

# **TRANSPORTATION DEVELOPMENT DISTRICT (“TDD”) POLICY**

**Effective Date: December 19, 2006**

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### **GB05-E-1 OBJECTIVES.**

To provide a tool for financing transportation related projects or infrastructure improvements (“Project”) as authorized by K.S.A. 12-17,140 *et seq.*, as amended, (the “Act”) to encourage and promote economic development in the City, within a defined transportation development district area (“District”) by levying and collecting special assessments and/or a transportation development district (“TDD”) sales tax up to 1% upon property in the District and to provide for the payment of all or any part of the cost of a Project out of the proceeds of such special assessments or TDD sales tax (“TDD financing”).

### **GB05-E-2 SCOPE.**

The authority and decision to approve a petition establishing a TDD is within the sole discretion of the Governing Body and the Governing Body is under no obligation to approve any petitioned Project, nor is it relinquishing its authority to initiate Projects by whatever other financing means it deems necessary to promote the general health and welfare of the City. This policy is intended to provide a guide for the Governing Body in considering applications and outline the policies and procedures to be followed by applicants. The Governing Body reserves the right to reject any proposal or petition for creation of a TDD at any time in the review process when it considers such action to be in the best interests of the City.

### **GB05-E-3 DEFINITIONS.**

1. “Cost” means (a) all costs necessarily incurred for the preparation of preliminary reports, the preparation of plans and specifications, the preparation and publication of notices of hearings, resolutions, ordinances and other proceedings, necessary fees and expenses of consultants, interest accrued on borrowed money during the period of construction and the amount of a reserve fund for the bonds, together with the cost of land, materials, labor and other lawful expenses

incurred in planning and doing any project and may include a charge of not to exceed 5% of the total cost of a project or the cost of work done by the City to reimburse the City for the services rendered by the City in the administration and supervision of such project by its general officers; and (b) in the case of property and projects already owned by the City and previously financed by the issuance of bonds, "cost" means costs authorized by K.S.A. 10-116a and amendments thereto.

2. "Finance Team" includes the City Administrator, Finance Director, and City Attorney, or their designees; City Bond Counsel and City Financial Advisor.
3. "Project" means any project or undertaking whether within or without the District, to improve, construct, reconstruct, maintain, restore, replace, renew, repair, install, furnish, equip or extend any bridge, street, road, highway access road, interchange, intersection signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail or other mass transit facility or any other transportation related project or infrastructure including, but not limited to, utility relocation; sanitary and storm sewers and lift stations; drainage conduits, channels and levees; street light textures, connection and facilities; underground gas, water, heating and electrical services and connections located within or without the public right-of-way; sidewalks and pedestrian underpasses or overpasses; and water main and extensions.

#### **GB05-E-4 PROVISIONS.**

##### **A. General Policies**

1. Application. Interested parties shall submit a TDD application on a form provided by the City. The City Finance Team shall review all TDD applications for compliance with City policy and State law and make a recommendation for preliminary approval and a decision to forward a petition to the City Council for consideration and action. If the Finance Team believes the application meets the criteria set forth in this Policy and should be recommended for approval, the Finance Team will work with the petitioner(s) to prepare a petition and develop a Finance Plan to present to the Governing Body when it considers the petition to establish the District.
2. Petition. TDD proceedings shall be initiated by petition, on a form prescribed by the City and containing the information required in K.S.A. 12-17,140 *et seq.*, as amended after receiving preliminary approval from the Finance Team.

- a. A TDD petition must be submitted with signatures of 100% of the property owners of all of the land area within the proposed District. The District boundaries and the method of financing the Project shall not require that all property that is benefited by the Project, whether the benefited property is within or without the District, be included in the District or be subject to an assessment or the TDD sales tax.
  - b. TDD financing will not be approved if any signatory to a petition has a financial interest in real estate located in the City of Lenexa, Kansas with existing delinquent tax obligations. All petitioners will be required to certify, under oath, that they have no financial interest in any real estate with delinquent special assessments, ad valorem taxes, or other city, state or federal tax liens at any location in the City of Lenexa, Kansas.
3. Term. The Governing Body shall review the financial feasibility of each District proposed for consideration and shall use this information in determining the appropriate term of the District. Any TDD sales tax shall expire no later than the date the bonds issued to finance such project or refunding bonds issued for the Project mature. TDD Bonds issued to finance the Project shall mature no more than twenty-two (22) years from date of issue, unless otherwise provided by law.

**B. Criteria for Use of Transportation Development District**

1. The decision to establish a transportation development district is within the sole discretion of the Governing Body. In determining whether or not to approve a petition to establish a District, the Governing Body will evaluate whether or not creation of a TDD is in the City's best interest, by considering one or more of the following criteria:
  - a. Promote and support efforts to redevelop retail sites to provide for reinvestment in our community;
  - b. Stimulate quality, retail development to enhance the City's diverse economic base;
  - c. Attract and promote mixed use, urban, development;
  - d. Allow for the construction of transportation related infrastructure beyond what the City requires or would otherwise build;
  - e. The Project will be located in an area that has been targeted by the Governing Body for economic development or redevelopment; or has specific site constraints making development more difficult or costly;
  - f. Recommendation of the City Finance Team;

- g. Whatever other factors the Governing Body deems relevant to its decision.
2. Additional Considerations:
- a. Cost of the proposed improvements identified in the Project;
  - b. Sources of funding, including the amount of equity funding in comparison to public financing;
  - c. Experience and stability of Developer;
  - d. Whether or not tenants are in place; and the nature and quality of the tenants;
  - e. Economic competition the development has and is expected to have in the future.

### **C. FINANCING**

1. Source of Funds. TDD Projects may be financed by any or all of the following sources:
  - a. Special assessments imposed in the District pursuant to this Act which have been paid in full prior to the date set by the Governing Body as provided in K.S.A. 12-6a10, and amendments thereto;
  - b. Special assessments imposed in the District pursuant to the Act, to be paid in installments;
  - c. A pledge of all of the revenue received from a TDD sales tax 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 1% as authorized by K.S.A. 12-17,145, and amendments thereto ("TDD sales tax"); and
  - d. Any other funds annually appropriated by the City.
2. Special Benefit District Procedures. If special assessments are used to finance all or a portion of a Project, the City and petitioner(s) must follow the assessment procedures in the General Improvement and Assessment Law set forth in K.S.A. 12-6a01 *et. seq.* and the City's Administrative Policy and Procedures for Special Benefit Districts.
3. Finance Plan. If the Finance Team reviews the application and finds it in the City's best interest to recommend approval of the TDD to the Governing Body, the Finance Team will work with the applicant to create a Finance Plan which shall be presented to the Governing Body

for consideration along with the petition. The Finance Plan shall address the recommended method of financing and specific terms associated therewith.

4. Bonds. The City may issue TDD Bonds to finance transportation related projects or infrastructure improvements. In no event shall special assessments be levied against the City-at-large and no full faith and credit notes or bonds may be issued by the municipality to finance a Project under this Act. Guidelines for the issuance of TDD Bonds include:
  - a. The maximum maturity for TDD Bonds shall be twenty-two (22) years and shall not exceed the anticipated useful life of the project.
  - b. The minimum issue size for TDD bonds issued by the City will be \$3,000,000, unless an exception is approved by the Governing Body.
  - c. TDD Bonds issued under this Policy must include security for the bonds of a sufficient amount to minimize any risk of default.
  - d. TDD Bonds issued under this Policy must be sold to qualified investors (as defined by the Securities and Exchange Commission Regulation D) in accordance with the minimum denominations as provided herein.
  - e. TDD Bonds must initially be offered in denominations of \$100,000 or greater. These denominations may be stepped down (upon consultation with the City's bond counsel and financial advisor) when one of the following are met:
    1. the Project being bond financed is substantially leased;
    2. the estimated revenue stream yields significant debt service coverage on the bonds;
    3. construction of the Project being bond financed is 100% complete;
    4. the repayment term is less than or equal to 60% of the maximum permitted repayment term;
    5. waiver of the minimum denomination provision by the Governing Body.
  - f. If a negotiated sale of the bonds is necessary, the City will normally select the underwriter(s) needed to structure, price, and sell the bonds through a competitive process. Exceptions

to this process may be approved by the City Administrator upon consultation with the City's bond counsel and financial advisor.

- g. At its sole discretion, the City may require that an independent feasibility study of future TDD revenues be performed, with any such cost born by the applicant if not recoverable from the TDD bond proceeds.
  - h. All pricing for negotiated sales will be performed with direct involvement by City staff and the City's financial advisor.
- 5. Annual Appropriation. The Governing Body may choose to, but is not obligated, to annually appropriate funds to secure TDD revenue bonds.
- 6. Reimbursement TDD. If available and permitted by law, Petitioner(s) may be reimbursed for a Project on a "pay as you go" basis until the Governing Body determines issuance of TDD Bonds is viable and in the City's best interest.
- 7. Project Funds. A separate fund shall be created for each District and each Project and such fund shall be identified by a suitable title. The proceeds from the sale of bonds and any other moneys appropriated by the Governing Body shall be credited to such fund and the fund shall be solely used to pay the costs of the Project.
- 8. Fees. The applicant shall be responsible for paying the City's fees and those of the City's consultants, including but not limited to the City's financial advisor and bond counsel, with respect to their work on the Project and the costs associated with the issuance of TDD Bonds. The applicant may also be required to pay a retainer or other fee simultaneous with the filing of its TDD application. The fees and/or retainer shall be set out in the City's TDD Procedures or by separate contract with the City's consultants.

#### **GB05-E-5 PROCEDURES.**

City staff shall develop internal procedures for processing TDD applications. Such procedures shall be approved, and amended as appropriate, by the City Administrator.

#### **GB05-E-6 STATUTORY AMENDMENTS.**

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

**GB05-E-7    RESPONSIBILITY FOR ENFORCEMENT.**

The City Administrator shall be responsible to the Governing Body for the enforcement of this Policy. The Finance Director and City Attorney shall assist in the implementation of this Policy. The Governing Body reserves the right to deviate from this Policy when it believes it is in the best interest of the City to do so, and provided such substitute provisions are in accordance with state or local law.

**GB05-E-8    REFERENCES.**

K.S.A. 12-17,140 *et seq.*, Supp. 2005.