

CITY OF TONGANOXIE

May 18, 2020  
7:00 Regular Meeting



REMOTE MEETING – See City of Tonganoxie website at [www.tonganoxie.org](http://www.tonganoxie.org) for more information. There may be an audio recording of the meeting which will be utilized to prepare the meeting minutes.

Honorable David Frese, Mayor

Council Members

Rocky Himpel

Jacob Dale

Lisa Patterson

Loralee Stevens

Chris Donnelly

**Open Regular Meeting – 7:00 p.m.**

**I. Pledge of Allegiance**

**II. Approval of Minutes** – Regular meeting dated May 4, 2020

**III. Consent Agenda**

- a) Review bill payments

**IV. Open Agenda**

Open agenda is not available during this meeting. Comments received by the City Clerk or emailed to [info@tonganoxie.org](mailto:info@tonganoxie.org) by 1:00 PM on the date of the meeting will be reviewed and possibly shared for review by the Governing Body.

**V. Old Business**

**VI. New Business**

- a) Public Hearing – West Village RHID

Due to the remote format of the meeting, public hearing comments must be received by the City Clerk or emailed to [info@tonganoxie.org](mailto:info@tonganoxie.org) by 1:00 PM on the date of the meeting. Comments will be reviewed and shared with the Governing Body.

- b) Ordinance 1485: Establishing the West Village Rural Housing Incentive District within the City and Adopting a Development Plan

- c) Tonganoxie Water Park 2020 Season Planning Discussion

- d) Resolution 05-20-01: Approval of 2020 Mill and Overlay Project Contract with Little Joe's Asphalt, Inc.

- e) Resolution 05-20-02: Approving and Authorizing the Execution of the Supplemental Agreement #1 to the Water Treatment Plant Wastestream Summary Contract between the City of Tonganoxie and BG Consultants, Inc.

- f) City Manager Agenda

- 1. Urgent Needs Grant Update
- 2. 2021 Budget Revenue Assumptions Update

- g) City Attorney Agenda

- h) Mayor Pro Tem Agenda

- i) City Council Agenda

- j) Mayor Agenda

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

**VIII. Adjourn**

City Council Meeting Minutes  
May 4, 2020  
7:00 PM Meeting

**Open Regular Meeting – 7:00 p.m.**

**I. Pledge of Allegiance (Replaced by Moment of Silence)**

- Mayor Frese opened the meeting at 7:00 p.m.
- Mayor Frese, Mr. Himpel, Mr. Donnelly, Ms. Stevens, Ms. Patterson, and Mr. Dale participated via Zoom. City Manager George Brajkovic, Assistant City Manager Dan Porter, Police Chief Greg Lawson and City Attorney Anna Krstulic also participated via Zoom.
- Mayor Frese noted that a flag was not available for the pledge of allegiance and instead led a moment of silence.

**II. Approval of Minutes – Regular meeting dated April 20, 2020**

- **Ms. Patterson made a motion to approve the minutes from the April 6, 2020 City Council meeting, with the clarification that there was a moment of silence instead of the pledge of allegiance.**
- **Mr. Donnelly seconded the motion, with the change requested by Ms. Patterson.**
- **Roll call vote of all ayes, motion carried.**

**III. Consent Agenda**

- a) Review bill payments
- **Ms. Stevens made a motion to approve the consent agenda.**
- **Ms. Patterson seconded the motion.**
- **Roll call vote of all ayes, motion carried.**

**IV. Open Agenda**

- No open agenda sign ups or submitted comments provided at this meeting.

**V. Old Business**

**VI. New Business**

- a) Presentation of Safest City Award
  - Chief Lawson introduced the item and explained background about the award and evaluation criteria.
  - The Governing Body congratulated Chief Lawson and the Tonganoxie Police Department for the recognition.
- b) Consider Approval of Roof Repairs at Water Well House Facility
  - Mr. Porter introduced the item and provided information about recent damage to the City's well house facility.
  - Ms. Patterson asked why the City does not plan to submit an insurance claim for the damage and repair.
  - Mr. Porter replied that the City's deductible for this type of property damage is \$5,000, which is greater than the repair cost.
  - Mayor Frese asked if the City should also obtain bids to complete additional work on the facility such as repainting or repairing window coverings.
  - Mr. Brajkovic responded that City staff will evaluate the ability to contract out or self-perform this type of work.
  - Mr. Dale asked if the low bid included a warranty on the roofing materials, and Mr. Porter replied yes.
  - **Mr. Himpel made a motion to approve the bid with Andy's Roofing and Exteriors, LLC to repair the Well House facility roof for an amount not to exceed \$4,720.00.**
  - **Mr. Donnelly seconded the motion.**
  - **Roll call vote of all ayes, motion carried.**

c) Consider Amendment to Tonganoxie Industrial Park Economic Development Grant Agreement with Leavenworth County

- Mr. Brajkovic introduced the item and provided information about the proposed amendment.
- Mayor Frese offered to write a letter to accompany the proposed amendment and request for a joint work session with the Board of County Commissioners.
- **Ms. Patterson made a motion to direct staff to send the proposed amendment to the City's grant agreement with Leavenworth County, a request to hold a joint work session with the Leavenworth County Board of County Commissioners, and an accompanying letter from Mayor Frese.**
- **Mr. Dale seconded the motion.**
- **Roll call vote of all ayes, motion carried.**

d) City Manager Agenda

1. Urgent Needs Grant Update

- Mr. Brajkovic shared an update on construction activity at the project and noted that he hopes to schedule a final walkthrough later in the week.
- Mr. Himpel asked if the City would evaluate whether the City has liability and should pay for damages on the asphalt path located on the property owned by the VFW north of the construction site.
- Mr. Brajkovic replied that staff would examine the issue as part of the final walkthrough for the project.
- Mr. Brajkovic stated that the City's next Planning Commission meeting is scheduled for 7 PM on May 6, 2020 and that it will be conducted via Zoom.

2. Library Project Update

- Mr. Brajkovic said that the Library project report included expenditure of all budgeted costs which were part of the City's contract with JE Dunn and that staff worked with JE Dunn to fix one leak in the roof noticed during recent rainfall.

e) City Attorney Agenda

f) Mayor Pro Tem Agenda

- Mr. Himpel said that Leavenworth County would soon hold a County Planning Commission meeting with revised public hearing procedures put in place due to COVID-19.

g) City Council Agenda

- Mr. Donnelly said that he attended his first meeting as a Board member of the Leavenworth County Port Authority last week and that he was appointed treasurer.

h) Mayor Agenda

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

**VIII. Adjourn**

- **Ms. Patterson made a motion to adjourn the meeting.**
- **Mr. Donnelly seconded the motion.**
- **Roll call vote of all ayes, motion carried.**
- **Meeting adjourned at 7:40 p.m.**

Respectfully submitted,



Dan Porter, Assistant City Manager



City of Tonganoxie, KS

Date Range: 05/01/2020 - 05/15/2020

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
<b>Bank Code: AP Bank-AP Bank</b>						
0056	BLUE CROSS AND BLUE SHIELD	05/04/2020	Regular	0	36731.45	47514
0250	HONEYCREEK DISPOSAL SERVICE	05/04/2020	Regular	0	28267.37	47520
0671	Evergy	05/08/2020	Regular	0	14403.12	47538
0793	LEAVENWORTH COUNTY TREASURER	05/04/2020	Regular	0	9561.56	47522
0051	BG CONSULTANTS INC	05/08/2020	Regular	0	6433	47535
0579	SECURITY BENEFIT - 457	05/04/2020	Regular	0	3569.6	47529
0051	BG CONSULTANTS INC	05/04/2020	Regular	0	3335	47513
1015	JE Dunn	05/04/2020	Regular	0	3073	47521
0136	DELTA DENTAL PLAN OF KANSAS,IN	05/08/2020	Regular	0	2548.32	47537
0548	RECORDNEWS	05/08/2020	Regular	0	2464.95	47552
1121	Jerome Gorman	05/08/2020	Regular	0	2200	47542
0189	FIRST STATE BANK & TRUST	05/04/2020	Regular	0	1130.48	47517
0642	USPS	05/04/2020	Regular	0	1049	47532
0243	HIMPEL LUMBER & BUILDING SUPPL	05/04/2020	Regular	0	721.01	47518
0596	GEOFF SONNTAG	05/08/2020	Regular	0	600	47540
0677	WILLIAM PRAY	05/08/2020	Regular	0	600	47555
0330	KANSAS GAS SERVICE	05/08/2020	Regular	0	557.08	47543
0443	MENARDS	05/04/2020	Regular	0	499	47524
0614	T-MOBILE	05/04/2020	Regular	0	495.78	47531
0249	HONEYBEE SEPTIC SERVICE	05/04/2020	Regular	0	430	47519
0661	VISION SERVICE PLAN	05/04/2020	Regular	0	426.42	47533
0568	SAMS CLUB	05/04/2020	Regular	0	370	47528
0760	NFPA	05/08/2020	Regular	0	315	47549
0757	KC CLEAN	05/08/2020	Regular	0	300	47546
0857	MIDCONTINENT COMMUNICATIONS	05/08/2020	Regular	0	270.51	47548
0491	OLATHE WINWATER WORKS	05/04/2020	Regular	0	258	47525
0932	RED WING SHOES	05/04/2020	Regular	0	222.07	47527
0249	HONEYBEE SEPTIC SERVICE	05/08/2020	Regular	0	215	47541
0542	QUILL	05/08/2020	Regular	0	213.88	47551
0410	LIBERTY NATIONAL	05/04/2020	Regular	0	206.42	47523
0500	OREILLY AUTO PARTS	05/08/2020	Regular	0	203.48	47550
0365	Kansas Municipal Insurance Trust	05/08/2020	Regular	0	162	47544
0098	CITY OF BASEHOR	05/04/2020	Regular	0	160	47515
0538	PUR-O-ZONE	05/04/2020	Regular	0	158.82	47526
0749	BROADVOICE	05/08/2020	Regular	0	146.69	47536
0496	KANSAS ONE CALL CONCEPTS	05/08/2020	Regular	0	138	47545
0205	GALL'S LLC	05/08/2020	Regular	0	125	47539
0034	AT&T ACCESS TRANSPORT SERVICES	05/08/2020	Regular	0	74.49	47534
0113	COMMERCIAL AQUATIC SERVICES	05/04/2020	Regular	0	42.23	47516
1007	LEAVENWORTH PAPER & OFFICE SUPPLY LLC	05/08/2020	Regular	0	41.16	47547
1142	Staples Business Credit	05/04/2020	Regular	0	33.92	47530
0555	Ricoh USA, INC.	05/08/2020	Regular	0	29.96	47553

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
0628	TODD'S TIRE LLC	05/08/2020	Regular	0	16	47554

**Bank Code AP Bank Summary**

Payment Type	Payable	Payment	Discount	Payment
	Count	Count		
Regular Checks	74	43	0.00	122,798.77
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>74</b>	<b>43</b>	<b>0.00</b>	<b>122,798.77</b>

## All Bank Codes Check Summary

Payment Type	Payable	Payment	Discount	Payment
	Count	Count		
Regular Checks	74	43	0.00	122,798.77
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
	74	43	0.00	122,798.77

## Fund Summary

Fund	Name	Period	Amount
998	Gen Fund-Pooled Cash	5/2020	122798.77
			122798.77

## ORDINANCE NO. 1485

### AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS ESTABLISHING THE WEST VILLAGE RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH DISTRICT, AND MAKING CERTAIN FINDINGS IN CONJUNCTION THEREWITH.

**WHEREAS**, the City of Tonganoxie, Kansas (the "City") has the authority to create one or more rural housing incentive districts (each, an "RHID") pursuant to K.S.A. 12-5241 *et seq.*, as amended from time to time (the "RHID Act"), for the purpose of financing public improvements that will support housing in rural areas which experience a shortage of housing; and

**WHEREAS**, on June 5, 2017, the Governing Body of the City made certain findings related to the need for housing in the City and proposed to establish an RHID pursuant to the RHID Act through the adoption of Resolution No. 06-17-01 (the "RHID Resolution") in accordance with Section 12-5244(a)-(b) of the RHID Act; and

**WHEREAS**, on June 6, 2017, the City submitted a certified copy of the RHID Resolution to the Secretary of Commerce (the "Secretary") and requested the Secretary to review the RHID Resolution and confirm whether the Secretary agrees with the findings contained therein, as required by Section 12-5244(c) of the RHID Act; and

**WHEREAS**, on June 9, 2017, the Secretary provided written confirmation to the City that the Secretary agreed with the findings contained within the RHID Resolution for establishment of the RHID; and

**WHEREAS**, pursuant to Section 12-5245(a) of the RHID Act, the City has caused to be prepared a plan for the development of housing and public facilities (the "Development Plan") within a portion of the proposed RHID to be known as the "West Village RHID"; and

**WHEREAS**, the Development Plan includes:

1. The legal description and map of the proposed West Village RHID required by K.S.A. 12-5244(a);
2. The existing assessed valuation of the real estate in the proposed West Village RHID, listing the land and improvement values separately;
3. A list of the names and addresses of the owners of record of all real estate parcels within the proposed West Village RHID;
4. A description of the housing and public facilities project or projects that are proposed to be constructed or improved in the proposed West Village RHID, and the location thereof;

5. A listing of the names, addresses and specific interests in real estate in the proposed West Village RHID of the developer responsible for development of the housing and public facilities in the proposed West Village RHID;
6. The contractual assurances that the Governing Body received from such developer, guaranteeing the financial feasibility of specific housing tax incentives projects in the proposed West Village RHID; and
7. A comprehensive analysis of the feasibility of providing housing tax incentives in the proposed West Village RHID as provided in the RHID Act, showing that the public benefits derived from the proposed West Village RHID will exceed the costs and that the income therefrom, together with other sources of funding, will be sufficient to pay for the public improvements that may be undertaken in the proposed West Village RHID.

**WHEREAS**, on February 3, 2020, the Governing Body of the City adopted Resolution No. 02-20-01 stating that the Governing Body is considering adopting the proposed Development Plan and designating the proposed West Village RHID pursuant to the RHID Act, and providing for notice of a public hearing on March 16, 2020 in the manner required by Section 12-5245(b)-(d) of the RHID Act; and

**WHEREAS**, the Governing Body opened the public hearing on March 16, 2020 at 7:00 p.m., and due to the COVID-19 pandemic, continued the public hearing twice, first to April 6, 2020 at 7:00 p.m. and then again to May 18, 2020 at 7:00 p.m.; and

**WHEREAS**, on May 18, 2020 at 7:00 p.m., pursuant to Section 12-5246(a) of the RHID Act, a representative of the City presented the Development Plan along with the proposed developer, WC DEVELOPMENT LLC, a Kansas limited liability company ("Developer"); and

**WHEREAS**, upon considering the information and public comments received at the public hearing, the Governing Body of the City hereby deems it advisable to make certain findings to establish the West Village RHID and to adopt the Development Plan pursuant to Section 12-5246(b) of the RHID Act.

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

**Section 1. Findings.** The Governing Body hereby finds that due notice of the public hearing conducted on December 16, 2019 at 7:00 p.m. was made in accordance with the provisions of the RHID Act.

**Section 2. Creation of West Village RHID.** The West Village RHID is hereby created within the City in accordance with the provisions of the RHID Act, which shall consist of the real property legally described and depicted on **Exhibit A** attached hereto. The boundaries of the West Village RHID do not contain any property not referenced in Resolution No. 02-20-01, which provided notice of public hearing on the creation of the West Village RHID and adoption of the Development Plan.

**Section 3. Approval of Development Plan.** The Governing Body hereby approves the Development Plan (and all attachments, including the Development Agreement) for the development of housing and public facilities in the West Village RHID, as presented to the Governing Body at the public hearing. The Mayor is hereby authorized to execute in the name of the City the Development Agreement.

**Section 4. Adverse Effect on Other Governmental Units.** If, within thirty (30) days following the conclusion of the public hearing on May 18, 2020 at 7:00 p.m., any of the following occurs, the Governing Body shall take action to repeal this Ordinance:

- a. The Board of Education of Tonganoxie Unified School District No. 464 (the "School District") determines by resolution that the West Village RHID will have an adverse effect on the School District; or
- b. The Board of County Commissioners of Leavenworth County, Kansas (the "County") determines by resolution that the West Village RHID will have an adverse effect on the County.

As of this date, the City has not received a copy of any such resolution and is not aware of the adoption of any such resolution by the School District or the County.

**Section 5. Reimbursement.** The RHID Act authorizes the City to reimburse the Developer for all or a portion of the costs of implementing the Development Plan through the use of property tax increments allocated to the City under provisions of the RHID Act.

**Section 6. Further Action.** The Mayor, City Clerk, City Manager and other officials and employees of the City, including the City Attorney, are hereby further authorized and directed to take such other actions as may be appropriate to accomplish the purposes of this Ordinance.

**Section 7. Effective Date.** This Ordinance shall be effective upon its passage by the Governing Body of the City and publication of a summary of this Ordinance one time in the official City newspaper.

*[Remainder of page intentionally left blank; signature page follows.]*

**PASSED** by the Governing Body and **APPROVED** by the Mayor this 18<sup>th</sup> day of May, 2020.

**SEAL**

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David Frese, Mayor

ATTEST:

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Patricia C. Hagg, City Clerk

APPROVED AS TO FORM:

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Anna M. Krstulic, City Attorney

## EXHIBIT A

### LEGAL DESCRIPTION AND MAP OF WEST VILLAGE RHID

A tract of land in the Southeast 1/4 of Section 8, Township South, Range 21 East of the 6th P.M., in Leavenworth County, Kansas, described as follows:

Commencing at the Southeast corner of the Southeast 1/4 of Section 8, Township 11 South, Range 21 East; thence South  $89^{\circ}11'59''$  West, (assumed), 50.00 feet; thence North  $00^{\circ}50'55''$  West, 660.00 feet to the point of beginning of this tract; thence South  $89^{\circ}11'59''$  West 660.00 feet; thence North  $00^{\circ}20'20''$  West 337.24 feet; thence North  $89^{\circ}11'59''$  East 657.00 feet; thence South  $00^{\circ}50'55''$  East 337.23 feet to the point of beginning of this tract, LESS any part thereof taken or used for road purposes.

More commonly known as 0000 West Street.

Leavenworth County, Kansas Parcel ID Number 193-08-0-00-00-022.02-0.



## DEVELOPMENT PLAN

### WEST VILLAGE RURAL HOUSING INCENTIVE DISTRICT IN THE CITY OF TONGANOXIE, KANSAS

May 18, 2020

#### INTRODUCTION

On June 5, 2017, the Governing Body of the City of Tonganoxie, Kansas (the "City") adopted Resolution No. 06-17-01 that found and determined that:

1. There is a shortage of quality housing of various price ranges in the City despite the best efforts of public and private housing developers.
2. The shortage of quality housing can be expected to persist and that additional financial incentives are necessary in order to encourage the private sector to construct or renovate housing in the City.
3. The shortage of quality housing is a substantial deterrent to the future economic growth and development of the City.
4. The future economic wellbeing of the City depends on the Governing Body providing additional incentives for the construction or renovation of quality housing in the City.

Based on these findings and determinations, the Governing Body proposed the establishment of a Rural Housing Incentive District within the City (the "RHID") pursuant to the Kansas Rural Housing Incentive District Act, K.S.A. 12-5241 *et seq.*, as amended (the "RHID Act").

On June 6, 2017, the City submitted a certified copy of Resolution No. 06-17-01 to the Secretary of Commerce (the "Secretary") for approval of the establishment of the RHID in the City, as required by Section 12-5244(c) of the RHID Act.

On June 9, 2017, the Secretary provided written confirmation approving the establishment of the RHID.

## DEVELOPMENT PLAN ADOPTION

K.S.A. 12-5245 states that once the City receives approval from the Secretary for the establishment of a rural housing incentive district, the Governing Body must adopt a plan for the development or redevelopment of housing and public facilities within the proposed district.

### DEVELOPMENT PLAN

As a result of the shortage of quality housing within the City, the City proposes this Development Plan for a portion of the RHID (the "West Village RHID") to assist in the development of quality housing within the City.

1. Legal description and map of the West Village RHID are attached hereto as **Attachment A**.
2. The existing assessed valuation of all real estate within the West Village RHID for 2020 is approximately \$480 for the land and \$0 for improvements.
3. The name and address of the owner of record for the real estate within the West Village RHID is:

Tomica and Ljubinka Cvetkovic  
2510 North 123<sup>rd</sup> Street  
Kansas City, Kansas 66109

4. The housing and public facilities that are proposed to be constructed in the West Village RHID include the following (the "Project"):

#### **Housing Facilities**

57 units of rental housing in six (6) buildings, including:

- (a) 36 units of multi-family rental housing comprised of one (1) and two (2) bedroom units in one (1) walk-up garden style building; and
- (b) 21 single-family units comprised of one (1) and two (2) bedroom units in five (5) single-story villa buildings.

#### **Public Facilities**

Public facilities will include the construction of infrastructure improvements that are necessary to support the Project within the boundaries of the West Village RHID, including parking, water, sanitary sewer, and electric improvements. The public facilities will be constructed concurrently with the housing facilities.

5. The names, addresses, and specific interests in the real estate in the West Village RHID of the developers responsible for the Project (the "Developer") are:

WC Development LLC  
10537 Clubhouse Drive  
Kansas City, Kansas 66109  
Interest: Developer of Project, and will acquire property from current owner.

6. The contractual assurances from the Developer guaranteeing the financial feasibility of the Project in the West Village RHID are included in the Development Agreement attached hereto as **Attachment C**.
  
7. Developer has conducted a comprehensive analysis of the feasibility of providing housing tax incentives in the West Village RHID, as provided in the RHID Act, that shows the public benefits derived from the West Village RHID will exceed the costs and that the income therefrom, together with other sources of funding, will be sufficient to pay for the Project, including the public improvements within the Project. A copy of the analysis is attached hereto as **Attachment B**. The analysis estimates the property tax revenues that will be generated from the West Village RHID, less existing property taxes, to determine the revenue stream available to support reimbursement to the Developer for all or a portion of the costs of financing the public improvements. The estimates indicate that the revenue realized from the Project, together with other available sources of revenue, will be adequate to pay the costs of the public improvements.

## DEVELOPMENT PLAN – ATTACHMENT A

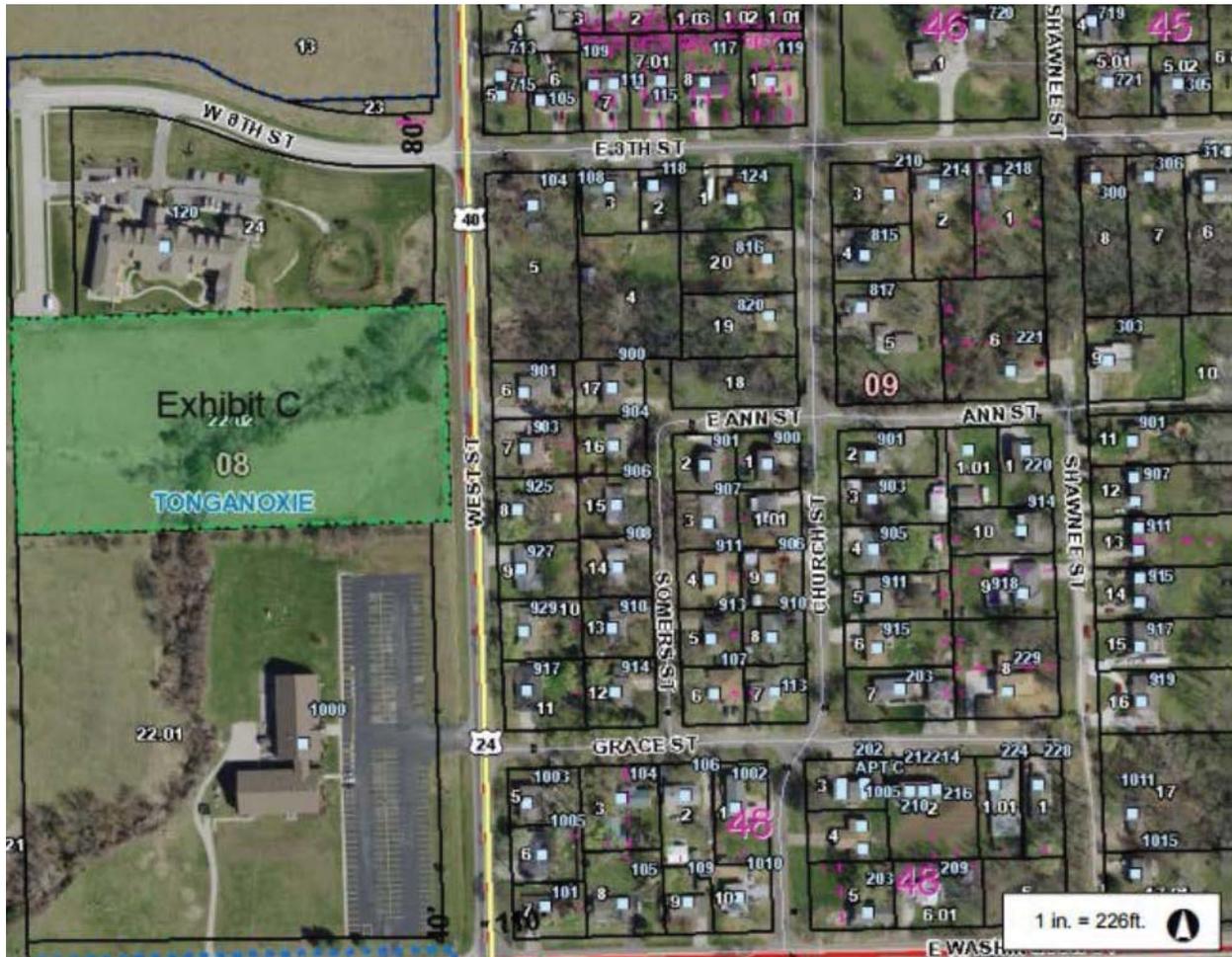
### LEGAL DESCRIPTION AND MAP OF WEST VILLAGE RHID

A tract of land in the Southeast 1/4 of Section 8, Township South, Range 21 East of the 6th P.M., in Leavenworth County, Kansas, described as follows:

Commencing at the Southeast corner of the Southeast 1/4 of Section 8, Township 11 South, Range 21 East; thence South  $89^{\circ}11'59''$  West, (assumed), 50.00 feet; thence North  $00^{\circ}50'55''$  West, 660.00 feet to the point of beginning of this tract; thence South  $89^{\circ}11'59''$  West 660.00 feet; thence North  $00^{\circ}20'20''$  West 337.24 feet; thence North  $89^{\circ}11'59''$  East 657.00 feet; thence South  $00^{\circ}50'55''$  East 337.23 feet to the point of beginning of this tract, LESS any part thereof taken or used for road purposes.

More commonly known as 0000 West Street.

Leavenworth County, Kansas Parcel ID Number 193-08-0-00-00-022.02-0.



**DEVELOPMENT PLAN – ATTACHMENT B**  
**COMPREHENSIVE FINANCIAL FEASIBILITY ANALYSIS**

Eligible Expenses Cap	\$ 1,675,000					
	Assessed Value	Property Class	Mill Levy	Number of Lots	Tax Amount	
Senior Project	\$ 72	30.0%	0.149307	1	\$ 10.75	
Multi-Family	\$ 72	30.0%	0.149307	1	\$ 10.75	
	Total Current					\$ 21.50

	Estimated Value of Lots	Estimated Value of Buildings to be Constructed	Property Class	Mill Levy	Est. Property Tax	Number of Lots	Total Value
Senior Project	\$ 400,000	\$ 2,100,000	11.5%	0.12781	\$ 36,745	1	\$ 36,745
Multi-Family Project	\$ 350,000	\$ 2,900,000	11.5%	0.12781	\$ 47,768	1	\$ 47,768

Grand Total	\$ 84,512
Tax Increment	\$ 84,491
Rebate Total, 1% Growth	\$ 1,297,518
*The numbers included are estimates based on 2020 Assessments Mill Levy	0.149307

\*The Mill Levy is reduced by 21.5 Mills (State & State School Funding)

**DEVELOPMENT PLAN – ATTACHMENT C**

**WEST VILLAGE DEVELOPMENT AGREEMENT  
May 18, 2020**

**THIS WEST VILLAGE DEVELOPMENT AGREEMENT** (this "Agreement") is entered into this 18th day of May, 2020 (the "Effective Date"), by and between the **CITY OF TONGANOXIE, KANSAS**, a Kansas municipal corporation (the "City"), and **WC DEVELOPMENT LLC**, a Kansas limited company ("Developer"). The City and Developer are referred to collectively herein as the "Parties".

**RECITALS**

A. Developer wishes to design, develop, construct and complete a multi-family housing development consisting of 57 units of rental housing in six (6) buildings, including (i) 36 units of multi-family rental housing comprised of one (1) and two (2) bedroom units in one (1) walk-up garden style building; and (ii) 21 single-family units comprised of one (1) and two (2) bedroom units in five (5) single-story villa buildings (the "Multi-Family Improvements"), as well as the necessary infrastructure required to support the Multi-Family Improvements (collectively, the "Project").

B. The Project will be constructed on approximately 5.2 acres of real property generally located at 00000 West Street (west of West Street and south of 8<sup>th</sup> Street), Tonganoxie, Kansas (the "Project Site"), as legally described in **Exhibit A**. Developer does not yet own the Project Site, but has the right to acquire the Project Site pursuant to that certain Lease Purchase Agreement dated \_May 15, 2020, and Developer shall, upon closing, have all rights to occupy and develop the same as set forth herein.

C. The City has the authority to create one or more rural housing incentive districts (each, an "RHID") pursuant to K.S.A. 12-5241 *et seq.*, as amended from time to time (the "RHID Act"), for the purpose of financing public improvements that will support housing in rural areas which experience a shortage of housing. On June 5, 2017, the Governing Body of the City made certain findings related to the need for housing in the City and approved the creation of an RHID pursuant to the RHID Act through the adoption of Resolution No. 06-17-01 (the "RHID Resolution"). A copy of the RHID Resolution is attached hereto as **Exhibit B**. A legal description of the boundaries of the RHID and map depicting the same are attached to the RHID Resolution.

D. On June 6, 2017, the City submitted a certified copy of the RHID Resolution to the Secretary of Commerce (the "Secretary") for approval of the establishment of the RHID in the City, as required by Section 12-5244(c) of the RHID Act.

E. On June 9, 2017, the Secretary provided written confirmation approving the establishment of the RHID. The Project Site constitutes a portion of the RHID (the "West Village RHID").

F. On May 18, 2020, the Governing Body of the City held a public hearing in connection with Developer's proposed Development Plan for the West Village RHID (the "Development Plan"), pursuant to the RHID Act. The Development Plan provides, among other things, for the collection of the Incremental Property Taxes (defined below in Section 4.2(a)(i)) within the West Village RHID to be disbursed to and used by Developer on a pay-as-you-go basis to reimburse certain RHID Eligible Expenses (defined below in Section 4.2). On May 18, 2020, the Governing Body of the City approved and adopted the Development Plan and established the West Village RHID through the adoption of

Ordinance No. 1485 (the "West Village RHID Ordinance"), pursuant to the RHID Act. The West Village RHID Ordinance is attached hereto as Exhibit C.

G. In addition to the RHID financing described above, the City entered into that certain Grant Agreement dated October 22, 2018 (the "Grant Agreement") with the Kansas Housing Resources Corporation ("KHRC"), pursuant to which KHRC awarded the City a moderate income housing grant in the amount of \$400,000 (the "MIH Funds"). The City agrees to disburse the MIH Funds to reimburse Developer for certain hard construction costs, as more particularly set forth in Section 4.3 below and subject to the terms of the Grant Agreement. A copy of the Grant Agreement is attached hereto as Exhibit D.

H. Development of the Project should attract new residents to the City and stimulate the economy of the City and surrounding area of Leavenworth County, Kansas through employment, additional taxes and other indirect spending in the community, all of which would promote the public good, health, and welfare within the City.

I. The Parties agree that the Project is not financially feasible without the public-private partnership as set forth in this Agreement, and therefore the Parties wish to enter into this Agreement to provide the necessary financing for the Project.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE I**

#### **DEFINITIONS AND INTERPRETATION**

1.1. Definitions. All capitalized terms used in this Agreement shall have the meanings ascribed to them in Annex 1 attached hereto and made a part hereof, or as otherwise provided herein.

1.2. Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (c) reference to any gender includes each other gender;
- (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (e) reference in this Agreement to any article, section, appendix, annex, schedule or exhibit means such article or section thereof or appendix, annex, schedule or exhibit thereto;

(f) each of the items or agreements identified on the attached Index of Exhibits are deemed part of this Agreement to the same extent as if set forth herein;

(g) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;

(h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and

(i) relative to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding."

1.3. Accounting Terms. Unless expressly otherwise provided, accounting terms shall be construed and interpreted, and accounting determination and computations shall be made, in accordance with GAAP.

1.4. Legal Representation of the Parties. This Agreement was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

## ARTICLE II

### THE PROJECT

2.1. Undertaking of Developer. Developer hereby agrees, subject to the terms and conditions hereinafter provided, to develop, construct, complete and operate the Project. The performance of all activities by Developer hereunder shall not be as an agent of the City, except as otherwise specifically provided herein.

2.2. Development of the Project Site. Prior to satisfaction of the Public Financing Conditions set forth in Section 3.1 below, the Parties hereby agree that Developer shall have the right but not the obligation to develop the Project as described below. If and to the extent that the Public Financing Conditions are satisfied on or before the Drop Dead Date (defined below in Section 3.2), Developer shall then be contractually obligated in this Agreement to construct and complete all of the components of the Project on the Project Site. Developer hereby contemplates that all of the infrastructure, buildings, parking facilities and other improvements constituting the Project, as described in this Section 2.2 and as generally depicted on Exhibit E attached hereto (the "Improvements"), shall be developed, constructed, completed, and operated on the Project Site in accordance and compliance with the terms and conditions of this Section 2.2 and the final site plan approvals as may be granted by the City's Planning Commission or other relevant bodies if any (the "Project Plan"). On and subject to the terms and provisions set forth in this Agreement, Developer shall have the sole right to, and shall be responsible for, design, construction, equipment and completion of the Improvements, and shall operate and use the Improvements in the manner described herein, all in accordance with the terms of this Section 2.2 and all other Applicable Laws and Requirements. The Parties further agree that the "Project" shall include the following:

(a) Multi-Family Improvements: 57 units of rental housing in six (6) buildings, including (i) 36 units of multi-family rental housing comprised of one (1) and two (2) bedroom units in one (1) walk-up garden style building; and (ii) 21 single-family units comprised of one (1) and two (2) bedroom units in five (5) single-story villa buildings. Project amenities shall

include: (i) walking trail, pet play area, and outdoor community gathering spaces; and (ii) in-unit washer/dryer and/or hookups, refrigerator, oven/range, and microwave.

(b) Infrastructure: Infrastructure improvements, including without limitation, site work and the water, sanitary sewer, storm water, drainage, electric improvements, roads, parking improvements containing the number of spaces required by Applicable Laws and Requirements, landscaping, sidewalks, and curb and gutter necessary to support the Improvements in the Project (the "Infrastructure"). Developer is responsible for landscaping and the ongoing maintenance of the Infrastructure. Developer understands and agrees that the City shall not undertake or have any obligation for snow or ice removal or other maintenance related to the Infrastructure.

(c) Signage: Signage which shall be subject to all Applicable Laws and Requirements, and any special use permits granted by the Governing Body. Developer may develop sign criteria for the entire Project Site.

(d) Developer's development, design and construction of the Improvements shall in all respects comply with the Plans and Specifications (defined below in Section 5.2).

(e) The Project described in this Section 2.2 shall not be amended or modified without the prior written consent of the City, which consent shall not be unreasonably withheld, and shall be granted or denied in accordance with all Applicable Laws and Requirements.

2.3. Developer's Obligations to Construct and Complete the Project. If and to the extent that the Public Financing Conditions are satisfied on or before the Drop Dead Date, then subject to the terms and conditions of this Agreement and except as otherwise provided herein, Developer hereby covenants and contractually agrees to fully construct and complete the Improvements as described herein. Except as otherwise provided herein, Developer hereby agrees to complete the Improvements on or before the Completion Date set forth in Section 5.10 below.

### ARTICLE III

### CONDITIONS

3.1. Public Financing Conditions. The issuance and delivery to Developer of any public financing contemplated under the terms of this Agreement shall be subject to the following conditions precedent (the "Public Financing Conditions"):

(a) Financing Plan. Developer shall secure and provide evidence of immediately available private funds which, when added to the RHID Proceeds (defined below in Section 4.2(a)(iii)) and MIH Funds, are sufficient to complete the Project. Developer shall provide evidence of such private funds in form and substance verifiable and approved by the City Manager in his or her reasonable discretion, in the form of: (x) cash funds held in a bank account; or (y) private equity and/or a closed loan from a financial institution that is ready, willing and able to provide construction draws for the Project, subject only to normal and customary draw conditions that are approved by the City;

(b) Closing. Developer shall close on its acquisition of the Project Site;

(c) No Nullification. The West Village RHID Ordinance is not nullified as provided in Section 12-5246 of the RHID Act; and

(d) Final Site Plan Approval. Developer shall have obtained all final site plan approvals and any other required approvals for the Project as required by all Applicable Laws and Requirements.

Where approval of the City is required for the various conditions set forth in this Section 3.1, such approval shall be granted or withheld by the City in its reasonable discretion.

3.2. Termination. In the event that the Public Financing Conditions are not met or waived on or prior to that date which is 195 days after the date of commencement of Phase III of "Ad Astra: A Plan to Reopen Kansas" issued by the Kansas Governor (the "Drop Dead Date"), then either party hereto shall have the right to terminate this Agreement, but such failure shall not be an event of default hereunder. Upon any such termination of this Agreement, the Parties shall have no further duty, obligation, or liability each to the other hereunder, except for those provisions that are specifically set forth herein to survive termination of this Agreement, and without limiting the generality of the foregoing, Developer shall be solely liable and responsible for all of its costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby, and except for the fees and expenses of the City to be paid for by Developer pursuant to that certain Funding Agreement dated as of September 30, 2019, as amended, and the provisions of this Agreement, the City shall be solely liable and responsible for all costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby.

## ARTICLE IV

### FINANCING

4.1. Public Financing; Source of Funds. Reference is hereby made to the Total Project Budget attached hereto as Exhibit F, and by this reference made a part hereof. The costs of the Project (the "Project Costs") will be funded in part by public incentives, including the RHID Proceeds and MIH Funds, as well as private equity and debt. Developer, using private equity and debt (the "Private Funds"), will initially advance all of the costs for the design, development and construction of the Project. Developer, subject to the terms and conditions of this Agreement, shall be reimbursed for certain RHID Eligible Expenses from and to the extent of the RHID Proceeds collected during the Term (as defined in Section 6.1). In addition, Developer, subject to the terms and conditions of this Agreement and the Grant Agreement, shall be reimbursed for certain MIH Eligible Expenses (defined below in Section 4.3).

4.2. RHID. It is contemplated by the Parties that the Project Costs shall be funded in part by RHID Proceeds. Developer has identified certain Project Costs which may be reimbursed with RHID Proceeds if and to the extent that such Project Costs are related to hard construction costs for the Infrastructure, located within the West Village RHID, identified on Exhibit F attached hereto, and eligible for payment or reimbursement pursuant to the RHID Act (the "RHID Eligible Expenses"). In connection with the West Village RHID, the Parties hereby agree as follows:

(a) Collection of RHID Revenues. During the RHID Collection Period (defined below in Section 4.2(b)(i)), the City shall collect Incremental Real Property Taxes as set forth below, unless the West Village RHID shall be earlier terminated pursuant to the express terms of this Agreement.

(i) Incremental Real Property Taxes. Subject to the terms and conditions of this Agreement and the West Village RHID Ordinance, the City hereby agrees that the RHID Eligible Expenses may be financed and reimbursed with Pay-Go RHID Financing (defined below in Section 4.2(b)) from the Incremental Real Property Taxes collected within the West Village RHID. Pursuant to the provisions of the RHID Act, including,

but not limited to, Section 12-5248(a) of the RHID Act, all real property located within the West Village RHID is subject to assessment for annual Real Property Taxes. Real Property Taxes shall be due in arrears, with half due on December 20<sup>th</sup> and half due on May 10<sup>th</sup> of each year in which said amount is required to be paid, and will be considered delinquent if not paid by such dates of each such year or as otherwise determined by Applicable Laws and Requirements. The obligation to pay Real Property Taxes shall be a covenant running with the land and shall create a lien in favor of the County on each such tax parcel as constituted from time to time and shall be enforceable against Developer and its successors and assigns in ownership of property in the West Village RHID. The "Incremental Real Property Taxes" means that amount of Real Property Taxes collected from within the West Village RHID that exceeds the amount of Real Property Taxes collected from the Base Year Assessed Valuation of the real property within the West Village RHID. For purposes hereof, the term "Base Year Assessed Valuation" means the assessed valuation of all real properties within the boundaries of the West Village RHID on the Effective Date. The Base Year Assessed Valuation of the real property within the West Village RHID is \$480.

(ii) West Village RHID Fund. During the existence of the West Village RHID, all Incremental Real Property Taxes generated within the West Village RHID shall be deposited into a separate fund (the "West Village RHID Fund"), which shall be established and administered by the City in compliance with this Agreement and all Applicable Laws and Requirements.

(iii) RHID Proceeds. The revenues received from the Incremental Real Property Taxes, less the Administrative Fee (defined below in Section 4.2(d)), constitute the "RHID Proceeds". The RHID Proceeds shall be used to pay or reimburse Developer for the RHID Eligible Expenses, subject to the limitations in the RHID Act and provided that none of the RHID Proceeds shall be used to pay for anything but the RHID Eligible Expenses without the prior approval of the City, in its sole discretion.

(b) Pay-Go RHID Financing. Subject to the terms and conditions of this Agreement, the Parties hereby agree that the RHID Proceeds shall be disbursed by the City to Developer from the West Village RHID Fund on a pay-as-you-go basis ("Pay-Go RHID Financing") to reimburse Developer for RHID Eligible Expenses, if and to the extent that: (1) there are sufficient RHID Proceeds in the West Village RHID Fund; (2) Developer has fully satisfied all of the conditions set forth in Section 4.2(e) below), (3) Developer has not already been reimbursed for RHID Eligible Expenses in an amount equal to the RHID Cap (defined below in Section 4.2(b)(ii)), and (4) the Term has not yet expired. The Parties further agree as follows:

(i) RHID Collection Period. The Incremental Real Property Taxes shall be collected within the West Village RHID for a period that commences on the Effective Date up to and concluding upon that date which is the earlier of (a) the date that Developer has been reimbursed for all RHID Eligible Expenses by Pay-Go RHID Financing in an amount equal to the RHID Cap, or (b) twenty (20) years from the Effective Date (the "RHID Collection Period"). At the end of the RHID Collection Period, the Parties understand and agree that the West Village RHID shall thereafter terminate, the City shall no longer deposit Incremental Real Property Taxes into the West Village RHID Fund, and Developer shall have no further access to RHID Proceeds to reimburse or pay for RHID Eligible Expenses.

(ii) RHID Cap. The RHID Proceeds available to Developer for reimbursement of RHID Eligible Expenses through Pay-Go RHID Financing shall in no event exceed \$1,675,000 (the "RHID Cap"). The Parties understand and agree that 100% of the RHID Proceeds shall be available to Developer for a duration ending upon the first to occur of (x) thirteen (13) years from the Effective Date, or (y) when Developer has been reimbursed RHID Eligible Expenses in the amount of \$1,000,000. Thereafter, the City's reimbursements to Developer will decrease 10% each year for the remainder of the Term until Developer has been reimbursed for RHID Eligible Expenses in an amount equal to the RHID Cap. In other words, Developer will receive 90% of the RHID Proceeds in Year 14, 80% of the RHID Proceeds in Year 15 and so on until Developer has been reimbursed for RHID Eligible Expenses in an amount equal to the RHID Cap. The RHID Cap shall, for all purposes set forth herein, operate as a cap on the use of RHID Proceeds for reimbursement to Developer of any of Developer's RHID Eligible Expenses. Once Developer has received an amount equal to the RHID Cap in reimbursements of RHID Eligible Expenses through Pay-Go RHID Financing, the Parties understand and agree that Developer's access to the Pay-Go RHID Financing shall thereafter terminate.

(iii) Conditions for Reimbursement. Developer shall not receive any reimbursements from Pay-Go RHID Financing unless and until the conditions precedent set forth in Section 4.2(e) below have been fully satisfied or waived by the City, upon which satisfaction or waiver Developer shall be reimbursed from Pay-Go RHID Financing as provided in this Agreement.

(c) No RHID Bonds. Developer hereby understands and agrees that all reimbursements to Developer hereunder shall be made only from Pay-Go RHID Financing, and nothing in this Agreement shall in any way obligate the City to issue bonds or other obligations to reimburse Developer for the RHID Eligible Expenses or any other Project Costs.

(d) Administrative Fee. A portion of the Incremental Real Property Taxes deposited into the West Village RHID Fund shall be used to pay an administrative fee in an amount equal to one percent (1%) of the Incremental Real Property Taxes deposited into the West Village RHID Fund (the "Administrative Fee"). The Administrative Fee shall be due and payable on the date the Incremental Real Property Taxes are received by the City. Developer hereby understands and agrees that such Administrative Fee shall be withheld by the City prior to depositing the balance of the Incremental Real Property Taxes into the West Village RHID Fund. As and when there are sufficient Incremental Real Property Taxes to pay the Administrative Fee, such Administrative Fee shall have first priority to available Incremental Real Property Taxes.

(e) Conditions Precedent to Reimbursements. Developer hereby understands and agrees that even when RHID Proceeds have begun to be collected by the City, the City will hold and not disburse to Developer any reimbursements for RHID Eligible Expenses from Pay-Go RHID Financing unless and until the conditions precedent set forth below have been fully satisfied as determined by the City in its sole reasonable discretion:

- (i) The City has approved Certificate(s) of Expenditures for such RHID Eligible Expenses;
- (ii) Developer shall have achieved Substantial Completion of the Project; and

- (iii) Developer shall be in compliance with the terms and conditions of this Agreement in all material respects and shall not be in default hereunder, nor shall there be conditions, actions or omissions of Developer which will, with the passage of time, become occurrences of default hereunder.

4.3. MIH Funds. It is contemplated by the Parties that the Project Costs shall be funded in part by MIH Funds if and to the extent that such Project Costs are eligible for payment or reimbursement pursuant to the Grant Agreement (the "MIH Eligible Expenses"). In connection with the MIH Funds, the Parties hereby agree as follows:

(a) Development Milestones. Developer shall submit Certificate(s) of Expenditures for the MIH Eligible Expenses in the amounts and upon the development milestones set forth below:

- (i) \$100,000 at Project commencement, which means the date upon which Developer has obtained all necessary City approvals and permits to begin construction of the Project (but in no event shall Developer submit a Certificate of Expenditures earlier than the Drop Dead Date);
- (ii) \$100,000 at completion of the Infrastructure; provided, however, that Developer understands and agrees that any Project Costs related to Infrastructure that are reimbursed with MIH Funds shall not also be reimbursed with RHID Proceeds;
- (iii) \$100,000 at Developer's receipt of Certificate of Occupancy for the first building of the Project; and
- (iv) \$100,000 at the Completion Date.

(b) Conditions for Reimbursement. Developer shall not receive any reimbursements from MIH Funds unless and until the conditions precedent set forth below have been satisfied as determined by the City in its sole discretion:

(i) Developer has submitted, and the City has approved, Certificate(s) of Expenditures for the MIH Eligible Expenses which are to be reimbursed with the MIH Funds, in accordance with the procedures set forth in Section 4.4 and no earlier or more frequently than the development milestones set forth above;

(ii) the City has received MIH Funds from the KHRC;

(iii) Developer shall be in compliance with all Applicable Laws and Requirements (including, but not limited to, the Grant Agreement) pertaining to the MIH Funds; and

(iv) Developer shall be in full compliance with the terms and conditions of this Agreement and Developer shall not be in default hereunder, nor shall there be conditions, actions or omissions of Developer which will, with the passage of time become occurrences of default hereunder.

(c) Unavailability of MIH Funds. Developer understands that the MIH Funds are funded in whole or in part by the State. In the event that the MIH Funds become unavailable, are

reduced, or are rescinded, KHRC has the right to unilaterally terminate or amend the Grant Agreement, and Developer acknowledges and agrees that in such event, the City will not be obligated to pay or reimburse Developer for the MIH Eligible Expenses from any other sources.

4.4. Certificate(s) of Expenditures for Reimbursement from RHID Proceeds and MIH Funds.  
The Parties hereby agree as follows:

(a) Certificate of Expenditures. In order to receive payment or reimbursement for Project Costs from Pay-Go RHID Financing and/or MIH Funds, Developer shall submit a certificate of expenditures in the form attached hereto as **Exhibit G** (each, a "Certificate of Expenditures") attesting to the expenditure of Project Costs in accordance with the procedure set forth below. Developer may submit a separate Certificate of Expenditures each month, but no more than one time per month. Additionally, Developer shall require that no transferee, purchaser, or lessee of any portion of the Project Site otherwise provide Certificate(s) of Expenditures to the City, except through Developer or except as otherwise approved by the City and Developer.

(b) Procedures for Certification of Expenditures. The City or a representative of the City shall review the Certificate(s) of Expenditures to be made in connection with the Project Costs for approval or denial of the same as follows:

(i) Developer shall submit to the City a Certificate of Expenditures setting forth the amount for which certification is sought and identification of the relevant Project Costs and the appropriate source of public financing proceeds (RHID Fund and/or MIH Funds) for payment of such Project Costs. Developer shall certify to the City that it shall only use the RHID Proceeds and/or MIH Funds for the designated Project Costs described in the Certificate of Expenditures and that such proceeds shall not be commingled with other sources or uses. Developer shall further certify to the City that it will only use the RHID Proceeds for RHID Eligible Expenses and the MIH Funds for MIH Eligible Expenses.

(ii) Each Certificate of Expenditures shall be accompanied by such bills, contracts, invoices, lien waivers and other evidence as the City shall reasonably require to document appropriate payment.

(iii) The City reserves the right to, at reasonable times and upon reasonable notice, have its engineer or other agents, consultants or employees inspect all the items set forth in Section 4.4(b)(ii) above as reasonably necessary to determine that the expenses therein are valid, eligible and properly incurred and constitute RHID Eligible Expenses and/or MIH Eligible Expenses.

(iv) The City shall have sixty (60) calendar days after receipt of any Certificate of Expenditures to review and respond by written notice to Developer. If the City disapproves of the Certificate of Expenditures, the City shall notify Developer in writing of the reason for such disapproval within such sixty (60) day period, in which event Developer shall have the right to revise and re-submit the Certificate of Expenditures to address the City's reason for disapproval, and the City will review and approve the revised Certificate of Expenditures within thirty (30) calendar days after receipt of the re-submitted Certificate of Expenditures; provided, however, that with regard to the MIH Funds, any of these time periods may be extended as necessary to

accommodate KHRC review and/or disbursement to the City. Approval of any Certificate of Expenditures will not be unreasonably withheld, conditioned, or delayed.

(c) Third Party Oversight/Management. The Parties hereby understand and agree that the process to approve Certificate(s) of Expenditures and properly disburse the RHID Proceeds and/or MIH Funds is important to the City and Developer for various reasons. Accordingly, the Parties hereby understand and agree that the City may retain outside third party representatives to manage and/or provide oversight to this process and Developer hereby agrees to fully cooperate with any such third party representatives in this process and to pay the City's costs for retaining such third parties.

4.5. Reimbursement Priority. All payments or reimbursements of whatever kind from the City to Developer under this Agreement shall be made in the following priority:

(a) First, to the City, to the extent permitted by Applicable Laws and Requirements, as payments by the Developer for any amounts due and owing to the City; provided, however, the City shall first provide Developer with advance written notice specifying the amount(s) in question, and afford Developer a period of ten (10) days following its receipt of such notice in which to pay such amount(s) from Private Funds, including, without limitation: (i) all amounts delinquent due or owing, including all taxes, fees, or fines and including any interest and penalty thereon, by the Developer to the City under this Agreement, under any other agreement between Developer and the City, or under any Applicable Laws and Requirements; (ii) all actual out-of-pocket costs incurred (and any interest or penalty thereon) by the City in entering into, operating under, or enforcing this Agreement, including reasonable attorneys' fees, and all costs of pursuit of Developer (or any Affiliate); (iii) indemnification of the City for any indemnity obligation owed by Developer (or any Affiliate) to the City, and any interest or penalty thereon; and (iv) any reimbursement due to the City on account of any prior overpayment or over-reimbursement to Developer under this Agreement, under any other agreement between Developer and the City, or under any Applicable Laws and Requirements; and

(b) Second, to Developer for actual amounts to which Developer is entitled by the other provisions of this Agreement.

4.6. Line Items. The Parties hereby agree that increases or decreases in line item amounts in the column labeled "RHID Eligible Expenses" in the Total Project Budget as set forth on **Exhibit F** may be made by Developer as long as: (a) no such increase represents more than a twenty percent (20%) change per line item, unless otherwise approved by the City Manager or his or her designee, and (b) prior to requesting reimbursement for any such line item change(s), Developer provides the City Manager's office with a modified Total Project Budget reflecting such change(s).

## ARTICLE V

### CONSTRUCTION OF THE IMPROVEMENTS

5.1. Architect. Developer shall select such architects, engineers and other design professionals and consultants as are necessary to provide construction documents and construction oversight services for the Improvements. All agreements respecting architectural and engineering services shall be between Developer and such Persons, and a copy of each such agreement shall be timely provided to the City upon a request for the same.

5.2. Design and Plans and Specifications. Developer shall, as soon as practicable, provide the City with plans and specifications for the Improvements (the "Plans and Specifications"), which Plans and Specifications shall include cost estimates for the Improvements, the design of which is compatible with the Development Plan, the Project Plan and all Applicable Laws and Requirements. Developer recognizes, stipulates and agrees that the Plans and Specifications will be presented to and subject to approval by the appropriate Government Authorities in accordance with Applicable Laws and Requirements. Without the prior written approval of the appropriate Government Authorities, there shall be no Material to the Plans and Specifications subsequent to the initial approval.

5.3. General Contractor and Construction Documents. Developer shall select one or more general contractors (the "General Contractor") for the Improvements. Developer represents that its construction documents relative to the Improvements (the "Construction Documents") will require and provide for: (a) the design, development, construction, equipping and completion of the Improvements (or applicable portion thereof) in accordance with this Agreement, the Grant Agreement, the Development Plan, the Project Plan, the Plans and Specifications and all Applicable Laws and Requirements; (b) a guaranteed maximum price, or other commercially reasonable payment structure acceptable to Developer; and (c) guaranteed Substantial Completion not later than the Completion Date. Developer shall, as soon as practicable, provide the City with a copy of the Construction Documents.

5.4. Changes or Amendments. Developer shall promptly deliver to the City copies of all change orders or other changes or amendments to the Construction Documents that constitute a Material Change. Developer agrees with the City that it will: (a) perform its duties and obligations under the Construction Documents and (b) enforce the obligations of all other parties thereunder.

5.5. Terms and Requirements for Improvements. The contracts for all Improvements in the Project shall comply with all Applicable Laws and Requirements. Any Material Changes to the Improvements require the prior approval of the City in accordance with Applicable Laws and Requirements. The City, or its designee, shall have the right to inspect, observe, and oversee the construction of the Improvements in order to ascertain and determine the requirements of this Agreement and the Grant Agreement have been met. Developer shall obtain the City's approval of all change orders relating to the Improvements that result in a Material Change.

5.6. Responsibility for Design and Construction. Developer shall, subject to the terms of this Agreement, the Development Plan and the Project Plan, have the sole right, and the responsibility, to design, manage, construct and operate the Project. Developer shall receive no separate fee from the City for acting as construction manager or developer of the Project.

5.7. Payment and Performance Bonds. If required by Applicable Laws and Requirements for the Improvements, the General Contractor shall be required under the Construction Documents to furnish and maintain in full force and effect performance and labor and material payment bonds in the full amount of the project cost, as set forth in the Construction Documents. The bonds shall be in form and substance and issued by a corporate surety reasonably satisfactory to Developer, Developer's lender, and the City.

5.8. Permits and Reviews. Developer hereby recognizes, stipulates and agrees that: (a) in the design, construction, completion, use or operation of the Improvements, Developer, or its General Contractor, shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required by Applicable Laws and Requirements; and (b) nothing herein shall be construed as any release by the City of the responsibility of Developer to comply with, and satisfy the requirements of, all Applicable Laws and Requirements.

5.9. Periodic Meetings with Developer. From the Effective Date until Substantial Completion of the Project, Developer hereby agrees to meet with the City at such intervals as Developer, the City and any such designee of the City shall mutually agree or reasonably request, and not more frequently than monthly, to review and discuss the design, development and construction of the Improvements and the Project as well as monthly reports on leasing prospects for the Multi-Family Improvements.

5.10. Project Construction Schedule. Developer shall commence construction of the Project within the Project Site in a commercially reasonable amount of time after passage of the West Village RHID Ordinance and approval of the final site plan. Developer will diligently pursue Substantial Completion of the Project and, unless otherwise approved by the City, must obtain Substantial Completion within twenty-four (24) months after the Drop Dead Date (the "Completion Date") or Developer will be in material breach of this Agreement.

## ARTICLE VI

### USE AND OPERATION

6.1. Term. The Term of this Agreement shall commence on the Effective Date and shall expire on that date which is the earlier to occur of: (a) the last date of the RHID Collection Period, or (b) twenty (20) years from the Effective Date of this Agreement (the "Term").

6.2. Use and Operation. Developer covenants that at all times during the Term, it will, at its expense:

(a) Use the Project only as a first-class multi-family development as described in Section 2.2(a) above (the "Permitted Use").

(b) Conduct its business at all times in a dignified quality manner and in conformity with first-class industry standards and in such manner as to help establish and maintain a high reputation for the Project.

(c) Additionally, Developer hereby understands and agrees that the nature of the multi-family uses within the West Village RHID were critical to the City's creation of same. Accordingly, the Parties hereby agree that the following uses shall be prohibited within the West Village RHID, except as otherwise provided herein or with the prior written approval of the City:

(i) Any use which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution, or which constitutes a nuisance or is hazardous by reason of fire or explosion, or injurious to the reputation of the Project, as determined by the City and Developer in their reasonable discretion.

(ii) Any use which involves the long-term raising, breeding, and keeping of any animals or poultry, except for pets permitted in accordance with Developer's leasing policy for the Multi-Family Improvements.

(iii) Salvage or reclamation yards and the storage of inoperative vehicles.

(iv) Any mobile home park, camp ground, trailer court, or labor camp; provided, however, that the foregoing restriction shall not be applicable to: (1) the temporary use of construction trailers during periods of construction, reconstruction or

maintenance; or (2) trailers, delivery trucks or recreational vehicles of invitees, guests, and participants of the Project.

(v) Any dumping, disposing, incineration or reduction of garbage; provided, however, that this prohibition shall not be applicable to garbage compactors located near the rear of any building within the West Village RHID, or elsewhere within the West Village RHID subject to the approved final Project Plan and in compliance with all Applicable Laws and Requirements.

(vi) Any use not permitted by the applicable zoning ordinance of the City.

The foregoing list of prohibited uses is not intended to supplant the requirements and/or prohibition of uses stated within the City's Code of Ordinances. The City's Governing Body may grant variances to the restrictions set forth in this Section 6.2(c) from time to time in its sole and absolute discretion. At Closing, or within thirty (30) days thereafter, Developer and the City shall execute a document which shall memorialize the restrictions set forth in this Section 6.2(c) and record the same against the real property within the West Village RHID, which restrictions shall be effective and run with the land for the Term of this Agreement. The City shall consent to additional reasonable development, use and maintenance covenants for the Project Site to ensure the ongoing, high-quality use of the Project.

6.3. Development Plan and Project Plan. During the Term, Developer agrees that it shall perform and comply with each and all of the terms and provisions of the Development Plan and Project Plan and not suffer or permit any default or breach of any such terms or provisions of the Development Plan and Project Plan.

6.4. Maintenance and Use. During the Term, Developer shall cause the Project, and all parts thereof, the Project Site and all other of its property used or useful in the conduct of its business and operations on the Project Site, to be maintained, preserved and kept in good repair and working order and in a safe condition, consistent at all times with other similarly situated first-class residential space in the greater metropolitan Kansas City area, and will make all repairs, renewals, replacements and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations on the Project Site. Developer may make additions, alterations and changes to the Project so long as such additions, alterations and changes are made in compliance with all Applicable Laws and Requirements, the Grant Agreement, the Development Plan and the Project Plan, and as long as the same do not materially adversely affect Developer's ability to perform its obligations under this Agreement. Developer agrees to set aside on its books such reasonable reserves for future maintenance and capital expenditures.

6.5. Compliance. Developer shall conduct its affairs and carry on its business and operations in such a manner as to comply with all Applicable Laws and Requirements, and to observe and conform to all valid orders, regulations or requirements (including, but not limited to, those relating to the Grant Agreement, and/or to safety and health) of any Government Authorities applicable to the conduct of its business and operations and the ownership of the Project; provided, however, that nothing contained in this Agreement shall require Developer to comply with, observe and conform to any such law, order, regulation or requirement of any Government Authorities so long as the validity thereof shall be contested by Developer in good faith by appropriate proceedings, and provided that Developer shall have set aside on its books adequate reserves in accordance with GAAP or secured adequate bonding with respect to such contest and such contest shall not materially impair the ability of Developer to meet its obligations under this Agreement. Developer agrees to promptly pay any and all fees and expenses associated with any safety, health or other inspections required under this Agreement or imposed by Applicable Laws and

Requirements (including the Grant Agreement), unless contested in good faith with the assurances provided in the preceding sentence.

6.6. Payment of Taxes and Other Charges. During the Term, Developer and each successor owner within the Project shall pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon parcels owned by the Developer or upon any income therefrom, including, but not limited to, any taxes, assessments, or other governmental charges levied, assessed or imposed on the Project, the Project Site, and/or the Improvements. Ad valorem property taxes shall be due in arrears, with half due on December 20<sup>th</sup> and half due on May 10<sup>th</sup> of each year in which such amount is required to be paid, and will be considered delinquent if not paid by such dates of each such year or as otherwise determined by Applicable Laws and Requirements. The obligation to make ad valorem property tax payments shall be a covenant running with the land and shall create a lien in favor of the County on each such tax parcel as constituted from time to time and shall be enforceable against Developer or each relevant successor parcel owner. Additionally, Developer hereby understands and agrees that if Developer shall fail to timely pay its ad valorem property taxes for a parcel, then Developer's access to the disbursements from the West Village RHID Fund and/or the MIH Funds for the Project shall be suspended until such taxes are paid in full. Nothing herein is intended to restrict Developer's right to file property tax appeals as long as such taxes are paid under protest when the subject property taxes are due and owing during the pendency of an appeal.

6.7. Payment of Obligations. During the Term, Developer shall promptly pay or otherwise satisfy and discharge all of its obligations and all demands and claims against it as and when the same become due and payable, unless the validity, amount or collectability thereof is being contested in good faith or unless the failure to comply or contest would not materially impair its ability to perform its obligations under this Agreement nor subject any material part of the Project to loss or forfeiture.

6.8. Liens and Encumbrances. During the Term, except for a Permitted Mortgage, Developer shall not create or incur or permit to be created or incurred or to exist any mortgage, lien, security interest, charge or encumbrance upon the Project, or any part thereof, and shall promptly cause to be discharged, challenged or terminated all mortgages, liens, security interests, charges and encumbrances that are not Permitted Encumbrances or a Permitted Mortgage. Notwithstanding the foregoing, any Permitted Mortgage shall be subject to the terms and conditions of this Agreement, including without limitation, Section 6.2 of this Agreement.

6.9. Licenses and Permits. During the Term, Developer shall procure and maintain all licenses and permits, and allow all inspections and/or investigations required by Applicable Laws and Requirements or otherwise necessary in the operation of its business and affairs in, on or about the Project.

6.10. Insurance. During the Term, Developer shall maintain or cause to be maintained insurance with respect to the portions of the Project which it owns and operations covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar properties and engaged in similar operations (including but not limited to property and casualty, worker's compensation, general liability and employee dishonesty) and in such amounts as, in the reasonable judgment of Developer, are adequate to protect Developer, the City and the Project, but in no event in an amount less than that required by the Insurance Specifications attached hereto as Exhibit H, and made a part hereof. Each policy or other contract for such insurance shall: (i) name the City as an additional insured (with respect to liability insurance and only in an amount equal to \$500,000), and (ii) contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least thirty (30) days after written notice of

cancellation to Developer and each other insured, additional insured, loss payee and mortgage payee named therein. The rights of the City to any insurance proceeds shall be subject and subordinate to the rights of any Permitted Mortgagee.

6.11. Damage, Destruction or Condemnation. The Parties hereby agree as follows:

(a) In the event of damage to or destruction of any portion of the Improvements resulting from fire or other Casualty during the Term, or in the event any portion of the Improvements is condemned or taken for any public or quasi-public use or title thereto is found to be deficient during the Term, the net proceeds of any insurance relating to such damage or destruction, the net proceeds of such condemnation or taking, or the net proceeds of any realization on title insurance shall be paid into, and used in accordance with, a construction escrow agreement satisfactory to the City and Developer ("Casualty Escrow").

(b) If, at any time during the Term, the Improvements or any part thereof shall be damaged or destroyed by a Casualty (the "Damaged Facilities"), Developer shall proceed as promptly as possible to repair, restore and replace the Damaged Facilities as nearly as possible to their condition immediately prior to the Casualty and shall be entitled to draw upon the Casualty Escrow for payment of such costs.

(c) If at any time during the Term, title to the whole or substantially all of the Improvements shall be taken in condemnation proceedings or by right of eminent domain, Developer, at its sole discretion, may terminate this Agreement as of the date of such taking. For purposes of this Section 6.11(c), "substantially all of the Improvements" shall be deemed to have been taken if the City and Developer, each acting reasonably and in good faith, determine that the untaken portion of the Project cannot be practically and economically used by Developer for the purposes and at the times contemplated by this Agreement.

6.12. Indemnity. Developer shall pay and indemnify and save the City and its Governing Body members, directors, officers, employees and agents harmless from and against all loss, liability, damage or expense arising out of: (a) the acquisition of the Project Site; (b) the design, construction and completion of the Project by Developer; (c) the use or occupation of the Project by Developer or anyone acting by, through or under it; (d) damage or injury, actual or claimed, of whatsoever kind or character occurring after Closing, to persons or property occurring or allegedly occurring in, on or about the Project; (e) any breach, default or failure to perform by Developer under this Agreement following any notice and cure period provided herein; (f) any act by an employee of the City at the Project Site which are within or under the control of Developer or pursued for the benefit of or on behalf of Developer; and (g) any claims or challenges related to the legality of the approval of, or terms contained in the planning, zoning, platting or other governmental approvals necessary for this Project, this Agreement, the Development Plan, the Project Plan, the West Village RHID, the formation of the West Village RHID and collection of the Incremental Real Property Taxes and the terms thereof, and of the public financing structure contemplated by this Agreement. Developer shall also pay and indemnify and save the City and its Governing Body members, directors, officers, employees and agents harmless of, from and against, all costs, reasonable counsel fees, expenses and liabilities incurred by them or by Developer in any action or proceeding brought by reason of any such claim, demand, expense, penalty or fine. If any action or proceeding is brought against the City or its Governing Body members, directors, officers, employees or agents by reason of any such claim or demand, Developer, upon notice from the City, covenants to resist and defend such action or proceeding on demand of the City or its Governing Body members, directors, officers, employees or agents. Notwithstanding the foregoing, no party benefited by this indemnity shall be indemnified against liability for damage arising out of bodily injury to persons or damage to property caused by such party's own respective willful and malicious acts or omissions or gross negligence. The

foregoing covenants contained in this Section 6.12 shall be deemed continuing covenants, representations and warranties for the benefit of the City and any successors and assigns of the City, and shall survive the termination, satisfaction or release of this Agreement.

6.13. Prohibition on Sales, Etc. Except for Permitted Encumbrances and a Permitted Mortgage, which are hereby permitted without any further approval of the City, and except as otherwise provided herein, during the Term, Developer will not, without the prior written consent of the City (which shall not be unreasonably withheld, conditioned, or delayed): (a) assign, sell, lease, mortgage or otherwise transfer the Project Site, the Improvements or equipment that comprise the Project or any part thereof or any interest therein; (b) merge with or into another corporation or sell or transfer to another corporation substantially all of its assets; or (c) assign this Agreement. Any such assignment, sale, lease, mortgage, merger or other transfer which is consented to by the City shall be an "Approved Assignment" and the assignee, purchaser, lessee, mortgagee or transferee shall be an "Assignee". The City shall have the right to grant or withhold its consent to any of the aforesaid in its reasonable discretion after inquiry and delivery of information to the City as to whether the proposed Assignee has sufficient financial wherewithal and experience to successfully complete the Project according to the terms hereof. If there is an Approved Assignment, the Assignee shall assume and agree to pay and perform each and all of the terms and provisions hereof. Notwithstanding the foregoing, the Parties hereby agree as follows:

(a) Developer may, subject always to the terms of this Agreement, in the ordinary course of its business, but without the prior written approval of the City, make leases of the residential units within the Multi-Family Improvements; and

(b) Without any further approval of the City, Developer may transfer all or a portion of the Project Site, and/or all or any portion of Developer's rights and/or obligations under this Agreement, to a transferee entity provided that the Controlling Person or Entity of such transferee entity is also the Controlling Person or Entity of the Developer, and provided that such transferee entity: (i) assumes or guarantees all of Developer's obligations under this Agreement with respect to all portions of the Project or this Agreement so transferred to such transferee entity, and (ii) remains liable jointly and severally with Developer therefor (an "Affiliate Transfer"). Developer shall deliver to the City notice of any Affiliate Transfer within fifteen (15) days following such transfer. For purposes hereof, the term "Controlling Person or Entity" with respect to any entity means a Person or entity who, under Applicable Laws and Requirements, possesses all authority and power necessary to lawfully act on behalf of and bind such entity, over the objection of all other holders of any other interest in such entity, to fulfill the obligations of Developer under this Agreement.

6.14. Utilities. During the Term, all utility and utility services used by Developer in, on or about the Project shall be paid (or caused to be paid) for by Developer, and Developer shall, at no cost to the City, procure any and all permits, licenses or authorizations necessary in connection therewith.

6.15. Access. During the Term, Developer hereby recognizes, acknowledges and agrees that the City, and its duly authorized representatives and agents, shall have the right to enter the Project at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement or, to the extent Developer has failed to cure any breach within applicable notice and cure periods, to cure any defaults under this Agreement. In exercising its rights hereunder, the City shall use reasonable efforts to avoid unreasonable interference with the construction and operation of the Project. Except as otherwise provided in this Agreement, the City shall pay all costs it incurs under this provision. Nothing contained in this Section 6.15 shall restrict or impede the right of the City to enter the Project pursuant to any Applicable Laws and Requirements.

6.16. Environmental Matters. Developer hereby agrees that Developer has sole responsibility for the costs of any remediation of any environmental conditions upon the Project Site. Further, Developer shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the Project in violation of any Environmental Regulation; shall not permit any Hazardous Substance to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any Environmental Regulations; shall cause all Hazardous Substances to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations; shall not install or permit to be installed any underground storage tank therein or thereunder in violation of any Environmental Regulation; and shall comply with all other Environmental Regulations which are applicable to the Project. Developer shall indemnify the City against, shall hold the City harmless from, and shall reimburse the City for, any and all claims, demands, judgments, penalties, fines, liabilities, costs, damages and expenses, including court costs and reasonable attorneys' fees incurred by the City (prior to trial, at trial and on appeal) in any action against or involving the City, resulting from any breach of the foregoing covenants or from the discovery of any Hazardous Substance, in, upon, under or over, or emanating from, the Project, whether or not Developer is responsible therefor, it being the intent of Developer and the City that the City shall have no liability or responsibility for damage or injury to human health, the environment or natural resources caused by, for abatement and/or clean-up of, or otherwise with respect to, Hazardous Substances, which arises subsequent to Closing. The foregoing covenants contained in this Section 6.16 shall be deemed continuing covenants, representations and warranties for the benefit of the City and any successors and assigns of the City, and shall survive the termination, satisfaction or release of this Agreement, or any other instrument. Any amounts covered by the foregoing indemnification shall bear interest from the date incurred at the Prime Rate plus 2%, or, if less, the maximum rate permitted by law, and shall be payable on demand.

6.17. Power of the City. Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.

## **ARTICLE VII**

### **DEFAULT AND REMEDIES**

7.1. Default Provisions. Developer shall be in default under this Agreement if:

(a) Developer fails to make any of the payments of money required by the terms of this Agreement, and Developer fails to cure or remedy the same within twenty (20) days after the City has given Developer written notice specifying such default; or

(b) Developer fails to keep or perform any covenant or obligation herein contained on Developer's part to be kept or performed, and Developer fails to remedy the same within sixty (60) days after the City has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected; or

(c) Developer or any Affiliate shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within sixty (60) days; or Developer or any

Affiliate generally is not paying its debts as such debts become due; or Developer or any Affiliate makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of Developer or any Affiliate and such appointment is not dismissed within sixty (60) days; or any execution or attachment shall issue against Developer whereupon the Project, or any part thereof, or any interest therein of Developer under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subparagraph being deemed a default under the provisions of this Agreement);

(d) Developer breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within fifteen (15) days following Developer's receipt of written notice from the City specifying such breach;

In the event of such default, the City may take such actions, or pursue such remedies, as exist hereunder, or at law or in equity, and Developer covenants to pay and to indemnify the City against all reasonable costs and charges, including reasonable attorneys' fees, lawfully and reasonably incurred by or on behalf of the City in connection with the enforcement of such actions or remedies, provided that the City is the prevailing party in such actions.

7.2. Rights and Remedies. Upon the occurrence and continuance of a Developer default, subject to any applicable notice and cure periods as described in Section 7.1 above, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

(a) Whenever any default by Developer shall have occurred and be continuing, subject to applicable cure periods as set forth above, the City may: (i) refuse to approve any further Certificate of Expenditures or make any further reimbursements of RHID Eligible Expenses and/or MIH Eligible Expenses unless and until such default is cured by Developer; (ii) terminate Developer's access to the Pay-Go RHID Financing and/or MIH Funds; and/or (iii) terminate this Agreement. The rights and remedies reserved by the City hereunder and those provided by law shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions.

(b) The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the specific performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer default.

(c) In the event of such default by Developer, the City may take such actions, or pursue such remedies, as exist hereunder or at law or in equity and Developer covenants to pay and to indemnify the City against all reasonable costs and charges, including reasonable attorneys' fees, lawfully and reasonably incurred by or on behalf of the City in connection with the enforcement of such actions or remedies.

(d) The rights and remedies reserved by the City hereunder and those provided by law shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions. If a default by Developer occurs under this Agreement and is continuing, the City may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and

observance by Developer of any provision of this Agreement. The City shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. Failure by the City to enforce any such rights shall not be deemed a waiver thereof.

(e) Notwithstanding the foregoing or anything in this Agreement to the contrary, the Parties hereby expressly acknowledge and agree that, under no circumstances, will Developer ever be liable for any remote or consequential damages including without limitation lost tax revenues, arising out of or in any way related to this Agreement.

7.3. Default by the City. The City shall be in default under this Agreement if the City fails to keep or perform any covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Developer has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected. If a default by the City occurs under this Agreement and is continuing, Developer may take whatever action at law or in equity as may appear necessary or desirable, in Developer's discretion, to enforce performance and observance by the City of any provision of this Agreement; provided, however, that the City's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote or consequential damages. Developer shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceedings in equity.

In the event of such default, Developer may take such actions, or pursue such remedies, as exist hereunder or at law or in equity; and if Developer is the prevailing party in an action to enforce its remedies hereunder, Developer shall be entitled, subject to Applicable Laws and Requirements, to reasonable costs and charges, including reasonable attorneys' fees, lawfully and reasonably incurred by or on behalf of Developer in connection with the enforcement of such actions or remedies.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

8.1. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

8.2. Force Majeure. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, unavailability of sufficient trade laborers or materials due to global pandemic such as COVID-19, failure of power or other insufficient utility service, riots, insurrection, environmental remediation required by the appropriate Government Authorities, discovery of cultural, archeological or paleontological resources or endangered species, any lawsuit seeking to restrain, enjoin, challenge or

delay construction, failure of the City to timely approve the Plans and Specifications, failure of KHRC to timely approve any Certificate(s) of Expenditures related to the MIH Funds and/or disburse the MIH Funds to the City, the Construction Documents, war, terrorism or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement ("Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 8.2 shall not be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

8.3. Covenants of Parties.

(a) Representations and Warranties of Developer. Developer represents and warrants to the City as follows:

(i) Organization. Developer is a Kansas limited liability company duly formed and validly existing under the laws of the State. Developer is duly authorized to conduct business in this State and each other jurisdiction in which the nature of its properties or its activities requires such authorization. Developer shall: (1) preserve and keep in full force and effect its corporate or other separate legal existence and (2) remain qualified to do business and conduct its affairs in the State and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

(ii) Authority. The execution, delivery and performance by Developer of this Agreement are within Developer's powers and have been duly authorized by all necessary action of Developer.

(iii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of Developer or any provision of law, statute, rule or regulation to which Developer is subject, or to any judgment, decree, license, order or permit applicable to Developer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer is a party, by which Developer is bound, or to which Developer is subject.

(iv) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authority or regulatory body or third party is required for the due execution and delivery by Developer of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authority or regulatory body or third party is required for the performance by Developer of this Agreement or the consummation of the transactions contemplated hereby except for zoning, building and other customary permits to be obtained from the City or other Government Authorities.

(v) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with the terms hereof.

(b) Representations and Warranties of the City. The City represents and warrants to Developer as follows:

(i) Authority. The execution, delivery and performance by the City of this Agreement are within its powers and have been duly authorized by all necessary action.

(ii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the ordinances, rules, regulations of the City or the laws of the State nor result in a breach, conflict with or be inconsistent with any terms, covenants, conditions or provisions of any indenture, agreement or other instrument by which the City is bound or to which the City is subject.

(iii) No Consents. Except as set forth in Section 3.1(c)-(d), no consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authority or regulatory body or third party is required for the due execution and delivery by the City of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Government Authority or regulatory body or third party is required for the performance by the City of this Agreement or the consummation of the transactions contemplated hereby.

(iv) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

8.4. Amendments. This Agreement may be amended, changed or modified only by a written agreement duly executed by the City and Developer.

8.5. Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State.

8.6. Invalidity of Any Provisions. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

8.7. Headings. The Article and Section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

8.8. Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Hand signatures transmitted by electronic mail in portable document format (PDF) or similar format shall also be permitted as binding signatures to this Agreement.

8.9. Time. Time is of the essence in this Agreement.

8.10. Consents and Approvals. Wherever in this Agreement it is provided that the City or Developer shall, may or must give its approval or consent, the City or Developer shall not, unless specifically herein provided otherwise, unreasonably withhold, condition, delay or refuse to give such approvals or consents. It is agreed, however, that the sole right and remedy for Developer or the City in any action concerning the other's reasonableness will be action for declaratory judgment and/or specific

performance, and in no event shall either such party be entitled to claim damages of any type or nature in any such action.

8.11. Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes if (i) delivered by nationally recognized overnight delivery service; (ii) delivered by electronic mail (with follow up within two (2) business days by United States Mail or by nationally recognized overnight delivery service); or (iii) delivered in person, in each case if addressed to the Parties set forth below:

The City Clerk  
The City of Tonganoxie, Kansas  
526 East 4<sup>th</sup> Street  
Tonganoxie, Kansas 66086  
Telephone: (913) 845-2620  
Email: mbilby@tonganoxie.org

with a copy to:

George Brajkovic  
City Manager  
The City of Tonganoxie, Kansas  
526 East 4<sup>th</sup> Street  
Tonganoxie, Kansas 66086  
Telephone: (913) 845-2620  
Email: gbrajkovic@tonganoxie.org

And a copy to:

Anna M. Krstulic  
City Attorney  
Stinson LLP  
1201 Walnut Street, Suite 2900  
Kansas City, Missouri 64106  
Telephone: (816) 842-8600  
Email: anna.krstulic@stinson.com

and to Developer at:

WC Development LLC  
10537 Clubhouse Drive  
Kansas City, Kansas 66109  
Attn: Marko Cvetkovic and Randy Willbanks  
Telephone: (913) 575-7708, (816) 863-9440  
Email: markvic1984@gmail.com, rwillbanks@patriotproducts.net

All notices given by: (i) nationally recognized overnight delivery service, or (ii) electronic mail, and followed up by regular United States mail or nationally recognized overnight delivery service in accordance with the above procedures, shall be deemed duly given one (1) business day after they are so delivered. All notices given in person shall be deemed duly given when delivered.

8.12. Real Estate Commissions. Each party hereby agrees to indemnify and hold harmless the other from and against: (i) any and all losses, liens, claims, judgments, liabilities, reasonable costs, expenses or damages (including reasonable attorneys' fees and court costs) of any kind or character arising out of or resulting from any duty or responsibility to pay any commission or make any other payment by either Developer or the City; or (ii) arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by Developer or on its behalf, or by the City or on its behalf, with any other broker, agent or finder in connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section 8.12 shall survive the Closing or any termination of this Agreement.

8.13. Entire Agreement. Together with the Exhibits hereto, this Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes and replaces all prior oral or written agreements concerning the subject matter hereof.

8.14. Run with the Land. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns and shall run with the land. However, Developer shall remain liable in the event of a violation of any of the terms or restrictions set forth in Sections 6.8 and 6.13 hereof. At Closing, the Parties shall record a memorandum describing this Agreement in the land records of Leavenworth County, Kansas.

8.15. Electronic Storage. The Parties agree that the transactions described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

*[Remainder of page intentionally left blank; signature pages follow.]*

IN WITNESS WHEREOF, the Parties hereto have executed these presents as of the day and year first above written.

**CITY:**

**THE CITY OF TONGANOXIE, KANSAS**

By: \_\_\_\_\_  
David Frese, Mayor

STATE OF KANSAS                    )  
  ) SS.  
COUNTY OF LEAVENWORTH        )

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by David Frese as Mayor of the City of Tonganoxie, Kansas.

Printed Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in \_\_\_\_\_ County

My commission expires  
  
\_\_\_\_\_



## ANNEX 1

### DEFINITIONS

"Administrative Fee" means the annual administrative fee for the West Village RHID Fund, as described in Section 4.2(d).

"Affiliate" means any person, entity or group of persons or entities which controls Developer, which Developer controls or which is under common control with Developer. As used herein, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise. However, the Parties understand and agree that the term "Affiliate" shall not include passive investors or capital partners without day to day operational control of the Project.

"Affiliate Transfer" means a transfer by Developer of all or a portion of the Project Site, and/or all or any portion of Developer's rights and/or obligations under this Agreement, to a transferee entity whose Controlling Person or Entity is also the Controlling Person or Entity of the Developer, as described in Section 6.13(b).

"Agreement" means this West Village Development Agreement by and between the City and Developer.

"Applicable Laws and Requirements" shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Government Authorities, and all requirements of any insurers. Applicable Laws and Requirements shall include, without limitation, the Development Plan, the Project Plan, the Grant Agreement, the Kansas Cash Basis Law (K.S.A. § 10-1100 *et seq.*) and Budget Law (K.S.A. § 75-2935 *et seq.*).

"Approved Assignment" means any assignment, sale, lease, mortgage, merger or other transfer which is consented to by the City pursuant to Section 6.13.

"Assignee" means the assignee, purchaser, lessee, mortgagee, or transferee of an Approved Assignment pursuant to Section 6.13.

"Base Year Assessed Valuation" means the assessed valuation of all real properties within the boundaries of the West Village RHID on the Effective Date, as described in Section 4.2(a)(i).

"Casualty" means any fire, storm, earthquake, tornado, flood or natural disaster or other sudden, unexpected or unusual cause of damage or destruction.

"Casualty Escrow" means the net proceeds of any insurance relating to damage or destruction of any portion of the Improvements, the net proceeds of condemnation or taking of any portion of the Improvements, or the net proceeds of any realization on title insurance paid into, and used in accordance with, a construction escrow agreement satisfactory to the City and Developer, as further described in Section 6.11(a).

"Certificate of Expenditures" means those certain certificates submitted by Developer in accordance with Section 4.4 and on the form set forth in **Exhibit G**.

"City" means the City of Tonganoxie, Kansas.

"Closing" means the date by which Developer closes on its acquisition of the Project Site.

"Completion Date" means the date identified for Substantial Completion of construction of the Project, as described in Section 5.10.

"Construction Documents" means the Developer's construction documents relative to the Improvements, as described in Section 5.3.

"Controlling Person or Entity" means a person or entity who, under Applicable Laws and Requirements, possesses all authority and power necessary to lawfully act on behalf of and bind such entity, over the objection of all other holders of any other interest in such entity, to fulfill the obligations of Developer under the Agreement, as described in Section 6.13(b).

"County" means Leavenworth County, Kansas.

"Damaged Facilities" means any part or the whole of the Project to the extent that the same is damaged or destroyed by a Casualty, as described in Section 6.11(b).

"Developer" means WC DEVELOPMENT LLC, a Kansas limited liability company.

"Development Plan" means the Development Plan for the West Village RHID, as described in Recital F.

"Drop Dead Date" means the date certain by which all Public Financing Conditions must be met, as set forth in Section 3.2.

"Effective Date" means the date of this Agreement first above written.

"Environmental Regulation" means any and all present and future laws, statutes, ordinances, rules, regulations and orders of any Government Authority having jurisdiction over the Parties hereto or any portion of the Project Site and pertaining to the protection of human health, hazardous substances, pollution, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as the same may be further amended from time to time (collectively, "CERCLA").

"Force Majeure" is defined in Section 8.2.

"GAAP" means generally accepted accounting principles.

"General Contractor" means that general contractor selected by Developer pursuant to Section 5.3.

"Government Authority" or "Government Authorities" shall mean any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence, with affirmative jurisdiction over Developer or the Project.

"Grant Agreement" means that certain Agreement dated October 22, 2018 between the City and KHRC, as described in Recital G and a copy of which is attached hereto as **Exhibit D**.

"Hazardous Substance" means any substance that is defined or listed as a hazardous or toxic substance and which is regulated as such or may form the basis of liability under any present or future

Environmental Regulation, or that is otherwise prohibited or subject to investigation or remediation under any present or future Environmental Regulation because of its hazardous, toxic, or dangerous properties, including, without limitation, (i) any substance that is a "hazardous substance" under CERCLA, and (ii) petroleum, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), only to the extent that the constituents of such synthetic gas are released or threatened to be released into the environment.

"Improvements" means those certain improvements that are contemplated to be constructed in the Project as more particularly described in Section 2.2 and generally depicted in **Exhibit E**.

"Incremental Real Property Taxes" means that amount of Real Property Taxes collected from the real property within the West Village RHID that is in excess of the amount of Real Property Taxes collected from the Base Year Assessed Valuation of the real property within the West Village RHID as determined in accordance with the RHID Act, as described in Section 4.2(a)(i).

"Infrastructure" means all of the infrastructure improvements, including without limitation, site work and the water, sanitary sewer, storm water, drainage, electric improvements, roads, parking improvements containing the number of spaces required by Applicable Laws and Requirements, landscaping, sidewalks, and curb and gutter necessary to support the Improvements in the Project, as described in Section 2.2(b).

"Insurance Specifications" means the insurance requirements on Developer in connection with the Project as generally described in Section 6.10 and more fully set forth in **Exhibit H**.

"KHRC" means the Kansas Housing Resources Corporation.

"Material Changes" means any substantial change to any agreement, plan or other document referred to herein, which change would require changes to Developer's permits or approval of the appropriate Government Authorities or is required by Applicable Laws and Requirements.

"MIH Eligible Expenses" means those certain Project Costs which may be reimbursed with MIH Funds if and to the extent that such Project Costs are eligible for payment or reimbursement pursuant to the Grant Agreement, as described in Section 4.3.

"MIH Funds" means the moderate income housing grant in the amount of \$400,000 awarded by KHRC to the City, as described in Recital G.

"Multi-Family Improvements" means thirty-two (32) townhomes, including six (6) three (3) bedroom units, twenty-six (26) two (2) bedroom units, and a small Leasing Office, as described in Recital A and Section 2.2(a).

"Parties" means, collectively, the City and Developer.

"Pay-Go RHID Financing" means a method of financing pursuant to which certain RHID Eligible Expenses are paid and/or reimbursed without notes or bonds, and the costs are reimbursed as RHID Proceeds are deposited in the West Village RHID Fund, as described in Section 4.2(b).

"Permitted Encumbrances" means any liens, restrictions, claims, easements, rights-of-way, encroachments, reservations, or other matters or encumbrances affecting the Project Site, which are acceptable to Developer in its sole discretion.

"Permitted Mortgage" means any mortgage placed on, or other security interest granted in, the Project Site or any part thereof in connection with any construction or permanent financing of the Project.

"Permitted Mortgagee" means the holder of the Permitted Mortgage.

"Permitted Use" means a first-class multi-family development, as described in Section 6.2(a).

"Person" shall mean any natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body or government or other entity.

"Plans and Specifications" means those plans and specifications generally described in Section 5.2.

"Prime Rate" means the rate of interest announced from time to time by Security Bank of Kansas City, or any successor to it. If such bank, or any successor to it, ceases to announce a prime rate, the City shall designate a reasonably comparable financial institution for purposes of determining the Prime Rate.

"Private Funds" means the Developer's private equity and debt used to pay the costs for the design, development and construction of the Project, as described in Section 4.1.

"Project" means the design, development, and construction of the Improvements on the Project Site, as described in Recital A and Section 2.2.

"Project Costs" means the costs of acquiring, designing, developing, constructing and completing the Project, as described in Section 4.1 and **Exhibit F**.

"Project Plan" means the final site plan approvals for the Improvements (or portion(s) thereof) as more fully described in Section 2.2.

"Project Site" means approximately 5.2 acres of real property owned by Developer and generally located at 00000 West Street (west of West Street and south of 8<sup>th</sup> Street), Tonganoxie, Kansas, as described in Recital B and legally described on **Exhibit A**.

"Public Financing Conditions" means the conditions precedent to the issuance and delivery to Developer of any public financing under the terms of the Agreement, as set forth in Section 3.1.

"Real Property Taxes" means all taxes levied on an ad valorem basis upon land and Improvements within the West Village RHID.

"RHID" means a rural housing incentive district created pursuant to the RHID Act, as described in Recital C.

"RHID Act" means K.S.A. 12-5241 *et seq.*

"RHID Cap" means the limitation on RHID Proceeds available to Developer for reimbursement of RHID Eligible Expenses through Pay-Go RHID Financing, as described in Section 4.2(b)(ii).

"RHID Eligible Expenses" means those certain Infrastructure Costs that are related to hard construction costs for the Infrastructure, located within the West Village RHID, identified on **Exhibit F** attached hereto, and eligible for payment or reimbursement pursuant to the RHID Act, as described in Section 4.2.

"RHID Collection Period" means the period that commences on the Effective Date up to and concluding upon that date which is the earlier of (a) the date that Developer has been reimbursed for all RHID Eligible Expenses by Pay-Go RHID Financing in an amount equal to the RHID Cap, or (b) twenty (20) years from the Effective Date, as described in Section 4.2(b)(i).

"RHID Resolution" means Resolution No. 06-17-01 adopted by the Governing Body of the City pursuant to the RHID Act on June 5, 2017 to create an RHID, as described in Recital C and a copy of which is attached hereto as **Exhibit B**.

"West Village RHID" means the portion of the RHID that comprises the Project Site, as established by the West Village RHID Ordinance and as described in Recital E.

"West Village RHID Fund" means the separate fund and account established by the City for collection of the Incremental Real Property Taxes collected within the West Village RHID, as described in Section 4.2(a)(ii).

"West Village RHID Ordinance" means the ordinance passed by the City pursuant to the RHID Act on or about May 18, 2020 to approve the West Village RHID, as described in Recital F and a copy of which is attached hereto as **Exhibit C**.

"Secretary" means the Kansas Secretary of Commerce, as described in Recital D.

"State" means the State of Kansas.

"Substantial Completion" means the stage in the progress of the construction of the Project, or as to any particular portion thereof, when construction is sufficiently complete so that the Project or such particular portion can be occupied or utilized for its intended use (which shall be evidenced by the receipt of a temporary certificate of occupancy for the Improvements).

"Term" means the term of this Agreement as set forth in Section 6.1.

"Total Project Budget" means the budget attached hereto as **Exhibit F**.

**INDEX OF EXHIBITS TO THE DEVELOPMENT AGREEMENT**

Exhibit A	Project Site – Legal Description	
Exhibit B	RHID Resolution	
Exhibit C	West Village RHID Ordinance	
Exhibit D	Grant Agreement	
Exhibit E	Depiction of Improvements	
Exhibit F	Total Project Budget	
Exhibit G	Form of Certificate of Expenditures	
Exhibit H	Insurance	Specifications

**EXHIBIT A to Development Agreement**

**Project Site – Legal Description**

A tract of land in the Southeast 1/4 of Section 8, Township South, Range 21 East of the 6th P.M., in Leavenworth County, Kansas, described as follows:

Commencing at the Southeast corner of the Southeast 1/4 of Section 8, Township 11 South, Range 21 East; thence South 89°11'59" West, (assumed), 50.00 feet; thence North 00°50'55" West, 660.00 feet to the point of beginning of this tract; thence South 89°11'59" West 660.00 feet; thence North 00°20'20" West 337.24 feet; thence North 89°11'59" East 657.00 feet; thence South 00°50'55" East 337.23 feet to the point of beginning of this tract, LESS any part thereof taken or used for road purposes.

More commonly known as 0000 West Street.

Leavenworth County, Kansas Parcel ID Number 193-08-0-00-00-022.02-0.

**EXHIBIT B to Development Agreement**

**RHID Resolution**

[Attached.]

(Published in the Leavenworth Times on the 9<sup>th</sup> day of June, 2017)

RESOLUTION NO. 06-17-01

**A RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS AS TO THE NEED FOR THE HOUSING WITHIN THE CITY OF TONGANOXIE, KANSAS AND SETTING FORTH THE LEGAL DESCRIPTION OF REAL PROPERTY PROPOSED TO BE DESIGNATED AS A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY.**

---

**WHEREAS**, K.S.A. 12-5241 et seq. (the "Act") authorizes any city incorporated in accordance with the laws of the State of Kansas (the "State") with a population of less than 60,000 located in a county with a population of less than 80,000, to designate rural housing incentive districts within such city; and

**WHEREAS**, prior to such designation the governing body of such city shall conduct a housing needs analysis to determine what, if any, housing needs exist within its community; and

**WHEREAS**, after conducting such analysis, the governing body of such city may adopt a resolution making certain findings regarding the establishment of a rural housing incentive district and providing the legal description of property to be contained therein; and

**WHEREAS**, after publishing such resolution, the governing body of such city shall send a copy thereof to the Secretary of Commerce of the State (the "Secretary") requesting that the Secretary agree with the finding contained in such resolution; and

**WHEREAS**, if the Secretary agrees with such findings, such city may proceed with the establishment of a rural housing incentive district within such city and adopt a plan for the development or redevelopment of housing and public facilities in the proposed district; and

**WHEREAS**, the City of Tonganoxie, Kansas (the "City") has an estimated population of 4,996 (2010 census) is located in Leavenworth County, Kansas which has a population of 76,227 (2010 Census) and therefore constitutes a city as said term is defined in this act; and

**WHEREAS**, the Governing Body of the City has performed a Housing Needs Analysis, adopted June 6, 2017 (the "Needs Analysis"), a copy of which is on file in the office of the City Clerk; and

**WHEREAS**, based on the Needs Analysis, the Governing Body of the City proposes to commence proceedings necessary to create a Rural Housing Incentive District, in accordance with the provisions of the Act.

**THEREFORE, BE IT RESOLVED** by the Governing Body of the City of Tonganoxie, Kansas, as follows:

**Section 1.** The Governing Body has previously adopted and incorporated reference as part of this Resolution the Needs Analysis, a copy of which is on file in the office of the City Clerk, and based on a review of said Needs Analysis makes the following findings and determinations.

**Section 2.** The Governing Body hereby finds and determines that there is a shortage of quality housing of various price ranges in the City despite the best efforts of public and private housing developers.

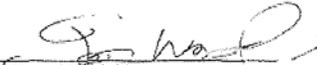
**Section 3.** The Governing Body hereby finds and determines that the shortage of quality housing can be expected to persist and that additional financial incentives are necessary in order to encourage the private sector to construct or renovate housing in the City.

**Section 4.** The Governing Body hereby finds and determines that the shortage of quality housing is a substantial deterrent to future economic growth and development in the City.

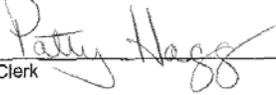
**Section 5.** The Governing Body hereby finds and determines that the future economic wellbeing of the City depends on the Governing Body providing additional incentives for the construction or renovation of quality housing in the City.

**Section 6.** Based on the findings and determinations contained in Sections 2 through 5 of this Resolution, the Governing Body proposed to establish a rural Housing Incentive District pursuant to the Act, within boundaries of the real estate legally described and depicted in the map in Exhibit "A-1" attached hereto.

**Section 7.** This Resolution shall take effect after its adoption and publication once in the official City newspaper.  
APPROVED AND PASSED by the Governing Body of the City of Tonganoxie, Kansas, this 5<sup>th</sup> day of June, 2017.

  
\_\_\_\_\_  
Jason Ward, Mayor

ATTEST:

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

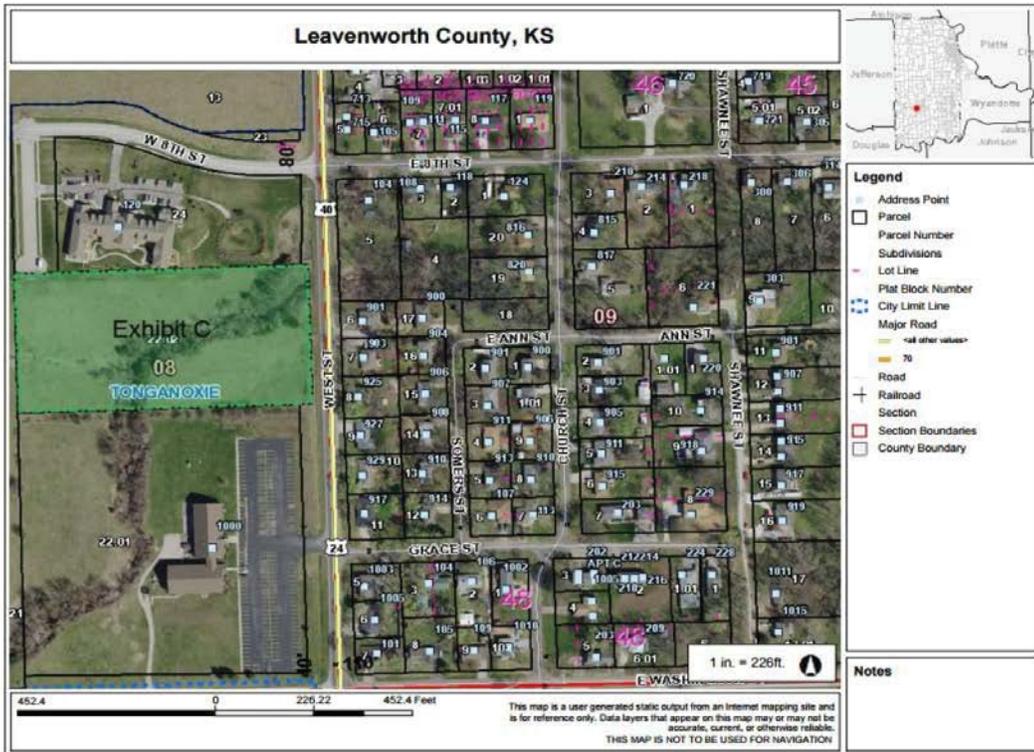
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Shannon Marciano, City Attorney



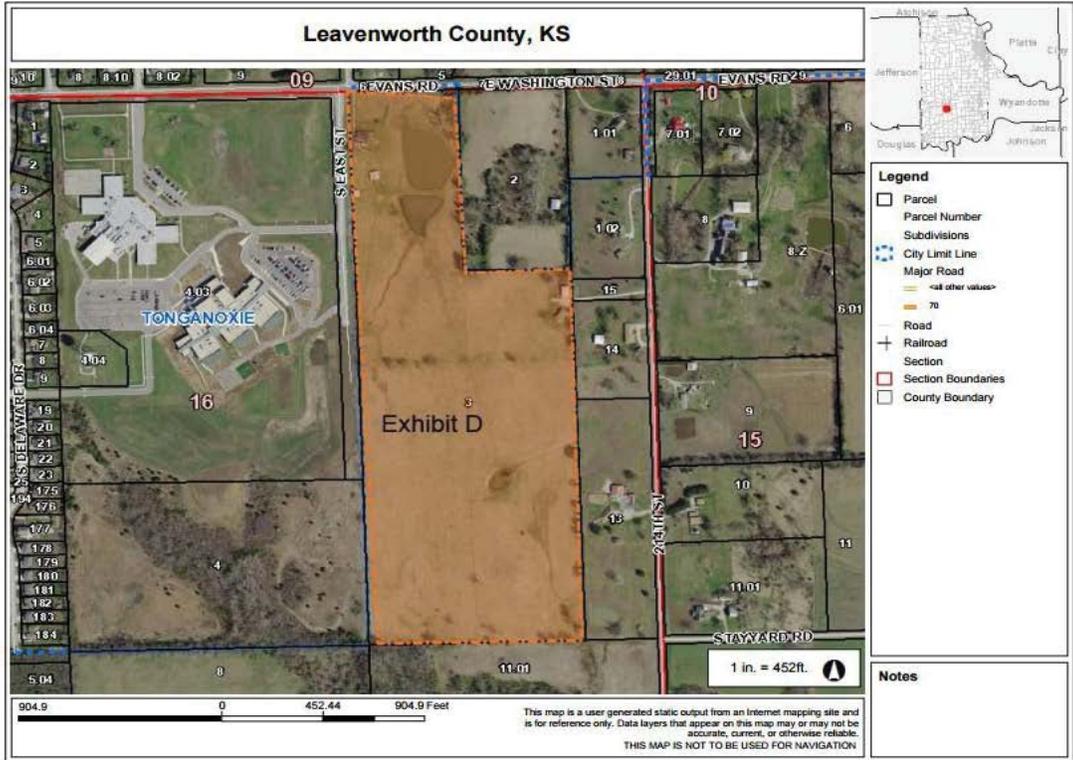
**Multi-Family Exhibits:**

Exhibit	Parcel ID	Site Address	Legal Description
Exhibit A	1920304001002000	00000 STATE AVE, Tonganoxie, KS 66086	SE1/4 LESS E330'(S) & ALL THAT PART OF STONECREEK ADD #1, #2, #3, 4A, 4B, 5, 6, & 7 EXC N20, OF W496.59', OF E925.7'
Exhibit B	19203000000172(60-90)	00000 INDUSTRIAL DR, Tonganoxie, KS 66086	SECTION 03 TOWNSHIP 11 RANGE 21E



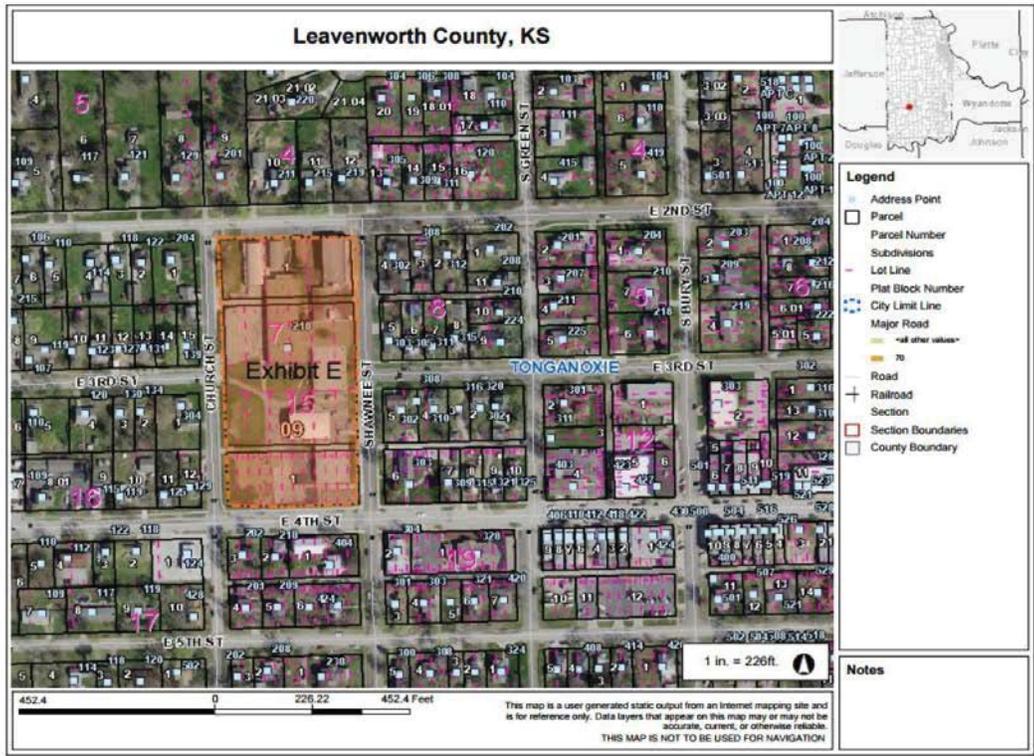
**Multi-Family Exhibit:**

	Parcel ID	Site Address	Legal Description
Exhibit C	193080000022020	00000 WEST ST, Tonganoxie, KS 66086	S337.2' OF N660' OF E710'(S) OF SE1/4SE1/4 LESS ROW



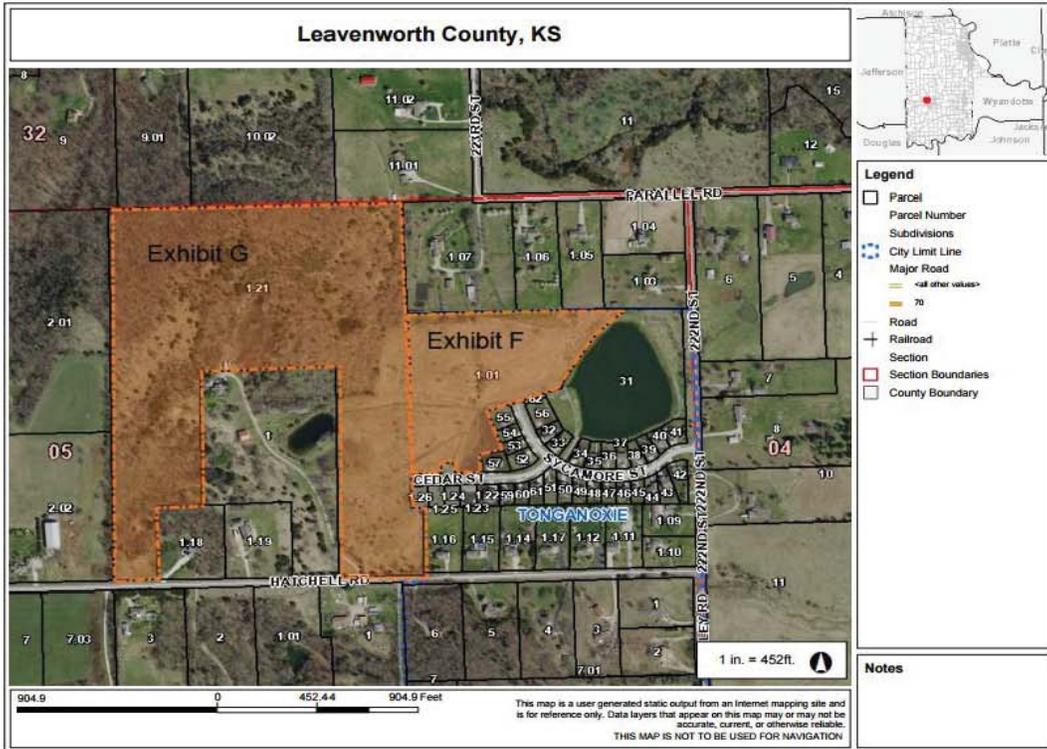
**Single-Family Exhibit:**

	Parcel ID	Site Address	Legal Description
Exhibit D	195.1600000003000	21589 EVANS RD, Tonganoxie, KS 66086	PT E1/2 NE1/4 BEG SE COR N2600' E492', S864.45', E487', S1745.5', W979' TO POB



**Single-Family Exhibit:**

	Parcel ID	Site Address	Legal Description
<b>Exhibit E</b>	1920902011001000	304 SHAWNEE ST, Tonganoxie, KS 66086	BLKS 7&15 & VAC ALLEYS & VAC 3RD ST ADJ



**Single-Family Exhibits:**

	Parcel ID	Site Address	Legal Description
<b>Exhibit F</b>	193050000001010	00000 223RD ST, Tonganoxie, KS 66086	BEG W1290'(S) & S530'(S) OF NE COR, E630', SE181.2', 225.8', S52.3', WLY271.7', SELY203.4'(S), WLY105.9', S74.7', W124'(S), N50', W60', S50', W140', N TO POB
<b>Exhibit G</b>	1930500000001210	00000 HATCHELL RD, Tonganoxie, KS 66086	PT NE1/4 BEG SW COR; N TO N LI NE1/4, E1311'(S), S1500'(S), E50'(S), S320', W360'(S), N1023', W625', S660', W175', S363'W TO POB LESS ROW

**EXHIBIT C to Development Agreement**

**West Village RHID Ordinance**

[To be attached.]

## EXHIBIT D to Development Agreement

### Grant Agreement

#### GRANT AGREEMENT

**THIS GRANT AGREEMENT ("Agreement")** is made by and between the City of Tonganoxie, ("**Grantee**"), 526 E. 4<sup>th</sup> Street, Tonganoxie, Kansas 66086 and Kansas Housing Resources Corporation, 611 South Kansas Avenue, Suite 300, Topeka, Kansas 66603 ("**KHRC**") this 22nd day of October, 2018.

**WHEREAS**, KHRC is a public corporation that administers Federal and State housing programs, as well as the State Housing Trust Fund ("**SHTF**") which is used for funding housing programs and services.

**WHEREAS**, the Kansas Legislature passed and the Governor signed Senate Substitute for Substitute for HOUSE BILL No. 2231 ("**Bill**") which provided \$2 million for the State Housing Trust Fund ("**SHTF**") to be used for the purpose of loans or grants to cities or counties for infrastructure or housing development in rural areas ("**Eligible Activities**").

**WHEREAS**, utilizing the funds provided under the Bill, KHRC issued a Kansas Moderate Income Housing ("**MIH**") Request for Proposal ("**RFP**") on June 27, 2018.

**WHEREAS**, Grantee requested MIH funds for proposed eligible activities by an application dated September 7, 2018 which is hereby incorporated by reference herein ("**Application**"), and which commitments and representations contained therein expressly remain a continuing obligation and responsibility of Grantee;

**WHEREAS**, KHRC's Loans and Grants Committee approved a grant totaling \$400,000 for Grantee's proposed eligible activities at its October 10, 2018 meeting;

**NOW THEREFORE**, the parties do mutually agree as follows:

1. **Grant Funds.** KHRC hereby grants Grantee up to \$400,000 ("**MIH Funds**") for Eligible Activities.
2. **Use of Grant Funds.** Grantee shall use the MIH Funds solely on the Eligible Activities proposed in Grantee's Application and approved by KHRC, and in accordance with the following allocation:
  - a. Development of a total of 57 units, with 36 units of multi-family rental housing comprised of 1 and 2 bedroom units in walk-up garden style buildings, and 21 single family units, with 1 and 2 bedroom options in a single story villa model.
  - b. Grantee will establish a Rural Housing Incentive District to provide the infrastructure that will support this development.

c. Construction of this development shall begin by April 1, 2019 unless a change is approved by KHRC.

3. **Leverage Commitment.** In addition to the MIH Funds provided by KHRC, Grantee shall provide leveraged funds in accordance with its representations in its Application towards the costs of the Eligible Activities.
4. **Disbursement of Grant Funds.** Grantee commits to use its usual procurement processes for bidding out each portion of the approved Eligible Activities. As development costs are incurred, Grantee may make a lump sum or partial payment request from KHRC, providing documentation of such costs, as well as evidence that the leverage commitment in Grantee's Application is being used in the funded Eligible Activities. Requests for payment shall be accompanied by supporting documentation and made to the attention of Fred Bentley, who may be reached as follows:

Fred Bentley, Director of Rental Development  
E-mail: fbentley@kshousingcorp.org  
Phone: 785-217-2029

KHRC shall have thirty (30) days after receipt of Grantee's payment request to review and respond by written notice to Grantee. If KHRC requires additional documentation prior to disbursement of MIH Funds, KHRC shall notify Grantee in writing of the specific additional documentation required within such thirty (30) day period and KHRC shall have fifteen (15) days after receipt of the additional documentation to review and approve Grantee's payment request. Approval of any payment request will not be unreasonably withheld, conditioned or delayed.

5. **Compliance with Regulations.** Grantee shall ensure compliance with all MIH rules and restrictions, as stated in the Bill and the MIH RFP, as well as other governing laws, **including the accessibility requirements of KSA 58-1401 et seq.**, when applicable, and the 2012 International Energy Conservation Code. If Grantee is using the MIH Funds for single family housing development or assistance, Grantee shall also enact and monitor a recapture provision as explained in the RFP. Prior to making any modifications to the approved Eligible Activities from Grantee's funding Application, Grantee commits to obtain written approval from KHRC, which approval will not be unreasonably withheld, conditioned or delayed.
6. **Program Income.** Grantee commits to use any income derived from or generated by the approved Eligible Activities, regardless of when the income is received, solely for housing purposes in accordance with the RFP.
7. **Reporting.** Beginning with the first business day of the month following the award to Grantee and each month thereafter, Grantee shall submit in writing

monthly status reports to KHRC until the entire development is completed and all MIH Funds have been expended. The status report should detail the use of MIH Funds to date, along with a self-assessment comparing that use with Grantee's proposed use from its original Application to KHRC. The status report should include an evaluation of the housing activities to date as well as the status of construction and the nature and reasons for any changes in the activities. A monthly status report should be filed even if there has been no progress or activity from the previous month.

Within sixty (60) days following completion of the development and expenditure of all MIH Funds, a final accounting shall be submitted to KHRC on its forms, which shall include the use of any income generated from the housing activities.

8. **Compliance Monitoring.** When MIH Funds are used in the development of rental housing, either directly or indirectly, it shall be required that tenants be initially qualified with gross incomes within the established MIH ranges as outlined in the RFP. Generally, the housing tax credit qualification procedures will be used to certify tenants and verify incomes but will use the higher MIH ranges identified in the RFP. Tenants need not be recertified once they are initially qualified. This process will be used for the first five (5) years following completion of the development whenever a new tenant enters the property. At the end of the fifth (5<sup>th</sup>) year, there shall be no further qualification procedures.

When MIH funding is used for home ownership opportunities, either directly or indirectly, an initial certification using the housing tax credit procedures will be required when the home is purchased. There will be no certification required for subsequent purchasers of the home when the first purchaser was qualified under the MIH guidelines. However, KHRC will require that Grantee record a deed restriction on the property limiting the profit that can be achieved whenever such home is sold within a ten (10) year period of its initial occupancy. The restriction shall require a declining refund of any profit payable to Grantee in increments of ten percent (10%) annually. If a home is sold within one year of its initial occupancy, one hundred percent (100%) of the profit earned from such sale shall be paid to Grantee. This percentage shall decline ten percent (10%) each year so that in the tenth (10<sup>th</sup>) year, if the home is sold, ten percent (10%) of the profit shall be returned to Grantee. At the end of the tenth (10<sup>th</sup>) year of occupancy, the deed restriction shall be lifted and there shall be no restriction on the profit achieved by the sale of the home.

9. **Noncompliance.** Noncompliance with the MIH RFP, this Agreement, or other reasonable requirements of KHRC, shall result in penalties including but not limited to recapture of funds and/or loss of eligibility for future funds. Prior to instituting any such penalty, KHRC shall notify Grantee in writing setting forth any compliance issue with specificity and Grantee shall have sixty (60) days to remedy the same; provided, however, that if any compliance issue shall be such

that it cannot be corrected within such period, it shall not constitute an event of noncompliance if corrective action is instituted by Grantee within such period and diligently pursued until the compliance issue is corrected.

**10. Rescission/Unavailability of Funds.** Grantee understands that the MIH RFP and Grantee's award is funded in whole or in part by State of Kansas funds provided through the Bill. In the event the State funds supporting this Agreement become unavailable, are reduced, or rescinded, KHRC may terminate or amend this Agreement without penalty and will not be obligated to pay the Grantee from any other sources, including KHRC, SHTF, or State of Kansas monies.

**11. Miscellaneous.** The descriptive headings of this Agreement are for convenience only and shall not be deemed to affect the meaning of any provision. This Agreement may be modified only by the mutual written agreement of the parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be enforced to the fullest extent permitted by law. The failure of KHRC to exercise any of its rights or responsibilities under the Bill or this Agreement shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect to the same or any other event. This Agreement constitutes the entire agreement of the parties and supersedes all other prior written or oral contracts between the parties with respect to the subject matter hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed by their duly authorized official or officers on the date first indicated.

**CITY OF TONGANOXIE**

By:   
George Brajkovic, City Manager  
Date: 08/06/19

**KANSAS HOUSING RESOURCES CORPORATION**

Name: FRAN VINENI  
Title: Executive Director  
Date: August 13, 2019

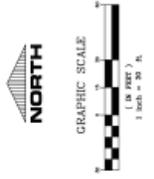


By					
Revisions					
No.	Date	Drawn By	Checked By	Job No.	Date
1	3/7/2020	msc	msc	2450	3/7/2020
2					
3					
4					

**CIVIL ENGINEERS**  
**LAND SURVEYORS - LAND PLANNERS**  
 122 N. WALKER STREET  
 OKLAHOMA CITY, OKLAHOMA 73102  
 PHONE: (405) 241-1000  
 FAX: (405) 241-1001

**WEST VILLAGE**  
**Landscape Plan**

Sheet No.  
 2 of 2



SYMBOL	COMMON NAME	BOTANICAL NAME	QUANTITIES	PLANTING SIZE
	Autumn Blaze Maple	Acer 'Spectol' 'Autumn Blaze'	15	40" J. 20" CALIPER
	Sea Green Juniper	Juniperus 'Sea Green'	15	40" J. 60"
	Gold Flame Ginkgo	Ginkgo biloba 'Gold Flame'	9	40" J. 60"
	Denise Yew	Thuja 'Denise'	40'	40" J. 60"

Substitute plants must be approved by the City prior to installation.

Landscape Plan

## EXHIBIT F to Development Agreement

### Total Project Budget

#### WEST VILLAGE MULTI-FAMILY TOTAL COSTS/RHID ELIGIBLE COST

<u>Land Acquisition</u>					TOTAL COST	RHID ELIGIBLE
DATE	Invoice Number	Vendor	MEMO	Amount		
TBD		Tomica & Ljubinka Cvetkovic	Land Acquisition	\$125,000		
TBD		Centenial Title	Closing Fees	\$1,200		
<b>Total</b>					<b>\$126,200</b>	<b>\$126,200</b>
<u>Site Work</u>						
DATE	Invoice Number	Vendor	MEMO	Amount		
TBD		AF Van Fleet	Infrastructure/Site Work	\$915,000		\$915,000
TBD		AF Van Fleet	Ingress/Egress Upgrades (road/bridge)	\$390,000		\$390,000
TBD		Various Providers/TBD	Monument Signs/Landscape/Fencing	\$57,000		
<b>Total</b>					<b>\$1,362,000</b>	<b>\$1,305,000</b>
<u>Vertical Construction</u>						
DATE	Invoice Number	Vendor	MEMO	Amount		
TBD		Creative Associates	Vertical 21 Senior Units	\$2,100,000		
TBD		Creative Associates	Vertical 36 Unit Multi-family	\$2,700,000		
<b>Total</b>					<b>\$4,800,000</b>	
<u>Engineer Design ** Included in Site Work</u>						
DATE	Invoice Number	Vendor	MEMO	Amount		
TBD		Allenbrand-Drews/Stormwater Engineer	Engineering	\$135,000		\$135,000
<b>Total</b>					<b>\$135,000</b>	<b>\$135,000</b>
<u>Architecture Design</u>						
DATE	Invoice Number	Vendor	MEMO	Amount		
TBD		BC Engineering	Architect	\$35,000		
<b>Total</b>					<b>\$35,000</b>	
<u>Development / Legal /Accounting/Brokerage/ Insurance/Project Management/Permits</u>						
DATE	Invoice Number	Vendor	MEMO	Amount		
TBD		Thad Batson	Legal	\$3,500		
TBD		City of Tonganoxie/Stinson Law Firm	Legal	\$7,000		
TBD		House, Park, Dobratz	Project Accounting	\$3,000		
TBD		Complete/Various Local Brokerage	RE Brokerage	\$0		
TBD		Penn Lumbermans	Insurance	\$75,000		
TBD		Heartland Housing	Project Dev/Management	\$85,000		
TBD		City of Tonganoxie	Building Permits - Tap Fees	\$80,000		
<b>Total</b>					<b>\$253,500</b>	
<u>Infrastructure Construction Finance/Long Term RHID Finance</u>						
DATE	Invoice Number	Vendor	MEMO	Amount		
TBD		Equity/Bank Debt	Infrastructure Construction Finance & Fees 5%/1 Year/\$1.65 + Fees	\$90,000		\$90,000
TBD		Equity/Bank Debt	Construction Interest 5%/1 Year/\$5.25M + Fees	\$275,000		
TBD		Equity/Bank Debt	Long Term RHID Finance 4.5%/15 Years/\$1.65M	\$622,000		
<b>Total</b>					<b>\$275,000</b>	<b>\$90,000</b>
<b>Sub Total</b>					<b>\$6,986,700</b>	<b>\$1,656,200</b>
<b>10% Contingency*</b>					<b>\$698,670</b>	<b>\$165,620</b>
<b>Grand Total</b>					<b>\$7,685,370</b>	<b>\$1,821,820</b>

**EXHIBIT G to Development Agreement**

**Form of Certificate of Expenditures**

---

**CERTIFICATE OF EXPENDITURES**

TO: City of Tonganoxie, Kansas

Attention: City Manager

Re: WEST VILLAGE

*Terms not otherwise defined herein shall have the meaning ascribed to such terms in the West Village Development Agreement dated as of May 18, 2020 (the "Agreement") between the City and Developer.*

In connection with the Agreement, the undersigned hereby states and certifies that, to the best of its actual knowledge:

1. Each item listed on *Schedule 1* hereto is an Infrastructure Cost and was incurred in connection with the construction of the Project.

2. These Infrastructure Costs have been paid by the Developer, successors, assigns, tenants, or transferees and are reimbursable under the Agreement.

3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the West Village RHID Fund and no part thereof has been included in any other certificate previously filed with the City.

4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.

5. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.

6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.

7. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a default under the Agreement.

8. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**WC DEVELOPMENT LLC**, a Kansas limited liability company

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

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

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

Approved for Payment this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_:

**CITY OF TONGANOXIE, KANSAS**

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

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

SCHEDULE I  
TO  
CERTIFICATE OF EXPENDITURES

<u>Description of Infrastructure Costs</u>	<u>Cost</u>	<u>Payee</u>	Designate as RHID Infrastructure <u>Costs</u>
--	-------------	--------------	---

Total Costs:

## **EXHIBIT H to Development Agreement**

### **Insurance Specifications**

1. Worker's Compensation. Developer may self-insure, to the extent allowed by applicable law. The self-insured retention shall be that which is standard in the industry. Developer will then purchase excess Worker's Compensation Insurance with statutory limits over the self-insured retention. If self-insurance is not available under applicable state law, coverage will be purchased in accordance with the statutory requirements.
2. Comprehensive General Liability. Developer will purchase and maintain with primary limits of \$3,000,000.
3. Automobile Liability. Developer will purchase and maintain with primary limits of \$1,000,000.
4. Excess Liability. Developer will purchase and maintain excess liability insurance in an amount not less than \$5,000,000.
5. Special Perils Form Property Insurance. Developer will purchase on a replacement cost basis. Deductibles and limits will be standard to those in the industry, and the policy shall include an "Agreed Amount" endorsement. Earthquake and flood insurance, as well as fired vessel, boiler and machinery, and underground collapse, may be required by the City as additional perils, but only to the extent required by Developer's lender for the Project.

# Public Hearing for West Village RHID



MAY 18, 2020

CITY COUNCIL MEETING



# What we are here for tonight?



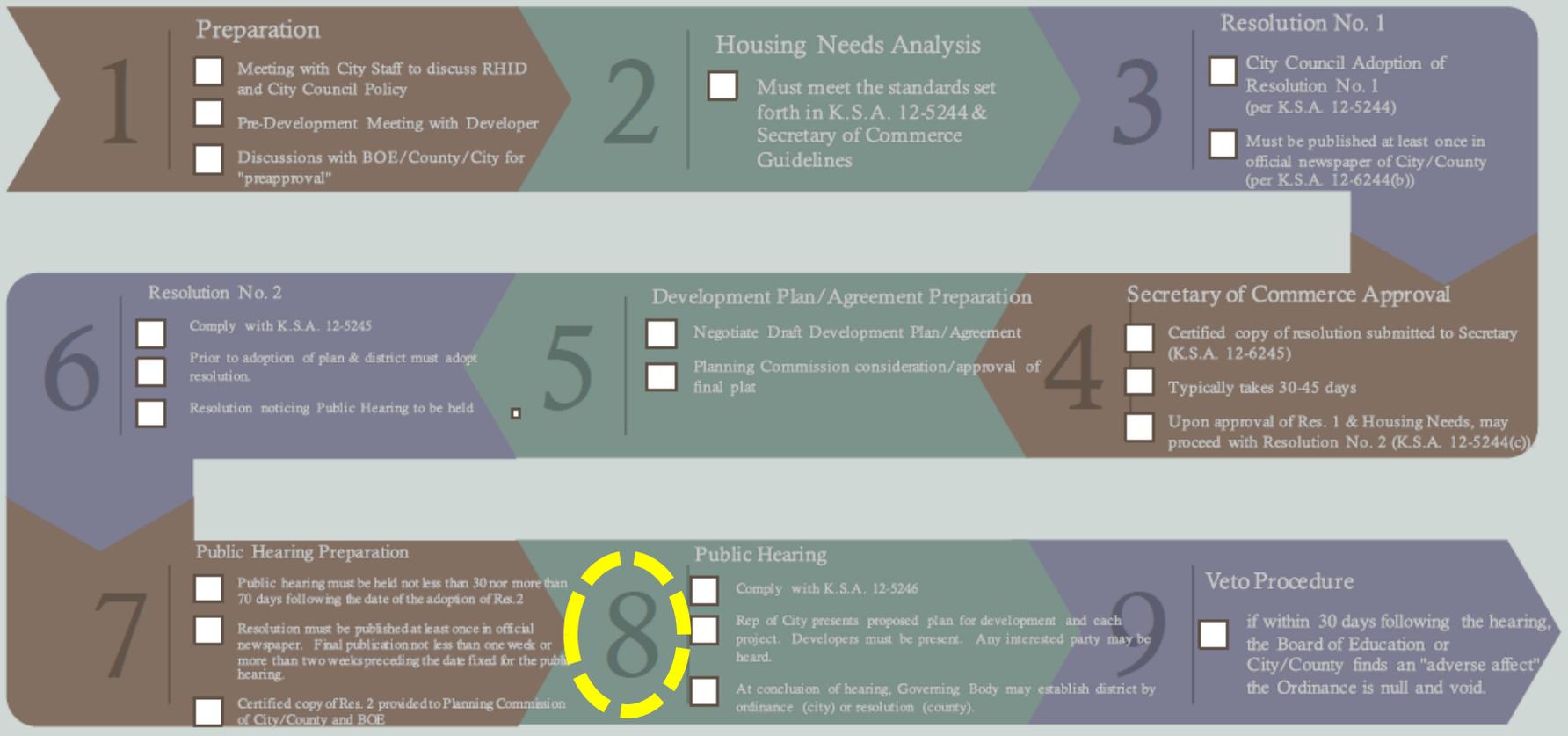
- Conduct a Public Hearing to consider the Development Plan for the West Village Rural Housing Incentive District (“RHID”)
- Pass Ordinance 1485 to establish the West Village RHID and adopt the Development Plan

# Previous RHID actions

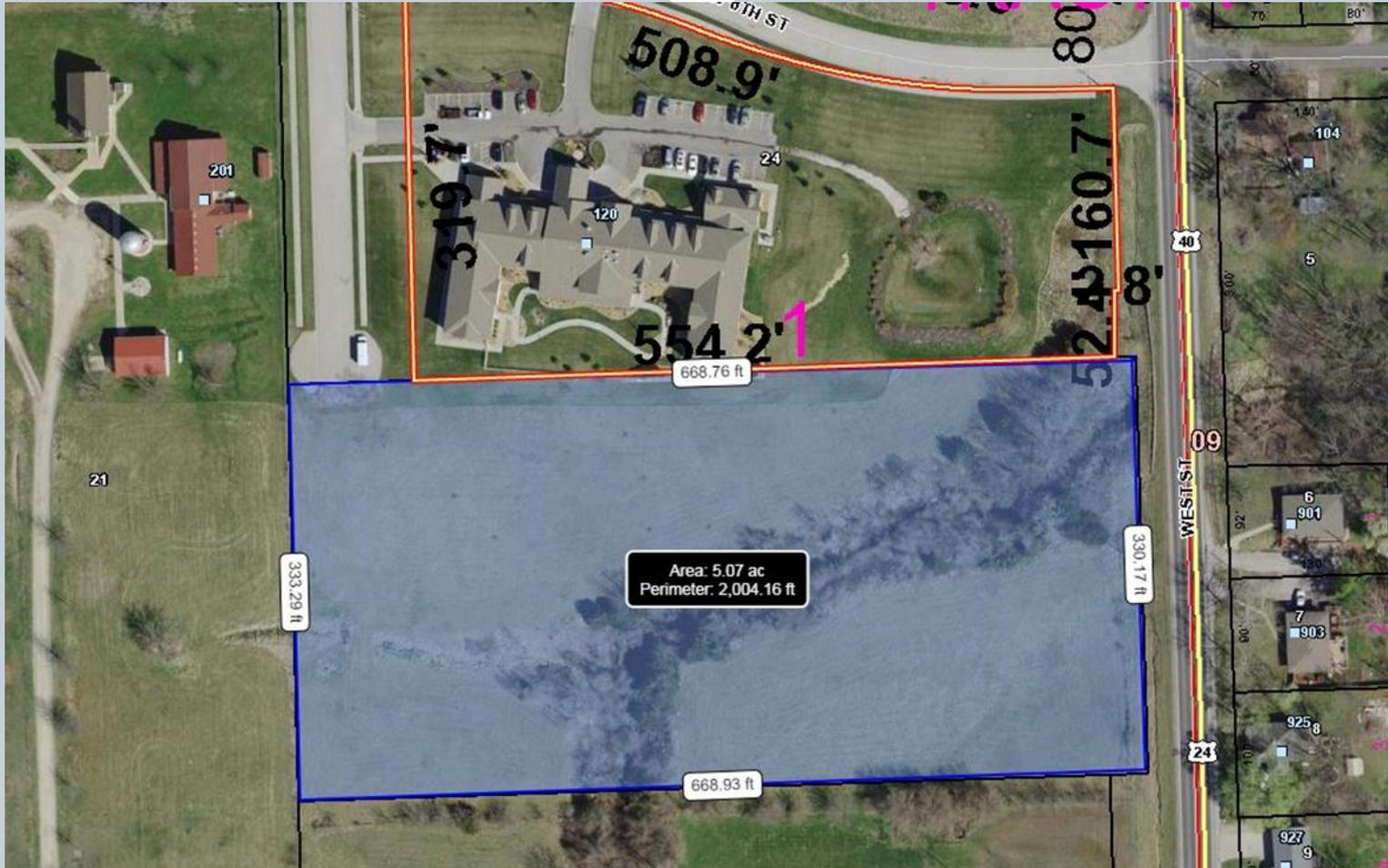


- May 1, 2017 – City Council considered RHID overview, draft Housing Needs Analysis
- June 5, 2017 – Resolution 06-17-01 adopted Housing Needs Analysis and established RHID Districts
- June 9, 2017 – Housing Needs Analysis approved by Kansas Secretary of Commerce
- April 2019 – present: staff work with Developer on Planning & Zoning, neighborhood meetings, KDOT issues, and Development Agreement negotiations
- February 3, 2020 – Resolution 02-20-01 set Public Hearing on Development Plan for March 16, 2020
- March 16, 2020 – due to COVID-19 concerns, Public Hearing continued to April 6, 2020
- April 6, 2020 – due to COVID-19 concerns, Public Hearing continued to May 18, 2020

# RHID process



# RHID site





# Development Plan details



- **57 units**
  - 36 units comprised of one and two bedroom units in one walk-up garden style apartment building
  - 21 single family units comprised of one and two bedroom units in five single story villa buildings
- **ADA accessible units; aging in place**
- **Extensive landscaping**
- **Maintenance free – all maintenance provided by owner, including landscaping, exterior and interior**

# Apartment Building



# Villas



# Capital investment details



- Approximately \$7.7M capital investment
- Moderate Income Housing (“MIH”) Grant from Kansas Housing Resources Corporation (“KHRC”), amount of \$400k
- RHID increment generated from project, Cap amount of \$1.675M
- Public Incentives approximately 27% of total investment

# Moderate Income Housing Grant



- August 6, 2018 – Resolution 08-18-03 authorized City submittal to the RFP for MIH grant funds
- October 22, 2018 –letter from KHRC awarding \$400k grant
- 4 distributions of \$100k, City is conduit for KHRC funds
  - Project commencement – all approvals and permits
  - Infrastructure completion
  - Certificate of Occupancy issued for first building
  - Completion date

# RHID



- Incentive structured for 20 years, Cap amount of \$1.675M
- Years 1-13, 100% of increment to eligible RHID costs
- Year 14, 90% of increment to Project
- Year 15, 80% to project
- Year 16, 70% to project
- Year 17, 60% to project
- Year 18, 50% to project
- Year 19, 40% to project
- Year 20, 30% to project
- Incentive ends at Cap amount or at 20 years

# Incremental Tax value generated



- Current Appraised Value - \$480
- Current Annual Property Tax – approximately \$20
- Projected Value of project - \$5M
- Projected Annual Property Tax - \$81,324
- Projected Tax Increment - \$81,303

# What we are here for tonight?



- Conduct a Public Hearing to consider the Development Plan for the West Village RHID
- Pass Ordinance 1485 establishing the West Village RHID and adopting the Development Plan

# Tonganoxie Water Park FY 2020 Season discussion



TONGANOXIE CITY COUNCIL MEETING

MAY 18, 2020



# Outline



- Public health restrictions & guidelines
- Announced closures of other facilities
- Legal concerns with residency limitation
- Insurance coverage
- Financial impact & scenarios
- Preparations to date and operational considerations
- Recommendation

# Kansas Recreation & Parks Guidance



**Kansas Recreation and Park Association** Task Force Recovery Plan – Revised May 4, 2020

	<b>OUTDOOR SWIMMING POOLS</b>
<b>STAY AT HOME ORDERS</b>	Closed
<b>PHASE 1</b>	Closed
<b>PHASE 2</b>	Open with social distancing measures in place, follow CDC guidelines for water sanitation, follow CDC guidelines for cleaning.
<b>PHASE 3</b>	Open with social distancing measures in place, follow CDC guidelines for water sanitation, follow CDC guidelines for cleaning.
<b>PHASE OUT</b>	Open at full capacity.

# Governor Kelly's Ad Astra Plan Phase 2



## PHASE TWO

**BEGINS NO EARLIER THAN JUNE 1, 2020**

At a date determined by the Governor based on the overall progress of the State on outlined health metrics, The Governor will issue an Executive Order to move the State into this phase.



### GATHERINGS

- Mass gatherings of no more than **30** individuals allowed.



### INDIVIDUALS

- Masks are strongly encouraged in public settings.
- Maintain 6 foot social distance.



### EMPLOYERS

- Telework is strongly encouraged when possible.
- Any employee exhibiting symptoms should be required to stay home.



### TRAVEL

- Minimize or avoid nonessential travel.
- Follow KDHE travel and quarantine guidelines for travel to high-risk areas.

### ✗ ACTIVITIES NOT ALLOWED TO OPEN

- Large entertainment venues with capacity of 2,000+
- Fairs, festivals, and parades
- Summer camps

### ✓ ESTABLISHMENTS ALLOWED TO OPEN

- Bars and nightclubs at 50% total occupancy
- Casinos (non-tribal) if compliant with guidelines approved by the KDHE.
- Indoor leisure spaces

### ✓ EDUCATION, ACTIVITIES, & VENUES ALLOWED TO OPERATE

- Childcare facilities
- Libraries
- Swimming pools
- Community centers
- Organized sports facilities, tournaments, and practices with some exceptions

# Governor Kelly's Ad Astra Plan Phase 3



## PHASE THREE

### BEGINS NO EARLIER THAN JUNE 15, 2020

At a date determined by the Governor based on the overall progress of the State on outlined health metrics. The Governor will issue an Executive Order to move the State into this phase.



#### GATHERINGS

- Mass gatherings of no more than **90** individuals allowed.



#### INDIVIDUALS

- Adhere to personal hygiene guidelines.
- Remain home if you feel sick.



#### EMPLOYERS

- On-site staffing is unrestricted.



#### TRAVEL

- Nonessential travel may resume.

#### BUSINESS AND ACTIVITY RESTRICTIONS

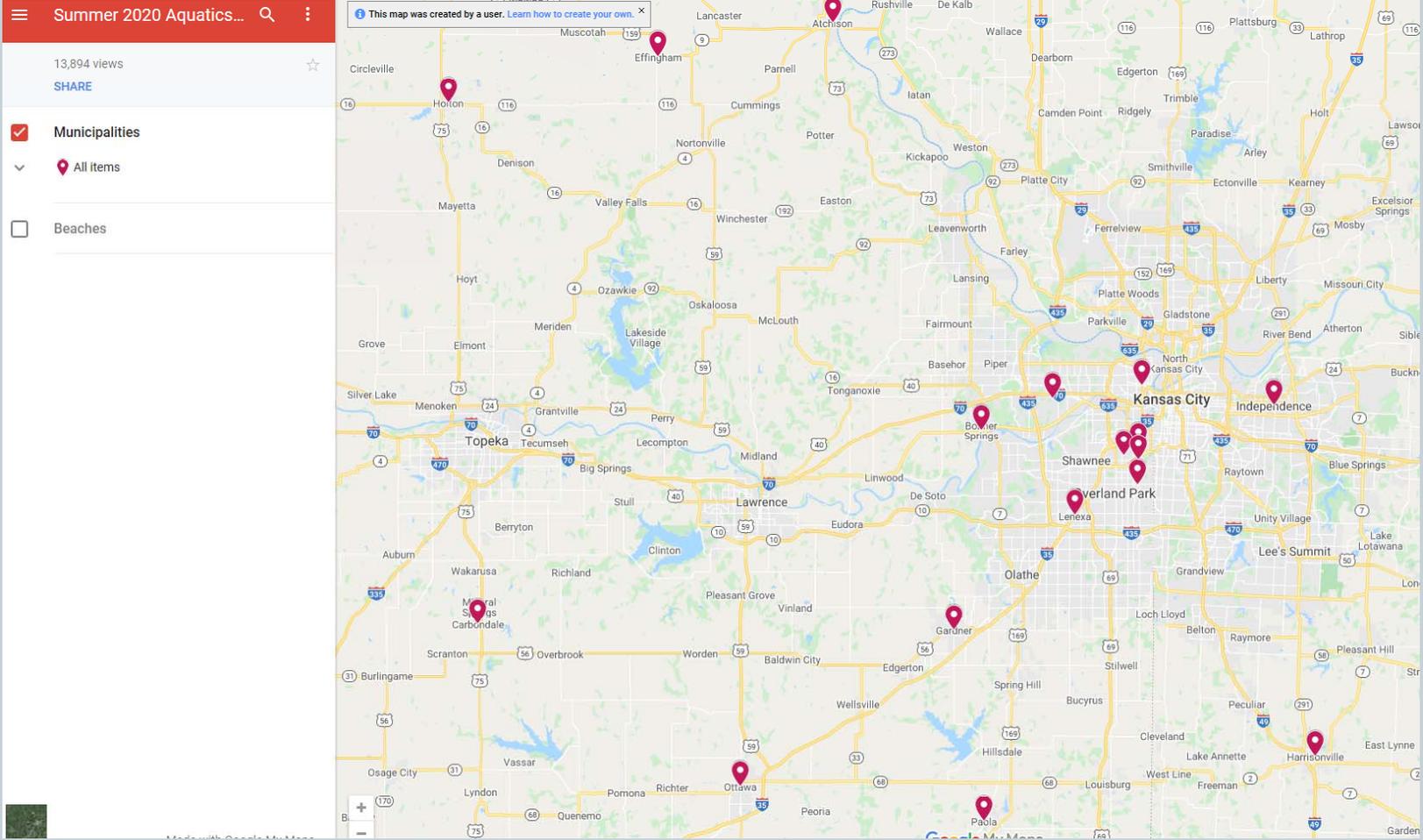
All education, activities, venues and establishments may operate pursuant to mass gathering guidelines.

# CDC Recommendations for Aquatic Centers



- <https://www.cdc.gov/coronavirus/2019-ncov/community/parks-rec/aquatic-venues.html>
- **Key Points**
  - Screen patrons prior to entrance into facility ( for symptoms & ability to comply with instructions)
  - Maintain 6 foot social distancing in and out of the pool except for saves by guards
  - Wear masks while out of the pool
  - Don't assign guards to ensure social distancing is adhered to
  - Clean all common areas with approved products
  - Communicate/educate with signage, PA system, and physical barriers/markers

# Announced Closures



# Announced Closures & Planned Openings



- **KACM list serve survey 05/07/20**
  - 36 KS respondents – 9 closed for season, 9 planning to open June 1, 18 not opening until June 15 if at all.
  - June 1<sup>st</sup> – Chapman, Goddard, Colby (if Governor's Plan allows), Kinsley, Eureka, Oskaloosa\*
  - Mid-June or later (if at all) – Augusta, Harper, Caldwell, Wamego, Kiowa, Seneca, Marysville
- **Tongie Tidal Waves –**
  - 2020 League season cancelled

# Limited Access opening – Legal Concerns



- Opening for only City residents consideration
- LKM – constitutionality issues
  - Privileges and Immunities (U.S. Constitution, Article IV, Section 2, Clause 1) – prevents States from discriminating against non-Citizens
  - Equal Protection (14<sup>th</sup> Amendment and in the Kansas Bill of Rights)– life, liberty, and pursuit of happiness

# Insurance Coverage



- **City's Property & Liability Insurance**
  - Required to follow the state plan, CDC recommendations and KPRA guidelines for opening aquatic centers in order to avoid exclusion of any claim from the City's coverage

# “Normal Season” Financial Assumptions



- The City General Fund budgets approximately \$140,000 in expenditures and \$121,000 in revenue for water park operations in 2020. Net annual loss of \$19,000 predicted.
  - ✦ 4% of 2020 General Fund Revenue
  - ✦ 4.5% of 2020 General Fund Expenditures
  
- Water Usage – Used for filling and cleaning the facility
  - ✦ Average approximately 1.5 million gallons of water used per year
  
- Changing these outcomes impacts the year end fund balance in the City’s General Fund and Water Operations Fund.

# “Normal Season” Financial Assumptions



## ○ General Fund Expenditures

Expense Category	2019 Costs	2020 Budget	% of WP Budget
Salaries and Benefits	84,338	85,531	61%
Utility Costs	12,335	13,500	10%
Other Contractual Costs	4,401	5,600	4%
Insurance Premiums	9,913	10,250	7%
Concessions Supplies	6,653	6,700	5%
Chemicals	10,722	10,200	7%
Other Supplies, Uniforms & Equipment	9,671	8,700	6%
<b>Total</b>	<b>138,033</b>	<b>140,481</b>	

## ○ Revenue

Revenue Category	2019 Revenue	2020 Budget	% of WP Budget
Admissions	73,763	80,000	66%
Concessions	23,243	21,000	17%
Rentals	9,820	7,000	6%
Lessons	13,301	13,000	11%
<b>Total</b>	<b>120,127</b>	<b>121,000</b>	

# “Normal Season” Financial Assumptions

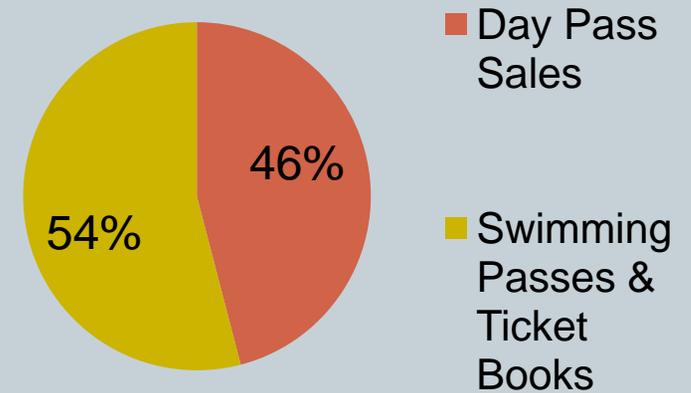
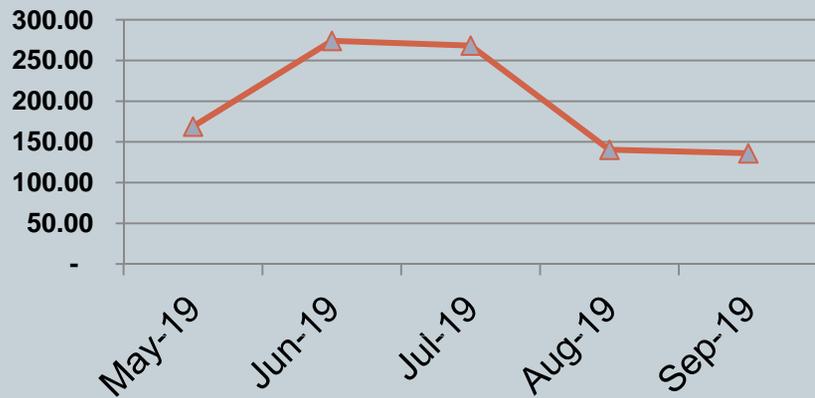


- Admissions Revenue Breakout – 66% of total revenue

Revenue Category	2019 Number Sold	2019 Revenue	% of WP Budget
Admissions – Day Passes	9,109	\$32,607	44%
Admissions – Season Passes	300	\$38,027	52%
Admissions – Ticket Books	73	\$2,718	4%
<b>Total</b>	<b>9,482</b>	<b>\$73,352</b>	

## 2019 Swimming Attendance Breakdown

### Avg Daily Swimming Attendance



# Financial Scenarios – Water Park

- Impact of adjusting the Water Park season & capacity restrictions...
  - Scenario 1 – Not opening the facility in 2020 would result in no revenue and ~\$20,000 in obligatory expenditures
    - ✦ Property insurance premiums, technology licensing, minimal utilities, minimal maintenance repairs
  - Scenario 2 – Worst Case – Open June 15 for 2 weeks of limited operations
  - Scenario 3 – Best Case – Open June 15 for 2 weeks of limited operations, remain open for 45 days with high avg daily attendance, no season passes offered

Scenario	Revenue	Expenditures	Gain/Loss
2020 Budget	121,000	140,481	(19,481)
Scenario 1 - Close for Entire Season	-	20,374	(20,374)
Scenario 2 - Worst Case - 15 days with limitations then closure	15,239	54,404	(39,165)
Scenario 3 - Best Case - 15 days with limitations and 45 days of high attendance	77,252	102,354	(25,101)

Assumptions

# Financial Scenarios – Water Park



- Assumptions include doing rentals, lessons, and concessions discounted to the currently anticipated applicable regulation.
- Assumptions don't include considerations for emergency paid sick leave for all seasonal employees that contract COVID-19, whether or not the disease is contracted on duty. This would impact staffing availability and financial cost of personnel.
- Assumptions outside of scenario 2 do not include consideration of the impact of an exposure and contact tracing by the public or staff (closure, extra cleaning, quarantine period for other staff)

Scenario	Revenue	Expenditures	Gain/Loss
2020 Budget	121,000	140,481	(19,481)
Scenario 1 - Close for Entire Season	-	20,374	(20,374)
Scenario 2 - Worst Case - 15 days with limitations then closure	15,239	54,404	(39,165)
Scenario 3 - Best Case - 15 days with limitations and 45 days of high attendance	77,252	102,354	(25,101)

# Preparations to Date in 2020



- Recruitment efforts ongoing by Water Park Manager & City staff
  - Remote interviews and pending job offers
- Public Works staff readying the Water Park facility
- Reviewing procedures necessary to complete lifeguard and staff training
- Reviewing cleaning requirements and potential costs

# City Manager's Recommendation



- Recommend announcing closure of the facility and programming for the 2020 season.
- Questions? Additional information needed?



Office of the City Manager  
**AGENDA STATEMENT**

**DATE:** May 18, 2020  
**To:** Honorable Mayor David Frese and Members of the City Council  
**FROM:** Dan Porter, Assistant City Manager  
**SUBJECT:** Resolution 05-20-01 Consider Award of Bid to Little Joe's Asphalt, Inc for the 2020 Mill & Overlay Project

**DISCUSSION:**

The 2020 budget adopted by the City Council included a continuation of dedicated funding for street maintenance activities at an enhanced level due to the identification of a clear need for preventative maintenance to improve the lifespan and quality of the City's transportation infrastructure and the presence of a partially dedicated funding source with voter approval of a ¾ cent infrastructure sales tax in February 2017. The Governing Body provided policy direction to move forward with targeted street maintenance treatments on locations identified throughout the City. The 2020 Mill & Overlay project reflects the largest street maintenance effort planned in 2020 and the most significant portion completed as a contracted service. So far in 2020 Public Works staff have begun smaller projects including pot-hole patching, curb repair, and curb replacement.

Advertisement was placed soliciting bids (request for proposals) on the City's website on April 15, 2020 with a due date of May 6, 2020. Staff received eight complete bids for the primary/base component and two add/alternate components identified in the attached bid specifications.

The low-cost bid for both the primary and add/alternate locations was submitted by Little Joe's Asphalt, Inc. for \$283,555.95. City staff reviewed the bid and consider it satisfactory & complete compared to the specifications. Staff recommends award of a contract to complete the services specified for the base bid and add/alternates 1 & 2 to Little Joe's Asphalt, Inc. and request approval of the draft contract included as an attachment.

**BUDGET IMPACT:**

As of April 2020, the City's Special Highway Fund still maintains 99% of the total of \$363,500 allocated in the fiscal year 2020 annual budget expenditure authority. The proposed contract fits within these constraints.

Approximately 33% of anticipated annual revenue for the Special Highway Fund has been collected through April 2020, and the existing fund balance level is sufficient to meet the entirety of the cost of this contract should collections in the remainder of 2020 fail to meet budget expectations.

**ACTION NEEDED:**

Make a motion to accept the bid of Little Joe's Asphalt, Inc. and authorize the contract with Little Joe's Asphalt, Inc. for an amount not to exceed \$283,555.95.

**ATTACHMENTS:**

Bids Tabulation & Summary  
Resolution 05-20-01: Draft Contract for 2020 Mill and Overlay Street Maintenance Project  
Project Specifications

**cc:** George Brajkovic, City Manager  
Kent Heskett, Public Works Director

<b>Firm</b>	<b>Base Unit Price</b>	<b>Add Alternate 1 Unit Price</b>	<b>Add Alternate 2 Unit Price</b>	<b>Total Quote</b>
Little Joes Asphalt, Inc	\$ 7.66	\$ 9.20	\$ 8.42	\$ 283,555.95
Seal-O-Matic	\$ 8.29	\$ 9.22	\$ 9.73	\$ 305,523.26
Bettis	\$ 8.95	\$ 8.85	\$ 9.10	\$ 319,713.65
JM Fahey	\$ 8.99	\$ 11.69	\$ 11.82	\$ 343,381.93
McAnany	\$ 9.75	\$ 10.00	\$ 10.00	\$ 353,034.00
Harbour	\$ 9.50	\$ 11.00	\$ 11.50	\$ 350,074.00
Tenoch	\$ 11.65	\$ 13.30	\$ 13.30	\$ 428,818.10
Sunflower	\$ 13.27	\$ 14.70	\$ 14.52	\$ 483,899.82

NOTE - Prices are represented as price per square yard included in each bid component.

**RESOLUTION NO. 05-20-01**

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THE CONSTRUCTION & TECHNICAL SERVICES AGREEMENT (2020 MILL AND OVERLAY STREET MAINTENANCE PROJECT) BETWEEN THE CITY OF TONGANOXIE, KANSAS AND LITTLE JOE'S ASPHALT, INC.**

**WHEREAS**, Little Joe's Asphalt, Inc., a Kansas corporation ("Contractor"), desires to provide asphalt milling and overlay services for streets in various locations (the "Project"); and

**WHEREAS**, the Project would promote the public good, health, and welfare within the City of Tonganoxie, Kansas (the "City");

**WHEREAS**, the Governing Body has determined that it is advisable to enter into the Construction & Technical Services Agreement (2020 Mill and Overlay Street Maintenance Project), attached hereto as **Exhibit A** (the "Contract"), with Contractor.

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

**Section 1.** That the Governing Body hereby approves the Contract in substantially the form attached hereto.

**Section 2.** That the City Manager is hereby authorized to execute in the name of the City, the Contract, and any other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

**Section 3.** This Resolution shall be effective upon adoption by the Governing Body.

*[Remainder of page intentionally left blank; signature page follows.]*

**ADOPTED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS,  
AND APPROVED BY THE MAYOR ON THIS 18<sup>th</sup> DAY OF MAY 2020.**

**SEAL**

---

David Frese, Mayor

ATTEST:

---

Patricia C. Hagg, City Clerk

**EXHIBIT A**

**Construction & Technical Services Agreement (2020 Mill and Overlay Street  
Maintenance Project)**

[To be attached.]

**CONSTRUCTION & TECHNICAL SERVICES AGREEMENT  
2020 Mill and Overlay Street Maintenance Project**

THIS AGREEMENT is dated this 18<sup>th</sup> day of May, 2020, between the City of Tonganoxie, a constitutionally chartered municipal corporation in the State of Kansas (the "City"), and Little Joe's Asphalt, Inc., a Kansas for Profit Corporation ("Contractor"), whereby Contractor shall provide construction services to the City in accordance with the terms and conditions contained in this Agreement.

**PART I  
SPECIAL TERMS AND CONDITIONS**

**Sec. 1 Compensation.**

- A. The amount the City will pay Contractor under this Agreement will not exceed \$283,555.95. Contractor will be paid by corporate check.
- B. Contractor will bill the City by itemized invoice, in a form acceptable to the City, upon completion of work as certified by the Public Works Director.
- C. It shall be a condition precedent to payment of any invoice from Contractor that Contractor is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Agreement. If damages are sustained by the City as a result of breach or default by Contractor, the City may withhold payment(s) to Contractor for the purpose of set off until such time as the exact amount of damages due the City from Contractor may be determined.
- D. No request for payment will be processed unless the request is in proper form, correctly computed, completely itemized, and is approved as payable under the terms of this Agreement.
- E. The City is not liable for any obligation incurred by this Agreement except as approved under the provisions of this Agreement.

**Sec. 2 Responsibilities of Contractor.** Contractor shall perform the following Scope of Services:

- A. Provide specialized and technical work as further described in **Attachment A** attached hereto.
- B. Use reasonable construction practices of modern industry standards as to ensure reasonable quality, functionality, and durability of final product.
- C. Comply with direction and coordination of the Public Works Director.
- D. Ensure that Contractor is sufficiently certified, equipped, and staffed to fully satisfy Contractor's responsibilities under the terms of this Agreement.

**Sec. 3 Notices.** All notices required by the Agreement shall be in writing sent by regular U.S. mail, postage prepaid or commercial overnight courier to the following:

**To City:**

City Manager  
City of Tonganoxie  
P.O. Box 326  
Tonganoxie, Kansas 66086  
Phone: (913) 845-2620      Facsimile: (913) 845-9760

**To Contractor:**

Theresa Buehler, President  
Little Joe's Asphalt, Inc.  
Box 516, 134 North 130<sup>th</sup> St  
Bonner Springs, KS 66012  
Phone: (913) 721-3261                      Facsimile: (913) 721-3144

All notices are effective on the date mailed or deposited with courier.

**Sec. 4 Merger.** This Agreement consists of Part I, Special Terms and Conditions and any Attachments and any documents incorporated by reference; and Part II, Standard Terms and Conditions. This Agreement, including any Attachments and incorporated documents, constitutes the entire agreement between the City and Contractor with respect to this subject matter.

**Sec. 5 Conflict between Contract Parts.** In the event of any conflict or ambiguity between the Special Terms and Conditions of Part I and the Standard Terms and Conditions of Part II of this Agreement, Part I will be controlling.

**Sec. 6 Term of Agreement.** This Agreement shall begin on May 18, 2020, and shall end on July 31, 2020. The term of this Agreement may be extended up to an additional 2 months upon the prior written approval by the City.

**Sec. 7 Responsibilities of City.**

- A. The City will provide sufficient and clear direction to Contractor for the adequate fulfillment of the scope of services under the terms of this Agreement.
- B. The City will provide prompt payment to Contractor, upon receipt of acceptable documentation and approval by the City Council, provided that Contractor has performed all work in a timely manner to the satisfaction of the Public Works Director.

**Sec. 8 Subcontracting.** Contractor must provide in writing to the City the name of any and all subcontracted companies and independent contractors that will perform work on behalf of Contractor under the terms of this Agreement.

**Sec. 9 Incorporation of Federal/State Laws and Regulation.** Contractor shall administer and use the funds provided hereunder in conformance with all federal/state laws and regulations applicable to the use of those funds. The federal/state laws and regulations applicable to the use of funds provided under this Agreement are incorporated and made a part of this Agreement by reference. Contractor agrees that it is its responsibility to obtain and familiarize itself with those laws and regulations. All laws and regulations incorporated into this Agreement shall include all subsequent amendments.

**Sec. 10 Attorney Services Certification.** Contractor certifies that at the time of the issuance of this Agreement, either in an individual or firm capacity, Contractor does not represent any part in litigation against the City, exclusive of representation in municipal court, exclusive of those attorneys employed by a not-for-profit legal services corporation and exclusive of where the City is named as a nominal part, where the litigation has been filed with the agreement of the City and the party represented by the attorney, or where the council has otherwise waived this requirement.

**PART II**  
**STANDARD TERMS AND CONDITIONS**

**Sec. 1. Indemnification.**

- A. For purposes of this Part II, Section 1, the following terms shall have the meanings listed:
1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.
  2. **Contractor's Agents** means Contractor's officers, employees, sub-consultants, subcontractors, successors, assigns, invitees, and other agents.
  3. **City** means City of Tonganoxie and its agents, officials, officers and employees.
- B. Contractor's obligations Part II, Section 1 with respect to indemnification for acts or omissions, including negligence, of the City, shall be limited to the coverage and limits of insurance that Contractor is required to procure and maintain under this Agreement. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this Agreement in its contract price.
- C. Contractor shall defend, indemnify and hold harmless the City from and against all claims arising out of or resulting from all acts or omissions in connection with this Agreement caused in whole or in part by Contractor or Contractor's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of the City. Contractor is not obligated under this Part II, Section 1 to indemnify the City for the sole negligence of the City.
- D. Nothing in this Part II, Section 1 shall apply to indemnification for professional negligence which is specified in a separate provision of this Agreement.

**Sec. 2. Independent Contractor.** Contractor is an independent contractor and is not the City's agent. Contractor has no authority to take any action or execute any documents on behalf of the City.

**Sec. 3. Insurance.**

- A. Contractor shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, Contractor shall supply such insurance at the City's cost. Policies containing a Self-Insured Retention are unacceptable to the City.
1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
    - (a) Severability of Interests Coverage applying to Additional Insureds
    - (b) Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$1,000,000
    - (c) No Contractual Liability Limitation Endorsement
    - (d) Additional Insured Endorsement, ISO form CG20 10, or its equivalent.
  2. If applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with limits of:  
  
Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:  
\$500,000 disease-policy limit  
\$100,000 disease-each employee

3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an “any auto” basis and written on an “occurrence” basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by Contractor.
  4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
- B. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to the City, ten (10) days in the event of nonpayment of premium. The Commercial General Liability Insurance and Automobile Liability Insurance specified above shall provide that the City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Agreement (with respect to liability only in the amount of \$500,000.00). Such insurance shall be written on an OCCURRENCE basis, and shall be PRIMARY and NON-CONTRIBUTORY. Contractor agrees to indemnify the City if, by providing coverage in excess of the \$500,000.00, Contractor causes the City to suffer a loss through a waiver of its Kansas Tort Claims Act cap on liability. Contractor shall provide to the City at execution of this Agreement a certificate of insurance showing all required endorsements and additional insureds.
- C. All insurance coverage must be written by companies that have an A.M. Best’s rating of “B+V” or better, and are licensed or approved by the State of Kansas to do business in Kansas.
- D. Regardless of any approval by the City, it is the responsibility of Contractor to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Contractor’s failure to maintain the required insurance in effect, the City may order Contractor to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

**Sec. 4. Governing Law.** This Agreement shall be construed and governed in accordance with the law of the State of Kansas. The parties submit to the jurisdiction of the courts of the State of Kansas and waive venue.

**Sec. 5. Compliance with Laws.** Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement.

**Sec. 6. Default and Remedies.** If Contractor shall be in default or breach of any provision of this Agreement, the City may terminate this Agreement, suspend the City’s performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor notice and opportunity to correct such default or breach.

**Sec. 7. Waiver.** Waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of same to be performed by Contractor to which the same may apply and, until complete performance by Contractor of the term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

**Sec. 8. Modification.** Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except in writing signed by the City.

**Sec. 9. Headings; Construction of Contract.** The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

**Sec. 10. Severability of Provisions.** Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

**Sec. 11. Audit.**

- A. The City Manager or designee shall have the right to audit this Agreement and all books, documents and records relating thereto.
- B. Contractor shall maintain all its books, documents and records relating to this Agreement during the contract period and for three (3) years after the date of final payment.
- C. The books, documents and records of Contractor in connection with this Agreement shall be made available to the City Manager or designee within ten (10) days after the written request is made.

**Sec. 12. Tax Compliance.** Contractor shall provide proof of compliance with the City's tax ordinances administered by the City Manager as a precondition to the City making the first payment under this Agreement or any renewal hereto when the total contract amount exceeds \$10,000. If Contractor performs work on a contract that is for a term longer than one (1) year, the Contractor also shall submit to the City proof of compliance with the City's tax ordinances administered by the City Manager as a condition precedent to the City making final payment under the contract.

**Sec. 13. Assignability or Subcontracting.** Contractor shall not subcontract, assign or transfer any part or all of Contractor's obligations or interests under this Agreement without the City's prior approval. If Contractor shall subcontract, assign, or transfer any part of Contractor's interests or obligations under this Agreement without the prior approval of the City, it shall constitute a material breach of this Agreement.

**Sec. 14. Conflicts of Interest.** Contractor certifies that no officer or employee of the City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of the City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Contractor in this Agreement.

**Sec. 15. Nondiscrimination.**

- A. Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, national origin, ancestry or age;

- B. In all solicitations or advertisements for employees, Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (the "Commission");
- C. If Contractor fails to comply with the manner in which Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
- D. If Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City; and
- E. Contractor shall include the provisions of this Part II, Section 15.A through D above in every contract, subcontract or purchase order so that such provisions will be binding upon such contractor, subcontractor or vendor.

**Sec. 16. Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. §§ 10-1100 *et seq.*), the Budget Law (K.S.A. § 79-2935 *et seq.*), and other laws of the State of Kansas. This Agreement shall be construed and interpreted in such a manner as to ensure that the City shall at all times remain in conformity with such laws.

**THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS**

*[Remainder of page intentionally left blank; signature pages follow.]*

IN WITNESS WHEREOF, Contractor and the City have caused this Agreement to be duly executed as set forth below.

**Contractor**

I hereby certify that I have authority to execute this document on behalf of **Little Joe's Asphalt, Inc.**, a Kansas corporation.

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

Printed: \_\_\_\_\_

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

IN WITNESS WHEREOF, Contractor and the City have caused this Agreement to be duly executed as set forth below.

**City of Tonganoxie, Kansas,**  
a constitutionally chartered municipal corporation

By: \_\_\_\_\_  
George Brajkovic, City Manager

Approved as to form:

\_\_\_\_\_  
Anna M. Krstulic, City Attorney

## **Attachment A**

### **Scope of Work**

**Sec.1** Contractor will purchase all associated materials that are necessary for complete performance under the terms of this Agreement.

**Sec.2** Contractor will mill and overlay streets within the city limits of Tonganoxie, in the following quantities and locations:

#### **Primary Work**

1. **Asphalt Milling-** Total asphalt milling is approximately 470 sq. yds. (Located at 5<sup>th</sup> Street and Church Street, 162' x 26', south of 5<sup>th</sup> Street)
2. **Asphalt Milling-** As needed for headers joining existing asphalt.
  - a. Milling the streets to create a uniform profile of 1/4 - 1/2 inch of fall will be permitted.
3. **Asphalt Overlay** – Approximately 27,338 sq. yds. with a minimum 2 inch overlay.
  - a. Overlay shall maintain a minimum 1/4 - 1/2 inch per foot fall to the curb line.
  - b. All drainage across intersections shall be maintained or improved.

Asphalt millings shall be hauled by the City and become city property.  
Sweeping will be the responsibility of Contractor.

#### **Location of Work**

1. Church Street from Washington Street to 5th Street - OVERLAY
2. 500 block of Delaware Street - OVERLAY
3. 6th Street from 24/40 east to Delaware Street - OVERLAY
4. Bury Street from 5th Street south 601 ft. - OVERLAY
5. Green Street from 5th Street south 593 ft. - OVERLAY
6. Shawnee Street from 5th Street south 162 ft. - MILL
7. Shawnee Street from 5th Street south to 8th Street - OVERLAY
8. 700 block of Green Street - OVERLAY (overlay will cover concrete curb to the upslope of the curb)
9. 7th Street Terrace from Green Street east to cul-de-sac - OVERLAY (overlay will cover concrete curb to the upslope of the curb)
10. 7th Street Terrace cul-de-sac - OVERLAY (overlay will cover concrete curb to the upslope of the curb)
11. 7th Street From Shawnee Street east 145 ft. - OVERLAY (overlay will cover concrete curb to the upslope of the curb)
12. 8th Street from 24/40 east 1420 ft. - OVERLAY
13. 7th Street from 24/40 east to Shawnee Street - OVERLAY
14. Ann Street from Church Street west to Somers Street then south to Grace Street - OVERLAY
15. Grace Street from 24/40 east to dead end 900 ft. - OVERLAY

Total Confirmed Measurement for Base Bid – 27,388 square yards

#### **Add/Alternate 1**

4th Street from east city limit, west 1827 ft. – EDGE MILL 7 ft. wide from 1 ½ inch to 0 inch, 2 inch OVERLAY.

Total Confirmed Measurement for Add/Alternate 1 – 4,665 square yards

**Add/Alternate 2**

1. Parallel Road from Tonganoxie Road east to city limit, 1217 ft. - OVERLAY
2. Approach at Hickory Drive and Parallel Road, approximately 180 sq. yds. - 2 inch MILL and OVERLAY.

Total Confirmed Measurement for Add/Alternate 2 – 3,428 square yards

All work will follow the specifications for the 2020 Mill and Overlay Project.

**Application Specifications**

1. SS1H tack oil will be used according to manufacturer specifications. Place tack coat just enough in advance of paving operations to allow the tack to cure before asphalt is placed. No traffic shall be allowed on tacked surfaces.
2. Asphalt shall be SR-12.5 A with a maximum 25% recycle. The use of recycled roofing materials will not be allowed.
3. The mix shall be transported to the jobsite in vehicles cleaned of all foreign material. Contractor shall provide a sufficient number of haul vehicles to ensure an orderly and continuous paving operation. All asphalt shall be delivered to the paver at a temperature between 250 degrees F and 325 degrees F.
4. In laying the mix adjacent to any finished area, it shall be placed sufficiently high so that when compacted, the finished surface will be true and uniform and match existing surface.
5. Compacting equipment shall conform to the requirements of the KDOT standards. Compaction shall begin as soon as the temperature and mix conditions permit without showing or tearing, the asphalt shall be thoroughly and uniformly compacted. The final rolling shall be accomplished with a steel roller.
6. Traffic control will be the responsibility of Contractor and shall conform to the MUTCD.
7. Public notifications informing residents of the work schedule shall be Contractor's responsibility.
8. All permits shall be the responsibility of the contractor to obtain.

**Sec. 3** The total amount of this Agreement includes all labor, equipment, and materials.

**Sec. 4** Contractor commits to performing work and staging equipment, materials, and personnel, under the direction of the Public Works Director, at allowable locations, allowable times, and in such a manner as not to negatively impact normal operations of City staff, automotive traffic, neighboring properties, and other field work.

**Sec. 5** Contractor shall follow guidelines listed in the bid advertisement specifications hereby incorporated and made part of this Agreement.

**Sec. 6** Contractor's quote is hereby incorporated by reference and made part of this Agreement.

# Little Joe's Asphalt, Inc.

P O Box 516  
Bonner Springs, KS 66012

Phone: (913)721-3261  
Fax: (913)721-3144

## A WOMEN'S BUSINESS ENTERPRISE

Estimate #: 17183

<b>Submitted To:</b> City Of Tonganoxie	<b>Date:</b> 5/6/2020
<b>Address:</b> 321 S. Delaware Tonganoxie, KS 66086	<b>Phone:</b> (913)845-2620 <b>Fax:</b> (913)417-7019
<b>Contact:</b> Kent Heskett	<b>Job Name:</b> 2020 Mill & Overlay
	<b>Job Location:</b> Tonganoxie, KS
	<b>Prop. Owned By:</b> City Of Tonganoxie

### Base Bid

1. MILLING - Header mill and 5th and Chuch Milling.	960 SY	\$9.10/SY \$8,736.00
2. 2" SURFACING SR-12.5 25% RAP	27,338 SY	\$7.35/SY \$200,934.30

The total price for the Base Bid items is: \$209,670.30

### Alternate #1 4Th St

3. Asphalt Edge & Header Milling	3,500 SY	\$2.20/SY \$7,700.00
4. 4th St Alternate 2" Surfacing SR-12.5 25% RAP	4,665 Sq. Yards,	\$7.55/SY \$35,220.75

The total price for the Alternate #1 4Th St items is: \$42,920.75

### Alternate #2 Parallel

5. Header and Intersection Milling	290 SY	\$10.25/SY \$2,972.50
6. Parallel Alternate 2" Surfacing SR-12.5 25% RAP	3,428 Sq. Yards,	\$7.55/SY \$25,881.40

The total price for the Alternate #2 Parallel items is: \$28,853.90

### Bond

7. Performance and maintenance bond 0.75% of contract amount -	\$2,111.00
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### Special Notes:

- \* PREVAILING WAGES EXCLUDED
- \* STRIPING EXCLUDED
- \* ALL GRADING EXCLUDED, PRICING AVAILABLE
- ALL TESTING EXCLUDED

<b>ACCEPTED:</b> The above prices, specifications and conditions are satisfactory and are hereby accepted. Buyer _____ Signature _____ Date of Acceptance _____	<b>CONFIRMED:</b> Little Joe's Asphalt, Inc. Authorized Signature  Title <u>Don Bruns, Estimator</u>
---	---

# Tonganoxie Mill and Overlay Project 2020

## Primary Work

- 1) **Asphalt Milling**- Total asphalt milling is approximately 470 sq. yds. ( Located at 5<sup>th</sup> and Church. 162' x 26' , south of 5<sup>th</sup> St.)
- 2) **Asphalt Milling**- As needed for headers joining existing asphalt.
  - a. Milling the streets to create a uniform profile of 1/4- 1/2 inch of fall will be permitted.
- 3) **Asphalt Overlay** – Approximately 27,338 sq. yds. With a minimum 2 inch overlay.
  - a. Overlay shall maintain a minimum 1/4- 1/2 inch per foot fall to the curb line.
  - b. All drainage across intersections shall be maintained or improved.

Asphalt millings shall be hauled by the city and become city property.

Sweeping will be the responsibility of the contractor.

## Application Specifications

- 1) SS1H tack oil will be used according to manufacturer specifications. Place tack coat just enough in advance of paving operations to allow the tack to cure before asphalt is placed. No traffic shall be allowed on tacked surfaces.
- 2) Asphalt shall be SR-12.5 A with a maximum 25% recycle. The use of recycled roofing materials will not be allowed.
- 3) The mix shall be transported to the jobsite in vehicles cleaned of all foreign material. The contractor shall provide a sufficient number of haul vehicles to ensure an orderly and continuous paving operation. All asphalt shall be delivered to the paver at a temperature between 250 degrees F and 325 degrees F.
- 4) In laying the mix adjacent to any finished area, it shall be placed sufficiently high so that, when compacted, the finished surface will be true and uniform and match existing surface.
- 5) Compacting equipment shall conform to the requirements of the KDOT standards. Compaction shall begin as soon as the temperature and mix conditions permit without shoving or tearing, the asphalt shall be thoroughly and uniformly compacted. The final rolling shall be accomplished with a steel roller.
- 6) Traffic control will be the responsibility of the contractor and shall conform to the MUTCD.
- 7) Public notifications informing residents of the work schedule shall be the contractor's responsibility.
- 8) All permits shall be the responsibility of the contractor to obtain.

## Potential Contract and Terms

- 1) Contractor shall furnish a performance bond to the City executed by surety for the contract amount.
- 2) Contractor shall provide proof of commercial general liability and auto liability insurance for the amount of \$1,000,000 per occurrence.
- 3) A project tax exemption number will be provided.
- 4) Work is anticipated to begin approximately June 1st, 2020 with the work being completed before July 31<sup>st</sup>, 2020.
- 5) The City of Tonganoxie holds the right to reject all bids and negotiate with the winning bidder.

Bids shall be sealed and sent to:

City of Tonganoxie

Box 326

Tonganoxie Ks, 66086

Or hand delivered to City Hall at 526 E 4<sup>th</sup> St. by 1:00 PM Wednesday May 6<sup>th</sup> 2020.

Bids will be opened Wednesday, May 6th, at 1:00 PM in the Tonganoxie Council Chambers @ 321 S. Delaware St.

Questions can be directed to Kent Heskett, Public Works Superintendent, at 913-208-6590 or [kheskett@tonganoxie.org](mailto:kheskett@tonganoxie.org). All questions and answers will be posted on the City website.

#### Location of work

- 1. Church St From Washington St to 5<sup>th</sup> St - OVERLAY**
- 2. 500 block of Delaware St - OVERLAY**
- 3. 6<sup>th</sup> St from 24/40 east to Delaware St –Overlay**
- 4. Bury St from 5<sup>th</sup> St south 601 ft. - Overlay**
- 5. Green St from 5<sup>th</sup> St south 593 ft. - Overlay**
- 6. Shawnee St from 5<sup>th</sup> St south 162 ft. – Mill**
- 7. Shawnee St from 5<sup>th</sup> St south to 8<sup>th</sup> St. - Overlay**
- 8. 700 block of Green St. – Overlay (Overlay will cover concrete curb to the upslope of the curb.)**
- 9. 7<sup>th</sup> St Terr. from Green St East to Cul-de-sac. - Overlay (Overlay will cover concrete curb to the upslope of the curb.)**

- 10.7<sup>th</sup> St Terr. Cul-de-sac – Overlay (Overlay will cover concrete curb to the up slope of the curb.)**
- 11.7<sup>th</sup> St From Shawnee St east 145 ft.- Overlay ( overlay will cover concrete curb to the upslope of the curb)**
- 12.8<sup>th</sup> St from 24/40 east 1420 ft. – Overlay**
- 13.7<sup>th</sup> St from 24/40 east to Shawnee St.- Overlay**
- 14. Ann St from Church St west to Somers St then south to Grace St. – Overlay**
- 15. Grace St from 24/40 east to dead end. 900 ft. - Overlay**

**Total Estimated Measurement for Base Bid – 27,388 yards<sup>2</sup>**

All measurements shall be verified by contractors and are final upon the bid deadline.

Bid amount shall be good and valid for sixty (60) days from the bid deadline.

## **ADD/ALTERNATE #1**

- 1. 4<sup>th</sup> St from east City Limit, west 1827 ft. Edge mill 7ft wide from 1 ½ inch to 0 inch. 2 inch overlay.**

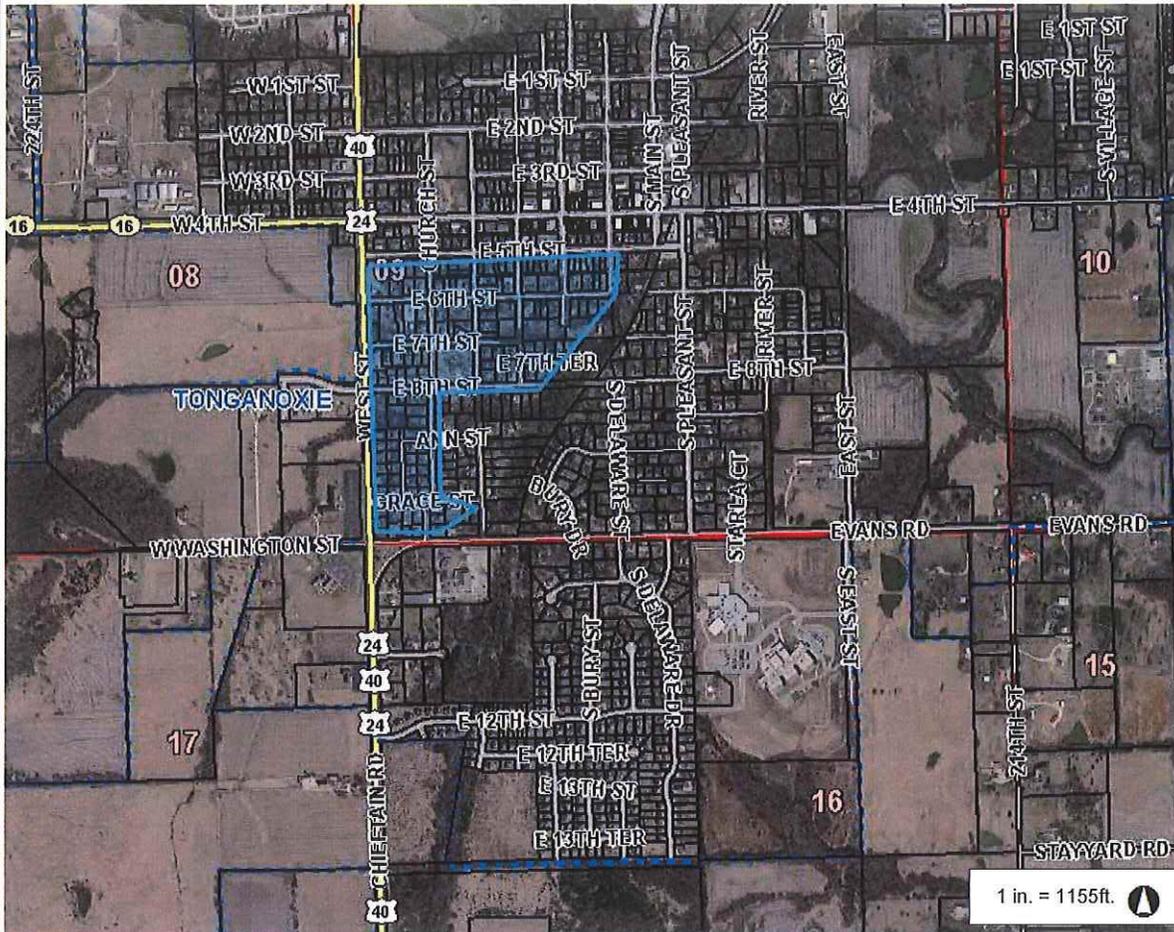
**Total Estimated Measurement for Add/Alternate 1 – 4,665 yards<sup>2</sup>**

## **ADD/ALTERNATE #2**

- 1. Parallel Rd. from Tonganoxie Rd east to City Limits. 1217 ft. – Overlay**
- 2. Approach @ Hickory Dr and Parallel. (Approximately 180 yd<sup>2</sup>) 2 inch Mill and Overlay.**

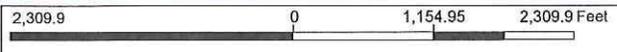
**Total Estimated Measurement for Add/Alternate 2 – 3,428 yards<sup>2</sup>**

# Leavenworth County, KS



- Legend**
- Parcel
  - City Limit Line
  - Major Road**
  - <all other values>
  - 70
  - Road
  - Railroad
  - Section
  - Section Boundaries
  - County Boundary

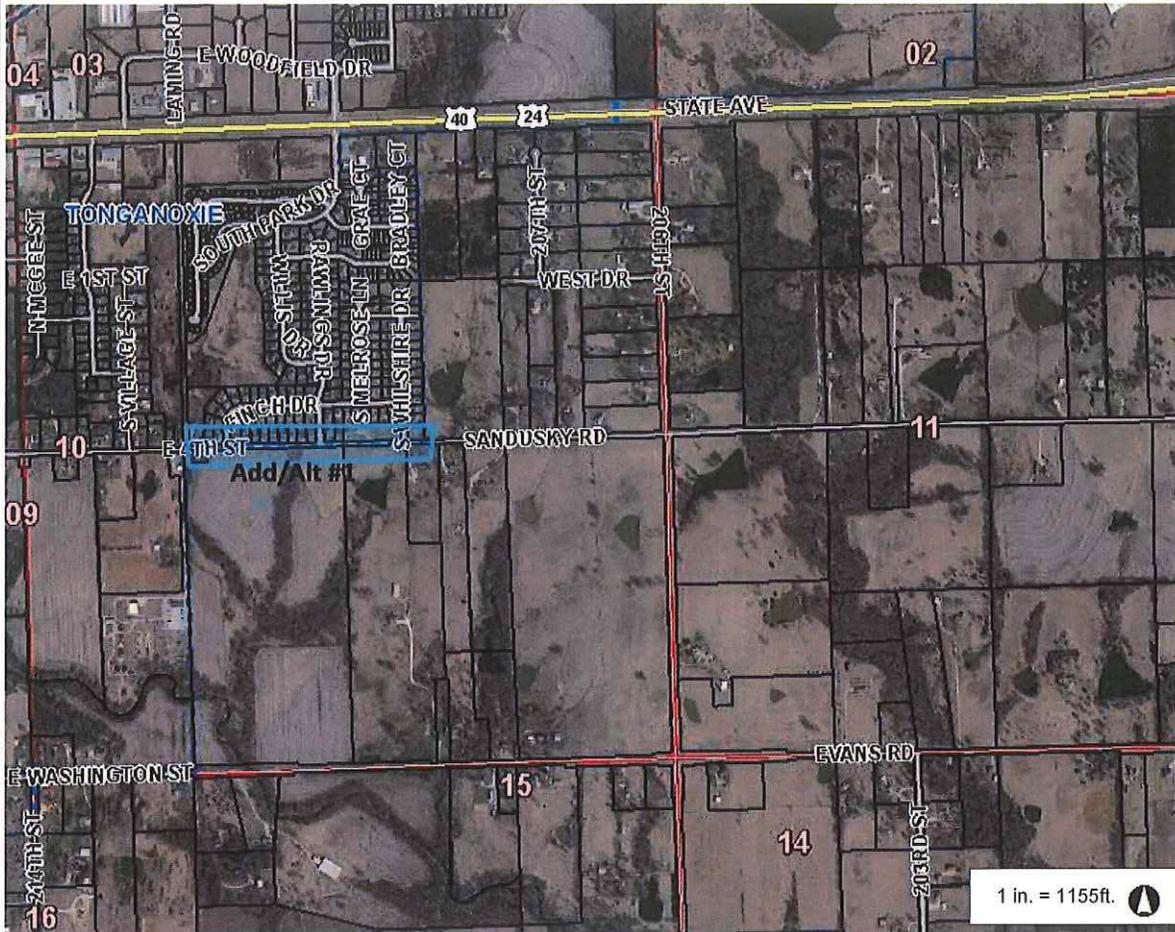
1 in. = 1155ft.



This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.  
THIS MAP IS NOT TO BE USED FOR NAVIGATION

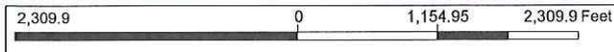
**Notes**

# Leavenworth County, KS



**Legend**

- Parcel
- City Limit Line
- Major Road**
- <all other values>
- 70
- Road
- Railroad
- Section
- Section Boundaries
- County Boundary

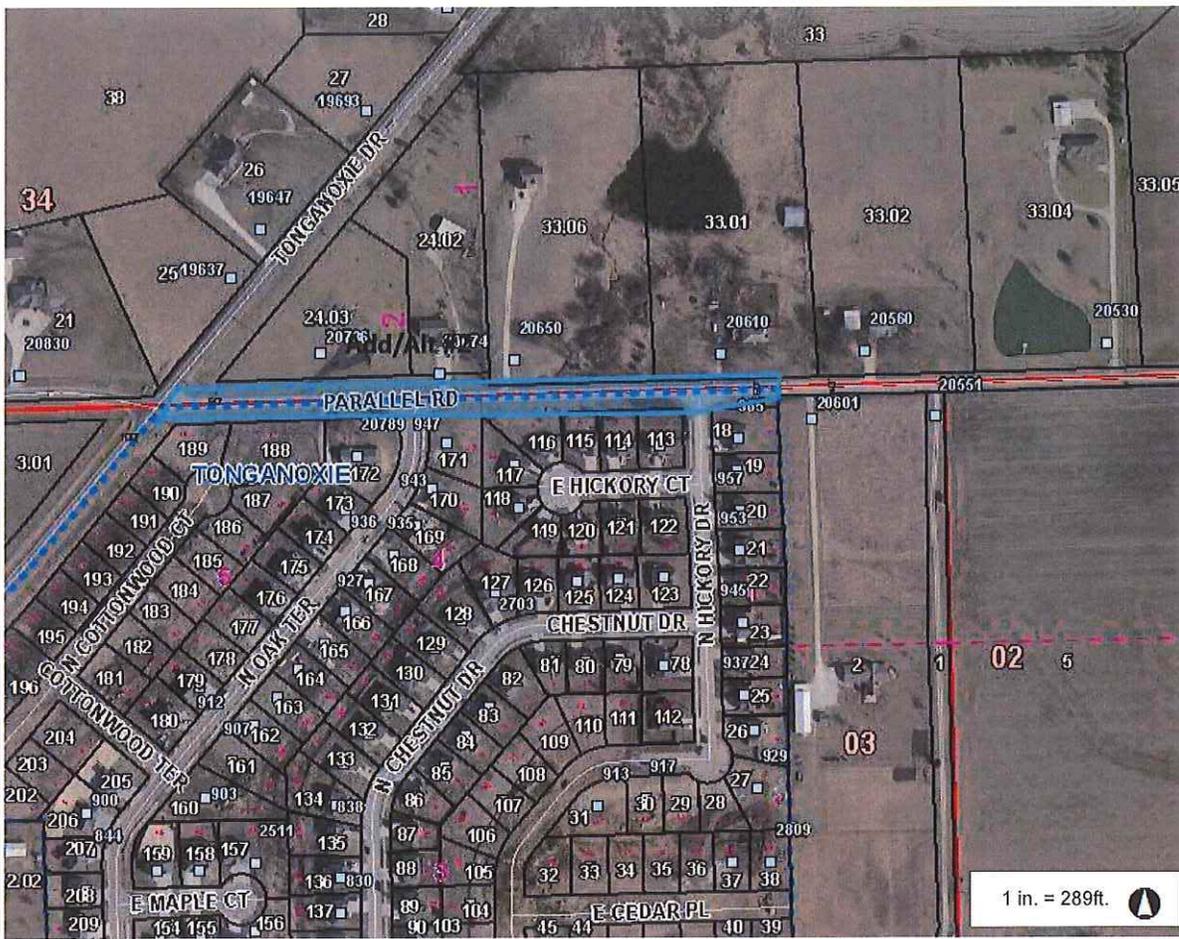


1 in. = 1155ft.

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**Notes**

# Leavenworth County, KS



- Legend**
- Address Point
  - Parcel Number
  - Lot Line
  - Parcel
  - City Limit Line
  - Major Road
  - <all other values>
  - 70
  - Road
  - + Railroad
  - Section
  - Section Boundaries
  - County Boundary

1 in. = 289ft.

577.5 0 288.74 577.5 Feet

This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.  
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes



Office of the City Manager  
**AGENDA STATEMENT**

**DATE:** May 18, 2020  
**To:** Honorable Mayor David Frese and Members of the City Council  
**FROM:** Dan Porter, Assistant City Manager  
**SUBJECT:** Consideration of a Resolution 05-20-02: Approving and Authorizing the Execution of the Supplemental Agreement #1 to the Water Treatment Plant Wastestream Summary Contract between the City of Tonganoxie and BG Consultants, Inc.

**DISCUSSION:**

In 2019 the Kansas Department of Health and Environment (KDHE) recommended that the City of Tonganoxie advance a plan to redirect the wastestream (water discharge) generated in the operation of the City's Water Treatment Plant facility to directly input into the City's Wastewater Treatment Plant. This process started in 2019 with approval of a contract with BG Consultants for development of a list of alternatives to complete the redirection, determination of estimates of probable cost for acceptable alternatives, and final coordination with KDHE and the City to complete the final Wastestream report and submit the report for KDHE approval. This report was completed and approved by KDHE in 2020 and the City can now move forward with design phase engineering services necessary to be able to construct the infrastructure required for the redirection of wastestream from the Water Treatment Plant. KDHE recently reached out to the City to inquire about the progress towards completion of the project.

Attached is a Resolution and draft supplemental agreement #1 to the summary project contract with BG Consultants, the City Engineer, to complete a design phase services for submittal to the City of Tonganoxie. Design phase services will include preparation of construction plans and materials necessary to acquire a KDHE permit.

**BUDGET IMPACT:**

The \$7,500 in cost for this project would be shared between the budget authority available in the City's Water Capital Fund and Sewer Capital Fund. Anticipated expenses for necessary materials for subsequent construction are also planned to be paid from these funding sources.

**RECOMMENDATION:**

Make a motion to approve Resolution 05-20-02: approving and authorizing the execution of the Supplemental Agreement #1 to the Water Treatment Plant Wastestream Summary Contract between the City of Tonganoxie and BG Consultants, Inc. in an amount not to exceed \$7,500.

**ATTACHMENTS:**

Resolution 05-20-02

**cc:** Anna Krstulic, City Attorney  
George Brajkovic, City Manager  
Kent Heskett, Public Works Director  
File

**RESOLUTION NO 05-20-02**

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THE SUPPLEMENTAL AGREEMENT NO 1 TO THE WATER TREATMENT PLANT WASTESTREAM SUMMARY CONTRACT BETWEEN THE CITY OF TONGANOXIE, KANSAS AND BG CONSULTANTS, INC.**

**WHEREAS**, BG Consultants, Inc., a Kansas corporation ("Contractor") desires to provide engineering design improvements for the City's Water Treatment Plant and submittal for a Kansas Department of Health and Environment permit (the "Project"); and

**WHEREAS**, the Project would promote the public good, health, and welfare within the City of Tonganoxie, Kansas (the "City");

**WHEREAS**, the Governing Body has determined that it is advisable to enter into the Supplemental Agreement No. 1 to the Water Treatment Plant Wastestream Summary Contract, attached hereto as **Exhibit A** (the "Contract"), with Contractor.

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

**Section 1.** That the Governing Body hereby approves the Contract in substantially the form attached hereto.

**Section 2.** That the City Manager is hereby authorized to execute in the name of the City, the Contract, and any other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

**Section 3.** This Resolution shall be effective upon adoption by the Governing Body.

**ADOPTED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE,  
KANSAS, AND APPROVED BY THE MAYOR ON THIS 18<sup>th</sup> DAY OF May, 2020.**

**SEAL**

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David Frese, Mayor

ATTEST:

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Patricia C. Hagg, City Clerk

**EXHIBIT A**

**Supplemental Agreement No. 1 to the Water Treatment Plant Wastestream  
Summary Contract**

**Supplemental Agreement No. 1**  
**to**  
**Agreement – Consultant-Client**  
**Between**  
**City of Tonganoxie and BG Consultants, Inc.**  
**For**  
**Water Treatment Plant Waste Stream Summary**  
**Tonganoxie, Kansas**

The purpose of this Supplement No. 1 is to modify the scope of services of the original contract. **The City of Tonganoxie**, hereinafter called the CLIENT, and **BG Consultants, Inc.**, hereinafter called the CONSULTANT, were parties to the original agreement. This agreement is a supplement to the AGREEMENT between the CLIENT and the CONSULTANT dated July 1, 2019.

**SECTION I – SCOPE OF SERVICES**

Under the terms of Supplemental Agreement No. 1, the CLIENT and CONSULTANT agree to modify the AGREEMENT as follows:

The Scope of Services described in this amendment is for engineering design of improvements to a water treatment plant (WTP) located east of the intersection of 4<sup>th</sup> Street and Village Street in Tonganoxie, Kansas, hereinafter referred to as “PROJECT”. The scope of PROJECT improvements includes preparation of plans to reroute wastewater piping in the existing WTP to the sanitary sewer as described in the following sections:

**A. DESIGN PHASE SERVICES**

CONSULTANT will provide the following Design Phase Services.

1. Perform a topographical survey of the PROJECT location. The survey will locate physical features for the PROJECT design, locate above ground topographic features and estimate the approximate location of known below ground features. Set two horizontal control points and establish two benchmarks outside of the estimated construction limits.
2. Perform design of the PROJECT to prepare construction plans and a project manual in general conformance with the following design guides and specifications:
  - a. *Policies, General Considerations and Design Requirements for Public Water Supply Systems in Kansas, published by the Kansas Department of Health and Environment.*
3. Prepare construction plans for the PROJECT improvements on 22”x36” sheets. Prepare project manual for improvements included in the PROJECT.
4. Construction plans will be prepared to a Field Check stage (approximately 50% complete status) and submitted to CLIENT for review and comment.
5. After the Field Check review, CONSULTANT will address CLIENT’s review comments and process the following stages of plan reviews through the CLIENT: Construction Drawings.
6. Prepare the permit application and applicable exhibits for known permits required for construction. CONSULTANT will provide permit application(s) to CLIENT for CLIENT to submit for approval. Permit application fees will be the CLIENT’s responsibility. CONSULTANT and CLIENT anticipate the following permits may be needed.
  - a. KDHE Public Water Supply Permit.
7. Applying for and obtaining a Section 404 Permit from the U.S. Army Corps of Engineers is not anticipated and therefore is not included in this scope of services.

8. Environmental Assessment or Environmental Impact Statement services concerning the National Environmental Policy Act are not included in this AGREEMENT. The CONSULTANT does not anticipate these services will be necessary for the PROJECT. Should the need for such services arise, the CONSULTANT can provide these services by supplemental agreement.
9. The proposed scope of services assumes that construction will be complete by City Personnel. Plans will be prepared to acquire a KDHE permit. Bid Letting and Construction Phase services are not included in the scope of services. Bid Letting and Construction Phase services can be added by Contract Amendment.

**SECTION II – COMPENSATION**

**A. FEE**

1. CONSULTANT will provide services in Section I of this amendment for the following lump sum fee(s):
  - a. Section A – Design Phase Services: **Seven Thousand Five Hundred and NO/100 dollars (\$7,500.00)** which includes up to 200 miles of transportation expenses and six Title Reports in connection with the PROJECT
2. CLIENT will be invoiced for Section A services in Section I in accordance with Section 4 of this AGREEMENT. Monthly invoicing will be based on the percentage of the scope of services performed.

**B. ESTIMATED PROJECT SCHEDULE**

1. CONSULTANT’s estimated project schedule is shown below:
  - a. Section A – Design Phase Services: Field Check plans will be provided within 60 days of Notice to Proceed. Bid letting plans will be provided within 30 days of receiving field check comments. Project permitting is dependent on regulatory review times.

**SECTION III – OTHER MATTERS**

It is mutually agreed and understood that all terms of the original Agreement, not specifically revised by this Supplement No. 1, shall remain unchanged and in full force.

IN WITNESS WHEREOF, the parties have executed this Supplement No. 1 on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

City of Tonganoxie  
CLIENT

BG Consultants, Inc.  
CONSULTANT

By \_\_\_\_\_  
George Brajkovic

By \_\_\_\_\_  
**Brian Kingsley, P.E.**

Title City Manager

Title President

Date \_\_\_\_\_

Date \_\_\_\_\_

**RESOLUTION NO 07-19-01**

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THE WATER TREATMENT PLANT WASTESTREAM SUMMARY CONTRACT BETWEEN THE CITY OF TONGANOXIE, KANSAS AND BG CONSULTANTS, INC.**

**WHEREAS**, BG Consultants, Inc., a Kansas corporation ("Contractor") desires to provide development of a Wastestream Summary Report for the City's Water Treatment Plant and submittal to the Kansas Department of Health and Environment (the "Project"); and

**WHEREAS**, the Project would promote the public good, health, and welfare within the City of Tonganoxie, Kansas (the "City");

**WHEREAS**, the Governing Body has determined that it is advisable to enter into the Water Treatment Plant Wastestream Summary Contract, attached hereto as **Exhibit A** (the "Contract"), with Contractor.

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

**Section 1.** That the Governing Body hereby approves the Contract in substantially the form attached hereto.

**Section 2.** That the City Manager is hereby authorized to execute in the name of the City, the Contract, and any other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

**Section 3.** This Resolution shall be effective upon adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE,  
KANSAS, AND APPROVED BY THE MAYOR ON THIS 1<sup>ST</sup> DAY OF JULY, 2019.

SEAL



A handwritten signature in cursive script that reads "Jason K. Ward".

Jason K. Ward, Mayor

ATTEST:

A handwritten signature in cursive script that reads "Patricia C. Hagg".  
Patricia C. Hagg, City Clerk

**EXHIBIT A**

**Water Treatment Plant Wastestream Summary Contract**



## AGREEMENT CONSULTANT-CLIENT

**THIS AGREEMENT** made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and Tonganoxie, KS, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

Water Treatment Plant Wastestream Summary

Location: Water Treatment Plant

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

### SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 "Additional Services" means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.
- 1.2 "Agreement" means this contract and includes change orders issued in writing.
- 1.3 "CLIENT" or "Client" means the agency, business or person identified on page 1 as "CLIENT" and is responsible for ordering and payment for work on this project.
- 1.4 "CONSULTANT" or "Consultant" means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 "Contract Documents" means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

- 1.6 "Engineering Documents" or "Architectural Documents" or "Survey Documents" means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.
- 1.7 "Consulting Services" or "Engineering Services" or "Architectural Services" or "Survey Services" means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 "Services" is a description of the required work as shown in **Exhibit 1**.
- 1.9 "Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

## SECTION 2 – RESPONSIBILITIES OF CONSULTANT

2.1 **SCOPE OF SERVICES:** The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

### 2.2 GENERAL DUTIES AND RESPONSIBILITIES

2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name:	Brian Kingsley, PE
Address:	1405 Wakarusa Drive
	Lawrence, KS 66049
Phone:	785-749-4474

2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT's profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.

2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the Client.

2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker's compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance and (iv) Professional liability insurance.

- 2.2.5. **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the Client and the Client will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm's work. The Client will pay the Geotechnical firm separately from this Agreement.
- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the Client and performed by a third party, other than the CONSULTANT or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the Client directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT's direct control, CONSULTANT's role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT's design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the Client regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.

## SECTION 3 – CLIENT RESPONSIBILITIES

### 3.1 GENERAL DUTIES AND RESPONSIBILITIES

- 3.1.1. **Communication:** The CLIENT shall provide to the Consultant information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the Consultant's submissions and give notice to the Consultant whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. Our review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the Consultant to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that Consultant is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: George Brajkovic, City Manager  
Address: 526 4<sup>th</sup> Street  
Tonganoxie, KS 66086  
Phone: 913-845-2620

## SECTION 4 – PAYMENT

### 4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** For Service under Exhibit 1 – Scope of Services the CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to Exhibit 2 of this Agreement. The Lump Sum Fee for this project is a total of \$6,000.00 Dollars plus reimbursable expenses as outlined in Exhibit 2 and for the Scope of Services

as shown in **Exhibit 1** of this Agreement. Payment of the Lump Sum Fee and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.

- 4.1.2. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of BG Consultants, Inc. discounted hourly rate schedule in effect at the time of services, unless stated otherwise in a properly executed addendum to this contract for Additional Services. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.3. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.4. **Reimbursable Expenses:** An estimate of reimbursable expenses plus ten (10) percent shall be included in the total estimate of cost for this project and as shown in **Exhibit 2**. Total estimated cost is calculated as Lump Sum plus reimbursable expenses plus ten (10) percent. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.
- 4.1.5. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.6. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall state the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT's invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.7. **Timing of Services:** CONSULTANT will perform the Services according to **Exhibit 2**. However, if during their performance, for reasons beyond the control of the CONSULTANT, delays occur, the parties agree that they will negotiate in

writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays. CONSULTANT will endeavor to start its services on the anticipated start date and continue to endeavor to complete its services according to the schedule indicated in Exhibit 2. The start date, completion date and any milestone for project delivery are approximate only and CONSULTANT reserves the right to adjust its schedule and all of those dates at its sole discretion for delays caused by the CLIENT, Owner or third parties.

- 4.1.8. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT's standard hourly rates. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT's negligence, error or omission.
- 4.1.9. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, and an hourly or lump sum fee adjustment. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the mutually agreed adjustment to the CONSULTANT's fee. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.10. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

## **SECTION 5 – MUTUAL PROVISIONS**

### **5.1 TERMINATION**

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on any material breach by the CLIENT.

Upon receipt of such notice from CLIENT, the CONSULTANT shall, at CLIENT's option as contained in the notice; Immediately cease all Services and meet with CLIENT to determine what Services shall be required of the CONSULTANT in order to bring the Project to a reasonable termination in accordance with the request of the CLIENT. The CONSULTANT shall also provide to the CLIENT digital and/or mylar copies of drawings and documents completed or partially completed at the date of termination. The CONSULTANT is entitled to terminate this agreement by providing thirty (30) days written notice.

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.
- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

## 5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

## 5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

- 5.3.1. Reports, drawings, plans or other documents (or copies) furnished to CONSULTANT by the CLIENT shall, at CLIENT's written request, be returned upon completion of the Services hereunder; provided, however that CONSULTANT may retain one (1) copy of all such documents. Reports, drawings, plans, documents, software, field notes and work product (or copies thereof) in any form prepared or furnished by CONSULTANT under this Agreement are instruments of service. Exclusive ownership, copyright and title to all instruments of service remain with CONSULTANT. CLIENT is hereby

granted a License to Use instruments of service with use limited to use on this project. The instruments of service are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the work or on any other project.

#### **5.4 INDEMNIFY AND HOLD HARMLESS**

5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand, or cause of action to the extent caused by: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.

Provided, however, that the parties agree that CLIENT shall have no obligation to indemnify CONSULTANT for acts for which CLIENT would otherwise be immune under the Kansas Tort Claims Act (K.S.A. 75-6104 et seq.), and amendments thereto, nor will the indemnity obligations set forth herein act as a waiver of CLIENT's protections under such provisions, and further that any liability of CLIENT shall be subject to the liability limitations under K.S.A. 75-6105, and amendments thereto. Additionally, and notwithstanding anything set forth herein to the contrary, the parties specifically agree that the terms of this section, and the terms of this Agreement, shall be subject to and limited by the Kansas Cash Basis Law (K.S.A. 10-1101 et seq.), and amendments thereto, and the Kansas Budget Law (K.S.A. 75-2935 et seq.), and amendments thereto.

5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG Consultants, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.

5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.

#### **5.5 ENTIRE AGREEMENT**

5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

**5.6 APPLICABLE LAW**

5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

**5.7 ASSIGNMENT OF AGREEMENT**

5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

**5.8 NO THIRD PARTY BENEFICIARIES**

5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

**5.9 LIMITATION OF LIABILITY**

5.9.1. CLIENT's exclusive remedy for any alleged breach of standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to two times (2x) the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.

5.9.2. CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages in whole or in part.

5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

**5.10 COMPLIANCE WITH LAWS**

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.10.2 The right of CLIENT to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. §§ 10-1100 et seq.), the Budget Law (K.S.A. § 79-2935 et seq.), and other laws of the State of Kansas. This Agreement shall be construed and interpreted in such a manner as to ensure that CLIENT shall at all times remain in conformity with such laws.

#### **5.11 TITLES, SUBHEADS AND CAPITALIZATION**

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

#### **5.12 SEVERABILITY CLAUSE**

5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

#### **5.13 FIELD REPRESENTATION**

5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that Consultant's Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

#### **5.14 HAZARDOUS MATERIALS**

5.14.1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

#### **5.15 AFFIRMATIVE ACTION**

5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

#### **5.16 SPECIAL PROVISIONS**

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this  
1st day  
of July, 2019.

**CONSULTANT:**

**CLIENT:**

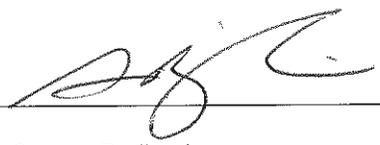
**BG Consultants, Inc.**

**City of Tonganoxie, KS**

By:  
Printed  
Name:

  
\_\_\_\_\_  
Brian P. Kingsley  
\_\_\_\_\_  
President  
\_\_\_\_\_

By:  
Printed  
Name:

  
\_\_\_\_\_  
George Brajkovic  
\_\_\_\_\_  
Title: City Manager  
\_\_\_\_\_

END OF CONSULTANT-CLIENT AGREEMENT

**EXHIBIT 1**  
**SCOPE OF SERVICES**

**DEFINITION AND SCOPE OF PROJECT**

The Engineering Services to be performed under this section are as follows:

**Water Treatment Plant (WTP) Wastestream Summary:**

- 1) Meet with City staff to obtain information about the WTP operation and request from KDHE to provide a wastestream analysis for discharge from the WTP facility.
- 2) Review WTP configuration and wastestream generated from facility.
- 3) Prepare summary information including exhibits and written overview of the WTP operation and wastestream generated by the facility.
- 4) Discuss potential alternatives for handling of wastestream with KDHE to be included in the Wastestream Summary Report.
- 5) Develop estimates of probable project cost for alternatives identified in the Wastestream Summary Report.
- 6) Draft a Wastestream Summary Report.
- 7) Review draft Wastestream Summary Report with City staff and obtain concurrence from the City.
- 8) Submit Wastestream Summary Report to KDHE after obtaining City concurrence.
- 9) Coordinate KDHE concerns and/or revision requests with the City to obtain a final approved Wastestream Summary Report.
- 10) Design services for alternatives identified in the Wastestream Summary Report are not included in this scope of work. If required, Design and Construction services will be through amendment of this contract.

**EXHIBIT 2**  
**COST AND SCHEDULE**

**COST SUMMARY:**

Exhibit 1 – Scope of Services (Wastestream Analysis Summary)	\$ 6,000.00
Total Contract Amount	\$ 6,000.00

These services will be billed monthly based upon the percentage of work completed the previous month.

**SCHEDULE:**

CONSULTANT will work with the City and KDHE in an effort to complete Scope of Services within 90 days of receiving signed agreement and a Notice to Proceed from CLIENT.

**EXHIBIT 3**  
**SPECIAL PROVISIONS**

- 1) None

**2019 BG CONSULTANTS DISCOUNTED HOURLY RATES**

<u>POSITION</u>	<u>DISCOUNTED PER HOUR 2019</u>
PRINCIPAL 3	\$247.00
PRINCIPAL 2	\$210.50
PRINCIPAL	\$154.50
PROJECT ENGINEER IV	\$150.00
PROJECT ENGINEER III	\$135.00
PROJECT ENGINEER II	\$124.00
PROJECT ENGINEER I	\$113.00
SENIOR DESIGN ENGINEER	\$116.00
DESIGN ENGINEER	\$103.50
ASSISTANT DESIGN ENGINEER	\$93.50
ARCHITECT	\$146.50
PROJECT ARCHITECT	\$111.00
DESIGN ARCHITECT	\$98.00
ASSISTANT ARCHITECT	\$83.00
TECHNICIAN II	\$105.00
TECHNICIAN I	\$86.50
SENIOR CONSTRUCTION OBSERVER	\$93.75
CERTIFIED CONSTRUCTION OBSERVER	\$85.00
CONSTRUCTION OBSERVER	\$77.00
SENIOR PROJECT SURVEYOR	\$128.00
PROJECT SURVEYOR	\$116.00
ASSISTANT PROJECT SURVEYOR	\$78.00
FIELD SUPERVISOR	\$95.00
SURVEYOR II	\$73.00
SURVEYOR I	\$62.50
CAD SYSTEM AND OPERATOR	\$85.00
CLERICAL	\$57.00

- Note:
- 1) The hourly rates shown above are effective for services through December 31st of the contract year and are subject to revision annually.
  - 2) For any Federal Wage and Hour Law non exempt personnel, overtime will be billed at 1.5 times the hourly labor billing rates shown.
  - 3) Expert Witness and Depositions will be charged at 1.5 times the hourly labor billing rates shown.

**Special Note: "Discounted" rates are only applicable for City or County Engineering Contracts**



**TRANSMITTAL**

**To:** Dan Clair, P.E.

**Date:** January 6, 2020

**Address:** Bureau of Water  
Public Water Supply Section  
1000 SW Jackson St., Suite  
420  
Topeka, KS 66612-1367

**Project:** Tonganoxie Water Treatment Plant  
**Description:** Waste Stream Summary

**From:** Paul C. Owings

**Transmitted** USPS  
**Via:**

**Action:**  For Approval     For Review     For Your Use     As Requested

Copies	Description
1	Waste Stream Summary

**Comments:**

If there are any questions or comments related to the content transmitted herein, or this transmission has reached you in error, please do not hesitate to contact me at 785.727.1694.

## Waste Stream Summary

**To:** Dan Clair, P.E.  
**From:** Paul Owings, P.E.  
**Date:** January 6, 2020  
**Re:** Tonganoxie Water Treatment Plant Improvements:  
 Project Number: 19-1348L



### 1. Background Information

The City of Tonganoxie, Kansas operates a water treatment plant (W ½ Sec 10, T11S, R21E) that receives water from two wells, see Exhibit A. The two well pumps are located in the building on the east side (39.11 N, 95.07 W) of the treatment facility. Raw water is pumped to the water treatment plant (WTP), which is adjacent to the well pump house. The WTP primarily removes iron and manganese. The WTP operation parameters and chemical dosage rates can be seen in Table 1.

**Table 1: Water Treatment Plant Operation Parameters and Chemical Dosage Rates**

Parameter	Value
Daily Operation Time	8 hours
Average WTP flow from wells	300 GPM
Chlorine Concentration	2 ppm
KMnO <sub>4</sub> Concentration	0.5 mg/L
Blended PO <sub>4</sub> Concentration (Carus 8105)	0.055 mg/L
LAS Concentration	1.2 mg/L

### 2. Existing Wastewater Description

Wastewater streams at the WTP include pressure filter backwash, process floor drains, laboratory wastewater, and domestic sewage, see Exhibit B showing the process flow diagram. The treatment facility is not permitted to discharge waste under the National Pollutant Discharge Elimination System (NPDES). Spent filter backwash and process floor drains are discharged directly to an unnamed tributary of Tonganoxie Creek at all times by gravity (39.11 N, 95.07 W). Domestic sewage and laboratory wastewater is discharged to the City of Tonganoxie's sanitary sewer collection and treatment system. See the attached table summarizing approximate wastewater flow rates, waste characteristics, and proposed treatment of each waste stream mentioned above.

### **3. Existing Wastewater Treatment Plant (WWTP) Conditions**

The City of Tonganoxie provided the following information about the existing WWTP. The WWTP has a design capacity of 750,000 GPD, and is currently operating at an average flow rate of 400,000 GPD. The sanitary sewer pipe to the WWTP has an 18-inch diameter with a minimum slope of 0.67%. Based on the slope, the sewer capacity is 3033 GPM at 2/3 pipe flow. City personnel have indicated the sanitary sewer does not have capacity issues and can receive the flow.

The City typically backwashes the pressure filters at 625 GPM for approximately 20 minutes every three days. The average quantity of water that will be added to the WWTP is 5,571 GPD. Based on the information provided by the City, it appears that the existing sanitary sewer collection pipe and WWTP have sufficient capacity to treat waste from the WTP.

Sludge from the WWTP is disposed of in a landfill.

### **4. Attachments**

- Exhibit A – Location Maps
- Exhibit B – Process Flow Diagram
- Waste Disposal Summary

NO.	REVISIONS	DATE	INITIALS

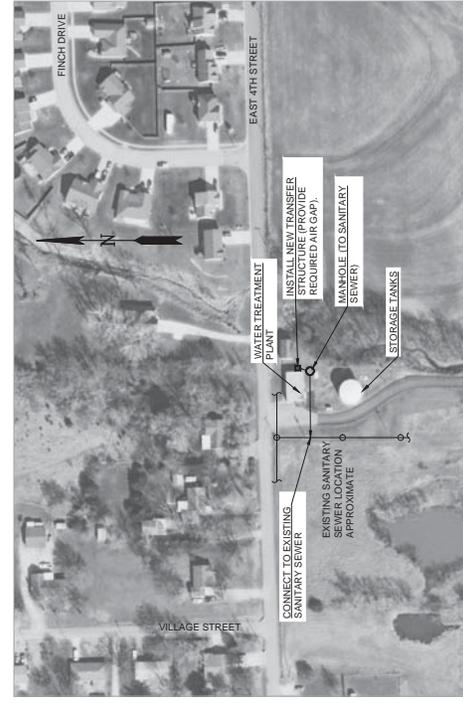
FOR PRELIMINARY REVIEW ONLY

TONGANOXIE, KANSAS WASTEWATER SUMMARY

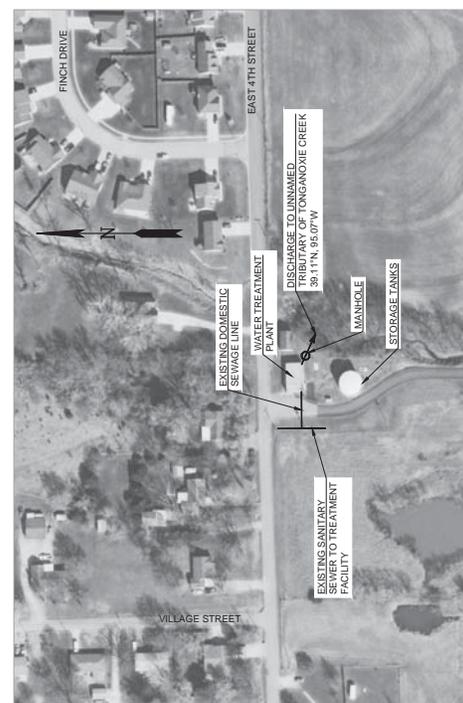
Engineer: PCO  
 Designer: PCO  
 Date: 7-19-2019  
 Project No.: 19-1348L  
 Sht. No.: \_\_\_\_\_  
 Total Shts.: X



VICINITY MAP  
 SCALE: 1"=400'



PROPOSED WATER TREATMENT PLANT CONDITIONS  
 SCALE: 1"=100'



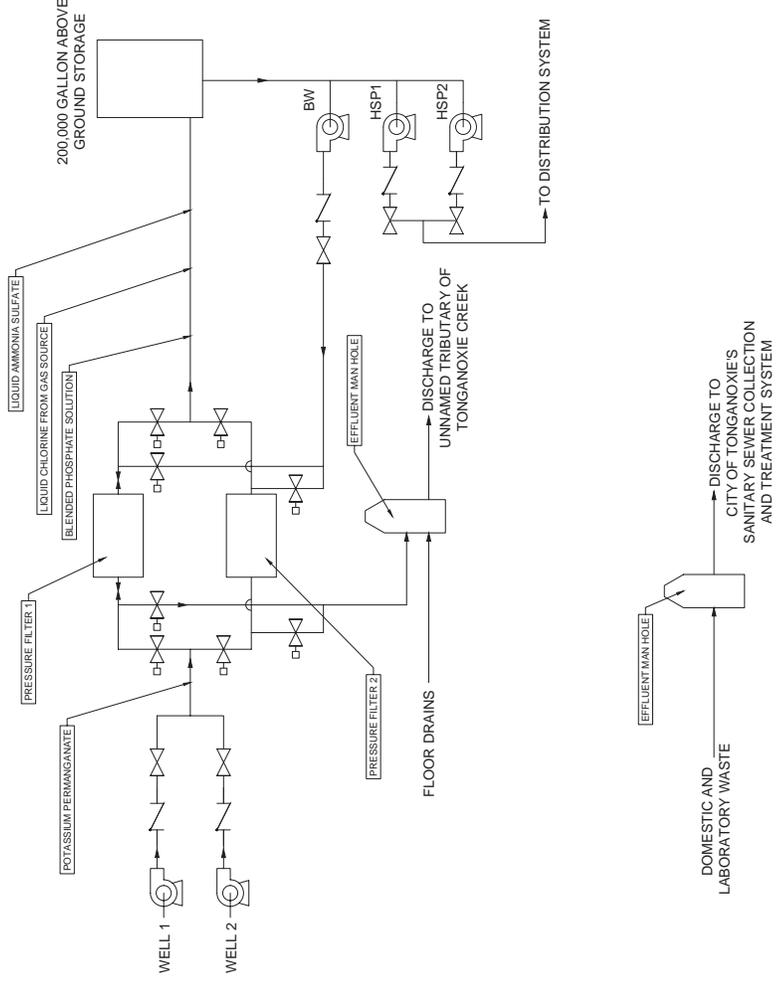
EXISTING WATER TREATMENT PLANT CONDITIONS  
 SCALE: 1"=100'

NO.	REVISIONS	DATE	INITIALS

FOR REVIEW ONLY

TONGANOXIE, KANSAS WASTEWATER TREATMENT PLANT  
EXHIBIT B - PROCESS FLOW DIAGRAM

Engineer: PCO  
 Designer: PCO  
 Date: 7-19-2019  
 Project No.: 19-1348L  
 Sheet No.: Total Sheets: X



**City of Tonganoxie, Kansas**  
**Water Treatment Plant**  
Waste Disposal Summary  
**19-1348L**

<b>Waste Stream</b>	<b>Quantity (GPD)</b>	<b>Waste Characteristic</b>	<b>Proposed Treatment</b>
Pressure Filter Backwash	5570	Solids Conc. < 2% pH > 8 Free Cl < 5 mg/L	Discharge to sanitary sewer. Treat at sanitary sewer wastewater treatment plant
Floor Drains	< 10	Free Cl < 5 mg/L	Discharge to sanitary sewer. Treat at sanitary sewer wastewater treatment plant
Laboratory	< 100	Free Cl < 5 mg/L	Discharge to sanitary sewer. Treat at sanitary sewer wastewater treatment plant
Domestic	< 100	BOD = 200 mg/L TSS = 200 mg/L	Discharge to sanitary sewer. Treat at sanitary sewer wastewater treatment plant

Date: 5/16/2020

**Grant Liabilities**

	Projection	Actual	Remaining
1b. Public Facilities Sewer Line Const	282,514.00	98,972.43	183,541.57
1h. Engineering Design	31,421.00	30,600.00	821.00
1i. Construction Inspection	23,565.00	4,195.50	19,369.50
3a. Grant Administration	10,000.00	4,999.92	5,000.08
		-	-
		-	-
		-	-
<b>Subtotal Grant Costs</b>	<b>347,500</b>	<b>138,768</b>	<b>208,732</b>

**City Liabilities**

	Projection	Actual	Remaining
Publications	500.00	380.00	120.00
Legal Services	2,000.00	2,500.00	(500.00)
			-
			-
<b>Subtotal City Costs</b>	<b>2,500</b>	<b>2,880</b>	<b>(380)</b>

	Budget	Actual	Balance Remaining
<b>Total Project Liabilities</b>	<b>350,000</b>	<b>141,648</b>	<b>208,352</b>