City of El Dorado, KS
220 E. First Avenue
El Dorado, KS 67402
Phone: (316) 321-9100
Fax: (316) 321-6282
www.eldoks.com

TO: City Commission
FROM: Tabitha Sharp, City Clerk
SUBJ: Work Session Meeting Agenda
DATE: August 28, 2019

A Work Session is scheduled for August 28, 2019 at 5:00 pm in the Commission Chambers at City Hall, 220 E. First Avenue. The following items will be presented:

I. ITEMS FOR PRESENTATION AND DISCUSSION

a. Tax Increment Financing Policy
    1. Orscheln TIF Public Hearing Resolution
    2. Orscheln Funding Agreement
    3. Resolution of Intent

b. Park Porta-Pot Plan

II. September 3, REGULAR AGENDA REVIEW

a. <u>Proclamations</u>

b. <u>Consent Agenda</u>
    i. City Commission Minutes
    ii. Appropriation Ordinance

c. <u>New Business</u>
    i. Tax Increment Financing Policy
        1. Orscheln Tax Increment Financing Public Hearing Resolution
        2. Orscheln Funding Agreement
        3. Resolution of Intent
    ii. Quorum, Terms and Vacancies
    iii. El Dorado Cox Small Cell Agreement
    iv. Main Street Memorandum Of Understanding

d. <u>Executive Session</u>
    i. Non-Elected Personnel

III. REPORTS

a. City Commission Reports

b. City Manager's Report

<u>2018 Commission Priorities</u>
Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

CITY OF EL DORADO
TAX INCREMENT FINANCING POLICY

1. ADOPTION OF POLICIES AND PROCEDURES

The following Tax Increment Financing ("TIF") Application Procedures are hereby adopted. The City Manager is hereby authorized to implement the following procedures and to make such additional changes and clarifications that shall be deemed advisable and in the best interest of the City.

2. POLICY STATEMENT

a. It shall be the policy of the City to consider creation of a redevelopment district for qualifying redevelopment projects. Prior to and following the creation of the redevelopment district, the applicant shall meet all state law and local requirements relating to the redevelopment plan and project.

b. It is the policy of the City to consider the judicious use of TIF for those projects which demonstrate a substantial and significant public benefit by constructing public improvements in support of developments that will, by creating new jobs and retaining existing employment, eliminate blight, strengthen the employment and economic base of the City, increase property values and tax revenues, reduce poverty, create economic stability, upgrade older neighborhoods, facilitate economic self-sufficiency, promote projects that are of community-wide importance, and implement the Comprehensive Plan and economic development goals of the City.

c. Care will be exercised in the use of TIF to thoroughly evaluate each project to ensure that the benefits that will accrue from the approval of TIF are appropriate for the costs that will result, and that they are equitable to the community as a whole.

d. The City will charge a TIF application and an administrative service fee as set forth in this policy.

3. POLICY GUIDELINES

The following criteria are to be used by the City Commission to evaluate TIF applications:

a. Each TIF application may be required to demonstrate that "but for" the use of TIF, the project is not feasible and would not be completed without the proposed TIF assistance.

b. All TIF applications requesting the issuance of bonds or notes will be required to demonstrate that the incremental real property taxes and/or the sales and transient guest taxes expected to be generated from within an applicable TIF district will be sufficient to provide a debt coverage factor of at least 1.25 times the projected debt service on the tax increment bonds or notes. Debt service coverage greater than 1.25 times may be necessary to market any notes or bonds that are limited to public offerings. Developer or bank purchased bonds may be less than 1.25 times debt service coverage.

c. The total amount of TIF assistance provided for projects will be based on the economic payoff expectations of the project and its significance to the community. In general, the goal will be for projects to pay off all improvements in ten years or less. Longer periods may be considered if a determination is made that the project is of community-wide significance.

d. Each TIF application must include evidence that the applicant:

   i. Has the financial ability to complete and operate the project;

   ii. Will be liable for, or contribute equity or private financing of at least fifty percent of the total cost of the redevelopment project (including private development costs), or provide a performance bond for the completion of the project. Projects with equity or private financing contributions from the developer in excess of fifty percent of the total redevelopment project costs will be viewed more favorably.

e. The City will not consider creation of a TIF district unless the applicant certifies that it intends to submit a redevelopment plan and begin negotiating a development agreement within sixty days of creation of the TIF district. Thereafter, the City will require satisfactory assurance that the project will be completed in a timely manner in accordance with the redevelopment plan and agreement.

f. TIF applications for residential development projects may be considered for removal of blight and revitalization of older developed neighborhoods, and/or to provide for public improvements to benefit economic development and employment.

g. TIF applications for the redevelopment of existing residential neighborhoods, commercial and industrial areas will be viewed favorably. Projects to stabilize current residential neighborhoods, commercial, and industrial areas that have or will likely experience deterioration will also be favored.

h. All TIF applications shall comply with the requirements of the Kansas TIF Statute.

i. Project eligible costs covered by TIF funds shall be identified in the application and the redevelopment plan.

j. TIF applications that include the establishment of business areas, or the redevelopment of existing business areas, shall include information as to the business type of the major tenants of the TIF area. In addition, a thorough market analysis should be completed which identifies:

   i. population areas that will be drawn from; and

   ii. businesses of similar types which would be competing with the TIF area businesses.

4. PROCEDURE

The City may consider issuing tax increment financing bonds or reimbursing the eligible costs from tax increments pursuant to state law and this policy after the following occurs:

a. A complete TIF application is received by the City from the applicant in a form prescribed by the City. The TIF application shall be submitted with sufficient time for staff to follow established procedures, review the project documents, and to meet with the Unified School District within which the proposed redevelopment is located.

b. Upon review of the TIF application, the City may require and the applicant shall furnish further information in order to clarify the submittal.

c. After creation of the TIF district, the City may designate the applicant as the proposed developer through the adoption of a development agreement.

d. The applicant shall, in consultation with the City and the Planning Commission proceed with the preparation of a redevelopment plan pursuant to state law and City requirements, including a complete and comprehensive financial feasibility study demonstrating that the economic benefits of the project exceed the cost, the tax increment to be derived from the project will fully fund such costs or bond payments, and that the term of the redevelopment district does not exceed a mutually agreed upon period of time.

e. The applicant and City will enter into a development agreement upon satisfactory completion of the redevelopment plan.

5. FEES

a. **Application Fee**
Applicants requesting TIF shall remit a non-refundable TIF application fee of $5,000 to the City at the time of the submittal of the application. The application fee will also apply when substantial changes to a TIF district or project (i.e., amendment of a district, etc.) are requested by an applicant.

b. **TIF Administration Service Fee**

  i. A five percent annual administrative service fee shall be paid to the City from the tax increment generated from the project prior to disbursement of the increment to the developer or bond trustee to cover the administrative costs incurred by the City for the administration of and other City costs associated with each approved TIF project. Such administrative service fee shall be in addition to the TIF application fee and any other fees associated with the TIF project, and shall be due by February 15th of each year the TIF project is effective.

c. **Funding Agreement and Reimbursement**

  i. The applicant will be required to enter into a funding agreement with the City for the purpose of providing such funds as may be necessary to pay preliminary expenses, such as outside consultants and attorney fees, as required for the City to fully analyze the TIF application. TIF application fees (excluding non-refundable), and funds contributed as part of a funding agreement may be reimbursed to applicant or paid to City from bond proceeds or TIF revenues. Bond issuance costs, however, may not be reimbursed from TIF project revenue if TIF project reimbursable costs are payable from City sales tax or transient guest tax.

6. REQUEST FOR PROPOSAL
The City may self-initiate a request for proposals process to facilitate a redevelopment project. The fees shown above are for both City initiated and non-City initiated redevelopment projects. The City Commission reserves the right, at its sole discretion, to reduce or waive the above fees if a redevelopment project is City-initiated and it is determined to be in the best interest of the City to do so. Upon the filing of a TIF application that is not City-initiated, the City reserves the right to cause a public notice to be inserted in a newspaper of general circulation in the City and on the City’s website requesting proposals for development in the proposed project area.

7. BUSINESS RELOCATIONS

If businesses are to be relocated from other areas of the City, sufficient justification will be included to indicate why this relocation should be considered. If existing businesses are to be relocated to the TIF district, the base year activity for purposes of determining the sales tax increment will be the last twelve month period at the businesses current location, immediately preceding the relocation.

8. METHOD OF FINANCING

TIF applications may request that TIF assistance be provided in one of the following forms:

a. Special obligation bond financing;

b. Direct reimbursement to the developer on a cash, or "pay as you go," basis;

c. Pledge of tax increment financing revenues to pay private financing; or

d. Any combination of the foregoing methods.

The City is, at its sole discretion, to determine the appropriate method of financing for a TIF project. In deciding which method of financing to use, the prevailing factor in making the determination will be total costs and the security for the bonds. The City will not provide credit enhancements for the special obligation bonds; however, credit enhancement provided by the developer on any bonds will be viewed favorably.

The City will not issue general obligation bonds for TIF eligible costs unless the City Commission determines that financing a TIF project with general obligation bonds is in the best interest of the community. Any general obligation bonds will be issued in compliance with applicable state law and local policy.
The proposed method of financing will be clearly shown in the TIF application and the redevelopment plan.

9. OTHER TAXES AVAILABLE TO REPAY TIF OBLIGATIONS.

The City will, at its sole discretion, give preference to TIF applications which request reimbursement of eligible project costs solely from the incremental real property taxes generated by the TIF project. Should an applicant request reimbursement of eligible project costs from the City's sales tax and/or transient guest tax, the applicant shall demonstrate the necessity of including such revenues in writing.

In the event that a TIF redevelopment project demonstrates the need for additional revenue, the City may elect to include, at its sole discretion, a portion of its general sales tax to repay reimbursable project costs. The City will contribute no more than fifty percent of the City's portion of any general sales taxes generated from within a TIF district in the event the City Commission elects to contribute sale tax receipts to project expenses. If an applicant requests reimbursement of eligible project costs from any amount of the City's sales tax, no more than twenty percent of the total square feet of the development may be leased to non-sales tax producing tenants. The City will not make available any proceeds from special sales taxes assessed within the corporate limits of the City.

Transient guest taxes may, at the sole discretion of the City, be used as part of the tax increment, but generally the City will only make up to fifty percent of the transient guest tax receipts generated within an applicable TIF district available to reimburse eligible redevelopment project costs.

Generally, the City will not include utility franchise fees collected from private utilities or as payments in-lieu of taxes from publicly owned utilities to repay or reimburse TIF obligations to the extent that such exclusion is permitted by law.

10. AUTHORITY OF GOVERNING BODY

The City Commission reserves the right to deviate from any policy, but not any procedure set forth in this Resolution or any other procedural requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City.

11. SUNSET DATE

Since the justification and necessity for creation of TIF districts may be lessened as the local economy moves towards its goals of balance and diversification and the City's redevelopment needs are satisfied, this policy shall automatically expire December 31, 2022, unless it is readopted for an additional term. No such TIF project shall be approved following such expiration, unless this policy is readopted or repealed by adoption of a new policy.

PROJECT OVERVIEW AND SUMMARY OF ECONOMIC DEVELOPMENT INCENTIVES REQUEST

_____________ __, 2019

I. Executive Summary

The proposed project involves the development of approximately [___] acres located at [geographical location in City of El Dorado], as well as [any applicable description other improvements], all within the areas shown on the map attached as **Exhibit A**. The property is located inside the city limits of the City of El Dorado (the "City") and is owned by [___________] the "Developer."

The proposed project consists of [Description of Project] (the "[Project Name]") at a total estimated cost (excluding soft costs) of $[_______], as follows:

Description	**Cost**
Public Improvements	
[Land Acquisition]	
[Project Component – Retail Facility]	
[Project Component – Any other planned construction facilities]	
Total	

Developer will initially finance the Public Improvements, Land Acquisition, the [other project components] from private sources and request reimbursement for certain eligible expenses from tax increment financing (*"TIF"*), [other revenue sources, CID?]. Developer has identified $[_________________] of TIF eligible expenses, including the Public Improvements.

[Provide allocation of sources and uses of funding]

Upon completion, the Developer estimates that the appraised value of the Project will be $[_______________], as shown below. The Developer also estimates that the Project will, upon full completion, create $[__________] of annual retail sales [any other associated non-retail revenues?].

In exchange for construction of the Public Improvements and [other project components], Developer requests the assistance listed in the table below.

Description	**Amount**
Tax Increment Financing (ad valorem tax only; no sales tax)[a]	$[______]
[other inventive requests, CID?]	

[a] TIF will be reimbursed to Developer for certain eligible costs on a pay-as-you-go basis.

A. Private Development.

A conceptual site plan of the Project is attached as **Exhibit B**. Current plans call for [retail facility description], containing the following uses [if plans include other uses of parcel]:

The [retail facility name] will consist of an approximately [_____] square foot [description], at an estimated construction cost of $[________], as set forth in more detail on **Exhibit C** (the *"[Facility Name]"*). The Developer estimates that the value of the [Facility Name] is $[___________], reflecting the value of land and improvements.

Developer anticipates that the [Facility Name] will be complete and open for business as soon as [____________]

[Developer anticipates constructing certain infrastructure improvements to serve such land, including streets, waterlines, sanitary sewers, surface parking, and other related improvements (the "Public Improvements", further described below).]

[Developer anticipates selling or leasing [any plans to sell, lease, further develop portions of property?] to other end users. Lot descriptions in this term sheet are for reference purposes only, and may not be indicative of the actual plat of the Project. The size and configuration of lots in the Project are subject to change.]

[Balance of page intentionally left blank]

B. Public Improvements.

In order to construct the Project, the following public infrastructure costs and other TIF-eligible expenses will be required (collectively, the *"Public Improvements"*):

[Insert Spreadsheet of TIF Eligible Costs]

C. Total Estimated Costs

The total estimated costs of the Project and related public improvements are summarized as follows:

Description	Cost	TIF Eligible
Public Improvements		
Land Acquisition		
Private Improvements		
TIF related soft costs		
Total		

Developer's expected land acquisition and construction costs for the [Project and/or specific Project Components], total $[_____________], and such costs will initially be financed by Developer's private debt and equity, a portion of which would be reimbursed to Developer on a pay-as-you-go basis from incremental property taxes generated within the TIF District, [and other revenue sources]

The remaining estimated costs of constructing the Project (approximately $[____________]) are expected to be incurred by [the Developer] [other purchasers or lessors of lots within the Project]. Such other end users will not receive proceeds of the TIF District but could approach the City for separate forms of assistance in the future.]

II. Proposed Method of Financing/Requested Economic Development Incentives

The Developer requests that the City Commission authorize staff to begin negotiating a Development Agreement to provide for construction of the Project and related public improvements. The Developer requests that the City commence the process of implementing the following requested economic development incentives:

1. *Tax Increment Financing District (TIF)* with boundaries as shown on **Exhibit A** (the "*TIF District*"). The TIF District is proposed to be created with [one][other] project area[s].

The TIF District would capture [all][other percentage of] incremental property tax revenues within the TIF District, exclusive of 1.5 mills levied by the State of Kansas and approximately 25.50 mills levied by Unified School District No. 490 (El Dorado Schools), consisting of a general levy of 20 mills and a capital outlay levy of 5.50 mills.

The TIF revenues generated within the TIF District would be used to reimburse Developer for TIF-eligible expenses on a pay-as-you-go basis with no bonds issued; the Developer requests the ability to request that the City issue special obligation bonds in the future.

Based on current project cost estimates, the Developer estimates that $[________] of the Project Costs are TIF-eligible expenses under State law.

Based on current development plans, the Developer estimates that Project would generate $[_________] in incremental property tax revenues over the 20-year life of the TIF project plan[, as set forth on **Exhibit D]**.

[or Insert spreadsheet showing base year valuation and incremental valuation increases]

2. *Cap on Total Reimbursable Costs.* Developer currently anticipates the TIF District to generate approximately $[__________]. [This amount is expected to be insufficient to pay all eligible costs, and the Developer requests that the Development Agreement entered into between the Developer and the City to leave open the possibility of additional reimbursement if CID or TIF revenues exceed current projections].

<u>Benefits to the City</u>

1. *Public infrastructure.* [Description of public benefits]. The Developer will undertake to construct the improvements for the City, subject to the City's oversight to ensure that the public infrastructure improvements are constructed according to City specifications. The Developer will conduct all preliminary design and engineering (subject to the City's approval of the engineering firm). The City will approve design prior to construction, and the City will inspect before ownership is assumed.

2. *Tax Revenue.* The City and County would receive all new sales taxes generated by the project. Developer estimates total annual sales of the Project upon full buildout will be approximately $[________]. At the City's current sales tax rate of 1.50%, this amount would generate approximately $[______] in annual sales tax revenue for the City[include discussion of sales tax receipts at current location].

3. *Implementation of City Policy*. The project would develop along a main thoroughfare in the City and further the purposes of the City's policies of encouraging economic activity, growing the tax base, and creating jobs.

4. [*Additional Benefits]*.

EXHIBIT A

TIF DISTRICT

EXHIBIT B

PROJECT SITE PLANS

EXHIBIT C

ESTIMATED CONSTRUCTION COSTS

EXHIBIT D

INCREMENTAL VALUATION INCREASE

(Published in the ***Butler County Times-Gazette*** on September 28, 2019)

RESOLUTION NO. _______

A RESOLUTION CALLING AND PROVIDING FOR NOTICE OF A PUBLIC HEARING ON THE ADVISABILITY OF CREATING THE ORSCHELNS REDEVELOPMENT DISTRICT IN THE CITY OF EL DORADO, KANSAS PURSUANT TO K.S.A. 12-1770 ET SEQ.

WHEREAS, K.S.A. 12-1770 *et seq.*, as amended (the "TIF Act") provides for the creation of redevelopment districts and the approval of redevelopment plans, and permits the issuance of tax increment financing bonds in accordance with the terms of the TIF Act; and

WHEREAS, the Governing Body of the City of El Dorado, Kansas (the "City") intends to set a date for a public hearing for the purpose of considering the establishment of the Orschelns Redevelopment District (the "Redevelopment District") in accordance with the TIF Act; and

WHEREAS, the establishment of the proposed Redevelopment District is necessary to promote the general economic welfare of the City pursuant to the TIF Act; and

WHEREAS, the Redevelopment District consists of an area described on the attached **Exhibit A** and generally delineated on the map attached as **Exhibit B**, both of which are incorporated herein by reference and made a part of this Resolution, and which is generally located at the Northwest corner of the intersection of Central Avenue and School Road in El Dorado, Butler County, Kansas.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

Section 1. Public Hearing. It is hereby authorized, ordered, and directed that the Governing Body of the City of El Dorado, Kansas shall hold a public hearing on **October 7, 2019** at **6:30 PM**, or as soon thereafter as the matter can be heard, in the Commission Room, located at 220 E. First Avenue, El Dorado, Kansas 67042, to hear comments and consider findings necessary to establish the Orschelns Redevelopment District pursuant to the TIF Act.

Section 2. Description and Map. A description and map of the proposed Redevelopment District is available for public inspection during normal business hours in the City Clerk's office located at 220 E. First Avenue, El Dorado, Kansas.

Section 3. Redevelopment District Plan. The Redevelopment District Plan consists of one or more redevelopment project areas, the names and boundaries of which will be defined at the time of the redevelopment project plan, and may be described in a general manner as follows:

> The acquisition of certain property, and development and redevelopment thereof to consist of some or all of the following uses, without limitation: commercial uses, retail uses, restaurant uses, hotel uses, office uses, residential uses and any other structure or use (including but not limited to non-profit, governmental, or community use), and including such associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, other associated and appurtenant structures and facilities, and any other items allowable under the TIF Act.

A copy of the Redevelopment District Plan is attached hereto as **<u>Exhibit C</u>**.

Section 4. **Findings**. The City is considering findings that the proposed Redevelopment District is a "blighted area" and therefore an "eligible area" as such terms are defined in the TIF Act, which findings are necessary for the establishment of a redevelopment district pursuant to the TIF Act.

Section 5. **Method of Financing.** The costs of the redevelopment project(s) will be financed, in part, on a "pay-as-you-go" basis from the revenue generated by the redevelopment district in accordance with the TIF Act, as well as any other applicable revenue streams of the proposed developer (or its successors in title).

Section 6. **Notices.** The City Clerk is hereby authorized and directed to publish this Resolution once in the official city newspaper not less than one (1) week or more than two (2) weeks preceding October 7, 2019, the date set for the public hearing. The City Clerk is authorized and directed to mail a copy of this Resolution via certified mail, return receipt requested to the County Commission for Butler County, Kansas; the El Dorado, Kansas Unified School District #490 Board of Education as the school district levying taxes on property within the proposed Redevelopment District; and to each owner and occupant of land within the project areas of the proposed Redevelopment District not more than ten (10) days following the date of the adoption of this Resolution.

Section 7. **Further Action**. The Mayor, City Manager and other officers, agents, and employees of the City are hereby further authorized and directed to take such further action as may be appropriate or desirable to accomplish the purpose of this Resolution.

Section 8. **Effective Date**. This Resolution shall be effective upon its adoption by the Governing Body of the City.

ADOPTED by the Governing Body of the City of El Dorado, Kansas on September 3, 2019.

____
Mayor

Attest:

____
City Clerk

EXHIBIT A
Legal Description of Redevelopment District

[INSERT LEGAL DESCRIPTION]

Any and all public right-of-way immediately adjacent to the above-described land.

EXHIBIT B

General Map of Redevelopment District

EXHIBIT C

Redevelopment District Plan

The Redevelopment District Plan consists of one or more redevelopment project areas, the names and boundaries of which will be defined at the time of the redevelopment project plan, and may be described in a general manner as follows:

> The acquisition of certain property, and development and redevelopment thereof to consist of some or all of the following uses, without limitation: commercial uses, retail uses, restaurant uses, hotel uses, office uses, residential uses and any other structure or use (including but not limited to non-profit, governmental, or community use), and including such associated site work, infrastructure, utilities, storm water control, access, street improvements, landscaping, lighting, parking facilities, other associated and appurtenant structures and facilities, and any other items allowable under the TIF Act.

FUNDING AGREEMENT

This FUNDING AGREEMENT (the "Agreement") is entered into this ___ day of ________ ____, between ____________________ (the "Applicant"), and the City of El Dorado, Kansas (the "City").

RECITALS

A. The City is a municipal corporation duly organized and existing under the laws of the State of Kansas and authorized by K.S.A. 12-1770 *et seq.*, as amended (the "TIF Act"), to provide tax increment financing for certain qualified projects upon compliance with the procedures set forth in the TIF Act;

B. The Applicant has requested the City consider establishing a Redevelopment District within the City to be located at _____________________ to assist in the redevelopment of real estate owned by the Applicant;

C. The Applicant is a limited liability company; and

D. The Applicant has requested that the City prepare and consider a Redevelopment Project Plan for the Redevelopment District in accordance with the TIF Act, and, if approved, make such revisions to the Redevelopment District Plan as necessary and to implement and administer the Redevelopment Project Plan through its completion. In order to do so, the City must retain administrative and professional staff, outside counsel and consultants, and incur expenses, but is without a source of funds to pay such staff, counsel, consultants and expenses.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:

1. **Services to be Performed by the City.** The City shall retain administrative and professional staff, outside counsel and consultants, and incur expenses which it, in its sole discretion, deems necessary to consider the Redevelopment Project Plan, including the following:

   a. Review the Redevelopment District Plan, give all notices, make all publications, hold all hearings as required by the TIF Act, prepare the required resolutions and ordinances and prepare a feasibility study;

   b. Prepare and consider the Redevelopment Project Plan in accordance with the provisions of the TIF Act, give all notices, make all publications, hold all hearings as required by the Act and prepare the required resolutions and ordinance to approve the Redevelopment Project Plan;

   c. If the City Commission approves the Redevelopment Project Plan, prepare and negotiate a definitive agreement between the parties for implementation of the Redevelopment Project Plan; and

d. If a definitive agreement is entered into, administer the Redevelopment Project Plan and definitive agreement until terminated or completed.

2. **Payment.** The Applicant shall pay the City for its fees and expenses; the time of its administrative and professional staff, as the City may from time to time deem appropriate; all charges for the City's outside counsel, including the fees of the City Attorney and consultants; and all other expenses incurred by the City in providing the services set forth in Section 1 (the "Charges"), subject to the following conditions:

   a. In order to insure the prompt and timely payment of the Charges, the Applicant shall establish a fund in the amount of $20,000 (the "Fund") by paying such amount to the City contemporaneously with the execution of this Agreement, receipt of which is hereby acknowledged. Thereafter, the City shall pay all Charges from moneys on deposit in the Fund and shall provide an itemized statement thereof to the Applicant on a monthly basis. If, in the judgment of the City's Finance Director, there are insufficient amounts on deposit in the Fund at any time to pay for the projected Charges expected to be incurred, the City's Finance Director shall notify the Applicant and the Applicant shall make a subsequent deposit or deposits into the Fund in an amount equal to the initial deposit or such other amount which in the judgment of the City's Finance Director is required to provide sufficient funds to pay the projected Charges.

   b. All statements shall be reasonably itemized and shall be payable within thirty days of receipt thereof. If not so paid, the City shall be relieved of its obligations hereunder until paid, and the unpaid balance shall be subject to a penalty of two percent per month until paid, but in no event shall such penalty exceed eighteen percent.

   c. The City's Financial Advisor, Baker Tilly Municipal Advisors, LLC, shall be paid on an hourly basis for services rendered in support of the services performed by the City hereunder, including preparing a feasibility study. The City's Bond Counsel, Gilmore & Bell, P.C., shall be paid on an hourly basis for services rendered in support of the services performed by the City hereunder, other than for legal services rendered in connection with the issuance of any bonds that may be issued to finance and implement the Redevelopment Project Plan.

   d. If the Redevelopment Project Plan is adopted, all payments made hereunder are eligible redevelopment costs under the TIF Act and as such are reimbursable out of the special tax increment fund created pursuant to the TIF Act.

3. **Termination.**

   a. The City may terminate this Agreement upon ten days' notice in the event the Applicant fails to make any payments when due.

   b. The Applicant may terminate this Agreement in the event it determines not to proceed further to complete the Redevelopment Project Plan upon notice to the City thereof.

c. If either party terminates this Agreement, the City shall apply the balance of the Fund, if any, to outstanding Charges pursuant to this Agreement and any monies due and owing to the City pursuant to any other agreement and shall pay the remaining balance, if any, to the Applicant within thirty days of such termination. In the event the balance of the Fund is insufficient to pay the outstanding Charges payable hereunder, the Applicant shall pay such Charges within thirty days of receipt of a statement from the City of the balance required to pay such Charges.

4. **No Obligation to Proceed with Redevelopment Project Plan.** The Applicant acknowledges that the City is not obligated by the execution of this Agreement to approve a Redevelopment Project Plan, and the approval of a Redevelopment Project Plan is subject to the sole discretion of the Governing Body of the City and the requirements of the TIF Act.

   The City is not by this Agreement making any agreement or representation regarding any approval of or opinion in regard to any changes in zoning that may be necessary for the approval of a Redevelopment Project Plan.

5. **Notice.** Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if it is in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:	With a copy to:
City of El Dorado, Kansas Attn: City Manager 220 E. First Avenue El Dorado, KS 67042	Gilmore & Bell, P.C. Attn: Mitch Walter One Main Place 100 North Main Street Wichita, KS 67202
To the Applicant:	With a copy to:
[insert information]	[insert information]

Each party may specify that notice be addressed to any other person or address by giving to the other party ten days prior written notice thereof.

6. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

Applicant

By: ___________________________________
Name: _________________________________
Title: _________________________________

Attest:

By: ___________________________________
Name: _________________________________
Title: _________________________________

STATE OF __________________)
) SS.
COUNTY OF________________)

On this ________ day of ________ 2019, before me, a notary public, appeared ______________________________to me personally known, who being by me duly sworn, did say that he is the _____________, of __________________________, and said instrument was signed in behalf od said limited liability company and he acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office the day and year last above written.

____
Notary Public

My Commission Expires:

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF EL DORADO, KANSAS

By: ___________________________________
Vince Haines, Mayor

(SEAL)

ATTEST:

By: _____________________________
Tabitha D. Sharp
City Clerk

STATE OF KANSAS)
) SS.
COUNTY OF BUTLER)

Be it remembered that on this _______day of ______ 2019, before me, the undersigned, a Notary Public in and for County and State aforesaid, came Vince Haines, Mayor of the City of El Dorado, Kansas (the "City"), a legally constituted municipal corporation and city of the second class, duly organized and existing under the laws of the State of Kansas, and Tabitha D. Sharp, City Clerk of said City, who are personally known to me to be the same persons who executed the foregoing instrument of writing as such officials, and said Vince Haines, as Mayor duly acknowledged the execution of the same to be the act of the City, and Tabitha D. Sharp, as City Clerk duly acknowledged the attestation of the same for and on behalf of said City and affixed thereto the seal of the City.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

____
Notary Public

My Commission Expires:

Gilmore & Bell, P.C.
08/21/2019

EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF EL DORADO, KANSAS
HELD ON SEPTEMBER 3, 2019

The governing body met in regular session at the usual meeting place in the City of El Dorado, Kansas on September 3, 2019, at 6:30 p.m., the following members being present and participating, to wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * * * * * * * * * * *
(Other Proceedings)

Thereupon, there was presented a Resolution entitled:

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A COMMERCIAL FACILITY TO BE LOCATED IN SAID CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS

Thereupon, Commissioner ________________ moved that said Resolution be adopted. The motion was seconded by Commissioner ________________. Said Resolution was duly read and considered, and upon being put, the motion for the adoption of said Resolution was carried by the vote of the governing body, the vote being as follows:

Yea:

Nay:

Thereupon, the Mayor declared said Resolution duly adopted and the Resolution was then duly numbered Resolution No. ________ and was signed by the Mayor and attested by the Clerk.

* * * * * * * * * * * * * *

(Other Proceedings)

On motion duly made, seconded and carried, the meeting hereupon adjourned.

CERTIFICATE

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of El Dorado, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

____
City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A COMMERCIAL FACILITY TO BE LOCATED IN SAID CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS

WHEREAS, the City of El Dorado, Kansas (the "Issuer") desires to promote, stimulate and develop the general economic welfare and prosperity of the City of El Dorado, Kansas, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the Issuer is authorized to issue revenue bonds for such purposes, and it is hereby found and determined to be advisable and in the interest and for the welfare of the Issuer and its inhabitants that revenue bonds of the Issuer in a principal amount not to exceed $6,000,000 be authorized and issued, in one or more series, to provide funds to pay the costs of the acquisition, construction and equipping of a commercial facility (the "Project") located in the Issuer and to be leased by the Issuer to Orscheln Supply LLC, a Missouri limited liability company (the "Tenant").

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS:

Section 1. **Public Purpose**. The governing body of the Issuer hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the Issuer, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas.

Section 2. **Authorization to Acquire Project; Intent to Issue Bonds**. The Issuer is hereby authorized to proceed with the acquisition, construction and equipping of the Project and to issue its revenue bonds, in one or more series, in a principal amount not to exceed $6,000,000 (the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. **Conditions to Issuance of Bonds**. The issuance of the Bonds is subject to: (a) the passage of an ordinance authorizing the issuance of the Bonds; (b) the successful negotiation of a Trust Indenture, Site Lease, Lease, Bond Purchase Agreement or other legal documents necessary to accomplish the issuance of the Bonds, the terms of which shall be in compliance with the Act and mutually satisfactory to the Issuer and the Tenant; (c) the successful negotiation and sale of the Bonds to a purchaser or purchasers yet to be determined (the "Purchaser"), which sale shall be the responsibility of the Tenant and not the Issuer; (d) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the Issuer, the Tenant and the Purchaser; (e) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (f) the satisfactory negotiation and execution of a Real Estate Purchase Contract between the City and the Tenant with respect to the sale by the City of certain land associated with the Project; and (g) the commitment to and payment by the Tenant or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the Issuer and the Issuer Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals.

Section 4. **Sales Tax Exemption**. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq*. (the "Sales Tax Act"), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore. In the event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

Section 5. **Reliance by Tenant; Limited Liability of Issuer.** It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the Bonds. Proceeds of Bonds may be used to reimburse the Tenant for such expenditures made not more than 60 days prior to the date this Resolution is adopted. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the Issuer from the Project and not from any other fund or source. The Issuer shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the Issuer shall have no liability to the Tenant.

Section 6. **Further Action**. The Clerk is hereby authorized to deliver an executed copy of this Resolution to the Tenant. The Mayor, Clerk and other officials and employees of the Issuer, including the Issuer's counsel and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) cooperate with the Tenant in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property; and (b) execution on behalf of the Issuer of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act.

Section 7. **Effective Date**. This resolution shall become effective upon adoption by the Governing Body.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

ADOPTED by the governing body of the City of El Dorado, Kansas on September 3, 2019.

[SEAL]

____
Mayor

Attest:

____
City Clerk

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the Issuer adopted by the governing body on September 3, 2019, as the same appears of record in my office.

DATED: September 3, 2019.

____
City Clerk