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3 **RESOLUTION NO. 9379**

4 A RESOLUTION introduced by City Manager Stephen Wade establishing the City of  
5 Topeka's policy for Rural Housing Incentive Districts.

6 WHEREAS, the City of Topeka, Kansas (the "City") recognizes that it is essential  
7 to stimulate economic growth and development of new residential housing developments  
8 in order to provide services, employment and tax revenues for the benefit of the  
9 community; and

10  
11 WHEREAS, the declared purpose of the Rural Housing Incentive District Act is to  
12 encourage the development and renovation of housing in the rural areas of Kansas that  
13 experience a shortage of housing by authorizing cities and counties to assist directly in  
14 the financing of public improvements that will support such housing; and

15  
16 WHEREAS, the Housing Study identified a need for approximately 420 units per  
17 year over the next 5 years to keep up with anticipated demand and another 2,300 units  
18 to catch up from past demand in order to have a balanced market with lower housing cost  
19 burdens; and

20  
21 WHEREAS, to meet these housing goals, the City recognizes the need to  
22 occasionally assist in the redevelopment of property located within the City by the creation  
23 of Rural Housing Incentive Districts (RHID), an economic development tool established  
24 by K.S.A. 12-5241 et seq. for the financing of qualified redevelopment projects; and

25  
26 WHEREAS, the City finds it in the best interest of the public it serves to establish  
27 certain policies and guidelines for the consideration of proposals that may be presented  
28 to the City by private developers requesting RHID assistance; and

29  
30 WHEREAS, all prospective RHID projects must be carefully evaluated by the City  
31 because the character of tax revenues generated by different developments can vary  
32 widely, and in most cases, will impact other taxing jurisdictions in the Topeka community;  
33 and

34  
35 WHEREAS, the City desires to use RHID for projects that demonstrate the highest  
36 public benefit and encourage an equitable distribution of projects citywide, including  
37 downtown, in keeping with the documented demand for housing; and

38  
39 WHEREAS, each RHID application submitted to the City will be evaluated on its  
40 own merits, and an evaluation of the proposal will be performed by a RHID Committee  
41 comprised of City staff and/or consultants; and

42  
43 WHEREAS, all projects must demonstrate financial and economic reasons such  
44 that but-for RHID assistance, the project could not proceed or could not address the City's  
45 housing goals.

47 NOW THEREFORE, THE RURAL HOUSING INCENTIVE DISTRICT POLICY  
48 FOR THE CITY OF TOPEKA, KANSAS WILL BE AS FOLLOWS:  
49

50 **SECTION ONE: PREFERENCES FOR PROJECTS**  
51

52 1. The City will use RHID to address housing needs as described in its July  
53 2020 Citywide Housing Market Study and Strategy document (the "Housing Study") as  
54 amended from time to time as needed. The City will amend this policy from time to time  
55 to adjust the targets below for progress to date or to address changing needs as identified  
56 by updates to its Housing Study. The Housing Study identified a need for approximately  
57 420 units per year over the next 5 years to keep up with anticipated demand and another  
58 2,300 units to catch up from past demand in order to have a balanced market with lower  
59 housing cost burdens. The City's current 3-year average is almost 270 new units per year.  
60 Therefore, a target of up to 3,100 units over a 5-year period is the substantiated need that  
61 is not being met by the market thus necessitating additional incentives. This total is further  
62 broken down by affordable, workforce, senior, market rate, and upscale units as  
63 referenced in the Housing Needs Analysis completed as an update to the Housing Study.  
64

65 2. The City will use RHID to encourage an equitable distribution of projects  
66 citywide in keeping with the documented demand for 900 new units in downtown by 2030.  
67

68 3. Per the Housing Study findings for greater housing choices, priority should  
69 be given to those projects that diversify the City's inventory with more attached unit  
70 typologies such as duplexes, townhomes, and multi-family projects.  
71

72 4. The City will reserve a portion of projected RHID benefits to develop,  
73 improve or replace public infrastructure supporting housing developments and to fund  
74 multi-modal connections (transit, biking, walking) to housing developments.  
75

76 5. The City will use a "but-for" approach (i.e., but-for the presence of the RHID  
77 incentive the project could not proceed or could not address the City's housing goals) in  
78 assessing the amount of RHID benefit granted to a housing development, maintaining  
79 flexibility with respect to the amount of incremental taxes permitted to be captured and/or  
80 the length of time an RHID will remain in place.  
81

82 6. Housing developers seeking RHID assistance will need to be prepared to:  
83

- 84 • Bear the costs of effecting an RHID incentive (estimated at \$25,000  
85 to \$50,000 per project plan). Cost may include, but are not limited to,  
86 updating the housing study, preparation of necessary resolutions,  
87 ordinances, publication notices, development agreement, and  
88 statutory feasibility findings. The City will first apply the  
89 nonrefundable application fee described below towards the costs.  
90 Once a better estimate of costs is obtained, the City may, at its sole  
91 discretion, require a deposit to cover outstanding costs. If an  
92 additional deposit is required in addition to the nonrefundable

93 application fee, the City shall return any balance from this deposit  
94 upon the applicant's withdrawal of the application or the conclusion  
95 of the approval processes.

- 96 • Provide the contractual and financial feasibility guarantees  
97 contemplated in the RHID statute (see K.S.A. 12-5245(a)(6)).
- 98 • Provide detailed information regarding the type, timing and  
99 implementation plan for the housing they propose to develop.
- 100 • Provide all information to the City required to effect an RHID project  
101 plan, as contemplated by Kansas law.
- 102 • Provide evidence in support of its need for RHID incentive under the  
103 but-for principle.

## 104 105 **SECTION TWO: PROCESS**

106  
107 1. *Creation of a District.* The City intends to use the Housing Study, as updated  
108 from time-to-time at the discretion of the City, to meet the statutory requirement (K.S.A.  
109 12-5244) that the City conduct a "housing needs analysis" to determine that "housing  
110 needs exist" in Topeka.

111  
112 Either the City or a housing developer may initiate the district creation process by  
113 delivering to the City Manager a District Pre-Application consisting of the following:

- 114  
115 a) A cover letter requesting the creation of a district, including a general  
116 description of the housing development expected to occur within the district,  
117 the names of the housing developer or developers expected to construct  
118 such housing, the expected timing of such housing development, a narrative  
119 describing how the district is likely to address the policy goals of the Housing  
120 Study and discussion of how the use of RHID is consistent with the City's  
121 but-for principle.
- 122 b) A legal description of the proposed district and a map depicting the existing  
123 parcels of real estate in the proposed district.
- 124 c) Evidence of site control or a detailed plan for which the developer intends  
125 to secure site control.
- 126 d) A certification that neither the developer entity nor any of its  
127 shareholders/partners/members is delinquent on its property tax or special  
128 assessment payments on any property it owns or controls in Shawnee  
129 County.
- 130 e) A certification that neither the developer entity nor any of its  
131 shareholders/partners/members has any outstanding utility bills, zoning or  
132 property maintenance, or other code cases pending with the city.
- 133 f) A non-refundable application fee of \$5,000. If the Developer withdraws the  
134 application, the City Governing Body elects not to create the District or does  
135 not approve the Housing Plan, or Kansas Secretary of Commerce elects to  
136 not approve the application, the City shall keep the application fee to  
137 reimburse it for the costs of processing and reviewing the application. The  
138 Developer shall not be entitled to any refund of the fee.

139  
140 Within thirty (30) days of receipt of a complete District Pre-Application, the City Manager  
141 will direct the preparation of a resolution for consideration by the Topeka Governing Body  
142 at a regular meeting not later than sixty (60) days following the City Manager's receipt of  
143 a complete District Pre-Application. The resolution shall include:

- 144  
145 a) The legal description and the map provided in the District Pre-Application;  
146 and  
147 b) The findings required in K.S.A. 12-5244(a)(1) through (a)(4).  
148

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

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

- 159 a) Narrative describing the overall development plan specifically addressing  
160 how the plan meets the policy goals of the Housing Study.  
161 b) A legal description of the proposed project area if such project area is not  
162 coterminous with the district boundaries.  
163 c) A map of the proposed project area if such project area is not coterminous  
164 with the district boundaries.  
165 d) A table (Excel format preferred) listing (i) each parcel within the proposed  
166 project area, listing the current Shawnee County assessed valuation of land  
167 and improvements separately and (ii) the property owner's name and  
168 address for each parcel.  
169 e) A narrative and a graphical description of the housing and public facilities  
170 that the developer will construct or improve, and the location of each within  
171 the project area.  
172 f) A narrative describing any improvements the developer expects the City to  
173 make to support the planned project, including any on or off-site public  
174 infrastructure and coordination with other public agencies, etc.  
175 g) A listing of the names, addresses and specific interests in real estate in the  
176 project area of the housing developer(s) responsible for development of the  
177 housing and public facilities in the project area.  
178 • For the purpose of this requirement, "housing developer(s)" means  
179 both the name of the business entity or entities, and the natural  
180 persons comprising the ownership of such entity or entities.  
181 h) A detailed total development cost budget for the housing and other  
182 improvements to be constructed including an identification of costs for which  
183 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 "Plan Pre-Application"), 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 Plan Pre-Application, the City Manager will direct the City's Finance Director, or other City Manager designee, to review the Plan Pre-Application 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).

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 Plan Pre-Application 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 Plan Pre-Application, 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.

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 prepare a funding agreement, to be considered at the same meeting as the resolution setting the public hearing, under which the developer(s) will agree to pay the City sufficient moneys to cover the City's costs in analyzing and effecting the district's creation.
- c) 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.

- d) 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.
- e) The City Manager will work with appropriate City departments to review project budgets for any capital improvements required to effect the housing development plan.
- f) 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) Approval of a funding agreement with the developer(s).
- b) 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.
- c) 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.
- d) 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).
- e) 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.

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322       2.     *Reimbursable Costs.* The City will generally consider all statutorily-  
323 permitted uses of RHID proceeds as reimbursable costs (see K.S.A. 12-5249); provided,  
324 however, the City will generally not reimburse land acquisition costs from owners affiliated  
325 with the housing developer unless the developer provides evidence of its actual  
326 acquisition costs from a bona fide arms-length purchase from an unaffiliated owner or the  
327 housing developer can provide satisfactory evidence to the City Manager that the land  
328 acquisition was purchased at fair market value which may include the cost of reimbursing  
329 delinquent special assessments or other delinquent taxes from an owner affiliated with  
330 the housing developer and that the reimbursement of the acquisition costs satisfy the  
331 public purpose doctrine.  
332

333       3.     *Downtown.* Buildings or structures must be more than twenty-five (25)  
334 years old and used primarily for residential use located in the central business district or  
335 in a business or commercial district within a qualified census tract as approved by the  
336 Secretary of Commerce. Certification of the building/structure's age must be provided to  
337 the Secretary of Commerce. Improvements are limited to the second or higher floors.  
338 Improvements for commercial purposes are not eligible. K.S.A. 12-5249  
339

340       4.     *Bonds.* The City will generally not consider the issuance of special  
341 obligation bonds. A housing developer may petition the City Manager in writing to issue  
342 bonds secured by the proceeds of an RHID if:  
343

- 344       a)     The project is complete, leased-up (multifamily)/substantially occupied  
345               (single family) and stabilized (multifamily).
- 346       b)     Shawnee County has completed at least four (4) tax valuations of the  
347               district.
- 348       c)     RHID-eligible costs exceed \$3 million.  
349

350     Upon receiving a petition for bond issuance, the City Manager will engage the City's  
351 financial advisor to assess the feasibility of bond issuance given the track record of the  
352 project, the potential size of the financing and then-current market conditions. If the City's  
353 financial advisor determines that a bond financing would be feasible and par offered  
354 would be likely to exceed \$3 million, the financial advisor will report its findings to the City  
355 Manager along with an estimate of the potential transaction costs to effect the financing.  
356

357     If a bond financing would be feasible, upon receipt of the financial advisor's findings, the  
358 City Manager will communicate the findings with the housing developer to determine  
359 whether the housing developer desires to proceed. If the housing developer desires to  
360 proceed, the City Manager will, within fifteen (15) days, convene the RHID Review Team  
361 to evaluate the housing developer's petition for bond issuance and the financial advisor's  
362 report.  
363

364     After reviewing the information presented, the RHID Review Team may (i) request the  
365 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 Plan Pre-Application 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 Plan Pre-Application.
- c) A bank letter of credit sufficiently sized to secure completion of a substantial percentage of the housing units and infrastructure proposed in its Plan Pre-Application.
- 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 Plan Pre-Application.

- e) Other contractual assurances that, in the sole determination of the City, meet the intent of the statute.

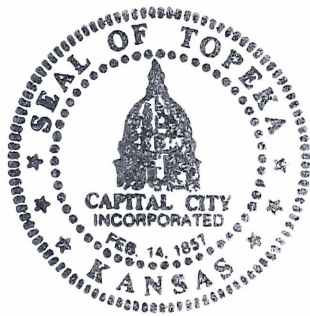
## SECTION FIVE: CITY REMEDIES IN THE EVENT OF DEVELOPER DEFAULT

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.

ADOPTED and APPROVED by the Governing Body on December 20, 2022.

CITY OF TOPEKA, KANSAS



ATTEST:

Michael A. Padilla, Mayor

Brenda Younger, City Clerk