda
- (3) Public Forum
- (4) Unfinished Business.
 - Amended MOU for the Jack Nicklaus Drive Project.
- (5) New Business
 - Appoint Trevor Job as the East River board member to replace Mayor Deb McCreary.

City of Elk Point
Mission Statement

To provide services that promote the highest quality of life through cost effective and efficient governance.

AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING

This Amendment No. 1 to Memorandum of Understanding is entered into this ___ day of October, 2021, by and between City of Elk Point (“City”) and Elk Point Investments, L.L.P., a South Dakota limited liability partnership (“EPI”). Together, the City and EPI are herein sometimes referred to herein as a “Party” or the “Parties” as context may require.

WITNESSETH:

WHEREAS, the Parties entered into a Memorandum of Understanding (“MOU”) on the ___ day of August, 2021; and

WHEREAS, the Parties wish to amend the MOU by amending Section 3 of the MOU.

NOW THEREFORE, in consideration of the above premises, and other good and valuable consideration, the Parties agree as follows:

1. Amendment. Section 3 of the MOU is hereby amended by adding the following paragraph to Section 3 of the MOU:

“The plans and specifications as set out in the above paragraph and Exhibit A are revised to provide that the north culvert would be extended near the golf course lot line. This pipe would remain below grade, but allow open ingress for drainage. The cost of providing for the piping and the installation of the piping and engineering would be the responsibility of the City. EPI will agree to replace and fix any damage to the sod and to the sprinkler system on the property owned by Lee Schaefer. The Parties acknowledge that the cost for the improvements are outlined in Exhibit A and it is anticipated that these costs will be sufficient to cover the improvements.”
2. Counterparts and Copies. This Amendment No. 1 to Memorandum of Understanding may be signed in counterpart. Scanned, facsimile or other electronic signatures hereto shall be binding.
3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any dispute having its origins in the provisions of this Agreement shall be venued in the state or federal courts having jurisdiction over Union County, South Dakota. The parties hereby irrevocably submit to the jurisdiction of such courts.
4. Ratification of Terms. The parties hereby confirm and ratify all other terms and conditions of the Memorandum of Understanding.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and date first above written.

City of Elk Point

By _____

Its: _____

Elk Point Investments, L.L.P.

By _____

Its: _____

EXHIBIT A

John Archer

From: John Archer
Sent: Monday, August 16, 2021 5:15 AM
To: Craig Thompson
Cc: Linda Merriman
Subject: Cost Estimate

Craig:

I visited with our engineer for the purpose of giving you a guesstimate of the cost to extend the culvert.

EPI - Cost to just do the grading as to what was originally planned: \$2,000-\$3,000

Taking the current bid of our contractor for the road (which he may or may not agree to): \$94.00 per square foot, which would equate the following costs:

North culvert: \$23,000

South culvert: \$20,000

Assuming that the culverts were just extended, the additional engineering cost would be approximately \$3,000-\$4,000. If there was more than an extension, the cost would probably double.

Total cost to extend the culverts would be as follows:

Contractor Cost:

North culvert: \$23,000

South culvert: \$20,000

Engineering Fee: \$ 4,000

Less EPI original cost (\$3,000)

Total \$44,000

Our engineer would suggest not doing the south culvert and letting the water drain into the pond over the dirt. Again this is just an estimate to give you some idea. I will get a revised MOU later this morning. JFA

John F. Archer
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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU” or “Agreement”) is entered into this ___ day of August, 2021, by and between City of Elk Point (“City”) and Elk Point Investments, L.L.P., a South Dakota limited liability partnership (“EPI”). Together, the City and EPI are herein sometimes referred to herein as a “Party” or the “Parties” as context may require.

RECITALS

WHEREAS, EPI has developed several properties in the City of Elk Point, and due to such development has worked with the City in providing certain infrastructures for the developments (“Project”); and

WHEREAS, the Parties desire to enter into this MOU in which EPI is constructing certain infrastructure items for the benefit of the City and at the sole cost of EPI; and

WHEREAS, the City and EPI wish to memorialize in this MOU the terms, obligations and responsibilities of the Parties with regard to the infrastructure work to be performed by EPI.

NOW THEREFORE, in consideration of the above premises, and other good and valuable consideration, the Parties agree as follows:

1. Extension of Jack Nicklaus Drive. In good faith, EPI shall continue the construction of the extension of Jack Nicklaus Drive in accordance with the plans and specifications attached as Exhibit C. The anticipated completion of the Jack Nicklaus Drive is December 31, 2021, barring any force majeure events. The cost of the construction of the Jack Nicklaus Drive, including any engineering expenses, shall be the sole responsibility of EPI.
2. Dedication of Jack Nicklaus Drive and other Completed Streets by EPI. Upon EPI providing notice of completion of the Jack Nicklaus Drive to the City, the City will accept ownership of the Jack Nicklaus Drive through dedication from EPI. Also, at this time, the City, if it has not already done so, will accept ownership and maintenance responsibility through dedication of all other streets previously constructed and completed by EPI, which would include Country Club Drive, Arnold Palmer Lane, Robert Jones Trail, Gary Player Lane, St. Andrews Lane and Lexington Street. EPI will pay for and file any required minor platting for the completion of the above dedication. After EPI’s completion of the work outlined in Exhibit C, EPI shall provide to the City a post construction Certificate of Completion issued by EPI’s independent engineering firm. Upon the City’s receipt of the Certificate of Completion, the Parties will complete the above dedications within sixty (60) days of the Certificate of Completion being delivered to the City.
3. Detention Basin Completion and Dedication. EPI will complete grading and elevation work required to complete the associated stormwater management systems in accordance with the plans and specifications attached hereto as Exhibit A. The detention basin areas (“Detention Property”) are designed for permanent drainage. Upon EPI completing the seeding, grading and elevation work, EPI shall provide to the City a post construction Certificate of Completion issued by EPI’s independent engineering firm. Upon the City’s receipt of the Certificate of Completion, the Parties will complete the above dedication within sixty (60) days of the Certificate of Completion being delivered to the City. The EPI will replat the Detention

Property which is identified in Exhibit B so that EPI can transfer the Detention Property to the City so the City can take over maintenance of the Detention Property.

4. Breach of MOU. In the event of breach of this MOU by any Party, the non-defaulting Party may seek all remedies available at law or equity to enforce this MOU, including specific performance of the obligations under the MOU. Furthermore, if the non-defaulting Party prevails in any case, suit, arbitration, or litigation concerning the enforcement of this Release, the defaulting Party shall pay all costs, expenses and attorney's fees incurred in the enforcement of this MOU.
5. Authority. Each person signing this MOU on behalf of a Party in a representative capacity represents that he or she has the authority to bind such Party.
6. Counterparts and Copies. This Memorandum of Understanding may be signed in counterpart. Scanned, facsimile or other electronic signatures hereto shall be binding.
7. Binding Nature and Severability. This MOU shall be binding and inure to the benefit of the successors in interest and assigns of the respective Parties. In the event any provision or any part of this MOU shall be void or unenforceable for any reason whatsoever, then such provision shall be stricken and of no force and effect. The remaining provisions of this MOU, however, shall continue in full force and effect, and to the extent required, shall be modified to preserve their validity.
8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any dispute having its origins in the provisions of this Agreement shall be venued in the state or federal courts having jurisdiction over Union County, South Dakota. The parties hereby irrevocably submit to the jurisdiction of such courts.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and date first above written.

City of Elk Point

By: Bob McCreary
Its: Mayor

Elk Point Investments, L.L.P.

By: [Signature]
Its: Authorized Partner

EXHIBIT A
Plans and Specifications

EPI commits to provide grading according to exhibits attached for the Lot and pond areas, as spot elevations and contours depict the targeted elevations.

EXHIBIT B
Detention Property

EXHIBIT C
Jack Nicklaus Drive Plans and Specifications