

CITY OF TONGANOXIE  
321 S. DELAWARE 913-845-2620  
December 4, 2017  
7:00 Regular Meeting



Honorable Jason K. Ward, Mayor  
Council Members  
Chris Donnelly                      James Truesdell  
Curtis Oroke                      Andy Gilner                      Kara Reed

**Open Regular Meeting – 7:00 p.m.**

**I. Pledge of Allegiance**

**II. Approval of Minutes –** Regular Meeting dated November 20, 2017

**III. Consent Agenda**

- a) Review Bill Payments

**IV. Open Agenda**

Members of the public are welcome to use this time to comment about any matter relating to City business. The comments that are discussed under Open Agenda may or may not be acted upon by the Council during this meeting. In order to speak during open agenda, you must sign up with your name and address with the city clerk or designee **before the meeting**. Comments will be limited to 3 minutes. Please wait to be recognized by the Mayor and **state your name and address** for the record.

**V. Old Business**

**VI. New Business**

- a) Resolution 12-17-01; updating authorized users on the City's Municipal Investment Pool account
- b) Resolution 12-17-02; approving and authorizing the execution of a Real estate Contract between the City of Tonganoxie, KS and Unilock Chicago, Inc, for the purchase of Lot 5 in the Tonganoxie Business Park
- c) Public Forum #2 of 2, regarding the construction of a new Public Library and other Capital Maintenance/Improvements Project list
- d) Consider approval of CMB license for Brothers Market
- e) Ordinance No. 1429; amending the rates charged for Water and Sewer usage
- f) City Manager Agenda
- g) City Attorney Agenda
- h) Mayor Agenda
- i) Mayor Pro Tem Agenda
- j) City Council Agenda

**VII. Information & Communications (No Action Required)**

**VIII. Adjourn**

**City Council Meeting**  
November 20, 2017  
7:00 p.m. Regular Meeting



Mayor Ward opened the meeting at 7:05 p.m. with the pledge of allegiance. Council members present were Jim Truesdell, Curtis Oroke, Andy Gilner, Kara Reed, and Chris Donnelly. Also in attendance were City Manager George Brajkovic, Deputy City Clerk Teresa Bastron, and City Attorney Shannon Marciano.

**Approval of Minutes and Consent Agenda**

- Mr. Gilner moved to approve the minutes from the November 6, 2017 council meeting. Ms. Reed seconded. All ayes. Motion carried.
- Mr. Gilner moved to approve the consent agenda. Ms. Reed seconded. All ayes. Motion carried.

**Open Agenda**

- Jayma Zook, library employee, 13008 Everett Ct., Kansas City, KS , addressed the council to support the new library and additional services.
- Mary Gergick, 21610 Kansas Avenue, addressed the council regarding her concerns about the construction activity in Tonganoxie Business Park.
- Laurence Hill, 1541 Fall Creek Drive, addressed the council to express the need for more community services and expanded library space.
- Monica Gee, 17685 214<sup>th</sup> Street, encouraged the council to consider a community spay clinic for pets offering micro-chipping at a reduced cost to citizens.

**New Business**

**Introduction of Amino Brothers Company, Inc. Low bid for the Public Improvement RFP for the Tonganoxie Business Park**

- George Brajkovic introduced Frank McMann, Project Manager for Amino Brothers Company and explained Amino Brothers was the low bid for the RFP process. Mr. McMann shared several past construction projects and work experience his company had worked on.

**Public Forum regarding the construction of a new Public Library**

- Brad gave a PowerPoint presentation showing possible library layout and features.
- Drew Miller questioned the scope of the project and inclusions for budget.
- Jamie Lawson, incoming city council member, invited the library board to meet with him and get him up to speed with the proposal for the new library.

**Presentation from staff regarding Tonganoxie Civic Academy**

- George Brajkovic introduced Liz Andrews, City Hall Management Intern and KU graduate program student.
- Liz presented the 2018 Civic Academy program and explained its goals.

**Consider Approval of CMB license for Casey's General Store**

- Mr. Donnelly moved to approve the application for Casey's CMB license for 2018. Andy Gilner seconded. Motion passed.

**City Manager Agenda**

- George explained revenues and expenditures as of October, 2017.
- Mr. Donnelly moved to go into executive session to discuss the possible acquisition of land for utility easements, pursuant to the acquisition of real property exemption, KSA 75-4319 (b) to include the governing body, city attorney, city manager and public works director. Andy Gilner seconded. All ayes. Motioned carried.
- Mr. Gilner moved to return from executive session. Ms. Reed seconded. Motion passed.

**Mayor Agenda**

- Mayor Ward thanked everyone involved in the Mayor's Annual Tree Lighting.

**City Council Agenda**

- Mr. Oroke requested information on the demolition of the old building on the corner of 4<sup>th</sup> Street and Main. Kent Heskett indicated that Brandon Harder, City Building Inspector, had sent certified notices to the owners of the building that are being returned undeliverable. The building is currently posted for demolition. Staff will continue to work on the process.

Mr. Gilner moved to adjourn at 8:30 p.m. Ms. Reed seconded. All ayes. Motion carried. Meeting adjourned.



City of Tonganoxie, KS

# Check Report

By Check Number

Date Range: 11/17/2017 - 11/30/2017

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
<b>Bank Code: AP Bank-AP Bank</b>						
0015	ALL SEASONS CAR WASH	11/17/2017	Regular	0.00	113.34	44226
0046	BAY BRIDGE ADMINISTRATORS, LLC	11/17/2017	Regular	0.00	303.76	44227
0059	BOARD OF PUBLIC UTIL.-WATER	11/17/2017	Regular	0.00	13,170.59	44228
0070	BROTHER' S MARKET	11/17/2017	Regular	0.00	35.00	44229
0073	CALIBRE PRESS INC	11/17/2017	Regular	0.00	80.00	44230
0094	CHIP'S GUNWORKS	11/17/2017	Regular	0.00	90.80	44231
0704	CLIFFORD POWER	11/17/2017	Regular	0.00	475.00	44232
0813	FREESTATE ELECTRIC COOPERATIVE	11/17/2017	Regular	0.00	1,593.00	44233
0205	GALL'S LLC	11/17/2017	Regular	0.00	345.94	44234
0596	GEOFF SONNTAG	11/17/2017	Regular	0.00	400.00	44235
0393	LAWRENCE MEMORIAL HOSPITAL	11/17/2017	Regular	0.00	258.00	44236
0409	LEXIPOL LLC	11/17/2017	Regular	0.00	3,700.00	44237
0426	LV COUNTY SHERIFF OFFICE	11/17/2017	Regular	0.00	110.00	44238
0857	MIDCONTINENT COMMUNICATIONS	11/17/2017	Regular	0.00	165.72	44239
0891	NATIONWIDE MUTUAL INSURANCE COMPANY	11/17/2017	Regular	0.00	25.00	44240
0491	OLATHE WINWATER WORKS	11/17/2017	Regular	0.00	1,555.00	44241
0542	QUILL	11/17/2017	Regular	0.00	86.13	44242
0578	SECURITY BENEFIT	11/17/2017	Regular	0.00	371.66	44243
0579	SECURITY BENEFIT - 457	11/17/2017	Regular	0.00	2,419.23	44244
0608	STRAIGHT-LINE STRIPING, INC.	11/17/2017	Regular	0.00	798.50	44245
0866	TERRACON CONSULTANTS, INC	11/17/2017	Regular	0.00	1,480.50	44246
0628	TODD'S TIRE LLC	11/17/2017	Regular	0.00	1,274.00	44247
0635	TOTAL ELECTRIC CONTRACTORS INC	11/17/2017	Regular	0.00	361.40	44248
0648	UNIVERSAL, INC.	11/17/2017	Regular	0.00	104.16	44249
0671	WESTAR ENERGY	11/17/2017	Regular	0.00	163.20	44250
0692	ZEP MANUFACTURING COMPANY	11/17/2017	Regular	0.00	172.99	44251
0892	Baker's Recovery & Tow	11/29/2017	Regular	0.00	861.00	44252

**Bank Code AP Bank Summary**

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	41	27	0.00	30,513.92
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	<b>41</b>	<b>27</b>	<b>0.00</b>	<b>30,513.92</b>

### Fund Summary

Fund	Name	Period	Amount
998	Gen Fund-Pooled Cash	11/2017	30,513.92
			<u>30,513.92</u>



Office of the City Manager  
**AGENDA STATEMENT**

**DATE:** November 27, 2017  
**To:** Honorable Mayor Jason K. Ward and Members of the City Council  
**FROM:** George Brajkovic, City Manager  
**SUBJECT:** Municipal Investment Pool Authorized Users

**DISCUSSION:**

Resolution 12-17-01 identifies the authorized users for the City of Tonganoxie's Kansas Municipal Investment Pool Account. This is the account we use to make bond payments to the State of Kansas. This resolution is needed to remove former Assistant City Manager Jamie Shockley as an authorized user and add new Assistant City Manager Dan Porter. Any changes to authorized users require a resolution to be approved by the governing body.

**ACTION NEEDED:**

Make a motion to approve Resolution 12-17-01

cc: Dan Porter, Assistant City Manager

**RESOLUTION 12-17-01**

WHEREAS, the undersigned is an eligible municipality, as defined in K.S.A. 12-1675, as amended, (the "Participant") and from time to time has funds on hand in excess of current cash demands; AND

WHEREAS, it is the best interest of the Participant and its inhabitants to invest funds in investments that yield a favorable rate of return while providing the necessary liquidity and protection of the principal; AND

WHEREAS, the Pooled Money Investment Board (the "PMIB"), operates the Municipal Investment Pool (MIP), a public funds investment pool, pursuant to Chapter 254 of the 1996 *Session Laws of Kansas*, and amendments thereto; AND

NOW, THEREFORE, be it resolved by the Governing Body of the City of Tonganoxie, Kansas:

1. The municipality designated below approves the establishment of an account in its name in the MIP for the purpose of transmitting funds for investment, subject to the MIP Participation Policy adopted by the Pooled Money Investment Board, and municipality acknowledges it has received a current copy of such Participation Policy. The Participant's taxpayer identification number assigned by the Internal Revenue Service is 48-6035159.
2. The following individuals, whose signatures appear directly below, are officers or employees of the Participant and are each hereby authorized to transfer funds for investment in the MIP and are each authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of funds:

List officers or employees authorized to execute documents and make deposits and withdrawals:

Name: Jason K. Ward

Title: Mayor

Signature \_\_\_\_\_

Name: George Brajkovic

Title: City Manager

Signature \_\_\_\_\_

Name: Dan Porter

Title: Assistant City Manager

Signature \_\_\_\_\_ •

3. Notice required by the PMIB's Municipal Investment Pool Participant Policy shall be provided to:

Contact Person: Dan Porter

Address: P.O. Box 326  
Tonganoxie, Kansas 66086

Telephone: 913-845-2620  
Fax No.: 913-845-9760  
Email: dporter@tonganoxie.org

4. This Resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant and until the PMIB receives a copy of any such amendment or revocation, the PMIB is entitled to rely on same.

PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF  
TONGANOXIE, KANSAS THIS 4TH DAY OF DECEMBER, 2017.

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Jason K. Ward, Mayor

ATTEST:

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Patty Hagg, City Clerk



Office of the City Manager  
**AGENDA STATEMENT**

**DATE:** November 30, 2017  
**To:** Honorable Mayor Jason K. Ward and Members of the City Council  
**FROM:** George Brajkovic, City Manager  
**SUBJECT:** Purchase Agreement between the City and Unilock Chicago, Inc. for Lot 5 of the Tonganoxie Business Park

**DISCUSSION:**

Unilock Chicago, Inc. is an industry leader in the style and technology of manufactured landscaping products, including pavers. They have multiple locations in the US and Canada, and have a sales yard currently located in Tonganoxie.

The Purchase Agreement is really two documents in one. It is, in fact, a purchase contract for Lot 5, an approximate 34 acres, of the Tonganoxie Business Park. The Purchase price for the ground is \$300,000.00, with an additional \$138,000.00 for excavation work previously done in good faith by the City, so that at Closing a total amount of \$438,000.00 will be paid by Unilock.

Additionally, it serves as a Development Agreement, and identifies a two-phased Development proposal from Unilock. Phase 1 will be a storage facility and a 7,000 sf Check-out building, located on the 16.35 acres on the Northern portion of the site. Phase 2, will consist of a minimum 40,000 sf office and manufacturing facility, with a total investment of \$18.9M, and creating 17 jobs.

There are performance provisions within the Contract which identify required Development milestones and subsequent remedies if the milestones are not met; these include price premiums for the ground or the City's reversionary interest in a portion of the site.

**REQUESTED ACTION:**

Adopt Resolution 12-17-02, authorizing the Mayor to execute the Real Estate Contract between the City and Unilock Chicago, Inc.

**RESOLUTION NO. 12-17-02**

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THAT CERTAIN REAL ESTATE CONTRACT OF SALE BETWEEN THE CITY OF TONGANOXIE, KANSAS, AND UNILOCK CHICAGO, INC.**

**WHEREAS**, the City of Tonganoxie, Kansas (the “City”), wishes to enter into that certain Real Estate Contract of Sale between the City and Unilock Chicago, Inc., attached hereto in substantially the form as Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS:**

**Section 1.** That the Governing Body approves and hereby authorizes the Mayor to execute that certain Real Estate Contract of Sale between the City and Unilock Chicago, Inc., attached hereto as Exhibit A.

**Section 2.** That this resolution shall become effective upon passage.

**ADOPTED** by the Governing Body this 4<sup>h</sup> day of December, 2017.

**SIGNED** by the Mayor this 4<sup>h</sup> day of December, 2017.

**SEAL**

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Jason Ward, Mayor

ATTEST:

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Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

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Shannon M. Marciano, City Attorney

**EXHIBIT A**

**Real Estate Contract of Sale between the City of Tonganoxie and  
Unilock Chicago, Inc.**

## REAL ESTATE CONTRACT OF SALE

THIS REAL ESTATE CONTRACT OF SALE ("Contract") is made and entered into as of the date of the signature of the last party to sign this Contract (the "Effective Date") by and between the CITY OF TONGANOXIE, KANSAS ("City") and UNILOCK CHICAGO, INC., an Illinois corporation registered to do business in the State of Kansas ("Unilock" or the "Buyer").

WITNESSETH:

WHEREAS, Leavenworth County, Kansas (the "County") and City intend to enter or have entered into a certain agreements in order to incentivize economic development within the City and the County through mutual cooperation between the parties, and cause the development of an industrial/commercial park within the City on certain real property legally described on Exhibit A which is attached hereto and incorporated herein by this reference (the "Project Property"), and to provide for the construction of certain infrastructure improvements to the Project Property;

WHEREAS, Buyer desires to purchase that certain portion of the Project Property legally described and depicted on Exhibit B, as attached hereto and incorporated herein (the "Unilock Property"), from the City for the construction of certain facilities related to Buyer's landscape design and paver business operation; and

WHEREAS, the City desires to sell to Buyer and Buyer desires to purchase from the City the Unilock Property on the terms and conditions hereinafter more fully set out.

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE I The Unilock Property

1.1 Subject to the terms and provisions of this Contract, the City agrees to sell to Buyer, and Buyer agrees to purchase from the City, all of the following, which comprise the Unilock Property:

- (a) the approximately 34.00 acres of land described and depicted on Exhibit B (the "Land") (the precise acreage of the land to be confirmed by the final Survey); and
- (b) all singular estates, rights, privileges, easements, and appurtenances belonging or in any way appertaining to the Land.

### ARTICLE II Purchase Price

2.1 Purchase Price. The total purchase price for the Property shall be Three Hundred Thousand and NO/100 Dollars (\$300,000.00) (the "Purchase Price"), which Purchase Price shall be due and payable by Buyer to the City by wire transfer as follows:

(a) Within three (3) days after the Effective Date of this Contract, Buyer shall deposit the sum of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (the "Earnest Money") with Kansas Secured Title Company ("Title Company"). All interest accruing on the Earnest Money shall become part of the Earnest Money.

(b) One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) at the Closing (hereinafter defined).

### **ARTICLE III Title and Survey**

3.1 Title Binder. Within fourteen (14) days after the Effective Date, the City shall provide Buyer with a current Commitment for a standard ALTA Owner's Policy of Title Insurance for the Unilock Property ("Title Binder") issued by the Title Company. The Title Binder shall include copies of all documents identified therein as exceptions to the title. The Title Binder shall describe the Land, name Buyer as the party to be insured thereunder and commit to insure the Buyer with indefeasible, good and marketable title in the full amount of the Purchase Price. The Title Binder shall list and identify by reference to volume and page, where recorded, all easements, rights-of-way and other instruments or matters affecting title to the Property. The City shall pay the cost of the ALTA Owner's Policy at Closing. Any endorsements (which may take the form of affirmative insurance covering, for example, restrictive covenants, encroachments, etc.) Buyer may desire shall be at Buyer's cost.

3.2 Survey/Plat. Within thirty (30) days after the Effective Date, the City shall provide Buyer with an ALTA survey of the Unilock Property (the "Survey"). The Survey shall also delineate and provide the precise acreage for the Northern Portion and the Southern Portion (as such terms are defined below). City shall also cause the Land to be platted in order to legally transfer and convey fee ownership of the same to Buyer, to provide the Land with legal access to public right-of-way, and to permit construction of Buyer's proposed facilities on the same (the "Subdivision Plat"). City shall take any and all action to cause the Subdivision Plat to be prepared and approved prior to the expiration of the Due Diligence Period (defined below). Buyer shall reasonably cooperate and join in the execution of any applications or documentation related to the Subdivision Plat. The parties agree that the Subdivision Plat shall not be recorded until Closing.

3.3 Title Inspections. During the Due Diligence Period, Buyer shall have the opportunity to examine the Title Binder and the Survey and to give City written notice of any objection or objections thereto that relate to the title or any matter that adversely and materially affect Buyer's intended use of the Unilock Property. If Seller does not receive a written notice from Buyer within the Due Diligence Period setting forth Buyer's objections, then Buyer shall be irrevocably deemed to have accepted the state of title as shown on the Title Binder and the Survey. If Buyer makes any timely objections, then City shall have the option (but not the obligation) to correct such objections at any time prior to the Closing. In the event that City opts not to correct any objection of Buyer prior to the Closing, or City is not able to correct any such objection, then Buyer shall have the option either: (i) to waive such objections and elect to accept such title and Owner's Policy as City is able to deliver; or (ii) to declare this Contract to be null and void, and thereupon the Earnest Money shall be returned to Buyer and this Contract

shall terminate, and neither party shall have any further obligations hereunder, except as otherwise provided in this Contract. Matters disclosed by the Title Binder and the Survey that are not objected to by Buyer, or that are waived or accepted by Buyer as provided in this section, shall be the "Permitted Exceptions." Notwithstanding the foregoing, and anything in this Contract to the contrary, with regard to the standard printed exceptions and other common exceptions generally included in Title Binders, (a) there shall be no exception for "any lien, or right to a lien, for services, or material heretofore or hereafter furnished, imposed by law and not shown by the public records," and (b) the exception for ad valorem taxes or special assessments shall reflect only taxes and special assessments for the year of Closing and shall be annotated "Not yet due and payable". Furthermore, and notwithstanding the objection process set forth in this Section 3.3, City shall cause to be removed from the final Owner's Policy (or insure over) any financial lien or other financial encumbrance.

#### **ARTICLE IV**

##### **Information, Inspections, Representations and Warranties**

4.1 Information. The City shall not later than ten (10) days after the Effective Date hereof, deliver to Buyer legible, accurate and complete copies of the following (the "Delivery Items"):

(a) The most recent ad valorem tax statements from all taxing authorities having jurisdiction over the Project Property for the prior year and to the extent the current year's bills are not available, the current valuation notice;

(b) A list of all contracts or leases affecting the Project Property and copies of all such leases for contracts of maintenance, service, supply or rental outstanding which affect any portion of the Project Property or its operation;

(c) Existing site plans, surveys, soil and substrata studies, architectural renderings environmental reports, engineering plans and studies, landscape plans and other plans, diagrams or studies of any kind, if any, in the City's possession, which relate to the Project Property, together with all documents relating or pertaining to all warranties and guaranties of construction;

(d) Any information in City's possession regarding any springs, slews, or other site elements that may impact development of the Project Property; and

(e) Such information as Unilock may reasonably request related to the Excavation Work (defined below), including but not limited to invoices, receipts, work orders, compaction reports, completion reports, and as-built survey.

4.2 Inspections.

(a) For a period of sixty (60) days after the Effective Date (the "Due Diligence Period"), Buyer shall have the right, at Buyer's cost and expense, to conduct a complete inspection of the Unilock Property and to conduct any investigations regarding engineering, hazardous waste, zoning review, feasibility, physical and economic conditions affecting the Property, or feasibility studies of the Unilock Property as Buyer

deems necessary or advisable in connection with the purchase of the Unilock Property. During the Due Diligence Period, Buyer shall have reasonable access to the Unilock Property for the purpose of making such investigations as Buyer shall deem appropriate.

(b) If it should be determined by Buyer, in Buyer's sole discretion and judgment, that the Unilock Property is not suitable for the purposes which Buyer intends to utilize the Unilock Property or if Buyer has not obtained or does not believe it can obtain all items necessary in its opinion to utilize the Unilock Property, Buyer may give written notice to City on or before the expiration of the Due Diligence Period that this Contract is terminated and is null and void for all purposes. Upon receipt by the City of such written notice, the Earnest Money shall forthwith be promptly returned to Buyer and the parties hereto shall have no further obligation one to the other, except as otherwise provided in this Contract.

4.3 Representations and Warranties of the City. The City hereby represents and warrants as of the date hereof and as of the Closing Date that:

(a) The City shall convey fee simple title to the Unilock Property on or before the seventh (7th) day following the expiration of the Due Diligence Period.

(b) The City is not prohibited from consummating the transaction contemplated in the Contract, by any law, regulation, agreement, instrument, restriction, order or judgment.

(c) The City has full right, title, authority and capacity to execute and perform this Contract and to consummate all of the transactions contemplated herein, and the individuals of the City who execute and deliver this Contract and all documents to be delivered to Buyer hereunder are and shall be duly authorized to do so.

(d) As of the Closing Date, there shall be no tenant, lessee or other occupant of the Property having any right or claim to possession or use of the Unilock Property and exclusive possession of the Unilock Property shall be delivered by City to Buyer at the Closing, free of the rights or claims of any tenants, occupants or other parties in possession of, or having or claiming any right to possession or use of, the Unilock Property.

(e) There is no litigation or proceeding pending or, to City's current actual knowledge, threatened against or related to all or any part of the Project Property nor does City know of any basis for any such action.

(f) City has made no agreements, representations, or commitments to any governmental agency or public authority, utility company, or school district relating to any portion of the Unilock Property, which agreement, representation or commitment imposes an obligation upon City (or would impose an obligation on Buyer) to make any contributions or dedications of money or land, or to construct, install, or maintain any improvements of a public nature on or off the Project Property, except as set forth in this Contract.

(g) There are no recorded or, to City's actual knowledge, unrecorded easements or agreements which would limit or prevent the Buyer's use and/or development of the Unilock Property as a landscape design and paver business operation not disclosed in the Title Binder.

(h) As of the Closing, the Unilock Property is and will be zoned so as to permit the legal conforming operation of a concrete paver and retaining wall manufacturing business operation, including warehousing and distribution operations. The Project Property is not in violation of any zoning law, use restriction, or subdivision regulation.

(i) City has not received a notice from any governmental agency that the Project Property or any portion thereof is in violation of any federal, state or local laws, regulations or orders or common and case law pertaining to health, safety, sanitation or environmental protection (including, without limitation, the surface water, ground water, drinking water supply, land, surface and subsurface strata and ambient air).

**ARTICLE V**  
**Conditions Precedent to Buyer's**  
**Obligation to Close**

5.1 Buyer's obligation to consummate the transactions contemplated hereunder is conditioned upon satisfaction of each of the following conditions at or prior to the Closing (or such earlier date as is specified with respect to a particular condition):

(a) None of the representations and warranties of the City set forth in Article IV hereof shall be untrue or inaccurate in any material respect.

(b) The Subdivision Plat shall be approved and recorded.

(c) A final development plan or site plan and design guidelines in form acceptable to Unilock (collectively, the "Development Plans") shall have been approved by the governing body of the City.

(d) City shall have completed the Initial City Improvements (defined below).

In the event that any of the above conditions are not met at or prior to the Closing, then Buyer shall have the option either: (i) to waive such conditions and proceed with Closing; or (ii) to declare this Contract to be null and void, and thereupon the Earnest Money shall be returned to Buyer and this Contract shall terminate, and neither party shall have any further obligations hereunder, except as otherwise provided in this Contract.

**ARTICLE VI**  
**Closing**

6.1 Time and Place of Closing. Provided that all of the conditions of this Contract shall have been satisfied or waived, the Closing of this transaction shall take place at the Title Company on that date which is seven (7) days after the later of (a) expiration of the Due

Diligence Period, or (b) completion of the Initial City Improvements, unless otherwise mutually agreed to in writing by the parties.

6.2 Events of Closing. At the Closing:

(a) The City shall deliver to Buyer the following:

(i) A Special Warranty Deed in the form attached hereto as Exhibit C, duly executed and acknowledged by the City, conveying to Buyer the Unilock Property in indefeasible fee simple free and clear of any lien, encumbrance or exception other than the Permitted Exceptions.

(ii) Possession of the Unilock Property (subject only to the Permitted Exceptions); and

(iii) All other documents reasonably necessary or appropriate to consummate this transaction as the Title Company may reasonably require.

(b) Buyer shall deliver to the City the following:

(i) The balance of the Purchase Price by wire transfer; and

(ii) Such evidence of the authority and capacity of Buyer and its representatives as the City or the Title Company may reasonably require.

6.3 Expenses. The City shall pay its proportionate share of the prorations as set forth in Section 6.4 hereof, the escrow fee charged by the Title Company, the recording fees, the premium for the Owner's Policy of Title Insurance (excluding any endorsements required by Buyer, which shall be paid solely by Buyer), the cost of the Survey and Subdivision Plat, and its own attorneys' fees. Buyer shall pay its proportionate share of the prorations as set forth in Section 6.4 hereof and its own attorneys' fees. Except as otherwise provided in this Section, all other expenses hereunder shall be paid by the party incurring such expenses.

6.4 Prorations. Real property ad valorem taxes and installments of current year special assessments shall be prorated to the Closing, based upon actual days involved. The City shall be responsible for all ad valorem taxes or installments of special assessments attributable to any period prior to the Closing. In connection with the proration of real and property ad valorem taxes, if actual tax figures for the year of Closing are not available at the Closing Date, the proration shall be based upon the tax figures from the preceding year. The City shall, on or before the Closing Date, furnish to Buyer and the Title Company all information necessary to compute the prorations provided for in this Section.

6.5 Costs for Excavation Work. Contemporaneously with the Initial City Improvements (defined below), City has performed certain excavation work on the Land so as to allow for a gravel base and product storage (the "Excavation Work"). At the Closing, Unilock agrees to pay the City for the Excavation Work in an amount not to exceed \$138,000.00.

**ARTICLE VII**  
**Development of the Project Property and the Unilock Property**

7.1 Initial City Improvements.

(a) The City agrees to construct certain infrastructure and site improvements to the Unilock Property prior to the Closing pursuant to the terms of this Article VII and otherwise known as the "Initial City Improvements". The Initial City Improvements shall consist of:

- (i) site grading to prepare the site for final site construction (grading shall be understood to generally mean a properly compacted and graded pad site with grades generally on the order of 2.00%);
- (ii) the extension of the existing of a water main and sanitary sewer force main by way of a 12" water main extension and an 8" sanitary sewer force main extension from their present location to a point near the northwest corner of the Unilock Property; and
- (iii) the establishment of fiber for communication and also single-phase electrical power to points adjacent to the site.

The Initial City Improvements shall otherwise conform to those requirements and specifications, and be installed in such locations, as set forth on Exhibit D which is attached hereto and incorporated herein by this reference. The Initial City Improvements shall be constructed so as to accommodate and support the Unilock Property as it is intended to be developed pursuant to the final development plan prepared by Buyer and approved by City (as set forth above), and in any event, in accordance with City standards and requirements and plans reasonably approved by Buyer.

(b) City agrees to complete construction of the Initial City Improvements by December 31, 2017, subject to Force Majeure (defined below). The parties hereby agree that construction of such Initial City Improvements shall be a condition to the Closing, as provided in Article V above, in which event the cost of such work (or any portion thereof) shall be funded by the Earnest Money; provided, that City's use of such Earnest Money shall not relieve City or the Title Company from returning any portion of the Earnest Money if Buyer has a right to the return of such Earnest Money under the terms of this Contract.

7.2 Additional City Improvements.

(a) City shall, on a post-Closing basis, extend single-phase electric power, gas, and a new road to the Unilock Property (the "Additional City Improvements"). The Additional City Improvements shall otherwise conform to those requirements and specifications, and be installed in such locations, as set forth on Exhibit D which is attached hereto and incorporated herein by this reference. The Additional City Improvements shall be constructed so as to accommodate and support the Unilock Property as it is intended to be developed pursuant to the final development plan prepared

by Buyer and approved by City (as set forth above), and in any event, in accordance with City standards and requirements and plans reasonably approved by Buyer.

(b) City agrees to complete construction of the Additional City Improvements within two (2) calendar years after the date of Closing, subject to Force Majeure. The parties hereby agree that construction of such Additional City Improvements shall be performed at City's sole cost and expense.

### 7.3 Indemnity and Insurance.

(a) During its performance of the Initial City Improvements and the Additional City Improvements, Grantor agrees that it will protect Unilock's property from any damage, injury or loss arising from City' use of the Unilock Property post-Closing, and restore the Unilock Property above to as near the original condition as possible (subject to the Initial City Improvements and the Additional City Improvements themselves).

(b) City shall indemnify, protect, defend and hold harmless Buyer from and against any and all damages or expense, including attorneys' and paralegals' fees, directly or indirectly arising from, relating to or associated with any actual: (i) negligent actions or willful misconduct of City or its employees, agents, representatives, or City's general contractor, subcontractors or sub-subcontractors, or any employees, agents, representatives or contractors of any of the foregoing; (ii) lien, security interest, claim or encumbrance in favor of any person or entity making a claim by reason of having provided labor, materials or equipment; (iii) any injury, damage, harm or loss directly or indirectly arising from, relating to or in any manner connected with the "release" or "threatened release" of hazardous materials, contaminants, oil or radioactive materials as a result of or connected with any acts, errors, or omissions of City or persons employed by or working under contract with Seller; and (iv) breach, violation or default by Seller or its employees, agents, representatives, or Seller's general contractor, subcontractors or sub-subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, of City's obligations, including, without limitation, any violation of any law, statute, ordinance, order, rule or regulation.

(c) From the date on which any work by City on the Initial City Improvements and the Additional City Improvements shall first commence until the date all work by City shall be completed and accepted hereunder (and, if required, until the same shall have been accepted by the applicable public utility company or governmental authority having jurisdiction as herein provided), City shall maintain in force and cause to be maintained in force by any of its contractors, subcontractors, and agents such types and amounts of insurance as are typical for projects of the scope and size of the Initial City Improvements and the Additional City Improvements, which insurance shall be issued by an insurer authorized to transact business in the State of Kansas. Upon request, City shall provide Seller a certificate of insurance evidencing compliance with the insuring obligations set forth in this Section.

#### 7.4 Unilock Improvements.

(a) On a post-Closing basis, Unilock shall have an obligation to construct a storage facility, including outdoor storage, on those approximately 16.35 acres of the Land labelled as the "Northern Portion" on Exhibit E which is attached hereto and incorporated herein by this reference ("Phase 1"), within twelve (12) calendar months after the date that City completes the Additional City Improvements, subject to Force Majeure. Phase 1 shall be developed in accordance with City standards and requirements, and in accordance with the final Development Plans prepared by Buyer and approved by City (as set forth above).

(b) On a post-Closing basis, Unilock may occupy the Northern Portion with a temporary structure to begin operations. In the interest of economic development and the generation of tax revenue, the City agrees to defer enforcement of the zoning ordinance for a period of twelve (12) months in order to allow the temporary structure on the Northern Portion. On or before that date which is twelve (12) months after the Effective Date, Unilock agrees to cease operations from the temporary structure and begin operations in the completed Check Out Building, as indicated on the Development Plans. Unilock agrees to pave the parking area serving the Check Out Building (as shown on the Development Plans) within twelve (12) months after completion of the Check Out Building (such completion date to be as evidenced by the date of issuance of a final certificate of occupancy for the Check Out Building). The storage lot area on the Northern Portion (as shown on the Development Plans) shall be paved at the rate of at least one (1) acre per year, commencing as of the date by which construction of Phase 2 (defined below) shall have commenced, as set forth in Section 7.4(d) below, and regardless of whether construction of Phase 2 so commences or not. If Unilock does not cease operations from the temporary structure on or before November 1, 2018, and pave the associated parking and storage lot as provided in this subsection, the City will enforce the zoning ordinance, and such temporary structure and gravel parking and storage lot will be deemed to be in violation of the zoning ordinance and Unilock may be subject to penalties in accordance with the zoning ordinance.

(c) On a post-Closing basis, the parties agree that Unilock intends to construct an office, warehouse, and/or manufacturing facility of approximately 40,000 square feet, with associated infrastructure work (collectively, "Phase 2") on that portion of the Land consisting of approximately 17.65 acres of the Land labelled as the "Southern Portion" on Exhibit E hereto. Unilock intends to proceed with Phase 2 if, by November 30, 2020, Unilock's sales revenue for the region (such region being approximately as identified on Exhibit F attached hereto) meets or exceeds \$10 million cumulatively (as reasonably determined by Unilock, in accordance with its standard accounting and revenue-tracking practices), in accordance with the following:

- (i) Unilock shall notify the City by no later than November 30, 2020 (the "Notice Date"), as to whether Unilock intends to proceed with Phase 2.

- (ii) If Unilock fails to give timely notice of its intent to proceed, or if Unilock notifies City that it is not able to proceed with Phase 2, then Unilock and City shall have thirty (30) days to mutually agree on an 18-month extension of the Notice Date; provided, that neither party shall be required to agree to any such extension. If the Notice Date is so extended, then the provisions of this Section 7.4(c) shall apply to such extended Notice Date.
- (iii) If Unilock notifies the City that it will not proceed with Phase 2, or if Unilock and City are unable to agree as to an extension of the Notice Date, then City shall have such remedies as are provided in subsection 7.4(e) below.

(d) If Unilock notifies the City by the Notice Date, as extended, that it intends to proceed with Phase 2, then Unilock shall then have an obligation to construct Phase 2. Unilock will incorporate into Phase 2 a minimum initial capital investment of \$18,900,000.00 (U.S.) (which may include: building costs; vertical improvements; site work, excavation, and base work; concrete/pad work; pavement, gravel/rock, and asphalt; utilities and lighting; and landscaping). Phase 2 shall be developed in accordance with City standards and requirements, and in accordance with the final development plan and site plan prepared by Buyer and approved by City (as set forth above). Unilock must commence construction of Phase 2 within twelve (12) calendar months after the Notice Date, as extended, and diligently pursue the same to completion such that substantial completion for Phase 2 shall be on or before that date which is eighteen (18) calendar months after the Notice Date, subject only to Force Majeure.

(e) If Unilock fails to give notice by the Notice Date of its intent (subject to its right to cure, as provided in Section 9.2 below), or if Unilock notifies City that it is not able to proceed with Phase 2, or if Unilock and City should fail to agree on an extension of the Notice Date within thirty (30) days as set forth in subsection 7.4(c)(ii) above, or if Unilock fails to commence construction of Phase 2 within twelve (12) calendar months after the Notice Date, as extended, as set forth in subsection 7.4(d), then Unilock shall either, at City's option and following written notice from the City of City's election (the "City Notice"):

- (i) promptly convey back to the City the Southern Portion (with no encumbrances or restrictions which were not in existence as of the Closing), subject to the Land being replatted or otherwise legally subdivided or split in order to allow Unilock to legally transfer and convey fee ownership of the Southern Portion to the City; or
- (ii) pay to the City a premium additional purchase price for the Southern Portion of the Land (the "Premium"), calculated as follows: If City and Unilock are unable to agree upon the Premium, then Unilock shall designate an appraiser in writing to City. Within ten (10) days after the date of Unilock's written designation, City shall either accept Unilock's appraiser or shall

provide Unilock with the name of a second appraiser. If City accepts Unilock's appraiser, then within thirty (30) days after such acceptance, such appraiser shall prepare a report stating the appraiser's opinion as to the fair market value of the Southern Portion of the Land only, based on a consideration of comparable properties of equivalent quality, size, utility, and location. The result of such appraisal shall be controlling on the parties. If City instead designates a second appraiser, the two designated appraisers shall designate a third appraiser having the qualifications set forth below within ten (10) days thereafter. Within twenty (20) days after the selection of the third appraiser, each party's appraiser shall submit to the third appraiser a written report stating such appraiser's opinion of the fair market value of the Southern Portion of the Land, based on a consideration of comparable properties of equivalent quality, size, utility, and location. Within thirty (30) days after receipt of such reports, the third appraiser shall accept one or the other of the reports. The result of such appraiser's determination shall be controlling on the parties. Any appraiser designated pursuant to this paragraph shall be a certified appraiser with at least five (5) years' experience in valuing industrial real estate rental values in the area where the Land is located. All costs in connection with the appraisals described in this paragraph shall be shared equally by the parties.

Notwithstanding the foregoing, in lieu of options (i) or (ii) above, Unilock may, at Unilock's option exercised by written notice to the City within fourteen (14) days after Unilock's receipt of the City Notice, instead pay to the City a Premium for those approximately 4.47 acres of the Southern Portion of the Land as shown on Exhibit G attached hereto and incorporated herein by this reference (the "Supplemental Portion"), and Unilock shall thereafter convey back to the City the remainder of the Southern Portion (as identified on Exhibit G) consisting of approximately 13.18 acres (with no encumbrances or restrictions which were not in existence as of the Closing), and subject to the Land being replatted or otherwise legally subdivided or split in order to allow Unilock to legally transfer and convey fee ownership of the remainder of the Southern Portion to the City. The Premium for the Supplemental Portion shall be calculated and arrived at in the same manner as set forth in subsection 7.4(e)(ii) above.

7.5 Force Majeure. For purposes of this Contract, the term "Force Majeure" means: acts of God; strikes; lockouts; labor troubles; inability to procure materials; inclement weather; governmental laws or regulations; casualty; orders or directives of any legislative, administrative, or judicial body or any governmental department; inability to obtain any governmental licenses, permissions or authorities (despite commercially reasonable pursuit of such licenses, permissions or authorities); and other similar or dissimilar causes beyond the performing party's reasonable control.

7.6 Survival. The parties agree that the rights and obligations of the parties as set forth in this Article VII shall survive the Closing and shall be included in the Special Warranty Deed from the City to Unilock.

## **ARTICLE VIII Damage to Property and Condemnation**

8.1 The City agrees to give Buyer prompt notice of any casualty affecting the Land or Initial City Improvements between the date hereof and the Closing Date or of any actual or threatened taking or condemnation of all or any portion of the Land or Improvements. If prior to the Closing there shall occur any damage to the Unilock Property or taking or condemnation of any portion of the Unilock Property, then in any such event Buyer may at its option terminate this Contract by written notice to the City within five (5) days after Buyer has received the notice referred to above or at the Closing, whichever is earlier. If Buyer so terminates this Contract, the Earnest Money shall forthwith be promptly returned to Buyer and the parties hereto shall have no further obligation one to the other, except as otherwise provided in this Contract. If Buyer does not so elect to terminate this Contract, then the Closing shall take place as provided herein without abatement of the purchase price, and there shall be assigned to Buyer at the Closing all of the City interest in and to all insurance proceeds or condemnation award.

## **ARTICLE IX Default and Remedies**

9.1 Default by the City. If the City defaults hereunder prior to Closing, Buyer may, as its exclusive remedy, terminate this Contract by notice to Buyer and receive a refund of the Earnest Money. If City defaults after the Closing (including but not limited to failure to perform as required under Article VII), then Unilock shall have such remedies as may be provided under Kansas law, including but not limited to a cause of action for damages and/or a cause of action for specific performance.

9.2 Default by Buyer. Buyer shall be in default hereunder if Buyer shall fail to satisfy any material covenant, agreement or obligation on its part hereunder, for any reason other than a default by the City hereunder and fails to cure such default within twenty (20) days of written notice of such default from the City. If Buyer defaults hereunder prior to Closing, the City, as its sole and exclusive remedy for such default, shall be entitled to terminate this Contract by notice to Buyer and retain Buyer's Earnest Money, it being agreed between Buyer and the City that such sum shall be liquidated damages for a default of Buyer hereunder because of the difficulty, inconvenience, and the uncertainty of ascertaining actual damages for such default. If Buyer defaults on its post-Closing obligations as set forth in Article VII, then City shall be entitled to such remedies as are set forth in Article VII.

9.3 Attorney's Fees. If it shall be necessary for either Buyer or the City to employ an attorney to enforce its rights pursuant to this Contract because of the default of the other party, the defaulting party shall reimburse the non-defaulting party for reasonable attorney's fees.

**ARTICLE X**  
**Interim Responsibilities of the Port Authority and the City**

10.1 The City agrees that, except for construction of the Improvements, during the period between the date of this Contract and the Closing Date:

(a) The Unilock Property shall be maintained in the same fashion as has been and the City shall keep and perform all obligations of owner of the Unilock Property under any Permitted Exceptions, applicable laws and any mortgage(s) applicable to the Unilock Property.

(b) The City shall not enter into any agreement with respect to the leasing, operation or maintenance of any portion of the Unilock Property, which shall survive Closing, without the prior written consent of Buyer.

All risk of loss shall be borne by the City until acceptance by Buyer of delivery of the City's deed at the Closing.

**ARTICLE XI**  
**Brokerage Commission**

Each party represents that it has not engaged a broker or realtor with respect to this Contract or the transaction contemplated hereto, except for KW Commercial ("Buyer's Broker"), to which the City shall pay a commission in an amount not to exceed \$18,000.00 in the event this transaction closes. Except as set forth above, each party agrees to indemnify and hold the other party harmless from any loss, liability, damage, cost or expense (including, without limitations reasonable attorney's fees) actually paid or incurred by such party by reason of any claim to any broker's, finder's or other fee in connection with this transaction by any party claiming by, through or under the indemnifying party.

**ARTICLE XII**  
**Miscellaneous**

12.1 Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be deemed delivered upon deposit by express mail or with a nationally recognized overnight courier for next business day delivery, and addressed to the addressee at its address set forth below or at such other address as such party may have specified theretofore by notice delivered in accordance with this Section:

To the City: City of Tonganoxie, Kansas  
Attn. City Manager  
526 E. 4th Street  
Tonganoxie, Kansas 66086

With a Copy to: Shannon Marcano, Esq.  
Bushyhead LLC  
Village Square  
4436 State Line Rd.  
Kansas City, Kansas 66103

If to Buyer: Unilock Chicago, Inc.  
Attn. Mr. Brad Gesbocker  
General Manager  
301 E. Sullivan Road  
Aurora, Illinois 60505

With a Copy to: David E. Waters, Esq.  
Lathrop Gage LLP  
10851 Mastin Blvd., Suite 1000  
Overland Park, Kansas 66210

12.2 Governing Law, Venue. The laws of the State of Kansas shall govern the validity, enforcement, and interpretation of this Contract.

12.3 Integration; Modification; Waiver. This Contract constitutes the complete and final expression of the agreement of the parties relating to the Property, and supersedes all previous contracts, agreements, and understandings of the parties, either oral or written, relating to the Unilock Property. This Contract cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Contract) executed by the party against whom enforcement of the modification or waiver is sought.

12.4 Counterpart Execution. This Contract may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

12.5 Headings, Construction. The headings which have been used throughout this Contract have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Contract. Words of any gender used in this Contract shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder" and other similar compounds of the word "here" when used in this Contract shall refer to the entire Contract and not to any particular provision or section. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

12.6 Invalid Provisions. If any one or more of the provisions of this Contract, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of any such provision shall not be affected thereby.

12.7 Binding Effect. This Contract shall be binding upon and inure to the benefit of City and Buyer, and their respective successors and assigns. Buyer may assign its rights under this Contract to an affiliate without the consent of the City. Upon acceptance of any assignment by the assignee and the assumption of Buyer's obligations hereunder, Buyer shall be relieved of all duties and obligations hereunder. The City shall not assign its interest hereunder without the prior written consent of Buyer.

12.8 Further Acts. In addition to the acts recited in this Contract to be performed by the City and Buyer, City and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

*[Remainder of Page Intentionally Left Blank. Signature Page Follows Directly]*

IN WITNESS WHEREOF, the undersigned have caused this Contract to be executed on the dates set forth below.

**CITY OF TONGANOXIE, KANSAS**

\_\_\_\_\_, 2017

By: \_\_\_\_\_  
Jason Ward, Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**UNILOCK CHICAGO, INC.**

\_\_\_\_\_, 2017

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A TO CONTRACT**

**LEGAL DESCRIPTION OF THE PROJECT PROPERTY**

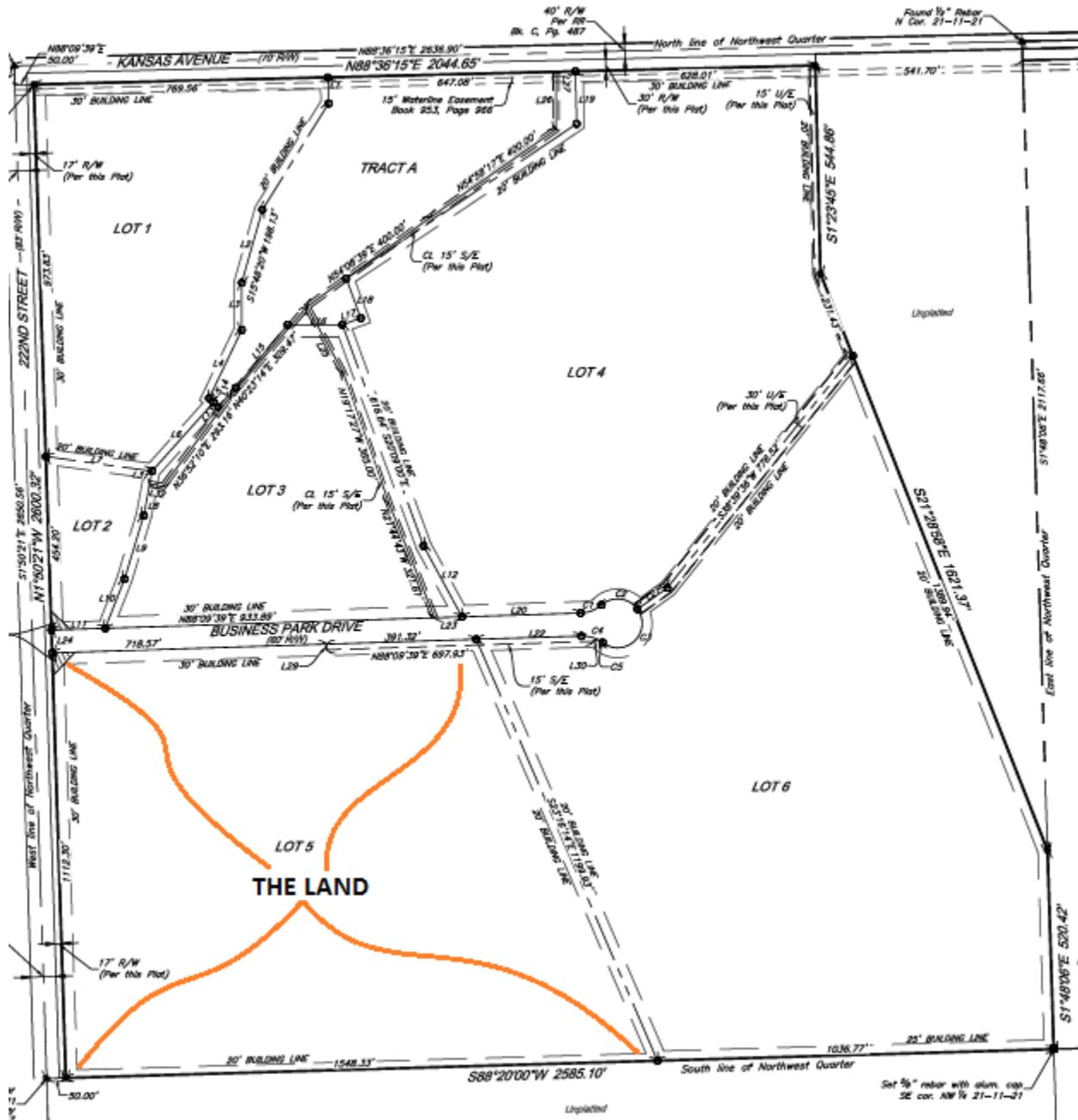
LOT 1 THROUGH 6, AND TRACT A, TONGANOXIE BUSINESS PARK, PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 11 SOUTH, RANGE 21 EAST, OF THE SIXTH PRINCIPAL MERIDIAN, IN THE CITY OF TONGANOXIE, LEAVENWORTH COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF.

**EXHIBIT B TO CONTRACT**

**LEGAL DESCRIPTION OF THE UNILOCK PROPERTY**

LOT 5, TONGANOXIE BUSINESS PARK, PART OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 11 SOUTH, RANGE 21 EAST, OF THE SIXTH PRINCIPAL MERIDIAN, IN THE CITY OF TONGANOXIE, LEAVENWORTH COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF.

**EXHIBIT B TO CONTRACT, CONT.**



**EXHIBIT C TO CONTRACT**

**SPECIAL WARRANTY DEED FORM**

[Above Space Reserved for Register of Deeds]

**SPECIAL WARRANTY DEED**

THIS SPECIAL WARRANTY DEED, is executed as of the date set forth below and is effective as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (notwithstanding its prior execution), by and between the CITY OF TONGANOXIE, KANSAS (the "Grantor") and UNILOCK CHICAGO, INC., an Illinois corporation ("Grantee").

WITNESSETH, that Grantor, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor duly paid, the receipt of which is hereby acknowledged, does by these presents SELL and CONVEY unto Grantee and Grantee's successors and assigns all of the real property described on Exhibit A, attached hereto and incorporated herein by this reference in Leavenworth County, Kansas (the "Property"),

SUBJECT TO: Those Permitted Exceptions set forth on Exhibit B attached hereto and incorporated herein by this reference.

AND ALSO SUBJECT TO THE FOLLOWING: The terms and conditions of that certain Real Estate Contract of Sale between Grantor and Grantee dated as of [REDACTED], 20\_\_ (the "Contract") and provisions therein related to development of the Property on a post-Closing basis. The Contract is incorporated herein by this reference and notice is hereby given of the Contract and all of its terms, covenants, and conditions to the same extent as if the Contract were fully set forth herein. The foregoing does not purport to show all of the terms and provisions of the Contract and is not a complete summary of the Contract or the obligations of the parties with respect thereto. The provisions of this Deed shall not be construed to interpret, vary or modify the terms, covenants, conditions and provisions of the Contract and in the event of any conflict between the terms hereof and the terms of the Contract, the terms of the Contract shall be exclusively controlling.

TO HAVE AND TO HOLD the Property with all and singular the tenements, hereditaments, appurtenances, rights, privileges and easements thereto belonging or in any wise appertaining, unto Grantee and Grantee's successors and assigns, forever; Grantor hereby covenanting that (i) the Property is free and clear from any encumbrance done or suffered by Grantor, except for set forth herein, and (ii) Grantor will warrant and defend the title to the Property unto Grantee and Grantee's successors and assigns forever against the lawful claims and demands of all persons claiming or to claim the same by, through or under Grantor, except as set forth herein.

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed the day and year first above written.

**CITY OF TONGANOXIE, KANSAS**

\_\_\_\_\_, 2017

By: \_\_\_\_\_  
Jason Ward, Mayor

STATE OF KANSAS                    )  
  ) ss:  
COUNTY OF LEAVENWORTH    )

On \_\_\_\_\_, 20\_\_, this deed was acknowledged before me by Jason Ward, the Mayor of the City of Tonganoxie, Kansas, on behalf of City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official the day and year last above written.

My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

**EXHIBIT A TO SPECIAL WARRANTY DEED**

[To be updated as platted pursuant to the Subdivision Plat]

A tract of land being part of the Northwest Quarter of Section 21, Township 11 South, Range 21 East of the Sixth Principal Meridian, in the City of Tonganoxie, Leavenworth County, Kansas, more particularly described as follows:

Commencing at the Southwest Corner of said Northwest Quarter; thence North 88°20'00" East, along the South line of said Northwest Quarter, a distance of 33.00 feet, to the Point of Beginning, said point also being on the East Right-of-Way line of 222<sup>nd</sup> Street, as now established; thence North 01°50'21" West, along said East Right-of-Way line, a distance of 1,112.25 feet; thence North 88°09'39" East, departing said East Right-of-Way line, a distance of 1,126.89 feet; thence South 23°16'14" East, a distance of 1,199.93 feet, to a point on said South line of the Northwest Quarter; thence South 88°20'00" West, along said South line, a distance of 1,565.33 feet, to the Point of Beginning, containing 1,499,864.13 square feet, or 34.43 acres, more or less.

**EXHIBIT B TO SPECIAL WARRANTY DEED**

[Permitted Exceptions]

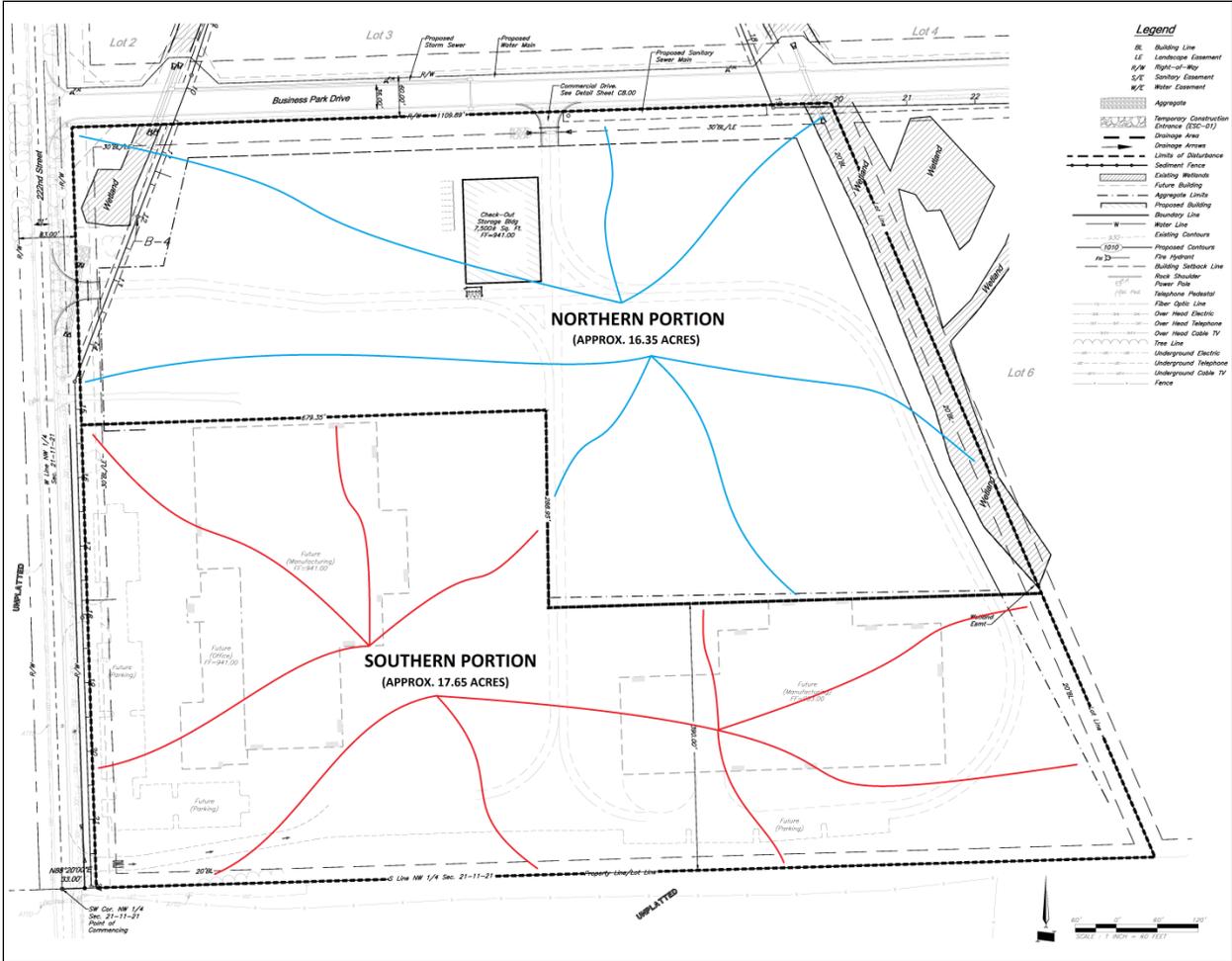
To be established and completed at Closing

**EXHIBIT D TO CONTRACT**

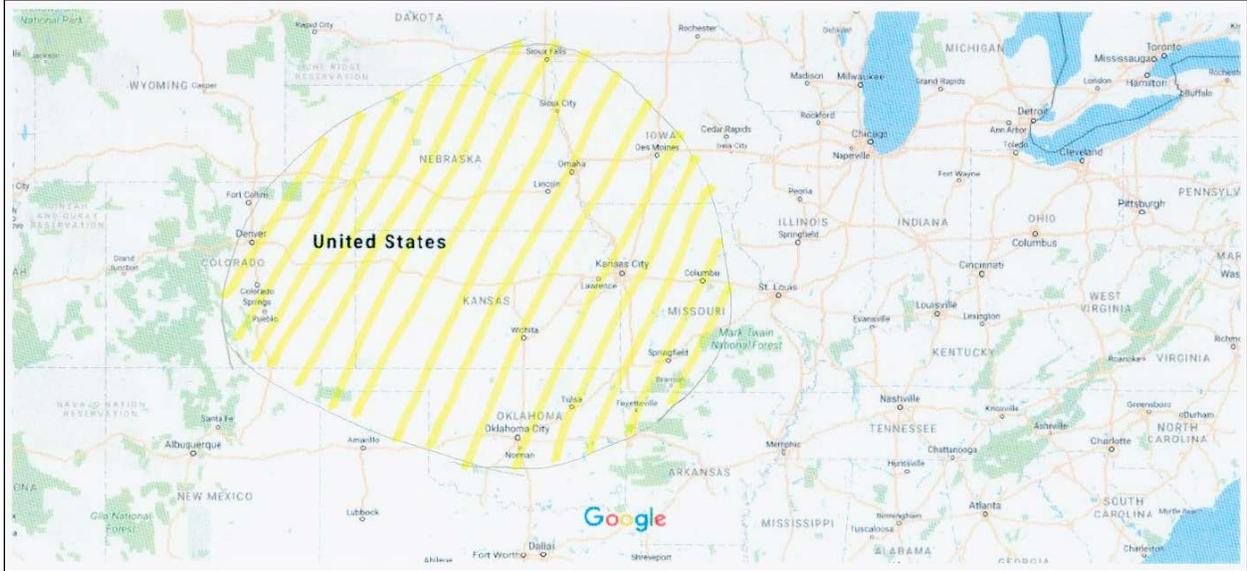
**INITIAL CITY IMPROVEMENTS AND ADDITIONAL CITY IMPROVEMENTS**

**EXHIBIT E TO CONTRACT**

**NORTHERN PORTION AND SOUTHERN PORTION DEPICTIONS**



**EXHIBIT F TO CONTRACT**  
**APPROXIMATE SALES REGION**





**Potential Infrastructure Projects to be paid for with Sales Tax Revenue**

Project Type	Project Description	Estimated Cost	Alternate Funding Source?
Street Maintenance	"GOOD CONDITION" (23,000 ft. = 4.36 miles)	None at this time	
Street Maintenance	"FAIR/MODERATE CONDITION" (71,000 ft. = 13.45 miles) Low End (crack seal and/or thin surfacing (seals)) High End (mill/overlay with 5% pavement patching estimate)	\$0.75 million to \$3.1 million	
Street Maintenance	"POOR CONDITION" (45,000 ft. = 8.52 miles)	approx. \$16 million	
<b>NOTE: Current annual O&amp;M Budget for Street Maintenance = ±\$120,000</b>			
Street Maintenance	Complete reconstruction of Church Street, from 4th Street to Washington, to include sidewalks, storm sewer, asphalt, curb and gutter to city standards	\$905,000	
Street Maintenance	Complete reconstruction of Village street from 4th Street to 1st Street, including 1st Street to Village Terrace, to include sidewalks, storm sewer, asphalt, curb and gutter to city standards	\$588,000	
Street Maintenance	Complete rebuild of W 1st Street from 24/40 heading west to dead end (2 blocks) to include sidewalks, storm sewer, asphalt, curb and gutter to city standards	\$360,000	
Street Maintenance	Improvement of all streets between 5th Street to Washington Street and 24/40 to Delaware Street	\$4,660,000	
<b>Bridge</b>			
Bridge Repair	Replace 4th Street Bridge Deck	\$500,000	X
Bridge Replacement	Replace Church Street Bridge	\$425,000	X
<b>Streets</b>			
Streets	Construction of 14th Street from US 24-40 to East Street	\$5,000,000	X
Streets	Construction of East Street extension, from Washington to 4th Street	\$2,550,000	
Streets	Laming Road Extension	\$1,400,000	X
<b>Utility</b>			
Utility Maintenance	Water tower inspections, maintenance, and repairs	\$50,000	
Utility	Smiley Rd and Hatchell Rd Area Booster Station	\$150,000	
Utility	NW Water Tower (Smiley Rd and Hatchell Rd Area)	\$1,000,000	
Utility	Stormwater Infrastructure Maintenance Line	\$300,000	
Utility	Waste Water Treatment Plant equipment upgrades		
Utility	Parallel Interceptor Sewer to WWTP		
<b>Industrial Park</b>			
Utility	Waterline	\$750,000	
Utility	Water Tower	\$1.0 million to \$1.5 million	
Utility	Sanitary Sewer	\$2,850,000	
<b>Core Community</b>			
Library	Library	\$2.8 m - \$3.6 m	
Indoor Recreation Center	Indoor Rec. Center	\$5,000,000	
Trails		KDOT TA 80/20	X



Office of the City Manager  
**AGENDA STATEMENT**

**DATE:** November 26, 2017  
**To:** Honorable Mayor Jason K. Ward and Members of the City Council  
**FROM:** George Brajkovic, City Manager  
**SUBJECT:** CMB License Renewal – Brothers Market

**DISCUSSION:**

Before the City Council for approval is an application from Brothers Market for renewal of their Cereal Malt Beverage (CMB) License for 2018. In the State of Kansas, cities regulate related beer sales under 5.0% alcohol content. Otherwise, the applicant would need a state liquor license first. The business has paid the \$75.00 fee.

**BUDGET IMPACT:**

A portion of the revenue received from a CMB license is remitted to the State of Kansas, and the remainder is credited to the City's General Fund. The General Fund's budget anticipates this revenue each year, even though it makes up a very small portion of total revenue collected in the General Fund.

**RECOMMENDATION:**

Make a motion to approve the CMB license for Brothers Market to sell retail cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.

Attachment

# CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or  County of Tonganoxie, Kansas

<b>SECTION 1 – LICENSE TYPE</b>	
Check One: <input type="checkbox"/> New License <input checked="" type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One:	
<input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.	

<b>SECTION 2 – APPLICANT INFORMATION</b>			
Kansas Sales Tax Registration Number (required):			
Name of Corporation Brothers Market 5, Inc.		Principal Place of Business Tonganoxie, KS	
Corporation Street Address 10415 NW Beaver Drive		Corporation City Johnston	State IA
Date of Incorporation 05/29/2014		Articles of Incorporation are on file with the Secretary of State.	Zip Code 50131
Resident Agent Name Richard Swedo		Phone No. 913.845.2949	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Residence Street Address 319 Ridge St		City Tonganoxie	State KS
		Zip Code 66086	

<b>SECTION 3 – LICENSED PREMISE</b>			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Brothers Market		Name	
Business Location Address 319 Ridge Street		Address	
City Tonganoxie	State KS	City	State
Zip 66086		Zip	
Business Phone No. 913.845.2949		<input type="checkbox"/> Applicant owns the proposed business location.	
Business Location Owner Name(s)		<input type="checkbox"/> Applicant does not own the proposed business location.	

<b>SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK</b>			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name Jay DeVries		Position CEO	
Residence Street Address 10415 NW Beaver Drive		City Johnston	State IA
Spouse Name		Date of Birth 01/13/1984	
Residence Street Address		City	State
		Zip Code 50131	
Name Darian DeVries		Position Vice President	
Residence Street Address 1916 N 172nd Circle		City Omaha	State NE
Spouse Name		Date of Birth 4/5/1975	
Residence Street Address		City	State
		Zip Code 68118	
Name Jared DeVries		Position Vice President	
Residence Street Address 15342 Lambert Drive		City Clear Lake	State IA
Spouse Name		Date of Birth 06/11/1976	
Residence Street Address		City	State
		Zip Code 50428	

**SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK (CONTINUED)**

Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Name	Position	Date of Birth
Residence Street Address	City State	Zip Code
Spouse Name	Position	Date of Birth
Residence Street Address	City State	Zip Code

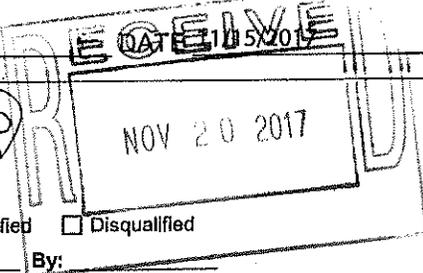
SECTION 5 – MANAGER OR AGENT INFORMATION		
My place of business or special event will be conducted by a manager or agent.		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide the following:		
Manager/Agent Name Richard Swedo	Phone No. 913.219.8183	Date of Birth 10/06/
Residence Street Address 319 Ridge Street	City Tonganoxie	Zip Code 66086
Manager or Agent Spousal Information		
Spouse Name	Phone No.	Date of Birth
Residence Street Address	City	Zip Code

SECTION 6 – QUALIFICATIONS FOR LICENSURE	
Within two years immediately preceding the date of this application, have any of the individuals identified in Sections 4 & 5 have been convicted of, released from incarceration for or released from probation or parole for any of the following crimes: (1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Have any of the individuals identified in Sections 4 and 5 been managers, officers, directors or stockholders owning more than 25% of the stock of a corporation which: (1) had a cereal malt beverage license revoked; or (2) was convicted of violating the Club and Drinking Establishment Act or the CMB laws of Kansas.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
All of the individuals identified in Sections 4 & 5 are at least 21 years of age <sup>1</sup> .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

SECTION 6 – DURATION OF SPECIAL EVENT		
Start Date	Time	<input type="checkbox"/> AM <input type="checkbox"/> PM
End Date	Time	<input type="checkbox"/> AM <input type="checkbox"/> PM

I declare under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct and that I am authorized by the corporation to complete this application. (K.S.A. 53-601)

SIGNATURE *RS*

FOR CITY/COUNTY OFFICE USE ONLY:	
<input checked="" type="checkbox"/> License Fee Received Amount \$ <u>75.00</u> Date <u>11/20/17</u>	
((\$25 - \$50 for Off-Premise license or \$25-200 for On-Premise license))	
<input type="checkbox"/> \$25 CMB Stamp Fee Received Date _____	
<input type="checkbox"/> Background Investigation <input type="checkbox"/> Completed Date _____ <input type="checkbox"/> Qualified <input type="checkbox"/> Disqualified	
<input type="checkbox"/> New License Approved Valid From Date _____ to _____ By: _____	
<input type="checkbox"/> License Renewed Valid From Date _____ to _____ By: _____	
<input type="checkbox"/> Special Event Permit Approved Valid From Date _____ to _____ By: _____	

A PHOTOCOPY OF THE COMPLETED FORM, TOGETHER WITH THE STAMP FEE REQUIRED BY K.S.A. 41-2702(e), MUST BE SUBMITTED WITH YOUR QUARTERLY REPORT (ABC-307) TO THE ALCOHOLIC BEVERAGE CONTROL, 915 SW HARRISON STREET ROOM 214, TOPEKA, KS, 66625-3512.

<sup>1</sup> Spouse not required to be over 21 years of age. K.S.A. 41-2703(b)(9)



Office of the City Manager  
**AGENDA STATEMENT**

**DATE:** November 29, 2017  
**To:** Honorable Mayor Jason K. Ward and Members of the City Council  
**FROM:** George Brajkovic, City Manager  
**SUBJECT:** Ordinance 1429 – Amending the Rates Charged for Water and Sewer

**DISCUSSION:**

During budget development for the FY 2018 Budget, the City Council agreed to continue the standard increase of three percent (3%) per year on water and sewer service charges in recognition of the inflationary increases of supplies and repair services. The current rates were established FY 2016, and FY 2017 saw no increase.

A 3% increase to both water and sewer equates to a monthly increase of \$1.75 for a customer who uses 4,000 gallons of water in one month (our median usage rate).

Ordinance 1429 will be effective upon publication in the official newspaper. The new rates will apply in January 2018, but the first billing to reflect the new rates would be in March 2018.

**ACTION NEEDED**

Make a motion to adopt Ordinance 1429, increasing the water and sewer rates by 3%.

Attachment

cc: Shannon Marcano, City Attorney

**ORDINANCE NO. 1429**

AN ORDINANCE REPEALING ORDINANCE 1398 OF THE CITY OF TONGANOXIE, KANSAS, AMENDING THE RATES CHARGED FOR WATER AND SEWER USAGE.

WHEREAS, the City of Tonganoxie, Kansas operates a water utility which provides water to residential and commercial customers for the City of Tonganoxie, Kansas; and

WHEREAS, the City of Tonganoxie, Kansas operates a wastewater treatment works; and

WHEREAS, the costs associated with operation, maintenance and management of the City-owned water and sewer utilities has exceeded the amount collected through the present rate schedule thereby requiring that rates be amended;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS, THAT:

Section 1. Water rates. The following water rates shall apply to all customers purchasing through a meter on a monthly basis:

From 0 gallons to 1,000 gallons: \$11.46

Each increment of 1,000 gallons thereafter shall be charged at the rate of \$5.70

Section 2. Sewer fees.

A. Each user shall pay for the services provided by the City based on his use of the treatment works as determined by water meter(s) acceptable to the City.

B. For residential contributors, monthly user charges will be based on average monthly water usage billed during the months of November, December, and January. Until a residential contributor has established a November, December, January average, his monthly user charge shall be the median charge of all other residential contributors. Note: Churches, religious institutions, and non-profit charitable organizations as determined by the Internal Revenue Service, will be billed under the residential classification.

C. For industrial and commercial contributors, user charges shall be based on water used during the current month for which the sanitary sewer charge is incurred. If a commercial or industrial contributor has a consumptive use of water, or in some other manner uses water which is not returned to the wastewater collection system, the use charge for that contributor may be based on a separate water meter installed and maintained at the contributor's expense, in a manner acceptable to the City.

D. The minimum monthly charge shall be \$17.81 and shall be payment for 0 gallons to 1,000 gallons of water used as determined in the preceding sections B and C. In addition, each contributor shall pay a charge for operation and maintenance, including replacement, of \$4.59 per additional 1,000 gallons of water used as determined in the preceding sections B and C.

Section 3. Debt Service Fees: Each user shall be required to pay a fee of \$11.50 per billing cycle for debt payments associated with water and sewer infrastructure and equipment.

Section 4. Publication and effective date. That this Ordinance shall be in full force and effect from and after its passage, approval and publication in The Mirror, the official newspaper for the City and shall be effective with the first utility billing cycle in 2018.

Section 5. Repeal. That Ordinance No. 1398 and any other Ordinance in conflict herewith are hereby repealed.

PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF  
TONGANOXIE, KANSAS, ON THIS 4TH DAY OF DECEMBER, 2017

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Jason Ward, Mayor

Attest:

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Patricia C. Hagg, City Clerk

Approved as to form:

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Shannon M. Marcano, City Attorney