

CITY OF TONGANOXIE



**July 17, 2023**

7:00 Regular Meeting

City Council Chambers, 303 Bury Street, Tonganoxie, KS 66086

There may be an audio recording of the meeting which will be utilized to prepare the meeting minutes and the meeting may be broadcast on the City of Tonganoxie YouTube Channel

Honorable David Frese, Mayor

Council Members

Jacob Dale

Loralee Stevens

Chris Donnelly

Jennifer McCutchen

Matt Partridge

**Open Regular Meeting – 7:00 p.m.**

**I. Pledge of Allegiance**

**II. Approval of Minutes** – Regular meeting dated July 3, 2023

**III. Consent Agenda**

- a) Review bill payments

**IV. Old Business**

**V. New Business**

- a) Public Hearing – Consideration of Rural Housing Incentive District (RHID) for Stone Creek Addition No. 10
- b) Ordinance 1514 – Establishment of Rural Housing Incentive District (RHID) for Stone Creek Addition No. 10 and Authorizing Development Agreement
- c) Resolution 07-23-02: Consider Approval of Purchase Agreement for 605 E. 4<sup>th</sup> Street
- d) Resolution 07-23-03: A Resolution Calling and Providing for Notice of a Public Hearing on the Governing Body's Intent to Levy a Property Tax Exceeding the Revenue Neutral Rate in the City of Tonganoxie, Kansas, Pursuant to K.S.A. 79-2988
- e) City Manager Agenda
  - 1. Presentation of Citizen Satisfaction Survey Results
  - 2. June 2023 Financial Report
- f) City Attorney Agenda
- g) Mayor Pro Tem Agenda
- h) City Council Agenda
- i) Mayor Agenda

**VI. Adjourn**

Council Meeting Minutes  
July 3, 2023  
7:00 PM Meeting

**I. Pledge of Allegiance**

- Mayor Frese opened the meeting at 7:00 p.m.
- Mayor Frese led the pledge of allegiance.
- Mayor Frese, Mr. Partridge, Ms. Stevens, Mr. Donnelly and Mr. Dale were present. Ms. McCutchen was absent.
- City Manager George Brajkovic, Assistant City Manager Dan Porter, City Attorney Anna Krstulic, Police Chief Greg Lawson, Fire Chief Zimbelman and Municipal Court Clerk Lindsay Huntington were also present.

**II. Approval of Minutes – Regular meeting dated June 19, 2023**

- Mr. Donnelly made a motion to approve draft minutes from the regular meeting dated June 19, 2023.
- Mr. Partridge seconded the motion.
- Vote of all ayes, motion carried.

**III. Consent Agenda**

- a) Review bill payments
  - Mr. Partridge made a motion to approve the consent agenda.
  - Ms. Stevens seconded the motion.
  - Vote of all ayes, motion carried.

**IV. Old Business**

**V. New Business**

- a) Review 2024 Budget Funding Support Requests from Community Groups
  - Mr. Porter stated as similar to years past each group requesting funding for 2024 has been asked to follow an established set of guidelines that were revised and adopted in 2021 and 2022. Mr. Porter stated in early June it was posted on the City website requesting funds submittals be received by June 26, 2023. Staff also reached out to every funding group that previously received funding in the last couple of years. Four submittals were received.
  - Mr. Porter stated the funds will be factored into the general fund assumptions for the 2024 budget.
  - Ms. Frese stated the Tonganoxie Farmers Market has had eight markets in 2023 to date and the consumer attendance has increased averaging approximately 400 per Thursday. Ms. Frese also stated their vendor attendance has also increased for 10 last year to 14 in 2023 with 2 additional vendors interested in joining in July. Two new banners have been purchased to advertise around town. A canopy and misting fan have been ordered to assist with the heat. Ms. Frese stated they would like to add more children's activities, as well as to continue inviting local vendors and entertainers to be a part of the market as well as local food trucks. They are interested in developing a cookbook pertaining to the produce being sold as well as a speaker system to play music when there is no live music. Lastly, they are exploring more shade ideas to keep the vendor and consumer comfortable.
  - Ms. Roberts with the Historical Society and museum thanked the Council for their support. Ms. Roberts stated history camp was the first week in June with 17 in attendance which continues to grow in attendance each year. The historical society assisted with the library scavenger hunt. The historical society would like to refresh the one room school house and the 5-town picnic. They will also be continuing the work in the barn. Their programs are outgoing the space in the church so they would like to put up a projection screen and speaker system in the barn as well as a portable AC unit.
  - Ms. Kelly stated the Tonganoxie Arts Council has completed about one half of their planned events. The year began with the children's storytelling festival, Plain Air competition and an art show in June in conjunction with the VFW car show. Ms. Kelly stated in September the Arts Council will be participating in a fundraiser at the Legends Outlet and in October they will be doing a story slam at Ryan's Pub. Ms. Kelly stated the Arts Council did receive the KCAIC grant to put in percussion instruments at the Tonganoxie Pocket Park. Ms. Kelly stated in addition to the events

and programs the goal of the Arts Council is to increase lasting art in the City and do at least one public art installation each year.

- Ms. Gee stated the Tonganoxie Business Association is hoping to reschedule the pet day in the fall, but all other projects are on track. TBA has also added the larger, self-watering flower pots on 4<sup>th</sup> Street. Ms. Gee also stated that Tongie Days will be September 16<sup>th</sup> this year.
- b) Review 2024 Library Operations Fund and Library Employee Benefits Fund Budget Proposal from Tonganoxie Library Board
  - Mr. Porter introduced Max Wirestone the Tonganoxie Library Director and Dana Splichal the Board Treasure. Mr. Porter stated the City Council has the authority every year to set a budget for the Library operations and employee benefits mill levy. The operations mill levy is capped at no more than 5.95 mills by City charter ordinance and the benefits mill levy is unlimited levy that is allow to be at whatever limit is set. The 2023 budget for both was decreased by 0.609 mills which was not revenue natural but did slightly lower the mill levy from the prior year. Mr. Porter stated the 2024 proposed operational fund is 4.999 mills which is a decrease of 0.481 mills and the benefits mill levy is 1.383 mills would fund the budget as presented which is a decrease of 0.391 mills. This is a slightly larger net decrease from last year at 0.872 mills.
  - Mr. Wirestone stated the Library is doing well and has seen a 31% growth increase from last year. Mr. Wirestone also stated they had a mid-week event that was so well attended they were forced to turn people away.
  - Mr. Wirestone stated the budget is showing a 4% increase for staff and to include part-time summer help. Employee benefits show a decrease due to a new health plan with lower costs. The operations budget better represents what will be needed now that they are more familiar with the new building and what is needed to maintain it. They are also putting more money in the programming for the Library. The reduction in technology services is due to a large one-time cost for digitization done in 2023. The grant income is also going up.
  - Mr. Partridge stated he really appreciates the variety in programming the Library provides and really appreciated the daughter hair clinic for dads and daughters.
- c) Public Hearing – Consideration of 2023 Budget Amendment to the Special Highway Fund and Capital Projects Fund
  - **Mayor Frese opened the public hearing for the Consideration of 2023 Budget Amendment to the Special Highway Fund and Capital Projects Fund at 7:36pm.**
  - No Comments.
  - **Mayor Frese closed the public hearing at 7:36pm**
- d) Consider Approval of 2023 Budget Amendment to the Special Highway Fund, Capital Projects Fund, Water Capital Fund, Sewer Capital Fund, and Fire Equipment Fund
  - Mr. Porter stated this is a two-part mid-year budget amendment. The Special Highway Fund and the Capital Projects Fund require the use of the State budget forms. With the State budget forms, it is required to schedule and conduct a public hearing and consider a motion to make the adjustment as needed for the current year.
  - Mr. Porter stated no such public hearing or notice is required for the Water Capital, Sewer Capital and Fire Equipment Fund and adjustments can be done with a motion from the Council.
  - Mr. Porter stated for the Special Highway Fund a contract with Metro Asphalt was approved with an add alternate which increased the project cost. The Capital Project fund will include the salt barn repairs which were not anticipated. The Water and Sewer Capital Fund was impacted by the City purchase of over 500 water meters to replace non-functioning radio reads and the purchase authorization was done in December of 2022 therefore not included in the 2023 budget which was approved in July of 2022. Finally, the Fire Equipment Fund, in April the City Council authorized a purchase of a 2023 Chevrolet 1500 4wd truck as an early replacement of a vehicle that was planned to replace in 2024.
  - **Mr. Donnelly made a motion to approve the 2023 Budget Amendments for the Special Highway Fund and the Capital Projects Fund as described in the agenda statement and published notice of public hearing.**
  - **Mr. Dale seconded the motion.**
  - **Vote of all ayes, motion carried.**

- **Mr. Partridge made a motion to approve the 2023 Expenditure Budget Amendments for the Water Capital Fund, the Sewer Capital Fund, and the Fire Equipment Fund as described in the agenda statement.**
  - **Ms. Stevens seconded the motion.**
  - **Vote of all ayes, motion carried.**
- e) Resolution 07-23-01: Consider Acceptance of Utility Easements Associated with Project at 1520 State Ave
- Mr. Brajkovic stated this is to run a sanitary sewer extension for a remodel project on 24/40 Highway. The City Engineer has reviewed the project engineers proposed path for connection. City Council approve is required because while the point of connection is considered a private line it is a public sanitary sewer easement. The City Attorney has in the past prepared a template document which has been used to prepared the proposed document.
  - **Mr. Donnelly made a motion to approve resolution 07-23-01 approving and authorizing acceptance of the City of Tonganoxie, Kansas of general utility easements from Mark E. and Stacey Ladesic, William M. and Cheryl A. Emery, and William Homer Jennings, Jr.**
  - **Mr. Partridge seconded the motion.**
  - **Vote of all ayes, motion carried.**
- f) City Manager Agenda
- Mr. Brajkovic reminded Council that City Hall offices will be closed tomorrow in observance of the Independence Day holiday.
- g) City Attorney Agenda
- h) Mayor Pro Tem Agenda
- i) City Council Agenda
- j) Mayor Agenda
- Mayor Frese stated the VFW would like to rededicate the bridge the City helped finance on Thursday at 5:30 p.m. at the bridge and would like any City Council members and Staff that are available to be there.
  - 1. Executive Session Pursuant to the preliminary discussion of the acquisition of real property.
    - **Mr. Partridge moved that the City Council recess into executive session for preliminary discussion of a potential acquisition of real property located at 605 E 4<sup>th</sup> Street which is adjacent to other property owned by the City pursuant to K.S.A. 75-4319(b)(6). The open meeting will resume in the City Council chamber at 7:53 p.m. The executive session will include the City Attorney, City Manager and Assistant City Manager.**
    - **Ms. Stevens recused herself from the meeting.**
    - **Mr. Donnelly seconded the motion.**
    - **Vote of all ayes, motion carried.**
  - ...
  - **Mayor Frese resumed the meeting at 7:53 p.m. and noted that no binding action was taken in executive session.**

## **VI. Adjourn**

- **Mr. Dale made a motion to adjourn the meeting.**
- **Mr. Partridge seconded the motion.**
- **Vote of all ayes, motion carried.**

- **Meeting adjourned at 7:53 p.m.**

Respectfully submitted,

*Lindsay Huntington*

Lindsay Huntington, Municipal Court Clerk

DRAFT



City of Tonganoxie, KS

# My Check Report

By Check Number

Date Range: 07/01/2023 - 07/14/2023

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: AP Bank-AP Bank						
0034	AT&T ACCESS TRANSPORT SERVICES	07/07/2023	Regular	0	-78.01	51419
1379	METRO ASPHALT, INC	07/05/2023	Regular	0	492754.35	51562
1130	ROBERTS AUTO PLAZA INC	07/05/2023	Regular	0	44568.9	51563
0034	AT&T ACCESS TRANSPORT SERVICES	07/07/2023	Regular	0	78.01	51564
0046	BAY BRIDGE ADMINISTRATORS, LLC	07/07/2023	Regular	0	676.17	51565
1355	BENJAMIN RIOUX	07/07/2023	Regular	0	800	51566
0749	BROADVOICE	07/07/2023	Regular	0	168.16	51567
0113	COMMERCIAL AQUATIC SERVICES	07/07/2023	Regular	0	424.52	51568
1389	DANAE GRAHAM	07/07/2023	Regular	0	25	51569
1200	EICHHORN HOLDINGS LLC	07/07/2023	Regular	0	217	51570
1263	ESO SOLUTIONS INC	07/07/2023	Regular	0	208.53	51571
0189	FIRST STATE BANK & TRUST	07/07/2023	Regular	0	1310.51	51572
0194	FORENSIC PSYCHOLOGY ASSOCIATES	07/07/2023	Regular	0	1000	51573
0250	HONEYCREEK DISPOSAL SERVICE	07/07/2023	Regular	0	32678.51	51574
1304	ICC GENERAL CODE, INC	07/07/2023	Regular	0	988.75	51575
1121	Jerome Gorman	07/07/2023	Regular	0	1100	51576
0330	KANSAS GAS SERVICE	07/07/2023	Regular	0	423.62	51577
0496	KANSAS ONE-CALL SYSTEM, INC.	07/07/2023	Regular	0	117.6	51578
0757	KEBRA CHILSON	07/07/2023	Regular	0	360	51579
1271	KENNETH J MOORE	07/07/2023	Regular	0	800	51580
0391	LAWRENCE JOURNAL WORLD	07/07/2023	Regular	0	141.12	51581
1390	LTA II MANUFACTURING LLC	07/07/2023	Regular	0	2049	51582
1246	Mallory Rae Pino	07/07/2023	Regular	0	202	51583
0857	MIDCONTINENT COMMUNICATIONS	07/07/2023	Regular	0	368.25	51584
0959	OFFICE OF THE KANSAS STATE TREASURER	07/07/2023	Regular	0	1424.25	51585
0548	RECORDNEWS	07/07/2023	Regular	0	616.85	51586
0555	RICOH USA, INC.	07/07/2023	Regular	0	447.8	51587
0568	SAMS CLUB	07/07/2023	Regular	0	683.42	51588
0579	SECURITY BENEFIT - 457	07/07/2023	Regular	0	4453.32	51589
0642	USPS	07/07/2023	Regular	0	1227.6	51590
1347	VERIZON CONNECT INC	07/07/2023	Regular	0	113.7	51591
1066	Western Consultants	07/07/2023	Regular	0	1560	51592
0034	AT&T ACCESS TRANSPORT SERVICES	07/07/2023	Regular	0	78.01	51593

## Bank Code AP Bank Summary

	Payable	Payment		
Payment Type	Count	Count	Discount	Payment
Regular Checks	33	32	0.00	592,064.95
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	-78.01
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	<b>33</b>	<b>33</b>	<b>0.00</b>	<b>591,986.94</b>

All Bank Codes Check Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	33	32	0.00	592,064.95
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	-78.01
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	33	33	0.00	591,986.94

Fund Summary

Fund	Name	Period	Amount
998	Gen Fund-Pooled Cash	7/2023	591986.94
			591986.94

## ORDINANCE NO. 1514

### AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS ESTABLISHING THE STONE CREEK REINVESTMENT 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 reinvestment housing incentive districts (each, an "RHID") pursuant to K.S.A. 12-5241 *et seq.*, as amended from time to time (the "RHID Act")<sup>1</sup>, for the purpose of financing public improvements that will support housing in areas of Kansas that experience a shortage of housing;

**WHEREAS**, 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 various RHIDs within the City through the adoption of Resolution No. 06-17-01 (the "RHID Resolution") pursuant to the RHID Act;

**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 K.S.A. 12-5244(c);

**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 RHIDs;

**WHEREAS**, pursuant to K.S.A. 12-5245(a), the City has caused to be prepared a plan for the development of housing and public facilities (the "Development Plan") within the proposed RHID legally described on Exhibit A attached hereto, to be known as the "Stone Creek RHID";

**WHEREAS**, the Development Plan includes the following, as required by the RHID Act:

1. The legal description and map of the Stone Creek RHID;
2. The existing assessed valuation of the real estate in the Stone Creek 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 Stone Creek RHID;
4. A description of the housing and public facilities project that is proposed to be constructed or improved in the Stone Creek RHID, and the location thereof (the "Project");
5. A listing of the names, addresses and specific interests in real estate in the Stone Creek RHID of the developer responsible for development of the Project;
6. The contractual assurances the Governing Body received from such developer, guaranteeing the financial feasibility of the Project;

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<sup>1</sup> The RHID Act was recently amended to replace references to "rural" with "reinvestment", among other changes. See Senate Bill No. 17, which was approved by Governor Kelly on April 20, 2023 and took effect on May 4, 2023, following publication in Volume 42, Issue 18 of the Kansas Register, available at <https://sos.ks.gov/publications/Register/Volume-42/Issues/Issue-18/05-04-23-51107.html>.



7. A comprehensive analysis of the feasibility of providing housing tax incentives in the Stone Creek RHID as provided in the RHID Act, which shows that the public benefits derived from the Stone Creek RHID will exceed the costs and that the income therefrom, together with all public and private sources of funding, will be sufficient to pay for the public improvements that may be undertaken in the Stone Creek RHID. Other sources of public or private funds used to finance the improvements are identified in the analysis; and

**WHEREAS**, on June 5, 2023, the Governing Body adopted Resolution No. 06-23-01 stating that the Governing Body is considering adopting the proposed Development Plan and designating the Stone Creek RHID pursuant to the RHID Act, and providing for notice of a public hearing on July 17, 2023 in the manner required by K.S.A. 12-5245 (including delivery of certified copies of Resolution No. 06-23-01 to the City's Planning Commission, the Board of Education of Tonganoxie Unified School District No. 464 (the "School District") and the Board of County Commissioners of Leavenworth County, Kansas (the "County") on or about June 12-13, 2023, and publication of Resolution No. 06-23-01 in the *Tonganoxie Mirror* on July 5, 2023);

**WHEREAS**, on July 17, 2023, the Governing Body held a public hearing at which a representative of the City presented the Development Plan along with the proposed developer, KANSAS LD, LLC, a Kansas limited liability company ("Developer"), and all interested persons were given an opportunity to be heard, as required by K.S.A. 12-5246(a); and

**WHEREAS**, upon considering the information and public comments received at the public hearing, the Governing Body hereby deems it advisable to adopt the Development Plan and establish the Stone Creek RHID, pursuant to 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 July 17, 2023 at 7:00 p.m. was made in accordance with the provisions of the RHID Act.

**Section 2.      Establishment of Stone Creek RHID.** The Stone Creek RHID is hereby established within the City in accordance with the provisions of the RHID Act, and shall consist of the real property legally described and depicted on **Exhibit A** attached hereto. This is the same legal description and depiction provided in Resolution No. 06-23-01, which provided notice of the public hearing on the proposed establishment of the Stone Creek 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 the Project in the Stone Creek 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 30 days following the conclusion of the public hearing on July 17, 2023, any of the following occurs, the Governing Body shall take action to repeal this Ordinance: (a) the School District determines by resolution that the Stone Creek RHID will have an adverse effect on the School District; or (b) the County determines by resolution that the Stone Creek 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 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 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 on July 17, 2023.

**SEAL**

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David Frese, Mayor

ATTEST:

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Daniel Porter, Acting City Clerk

APPROVED AS TO FORM:

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Anna M. Krstulic, City Attorney

## **EXHIBIT A**

### **LEGAL DESCRIPTION AND MAP OF STONE CREEK RHID**

A tract of land in the Southeast Quarter of Section 3, Township 11 South, Range 21 East of the Sixth Principal Meridian, Leavenworth County, Kansas described as follows:

Beginning at the Southeast Corner of Lot 2A, Stone Creek Business Center, a Subdivision in the City of Tonganoxie, Leavenworth County, Kansas; thence N 01°17'32" W 300.51 feet to the Northeast Corner of said Lot 2A, Stone Creek Business Center; thence

S 88°04'31" W 70.00 feet along the North Line of said Lot 2A, Stone Creek Business Center; thence

N 01°17'43" W 409.11 feet to the Southwest Corner of Lot 1, Block 2, Stone Creek Addition No. 1, City of Tonganoxie, Leavenworth County, Kansas; thence

N 87°58'35" E 484.97 feet to the Southeast Corner of Lot 6, Block 2, Stone Creek Addition No. 1; thence

N 87°58'35" E 424.27 feet to the Southeast Corner of Lot 5, Block 1, Stone Creek Addition No. 4A, City of Tonganoxie, Leavenworth County, Kansas; thence

N 02°02'44" W 135.00 feet to the Northeast Corner of said Lot 5, Block 1, Stone Creek Addition No. 4A; thence

N 24°31'33" E 67.02 feet to the Southeast Corner of Lot 1, Block 2, Stone Creek Addition No. 4A; thence

N 02°00'50" W 84.33 feet to the Northeast Corner of said Lot 1, Block 2, Stone Creek Addition No. 4A; thence

N 21°56'59" E 72.07 feet to the Northeast Corner of Lot 2, Block 2, Stone Creek Addition No. 4A; thence

N 48°27'56" E 72.39 feet to the Northeast Corner of Lot 3, Block 2, Stone Creek Addition No. 4A; thence

S 46°56'47" E 359.96 feet to the Southwest Corner of Lot 8, Block 2, Stone Creek Addition No. 4A; thence

N 43°01'42" E 294.84 feet along the Southeasterly Lot Line of Lot 8, Block 1 and Lot 1, Block 3, Stone Creek Addition No. 4A; thence

S 46°55'05" E 434.32 feet; thence

S 01°29'58" E 778.59 feet to the North right of way line of US-24 Highway; thence

Along the North right of way line of US-24 Highway the following 3 courses,

Course 1: S 88°52'14" W 988.18 feet,

Course 2: N 00°35'16" W 5.00 feet,

Course 3: S 88°52'14" W 737.76 feet to the point of beginning containing 34.2 acres.

Tim Sloan, PLS-783, March 9, 2023.

Subject to easements and restrictions of record.

Leavenworth County, Kansas Parcel No. 052-192-03-0-40-01-002.02-0.



**DEVELOPMENT PLAN**  
**STONE CREEK REINVESTMENT HOUSING INCENTIVE DISTRICT**  
**IN THE CITY OF TONGANOXIE, KANSAS**

\_\_\_\_\_, 2023

**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 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 various reinvestment housing incentive districts within the City (collectively, the "RHID") pursuant to the Kansas Reinvestment Housing Incentive District Act, K.S.A. 12-5241 *et seq.* (as amended, the "RHID Act").<sup>1</sup>

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

On June 9, 2017, the Secretary provided written confirmation approving the findings set forth in Resolution No. 06-17-01 for establishment of the RHID.

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<sup>1</sup> The RHID Act was recently amended to replace references to "rural" with "reinvestment", among other changes. See Senate Bill No. 17, which was approved by Governor Kelly on April 20, 2023 and took effect on May 4, 2023, following publication in Volume 42, Issue 18 of the Kansas Register, available at <https://sos.ks.gov/publications/Register/Volume-42/Issues/Issue-18/05-04-23-51107.html>.

## DEVELOPMENT PLAN ADOPTION

K.S.A. 12-5245 states that upon receipt of the Secretary's approval of the findings for establishing a reinvestment housing incentive district, the Governing Body may proceed with establishment of the district, provided that the Governing Body first adopts 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 "Stone Creek RHID") to assist in the development of quality housing within the City.

1. Legal description and map of the Stone Creek RHID are attached hereto as Attachment A.
2. The existing assessed valuation of all real estate within the Stone Creek RHID for 2023 is approximately \$1,101 for the land and \$0 for improvements.
3. The name and address of the owner of record for the real estate within the Stone Creek RHID is:

STONECREEK DEVELOPMENT LLC  
648 Shady Bend Drive  
Tonganoxie, Kansas 66086

4. The housing and public facilities that are proposed to be constructed in the Stone Creek RHID include the following (collectively, the "Project"):

### Housing Facilities

142 units of single-family housing on lots ranging in size from approximately 6,000 to 16,000 square feet.

### Public Facilities

Public facilities will include the construction of infrastructure improvements that are necessary to support the Project within the boundaries of the Stone Creek RHID, including without limitation, site work, water, sanitary sewer, storm water, drainage, electric improvements, roads, landscaping, sidewalks, and curb and gutter. The public facilities will be constructed concurrently with the housing facilities.

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

KANSAS LD, LLC  
Post Office Box 10560  
Fayetteville, Arkansas 72703  
Interest: Developer of Project, and will acquire property from current owner.

6. The contractual assurances from Developer guaranteeing the financial feasibility of the Project in the Stone Creek 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 Stone Creek RHID, as provided in the RHID Act, that shows the public benefits derived from the Stone Creek 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 Stone Creek 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 STONE CREEK RHID**

A tract of land in the Southeast Quarter of Section 3, Township 11 South, Range 21 East of the Sixth Principal Meridian, Leavenworth County, Kansas described as follows:

Beginning at the Southeast Corner of Lot 2A, Stone Creek Business Center, a Subdivision in the City of Tonganoxie, Leavenworth County, Kansas; thence N 01° 17'32" W 300.51 feet to the Northeast Corner of said Lot 2A, Stone Creek Business Center; thence

S 88° 04'31" W 70.00 feet along the North Line of said Lot 2A, Stone Creek Business Center; thence

N 01° 17'43" W 409.11 feet to the Southwest Corner of Lot 1, Block 2, Stone Creek Addition No. 1, City of Tonganoxie, Leavenworth County, Kansas; thence

N 87° 58'35" E 484.97 feet to the Southeast Corner of Lot 6, Block 2, Stone Creek Addition No. 1; thence

N 87° 58'35" E 424.27 feet to the Southeast Corner of Lot 5, Block 1, Stone Creek Addition No. 4A, City of Tonganoxie, Leavenworth County, Kansas; thence

N 02° 02'44" W 135.00 feet to the Northeast Corner of said Lot 5, Block 1, Stone Creek Addition No. 4A; thence

N 24° 31'33" E 67.02 feet to the Southeast Corner of Lot 1, Block 2, Stone Creek Addition No. 4A; thence

N 02° 00'50" W 84.33 feet to the Northeast Corner of said Lot 1, Block 2, Stone Creek Addition No. 4A; thence

N 21° 56'59" E 72.07 feet to the Northeast Corner of Lot 2, Block 2, Stone Creek Addition No. 4A; thence

N 48° 27'56" E 72.39 feet to the Northeast Corner of Lot 3, Block 2, Stone Creek Addition No. 4A; thence

S 46° 56'47" E 359.96 feet to the Southwest Corner of Lot 8, Block 2, Stone Creek Addition No. 4A; thence

N 43° 01'42" E 294.84 feet along the Southeasterly Lot Line of Lot 8, Block 1 and Lot 1, Block 3, Stone Creek Addition No. 4A; thence

S 46° 55'05" E 434.32 feet; thence

S 01° 29'58" E 778.59 feet to the North right of way line of US-24 Highway; thence

Along the North right of way line of US-24 Highway the following 3 courses,

Course 1: S 88° 52'14" W 988.18 feet,

Course 2: N 00° 35'16" W 5.00 feet,

Course 3: S 88° 52'14" W 737.76 feet to the point of beginning containing 34.2 acres.

Tim Sloan, PLS-783, March 9, 2023.

Subject to easements and restrictions of record.

Leavenworth County, Kansas Parcel No. 052-192-03-0-40-01-002.02-0.



## DEVELOPMENT PLAN – ATTACHMENT B

### COMPREHENSIVE FINANCIAL FEASIBILITY ANALYSIS

	Assessed Valuation	Property Class	Mill Levy	Number of Lots	Tax Amount
All Lots	\$ 1,101.00		0.149488	1	\$ 164.59
					\$ -
				-	\$ -
<u>Total Current</u>					<u>\$ 164.59</u>

	Estimated Value of Lots	Estimated Value of Buildings to be Constructed	Property Class	Mill Levy	Est. Property Tax	Number of Lots	Total Value
Home Type: Carlie II	\$ 40,000	\$ 220,000	11.5%	0.1280	\$ 3,827	24	\$ 91,844
Home Type: Davenport	\$ 40,000	\$ 230,000	11.5%	0.1280	\$ 3,974	24	\$ 95,377
Home Type: Cooper	\$ 40,000	\$ 240,000	11.5%	0.1280	\$ 4,121	24	\$ 98,909
Home Type: Baltimore	\$ 40,000	\$ 250,000	11.5%	0.1280	\$ 4,268	24	\$ 102,442
Home Type: Bridgeport	\$ 40,000	\$ 260,000	11.5%	0.1280	\$ 4,416	24	\$ 105,974
Home Type: Camden	\$ 40,000	\$ 280,000	11.5%	0.1280	\$ 4,710	22	\$ 103,619

Grand Total Less Incentive Percent	\$ 598,165
Tax Increment	\$ 598,000
25 Year RebateTotal, 1% Growth	\$ 9,373,774
Revenue Stream Net Present Value	\$ 4,172,479
Total Tax Less State Mills	\$ 598,165
Incentive Percent	100%
*The numbers included are estimates based on 2022 Assessments Mill Levy	0.149488

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

## DEVELOPMENT PLAN – ATTACHMENT C

### STONE CREEK DEVELOPMENT AGREEMENT

July 17, 2023

THIS STONE CREEK DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of July 17, 2023 (the "Effective Date"), by and between the CITY OF TONGANOXIE, KANSAS, a Kansas municipal corporation (the "City"), and KANSAS LD, 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 single-family housing development consisting of 142 units on lots ranging in size from approximately 6,000 to 16,000 square feet (the "Housing Facilities"), as well as the necessary infrastructure required to support the Housing Facilities (collectively, the "Project").

B. The Project consists of approximately 34.2 acres of real property generally located north of State Avenue/US-24/40 and west of East Woodfield Drive and Stone Creek Avenue with an address of 00000 State Avenue, Tonganoxie, Kansas, as legally described in Exhibit A attached hereto (the "Project Site"). Developer does not yet own the Project Site, but has the right to acquire the Project Site pursuant to that certain Purchase and Sale Agreement (Raw Land – Bulk) dated October 12, 2022, and Developer shall, upon closing on acquisition of the Project Site ("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 reinvestment housing incentive districts pursuant to K.S.A. 12-5241 *et seq.* (as amended, the "RHID Act")<sup>2</sup>, for the purpose of encouraging development of housing and assisting with the financing of public improvements that will support such housing in areas that 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 various reinvestment housing incentive districts within the City (collectively, the "RHID") through the adoption of Resolution No. 06-17-01 (the "RHID Resolution") pursuant to the RHID Act. A copy of the RHID Resolution is attached hereto as Exhibit B. A legal description of the boundaries of the RHIDs and maps 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 findings set forth therein for establishment of the RHIDs in the City, as required by K.S.A. 12-5244(c).

E. On June 9, 2017, the Secretary provided written confirmation approving the findings set forth in the RHID Resolution for establishment of the RHID. The Project Site constitutes a portion of the RHID (the "Stone Creek RHID").

F. On July 17, 2023, the Governing Body of the City held a public hearing in connection with Developer's proposed development plan for the Stone Creek RHID (the "Development Plan"), pursuant to the RHID Act. The Development Plan provides, among other things, for the collection of the Incremental

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<sup>2</sup> The RHID Act was recently amended to replace references to "rural" with "reinvestment", among other changes. See Senate Bill No. 17, which was approved by Governor Kelly on April 20, 2023 and took effect on May 4, 2023, following publication in Volume 42, Issue 18 of the Kansas Register, available at <https://sos.ks.gov/publications/Register/Volume-42/Issues/Issue-18/05-04-23-51107.html>.

Property Taxes (defined in Section 4.2(a)(i) below) within the Stone Creek RHID to be disbursed to and used by Developer on a pay-as-you-go basis to reimburse certain RHID Eligible Expenses (defined in Section 4.2). Upon the conclusion of the public hearing, the Governing Body passed Ordinance No. 1514, a copy of which is attached hereto as **Exhibit C** (the "Stone Creek RHID Ordinance"), to adopt the Development Plan and establish the Stone Creek RHID pursuant to the RHID Act.

G. 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.

H. 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, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties 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 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 in this Agreement, to develop, construct, and complete the Project. The performance of all activities by Developer hereunder shall be as an independent contractor and not as an agent of the City, except as otherwise specifically provided herein.

2.2. Development of the Project Site. Developer contemplates that all of the buildings, infrastructure and other improvements constituting the Project, as described in this Section 2.2 and as generally depicted on **Exhibit D** attached hereto (collectively, the "Improvements"), if constructed, shall be developed, constructed, and completed 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 or amended from time to time 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 in the manner described herein, all in accordance with the terms of this Section 2.2 and all other Applicable Laws and Requirements (defined in Annex 1). The Parties further agree that the "Project" shall include the following:

(a) Housing Facilities: Up to 142 units of single-family housing on lots ranging in size from approximately 6,000 to 16,000 square feet, which units may be constructed in multiple phases.

(b) Public Facilities: Infrastructure improvements that are necessary to support the Housing Facilities, including without limitation, site work, water, sanitary sewer, storm water, drainage, electric improvements, roads, landscaping, sidewalks, and curb and gutter (collectively, the "Public Facilities").

(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 material respects comply with the Plans and Specifications (defined in Section 5.2).

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

2.3. Developer's Obligations to Construct and Complete the Project. Prior to satisfaction of the Public Financing Conditions set forth in Section 3.1 below, the Parties agree that Developer shall have the right but not the obligation to develop the Project as described above. If and to the extent that the Public Financing Conditions are satisfied on or before the Drop-Dead Date (defined in Section 3.2), then subject to the terms and conditions of this Agreement and except as otherwise provided herein, Developer covenants and contractually agrees to fully construct and 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 that, when added to the RHID Proceeds (defined in Section 4.2(a)(iii)), 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 reasonable discretion, in the form of: (x) cash funds held in a bank account; or (y) private equity and/or satisfactory evidence from a financial institution that is ready, willing and able to provide construction draws for the Project, subject only to 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 Stone Creek RHID Ordinance is not nullified within 30 days after passage, as provided in 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 any of the Public Financing Conditions, such approval shall be granted or withheld by the City in its sole, but reasonable discretion.

3.2. Termination. In the event that the Public Financing Conditions are not met or waived on or before                     , 2023 (the "Drop-Dead Date"), then either party hereto shall have the right to terminate this Agreement, but the failure to meet any of the Public Financing Conditions 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 \_\_\_\_\_, 2023, as may be amended, 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 E, 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, as well as private equity and debt (the "Private Funds"). Developer will use the Private Funds to 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).

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 property acquisition and hard costs of site preparation and construction for the Public Facilities, located within the Stone Creek RHID, identified on Exhibit E attached hereto, and eligible for payment or reimbursement pursuant to the RHID Act (the "RHID Eligible Expenses"). In connection with the Stone Creek RHID, the Parties agree as follows:

(a) Collection of RHID Revenues. During the RHID Collection Period (defined in Section 4.2(b)(i)), the City shall collect Incremental Real Property Taxes as set forth below, unless the Stone Creek 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 Stone Creek RHID Ordinance, the City hereby agrees that the RHID Eligible Expenses may be financed and reimbursed with Pay-Go RHID Financing (defined in Section 4.2(b)) from the Incremental Real Property Taxes collected within the Stone Creek RHID. "Incremental Real Property Taxes" means that amount of Real Property Taxes collected from within the Stone Creek RHID that exceeds the amount of Real Property Taxes collected from the Base Year Assessed Valuation of the real property within the Stone Creek RHID. "Base Year Assessed Valuation" means the assessed valuation of all real property within the boundaries of the Stone Creek RHID on the Effective Date. The Base Year Assessed Valuation of the real property within the Stone Creek RHID is \$1,101.

(ii) Stone Creek RHID Fund. During the existence of the Stone Creek RHID, all Incremental Real Property Taxes generated within the Stone Creek RHID shall be deposited into a separate fund (the "Stone Creek 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 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 or reimburse Developer 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 agree that the RHID Proceeds shall be disbursed by the City to Developer from the Stone Creek 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



Stone Creek RHID Fund; (2) Developer has fully satisfied, or City has waived, all of the conditions set forth in Section 4.2(e); (3) Developer has not already been reimbursed for RHID Eligible Expenses in an amount equal to the RHID Cap (defined 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 Stone Creek 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) 18 years from the Effective Date (the "RHID Collection Period"). At the end of the RHID Collection Period, the City shall, to the extent there exist unreimbursed RHID Eligible Expenses for which a Certificate(s) of Expenditure has been submitted by Developer, disburse to Developer any remaining funds in the Stone Creek RHID Fund (subject to satisfaction of the conditions set forth in subsection (b)(1)-(3) above), and the Parties understand and agree that the Stone Creek RHID shall thereafter terminate, the City shall no longer deposit Incremental Real Property Taxes into the Stone Creek 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 \$9,000,000 (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) 18 years from the Effective Date, or (y) when 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 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 Stone Creek RHID Fund shall be used to pay an administrative fee in an amount equal to 1% of the Incremental Real Property Taxes deposited into the Stone Creek 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 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 Stone Creek 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 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, but 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 beyond any applicable cure period.

4.3. Certificate(s) of Expenditures for Reimbursement from RHID Proceeds. The Parties agree as follows:

(a) Certificate of Expenditures. In order to receive payment or reimbursement for Project Costs from Pay-Go RHID Financing, Developer shall submit a certificate of expenditures in the form attached hereto as **Exhibit F** (each, a "Certificate of Expenditures") attesting to the expenditure of Project Costs in accordance with the procedures 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 Developer's successor or assigns (subject to the requirements of Section 6.9), 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. Developer shall certify to the City that it shall only use the RHID Proceeds 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.

(ii) Each Certificate of Expenditures shall be accompanied by such bills, 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 4.3(b)(ii) above as reasonably necessary to determine that the expenses therein are valid, eligible and properly incurred and constitute RHID Eligible Expenses.

(iv) The City shall have 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 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 30 calendar days after receipt of the re-submitted Certificate of Expenditures. 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 is important to the City and Developer for various reasons. Accordingly, the Parties 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.

4.4. 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, that the City shall first provide Developer with advance written notice specifying the amount(s) in question, and afford Developer a period of 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 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; (iii) indemnification of the City for any indemnity obligation owed by Developer to the City pursuant to the terms of this Agreement, 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.

4.5. Line Items. The Parties 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 E may be made by Developer as long as: (a) no such increase represents more than a 20% change per line item, unless otherwise approved by the City Manager or his or her designee, which approval will not be unreasonably withheld, conditioned or delayed; 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 Changes (defined in Annex 1) 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 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 following request by the City, 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 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, and construct 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 Costs, 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 recognizes, stipulates and agrees that: (a) in the design, construction and completion 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 Improvements, Developer agrees to meet with the City at such intervals as Developer, the City, and any authorized City designee 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 sales prospects for the Housing Facilities.

5.10. Project Construction Schedule. Developer will diligently pursue Substantial Completion of the Project and, subject to Force Majeure or unless otherwise approved by the City, must obtain Substantial Completion within 45 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) expiration of the RHID Collection Period, or (b) 25 years from the date of the establishment of the Stone Creek RHID (the "Term").

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

(a) Establish restrictive covenants to ensure consistency in development and property maintenance, and provide for the creation of a property owners' association ("POA") that shall be responsible for maintaining common areas after the turn-over date provided in the declaration; provided, however, that Developer shall be responsible for maintaining the common areas until such turn-over date, and Developer shall always be responsible for maintaining any and all property it owns within the Project Site.

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

(c) Additionally, Developer understands and agrees that the nature of the residential uses within the Stone Creek RHID were critical to the City's creation of same. Accordingly, the Parties agree that the following uses shall be prohibited within the Stone Creek 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 allowed by Applicable Laws and Requirements.

(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 property owners within the Project Site.

(v) Any dumping, disposing, incineration or reduction of garbage.

(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 30 days thereafter, Developer and the City shall execute a document that shall memorialize the restrictions set forth in this Section 6.2(c) and record the same against the real property within the Stone Creek RHID, which restrictions shall be effective and run with the land for the Term of this Agreement.

6.3. Development Plan and Project Plan. During the Term, Developer agrees that it shall perform and comply, in all material respects, with each and all of the terms and provisions of the Development Plan and the Project Plan.

6.4. Maintenance and Use. During the Term, Developer shall cause the portions of the Project then owned by Developer and all other property owned or used by Developer 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 residential subdivisions in the greater metropolitan Kansas City area. Except as otherwise set forth in Section 6.2(a), Developer shall have no obligation to maintain, or enforce any maintenance obligations on, any residential lots sold to a third party.

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 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, unless contested in good faith with the assurances provided in the preceding sentence.

6.6. Licenses and Permits. 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 construction of the Project.

6.7. Insurance. During the Term, Developer shall maintain, or cause to be maintained by the POA, insurance with respect to the common areas of the Project Site and operations covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar subdivisions and engaged in similar operations (including but not limited to property and casualty,

and general liability) and in such amounts as, in the reasonable judgment of Developer, are adequate to protect Developer, the POA and the common areas of the Project.

6.8. 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 Developer's 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, including but not limited to the POA; (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 the Project, this Agreement, the Development Plan, the Project Plan, the Stone Creek RHID, the formation of the Stone Creek 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 6.8 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.

6.9. Prohibition on Assignment. Except for Permitted Encumbrances and a Permitted Mortgage (defined in Annex 1), which are hereby permitted without any further approval of the City, and except as otherwise provided herein, during the Term, Developer will not assign this Agreement without the prior written consent of the City (which shall not be unreasonably withheld, conditioned, or delayed). Any such assignment which is consented to by the City shall be an "Approved Assignment". The City shall have the right to grant or withhold its consent to any of the aforesaid, other than an Affiliate Transfer (as defined below), 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 agree that Developer may assign this Agreement without the City's prior consent to any entity which is owned or controlled by or under common control with Developer, provided that: (i) such transferee entity assumes or guarantees all of Developer's obligations under this Agreement; (ii) the transferee entity remains liable jointly and severally with Developer therefor; and (iii) Developer delivers notice to the City of such transfer at least 10 days prior thereto (an "Affiliate Transfer"). As used herein, the term "control" means 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; provided, however, that the Parties understand and agree that the term shall not include passive investors or capital partners without day to day operational control.

6.10. 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.

6.11. 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. 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 6.11 shall restrict or impede the right of the City to enter the Project pursuant to any Applicable Laws and Requirements.

6.12. Environmental Matters. Developer agrees that by Closing on acquisition of the Project Site, Developer shall assume 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 (defined in Annex 1) in, upon, under, over or from the Project in violation of any Environmental Regulation (defined in Annex 1); shall not grant permission for 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 brought to the Project Site by Developer, its employees or agents, to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations; shall not install or grant permission to be installed any underground storage tank therein or thereunder in violation of any Environmental Regulation; and shall comply with all Environmental Regulations applicable to the Project Site or any portion thereof owned by Developer. Developer shall indemnify the City against, hold the City harmless from, and 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, unless caused by City, its employees or agents. The foregoing covenants contained in this Section 6.12 shall be deemed continuing covenants, representations and warranties for the benefit of the City, and shall survive the termination, satisfaction or release of this Agreement.

6.13. 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 45 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 120 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 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 120 days; or Developer generally is not paying its debts as such debts become due; or Developer 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 and such appointment is not dismissed within 120 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 60 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.

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, and Developer covenants to pay and indemnify the City against all reasonable costs and charges, including attorneys' fees, lawfully incurred by the City in connection with the enforcement of such rights and remedies:

(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 unless and until such default is cured by Developer; (ii) terminate Developer's access to the Pay-Go RHID Financing; and/or (iii) terminate this Agreement.

(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 actual damages incurred by the City resulting from such Developer default; provided, however, that the specific performance remedy shall not apply to compel Developer to complete the Project.

(c) 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 continues after notice and expiration of any applicable cure periods, 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 (provided that the specific performance remedy shall not apply to compel Developer to complete the Project), and the Parties waive 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.

(d) Notwithstanding the foregoing or anything in this Agreement to the contrary, the Parties expressly acknowledge and agree that Developer shall not be liable for any punitive, 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 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 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 ever be liable for any punitive, remote or consequential damages.

## **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 or financing due to global pandemic such as COVID-19, failure of power or other insufficient utility service, riots, insurrection, environmental remediation required by Government Authorities, supply chain interruptions, 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 Development Plan, Project Plan, Plans and Specifications, and/or 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, Government Authority, 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, Government Authority, 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:

City Clerk  
City of Tonganoxie, Kansas

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

with a copy to:

George Brajkovic  
City Manager  
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:

Kansas LD, LLC  
c/o Jared Payne  
Rausch Coleman Homes  
4058 North College Avenue, Suite 100  
Fayetteville, Arkansas 72703  
Telephone: (479) 957-9851  
Email: jared.payne@rch.com

And a copy to:

Ryan R. Cook  
Rouse Frets White Goss Gentile Rhodes, P.C.  
4510 Belleview, Suite 300  
Kansas City, Missouri 64111  
Telephone: (816) 502-4712  
Email: rcook@rousepc.com

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 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 Section 6.9. 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 and exhibits follow.]*



IN WITNESS WHEREOF, the Parties have executed these presents as of the Effective Date.

**DEVELOPER:**

**KANSAS LD, LLC**, a Kansas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a Kansas limited liability company.

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 Stone Creek RHID Fund, as described in Section 4.2(d).

"Affiliate Transfer" means a transfer by Developer of all or any portion of Developer's rights and/or obligations under this Agreement, to an entity which is owned or controlled by or under common control with Developer, as described in Section 6.9.

"Agreement" means this Stone Creek 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 6.9.

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

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

"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.

"County" means Leavenworth County, Kansas.

"Developer" means Kansas LD, LLC, a Kansas limited liability company.

"Development Plan" means the Development Plan for the Stone Creek 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 Authorities having jurisdiction over the Parties 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 the general contractor selected by Developer for the Improvements, as described in Section 5.3.

"Government Authority" or "Government Authorities" means 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.

"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.

"Housing Facilities" means up to 142 units of single-family housing on lots ranging in size from approximately 6,000 to 16,000 square feet, as described in Recital A and Section 2.2(a).

"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 D**.

"Incremental Real Property Taxes" means that amount of Real Property Taxes collected from the real property within the Stone Creek 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 Stone Creek RHID as determined in accordance with the RHID Act, as described in Section 4.2(a)(i).

"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.

"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 Stone Creek 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 single family residential 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 34.2 acres of real property generally located north of State Avenue/US-24/40 and west of East Woodfield Drive and Stone Creek Avenue with an address of 00000 State Avenue, Tonganoxie, Kansas, as described in Recital B and legally described on **Exhibit A**.

"Public Facilities" 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).

"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 Stone Creek RHID.

"RHID" means a reinvestment 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 Project Costs incurred by Developer which are eligible for payment or reimbursement pursuant to the RHID Act, as described in Section 4.2 and identified on **Exhibit E** attached hereto.

"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) 18 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**.

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

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

"Stone Creek RHID Ordinance" means the ordinance passed by the City pursuant to the RHID Act on or about May 18, 2020 to approve the Stone Creek 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 E**.

## **INDEX OF EXHIBITS TO THE DEVELOPMENT AGREEMENT**

Exhibit A	Project Site – Legal Description
Exhibit B	RHID Resolution
Exhibit C	Stone Creek RHID Ordinance
Exhibit D	Depiction of Improvements
Exhibit E	Total Project Budget
Exhibit F	Form of Certificate of Expenditures

## **EXHIBIT A to Development Agreement**

### **Project Site – Legal Description**

A tract of land in the Southeast Quarter of Section 3, Township 11 South, Range 21 East of the Sixth Principal Meridian, Leavenworth County, Kansas described as follows:

Beginning at the Southeast Corner of Lot 2A, Stone Creek Business Center, a Subdivision in the City of Tonganoxie, Leavenworth County, Kansas; thence N 01°17'32" W 300.51 feet to the Northeast Corner of said Lot 2A, Stone Creek Business Center; thence

S 88°04'31" W 70.00 feet along the North Line of said Lot 2A, Stone Creek Business Center; thence

N 01°17'43" W 409.11 feet to the Southwest Corner of Lot 1, Block 2, Stone Creek Addition No. 1, City of Tonganoxie, Leavenworth County, Kansas; thence

N 87°58'35" E 484.97 feet to the Southeast Corner of Lot 6, Block 2, Stone Creek Addition No. 1; thence

N 87°58'35" E 424.27 feet to the Southeast Corner of Lot 5, Block 1, Stone Creek Addition No. 4A, City of Tonganoxie, Leavenworth County, Kansas; thence

N 02°02'44" W 135.00 feet to the Northeast Corner of said Lot 5, Block 1, Stone Creek Addition No. 4A; thence

N 24°31'33" E 67.02 feet to the Southeast Corner of Lot 1, Block 2, Stone Creek Addition No. 4A; thence

N 02°00'50" W 84.33 feet to the Northeast Corner of said Lot 1, Block 2, Stone Creek Addition No. 4A; thence

N 21°56'59" E 72.07 feet to the Northeast Corner of Lot 2, Block 2, Stone Creek Addition No. 4A; thence

N 48°27'56" E 72.39 feet to the Northeast Corner of Lot 3, Block 2, Stone Creek Addition No. 4A; thence

S 46°56'47" E 359.96 feet to the Southwest Corner of Lot 8, Block 2, Stone Creek Addition No. 4A; thence

N 43°01'42" E 294.84 feet along the Southeasterly Lot Line of Lot 8, Block 1 and Lot 1, Block 3, Stone Creek Addition No. 4A; thence

S 46°55'05" E 434.32 feet; thence

S 01°29'58" E 778.59 feet to the North right of way line of US-24 Highway; thence

Along the North right of way line of US-24 Highway the following 3 courses,

Course 1: S 88°52'14" W 988.18 feet,

Course 2: N 00°35'16" W 5.00 feet,

Course 3: S 88°52'14" W 737.76 feet to the point of beginning containing 34.2 acres.

Tim Sloan, PLS-783, March 9, 2023.

Subject to easements and restrictions of record.

Leavenworth County, Kansas Parcel No. 052-192-03-0-40-01-002.02-0.

**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.**

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**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.

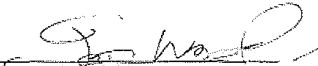
**Section 4.** The Governing Body hereby finds and determines that the shortage of quality housing is a substantial deterrent to future economic growth and development in the City.

**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.

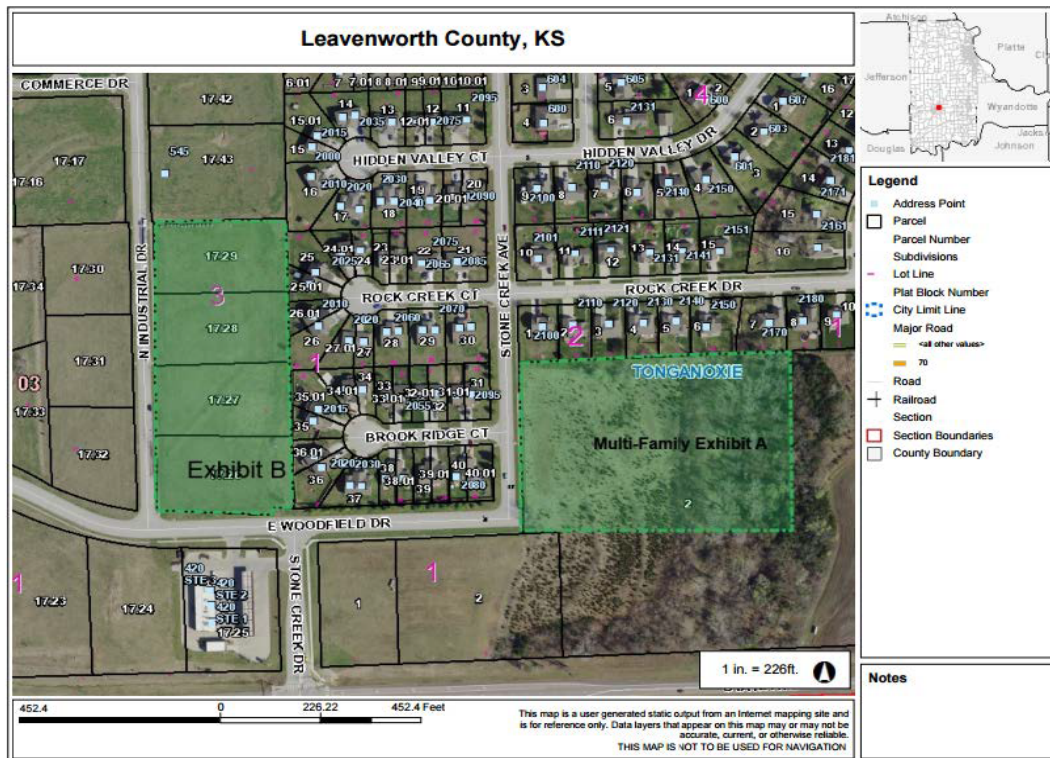
  
Jason Ward, Mayor

ATTEST:

  
City Clerk

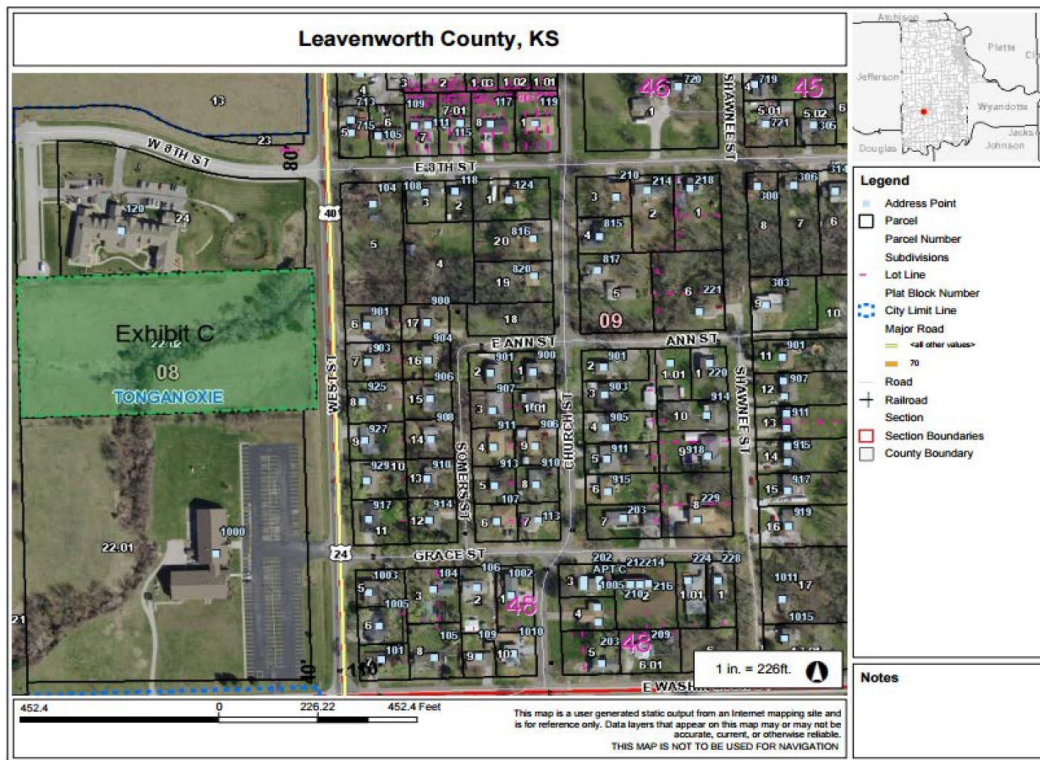
APPROVED AS TO FORM:

  
Shannon Marciano, City Attorney



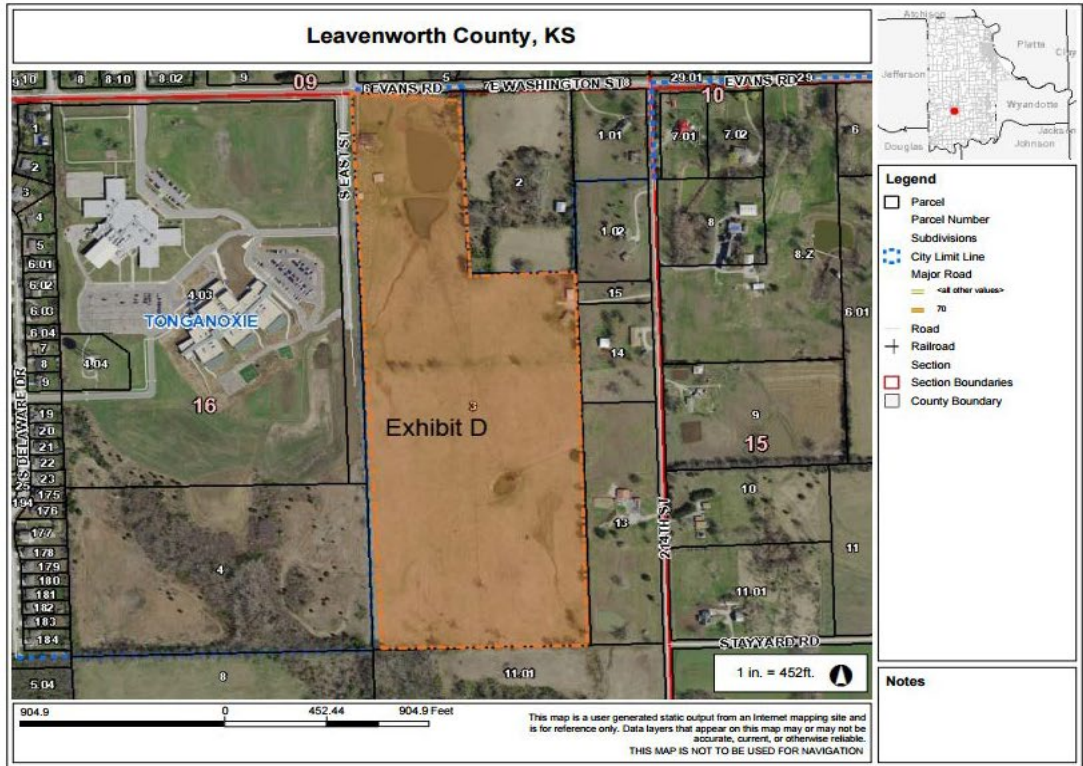
**Multi-Family Exhibits:**

	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:**

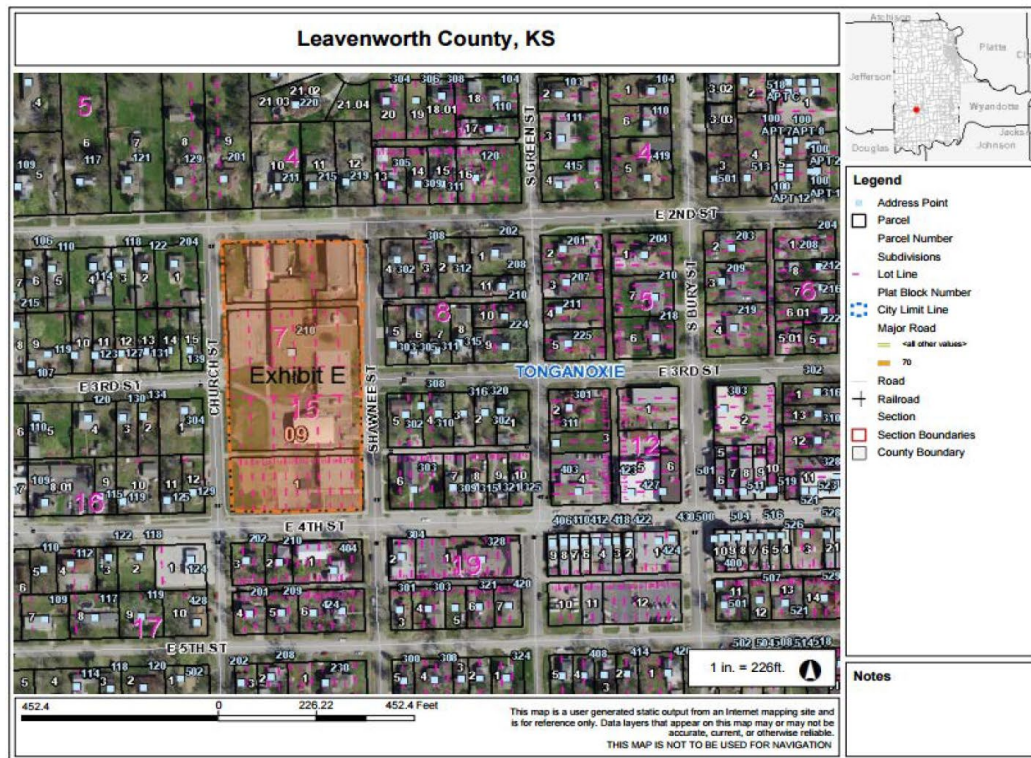
	Parcel ID	Site Address	Legal Description
Exhibit C	1930800000022020	00000 WEST ST, Tonganoxie, KS 66086	S337.2' OF N660' OF E710'(S) OF SE1/4SE1/4 LESS ROW



**Single-Family Exhibit:**

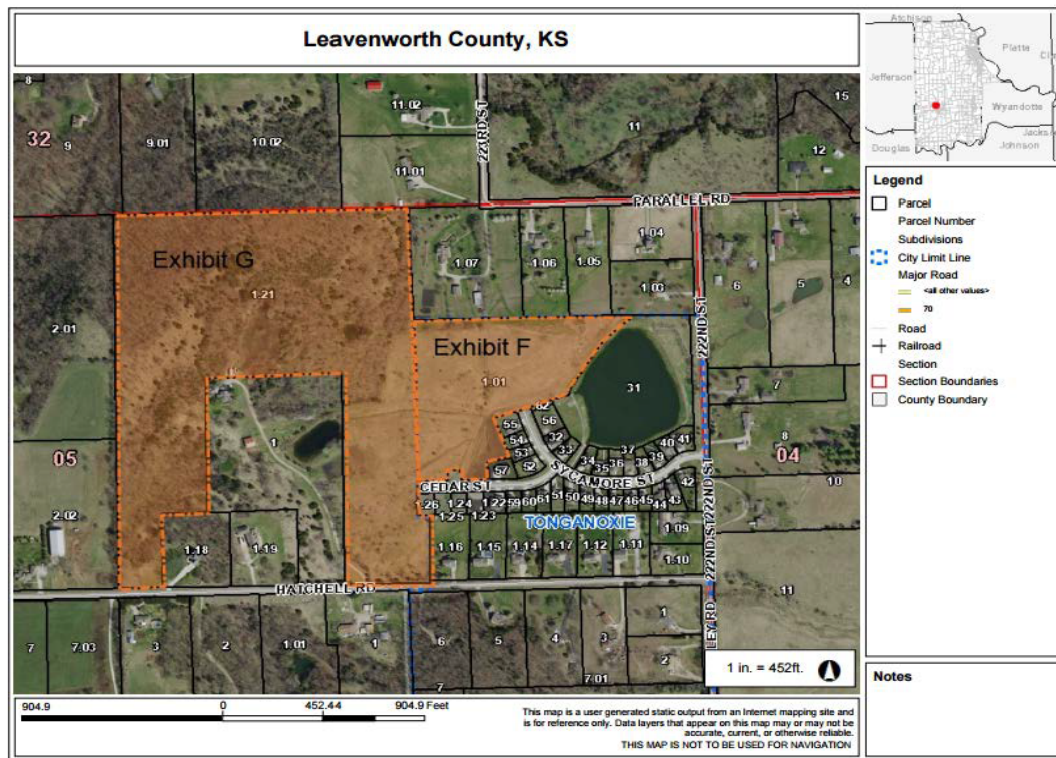
	Parcel ID	Site Address	Legal Description
Exhibit D	1951600000003000	21589 EVANS RD, Tonganoxie, KS 66086	PT E1/2 NE1/4 BEG SE COR N2600' E492', S864.45', E487', S1745.5', W979' TO POB





**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**

**Stone Creek RHID Ordinance**

[To be attached.]

**EXHIBIT D to Development Agreement**

**Improvements – Depiction**



**EXHIBIT E to Development Agreement**

**Total Project Budget**

<i>Category</i>	<i>Estimated Expense</i>
Land Acquisition	\$1,3000,000
Site Work*	\$5,351,540
Engineer Design, Construction Documents, Fees	\$1,548,284
Project Finance	\$5,482,584
Contingency @ 5% of Total (non-bank interest not included)	\$409,991
Total	\$14,092,399

\*Site Work includes: Parking/Sidewalks/Earth Work/Sanitary Sewer/Storm  
Water/Water/Electric/Landscape/Fencing

\*\* The Parties acknowledge that the above Project Costs are estimates and may be adjusted, but all  
such Project Costs shall be subject to verification as provided for herein and eligibility under the  
RHID Act and this Agreement.

**EXHIBIT F to Development Agreement**

**Form of Certificate of Expenditures**

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**CERTIFICATE OF EXPENDITURES**

TO: City of Tonganoxie, Kansas

Attention: City Manager

Re: STONE CREEK RHID

*Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Stone Creek Development Agreement dated as of \_\_\_\_\_, 2023 (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 RHID Eligible Expense and was incurred in connection with the construction of the Project.
2. These RHID Eligible Expenses 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 Stone Creek RHID Fund and no part thereof has been included in any other certificate previously filed with and paid by 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 beyond any applicable notice and cure period.
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 \_\_\_\_.

\_\_\_\_\_, a Kansas limited liability  
company

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

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

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

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

**CITY OF TONGANOXIE, KANSAS**

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

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

SCHEDULE I  
TO

### Description of Infrastructure Costs

Designate as  
RHID Infrastructure  
Costs

Cost

Payee

Total Costs:

**RESOLUTION NO. 07-23-22**

**A RESOLUTION APPROVING AND AUTHORIZING THE PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF TONGANOXIE, KANSAS AND MATTHEW STEVENS, LORALEE STEVENS, AND LISA SCHELLER, AS EXECUTORS OF THE ESTATE OF BETTY STEVENS**

**WHEREAS**, Matthew Stevens, Lorelee Stevens, and Lisa Scheller, as Executors of the Estate of Betty Stevens (collectively, the "Seller"), are the owners of real property located at 605 E. 4th Street, Tonganoxie, Kansas 66086 (the "Property");

**WHEREAS**, the Seller is prepared to sell the Property to the City of Tonganoxie, Kansas (the "City");

**WHEREAS**, the Property is located near other City facilities and its acquisition by the City would enable the City to use the Property in an efficient and valuable manner in conjunction with the nearby City facilities;

**WHEREAS**, the Governing Body has determined that it is advisable to enter into the Purchase and Sale Agreement, attached hereto as **Exhibit A** (the "Agreement"), with Seller.

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

**Section 1.** The Governing Body hereby approves the Agreement in substantially the form attached hereto.

**Section 2.** The Mayor is hereby authorized to execute in the name of the City, the Agreement, and the City Manager and other officials and representatives of the City, including the City Attorney, are hereby further authorized and directed to take such actions and to execute 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 JULY \_\_, 2023.**

**SEAL**

---

David Frese, Mayor

ATTEST:

---

Daniel Porter, Acting City Clerk

**EXHIBIT A**  
**PURCHASE AND SALE AGREEMENT**

[To be attached.]

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of the Effective Date (defined below) between the CITY OF TONGANOXIE, KANSAS, a Kansas municipal corporation ("Purchaser"), and MATTHEW STEVENS, LORALEE STEVENS, AND LISA SCHELLER, AS EXECUTORS OF THE ESTATE OF BETTY STEVENS ("Seller"). Seller and Purchaser are sometimes collectively referred to herein as the "Parties" and each of the Parties is sometimes singularly referred to herein as a "Party".

WHEREAS, Seller is the owner of the Property (as hereinafter defined); and,

WHEREAS, Seller desires to sell and Purchaser desires to purchase fee simple title to the Property, all in accordance with, and subject to, the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. DEFINITIONS

As used herein, the following terms shall have the meanings indicated:

"Bill of Sale" shall mean a bill of sale executed by Seller, as grantor, in favor of Purchaser, as grantee, conveying the Personal Property to Purchaser, substantially in the form attached hereto as Exhibit C.

"Business Day" means any day other than a Saturday, Sunday, recognized national holiday, or other local holiday on which banks are closed in the Kansas City metropolitan area.

"Closing" shall mean the consummation of the sale and purchase of the Property provided for herein, to be held at the offices of the Title Company, or such other place as the Parties may mutually agree.

"Closing Date" shall mean the date which is 30 days following the expiration of the Feasibility Period.

"Deed" shall mean a special warranty deed executed and acknowledged by Seller, as grantor, in favor of Purchaser, as grantee, conveying the Property to Purchaser, subject only to the Permitted Exceptions, substantially in the form attached hereto as Exhibit B.

"Due Diligence Materials" shall mean the information to be provided by Seller to Purchaser pursuant to the provisions of Section 4.1.

"Earnest Money Deposit" shall mean the earnest money deposit to be paid by Purchaser pursuant to the provisions of Article III.



"Effective Date" shall mean the date on which the last of Seller or Purchaser executes this Agreement.

"Exception Documents" shall mean true, correct and legible copies of each document listed as an exception to title in the Title Commitment.

"Feasibility Period" shall mean a period commencing on the Effective Date and ending on the date which is 30 days following the Effective Date.

"Hazardous Materials" shall mean (a) "hazardous substances" or "toxic substances" as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), or by the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 *et seq.*, each as may be amended; (b) "hazardous wastes", as that term is defined by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6902 *et seq.* ("RCRA"), as may be amended; (c) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances with the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste substances or materials, all as now and hereafter amended; (d) petroleum including crude oil or any fraction thereof; (e) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. § 2011 *et seq.*, as may be amended; (f) asbestos in any form or condition; and (g) polychlorinated biphenyl ("PCBs") or substances or compounds containing PCBs.

"Hazardous Materials Law" shall mean any local, state or federal law relating to environmental conditions or industrial hygiene, including, without limitation, RCRA, CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, the Federal Waste Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and all similar federal, state and local environmental statutes and ordinances and the regulations, orders, or decrees now or hereafter promulgated thereunder.

"Improvements" shall mean the improvements located on the Land.

"Land" shall mean a portion of the real property legally described on Exhibit A attached hereto, together with all of Seller's rights, titles, appurtenant interests, covenants, licenses, water rights, mineral rights, privileges and benefits thereunto belonging, and Seller's right, title and interest in and to any easements, right-of-way, rights of ingress or egress or other interests in, on or under any land, highway, street, road or avenue, open or proposed, in, on, across, in front of, abutting or adjoining such real property including, without limitation, any strips and gores adjacent to or lying between such real property and any adjacent real property. Following completion of the Survey, if applicable, the Parties agree that the legal description for the Land contained in the Survey, if different, shall be substituted for the legal description contained on Exhibit A hereto.

"Permitted Exceptions" shall mean those title exceptions which: (i) have been approved in writing by Purchaser; or (ii) which are deemed to have been approved by Purchaser by reason of Purchaser not objecting to such title exceptions pursuant to Sections 4.2 and 4.3; or (iii) Purchaser

is deemed to have waived by Purchaser's election under Sections 4.2 and 4.3 to close as contemplated by this Agreement notwithstanding Seller's failure to cure such title objections, but specifically excluding: (a) mortgages, deeds of trust, mechanic's or other liens that can be released with the payment of money; (b) the standard exceptions; (c) the exception for survey matters, if Purchaser elects to obtain a Survey; and (d) the general exception for visible and apparent easements or roads and highways or similar items.

"Personal Property" shall mean all tangible personal property owned by Seller located on, or situated in and used in connection with, the Land and/or the Improvements, including but not limited to all furniture, furnishings, fixtures, equipment, machinery, maintenance vehicles and equipment, tools, parts, recreational equipment, carpeting, art work, and window treatments, and other tangible personal property owned by Seller or in which Seller otherwise has an interest (other than a leasehold interest) if utilized by Seller solely in connection with the Land and/or the Improvements, together with all replacements and substitutions therefor located on the Land and used in connection with the operation or maintenance of the Land and/or the Improvements, together with any replacements or additions thereto between the Effective Date and Closing.

"Property" shall mean the Land, the Improvements, and the Personal Property.

"Purchase Price" shall have the meaning set forth in Article III below.

"Survey" means an ALTA/NSPS survey prepared by a surveyor selected by Purchaser.

"Title Commitment" shall mean a current commitment issued by the Title Company to the Purchaser pursuant to the terms of which the Title Company shall commit to issue the Title Policy to Purchaser in accordance with the provisions of this Agreement, and reflecting all matters which would be listed as exceptions to coverage on the Title Policy.

"Title Company" shall mean First American Title Insurance Company, 1100 Main Street, Suite 1900, Kansas City, Missouri 64105.

"Title Policy" shall mean an ALTA Extended Coverage Owner's Policy (or policies) of Title Insurance (2021 unmodified form), or comparable state promulgated policies, with liability in the aggregate amount of the Purchase Price, dated as of the Closing Date, issued by the Title Company, insuring title to the fee interest in the Property as being vested in Purchaser, subject only to the Permitted Exceptions, with the following modifications (which modifications shall be at Purchaser's expense to the extent the same result in an increase in the cost of the Title Policy beyond a standard title insurance policy): (a) the standard exceptions shall be deleted; (b) the exception for survey matters and mechanic's liens shall be deleted and replaced by an exception for the matters shown on the Survey (if obtained by Purchaser); (c) the exception for ad valorem taxes shall reflect only taxes for the current and subsequent years; (d) any exception as to parties in possession shall be deleted; (e) there shall be no general exception for visible and apparent easements or roads and highways or similar items (with any exception for visible and apparent easements or roads and highways or similar items to be specifically referenced to and shown on the Survey and also identified by applicable recording information); and (f) the Title Policy shall include such endorsements as Purchaser, at Purchaser's expense, shall reasonably require,

including without limitation endorsements for Zoning, Access, Contiguity, Subdivision, Comprehensive, Tax Parcel, Deletion of Arbitration, and Same as Survey (if applicable).

## **ARTICLE II. AGREEMENTS TO SELL AND PURCHASE**

**2.1. Agreement to Sell and Purchase Property.** On the Closing Date, subject to the performance by the Parties of the terms and provisions of this Agreement, Seller shall sell, convey, assign, transfer and deliver to Purchaser and Purchaser shall purchase, acquire and accept from Seller, the Property, for the Purchase Price therefor and subject to the terms and conditions of this Agreement.

## **ARTICLE III. PURCHASE PRICE**

**3.1. Earnest Money.** Within five (5) days after the Effective Date, Purchaser shall deliver to the Title Company the sum of \$5,000 as earnest money (together with any interest earned thereon, the "Earnest Money Deposit"). The Earnest Money Deposit shall be deposited with and held by the Title Company in a federally insured interest bearing escrow account that can be withdrawn without penalty and shall be nonrefundable to Purchaser if this Agreement has not been terminated on or prior to the expiration of the Feasibility Period, except as expressly provided to the contrary elsewhere in this Agreement. If Purchaser terminates this Agreement prior to the expiration of the Feasibility Period, the Earnest Money Deposit and all interest earned thereon shall be promptly refunded to Purchaser. The Earnest Money Deposit shall be applicable to the Purchase Price at the Closing.

**3.2. Purchase Price.** The Purchase Price shall be \$50,000.

**3.3. Payment of Balance of Purchase Price.** The balance of the Purchase Price for the Property shall be delivered by Purchaser at the Closing, in immediately available funds, subject to adjustment as herein provided.

## **ARTICLE IV. DUE DILIGENCE**

**4.1. Due Diligence Materials.** Within five (5) days after the Effective Date, Seller shall deliver to Purchaser, at Purchaser's address, for its review and/or copying, or shall make available to Purchaser in electronic format, the following items respecting the Property:

(a) True, correct, complete and legible copies of any documents related to the development of the Property, if any;

(b) True, correct, complete and legible copies of tax statements or assessments for all real estate and personal property taxes assessed against the Property for the current and the three (3) prior calendar years, if available;

(c) True, correct, complete and legible copies of any and all existing surveys, if any, and any environmental studies or impact reports relating to the Property, if any, including

any Phase I or Phase II environmental site assessments, and any approvals, conditions, orders or declarations issued by any governmental authority relating thereto (such studies and reports shall include, but not be limited to, reports indicating whether the Property is or has been contaminated by Hazardous Materials);

(d) True, correct, complete and legible copies of any and all litigation files with respect to any pending litigation and claim files for any claims made or threatened, if any, the outcome of which might materially affect the Property or the use and operation of the Property, together with summaries and such other more detailed information as Purchaser may reasonably request with respect to any other pending litigation or claim the outcome of which might materially affect Seller or materially affect the Property;

(e) True, correct, complete and legible copies of any and all operating expenses reports, invoices for repairs and maintenance, and documents detailing all expenses of Seller with respect to the Property for the prior three (3) years;

(f) True, correct, complete and legible copies of any and all leases, other occupancy agreements, and a current rent roll for the Property;

(g) True, correct, complete and legible copies of any and all (i) any existing title commitments or policies; (ii) any and all zoning information; (iii) any and all development and site plans and specifications; (iv) any utility agreements; (v) any and all right-of-way agreements, easements, restrictions and agreements affecting the Property; (vi) any and all economic incentive reports and information related to the Property; (vii) any and all permits related to the Property; and (viii) soil reports, geotechnical studies and similar engineering reports; and

(h) all other information in Seller's possession and control related to the Property which Purchaser may reasonably request.

**4.2. Title and Survey Review.** Purchaser has requested the Title Company to prepare the Title Commitment and Exception Documents. During the Feasibility Period, Purchaser may obtain, at its sole cost and expense, a Survey. During the Feasibility Period, Purchaser may notify Seller in writing of any objections Purchaser has to any matters shown or referred to in the Title Commitment and/or the Survey (the "Objections"). Except as set forth herein, any matters set forth in the Title Commitment or Survey other than the Objections shall be deemed to be Permitted Exceptions. Within five (5) days after Purchaser gives notice to Seller of the Objections, Seller shall notify Purchaser in writing of Seller's election to cure or not cure each of the Objections. If Seller elects to cure a given Objection, Seller's notice of election to cure shall include a reasonably detailed description of the cure to be undertaken, and a description of the time period during which such cure is to be effected, and Seller shall use reasonable efforts to cure such Objection prior to the Closing Date. If Seller elects not to cure all of the Objections or fails to deliver a cure notice, Purchaser may terminate this Agreement by written notice to Seller and, notwithstanding anything to the contrary herein, receive a refund of the Earnest Money, whereupon the Parties shall thereafter be relieved of all further liability hereunder; provided, however, that if Purchaser fails to terminate this Agreement, then the Objections Seller did not elect to cure shall be deemed Permitted Exceptions. If Seller fails to cure all of the Objections it elected to cure by the Closing Date, then such failure shall be a default of Seller, and Purchaser may exercise any rights or

remedies it has herein in connection with Seller's default. Seller shall not have any obligation to cure any Objections other than causing a release of any deeds of trust and other monetary liens and encumbrances and causing a release of any items appearing in the Title Commitment or on the Survey that were created after the Effective Date.

**4.3. Updated Title and Survey Review.** If, after the delivery of the Objections, any update to the Title Commitment or the Survey includes any item that was not included in the original Title Commitment or Survey, then Purchaser may give written notice to Seller of Purchaser's updated objections (the "Updated Objections") to any such new items within five (5) days after Purchaser's receipt of the updated Title Commitment or Survey. Within five (5) days after Purchaser gives notice to Seller of the Updated Objections, Seller shall notify Purchaser in writing of Seller's election to cure or not cure each of the Updated Objections. If Seller elects to cure a given Updated Objection, Seller's notice of election to cure shall include a reasonably detailed description of the cure to be undertaken, and a description of the time period during which such cure is to be effected, and Seller shall use reasonable efforts to cure such Updated Objection prior to the Closing Date. If Seller elects not to cure all of the Updated Objections or fails to deliver a cure notice, Purchaser may terminate this Agreement by written notice to Seller and, notwithstanding anything to the contrary herein, receive a refund of the Earnest Money, whereupon the parties shall thereafter be relieved of all further liability hereunder; provided, however, that if Purchaser fails to terminate this Agreement, then the Updated Objections Seller did not elect to cure shall be deemed Permitted Exceptions. If Seller fails to cure all of the Updated Objections it elected to cure by the Closing Date, then such failure shall be a default of Seller, and Purchaser may exercise any rights or remedies it has herein in connection with Seller's default. Seller shall not have any obligation to cure any Updated Objections other than causing a release of any deeds of trust and other monetary liens and encumbrances and causing a release of any items appearing in the Title Commitment or on the Survey that were created after the Effective Date.

**4.4. Investigations.** During the Feasibility Period, Purchaser and its authorized agents and designees shall have the right and opportunity to review the Due Diligence Materials, and to examine the Property for the purpose of inspecting the same and making tests, inquiries and examinations, making soil analyses, conducting engineering and studies, core borings, drillings, surveys, environmental assessments and such other physical due diligence investigations and analyses in, on and to the Property as Purchaser deems necessary to ascertain the suitability of the Property for the intended acquisition (collectively, the "Investigations"). With regard to any matter to which Purchaser objects in connection with its Investigations, Purchaser may either (a) waive such objections and close as contemplated in this Agreement, or (b) terminate this Agreement by written notice to Seller prior to the expiration of the Feasibility Period, it being understood that Purchaser may elect to terminate this Agreement by written notice to Seller for any reason or no reason prior to the expiration of the Feasibility Period.

**4.5. Restoration After Investigations.** Purchaser agrees, at its sole expense, to repair any damage to the Property caused by Investigations and to restore the Property to substantially the same condition it was in prior to such Investigations. Purchaser agrees to indemnify, defend and hold Seller, its successors and assigns harmless for, from and against and to reimburse Seller with respect to all claims for bodily injury, personal injury or property damage, as well as any professional services lien, which may be asserted by reason of the activities of Purchaser or its authorized agents or designees during the Investigations. The foregoing indemnity shall survive

the Closing and/or any termination of this Agreement for a period of six (6) months and shall not operate as, or be deemed to be, an indemnification against any claim arising as a result of any condition or matter discovered as a result of the Investigations.

## **ARTICLE V. REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS**

**5.1. Representations and Warranties of Seller.** To induce Purchaser to enter into this Agreement and to purchase the Property, Seller represents and warrants to Purchaser as follows:

(a) Seller has or will have at Closing the unconditional right to obtain and will convey, transfer and assign to Purchaser, good, marketable, indefeasible and insurable right and title to the Property free and clear of any deeds of trust, mortgages, liens, encumbrances, leases, tenancies, licenses, chattel mortgages, conditional sales agreements, security interests, covenants, conditions, restrictions, judgments, rights-of-way, easements, encroachments, claims and any other matters affecting title or use of the Property, except for the Permitted Exceptions.

(b) Seller: (i) has full power, authority and legal right to execute, deliver and perform this Agreement; and (ii) has obtained all necessary consents and approvals of all requisite parties to execute this Agreement. The execution by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not, and at the Closing will not, result in a breach of any of the terms or provisions of, or constitute a default or a condition which upon notice or lapse of time or both would ripen into a default under any indenture, agreement or instrument or obligation to which Seller is a party or by which the Property or any portion thereof is bound; and does not constitute a violation of any laws, order, rule or regulation applicable to Seller or any portion of the Property of any court or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Seller or any portion of the Property.

(c) There are no adverse parties in possession of the Property or any part thereof. Seller has not granted to any party any license, lease or other right relating to the use or possession of the Property.

(d) No pending condemnation, eminent domain, assessment or similar proceeding or charge affecting the Property or any portion thereof exists. Seller has not received any written notice, and has no knowledge, that any such proceeding or charge is contemplated.

(e) The location, construction, occupancy, operation and use of the Property does not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Property or the location, construction, occupancy, operation or use thereof, including, without limitation, all applicable zoning ordinances and building codes, flood disaster laws and health and environmental laws and regulations.

(f) No work has been performed or is in progress at the Property, and no materials will have been delivered to the Property that might provide the basis for a mechanic's, materialmen's or other lien against the Property or any portion thereof, and all amounts due for

such work and material shall have been paid and all discharged to Purchaser's satisfaction as of the Closing.

(g) Seller is not in default in any manner which would result in a material adverse effect on Seller or the Property under any of the covenants, conditions, restrictions, rights-of-way or easements affecting the Property or any portion thereof, and, to Seller's knowledge no other party to any of the foregoing is in material default thereunder.

(h) There are no actions, suits or proceedings pending or, to Seller's knowledge, threatened against or affecting the Property or any portion thereof, or relating to or arising out of the ownership or operation of the Property, or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality. All judicial proceedings concerning the Property will be finally dismissed and terminated prior to Closing, excluding lawsuits in which Seller is involved in its ordinary course of business.

(i) The Property has free and unimpeded access to presently existing public highways and/or roads (either directly or by way of perpetual easements), and all approvals necessary therefor have been obtained. No fact or condition exists which would result in the termination of the current access from the Property to any presently existing public highways and/or roads adjoining or situated on the Property.

(j) There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or, to Seller's knowledge, pending or threatened against Seller or the Property.

(k) To Seller's knowledge, no Hazardous Materials have been installed, used, generated, manufactured, treated, handled, refined, produced, processed, stored or disposed of, or otherwise present in, on or under the Property by Seller or, to Seller's knowledge, by any third party. To Seller's knowledge, no activity has been undertaken on the Property by Seller or, to Seller's knowledge, by any third party which would cause: (i) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of RCRA, or any Hazardous Materials Law; (ii) a release or threatened release of Hazardous Materials from the Property within the meaning of, or otherwise bring the Property within the ambit of, CERCLA or SARA or any Hazardous Materials Law; or (iii) the discharge of Hazardous Materials into any watercourse, body of surface or subsurface water or wetland, or the discharge into the atmosphere of any Hazardous Materials which would require a permit under any Hazardous Materials Law. To Seller's knowledge, no activity has been undertaken with respect to the Property by Seller or, to Seller's knowledge, any third party which would cause a violation or support a claim under RCRA, CERCLA, SARA or any Hazardous Materials Law. No investigation, administrative order, litigation or settlement with respect to any Hazardous Materials is in existence with respect to the Property, nor, to Seller's knowledge, is any of the foregoing threatened. No written notice has been received by Seller from any entity, governmental body or individual claiming any violation of any Hazardous Materials Law, or requiring compliance with any Hazardous Materials Law, or demanding payment or contribution for environmental damage or injury to natural resources. Seller has not obtained and, to Seller's knowledge, is not required to obtain, and Seller has no knowledge of any reason Purchaser will be

required to obtain, any permits, licenses, or similar authorizations to occupy, operate or use the Improvements or any part of the Property by reason of any Hazardous Materials Law.

(l) There are no existing or pending private/public incentive programs affecting the Property, such as special assessments, benefit districts, community improvement districts, and/or transportation development districts.

(m) Seller has not failed to disclose anything of a material nature with respect to the Due Diligence Materials.

**5.2. Seller Indemnification.** Seller hereby agrees to indemnify and defend, at its sole cost and expense, and hold Purchaser, its successors and assigns, harmless from and against and to reimburse Purchaser with respect to any and all claims, demands, actions, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) actually incurred of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Purchaser at any time and from time to time by reason of or arising out of: (a) the breach of any representation or warranty of Seller set forth in Section 5.1 or any breach by Seller of any of its covenants and agreements set forth in this Agreement; (b) the failure of Seller, in whole or in part, to perform any obligation required to be performed by Seller pursuant to Section 5.1 or any other part of this Agreement; or (c) the ownership, construction, occupancy, operation, use and maintenance by Seller or its agents of the Property prior to the Closing Date. This indemnity applies, without limitation, to the violation on or before the Closing Date of any Hazardous Materials Law in effect on or before the Closing Date and any and all matters arising out of any act, omission, event or circumstance existing or occurring on or prior to the Closing Date (including, without limitation, the presence on the Property or release from the Property of Hazardous Materials disposed of or otherwise released prior to the Closing Date), regardless of whether the act, omission, event or circumstance constituted a violation of any Hazardous Materials Law at the time of its existence or occurrence. The provisions of this Article shall survive the Closing of the transaction contemplated by Section 2.1 of this Agreement and shall continue thereafter in full force and effect for the benefit of Purchaser, its successors and assigns for a period of five (5) years. Notwithstanding any provision of this Agreement to the contrary, Purchaser may exercise any right or remedy Purchaser may have at law or in equity should Seller fail to meet, comply with or perform its indemnity obligations required by this Section 5.2.

**5.3. Covenants and Agreements of Seller.** Seller covenants and agrees with Purchaser, from the Effective Date until the Closing or the earlier termination of this Agreement:

(a) Seller shall not supplement, modify, or amend any existing leases or enter into any new leases for any portion of the Property without the prior written consent of Purchaser, which may be granted or withheld in Purchaser's sole and absolute discretion.

(b) Seller shall fully maintain and repair the Property in good condition and repair.



(c) Seller shall maintain, or shall cause to be maintained, in full force and effect general liability insurance with respect to damage or injury to persons or property occurring on or relating to operation of the Property in commercially reasonable amounts.

(d) Seller shall pay, or shall cause to be paid, when due all bills and expenses of the Property. Seller shall not enter into, subject the Property to, or assume any new agreements with regard to the Property, without the prior written consent of Purchaser.

(e) Seller shall not create or permit to be created any liens, easements or other conditions affecting any portion of the Property or the uses thereof, without the prior written consent of Purchaser.

(f) During the pendency of this Agreement, Seller shall not negotiate the sale or other disposition of any or all of the Property with any person or entity other than Purchaser, and shall not take any steps to initiate, consummate or document the sale or other disposition of any or all of the Property, or any portion thereof, to any person or entity other than Purchaser.

(g) Seller will pay or cause to be paid, as and when due, all interest and principal and all other charges payable under any indebtedness of Seller secured by the Property from the date hereof until Closing, and will not suffer or permit any default or, amend or modify the documents evidencing or securing any such secured indebtedness without the prior written consent of Purchaser.

(h) Seller shall provide such information as may be reasonably required in connection with any financing by Purchaser, including, but not limited to, financial statements, summary financial information, operating statements regarding the Property and other information concerning Seller. Notwithstanding the foregoing, and subject always to Purchaser's obligations under the Kansas Open Records Act, K.S.A. 45-215 *et seq.*, Purchaser agrees that to the extent that any such information requested of Seller is non-public information, Purchaser will not disclose such information without the consent of Seller, which consent will not be unreasonably withheld, conditioned or delayed.

**5.4. Representations and Warranties of Purchaser.** To induce Seller to enter into this Agreement and to sell the Property, Purchaser represents and warrants to Seller as follows:

(a) Purchaser has duly and validly authorized and executed this Agreement, and has full right, title, power and authority to enter into this Agreement and to consummate the transactions provided for herein, and the joinder of no person or entity will be necessary to purchase the Property from Seller at Closing.

(b) There are no actions, suits or proceedings pending, or to the actual knowledge of Purchaser, threatened, before or by any judicial body or any governmental authority, against Purchaser which would affect in any material respect Purchaser's ability to proceed with the transaction contemplated by this Agreement.

## **ARTICLE VI. CONDITIONS TO OBLIGATIONS**

**6.1. Conditions to the Purchaser's Obligations.** The obligations of Purchaser to purchase the Property from Seller and to consummate the transactions contemplated by this Agreement are subject to the satisfaction, at all times prior to and as of the Closing (or such other time period specified below), of each of the following conditions:

(a) All of the representations and warranties of Seller set forth in this Agreement shall be true at all times prior to, at and as of, the Closing in all material respects.

(b) Seller shall have delivered, performed, observed and complied with, all of the items, instruments, documents, covenants, agreements and conditions required by this Agreement to be delivered, performed, observed and complied with by it prior to, or as of, the Closing.

(c) Seller shall not have made any assignment for the benefit of creditors, or admitted in writing its inability to pay its debts as they mature, or have been adjudicated a bankrupt, or have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state and no such petition shall have been filed against it.

(d) No material or substantial adverse change shall have occurred with respect to the condition, financial or otherwise, of the Property. No material adverse change shall have occurred with respect to the condition of Seller, financially or otherwise that would adversely affect the title to the Property or Seller's ability to convey the same pursuant to the terms of this Agreement.

(e) Neither the Property nor any part thereof or interest therein shall have been taken by execution or other process of law in any action prior to Closing, nor shall any action or proceeding seeking any such taking be pending.

(f) No portion of the Property shall have been destroyed by fire or casualty.

(g) No condemnation, eminent domain or similar proceedings shall have been commenced or threatened in writing with respect to any portion of the Property.

(h) Seller shall have received all required third-party approvals for the sale of the Property to Purchaser, including approvals from the Probate Division of the District Court of Leavenworth County, Kansas, in the Matter of the Estate of Betty D. Stevens.

**6.2. Failure of Conditions to Purchaser's Obligations.** In the event any one or more of the conditions to Purchaser's obligations are not satisfied or waived in whole or in part at any time prior to or as of the Closing, Purchaser, at Purchaser's option, shall be entitled to: (a) terminate this Agreement with regard to the Property by giving written notice thereof to Seller, whereupon the Earnest Money Deposit shall be immediately refunded to Purchaser, Seller shall reimburse Purchaser for Purchaser's actual, out-of-pocket costs and expenses incurred in connection with this

transaction, and Purchaser shall have no further obligations or liabilities hereunder; or (b) proceed to Closing.

## **ARTICLE VII. PROVISIONS WITH RESPECT TO THE CLOSING**

**7.1. Seller's Closing Obligations.** At the Closing, Seller shall, at Seller's expense, furnish and deliver to the Title Company in escrow for delivery to Purchaser, the following:

- (a) The Deed, duly executed and acknowledged by Seller.
- (b) The Bill of Sale, duly executed by Seller.
- (c) The Title Policy.
- (d) Such affidavits or letters of indemnity from Seller as the Title Company shall reasonably require in order to omit from the Title Policy all exceptions that do not constitute Permitted Exceptions.
- (e) Releases sufficient to discharge of record any mortgages, deeds of trust, or other liens affecting the Property.
- (f) Such instruments or documents as are necessary, or reasonably required by Purchaser or the Title Company, to evidence the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of Seller in connection with the purchase and sale transaction contemplated hereby.
- (g) Such other documents as are reasonably required by Purchaser to carry out the terms and provisions of this Agreement.

**7.2. Purchaser's Closing Obligations.** At the Closing, Purchaser shall, at Purchaser's expense, furnish and deliver to the Title Company in escrow for delivery to Seller, the following:

- (a) Federal Reserve, wire transfer funds or other immediately available collected funds payable to the order of Seller representing the Purchase Price due in accordance with Section 3.2.
- (b) Such instruments or documents as are necessary, or reasonably required by Seller or the Title Company, to evidence the status and capacity of Purchaser and the authority of the person(s) who are executing the various documents on behalf of Purchaser in connection with the transaction contemplated hereby.

## **ARTICLE VIII. EXPENSES OF CLOSING**

### **8.1. Adjustments.**

(a) Except as otherwise specifically provided in Section 8.1(b), all taxes, assessments, water or sewer charges, gas, electric, telephone or other utilities, operating expenses, and rents or other normally prorable items, shall be prorated between Seller and Purchaser as of the Closing Date. Seller and Purchaser shall notify all providers of utility services to the Property of the Closing and request that such providers bill Seller for all costs incurred up to the Closing Date and bill Purchaser for all costs incurred on and after the Closing Date.

(b) Seller shall pay all real estate taxes and current installments of assessments, of whatever kind, accruing against the Property up to prior to the year in which the Closing occurs. All real estate taxes, sewer rents and taxes, current installments of assessments and charges, or any other governmental tax or charge, levied or assessed against the Property for the year in which the Closing occurs (irrespective of when such taxes, assessments and charges are due and payable), including, without limitation, that year's installment (both principal and interest) of any special assessments which are encumbrances permitted hereunder and which are due and payable in the year in which the Closing occurs, shall be prorated between Purchaser and Seller as of the Closing Date. Proration of taxes and assessments at the Closing shall be final and shall not be subject to readjustment.

**8.2. Closing Costs.** In addition to all other costs and expenses which are required to be paid by the Parties pursuant to other provisions of this Agreement, the Closing costs shall be allocated as follows:

PURCHASER	COST/EXPENSE	SELLER
	Seller's legal, accounting and other professional fees and expenses and the cost of all opinions, certificates, instruments, documents and papers required to be delivered by Seller hereunder, including without limitation, the cost of performance by Seller of its obligations hereunder	X
X	Purchaser's legal, accounting and other professional fees and expenses and the cost of all opinions, certificates, instruments, documents and papers required to be delivered by Seller hereunder, including without limitation, the cost of performance by Seller of its obligations hereunder	
	Title examination fees and premiums for the Title Commitment and Title Policy in the amount of the Purchase Price	X
X	Cost of any endorsements to Title Policy	
X	Survey	
X	Cost of any Investigations	
	Applicable state and local transfer taxes or fees, if any	X
	Charges for or in connection with the recording and/or filing of any instrument or document provided herein or contemplated by this Agreement or any agreement or document described or referred to herein	X
1/2	Title Company closing or escrow charges	1/2

**8.3. Commissions/Broker's Fees.** Seller represents and warrants to Purchaser, and Purchaser represents and warrants to Seller, that no broker or finder has been engaged by them, respectively, in connection with any of the transactions contemplated by this Agreement, or is in any way connected with any of such transactions. Purchaser shall indemnify, hold harmless and defend Seller from any liability, cost, or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Purchaser in connection with this transaction. Seller shall indemnify, hold harmless and defend Purchaser from any liability, cost, or expense arising out of or connected with any

claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Seller in connection with this transaction. This indemnity provision shall survive the Closing or any earlier termination of this Agreement.

## **ARTICLE IX. DEFAULT AND REMEDIES**

### **9.1. Seller's Default; Purchaser's Remedies.**

(a) **Seller's Default.** Seller shall be deemed to be in default hereunder upon the occurrence of one of the following events: (i) any of Seller's warranties or representations set forth herein shall be untrue in any material respect when made or at Closing; or (ii) Seller shall fail to meet, comply with, or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required in this Agreement.

(b) **Purchaser's Remedies.** In the event Seller shall be deemed to be in default hereunder, Purchaser may, at Purchaser's sole option, do any one or more of the following: (i) terminate this Agreement by written notice delivered to Seller on or before the Closing whereupon the Earnest Money Deposit shall be immediately refunded to Purchaser, and Seller shall reimburse Purchaser for Purchaser's actual, out-of-pocket costs and expenses incurred in connection with this transaction, and Purchaser shall have no further rights or obligations hereunder; and/or (ii) enforce specific performance of this Agreement against Seller, including reimbursement for Purchaser's reasonable costs and attorneys' fees and court costs in connection therewith; and/or (iii) exercise any other right or remedy Purchaser may have at law or in equity by reason of such default including, but not limited to, the recovery of reasonable attorneys' fees and court costs incurred by Purchaser in connection herewith.

### **9.2. Purchaser's Default; Seller's Remedies.**

(a) **Purchaser's Default.** Purchaser shall be deemed to be in default hereunder upon the occurrence of one of the following events: (i) any of Purchaser's warranties or representations set forth herein shall be untrue in any material respect when made or at Closing; or (ii) Purchaser shall fail to meet, comply with, or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required in this Agreement.

(b) **Seller's Remedies.** In the event that Purchaser shall be deemed to be in default hereunder, Seller may terminate this Agreement by written notice to Purchaser and, as Seller's sole and exclusive remedy, retain the Earnest Money Deposit as liquidated damages (the parties recognizing that it would be extremely difficult to ascertain the extent of actual damages caused by Purchaser's breach, and that the Earnest Money Deposit represents as fair an approximation of such actual damages as the parties can now determine).

## **ARTICLE X. MISCELLANEOUS**

**10.1. Assignment.** Without Purchaser's prior written consent, Seller will not assign all or any of its interest under this Agreement. Notwithstanding the foregoing, Seller may assign its right to receive the Purchase Price under this Agreement, provided that any such assignment shall

not constitute a release of Seller from its obligations under this Agreement. Purchaser will not, without Seller's prior written consent, assign all or any of its interest under this Agreement.

**10.2. Notices.** All notices, requests and other communications under this Agreement shall be in writing and shall be either (a) delivered in person; (b) sent by certified mail, return-receipt requested; (c) sent via e-mail, provided that e-mail delivery shall be effective if the sender delivers an additional notice through another approved form of notice hereunder within three (3) Business Days following the delivery of the e-mail notice; or (d) delivered by a recognized delivery service as follows:

If intended for Purchaser:           City of Tonganoxie, Kansas  
526 E. 4th Street  
Tonganoxie, Kansas 66086  
Attention: George Brajkovic  
Phone: 913-845-2620  
Email: gbrajkovic@tonganoxie.org

With a copy to:                         Stinson LLP  
1201 Walnut, Suite 2900  
Kansas City, Missouri 64106  
Attention: Anna Krstulic and Jim Mosimann  
Phone: 816-691-2426 / 816-691-3174  
Email: anna.krstulic@stinson.com / jim.mosimann@stinson.com

If intended for Seller:               Estate of Betty Stevens  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:                         \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

or at such other address, and to the attention of such other person, as the Parties shall give notice as herein provided. A notice, request and other communication shall be deemed to be duly received if delivered in person or by a recognized delivery service, when delivered to the address of the recipient, if sent via e-mail, when delivered to the e-mail address of the recipient, if sent by mail, on the date of receipt by the recipient as shown on the return receipt card; provided that if a notice, request or other communication is served on a day which is not a Business Day, or after 5:00 P.M. (local time where the Property is located) on any Business Day at the addressee's location, such notice or communication shall be deemed to be duly received by the recipient at 9:00 A.M. on the first Business Day thereafter.

**10.3. Entire Agreement; Modifications.** This Agreement, together with the other documents, instruments and agreements heretofore or hereinafter entered into in connection with the transactions contemplated herein, embody and constitute the entire understanding between the Parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements (oral or written) are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the Party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

**10.4. Captions.** The captions in this Agreement are for convenience of reference only and in no way define, describe, or limit the scope or intent of this Agreement or any of the provisions hereof.

**10.5. Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

**10.6. Time is of the Essence.** With respect to all provisions of this Agreement, time is of the essence. However, if the last date of any period which is set out in any provision of this Agreement falls on a day which is not a Business Day, then, in such event, the time of such period shall be extended to the next day which is a Business Day.

**10.7. Waiver of Conditions.** Any Party may at any time, at its election, waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by such Party. No waiver by a Party of any breach of this Agreement or of any warranty or representation hereunder by the other Party shall be deemed to be a waiver of any other breach by such other Party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a Party after any breach by the other Party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other Party, whether or not the first Party knows of such breach at the time it accepts such payment or performance. No failure or delay by a Party to exercise any right it may have by reason of the default of the other Party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first Party while the other Party continues to be so in default.

**10.8. Remedies Cumulative.** Except as herein expressly set forth, no remedy conferred upon a Party by this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law, in equity or by statute.

**10.9. Terminology.** The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The words "herein", "hereof", "hereunder" and similar terms shall refer to this Agreement unless the context requires otherwise. Whenever the context so requires, the neuter gender includes the masculine and/or feminine gender, and the singular number includes the plural and vice versa.

**10.10. Estoppel.** Each Party confirms and agrees that it: (a) has read and understood all of the provisions of this Agreement; (b) is familiar with major sophisticated transactions such as that contemplated by this Agreement; (c) has negotiated with the other Party at arm's length with equal bargaining power; and (d) has been advised by competent legal counsel of its own choosing.

**10.11. Joint Preparation.** This Agreement (and all exhibits thereto) is deemed to have been jointly prepared by the Parties hereto, and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any Party, but shall be interpreted according to the application of the rules of interpretation for arm's-length agreements.

**10.12. Counterparts.** This Agreement may be executed in counterparts, and it is agreed that such counterpart signatures, when assembled into a single document with multiple signature pages, shall be binding upon and enforceable against the Parties to the same extent as if all signatures were set forth on the same copy of this Agreement. Electronic delivery of an executed counterpart of a signature page to this Agreement shall be as effective as delivery of a manually executed counterpart of this Agreement. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the Party against whom enforcement is sought.

**10.13. Joint and Several Liability.** In the event that the Seller consists of more than one individual or entity, the liabilities and obligations of each party constituting the Seller shall be the joint and several obligations of each such party.

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



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**PURCHASER:**

CITY OF TONGANOXIE, KANSAS  
a Kansas municipal corporation

By: \_\_\_\_\_  
Print: David Frese  
Title: Mayor

**SELLER:**

THE ESTATE OF BETTY STEVENS

By: \_\_\_\_\_  
Print: Matthew Stevens  
Title: Executor

By: \_\_\_\_\_  
Print: Loralee Stevens  
Title: Executor

By: \_\_\_\_\_  
Print: Lisa Scheller  
Title: Executor

**EXHIBIT A**

**Legal Description of the Property**

[INSERT]

## **EXHIBIT B**

### **Form of Deed**

#### **KANSAS SPECIAL WARRANTY DEED**

THIS INDENTURE is made as of \_\_\_\_\_, 2023 (the "Effective Date"), by and between MATTHEW STEVENS, LORALEE STEVENS, AND LISA SCHELLER, AS EXECUTORS OF THE ESTATE OF BETTY STEVENS, whose address is \_\_\_\_\_ ("Grantor"), and the CITY OF TONGANOXIE, KANSAS, a Kansas municipal corporation, whose address is 526 E. 4<sup>th</sup> Street, Tonganoxie, Kansas 66086 ("Grantee").

WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars (\$10) and other valuable considerations, to Grantor paid by Grantee (the receipt and sufficiency of which are hereby acknowledged), does by these presents, GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto Grantee, and Grantee's successors and assigns, the real property lying, being and situate in Leavenworth County, Kansas, as described on **Exhibit A** attached hereto and incorporated herein by this reference, together with all improvements on, and tenements, hereditaments, and appurtenances thereunto belonging or appertaining to such property (collectively, the "Property").

SUBJECT TO those permitted encumbrances set forth on **Exhibit B** attached hereto and incorporated herein by this reference (the "Permitted Encumbrances").

TO HAVE AND TO HOLD the Property, subject to the Permitted Encumbrances, together with all and singular, the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining unto Grantee and its successors and assigns forever; Grantor hereby covenanting that the Property is free and clear from any encumbrance done or suffered by Grantor, except as set forth herein; and that Grantor will warrant and defend the title to the Property unto Grantee and Grantee's successors and assigns, forever, against the lawful claims and demands of all persons claiming under Grantor, except as set forth herein.

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



**EXHIBIT A TO KANSAS SPECIAL WARRANTY DEED**

**Legal Description of the Property**

[INSERT]

**EXHIBIT B TO KANSAS SPECIAL WARRANTY DEED**

**Permitted Encumbrances**

[INSERT]

## **EXHIBIT C**

### **Form of Bill of Sale**

#### **BILL OF SALE**

THIS BILL OF SALE is made as of \_\_\_\_\_, 2023, by and between MATTHEW STEVENS, LORALEE STEVENS, AND LISA SCHELLER, AS EXECUTORS OF THE ESTATE OF BETTY STEVENS, whose address is \_\_\_\_\_ ("Seller"), and THE CITY OF TONGANOXIE, KANSAS, a Kansas municipal corporation, whose address is 526 E. 4<sup>th</sup> Street, Tonganoxie, Kansas 66086 ("Purchaser").

WHEREAS, in connection with the sale of that certain real property legally described on **Exhibit A** attached hereto and made a part hereof (the "Land"), together with certain improvements located thereon (the "Improvements"), Seller has agreed to sell, transfer and assign to Purchaser certain personal property particularly utilized in the operation and ownership of the Land and Improvements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller does hereby grant, bargain, sell, assign, transfer, set over, and deliver to Purchaser all of Seller's right, title, and interest in and to the following:

All tangible personal property owned by Seller located on, or situated in and used in connection with, the Land and/or the Improvements, including but not limited to all furniture, furnishings, fixtures, equipment, machinery, maintenance vehicles and equipment, tools, parts, recreational equipment, carpeting, art work, and window treatments, and other tangible personal property owned by Seller or in which Seller otherwise has an interest (other than a leasehold interest) if utilized by Seller solely in connection with the Property or the Improvements, together with all replacements and substitutions therefor located on the Land and used in connection with the operation or maintenance of the Land or the Improvements, together with any replacements or additions thereto between the Effective Date and Closing (collectively, the "Personal Property");

TO HAVE AND TO HOLD the aforesaid Personal Property unto Purchaser, its successors and assigns forever.

Seller warrants the Personal Property to be free and clear of all security interests, liens, and other encumbrances of any type or description of any party claiming by, through or under Seller. Seller covenants with Purchaser that Seller has the authority to transfer and assign the right, title and interest conveyed and will warrant and defend the same in favor of Purchaser, its successors and assigns, against the claims and demands of any party claiming by, through or under Seller.

Unless as otherwise provided in the Purchase Agreement and in this Bill of Sale, THE PERSONAL PROPERTY IS SOLD IN ITS "AS-IS" CONDITION WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS OR MERCHANTABILITY.

This Bill of Sale shall be governed by, interpreted under, construed under and enforceable in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, Seller has executed these presents as of the Effective Date.

**SELLER:**

ESTATE OF BETTY STEVENS

By: \_\_\_\_\_  
Name: Matthew Stevens  
Title: Executor

By: \_\_\_\_\_  
Name: Loralee Stevens  
Title: Executor

By: \_\_\_\_\_  
Name: Lisa Scheller  
Title: Executor



**EXHIBIT A TO BILL OF SALE**

**Legal Description of the Land**

[INSERT]

## **RESOLUTION NO. 07-23-03**

### **A RESOLUTION CALLING AND PROVIDING FOR NOTICE OF A PUBLIC HEARING ON THE GOVERNING BODY'S INTENT TO LEVY A PROPERTY TAX EXCEEDING THE REVENUE NEUTRAL RATE IN THE CITY OF TONGANOXIE, KANSAS, PURSUANT TO K.S.A. 79-2988.**

**WHEREAS**, K.S.A. 79-2988 sets forth requirements for a taxing subdivision to exceed the revenue neutral rate, as more particularly defined therein;

**WHEREAS**, the Leavenworth County Clerk calculated the revenue neutral rate for the City of Tonganoxie, Kansas (the "City") as 38.302 mills (the "Revenue Neutral Rate");

**WHEREAS**, the budget proposed by the City's Governing Body will require the levy of a property tax rate that exceeds the Revenue Neutral Rate; and

**WHEREAS**, the Governing Body intends to hold a hearing and hear testimony from all interested taxpayers desiring to be heard as required by state law.

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

**Section 1. Intent to Exceed Revenue Neutral Rate.** The Governing Body intends to exceed the Revenue Neutral Rate with a proposed mill levy of no more than 43.823 mills.

**Section 2. Public Hearing.** The Governing Body shall hold a public hearing on **September 5, 2023 at 7:00 PM** regarding the proposed mill levy and intent to exceed the Revenue Neutral Rate. The public hearing will be held in the City Council Chambers at 303 Bury Street, Tonganoxie, Kansas. Public hearing access information is available by contacting City Hall at (913) 845-2620 or via online request at <https://www.tonganoxie.org/home/webforms/request-service-or-informationmake-suggestion>. Public comment may be submitted in advance of the public hearing via online request at the website identified in the foregoing sentence, or by mail to City Hall, 526 E. 4<sup>th</sup> Street, Tonganoxie, Kansas 66086.

**Section 3. Notices.** The City Clerk is hereby authorized and directed to: (A) provide a copy of this Resolution to the Leavenworth County Clerk as notice of the City's proposed intent to exceed the Revenue Neutral Rate; (B) publish this Resolution on the City's website; and (C) publish this Resolution once in a weekly or daily newspaper having a general circulation in Leavenworth County at least 10 days in advance of the public hearing, all in accordance with K.S.A. 79-2988(b).

**Section 4. Further Action.** The City Manager and other officials and representatives of the City are hereby authorized and directed to take such further actions and to execute any other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purpose of this Resolution.

**Section 5. Effective Date.** This Resolution shall be effective immediately upon its adoption and shall remain in effect until future action is taken by the Governing Body.

**ADOPTED BY THE GOVERNING BODY THIS 17<sup>th</sup> DAY OF JULY, 2023, AND  
APPROVED BY THE MAYOR.**

---

David Frese, Mayor

ATTEST:

---

Daniel Porter, Acting City Clerk



## NOTICE OF REVENUE NEUTRAL RATE INTENT

**Date:** July 17, 2023

The Governing Body of the City of Tonganoxie, Kansas, hereby notifies the Leavenworth County Clerk of the intent to potentially exceed the revenue neutral rate in the 2023 levy for the 2024 Budget Year.

The Governing Body intends to potentially exceed the Revenue Neutral Rate and the proposed maximum mill levy rate considered for the City of Tonganoxie, which includes levies collected on behalf of the Tonganoxie Public Library, will be no more than **43.823 mills**.

### **Levies**

021 Tonganoxie City – Bond & Interest  
097 Tonganoxie City – Employee Benefit  
098 Tonganoxie City – Library Emp. Benefit  
135 Tonganoxie City – General  
217 Tonganoxie City – Library

### **Maximum Total Levied**

**43.823 mills**

The date of the scheduled public hearing is Tuesday, September 5, 2023 at 7:00 PM and the hearing will be held at the City Council Chambers located at 303 Bury Street, Tonganoxie, Kansas.

(Seal)

---

City Clerk

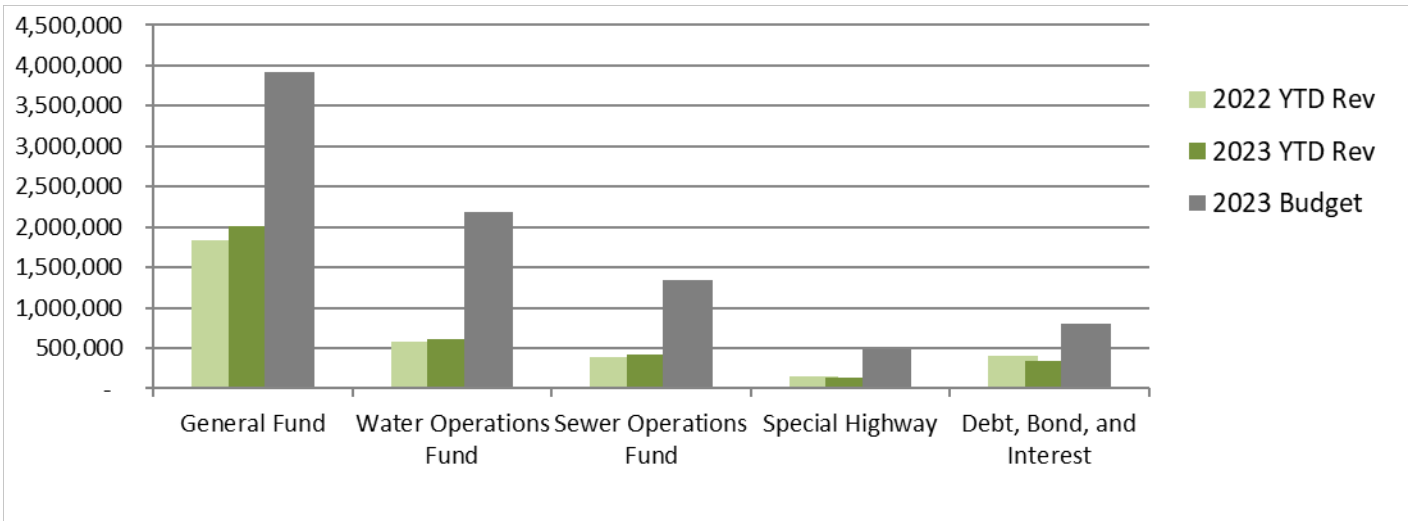
# CITY OF TONGANOXIE FINANCIAL REPORT

## JUNE 2023

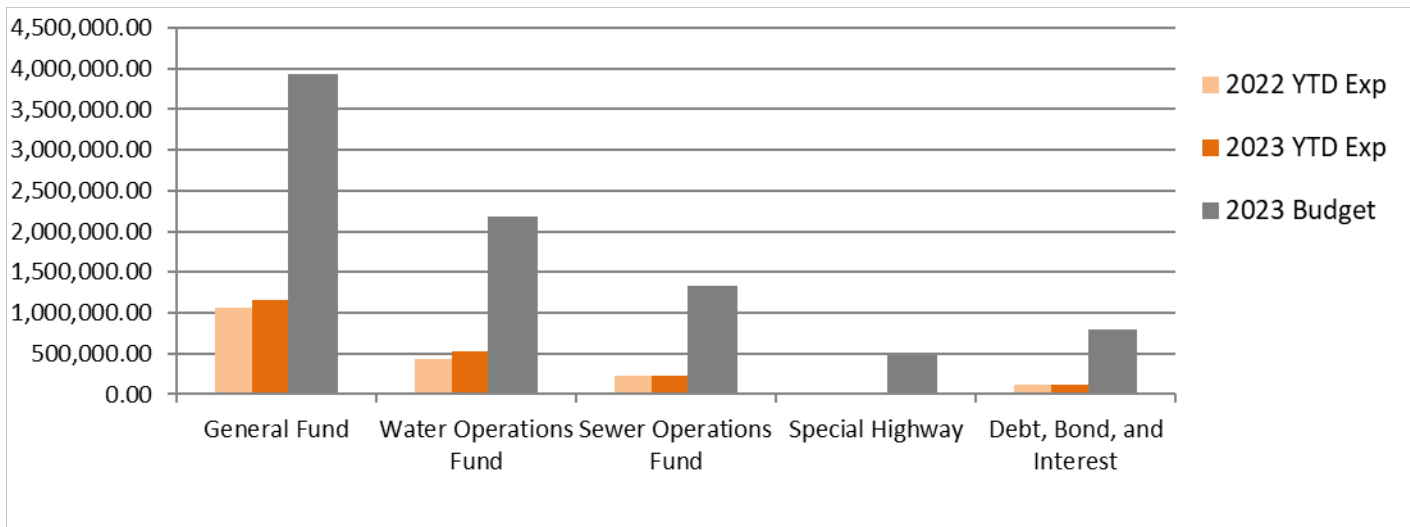
### EXECUTIVE SUMMARY

- 50% of FY 2023 completed as of June 30, 2023.
- Collected 60.6% of revenue estimates and spent 43.5% of expenditure budget authority across all funds.
- The City completed closing in February for Temporary Notes Series 2023A for repayment of a portion of Temporary Notes Series 2022C which was issued to meet construction costs of the Water Tower Project. The City utilized unspent proceeds from Series 2022C to meet the City's share of refunding the Series 2022C Temporary Notes Interest & Principal in early 2023.
- The City completed debt service payments in February 2023 for interest payments for GO Bond debt and completed principal & interest payments for lease purchase agreements debt service on March 1, 2023. The next debt service payment is due in July 2023.
- The City received the fourth partial reimbursement (~45% of construction costs) from the EDA Grant in late June for previously incurred costs utilizing the Series 202AA Temp Note proceeds in the City's Debt Proceeds Fund. Total grant receipts to date are \$1,076,056.72. The fourth reimbursement request was previously submitted to the EDA in early June 2023.
- American Rescue Plan Act (ARPA) - The City currently maintains \$746,458.42 in funding after expenditures of \$19,400 in June 2023. Required reporting for "non-entitlement unit" local governments like the City of Tonganoxie was completed in April 2023 with the next report due in April 2024. The City commenced spending available ARPA funds on some of the design engineering contract costs for the WWTP Improvements Project in June 2023.
- Five funds include previously approved mid-year budget amendments in 2023, which are listed below:
  - o June 19, 2023 –
    - \$20,233 expenditure budget amendment to the Fire Equipment Fund to account for unplanned vehicle repair expenditures
  - o July 3, 2023 –
    - \$44,568 expenditure budget and \$10,000 revenue budget amendment to the Fire Equipment Fund to account for purchase authorization of a new Fire Brush Truck and pending sale of an existing Brush Truck
    - \$50,000 expenditure budget amendment to the Capital Projects Fund to account for unplanned salt storage facility repair expenditures
    - \$151,000 expenditure budget amendment to the Special Highway Fund to account for acceptance of an add-alternate scope of work as part of the City's overall 2023 street maintenance program expenditures
    - \$120,000 expenditure budget amendment to the Sewer Capital Fund to account for a share of the cost of previously unplanned replacement of partially malfunctioning water meter equipment
    - \$80,000 expenditure budget amendment to the Water Capital Fund to account for a share of the cost of previously unplanned replacement of partially malfunctioning water meter equipment

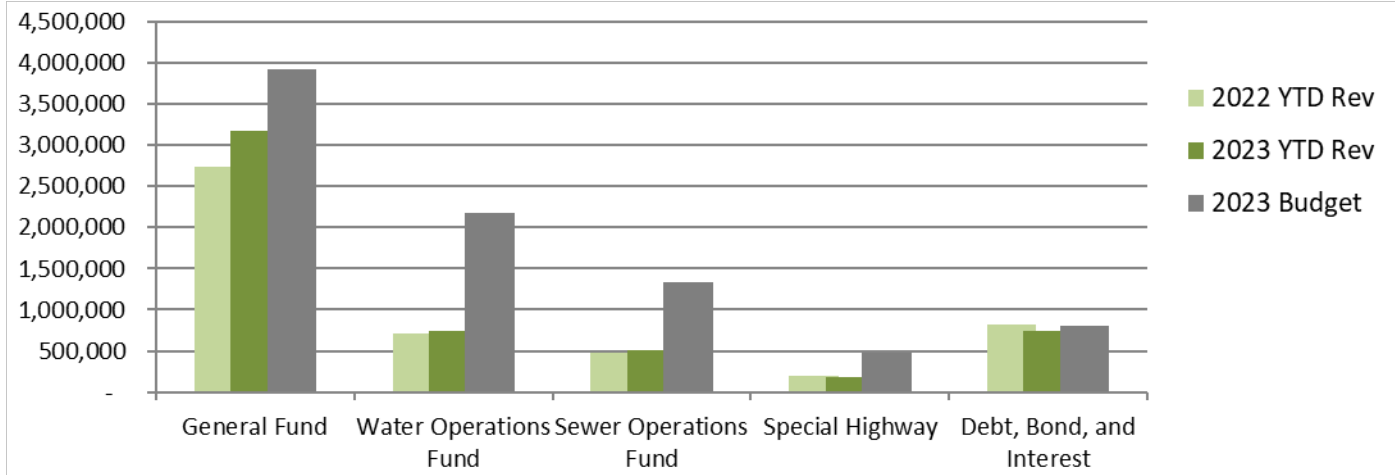
# Major Fund Revenues



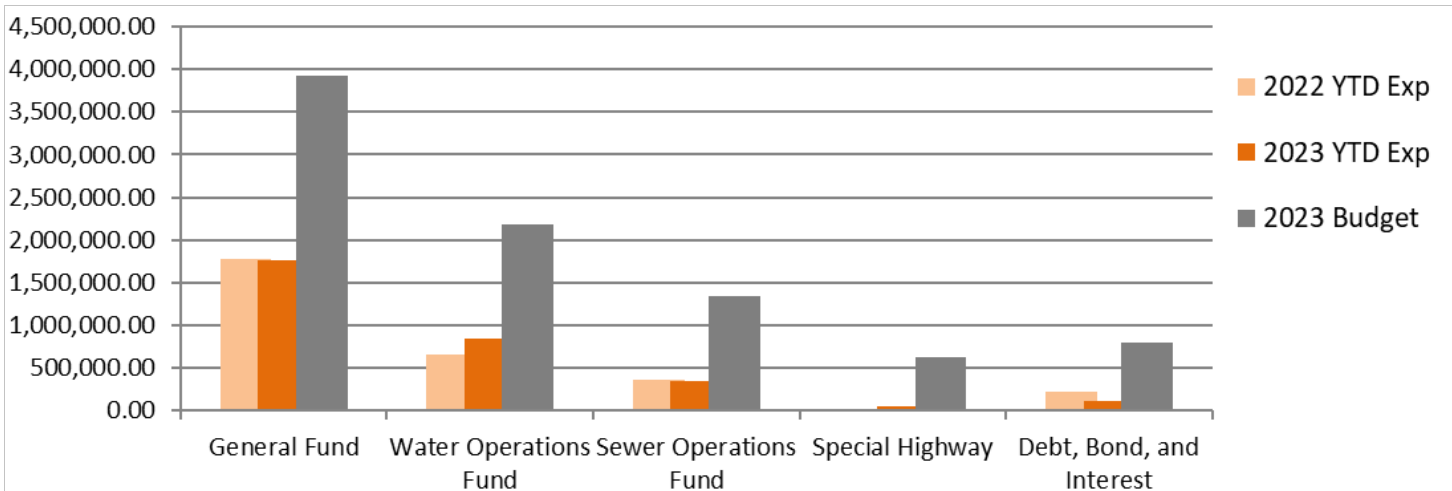
# Major Fund Expenditures



# Utility & Non-Utility Capital Funds Revenues



# Utility & Non-Utility Capital Funds Expenditures

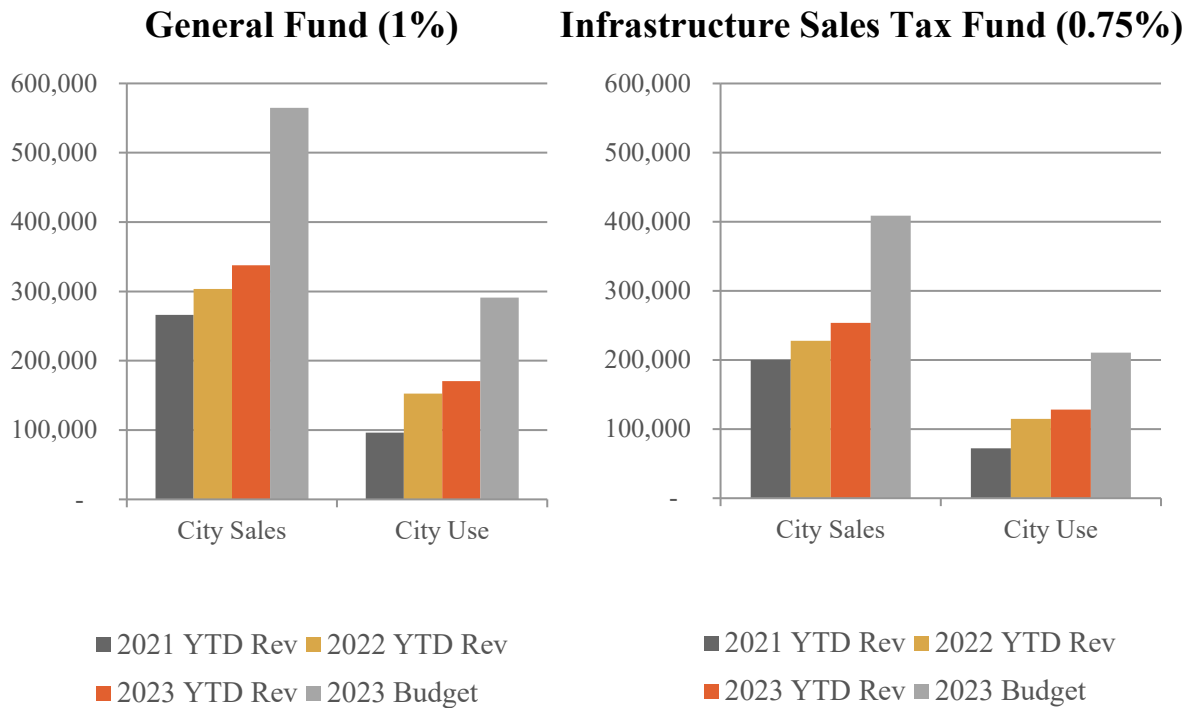


## MAJOR REVENUES DETAIL VIEW

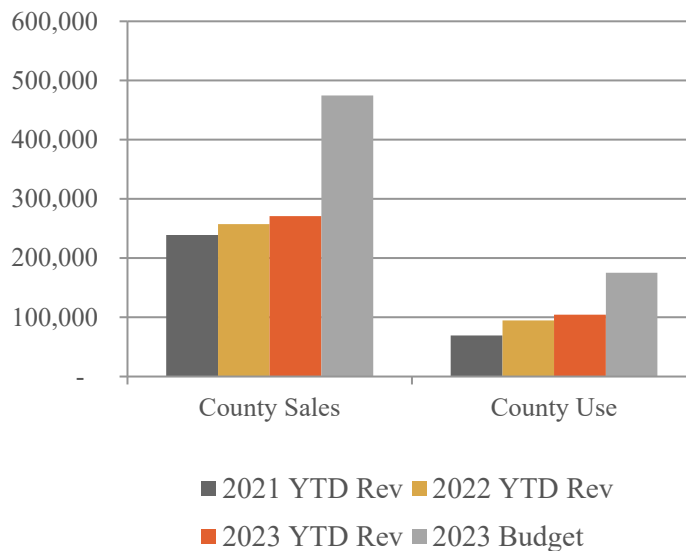
### SALES & USE TAX –

Current City of Tonganoxie Sales Tax Rate (9.25%) is broken down into the following elements:  
6% - State, 1% LV County, 1% City General Fund, 0.75% City Infrastructure General Purpose

- ☒ The City received the fifth and sixth monthly remittance of sales and use tax proceeds from the State of Kansas in May 2023. The May remittances from the State of Kansas arrived in municipality accounts a couple days late and were recorded in the month following the usual recording date. Six remaining monthly remittances are expected until next year. Collection trends remain positive in 2023 for both sales & use tax, with both exceeding prior year actuals and the current year budget..



### Capital Projects Fund (City share of LV County Sales Tax)





# MAJOR CONSTRUCTURE PROJECT DETAIL VIEW

Business Park Water Tower Construction Contract – Vendor: Caldwell Tanks, Inc.

## Caldwell Tanks - Water Tower Project Financial Tracker

Last Updated: 07/07/2023

Pay App	Amount Completed and Materials (to date)	Retainage Withheld (5%)	Eligible for Pmt (to date)	Amount due (this payment)	Cumulative Payments Due	Remaining Balance to Finish (incl Retainage)
1	321,040.00	16,052.00	304,988.00	304,988.00	304,988.00	2,977,960.00
2	883,390.00	44,169.50	839,220.50	534,232.50	839,220.50	2,415,610.00
3	1,123,475.00	56,173.75	1,067,301.25	228,080.75	1,067,301.25	2,175,525.00
4	1,288,580.00	64,429.00	1,224,151.00	156,849.75	1,224,151.00	2,010,420.00
5	1,355,780.00	67,789.00	1,287,991.00	63,840.00	1,287,991.00	1,943,220.00
6	1,506,180.00	75,309.00	1,430,871.00	142,880.00	1,430,871.00	1,792,820.00
7	2,271,804.00	113,590.20	2,158,213.80	727,342.80	2,158,213.80	1,027,196.00
8	2,476,554.00	123,827.70	2,352,726.30	194,512.50	2,352,726.30	822,446.00
9	2,599,104.00	129,955.20	2,469,148.80	116,422.50	2,469,148.80	699,896.00

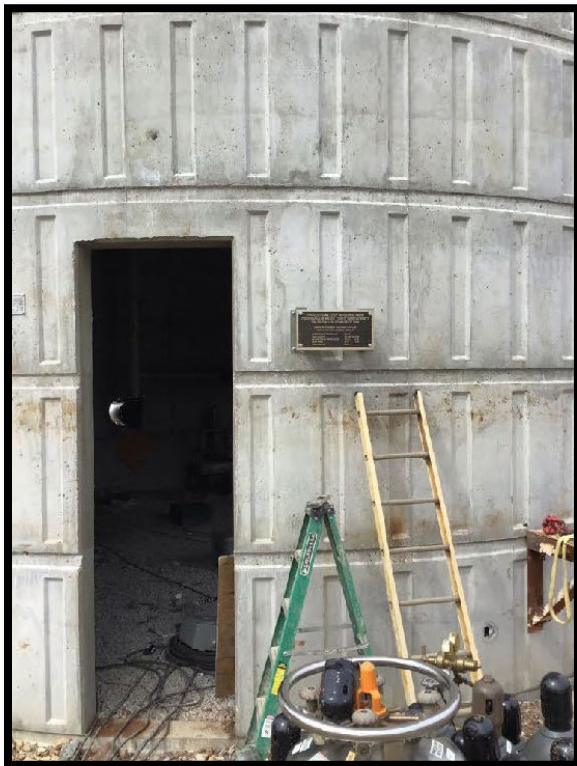
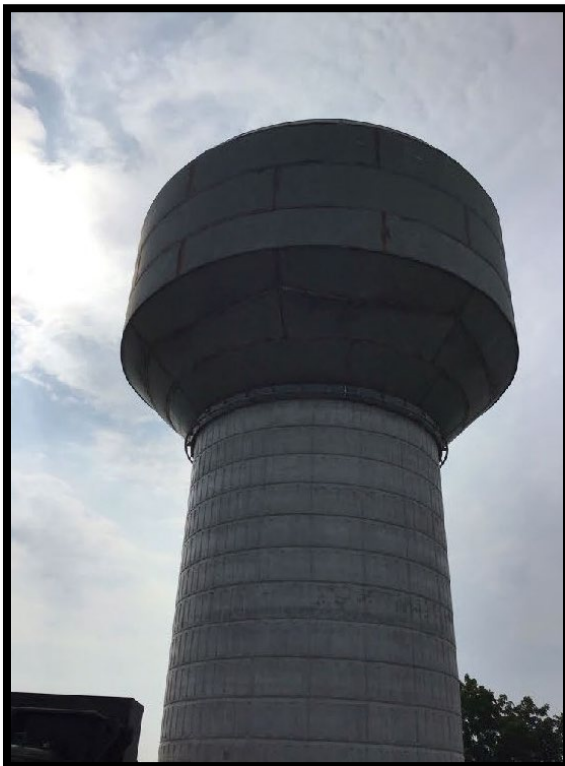
Contract Price	3,299,000
Change Order Amount	-
Total Contract Price	3,299,000
% Contact Completed	79%
% Contact Paid Per latest Pay App Paid	71%

Change Order	Amount
N/A	N/A



Pay App	Amount	Notes
1	304,988.00	Received and paid from Debt Proceeds Fund. Part of combined grant reimbursement #1 - repayment with grant funds completed.
2	534,232.50	Received and paid from Debt Proceeds Fund. Part of combined grant reimbursement #1 - repayment with grant funds completed.
3	228,080.75	Received and paid from Debt Proceeds Fund. Part of combined grant reimbursement #1 - repayment with grant funds completed.
4	156,849.75	Received and paid from Debt Proceeds Fund. Part of grant reimbursement #2 - repayment with grant funds completed.
5	63,840.00	Received and paid from Debt Proceeds Fund. Part of grant reimbursement #30 - repayment with grant funds completed.
6	142,880.00	Received and paid from Debt Proceeds Fund. Will be submitted as grant reimbursement #4.
7	727,342.80	Received and paid from Debt Proceeds Fund. Will be submitted as grant reimbursement #5.
8	194,512.50	Received and paid from Debt Proceeds Fund. Will be submitted as grant reimbursement #5.
9	116,422.50	Received in early July. Not yet paid. Will be included in future grant reimbursement from EDA grant.

2,469,148.80



## 2023 BUDGET INITIATIVES

### CITY INFRASTRUCTURE & SHARE OF LEAVENWORTH COUNTY SALES TAX PROCEEDS

- ☒ \$480,000 total from the Infrastructure Sales Tax (\$175,000) and special highway funding to support a 6<sup>th</sup> consecutive year of enhanced street maintenance activities & Northstar Subdivision sidewalk connections
- ☒ \$262,500 from the Infrastructure Sales Tax to support the 5<sup>th</sup> year of 20-year Library debt payments
- ☒ \$621,000 from the City's share of the County Sales Tax and the Infrastructure Sales Tax for replacement of Church Street Bridge – Survey & partial design completed in 2021, engineering completed in 2022, and construction commenced in winter 2022 with completion projected in 2023.
- ☒ \$20,000 from the City's share of the County Sales Tax for share of 30" milling equipment
- ☒ \$20,000 from the City's share of the County Sales Tax for replacement of 2 Police Department servers
- ☒ \$15,000 from the City's share of the County Sales Tax for replacement of Water Park Chlorine Pulsar Feeds & Umbrellas

### GENERAL FUND

- ☒ 5% annual merit pool funding available to high performing City employees
- ☒ 3% cost of living adjustment for all full-time City employees
- ☒ \$61,309 for 3 Police Department Part-Time Sworn Positions
- ☒ \$15,000 for Police Department operational budget costs & community engagement
- ☒ \$47,000 for Fire Department/Code Enforcement Vehicle Purchase
- ☒ \$4,500 for Fire Department operational budget costs
- ☒ \$4,000 for Water Park patron chair equipment replacements
- ☒ \$19,840 for funding assistance for LCDC
- ☒ \$26,914 for funding assistance for the following community organizations:
  - Tonganoxie Business Association (\$5,000)
  - Tonganoxie Arts Council (\$5,000)
  - Tonganoxie Farmers Market (\$3,000)
  - Tonganoxie Historical Society (\$5,000)
  - Tonganoxie VFW Bridge Project (\$8,914)
- ☒ \$10,000 for funding assistance for community events
- ☐ Additional \$87,800 of funding available for allocation by the City Council for crosswalks improvements, pedestrian safety measures, or any previously unbudgeted needs arising during FY 2023.

### UTILITY FUNDS

- ☒ Business Park Water Tower Project Construction – Design completed in 2021/2022. EDA grant funding assistance of \$1,508,850 was confirmed with award announcement. Contract was awarded in March 2022, construction commenced in 2022 and completion is projected in 2023.
- ☒ Wastewater Treatment Plant Improvements – Design & construction engineering contract (\$967,100) approved in 2022. BASE Grant 2.0 funding request for \$3.5M submitted in January 2023. Bidding & construction planned for 2023.
- ☒ \$65,000 for share of replacement of skid steer & purchase of 30" milling equipment
- ☐ \$45,000 in Storm Water Fund for engineering assessment projects
- ☒ Water & Sewer Capital Funds providing funding for Water Meter Replacements Project approved in 2022

### PUBLIC SAFETY EQUIPMENT FUNDS

- ☐ \$5,000 for firing range improvements
- ☒ \$4,000 for Police Department computer workstation updates
- ☐ \$23,000 for equipment costs associated with Fire Department extrication & hydrant testing equipment

## 2024 BUDGET DEVELOPMENT TIMELINE

- ☒ March 2023 – Spring Retreat
- ☒ May 2023 – Capital Maintenance & Improvements Plan (CMIP) City Council work session
- ☒ June 2023 – Base Budget preparation & department budget presentations
- ☐ July 2023 – Budget work sessions & notice to County Clerk of proposed mill levy & RNR
- ☐ August 2023 – Publication of notice of public hearings
- ☐ September 2023 – RNR & Budget Public Hearings and Budget Adoption
- ☐ September 2023 – Delivery of Adopted FY 2024 Budget Forms to the Leavenworth County Clerk
- ☐ Winter 2023 – Creation of Adopted FY 2024 Budget Book – printed & published on City website  
<https://www.tonganoxie.org/finance/pages/annual-city-budgets>



City of Tonganoxie, KS

# Expenditure Budget Remaining Report

## Fund Summary

For Fiscal: 2023 Period Ending: 06/30/2023

Fund	Original Total Budget	Current Total Budget	Period Activity	Fiscal Activity	Encumbrances	Variance Favorable (Unfavorable)	Percent Remaining
100 - General Fund	3,924,596.00	3,924,596.00	359,800.98	1,755,551.10	0.00	2,169,044.90	55.27%
210 - Water Operations Fund	2,181,000.00	2,181,000.00	186,161.34	840,560.82	0.00	1,340,439.18	61.46%
220 - Sewer Operations Fund	1,335,000.00	1,335,000.00	76,324.39	353,948.01	0.00	981,051.99	73.49%
230 - Sanitation Fund	455,000.00	455,000.00	32,999.86	196,278.58	0.00	258,721.42	56.86%
240 - Storm Water	57,000.00	57,000.00	396.00	5,568.63	0.00	51,431.37	90.23%
310 - Transient Guest Tax	1,100.00	1,100.00	0.00	0.00	0.00	1,100.00	100.00%
320 - Library Operations	614,545.00	614,545.00	190,830.20	494,023.37	0.00	120,521.63	19.61%
330 - Special Parks	5,000.00	5,000.00	59.54	4,334.34	0.00	665.66	13.31%
340 - Special Highway	480,000.00	631,000.00	49,916.95	58,260.11	0.00	572,739.89	90.77%
350 - Infrastructure Sales Tax	437,500.00	437,500.00	240,625.00	350,000.00	0.00	87,500.00	20.00%
360 - Capital Projects	808,613.00	858,613.00	222,800.10	687,110.94	0.00	171,502.06	19.97%
410 - Fire Equipment Reserve	64,693.00	129,494.00	12,444.44	40,381.29	0.00	89,112.71	68.82%
420 - Police Equipment Reserve	14,000.00	14,000.00	0.00	2,744.00	0.00	11,256.00	80.40%
430 - Sewer Capital Reserve	200,000.00	320,000.00	0.00	125,443.04	0.00	194,556.96	60.80%
440 - Water Capital Reserve	325,000.00	405,000.00	1,520.00	263,979.82	0.00	141,020.18	34.82%
500 - Debt, Bond, and Interest	801,017.00	801,017.00	0.00	111,702.47	0.00	689,314.53	86.05%
<b>Report Total:</b>	<b>11,704,064.00</b>	<b>12,169,865.00</b>	<b>1,373,878.80</b>	<b>5,289,886.52</b>	<b>0.00</b>	<b>6,879,978.48</b>	<b>56.53%</b>





Fund	Beginning Balance	Total Revenues	Total Expenses	Ending Balance
100 - General Fund	1,392,026.48	3,169,236.59	1,755,551.10	2,805,711.97
210 - Water Operations Fund	897,744.21	737,465.91	840,560.82	794,649.30
220 - Sewer Operations Fund	640,628.61	508,141.99	353,948.01	794,822.59
230 - Sanitation Fund	225,342.69	225,184.54	196,278.58	254,248.65
240 - Storm Water	56,585.08	24,127.46	5,568.63	75,143.91
310 - Transient Guest Tax	7,397.22	581.38	0.00	7,978.60
320 - Library Operations	1,110.79	489,663.61	494,023.37	-3,248.97
330 - Special Parks	20,457.12	1,808.13	4,334.34	17,930.91
340 - Special Highway	820,194.86	182,337.23	58,260.11	944,271.98
350 - Infrastructure Sales Tax	767,994.36	381,769.33	350,000.00	799,763.69
360 - Capital Projects	1,779,411.57	440,714.12	687,110.94	1,533,014.75
410 - Fire Equipment Reserve	268,526.63	46,510.40	40,381.29	274,655.74
420 - Police Equipment Reserve	40,530.76	7,055.45	2,744.00	44,842.21
430 - Sewer Capital Reserve	667,681.14	17,500.00	125,443.04	559,738.10
440 - Water Capital Reserve	556,765.50	17,500.00	263,979.82	310,285.68
450 - Capital Reserve	915.03	0.00	0.00	915.03
500 - Debt, Bond, and Interest	248,372.83	740,643.42	111,702.47	877,313.78
930 - Debt Proceeds	1,759,399.68	3,480,113.99	4,148,361.72	1,091,151.95
940 - Gallagher Park Fund	9,183.08	0.00	0.00	9,183.08
950 - Festival/Event Fund	4,594.80	300.00	0.00	4,894.80
960 - Law Enforcement Trust	0.00	0.00	0.00	0.00
961 - Opioid Addiction Fund	0.00	14,585.37	0.00	14,585.37
971 - RHID 1	340.82	22,773.72	0.00	23,114.54
972 - RHID 2	0.00	1,881.25	0.00	1,881.25
980 - Industrial Park Development Fund	169,950.68	12,000.00	54,442.23	127,508.45
981 - CDBG Urgent Need Grant Fund	0.00	0.00	0.00	0.00
982 - CDBG-CV Grant 2020	0.00	0.00	0.00	0.00
983 - CARES CRF Fund	0.00	0.00	0.00	0.00
984 - ARPA Fund	765,858.42	0.00	19,400.00	746,458.42
985 - MIH Grant Fund	0.00	0.00	0.00	0.00
<b>Report Total:</b>	<b>11,101,012.36</b>	<b>10,521,893.89</b>	<b>9,512,090.47</b>	<b>12,110,815.78</b>