

**CITY OF WESTWOOD, KANSAS  
RESOLUTION NO. 115-2022**

**A RESOLUTION OF THE CITY OF WESTWOOD, KANSAS, ADOPTING UPDATES TO THE ECONOMIC DEVELOPMENT POLICY.**

**WHEREAS**, the City of Westwood desires to update its Economic Development Policy, providing for economic development programs in accordance with applicable Kansas state statute;

**WHEREAS**, Ordinance No. 910 passed August 12, 2010 established an Economic Development Policy for the City; and

**WHEREAS**, the City of Westwood recognizes that development and community improvement is essential to stimulate economic growth and development for industries and businesses in order to provide services, employment and tax revenues for the benefit of the community;

**WHEREAS**, it is further recognized that community improvement and the stimulation of balanced economic development is a joint responsibility of the private and public sectors, working closely together to create a positive business environment and to encourage industry to locate and expand in the City;

**WHEREAS**, the economic development goals of the City include economic diversification, broadening of the property tax base, stimulation of private investment, enhancement and support of existing development, quality of materials and design, maintenance of environmental quality, creation and quality of employment opportunities, and increased per capita income;

**WHEREAS**, to meet these economic development goals, the City recognizes the need to assist the private sector by use of development incentives which may include Tax Increment Financing, Community Improvement Districts, Transportation Development Districts, tax abatement and such other and further incentives permissible under Federal and State law; and

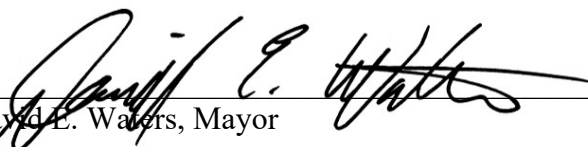
**WHEREAS** this policy is intended to be reviewed and updated from time to time by the Governing Body.

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

**SECTION 1.** The Economic Development Policy (2022) of the City of Westwood attached hereto as Exhibit "A" is hereby incorporated by reference and adopted by the Governing Body.

**SECTION 2.** The Resolution shall take effect upon its approval by the City Council.

**ADOPTED by the Governing Body of the City of Westwood, Kansas, this 8<sup>th</sup> day of December, 2022.**

  
\_\_\_\_\_  
David E. Waters, Mayor

ATTEST:

  
\_\_\_\_\_  
Leslie Herring, City Clerk

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, appearing to read 'R. Denk', is written over a horizontal line. The signature is stylized with a large 'R' and a circular flourish.

Ryan B. Denk, City Attorney



**CITY OF WESTWOOD, KANSAS**

**4700 RAINBOW BLVD.**

**WESTWOOD, KANSAS 66205**

**ECONOMIC DEVELOPMENT POLICY (2022)**

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**PREFACE**

The City of Westwood, Kansas (the “City”) desires to be a community with diverse options for housing, commercial, business, office, civic, and commercial offerings, that are consistent with the City’s vision. Such vision and direction have been guided by, among other things, the following:

- 2015 Urban Land Institute Technical Assistance Panel
- 2017 Westwood Master Plan
- 2018 47<sup>th</sup> Street Complete Street Plan
- 2021 Westwood Complete Streets Policy and Plan
- 2021 Urban Land Institute Technical Assistance Panel
- Westwood Zoning Ordinance, Updated 2022

The following represents the economic development and incentives policies and guidelines of the City of Westwood. The City’s purpose in adopting these policies is to improve the business health of the City, preserve property values, encourage the growth of a healthy tax base, and provide for the health, safety, welfare and betterment of the City and the community.

These policies do not constitute hard and fast rules; rather they are guidelines to assist the City in evaluating proposals on a case-by-case basis. The City is not bound to follow every provision in these policies, nor should any applicant have any expectation that any policy or past practice of the City constitutes a guarantee of future action or performance by the City. The City may deviate from any of the provisions herein when the Governing Body determines it is in the best interests of the City to do so.

Generally, the City will consider applications for economic development incentives when a project would not be feasible but for the City’s grant of such incentives, and a project will further the vision of the City. The City will give careful consideration to the economic and other impacts of any economic development initiative upon the existing residents and businesses in the City, the ability of the City and staff to provide services, and upon the community as a whole. The City will, in appropriate circumstances, consider the impact of any proposal on other taxing entities. The City may also consider the history, reputation, and credit-worthiness of applicants for incentives, the experiences of other cities in interacting with applicants, and their histories of property ownership or management within the City.

The City will require higher standards for the design of improvements and materials used in making improvements within an incentive district than the minimum requirements set forth within the Westwood Zoning Code. Preference will be given to businesses that practice sustainable design practices, including but not limited to, energy efficient construction, use of

recycled materials, use of native and drought-resistant landscaping, and conservation of natural hydrological systems. The proposed use must be clean, non-polluting and consistent with all City policies, ordinances, and codes. The Project's site plans and building elevations and the Project's plans are subject to final approval by the City's Planning Commission to ensure that they are similar to the preliminary plans and elevations submitted.

All Projects granted incentives should be consistent with the City's comprehensive plan, street improvement plans, and any special established overlay districts. The City will consult these plans for consistency prior to the City approving any proposed CID District. When evaluating requests for incentives, the City will consider:

- a. the compatibility of the location of the proposed Project(s);
- b. the compatibility of the proposed land uses with land use, capital improvement, and other relevant plans of the City; and
- c. the availability of existing infrastructure facilities and essential public services.

Finally, these policies are not available to the exclusion of other development tools, nor are they a substitute for creative thought. The City may consider other development tools under appropriate circumstances.

**ARTICLE I**  
**TAX INCREMENT FINANCING (“TIF”) POLICY**

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**Section 1 OBJECTIVES.**

The proper use of TIF can promote, stimulate and develop the general and economic welfare of and quality of life in the City. This Policy establishes the procedures of the City of Westwood, Kansas, for considering applications for Tax Increment Financing (“TIF”) used for economic development and redevelopment purposes in accordance with the provisions of K.S.A. 12-1770 *et seq.* and any amendments thereto (the “TIF Act”).

**Section 2 SCOPE.**

The City is committed to the high quality and balanced growth and development of the community; to preserving the City's unique character and distinctive atmosphere; and to revitalizing and redeveloping areas of the City. Although the City does not encourage the practice of subsidizing private business with public funds, insofar as the City's objectives are substantially advanced by the expansion of the tax base, the removal of blight or conditions that might lead to blight, and enhancement of the local economy, the City will consider, on a case-by-case basis, the approval of TIF Projects where, but for the availability of TIF, such development would not be economically viable. It is the policy of the City that any decision regarding the approval of TIF Projects will be made in accordance with the guidelines, criteria, and procedures outlined in this Policy. Nothing herein shall imply or suggest that the City is under any obligation to approve a TIF Project for any applicant.

**Section 3 DEFINITIONS.**

For the purpose of this Policy, the words or phrases as used in this Policy shall have meaning or be construed as follows unless otherwise defined by state statute or otherwise defined in this Policy.

**APPLICANT:** The individual or business and its officers, employees, and agents requesting approval of a redevelopment district or redevelopment project plan associated with any proposed TIF Project. May also be referred to as Developer.

**BASE YEAR ASSESSED VALUATION:** The assessed valuation of all real property within the boundaries of a redevelopment district on the date the redevelopment district is established.

**CAPITAL INVESTMENT:** The acquisition cost of land, buildings and tangible personal property constituting capital assets for accounting purposes.

**CONSERVATION AREA:** Any improved area within the corporate limits of Westwood in which 50% or more of the structures in the area have an age of 35 years or more, which area is not yet blighted, but may become a blighted area due to the existence of a combination of two or more of the following factors:

1. dilapidation, obsolescence or deterioration of the structures;
2. illegal use of individual structures;
3. the presence of structures below minimum code standards;
4. building abandonment;
5. excessive vacancies;
6. overcrowding of structures and community facilities; or
7. inadequate utilities and infrastructure.

**DEVELOPMENT AGREEMENT:** A written agreement between the City and a Developer regarding the construction and financing of a redevelopment project. Such agreement shall address issues involved in the redevelopment project, including, but not limited to the following: schedule of construction; acquisition of land; eligible TIF expenses; prioritization of payment; scope of the development (including development criteria); indemnity of the City and insurance requirements; reimbursement of City costs; financing (private and/or public); transfer restrictions prior to completion; maintenance and restrictive covenants; city inspection and information access rights; reporting requirements; and remedies upon default. The Development Agreement will generally include reference to all incentives requested by the Developer for a project, including those provided by other governmental entities, and will generally be considered concurrent with city council actions on incentives within the control of the City.

**FEASIBILITY STUDY:** A study which shows whether a redevelopment project's benefits and tax increment revenue and other available revenues under the TIF Act are expected to exceed or be sufficient to pay for the redevelopment project costs and the effect, if any, the redevelopment project costs will have on any outstanding special obligation bonds as authorized pursuant to Kansas law. A Feasibility Study performed by the Developer or, at the City's option, the City or its designee, shall be prepared prior to approval of the redevelopment project plan.

**FINANCE TEAM:** A Committee comprised of the Mayor, the President of the City Council, the City Administrator, the City Attorney, the City's Financial Advisor, and the City's Bond Counsel, or their designees, and such other persons as the Mayor may appoint, whose function is to review TIF applications and make recommendations for approval or denial to the Governing Body.

**REDEVELOPMENT DISTRICT:** The specific area declared to be an eligible area in which one or more redevelopment projects may be developed. This is sometimes referred to as a TIF District.

**REDEVELOPMENT DISTRICT PLAN:** The preliminary plan that identifies all of the proposed redevelopment project areas and identifies in a general manner all of the buildings, facilities and improvements in each that are proposed to be constructed or improved in each redevelopment project area.

**REDEVELOPMENT PROJECT:** The approved project to implement a project plan for the development of the established redevelopment district and for which a redevelopment project plan is approved and a development agreement is executed. This is sometimes referred to as a TIF Project or Project.

**REDEVELOPMENT PROJECT PLAN:** The plan adopted by the City for the development of a redevelopment project or projects which conforms to K.S.A. 12-1772, and amendments thereto, in a redevelopment district. Any redevelopment project must be completed within twenty (20) years from the effective date of the redevelopment project plan.

**REVENUE STUDY:** A report commissioned by the City and paid for by the Developer assessing the likely market acceptance of the project proposed by the Developer and projecting the potential tax and other revenues likely to be generated by the project over the term of the incentives requested.

**TAX INCREMENT:** The amount of real property taxes collected from real property located within the redevelopment district that is in excess of the amount of real property taxes which is collected from the base year assessed valuation. In certain circumstances, the City may also allow capture of the incremental sales tax revenues and franchise fees generated by the redevelopment project.

**TAXING SUBDIVISIONS:** Includes Johnson County, Kansas, the City, Unified School District No. 512 (Shawnee Mission School District), Johnson County Community College, Consolidated Fire District No. 2, and any other taxing subdivision levying real property taxes, the territory or jurisdiction of which includes any currently existing or subsequently created redevelopment district.

#### **Section 4 AUTHORITY FOR ESTABLISHMENT OF REDEVELOPMENT DISTRICT.**

- A.** Pursuant to state law, the City may, but is not required to, create redevelopment districts in blighted areas, conservation areas, and enterprise zones created pursuant to K.S.A. 12-17,110 prior to July 1, 1992. Certain costs of improvements within the redevelopment district may be reimbursed to the Developer on a pay-as-you-go basis or paid through the issuance of special obligation bonds or full faith and credit bonds. Funds to pay the reimbursement or to retire the bonds are generated by the tax increment and other sources that may be pledged by the City. This authority is discretionary and the City may provide for tax increment financing in an amount and for purposes more restrictive than that authorized by statute.
- B.** The Governing Body reserves the right to grant or deny tax increment financing for the development or redevelopment of a redevelopment district under circumstances beyond the scope of this Policy or to waive provisions herein. The Governing Body may be more restrictive than state law, but shall not waive any legal requirement of State law.

#### **Section 5: ELIGIBLE REDEVELOPMENT PROJECT COSTS.**

- A.** Permissible redevelopment project (TIF Project) costs or expenses are those costs necessary to implement a redevelopment project plan, at the discretion of the City on a case-by-case basis, including:

1. acquisition of property within the redevelopment project area;
2. payment of relocation assistance;
3. site preparation including utility relocations;
4. sanitary and storm sewers and lift stations;
5. drainage conduits, channels and levees and river walk canal facilities;
6. street grading, paving, graveling, macadamizing, curbing, guttering and surfacing;
7. street lighting fixtures, connection and facilities;
8. underground gas, water, heating, and electrical services and connections located within the public right-of-way;
9. sidewalks and pedestrian underpasses or overpasses;
10. drives and driveway approaches located within the public right-of-way;
11. water mains and extensions;
12. plazas and arcades;
13. parking facilities;
14. landscaping and plantings; fountains, shelters, benches, sculptures, lighting, decorations and similar amenities; and
15. related expenses to redevelop and finance the redevelopment project.

**Section 6 AMOUNT OF TAX INCREMENT FINANCING AVAILABLE.**

**A. Criteria.** The general objectives of the City in granting TIF for economic development are:

1. promote, stimulate and develop the general and economic welfare of the state of Kansas and the City;
2. promote the general welfare of the citizens of Kansas and the City through assisting in the development, redevelopment, and revitalization of business corridors, blighted areas, conservation areas, and environmentally contaminated areas located within the City, including projects that include environmentally sustainable components;
3. create new jobs and retain existing jobs; and
4. expand the economic and tax base of the City.

The specific objectives of the City to be considered when reviewing a proposed redevelopment district include but are not limited to promoting the redevelopment of locations that need assistance due to unique methods of construction, geological, environmental, or other site constraints. The City recognizes that a simple system of



determining the amount of TIF to be granted in order to reach these objectives may not always be equitable if applied uniformly to different kinds of redevelopment project plans. As a result, in determining the actual amount and duration of TIF to be granted, the City shall review each application on a case by case basis and consider the factors and criteria set forth in this Policy including where applicable and a feasibility study as required by state law. The City shall not be bound as to future TIF Projects as to the amount and duration of previous TIF Projects supported by the City.

**B. Capital Investment.** Although no minimum capital investment is required by the City, the amount of capital investment made by an applicant is a factor to be considered by the City in determining whether or not to authorize a redevelopment project plan.

**C. Application Of "But-For" Principle.** All TIF applications shall be considered in light of the "but-for" principle, *i.e.*, tax increment financing must make such a difference that the Project would not be economically feasible "but for" the availability of TIF. In evaluating the economic feasibility, the City shall consider factors that include, but are not limited to:

1. the extraordinary or unique costs associated with developing the project;
2. the applicant's financial investment in the project;
3. the property, sales and other tax and fee revenue that may result from the project;
4. the credit worthiness and experience of the applicant;
5. Developer compliance with other development projects and development agreements in Westwood and in other communities, including but not limited to delinquency on property tax;
6. the value added, including intangible costs and benefits received by the City and other taxing jurisdictions, as a result of the proposed project; and
7. the extent to which the basis for the creation of a TIF District or the request for TIF financing can be attributed to actions or inactions of the applicant or parties related to such applicant, including but not limited to property neglect, failure to make capital investments, insufficient management or leasing activities, or the like.

The City does not encourage the subsidy of private businesses with public funds, the indirect consequence of TIF, unless some measurable public good results, as determined by the City, and the public subsidization can reasonably be expected to make a significant difference in achieving one or more objectives of the City.

## **Section 7 APPLICATION AND ADMINISTRATION FEES.**

Redevelopment district applications and redevelopment project plan applications shall be accompanied by an application fee. This fee is in addition to other fees which may be required by the City, including fees for the issuance of bonds, costs incurred for preparation of the feasibility study as required by the TIF Act and this Policy, and costs incurred, if any, for review and work done by the City's Financial Advisor and Bond Counsel. In addition, any applicant that receives redevelopment project plan approval and subsequent TIF assistance shall pay an annual administration service fee as set forth herein. All fees shall be due and payable as

provided for herein or as otherwise set forth in an approved Development Agreement.

**A. Fees Associated with Redevelopment District.**

1. **Initial Application Fee.** A non-refundable amount of \$10,000.00 shall accompany the redevelopment district application.
2. **Retainer and Funding Agreement.** Prior to considering any application, the applicant shall enter into a predevelopment or funding agreement with the City which, among other things, shall require that applicant deposit with the City a sum to be determined by the City based upon the size of the Project, but not less than \$25,000.00 ("Retainer"), which shall accompany the filing of the application. The predevelopment or funding agreement shall provide for, and the City shall use the Retainer to pay for, the costs of City bond counsel, financial advisor and other professional consultants' fees and apply the hourly fees incurred by the City's professional consultants for work on this Project against the Retainer. The City shall bill the applicant for any amounts incurred in excess of the Retainer. If there is money left in the Retainer when the professional work is completed, the City shall pay over to the applicant any amounts remaining. However, if that retainer should become exhausted or drop to a point unacceptably low to the City during the pendency of the TIF Project, the City may require the deposit of such additional funds as the City may deem appropriate, in its sole discretion, in order to assure that the City will not have to absorb any of the costs of the evaluation or administration of the TIF Project, and to assure the financial security of the City.
3. **Annual Administrative Service Fee.** An amount equal to at least 2% of the annual increment reimbursed to applicant or its successor(s) in interest.

**Section 8. TIF APPLICATION PROCESS.**

The following basic procedures shall govern the approval of all redevelopment districts and TIF Projects within the City. All requests for or applications for redevelopment districts or redevelopment project plans shall be considered and acted upon in accordance with the TIF Policy set forth herein; provided, that these procedures are established under the authority of the Governing Body and these provisions may be waived by the Governing Body, if such waiver is in the best interest of the City and does not conflict with any statutory or procedural requirement of state law or other competent authority.

**A. Redevelopment District and Project Plan Applications.** The applicant shall make application for a redevelopment district and a redevelopment project by filing with the City a written application on a form provided by the City or in such form as the City may otherwise reasonably accept from the applicant. The application shall include, but is not limited to, all such matters as are required under the TIF Act, and also include the following:

1. Information from qualified personnel establishing the information necessary to establish blight or conservation area findings as the basis for establishing the redevelopment district area;
2. Evidence in a form satisfactory to the City of the applicant's financial ability to complete the proposed project in a timely manner.

3. Documentation substantiating the applicant's sources of funding, including the amount/percentage of equity funding.
4. Submission of a financial pro forma and with project feasibility analysis which includes the amount of incentives requested.
5. Payment of all required fees and compliance with all procedural requirements of the TIF Act and the City's TIF Policy.

City staff may also initiate redevelopment districts and redevelopment project plans. Such staff requests shall be accompanied by an application completed by the project manager, but the corresponding fee may be waived.

#### **B. General Application Procedure.**

1. The City will only consider full and complete applications. On receipt of the completed application and the required fees, the City Administrator or his or her designee shall determine whether the proposal is complete and sufficient for review. If the proposal is incomplete, the City Administrator shall notify the Applicant of the need for such changes or additions as deemed necessary. Upon receipt of a completed application and the applicable fee, the City Administrator shall forward the application to the Finance Team for review.
2. Applicant will also be responsible for providing whatever additional information requested by staff or the Governing Body as necessary for assisting the City in making its recommendation or decision on the application. Any inaccuracy, misstatement or error in fact may render the application null and void and may be cause for the repeal of any development assistance ultimately provided by the City through the TIF statutes in reliance upon said information.

#### **C. Finance Team Review.**

1. The Finance Team is responsible for reviewing applications for TIF assistance. It will generally review the proposed project against both state law and local policy considerations and, in its discretion, will make a recommendation to the City Council for action on the proposed project. The Finance Team will also be involved in providing feedback and guidance to the City's negotiation team in the Development Agreement creation process.
2. In reviewing the information, the Finance Team may use the services of consultants, including but not limited to bond counsel and financial advisors, and may charge the fees of these consultants under the Funding Agreement. Finance Team records, including applications submitted for TIF, may be eligible for withholding from public disclosure as provided under the Kansas Open Records Act, but shall be available for public inspection when otherwise required by law.

#### **D. The Redevelopment Project Plan.**

1. The City will prepare, or cause the Applicant to prepare, a redevelopment project plan. The Finance Committee will review the redevelopment project plan as provided above in this Policy.

2. The Planning Commission must determine that the redevelopment project plan is consistent with the comprehensive general plan for the development of the City and this action must occur before the Governing Body adopts a resolution providing notice of a public hearing to consider adoption of the redevelopment project plan.
3. The redevelopment project plan will generally include such matters as are required under the TIF Act, but also will include any other information the City deems necessary to advise the public of the intent of the project plan, including but not limited to a Revenue Study.
4. Utilizes environmentally-sustainable construction practices with the businesses located therein using sustainable best practices.

**E. Feasibility Study and But-For Analysis.** The City or its consultant will review the redevelopment project plan, the information provided by the Developer (including its financial pro forma, project schedule, financial capabilities and development expertise, etc.), information collected about the Developer's other projects and experience with other communities, the findings of any Revenue Study, and will evaluate the redevelopment project plan both with respect to the statutory feasibility finding and the but-for principle identified in this policy, and will provide a report of findings on these matters to be considered by the Governing Body at the time it which it takes up the redevelopment project plan for approval.

## **Section 9. FINANCING AND BONDS.**

**A. General.** The City may use proceeds of special obligation bonds or full faith and credit tax increment bonds to finance the undertaking of a redevelopment project, as provided in K.S.A. 12-1774 and amendments thereto. The maximum maturity of any such special obligation bonds or full faith and credit tax increment bonds shall be twenty (20) years. The City may also issue industrial revenue bonds or private activity bonds for a project located within a redevelopment district.

### **B. Special Obligation Bonds.**

1. The City may issue special obligation bonds to finance permissible expenses of a redevelopment project. Such bonds may be payable, both as to principal and interest:
  - a. from property tax increments allocated to, and paid into a special fund of the City;
  - b. from revenues of the City derived from or held in connection with the undertaking and carrying out of any redevelopment project; (iii) from private sources, contributions or other financial assistance from the state or federal government; (iv) from the increased franchise fees and city sales tax (if the City agrees to their capture within the redevelopment project plan area), or (e) from any combination of these methods.
  - c. Special obligation bonds are not general obligations of the City, nor in any event shall they give rise to a charge against its general credit or taxing powers or be payable out of any funds or properties other than those sources set forth above.
2. Each request for the issuance of special obligation bonds shall be considered on a case by case basis, but the City shall consider a number of factors in deciding whether

or not to issue special obligation bonds for a Project. These factors may include but are not limited to:

- a. Project compliance with this Policy;
  - b. Source of revenue to repay the debt issued;
  - c. The size of the issue;
  - d. The Applicant's compliance with the approved redevelopment project plan and phasing plan;
  - e. Whether the Project requested for financing meets the stated goals and objectives of the Governing Body;
  - f. Developer compliance with existing redevelopment projects and project agreements;
  - g. Any developer delinquency on other municipal financing projects or property tax;
  - h. The track record of developer's projects in other communities with respect to financial performance and bond repayment;
  - i. Overall security provisions for debt repayment; and
  - j. if the bonds are able to obtain an investment grade bond rating..
3. Special obligation bonds issued under this Policy, whether privately placed or offered to the public through a competitive sale, must include security for the bonds of a sufficient amount to minimize any risk of default; be sold to qualified investors (including accredited investors and qualified institutional buyers, each as defined in SEC rules) in accordance with the minimum denominations as provided herein.
  4. The City may require that special obligation bond proceeds be released in phases and amounts consistent with a percentage of construction or other performance standards which shall be agreed upon by the parties.
  5. If a negotiated sale of the bonds is necessary, the City will normally select the underwriter(s) needed to structure, market, price, and sell the bonds through a competitive process. Exceptions to this competitive selection process may be approved by the City Administrator upon consultation with the City's bond counsel and financial advisor. In addition, the City may issue a Request for Proposals and Qualifications to establish a list of pre-qualified underwriters for TIF special obligation bonds. All pricing for negotiated sales will be performed with direct involvement by City staff and the City's financial advisor.

#### **D. Full Faith and Credit Bonds.**

1. In very rare instances, generally those where the proceeds of TIF bonds are substantially used to finance high-priority public infrastructure, the City may also issue full faith and credit tax increment bonds to finance a redevelopment project. Any resolution establishing a public hearing on a redevelopment project plan for which the City intends or may intend to issue full faith and credit tax increment bonds, shall state the City's intent to issue full faith and credit tax increment bonds. These bonds are payable, both as to principal and interest:
  - a. from the revenue sources identified for special obligation bonds; and
  - b. from a pledge of the City's full faith and credit to use its *ad valorem* taxing authority for repayment thereof in the event all other authorized sources of revenue are not

sufficient. Except in extraordinary circumstances in the sole discretion of the Governing Body, the proceeds of full faith and credit tax increment bonds shall only be used to pay for public improvements or public projects which would otherwise be eligible to be paid for with the proceeds of City general obligation bonds.

2. In accordance with K.S.A. 12-1774(b)(5), full faith and credit tax increment bonds are general obligations of the City and shall be exempt from all state taxes except inheritance taxes, and the amount of full faith and credit tax increment bonds issued and outstanding which exceed three percent (3%) of the assessed valuation of the City shall be within the bonded limit of the City.

**E. Bond Fees.** In addition to submitting the costs of its consultants as costs of issuance on any TIF bond transaction, the City may impose a bond origination fee to cover its staff time and indirect costs in effecting the bond transaction. The amount of such fee will be determined financing-by-financing, based upon the facts and circumstances of the transaction, including complexity, amount of staff time involved, the size of the financing, the amount of risk borne by the City, and the term of the bonds.

**F. Pay-As-You-Go.** Pursuant to Attorney General Opinion 96-45, tax increment can be used to reimburse a Developer for eligible redevelopment project plan costs as opposed to issuing bonds. Under this method, the City may agree to reimburse the Developer for eligible redevelopment project costs over a period of time not to exceed twenty (20) years from the effective date of a redevelopment project plan in accordance with the terms set forth in the development agreement. The reimbursement amount is paid solely from all or a portion of the tax increment, and the Developer takes the risk that the portion of the increment pledged for reimbursement will be insufficient to retire the eligible redevelopment project costs. This reimbursement method is preferred by the City over the use of bond financing as the method to reimburse Developers for eligible redevelopment project costs.

## **Section 10 COMMUNITY PARTICIPATION.**

All applicants will agree to actively participate in the civic, charitable, educational, philanthropic, and economic development of the City of Westwood. Accordingly, each Development Agreement for a Project will require that the applicant support the purposes of this Section in a manner acceptable to the City.

## **Section 11. OTHER PROCEDURES.**

City staff may develop other internal procedures for processing redevelopment district and redevelopment project plan applications and the applicable fees associated therewith. Such procedures will be approved, and amended when appropriate, by the Mayor. All requests or applications for either redevelopment districts or redevelopment project plans will be considered and acted upon in accordance with this Policy and its accompanying procedures.

## **Section 12. STATUTORY AMENDMENTS.**

Any amendment to any statute cited herein or used as a source of authority for development of the City's TIF Policy shall apply without modification or amendment to the TIF Policy.

**Section 13. RESPONSIBILITY FOR ENFORCEMENT.**

The City Administrator shall be responsible to the Governing Body for the enforcement of this Policy. The City Clerk, City Attorney, Bond Counsel, Financial Advisor, and any other consultants the City may engage may assist in the implementation of this Policy.

**Section 14. REFERENCES.**

K.S.A. 12-1770 through 12-1780; 12-17,110; and 12-1740 as amended.

## ARTICLE II COMMUNITY IMPROVEMENT DISTRICT (“CID”) POLICY

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### **Section 1 OBJECTIVES.**

To meet the economic goals of the City as outlined above, it is the policy of the City to consider establishment of Community Improvement Districts (“CID”) to enable public financing of all or a portion of a CID Project or infrastructure improvements. A CID is authorized by K.S.A. 12-6a26 *et seq.*, as amended, (the “CID Act”) to encourage and promote economic development, tourism and community investment within a defined CID area (“District”). A CID Project should provide public benefit such as strengthening economic development and employment opportunities; reducing blight, enhancing tourism; upgrading older real estate through redevelopment or rehabilitation; or promoting sustainability. Public financing is achieved by levying and collecting special assessments and/or a CID sales tax upon property in the District.

### **Section 2 SCOPE.**

An applicant may petition the City to use CID financing to fund Projects eligible under the CID Act. Although the City does not encourage the practice of subsidizing private business with public funds, insofar as the City’s objectives are substantially advanced, the City will consider, on a case-by-case basis, the approval of CID Projects where, but for the availability of CID, such improvements would not be economically viable. It is the policy of the City that any decision regarding the approval of CID Projects will be made in accordance with the guidelines, criteria, and procedures outlined in this Policy. Nothing herein is to imply or suggest that the City is under any obligation to approve a CID Project for any applicant. The authority and decision to approve a petition establishing a CID for a Project is within the sole discretion of the Governing Body. The Governing Body reserves the right to deviate from this Policy when it believes it is in the City’s best interest.

### **Section 3 DEFINITIONS.**

For the purpose of this Policy, the words or phrases as used in this Policy are defined below unless otherwise defined by state statute or otherwise provided in this Policy.

**APPLICANT:** The individual or business and its officers, employees, and agents requesting approval of a CID or CID Project. May also be referred to as Developer.

**CID SALES TAX:** A retailers’ sales tax over and above the aggregate amount of the retailers’ sales tax contained in K.S.A. 12-187 through 12-197, and amendments thereto, on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailer’s sales tax act, within a District, in any increment of .10% or .25% not to exceed 2% as authorized by the CID Act, pledging such revenue to pay the bonds issued for the Project or to reimburse the cost of the Project.

**COST:** Means the definition set out in the CID Act. The City reserves the right to exclude otherwise eligible costs under the CID Act and to negotiate eligible fees on a project by project basis. This prohibition does not extend to architectural and engineering fees; environmental and geotechnical consultants or other similar due diligence expenses associated with a



project, structure or infrastructure construction. The approved project costs shall be described in detail in a Development Agreement.

**DEVELOPMENT AGREEMENT:** A written agreement between the City and a Developer regarding the construction and financing of a CID Project. Such agreement shall address issues involved in the CID Project, including, but not limited to the following: schedule of construction; eligible CID expenses; prioritization of payment; scope of the development (including development criteria); indemnity of the City and insurance requirements; reimbursement of City costs; financing (private and/or public); transfer restrictions prior to completion; maintenance and restrictive covenants; city inspection and information access rights; reporting requirements; and remedies upon default.

**FINANCE TEAM:** A Committee comprised of the Mayor, the President of the City Council, the Chair of the Planning Commission, the City Administrator, the City Attorney, the City's Financial Advisor, and the City's Bond Counsel, or their designees, and such other persons as the Mayor may appoint, whose function is to review CID applications and make recommendations for approval or denial to the Governing Body.

**PAY-AS-YOU-GO:** A method of financing in which the costs of a Project are financed without notes or bonds, and the approved costs of such Project are reimbursed after Project completion as monies are deposited in the District fund.

**PROJECT or CID PROJECT:** May include any item eligible under the CID Act, but the City reserves the right, through this Policy or otherwise, to exclude otherwise eligible CID Projects under the CID Act; determine eligible and ineligible projects; and determine the amount of funding for a Project on a case by case basis. These terms and approvals shall be set out in a Development Agreement.

#### **Section 4. GENERAL ELIGIBILITY.**

**A. General Criteria.** Strong consideration will be given to CID Projects which add to and diversify the Westwood tax base as well as CID Projects which would provide an extraordinary or particularly unique community-wide economic opportunity. Evaluation criteria to be used in determining economic benefit to the community shall include, but shall not be limited to, consideration of the amount of capital investment and a determination of whether the proposed Project enables the development and location of new products, services and amenities in the City rather than the relocation of existing City businesses. The Governing Body shall consider establishment of a CID when it determines it is in the best interest of the City and provided the Project meets one or more of the following criteria:

1. Furthers an identified Governing Body goal.
2. Attracts, promotes, and enables the development and location of new products, services and amenities in the City rather than the relocation of existing City businesses.
3. Has unique site constraints making development more difficult and costly.
4. Substantially promotes economic development, investment or reinvestment in the community.

5. Incorporates higher standards for the design and construction of improvements than the minimum Code required standards.
6. Utilizes environmentally-sustainable construction practices with the businesses located therein using sustainable best practices.
7. Encourages retail projects that enhance the retail base by either attracting new sales or capturing sales moving to other markets.
8. Encourages or enhances pedestrian, bicycle, or public transportation opportunities.
9. Provides for the construction of facilities that promote tourism or enhance the quality of life within the City.
10. Incorporates construction of public infrastructure.

**B. Eligible CID Projects.** Subject to and except as otherwise provided in this Policy, Projects eligible for CID financing shall be as allowed under the CID Act. These include, but may not be limited to:

1. Public buildings, structures and facilities, and not-for-profit museums;
2. Sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, water mains and extensions and other site improvements;
3. Parking garages;
4. Streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;
5. Parks, lawns, trees and other landscape;
6. Communication and information booths, bus stops and other shelters, stations, terminals, hangers, rest rooms and kiosks;
7. Outdoor cultural amenities, including but not limited to, sculptures and fountains;
8. Airports, railroads, light rail and other mass transit facilities;
9. Lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits;
10. To provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons for public property, public buildings and outdoor spaces;

11. To provide or contract for cleaning, maintenance and other services to public property, public buildings and outdoor spaces;
12. To contract for or conduct economic impact, planning, marketing or other studies related to the district.

**C. Capital Investment.** Although no minimum capital investment is required by the City, the amount of capital investment made by an applicant is a factor to be considered by the City in determining whether or not to authorize the establishment of a CID District.

**D. Application Of "But-For" Principle.** All CID applications and petitions will be considered in light of the "but-for" principle, *i.e.*, CID financing must make such a difference that the Project would not be economically feasible "but for" the availability of CID. In evaluating the economic feasibility, the City shall consider factors that include, but are not limited to:

1. the extraordinary or unique costs associated with developing the project;
2. the applicant's financial investment in the project;
3. the property, sales and other tax and fee revenue that may result from the project;
4. the credit worthiness and experience of the applicant;
5. Developer compliance with other City development projects and development agreements, including but not limited to delinquency on property tax;
6. the value added, including intangible costs and benefits received by the City and other taxing jurisdictions, as a result of the proposed project; and
7. the extent to which the basis for the creation of a CID District or the request for CID financing can be attributed to actions or inactions of the applicant or parties related to such applicant, including but not limited to property neglect, failure to make capital investments, insufficient management or leasing activities, or the like.

The City does not encourage the subsidy of private businesses with public funds, the indirect consequence of CID, unless some measurable public good results, as determined by the City, and the public subsidization can reasonably be expected to make a significant difference in achieving one or more objectives of the City.

**E. Developer Contribution & Cost Allocation.** Each application/petition should include evidence that the Developer will do the following:

1. Have the financial ability to complete and operate the CID Project, and will be liable for, or contribute equity or private financing of, sufficient amounts for the completion of the CID Project;
2. Demonstrate a financial nexus between the public and private improvements financed by the CID assistance;
3. Provide satisfactory assurance that the Project will be completed in a timely manner in accordance with the Development Agreement.

## **Section 5 APPLICATION AND ADMINISTRATION FEES.**

CID applications and petitions shall be accompanied by an application fee. This fee is in addition to other fees which may be required by the City, including fees for the issuance of bonds and costs incurred, if any, for review and work done by the City's Financial Advisor and Bond Counsel. In addition, any applicant that receives CID assistance shall pay an annual administration service fee as set forth herein. All fees shall be due and payable as provided for herein or as otherwise set forth in an approved Development Agreement.

**A. Initial Application/Petition Fee.** A non-refundable amount of \$10,000.00 shall accompany the CID application.

**B. Retainer and Funding Agreement.** Prior to considering any application, the applicant shall enter into a predevelopment or funding agreement with the City which, among other things, shall require that applicant deposit with the City a sum to be determined by the City based upon the size of the Project, but not less than \$25,000.00 ("Retainer"), which shall accompany the filing of the application. The predevelopment or funding agreement shall provide for, and the City shall use the Retainer to pay for, the costs of City bond counsel, financial advisor and other professional consultants' fees and apply the hourly fees incurred by the City's professional consultants for work on this Project against the Retainer. The City shall bill the applicant for any amounts incurred in excess of the Retainer. If there is money left in the Retainer when the professional work is completed, the City shall pay over to the applicant any amounts remaining. However, if that retainer should become exhausted or drop to a point unacceptably low to the City during the pendency of the CID Project, the City may require the deposit of such additional funds as the City may deem appropriate, in its sole discretion, in order to assure that the City will not have to absorb any of the costs of the evaluation or administration of the CID Project, and to assure the financial security of the City.

**C. CID Fee.** A non-refundable amount equal to 2% of the total CID assistance, which fee shall be paid as follows:

1. **CID Approval Fee.** An amount equal to 25% of the CID fee, based upon the approved eligible CID project costs, to be paid prior to publication of the ordinance establishing the CID District.
2. **Balance of Fee.** Paid with the first CID disbursements (or subsequent disbursements until paid in full) or upon the issuance of bonds, if applicable, in the amount of 75% of the CID fee, based upon the approved eligible CID project costs.

## **Section 6. CID APPLICATION/PETITION PROCESS.**

The City will generally follow the procedures below with respect to the approval of all CID Districts and CID Projects within the City; provided, that these procedures are established under the authority of the Governing Body and these provisions may be waived by the Governing Body, if such waiver is in the best interest of the City and does not conflict with any statutory or procedural requirement of state law or other competent authority.

**A. CID Application/Petition.** To start the City's review process, an applicant will file with the City a written application or petition on a form provided by the City or in such form as the

City may otherwise reasonably accept from the applicant. An application will include items required under the CID Act along with:

1. Evidence in a form satisfactory to the City of the applicant's financial ability to complete the proposed project in a timely manner.
2. Documentation substantiating the applicant's sources of funding, including the amount/percentage of equity funding.
3. Submission of a financial pro forma and with project feasibility analysis which includes the amount of incentives requested.
4. Payment of all required fees and compliance with all procedural requirements of the CID Act and the City's CID Policy.

**B. General Application/Petition Procedure.**

1. The City will only consider full and complete applications. On receipt of the completed application and the required fees, the City Administrator or his or her designee will determine whether the proposal is complete and sufficient for review. If the proposal is incomplete, the City Administrator will notify the Applicant of the need for such changes or additions as deemed necessary. Upon receipt of a completed application and the applicable fee, the City Administrator will forward the application to the Finance Team for review.
2. Applicant will also be responsible for providing whatever additional information requested by staff or the Governing Body as necessary for assisting the City in making its recommendation or decision on the application. Any inaccuracy, misstatement or error in fact may render the application null and void and may be cause for the repeal of any development assistance ultimately provided by the City through the CID Act in reliance upon said information.

**C. Finance Team Review.**

1. The Finance Team is responsible for reviewing applications for CID Projects. It will generally review the proposed project against both state law and local policy considerations and, in its discretion, will make a recommendation to the City Council for action on the proposed project. The Finance Team will also be involved in providing feedback and guidance to the City's negotiation team in the Development Agreement creation process. In reviewing the information, the Finance Team may use the services of consultants, including but not limited to bond counsel and financial advisors, and may charge the fees of these consultants under the Development Agreement. Finance Team records, including applications submitted for CID, may be eligible for withholding from public disclosure as provided under the Kansas Open Records Act, but shall be available for public inspection when otherwise required by law.
2. Further, the review of the CID considerations is not a substitute for any review of any plans by the Planning Commission, and all plan review and other zoning or land use procedures by the Planning Commission and/or the Governing Body shall not be affected by the Finance Team's review, but rather the Finance Team shall endeavor

to work in concert with all City bodies and personnel in a coordinated fashion by providing its recommendation to the Governing Body concurrent with the Governing Body's consideration of the applicant's development plan.

#### **D. Governing Body Consideration of CID District.**

1. **Reviewing and Establishing the CID.** Upon receiving the recommendation of the Finance Team, the Governing Body shall consider the application for creation of a CID District in accordance with the notice and public hearing provisions of the CID Act. Any resolution passed by the Governing Body stating that the City is considering the establishment of a CID District, pursuant to the CID Act, shall not be deemed in any way to bind the City to establishing a CID District.
2. **Development Agreement.** Prior to the commencement of development of the CID Project (including the issuance of bonds), and generally simultaneous with the approval of the CID District, the Developer shall execute a Development Agreement as approved by the Governing Body.

#### **Section 7 TERM.**

- A. The Governing Body shall review the financial feasibility of each CID and shall use this information in determining the appropriate term of the CID, which may be less than the duration allowed by the CID Act.
- B. In the event pay-as-you go financing is utilized, the CID sales tax shall expire on a date approved by the City, but no later than 22 years from the date the state director of taxation begins collecting such tax or when the pay-as-you-go costs have been paid.
- C. CID bonds issued to finance the Project shall mature on a date approved by the City, but no later than twenty-two (22) years from date of issue, unless otherwise provided by law.
- D. In no event shall any CID sales tax extend later than the date the bonds issued to finance such project or refunding bonds issued for the Project mature.

#### **Section 8. FINANCING AND BONDS.**

- A. **Source of Funds.** The cost of all or a portion of any authorized CID Project may be financed by any or all of the following sources:
  1. Pay-As-You-Go financing based either on a special assessment or a CID sales tax within the District, or both;
  2. Special Obligation Bond financing payable in whole or in part through special assessments within the CID or payable wholly through a CID sales tax;
  3. A combination of the foregoing methods.
- B. **Bonds.**
  1. The City encourages the use of private financing ("Pay-As-You-Go") with reimbursement to the applicant for eligible, approved costs associated with a CID

Project, but the City shall reasonably consider the issuance of bonds. Any determination to issue bonds is the sole discretion of the Governing Body and shall be accompanied by a recommendation of the City's Financial Advisor that issuance of the bonds for the Project is feasible and marketable. The City will not provide credit enhancements for or pledge its full faith and credit to CID bonds; however, credit enhancement provided by an applicant will be viewed favorably.

2. All applications/petitions requesting the issuance of special obligation bonds should demonstrate that the CID sales taxes or special assessments expected to be generated will be sufficient to provide enough security to pay off the bonds.
3. In addition to submitting the costs of its consultants as costs of issuance on any CID bond transaction, the City may impose a bond origination fee to cover its staff time and indirect costs in effecting the bond transaction. The amount of such fee will be determined financing-by-financing, based upon the facts and circumstances of the transaction, including complexity, amount of staff time involved, the size of the financing, the amount of risk borne by the City, and the term of the bonds.

#### **Section 9 COMMUNITY PARTICIPATION.**

All applicants will agree in the Development Agreement to actively participate in the civic, charitable, educational, philanthropic, and economic development of the City of Westwood.

#### **Section 10. OTHER PROCEDURES.**

City staff may develop other internal procedures for processing CID applications and the applicable fees associated therewith. Such procedures shall be approved, and amended when appropriate, by the Mayor. All requests or applications for CID financing shall be considered and acted upon in accordance with this Policy and its accompanying procedures.

#### **Section 11. STATUTORY AMENDMENTS.**

Any amendment to any statute cited herein or used as a source of authority for development of the City's CID Policy shall apply without modification or amendment to the CID Policy.

#### **Section 12. RESPONSIBILITY FOR ENFORCEMENT.**

The City Administrator shall be responsible to the Governing Body for the enforcement of this Policy. The City Clerk, City Attorney, Bond Counsel, Financial Advisor, and any other consultants the City may engage shall assist in the implementation of this Policy.

#### **Section 13. REFERENCES.**

- K.S.A. 12-6a26 *et seq.*, and amendments thereto.
- K.S.A. 12-6a01 *et seq.*, and amendments thereto.
- K.S.A. 10-112, 10-115, 10-116a and 10-142 and amendments thereto.

## ARTICLE III INDUSTRIAL REVENUE BOND (“IRB”) AND TAX ABATEMENT POLICY

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### **Section 1 OBJECTIVES.**

To meet the economic goals of the City, certain industrial revenue bond financing and tax abatements are authorized by K.S.A. 12-1740 *et seq.*, K.S.A. 79-201a, Section 13 of Article 11 of the Kansas Constitution, and other related statutes (collectively, the “Acts”). It shall be the policy of the Governing Body of the City to consider effective real property tax abatement or a negotiated fixed payment in lieu of taxes (“PILOT”) for portions of a project that qualify for tax abatement under Kansas law so long as the project meets the criteria listed in this Policy. The amount of the tax abatement or PILOT will be determined based upon the City’s policy goals, as set forth in the Criteria listed herein and as established by the Governing Body. It shall be the policy of the City that economic development projects pay their fair share of property tax, special improvement district assessments and cost of utility services. Economic development projects shall have a positive financial impact on the City, and the City reserves the right to approve the cost-benefit analysis model used to determine the financial impact.

### **Section 2 SCOPE.**

An applicant may petition the City to utilize industrial revenue bond/tax abatement financing to fund projects eligible under the Acts. Although the City does not encourage the practice of subsidizing private business with public funds, insofar as the City's objectives are substantially advanced, the City will consider, on a case-by-case basis, the approval of projects where, but for the availability of such incentives, such improvements would not be economically viable. It is the policy of the City that any decision regarding the approval of projects will be made in accordance with the guidelines, criteria, and procedures outlined in this Policy. Nothing herein shall imply or suggest that the City is under any obligation to approve a project for any applicant. The authority and decision to approve incentives is within the sole discretion of the Governing Body. The Governing Body reserves the right to deviate from this Policy when it believes it is in the City’s best interest.

### **Section 3 DEFINITIONS.**

For the purpose of this Policy, the words or phrases as used in this Policy shall have meaning or be construed as follows unless otherwise defined by state statute or otherwise defined in this Policy.

**ABATEMENT:** The difference between the amount of ad valorem property taxes an entity would pay if there were no City-granted abatement and the amount required to be paid as in lieu of taxes or charges (PILOT). For example, if the taxes required with no abatement were \$5,000, and the required in lieu payments were \$3,000, the "abatement" would be \$2,000.

**APPLICANT:** The individual or business and its officers, employees, and agents requesting approval of a tax abatement or tax exemptions. May also be referred to as Developer.

**DEVELOPMENT AGREEMENT:** A written agreement between the City and a Developer regarding the construction and financing of a Project. There may be one or more such Development Agreements for a Project, which may also be referred to as a “PILOT



Agreement”, a “Performance Agreement”, or similar. The Development Agreements will establish performance standards for the applicant, and are subject to annual review by the City to ensure conditions qualifying the business for the abatement or exemption continue to exist. These performance standards may include minimum capital investment amounts, minimum appraised and assessed valuation amounts, minimum employment levels, average salary targets, and any other standards deemed appropriate by the Governing Body. The Development Agreements may also address issues involved in the Project, including, but not limited to the following: Schedule of construction; eligible expenses; prioritization of payment; scope of the development (including development criteria); indemnity of the City and insurance requirements; reimbursement of City costs; financing (private and/or public); transfer restrictions prior to completion; maintenance and restrictive covenants; city inspection and information access rights; reporting requirements; and remedies upon default.

**FINANCE TEAM:** A Committee comprised of the Mayor, the President of the City Council, the Chair of the Planning Commission, the City Administrator, the City Attorney, the City’s Financial Advisor, and the City’s Bond Counsel, or their designees, and such other persons as the Mayor may appoint, whose function is to review applications for abatements and exemptions and make recommendations for approval or denial to the Governing Body.

**PROJECT:** May include any project eligible under the Acts, but the City reserves the right, through this Policy or otherwise, to exclude otherwise eligible projects under the Acts; determine eligible and ineligible projects; and determine the amount of funding for a Project on a case by case basis. These terms and approvals shall be set out in a Development Agreement.

#### **Section 4 TAX ABATEMENTS.**

- A.** It shall be the policy of the Governing Body of the City to consider up to a 50% real property tax abatement or a negotiated fixed payment in lieu of taxes (“PILOT”) payment for portions of a project that qualify for tax abatement under Kansas law so long as the project meets the criteria listed in this Policy. Depending upon how the tax abatement is structured over the term, the percentage tax abatement or PILOT payment for a project may be different from year to year and may exceed or be less than an overall average of 50%.
- B.** Any tax abatement shall not affect the liability of any property for any special assessments levied or to be levied against such property.

#### **Section 5 SALES TAX EXEMPTION.**

The City will consider issuance of industrial revenue bonds for the sole purpose of enabling a project to obtain a sales tax exemption certificate on its building materials and/or personal property (with no real property tax abatement). This consideration may include many factors which may induce the City to issue such bonds. These factors include, but are not limited to, whether a project will result in the adaptive re-use of an underutilized property; whether a project is included in a tax increment financing district (TIF) or community improvement district (CID); whether, but-for issuance of bonds to obtain a sales tax exemption certificate on building materials/personal property, the project would not occur, and whether the project will bring significant capital investment to the City; and whether the applicant provides for a portion of the sales tax savings to be used for a public benefit.

## **Section 6 GENERAL ELIGIBILITY.**

**A. General Criteria.** Strong consideration will be given to projects which add to and diversify the Westwood tax base as well as projects which would provide an extraordinary or particularly unique community-wide economic opportunity. Evaluation criteria to be used in determining economic benefit to the community shall include, but shall not be limited to, consideration of the amount of capital investment and a determination of whether the proposed project enables the development and location of new products, services and amenities in the City rather than the relocation of existing City businesses. The Governing Body shall consider tax abatement or exemptions when it determines it is in the best interest of the City and provided the project meets one or more of the following criteria:

1. Furthers an identified Governing Body goal.
2. Attracts, promotes, and enables the development and location of new products, services and amenities in the City rather than the relocation of existing City businesses.
3. Has unique site constraints making development more difficult and costly.
4. Substantially promotes economic development, investment or reinvestment in the community.
5. Incorporates higher standards for the design and construction of improvements than the minimum Code required standards.
6. Utilizes environmentally-sustainable construction practices with the businesses located therein using sustainable best practices.
7. Encourages retail projects that enhance the retail base by either attracting new sales or capturing sales moving to other markets.
8. Encourages or enhances pedestrian, bicycle, or public transportation opportunities.
9. Provides for the construction of facilities that promote tourism or enhance the quality of life within the City.
10. Incorporates construction of public infrastructure.

**B. Capital Investment.** Although no minimum capital investment is required by the City, the amount of capital investment made by an applicant is a factor to be considered by the City in determining whether or not to authorize tax abatements or exemptions.

**C. Design and Planning Criteria.**

1. The City will require higher standards for the design of improvements and materials used in making improvements receiving incentives than the minimum requirements set forth within the Westwood Zoning Code. Preference will be given to businesses that practice sustainable design practices, including but not limited to, energy efficient construction, use of recycled materials, use of native and drought-resistant landscaping, and conservation of natural hydrological systems. The proposed use

must be clean, non-polluting and consistent with all City policies, ordinances, and codes. The project's site plans and building elevations and the project's plans are subject to final approval by the City's Planning Commission to ensure that they are similar to the preliminary plans and elevations submitted.

2. All projects should be consistent with the City's comprehensive plan, street improvement plans, and any special established overlay districts. The City will consult these plans for consistency prior to the City approving any proposed incentives. When evaluating proposed incentives, the City will consider:
  - a. the compatibility of the location of the proposed project(s);
  - b. the compatibility of the proposed land uses with land use, capital improvement, and other relevant plans of the City; and
  - c. the availability of existing infrastructure facilities and essential public services.

**D. Application Of "But-For" Principle.** All tax incentives shall be considered in light of the "but-for" principle, *i.e.*, tax abatement or exemptions must make such a difference that the project would not be economically feasible "but for" the availability of such incentives. In evaluating the economic feasibility, the City shall consider factors that include, but are not limited to:

1. the extraordinary or unique costs associated with developing the project;
2. the applicant's financial investment in the project;
3. the property, sales and other tax and fee revenue that may result from the project;
4. the credit worthiness and experience of the applicant;
5. Developer compliance with other City development projects and development agreements, including but not limited to delinquency on property tax;
6. the value added, including intangible costs and benefits received by the City and other taxing jurisdictions, as a result of the proposed project; and
7. the extent to which the basis for the request for incentives can be attributed to actions or inactions of the applicant or parties related to such applicant, including but not limited to property neglect, failure to make capital investments, insufficient management or leasing activities, or the like.

The City does not encourage the subsidy of private businesses with public funds, the indirect consequence of tax incentives, unless some measurable public good results, as determined by the City, and the public subsidization can reasonably be expected to make a significant difference in achieving one or more objectives of the City.

**E. Developer Contribution & Cost Allocation.** Each application/petition should include evidence that the Developer will do the following:

8. Have the financial ability to complete and operate the project, and will be liable for, or contribute equity or private financing of, sufficient amounts for the completion of the project;

9. Demonstrate a financial nexus between the public and private improvements financed by the assistance;
10. Provide satisfactory assurance that the project will be completed in a timely manner in accordance with the Development Agreement.

**Section 7 APPLICATION AND ADMINISTRATION FEES.**

Abatement, exemption, and industrial revenue bond applications and petitions shall be accompanied by an application fee. This fee is in addition to other fees which may be required by the City, including fees for the issuance of bonds and costs incurred, if any, for review and work done by the City's Financial Advisor and Bond Counsel. All fees shall be due and payable as provided for herein or as otherwise set forth in an approved Development Agreement.

- A. Initial Application/Petition Fee.** A non-refundable amount of \$5,000 shall accompany the abatement/exemption application.
- B. Origination Fee.** An origination fee shall be assessed by the City as authorized by K.S.A. 12-1742 as amended. The fee is due upon closing of the bond issue and will be reduced by the amount of the application fee. The amount of the Origination Fee will be Calculated as outlined in the tables below:

<b>Origination Fee Table #1 - Commercial Property Bond Issues</b>	
<b>Par Amount of Bond Issue</b>	<b>Fee Calculation</b>
First \$10 million	.0025 of par amount
Second \$10 million	\$25,000 plus .0020 of par amount over \$10 million
Amounts in excess of \$20 million	\$45,000 plus .0010 of par amount over \$20 million
Refunding Bond Issues	Fee is 50% of the amount that would be calculated for a new money issue of the same par amount
MAXIMUM FEE is \$100,000 (including both new money and refunding portions of issue)	

<b>Origination Fee Table #2 - Multi-Family Housing Bond Issues</b>	
<b>Par Amount of Bond Issue</b>	<b>Fee Calculation</b>
First \$10 million	.0040 of par amount
Second \$10 million	\$40,000 plus .0020 of par amount over \$10 million
Amounts in excess of \$20 million	\$60,000 plus .0010 of par amount over \$20 million
Refunding Bond Issues	Fee is 50% of the amount that would be calculated for a new money issue of the same par amount
MAXIMUM FEE is \$100,000 (including both new money and refunding portions of issue)	

Origination Fee Table #3 - Tax-exempt Organization Issues	
Par Amount of Bond Issue	Fee Calculation
First \$10 million	.0080 of par amount
Second \$10 million	\$80,000 plus .0040 of par amount over \$10 million
Amounts in excess of \$20 million	\$120,000 plus .0020 of par amount over \$20 million
Refunding Bond Issues	Fee is 50% of the amount that would be calculated for a new money issue of the same par amount
NO MAXIMUM FEE	

**C. Retainer and Funding Agreement.** Prior to considering any application, the applicant shall enter into a predevelopment or funding agreement with the City which, among other things, shall require that applicant deposit with the City a sum to be determined by the City based upon the size of the Project, but not less than \$10,000.00 (“Retainer”), which shall accompany the filing of the application. The predevelopment or funding agreement shall provide for, and the City shall use the Retainer to pay for, the costs of City bond counsel, financial advisor and other professional consultants’ fees and apply the hourly fees incurred by the City’s professional consultants for work on this Project against the Retainer. The City shall bill the applicant for any amounts incurred in excess of the Retainer. If there is money left in the Retainer when the professional work is completed, the City shall pay over to the applicant any amounts remaining. However, if that retainer should become exhausted or drop to a point unacceptably low to the City during the pendency of the Project, the City may require the deposit of such additional funds as the City may deem appropriate, in its sole discretion, in order to assure that the City will not have to absorb any of the costs of the evaluation or administration of the Project, and to assure the financial security of the City.

**Section 8. APPLICATION/PETITION PROCESS.**

The following basic procedures shall govern the approval of all requests for abatements and industrial revenue bond requests within the City. All requests for or applications for such incentives shall be considered and acted upon in accordance with the Policy set forth herein; provided, that these procedures are established under the authority of the Governing Body and these provisions may be waived by the Governing Body, if such waiver is in the best interest of the City and does not conflict with any statutory or procedural requirement of state law or other competent authority.

**A. Application/Petition.** The applicant shall make application for a tax abatement, industrial revenue bonds, or exemptions by filing with the City a written application on a form provided by the City or in such form as the City may otherwise reasonably accept from the applicant. The application shall include, but is not limited to, all such matters as are required under the Acts, and also include the following:

1. Evidence in a form satisfactory to the City of the applicant’s financial ability to complete the proposed project in a timely manner.
2. Documentation substantiating the applicant’s sources of funding, including the amount/percentage of equity funding.

3. Submission of a pro forma and with project feasibility analysis which includes the level of abatement requested.
4. Payment of all required fees and compliance with all procedural requirements of the Acts and the City's Policy.

#### **B. General Application/Petition Procedure.**

1. The City will only consider full and complete applications. On receipt of the completed application and the required fees, the City Administrator or his or her designee shall determine whether the proposal is complete and sufficient for review. If the proposal is incomplete, the City Administrator shall notify the Applicant of the need for such changes or additions as deemed necessary. Upon receipt of a completed application and the applicable fee, the City Administrator shall forward the application to the Finance Team for review.
2. Applicant will also be responsible for providing whatever additional information requested by staff or the Governing Body as necessary for assisting the City in making its recommendation or decision on the application. Any inaccuracy, misstatement or error in fact may render the application null and void and may be cause for the repeal of any development assistance ultimately provided by the City through the Acts in reliance upon said information.

#### **C. Finance Team Review.**

1. The Finance Team shall review applications for tax abatement and industrial revenue bonds. The Finance Team shall also evaluate the proposed Project and verify that the proposed improvements are necessary to promote the general and economic welfare of the City; gather and review such additional information as may be deemed necessary to determine if the applicant meets the objectives of this Policy; obtain input of applicable City departments with respect to the proposed physical plan and infrastructure needs; prepare a timeline for processing the application; conduct discussions and negotiations with the applicant; and recommend to the Governing Body whether the application should be favorably considered.
2. In reviewing any Project, the Finance Team shall bear in mind the criteria and policies of the City, including requiring the adherence to a timeline for development, establishing performance criteria to guide the project, making certain that the applicant pays the costs of the abatement/exemption evaluation and administration, making provision for such assurances and security as may be necessary to protect the City and its financial interests, applying the "but for" test to determine if the project requires abatement by reviewing the cost-benefit analysis conducted by the City's Financial Advisor and as required by State law, exemptions, or other development assistance, and considering whether a project will create an unfair advantage with respect to any existing businesses.
3. In reviewing the information, the Finance Team may utilize the services of consultants, including but not limited to bond counsel and financial advisors. Finance Team records, including applications submitted for abatement/exemption, may be eligible for withholding from public disclosure as provided under the Kansas Open Records Act, but shall be available for public inspection when otherwise required by law.

4. Further, the review of the abatement/exemption considerations is not a substitute for any review of any plans by the Planning Commission, and all plan review and other zoning or land use procedures by the Planning Commission and/or the Governing Body shall not be affected by the Finance Team's review, but rather the Finance Team shall endeavor to work in concert with all City bodies and personnel in a coordinated fashion by providing its recommendation to the Governing Body concurrent with the Governing Body's consideration of the applicant's development plan.

#### **D. Governing Body Consideration.**

1. **Reviewing and Approving Abatements or Exemptions.** Upon receiving the recommendation of the Finance Team, the Governing Body shall consider the application for abatements or exemptions in accordance with the notice and public hearing provisions of K.S.A. 12-1740 *et. seq.* Any resolution of intent to issue industrial revenue bonds pursuant to the Acts passed by the Governing Body shall not be deemed in any way to bind the City to actually issuing such industrial revenue bonds. Any such resolution of intent shall be valid for a period of two (2) years or until bonds are issued or a building permit is issued, whichever occurs first, unless the resolution is extended by vote of the Governing Body.
2. **Development Agreement.** As a condition to the effectiveness of any ordinance creating issuing bonds, and prior to the commencement of development of the Project (including the issuance of bonds), and generally simultaneous with the approval of the abatement or exemption, the Developer shall execute a Development Agreement as approved by the Governing Body.

#### **Section 9 TERM.**

The amount and term of tax abatements granted by the Governing Body will be selected by the City on a case-by-case basis. The maximum abatement term is ten (10) years. The abatement term for projects under the authority of K.S.A. 12-1740 *et seq.* and K.S.A. 79-201a, as amended, shall begin in the calendar year after the calendar year in which the bonds are issued. Projects which include multiple phases shall have an expiration date for the commencement of the term of the abatement for all phases as determined by the Governing Body at the time of the adoption of the resolution of intent and such date(s) and further conditions shall be included in the Development Agreements.

#### **Section 10. BONDS.**

- A. The City may issue industrial revenue bonds/private activity bonds in conjunction with other economic development tools in order to meet some or all of the objectives previously mentioned in this policy.

#### **Section 11 COMMUNITY PARTICIPATION.**

All applicants will agree to actively participate in the civic, charitable, educational, philanthropic, and economic development of the City of Westwood.

#### **Section 12. OTHER PROCEDURES.**

City staff may develop other internal procedures for processing applications and the

applicable fees associated therewith. Such procedures shall be approved, and amended when appropriate, by the Mayor. All requests or applications abatements, industrial revenue bonds, and tax exemptions shall be considered and acted upon in accordance with this Policy and its accompanying procedures.

**Section 13. STATUTORY AMENDMENTS.**

Any amendment to any statute cited herein or used as a source of authority for development of the City's Policy shall apply without modification or amendment to the Policy.

**Section 14. RESPONSIBILITY FOR ENFORCEMENT.**

The City Administrator shall be responsible to the Governing Body for the enforcement of this Policy. The City Clerk, City Attorney, Bond Counsel, Financial Advisor, and any other consultants the City may engage shall assist in the implementation of this Policy.

**Section 15. REFERENCES.**

K.S.A. 12-1740 through 12-1749d; Section 13 of Article 11 of the Kansas Constitution as limited by K.S.A. 79-251 through 79-253; K.S.A. 12-147 and 12-148; K.S.A. 79-201, 79-201a, 79-210, 79-213, 79-214, and K.S.A. 45-221.