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WHEREAS, each RHID application submitted to the City will be evaluated on its own merits, and an evaluation of the proposal will be performed by a RHID Committee comprised of City staff and/or consultants; and

WHEREAS, all projects must demonstrate financial and economic reasons such that but-for RHID assistance, the project could not proceed or could not address the City's housing goals.

NOW THEREFORE, BE IT RESOLVED THAT THE REINVESTMENT HOUSING INCENTIVE DISTRICT POLICY FOR THE CITY OF TOPEKA, KANSAS WILL BE AS FOLLOWS:

**CITY OF TOPEKA  
REINVESTMENT HOUSING INCENTIVE DISTRICT ("RHID") POLICY**

**SECTION ONE: PREFERENCES FOR PROJECTS**

1. The City will use RHID to address housing needs as described in its July 2020 Citywide Housing Market Study and Strategy document (the "Housing Study") as amended from time to time as needed. The City will amend this policy from time to time to adjust the targets below for progress to date or to address changing needs as identified by updates to its Housing Study. The Housing Study identified a need for approximately 720 units per year over the next 20 years through 2040 to keep up with anticipated demand and another 2,367 units to catch up from past demand in order to have a balanced market with lower housing cost burdens. The City currently averages around 240 new residential units per year. Therefore, a target of up to 4,470 units by 2030 is the substantiated need that is not being met by the market thus necessitating additional incentives. This total is further broken down by affordable, workforce, senior, market rate, and upscale units as referenced in the Housing Needs Analysis completed as an update to the Housing Study.

2. The City will use RHID to encourage an equitable distribution of projects citywide in keeping with the documented demand for 900 new units in downtown by 2030.

3. Per the Housing Study findings for greater housing choices, priority should be given to those projects that diversify the City's inventory with more attached unit typologies such as duplexes, townhomes, and multi-family projects.

4. The City will reserve a portion of projected RHID benefits to develop, improve or replace public infrastructure supporting housing developments and to fund multi-modal connections (transit, biking, walking) to housing developments.

5. The City will use a "but-for" approach (i.e., but-for the presence of the RHID incentive the project could not proceed or could not address the City's housing goals) in assessing the amount of RHID benefit granted to a housing development, maintaining flexibility with respect to the amount of incremental taxes permitted to be captured and/or the length of time an RHID will remain in place.

6. Housing developers seeking RHID assistance will need to be prepared to:

- Bear the costs of effecting an RHID incentive (estimated at \$25,000 to \$50,000 per project plan). Cost may include, but are not limited to, updating the housing study, preparation of necessary resolutions, ordinances, publication notices, development agreement, and statutory feasibility findings. The City will first apply the nonrefundable application fee described below towards the costs. Once a better estimate of costs is obtained, the City may, at its sole discretion, require a deposit to cover outstanding costs. If an additional deposit is required in addition to the nonrefundable application fee, the City shall return any balance from this deposit upon the applicant's withdrawal of the application or the conclusion of the approval processes.
- Provide the contractual and financial feasibility guarantees contemplated in the RHID statute (see K.S.A. 12-5245(a)(6)).
- Provide detailed information regarding the type, timing and implementation plan for the housing they propose to develop.
- Provide all information to the City required to effect an RHID project plan, as contemplated by Kansas law.
- Provide evidence in support of its need for RHID incentive under the but-for principle.

## SECTION TWO: PROCESS

1. Creation of a District. The City intends to use the Housing Study, as updated from time-to-time at the discretion of the City, to meet the statutory requirement (K.S.A. 12-5244) that the City conduct a "housing needs analysis" to determine that "housing needs exist" in Topeka.

Either the City or a housing developer may initiate the district creation process by delivering to the City Manager a District Application consisting of the following:

- (a) A cover letter requesting the creation of a district, including a general description of the housing development expected to occur within the district, the names of the housing developer or developers expected to construct such housing, the expected timing of such housing development, a narrative describing how the district is likely to address the policy goals of the Housing Study and discussion of how the use of RHID is consistent with the City's but-for principle.
- (b) A legal description of the proposed district and a map depicting the existing parcels of real estate in the proposed district.
- (c) Evidence of site control or a detailed plan for which the developer intends to secure site control.
- (d) A certification that neither the developer entity nor any of its shareholders/partners/members is delinquent on its property tax or special assessment payments on any property it owns or controls in Shawnee County.

- 135 (e) A certification that neither the developer entity nor any of its  
136 shareholders/partners/members has any outstanding utility bills, zoning or  
137 property maintenance, or other code cases pending with the city.  
138 (f) A non-refundable application fee of \$5,000. If the Developer withdraws the  
139 application, the City Governing Body elects not to create the District or does  
140 not approve the Housing Plan, or Kansas Secretary of Commerce elects to  
141 not approve the application, the City shall keep the application fee to  
142 reimburse it for the costs of processing and reviewing the application. The  
143 Developer shall not be entitled to any refund of the fee.  
144

145 Within thirty (30) days of receipt of a complete District Application, the City Manager will  
146 direct the preparation of a resolution for consideration by the Topeka Governing Body at  
147 a regular meeting not later than sixty (60) days following the City Manager's receipt of a  
148 complete District Application. The resolution shall include:  
149

- 150 (a) The legal description and the map provided in the District Application; and  
151 (b) The findings required in K.S.A. 12-5244(a)(1) through (a)(4).  
152

153 If the resolution is adopted by the Topeka Governing Body, the City Manager or designee  
154 will provide for publication of the adopted resolution as required in K.S.A. 12-5244(b) and  
155 will request approval by the Kansas Secretary of Commerce in the manner provided in  
156 K.S.A. 12-5244(c).  
157

158 2. Creation of a Housing Development Plan. Once the Kansas Secretary of  
159 Commerce has approved creation of a district, one or more housing developers may  
160 petition the City Manager for the execution of a housing development plan within such  
161 district. This petition will need to include all of the following:  
162

- 163 (a) Narrative describing the overall development plan specifically addressing  
164 how the plan meets the policy goals of the Housing Study.  
165 (b) A legal description of the proposed project area if such project area is not  
166 coterminous with the district boundaries.  
167 (c) A map of the proposed project area if such project area is not coterminous  
168 with the district boundaries.  
169 (d) A table (Excel format preferred) listing (i) each parcel within the proposed  
170 project area, listing the current Shawnee County assessed valuation of land  
171 and improvements separately and (ii) the property owner's name and  
172 address for each parcel.  
173 (e) A narrative and a graphical description of the housing and public facilities  
174 that the developer will construct or improve, and the location of each within  
175 the project area.  
176 (f) A narrative describing any improvements the developer expects the City to  
177 make to support the planned project, including any on or off-site public  
178 infrastructure and coordination with other public agencies, etc.

- (g) A listing of the names, addresses and specific interests in real estate in the project area of the housing developer(s) responsible for development of the housing and public facilities in the project area.  
For the purpose of this requirement, "housing developer(s)" means both the name of the business entity or entities, and the natural persons comprising the ownership of such entity or entities.
- (h) A detailed total development cost budget for the housing and other improvements to be constructed including an identification of costs for which the developer will seek reimbursement from RHID proceeds.
- (i) A narrative describing all public incentives sought in support of the planned project (including those that might be provided by other government agencies, foundations or non-profits), including identification of whether the developer seeks potential bond financing related to the RHID.
- (j) A detailed construction schedule, identifying any phasing of construction anticipated.
- (k) A detailed financial pro forma, showing the operation of the project over the life of the RHID, including sufficient detail on assumptions so the City may determine, among other things, the developer's expectations for the number and potential valuation of housing units to be constructed, the developer's expected private financing for the project (including debt, equity and other sources), and sufficient other detail to permit the City to make the required statutory finding as provided in K.S.A. 12-5245(a)(7).
- (l) A detailed description of the contractual assurances the developer is willing to make, including any financial guarantees it is willing to provide, to "guarantee the financial feasibility" of the project, all as required by K.S.A. 12-5245(a)(6) (together, the "Housing Development Plan"), along with commercially reasonable information evidencing developer's financial and operational capabilities to effect the proposed project as presented.

Unless there are extenuating circumstances, within fifteen (15) days of receipt of a complete Housing Development Plan, the City Manager will direct the City's Finance Director, or other City Manager designee, to review the Housing Development Plan for completeness (compared both to statutory requirements and the requirements of this policy), to prepare a financial analysis of the developer's proposal and to provide a written report to the City in conformance with K.S.A. 12-5245(a)(7).

Also, within fifteen (15) days of receipt of the complete Housing Development Plan, the Developer shall enter into a funding agreement with the City under which the developer(s) will agree to pay the City sufficient moneys to cover the City's costs in analyzing and effecting the Housing Development Plan.

The City's Finance Director may request additional information from the developer to assist in its analysis and the developer may request to provide certain information directly to the City's Finance Director, particularly with respect to its financial capacity to perform. The Finance Director may also consider: (a) the extraordinary or unique costs of the housing development plan; (b) the developer's (and its shareholders'/partners'/members')

compliance with other City development agreements; (c) the creditworthiness of the developer; and (d) the experience of the developer constructing, completing and managing projects of a similar nature, scale and complexity. The City's Finance Director will provide its written report in draft to the City Manager within thirty (30) days after receipt of the Housing Development Plan and any supplemental information it requests of the developer.

As authorized under the Kansas Open Records Act, the City will treat as confidential any such sensitive financial information provided by the applicant or its guarantors to the City's Finance Director, other city advisors or legal counsel, and will, if requested, enter on the City's behalf into a non-disclosure agreement; provided, however, that such advisors or legal counsel must have the right under such agreement to convey their conclusions about the applicant's ability to meet the requirements above based upon its review.

Concurrently with the City Finance Director's work, the City Manager will coordinate with City departments, as applicable, to identify any concerns with the City's ability to support the proposed project, including, but not limited to, availability of utilities, the cost to construct public infrastructure identified by the developer as the City's responsibility, traffic considerations and the ability to provide public safety services to the project, etc.

3. RHID Review Team. Within fifteen (15) days of receipt of the City Finance Director's draft analysis, the City Manager will convene a meeting of the RHID Review Team to include: the Mayor, Deputy Mayor, affected district council member(s), City Manager, Finance Director, Public Works Director, Utilities Director, Planning Director and City Attorney. In the absence of one of the named members above, the City Manager may designate alternative members to the RHID Review Team as appropriate. The RHID Review Team will review the Housing Development Plan, the City Finance Director's draft analysis and the City Manager's review of the City's ability to support the project, and may call on the financial advisor, City bond counsel and other resources to assist in its deliberations.

After reviewing the information presented, the RHID Review Team may (i) request the City Manager to seek additional information or provide additional analysis; (ii) make a recommendation to the Governing Body to establish the District and approve the plan with or without conditions; or (iii) not approve the plan.

*Capitalization Rate Criteria*. The RHID Review Team may recommend a higher capitalization rate (cap rate) than the standard cap rate for that type of development (i.e. office or apartment) for projects that substantially meet one or more of the following criteria:

- (a) Downtown redevelopment: Projects located within Topeka's designated central business district that contribute to the revitalization goals outlined in current downtown development plans.

- (b) Workforce housing: Projects that create housing units specifically designated and priced for workforce households earning between 61% and 120% of the Area Median Income (AMI).
- (c) Affordable housing: Projects that create housing for households below 60% AMI
- (d) Historically undeveloped areas: Projects developed on parcels that have been vacant or undeveloped for at least 15 years and present unique development challenges.
- (e) Blighted areas: Projects in designated blighted areas as defined by K.S.A. 12-1770a that remediate deteriorated structures, infrastructure deficiencies, or environmental concerns.
- (f) Restrictive covenants: Projects that incorporate restrictive covenants ensuring long-term affordability, restrict transfer of ownership, quality standards, or other public benefits as approved by the City.

The RHID Review Team shall document how projects meet these criteria when recommending the higher capitalization rate in their report to the Governing Body.

In the event the RHID Review Team requests the City Manager obtain additional information from the developer, it will include a reasonable timeline for the completion of such additional work and a schedule for its reconsideration. Upon reconsideration, the RHID Review Team may take one of the actions identified above.

In the event the RHID Review Team makes a recommendation to not approve, the City Manager will report on the action of the RHID Review Team at a future Governing Body meeting.

In the event the RHID Review Team makes a recommendation of approval:

- (a) The City Attorney, or appropriate designee, will prepare the resolution contemplated in K.S.A. 12-5245(b), setting a date for a public hearing on the creation of the district for inclusion on a regular City Governing Body agenda within thirty (30) days of the action of the RHID Review Team.
- (b) The City Attorney, or appropriate designee, will draft a development agreement and enter into negotiations with the developer and its counsel on the contents of such development agreement. The purpose of the development agreement will be to translate into contract form the rights, responsibilities and obligations of both the City and the developer in the implementation of the housing development plan. The City Attorney may involve the City's financial advisor, bond counsel and other resources in the development and review of the development agreement.

- (c) The City's Finance Director will finalize its analysis for inclusion in the Governing Body agenda packet and will incorporate any provisions from the development agreement that might affect its analysis.
- (d) The City Manager will work with appropriate City departments to review project budgets for any capital improvements required to effect the housing development plan.
- (e) The City Planning Director, or appropriate designee, will work with the developer to effect any planning and zoning approvals required to effect the housing development plan.

4. Governing Body Review and Approval. Once a housing development plan is recommended for approval from the RHID Review Team, it will appear on the Governing Body agenda as follows:

- (a) A resolution setting a public hearing on the creation of the district, consistent with the requirements of K.S.A. 12-5245(b), at least thirty (30) and not more than seventy (70) days from the adoption date of this resolution.
- (b) After this public hearing is held, at the same meeting or at a subsequent meeting, the Governing Body may consider an ordinance creating the district and adopting the housing development plan.
- (c) At the meeting at which the Governing Body considers the ordinance creating the district and adopting the housing development plan it will also consider:
  - i. Approval of the fully-negotiated development agreement(s) with the housing developer(s) for the project(s).
  - ii. Approval of any other City-provided incentives related to the project(s).
  - iii. Approval of project budgets related to any City-financed infrastructure related to the project(s) including the adoption or amendment of the CIB/CIP, if necessary.
  - iv. Approval of any planning or zoning matters required to effect the project(s).
- (d) The effectiveness of all such related matters will be conditioned upon the RHID district creation ordinance surviving the thirty (30) day veto period of Shawnee County and any affected school district.

### SECTION THREE: INCENTIVE STRUCTURE

1. Presumption of Pay-As-You-Go Incentives. The City will begin negotiations with housing developers with the presumption that it will structure RHID incentives on a pay-as-you-go basis.

2. Reimbursable Costs. The City will generally consider all statutorily-permitted uses of RHID proceeds as reimbursable costs (see K.S.A. 12-5249); provided, however, the City will generally not reimburse land acquisition costs from owners affiliated with the housing developer unless the developer provides evidence of its actual



acquisition costs from a bona fide arms-length purchase from an unaffiliated owner or the housing developer can provide satisfactory evidence to the City Manager that the land acquisition was purchased at fair market value which may include the cost of reimbursing delinquent special assessments or other delinquent taxes from an owner affiliated with the housing developer and that the reimbursement of the acquisition costs satisfy the public purpose doctrine.

3. Downtown. Buildings or structures must be more than twenty-five (25) years old and used primarily for residential use located in the central business district or in a business or commercial district within a qualified census tract as approved by the Secretary of Commerce. Certification of the building/structure's age must be provided to the Secretary of Commerce. Improvements are limited to the second or higher floors. Improvements for commercial purposes are not eligible. K.S.A. 12-5249

4. Bonds. The City will generally not consider the issuance of special obligation bonds. A housing developer may petition the City Manager in writing to issue bonds secured by the proceeds of an RHID if:

- (a) The project is complete, leased-up (multifamily)/substantially occupied (single family) and stabilized (multifamily).
- (b) Shawnee County has completed at least four (4) tax valuations of the district.
- (c) RHID-eligible costs exceed \$3 million.

Upon receiving a petition for bond issuance, the City Manager will engage the City's financial advisor to assess the feasibility of bond issuance given the track record of the project, the potential size of the financing and then-current market conditions. If the City's financial advisor determines that a bond financing would be feasible and par offered would be likely to exceed \$3 million, the financial advisor will report its findings to the City Manager along with an estimate of the potential transaction costs to effect the financing.

If a bond financing would be feasible, upon receipt of the financial advisor's findings, the City Manager will communicate the findings with the housing developer to determine whether the housing developer desires to proceed. If the housing developer desires to proceed, the City Manager will, within fifteen (15) days, convene the RHID Review Team to evaluate the housing developer's petition for bond issuance and the financial advisor's report.

After reviewing the information presented, the RHID Review Team may (i) request the City Manager seek additional information or provide (or commission) additional analysis; (ii) decline to advance the housing developer's petition for bond issuance; or (iii) direct the City Finance Director to proceed with execution of a potential bond issuance.

Upon direction from the RHID Review Team to proceed, the Finance Director will coordinate with the City's financial advisor and bond counsel to commence execution of a bond financing. The financial advisor will advise on method of sale and will assist the

Finance Director in the selection of one or more underwriters for the financing. City bond counsel will prepare a bond sale intent resolution, describing the intended sale and authorizing appointment of the underwriter, directing staff and advisors/counsel to effect the financing, and causing the preparation of customary bond and sale documents.

Within thirty (30) days of bond counsel's preparation of the bond sale intent resolution, the City Manager will calendar the resolution for consideration by the Governing Body. If the Governing Body adopts the bond sale intent resolution, the City will use its best efforts to cause the issuance of the bonds.

5. No Issuance by Third Parties. The City will not consent to and will include language in any development agreement prohibiting the issuance of bonds by any third-party on behalf of the developer to be secured by an assignment of the developer's rights under the development agreement. For the purposes of clarity, this language is not intended to prevent or preclude developer's collateral assignment of the development agreement to a bank to secure the developer's private financing of the project.

#### **SECTION FOUR: HOUSING DEVELOPER GUARANTEES**

1. Assurances Required. The City interprets K.S.A. 12-5245(a)(6) as requiring that housing developers provide contractual assurances of their performance under a development agreement related to an RHID project. The City will expect a housing developer to offer one or more of the following contractual assurances of performance as part of the development agreement. The City does not expect a developer to provide all of these contractual assurances and will work with the developer on what is the most appropriate assurance for a particular project:

- (a) A firm commitment to construct and complete a substantial percentage of the housing units and related infrastructure proposed in its Housing Development Plan within a specified timeframe.
- (b) A performance and payment bond sufficiently sized to cause completion of a substantial percentage of the housing units and infrastructure proposed in its Housing Development Plan.
- (c) A bank letter of credit sufficiently sized to secure completion of a substantial percentage of the housing units and infrastructure proposed in its Housing Development Plan.
- (d) Personal financial guarantees of one or more owners of the developer to ensure completion of a substantial percentage of the housing units and infrastructure proposed in its Housing Development Plan.
- (e) Other contractual assurances that, in the sole determination of the City, meet the intent of the statute.

#### **SECTION FIVE: CITY REMEDIES IN THE EVENT OF DEVELOPER DEFAULT**

Each development agreement will identify the conditions under which a developer may cause a default under the agreement. The City may impose one or more of the following remedies if a default occurs and is not cured timely:

- (a) Reduction to or elimination of the amount of RHID proceeds that can be used to reimburse eligible costs.
- (b) Shortening of the expiration of the RHID incentive.
- (c) Cross-default against other incentives granted by the City.
- (d) Other penalties or claw backs unique to each development agreement.

NOW, THEREFORE BE IT FURTHER RESOLVED that Resolution Nos. 9627 is hereby rescinded.

ADOPTED and APPROVED by the Governing Body on July 15, 2025.

CITY OF TOPEKA, KANSAS

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Michael A. Padilla, Mayor

ATTEST:

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Brenda Younger, City Clerk