



ABILENE CITY COMMISSION - SPECIAL MEETING AGENDA
ABILENE PUBLIC LIBRARY, 209 NW FOURTH STREET

March 21, 2022
5:00 p.m.

VIEW THIS CITY COMMISSION MEETING VIRTUALLY AT
www.abilenecityhall.com/watchlive

1. Call to Order

2. Roll Call: ___ Marshall ___ Witt ___ Rein ___ Miller ___ Kollhoff

Public Hearing

3. Public Hearing for the purpose of hearing and answering the objections of taxpayers relating to the establishment of a Rural Housing Incentive District (RHID) in the Golden Belt Heights Subdivision.

New Business

4. Consider approval of Ordinance No. 22-3414, **AN ORDINANCE OF THE CITY OF ABILENE, KANSAS, ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH DISTRICT, AND MAKING CERTAIN FINDINGS IN CONJUNCTION THEREWITH (GOLDEN BELT HEIGHTS RURAL HOUSING INCENTIVE DISTRICT)/**

Adjournment

5. Consider a motion to adjourn the March 21, 2022 Special City Commission Meeting.



CITY OF ABILENE
Item for City Commission Agenda

Meeting Date:

3/21/2022

Originating Department

Prepared By:

Approved For Agenda By:
(Office Use Only)

Administration

Ron Marsh

AGENDA ITEM HEADING:

Consider an Ordinance Establishing an RHID at Golden Belt Heights

BACKGROUND:

Per K.S.A. 12-5246, upon completion of the public hearing considering the RHID, the City Commission may adopt the development plan and establish the district by ordinance.

Dominic Eck with Gilmore & Bell has drafted the ordinance for your consideration and will be present to answer any questions from the commission.

FISCAL NOTE:

TBD

COMMISSION ACTION:

Recommend adopting ordinance establishing the RHID at Golden Belt Heights.

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF ABILENE KANSAS
HELD ON MARCH 21, 2022**

The City Commission (the “Governing Body”) met in special session at the usual meeting place in the City at 5:00 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)

Among other business, in accordance with Resolution No. 021422-1 published on March 10, 2022, in the ***Abilene Reflector-Chronicle***, a public hearing was held by the governing body relating to the proposed establishment of a Rural Housing Incentive District within the City and adopting a plan for the development of housing and public facilities in such District. At the hearing, each project proposed for the District was identified and explained, and the developer that has contracted with the City to participate in such project was identified and present in person. Following the presentation, all interested persons were afforded an opportunity to present their views on the establishment of the District and the proposed projects. Thereafter the public hearing was closed.

Following the close of the public hearing, there was presented to the governing body an Ordinance entitled:

AN ORDINANCE OF THE CITY OF ABILENE, KANSAS, ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH DISTRICT, AND MAKING CERTAIN FINDINGS IN CONJUNCTION THEREWITH (GOLDEN BELT HEIGHTS RURAL HOUSING INCENTIVE DISTRICT).

Commissioner _____ moved that the ordinance be passed. The motion was seconded by Commissioner _____. The ordinance was duly read and considered, and upon being put, the motion for the passage of the ordinance was carried by the vote of the governing body as follows:

Yea: _____

Nay: _____

The Mayor declared the ordinance duly passed and the ordinance was duly numbered Ordinance No. 22-3414, was signed by the Mayor and attested by the City Clerk, and was directed to be published one time in the official City newspaper.

* * * * *

(Other Proceedings)

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

CERTIFICATE

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

(SEAL)

Clerk

(Published in the *Abilene Reflector-Chronicle* on March 24, 2022)

ORDINANCE NO. 22-3414

AN ORDINANCE OF THE CITY OF ABILENE, KANSAS, ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH DISTRICT, AND MAKING CERTAIN FINDINGS IN CONJUNCTION THEREWITH (GOLDEN BELT HEIGHTS RURAL HOUSING INCENTIVE DISTRICT).

WHEREAS, K.S.A. 12-5241 *et seq.* (the “Act”) authorizes any city incorporated in accordance with the laws of the state of Kansas (the “State”) with a population of less than 60,000 to designate rural housing incentive districts within such city; and

WHEREAS, prior to such designation the governing body of such city shall conduct a housing needs analysis to determine what, if any, housing needs exist within its community; and

WHEREAS, after conducting such analysis, the governing body of such city may adopt a resolution making certain findings regarding the establishment of a rural housing incentive district and providing the legal description of property to be contained therein; and

WHEREAS, after publishing such resolution, the governing body of such city shall send a copy thereof to the Secretary of the Kansas Department of Commerce (the “Secretary”) requesting that the Secretary agree with the finding contained in such resolution; and

WHEREAS, if the Secretary agrees with such findings, such city may proceed with the establishment of a rural housing incentive district within such city and adopt a plan for the development or redevelopment of housing and public facilities in the proposed district; and

WHEREAS, the City of Abilene, Kansas (the “City”) has an estimated population under 60,000 and therefore constitutes a city as the term is defined in the Act; and

WHEREAS, the governing body of the City (the “Governing Body”) has performed a Housing Needs Analysis (the “Analysis”), a copy of which is on file in the office of the City Clerk; and

WHEREAS, the Governing Body adopted Resolution No. 101121-2 on October 11, 2021, which made certain findings relating to the need for financial incentives relating to the construction of quality housing within the City, declared it advisable to establish a rural housing incentive district pursuant to the Act, and authorized the submission of such resolution and the Analysis to the Kansas Department of Commerce in accordance with the Act; and

WHEREAS, the Secretary of the Kansas Department of Commerce, pursuant to a letter dated December 1, 2021, authorized the City to proceed with the establishment of a rural housing incentive district pursuant to the Act; and

WHEREAS, the City has caused to be prepared a plan (the “Plan”) for the development or redevelopment of housing and public facilities in the proposed Golden Belt Heights Rural Housing Incentive District (the “District”) in accordance with the provisions of the Act; and

WHEREAS, the Plan includes:

1. The legal description and map required by K.S.A. 12-5244(a).
2. The existing assessed valuation of the real estate in the proposed District listing the land and improvement value separately.
3. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District.
4. A description of the housing and public facilities project or projects that are proposed to be constructed or improved in the proposed District, and the location thereof.
5. A listing of the names, addresses, and specific interests in real estate in the proposed District of the developers responsible for development of the housing and public facilities in the proposed District.
6. The contractual assurances, if any, the Governing Body has received from such developer or developers, guaranteeing the financial feasibility of specific housing tax incentive projects in the proposed District.
7. A comprehensive analysis of the feasibility of providing housing tax incentives in the proposed District as provided in the Act, which shows the public benefit derived from the District will exceed the costs and that the income therefrom, together with all public and private sources of funding, will be sufficient to pay for the public improvements that may be undertaken in the District.

WHEREAS, the Governing Body of the City has heretofore adopted Resolution No. 021422-1, which made a finding that the City is considering establishing the proposed District and adopting the proposed Plan pursuant to the Act, set forth the boundaries of the proposed District, provided a summary of the proposed Plan, called a public hearing concerning the establishment of the proposed District for March 21, 2022, and provided for notice of such public hearing as provided in the Act; and

WHEREAS, a public hearing was held on March 21, 2022, after notice was duly published and delivered in accordance with the provisions of the Act; and

WHEREAS, upon and considering the information and public comments received at the public hearing, the Governing Body of the City hereby deems it advisable to make certain findings to establish the proposed District and to adopt the proposed Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:

Section 1. Findings. The Governing Body hereby finds that notice of the public hearing conducted March 21, 2022, was duly made in accordance with the provisions of the Act.

Section 2. Creation of Rural Housing Incentive District. A Rural Housing Incentive District is hereby created within the City in accordance with the provisions of the Act, which shall consist of the following described real property:

Area 1 (East Highlands):

A parcel of land located in the West Half of Section 8, Township 13 South, Range 2 East of the 6th Principal Meridian in Dickinson County, Kansas, more particularly described as follows:

Commencing at the Southwest Corner of the Southwest Quarter of said Section 8; thence on an assumed bearing of N 00°00'00" E along the West line of said Southwest Quarter a distance of 668.20 feet to the Southwest Corner of the North Half of the Southwest Quarter of said Southwest Quarter, said point also being the POINT OF BEGINNING of the parcel to be described;

- thence continuing N 00°00'00" E along said West line a distance of 1021.58 feet to the South right-of-way line Interstate 70;
- thence N 90°00'00" E along said South right-of-way line distance of 30.00 feet;
- thence N 12°45'36" E along said South right-of-way line a distance of 947.27 feet;
- thence N 86°59'06" E along said South right-of-way line a distance of 956.79 feet;
- thence N 86°26'10" E along said South right-of-way line a distance of 141.67 feet;
- thence S 00°07'21" E along the East line, and extensions thereof, of the West Half of said Southwest Quarter a distance of 1996.85 feet to the Southeast Corner of said North Half of the Southwest Quarter of the Southwest Quarter;
- thence S 89°40'08" W along the South line of said North Half of the Southwest Quarter of the Southwest Quarter a distance of 1340.38 feet to the POINT OF BEGINNING;

Said parcel contains 57.53 acres, more or less, and is subject to easements, reservations and restrictions of record.

Area 2 (West Highlands):

A parcel of land located in the Southeast Quarter of Section 7, Township 13 South, Range 2 East of the 6th Principle Meridian in Dickinson County, Kansas, more particularly described as follows:

Commencing at the Southeast Corner of said Southeast Quarter; thence on an assumed bearing N 00°00'00" E along the East line of said Southeast Quarter a distance of 668.02 feet to the Southeast Corner of the North Half of the Southeast Quarter of said Southeast Quarter, said point also being the POINT OF BEGINNING of the parcel to be described;

- thence S 89°39'57" W along the South line of said North Half of the Southeast Quarter of the Southeast Quarter a distance of 1322.73 feet to the Southwest corner of said North Half of the Southeast Quarter of the Southeast Quarter;
- thence N 00°04'09" W along the West line of said Southeast Quarter of the Southeast Quarter a distance 663.95 feet to the Southwest corner of the Northeast Quarter of said Southeast Quarter;
- thence continuing N 00°04'09" W along the West line of said Northeast Quarter of said Southeast Quarter a distance of 1266.69 feet to a point on the South right-of-way line of Interstate 70;
- thence N 87°48'43" E along said South right-of-way line a distance of 1205.56 feet;
- thence N 76°18'25" E along said South right-of-way line a distance of 83.57 feet;
- thence N 87°56'37" E along said South right-of-way line a distance of 39.18 feet to the Northeast corner of said Southeast Quarter;
- thence S 00°00'00" E along said East line of the Southeast Quarter a distance of 1990.14 feet to the POINT OF BEGINNING;

Said parcel contains 59.36 acres (112,596 square feet), more or less, and is subject to easements, reservations and restrictions of record.

The District's boundaries do not contain any property not referenced in Resolution No. 012422-1, which provided notice of the public hearing on the creation of the District and adoption of the Plan.

Section 3. Approval of Development Plan. The Plan for the development or redevelopment of housing and public facilities in the District, as presented to the Governing Body this date, is hereby approved. In addition, the approval of the Consulting Agreement relating to the Golden Belt Heights Rural Housing Incentive District between the City and the developer thereof is hereby ratified and confirmed.

Section 4. Adverse Effect on Other Governmental Units. If, within 30 days following the conclusion of the public hearing on March 21, 2022, any of the following occurs, the Governing Body shall take action to repeal this Ordinance:

(a) The Board of Education of Unified School District No. 435, Dickinson County, Kansas (Abilene) determines by resolution that the District will have an adverse effect on such school district; or

(b) The Board of County Commissioners of Dickinson County, Kansas, determines by resolution that the District will have an adverse effect on such county.

As of this date, the City has not received a copy of any such resolution and is not aware of the adoption of any such resolution by the governing body of either Unified School District No. 435, Dickinson County, Kansas (Abilene) or of Dickinson County, Kansas.

Section 5. Further Action. The Mayor, City Clerk, city officials and employees, including the City Attorney, and Gilmore & Bell, P.C., are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Ordinance.

Section 6. Effective Date. This Ordinance shall be effective upon its passage by the Governing Body and publication one time in the official City newspaper.

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PASSED by the Governing Body of the City of Abilene, Kansas, and **SIGNED** by the Mayor on March 21, 2022.

(SEAL)

Dee Marshall, Mayor

ATTEST:

Shayla L. Mohr, City Clerk

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CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that the Ordinance was passed on March 21, 2022; that the record of the final vote on its passage is found on page ____ of journal ____; and that it was published in the ***Abilene Reflector-Chronicle*** on March 25, 2022.

DATED: March 25, 2022.

City Clerk

**DEVELOPMENT PLAN
OF THE CITY OF ABILENE, KANSAS
HIGHLANDS RURAL HOUSING INCENTIVE DISTRICT**

FEBRUARY 7, 2022

INTRODUCTION

On October 11, 2021 the City Commission (the “Governing Body”) of the City Abilene, Kansas (the “City”) adopted Resolution 101121-2, which found and determined that:

1. There is a shortage of quality housing of various price ranges in the City despite the best efforts of public and private housing developers.
2. The shortage of quality housing can be expected to persist and that additional financial incentives are necessary in order to encourage the private sector to construct or renovate housing in the City.
3. The shortage of quality housing is a substantial deterrent to the future economic growth and development of the City.
4. The future economic wellbeing of the City depends on the Governing Body providing additional incentives for the construction of/or renovation of quality housing in the City.

Based on these findings and determinations, the Governing Body proposed the establishment of a Rural Housing Incentive District within the City pursuant to K.S.A. 12-5241 *et seq.* (the “Act”).

Following the adoption of Resolution 101121-2, a certified copy was submitted to the Secretary of Commerce for approval of the establishment of the Rural Housing Incentive District in the City as required by K.S.A. 12-5244(c). On December 1, 2021, the Secretary of Commerce provided written confirmation approving the establishment of the Rural Housing Incentive District within the City.

DEVELOPMENT PLAN ADOPTION

K.S.A. 12-5245 states that once a city receives approval from the Secretary of Commerce for the development of a rural housing incentive district, the governing body must adopt a plan for the development of housing and public facilities within the proposed district.

DEVELOPMENT PLAN

As a result of the shortage of quality housing, the City proposes this development plan (the “Development Plan”) to assist in the development of quality housing within the City.

(1) ***Legal Description and Map of the District.*** The legal description of the Highlands Rural Housing Incentive District (the “District”) is attached as ***Exhibit A*** to this Development Plan. A map of the District is attached as ***Exhibit B*** to this Development Plan.

(2) ***Existing Assessed Valuation of the District.*** The assessed valuation of all real estate within the District for 2021 is:

Land	\$ 1,610
Improvements	<u>29,432</u>
Total	\$31,042

(3) ***Owners of Record.*** The names and addresses of the owners of record for the real estate within the District is:

City of Abilene, Kansas Land Bank
419 N. Broadway Ave.
P.O. Box 519

Abilene, Kansas 67410

Gary M. & Susan J. Longenecker
1707 Broadfoot Drive
Abilene, Kansas 67410

Larry S. Murray
1709 Broadfoot Drive
Abilene, Kansas 67410

(4) **Description of Housing and Public Facilities Projects.** The housing and public facilities projects that are proposed to be constructed include the following:

Housing Facilities

The housing facilities will consist of constructing approximately 115 residences on standard residential lots, with a mix of single family homes and multi-family homes. Development is expected to be market-driven.

Public Facilities

Public facilities have previously been constructed to support the development, including water, sanitary sewer, storm water, streets, curbs, gutters, sidewalks, and other utilities. These infrastructure improvements were initially financed by special assessments levied pursuant to K.S.A. 12-6a01 *et seq.* (the “Benefit District Act”). Increment generated by the District is expected to be utilized for payment or reimbursement for prior payment of past, present, and future special assessments levied against property within the District pursuant to the Benefit District Act.

The map attached as *Exhibit B* also reflects the Site Plan for the District.

(5) **Developer’s Information.** The names, addresses and specific interests in the real estate in the District of the developers responsible for development of the housing and public facilities is:

Developer:	City of Abilene, Kansas Land Bank 419 N. Broadway Ave. P.O. Box 519 Abilene, Kansas 67410
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Specific property interest:	Owner of vacant property within the District
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Developer:	Heartland Housing Partners, LLC 4851 Meadowbrook Parkway Unit 149 Prairie Village, Kansas 66207
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Specific property interest:	None
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(6) **Contractual Assurances.** The Governing Body entered into a Consulting Services Agreement, dated February [], 2022 (the “Consulting Agreement”), with Heartland Housing Partners, LLC, a Kansas limited liability company (the “Consultant”). The Consulting Agreement, as supplemented and amended, includes an anticipated project construction schedule, a description of services to be provided related to the District, and financial and administrative support from the City. The Consulting Agreement includes contractual assurances, if any, the Governing Body has received from the Consultant guaranteeing

the financial feasibility of specific housing tax incentive projects in the proposed district. A copy of the Consulting Agreement is attached as ***Exhibit C*** to this Development Plan.

(7) ***Comprehensive Analysis of Feasibility.*** A comprehensive analysis was conducted to determine whether the public benefits derived from the District will exceed the costs and that the income from the District, together with other sources of revenue, would be sufficient to pay for the public improvements to be undertaken in the District. A copy of the analysis is attached as ***Exhibit D*** to this Development Plan. The analysis estimates the property tax revenues that will be generated from the District, less existing property taxes, to determine the revenue stream available to support payment or reimbursement of all or a portion of the costs of financing the public infrastructure. The estimates indicate that the revenue realized from the project together with other sources of funds would be adequate to pay the eligible costs.

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EXHIBIT A
DEVELOPMENT PLAN
HIGHLANDS RURAL HOUSING INCENTIVE DISTRICT

LEGAL DESCRIPTION OF THE DISTRICT

The following described real estate in the City of Abilene, Dickinson County, Kansas, together with public rights-of-way adjacent thereto:

Area 1 (East Highlands):

A parcel of land located in the West Half of Section 8, Township 13 South, Range 2 East of the 6th Principal Meridian in Dickinson County, Kansas, more particularly described as follows:

Commencing at the Southwest Corner of the Southwest Quarter of said Section 8; thence on an assumed bearing of N 00°00'00" E along the West line of said Southwest Quarter a distance of 668.20 feet to the Southwest Corner of the North Half of the Southwest Quarter of said Southwest Quarter, said point also being the POINT OF BEGINNING of the parcel to be described;

- thence continuing N 00°00'00" E along said West line a distance of 1021.58 feet to the South right-of-way line Interstate 70;
- thence N 90°00'00" E along said South right-of-way line distance of 30.00 feet;
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Said parcel contains 57.53 acres, more or less, and is subject to easements, reservations and restrictions of record.

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- thence N 00°04'09" W along the West line of said Southeast Quarter of the Southeast Quarter a distance 663.95 feet to the Southwest corner of the Northeast Quarter of said Southeast Quarter;

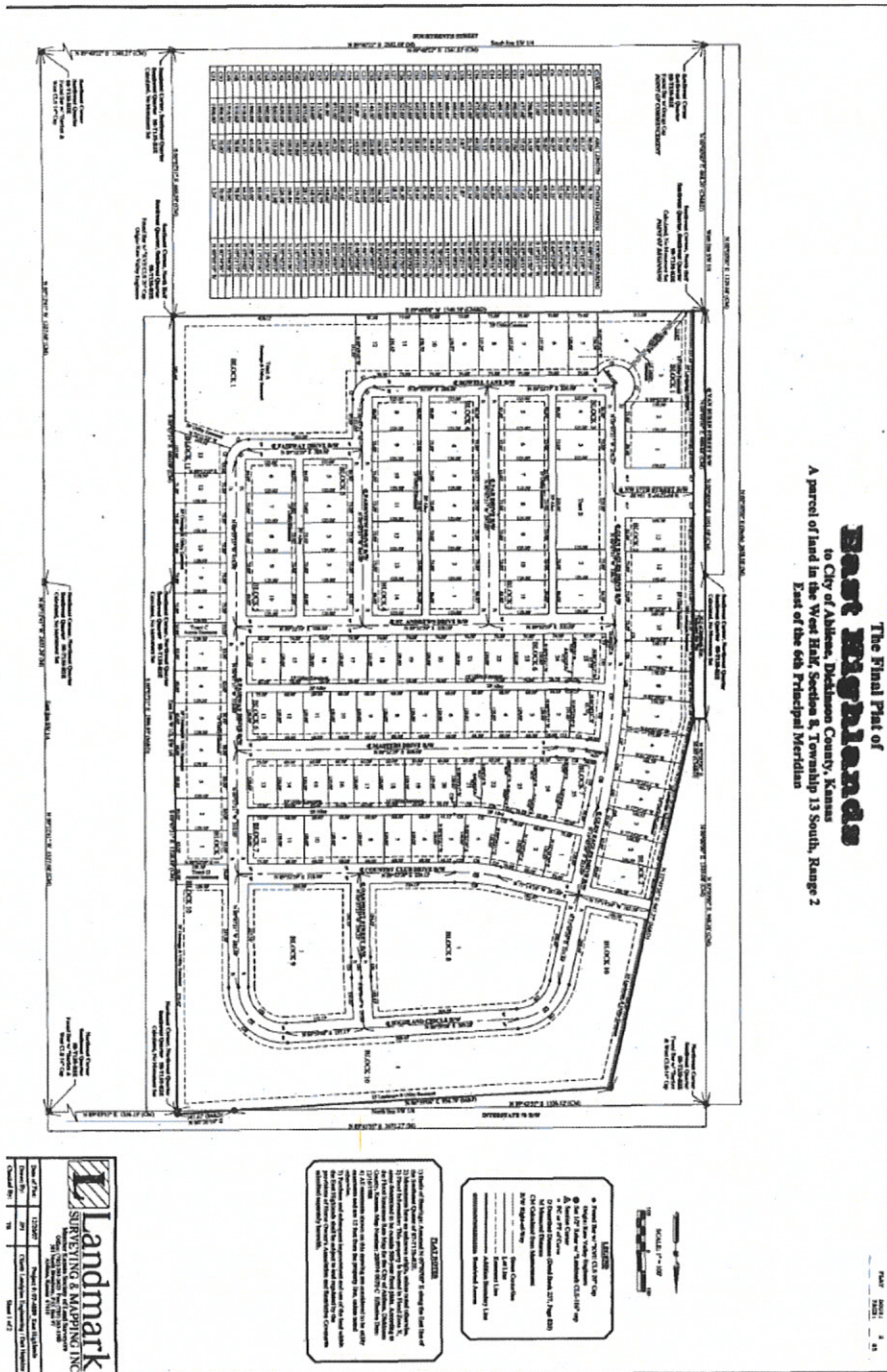
- thence continuing N 00°04'09" W along the West line of said Northeast Quarter of said Southeast Quarter a distance of 1266.69 feet to a point on the South right-of-way line of Interstate 70;
- thence N 87°48'43" E along said South right-of-way line a distance of 1205.56 feet;
- thence N 76°18'25" E along said South right-of-way line a distance of 83.57 feet;
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- thence S 00°00'00" E along said East line of the Southeast Quarter a distance of 1990.14 feet to the POINT OF BEGINNING;

Said parcel contains 59.36 acres (112,596 square feet), more or less, and is subject to easements, reservations and restrictions of record.

EXHIBIT B
DEVELOPMENT PLAN
HIGHLANDS RURAL HOUSING INCENTIVE DISTRICT

MAP OF THE DISTRICT

Map of Area 1 (East Highlands):



Map of Area 2 (West Highlands):

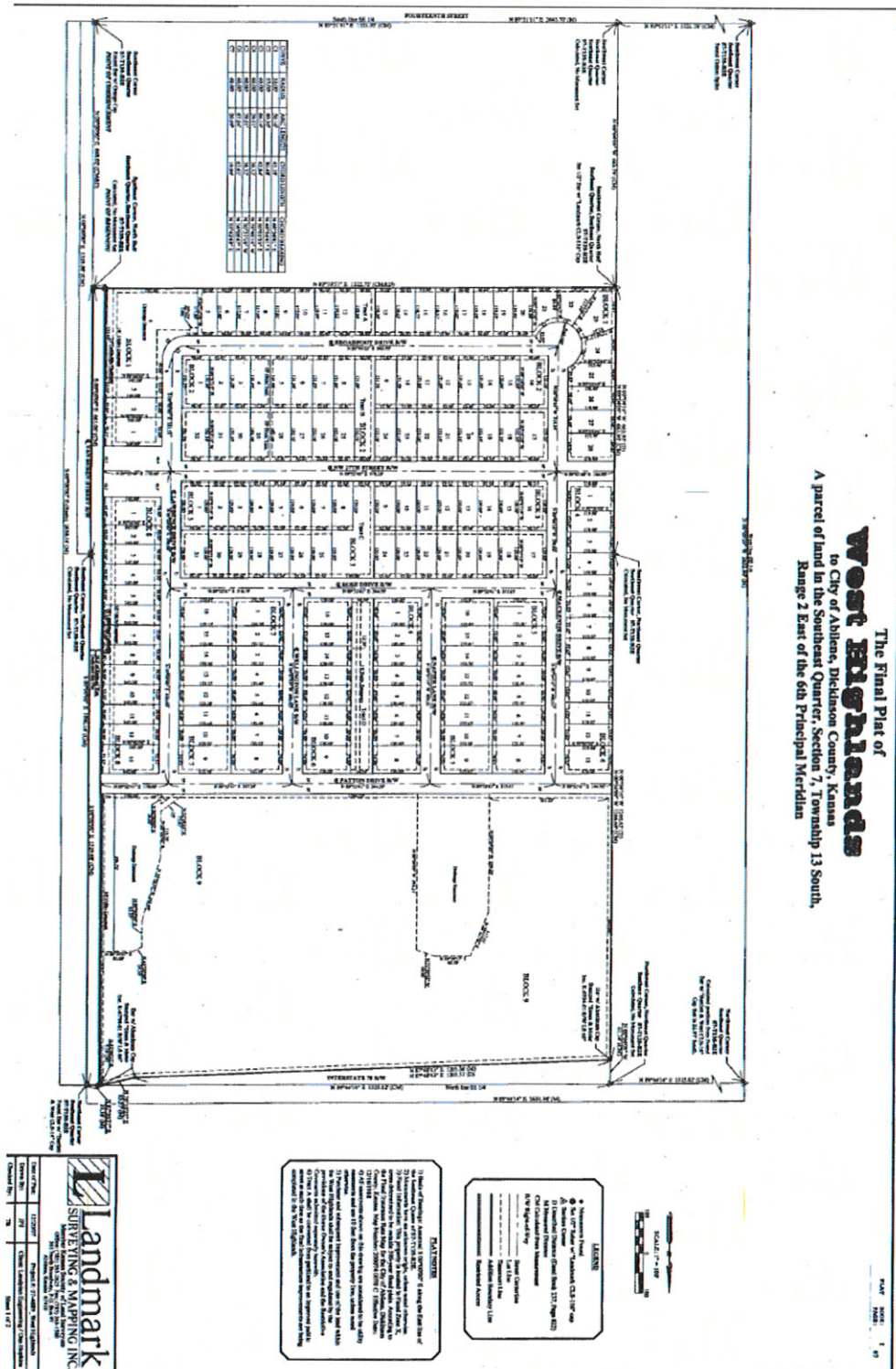


EXHIBIT C
DEVELOPMENT PLAN
HIGHLANDS RURAL HOUSING INCENTIVE DISTRICT
CONSULTING AGREEMENT

HEARTLAND HOUSING PARTNERS, LLC
CONSULTING SERVICES AGREEMENT
ABILENE, KANSAS RHID PROJECT

This Consulting Services Agreement ("Agreement") is entered into as of the 28th day of February, 2022, by and between the City of Abilene, Kansas, a municipal corporation (hereinafter referred to as "Abilene" or "the City") and Heartland Housing Partners, LLC, a Kansas Limited Liability Company ("Heartland").

WHEREAS, Abilene desires to hire Heartland to provide consultation on the development of certain housing facilities described in the attached and incorporated **Exhibit A** (the "Development"); and

WHEREAS, Abilene wishes to enter into this separate Consulting Agreement with Heartland under the terms and conditions addressed below; and

NOW, THEREFORE, it is agreed as follows:

ARTICLE ONE: TERMS OF AGREEMENT

1.1 **Engagement.** During the term of this Agreement, Abilene hereby agrees to engage Heartland and Heartland hereby agrees to provide services to Abilene by providing consulting services to Abilene on various aspects of the Development at times and at the convenience of Heartland as is appropriate, and shall further be available for phone consultation at reasonable times and for reasonable periods of time to perform such services designated by Abilene. These services are as follows (the "Services"):

- a. Conceptualization and consultation regarding use of the RHID concept to assist with the feasibility of the Development, and utilization of RHID to assist with the debt burden of bonding issued during prior development;
- b. Assist City and City Attorney in determining statutory RHID eligibility and the approval process.
- c. Evaluate and reassess site plan and unit types for West project area. Assess site plan for East portion of the project. While changes are not expected, efficiencies may be gained by making changes.
- d. Assist with the creation of Covenants and Restrictions for project area
- e. Assist with creation of rules and regulations for builders to qualify to purchase lots
- f. Recruit builders/investors to construct new homes
 - i. Work with parties on contract execution
 - ii. Work with the City and City Attorney to create lot purchase agreements
 - iii. Builder contractual guarantees for lot purchase
- g. Work with City Staff to oversee upkeep schedule - performed by the Land Bank/City; assess current deferred maintenance; and advice regarding repair of items which have suffered from lack of upkeep at the site.
- h. Assist the City in attaining grant funds for future home construction, if

available— project-by-project basis.

1.2 Term. The force and effect of this Agreement shall be subject to satisfaction of the condition precedent of the Abilene City Commission's adoption, and the city clerk's publication, of an ordinance establishing a rural housing incentive district for the Development, pursuant to K.S.A. 12-5241, *et seq.* The date of publication of such ordinance shall be the effective date of this Agreement ("Effective Date"). Unless extended by mutual agreement of the parties, and following the Effective Date, the term of this Agreement will continue until the earlier of: (i) the date on which all lots have been sold and all payment obligations set forth herein have been satisfied; (ii) the expiration or earlier termination of the rural housing incentive district for the Development; or (iii) the termination of this Agreement in accordance with its terms.

1.3 Compensation. Abilene agrees to pay to Heartland for consulting services as listed on **Exhibit B**.

1.4 Home Starts. Heartland agrees that once the RHID is approved, an average of 5 new homes will be constructed annually in the Development, based on a prior 3-year rolling average. A written assessment of new homes being started shall take place on January 1st of every other year, and shall be evaluated on a prior 3-year rolling average ("Assessment"). For sake of clarity, on May 1, 2025, there shall be an Assessment performed to ensure that at least 15 houses have commenced construction from May 1, 2022-April 30, 2025. The parties acknowledge that the annual average number of new homes constructed will depend on market conditions. However, if any Assessment reveals that less than 5 new homes have commenced construction annually, on average ("Minimum Home Starts"), then Abilene shall have the right to terminate this Agreement upon at least thirty (30) days' prior written notice to Heartland, which notice must be provided within sixty (60) days after the applicable Assessment. This right to terminate shall be subject to the Right to Cure Home Starts, set forth below. If Abilene terminates this Agreement pursuant to this Section 1.4, Abilene shall remain obligated to pay Heartland a pro-rata portion of the total amount distributed to Abilene pursuant to K.S.A. 12-5250 that is attributable to the Development, in accordance with the formula described in Exhibit B attached hereto, from any funds received by Abilene that are attributable to homes for which commencement of construction occurred prior to termination of this Agreement.

1.5 Default; Remedies.

1.5.1 Default. If either party fails to comply with any term of this Agreement within thirty (30) days after written notice to comply has been mailed by the non-defaulting party to the defaulting party, such failure shall be deemed an immediate breach of this Agreement ("Event of Default"). Upon written notice from the other Party specifying such claimed breach, the defaulting party shall proceed immediately to cure or remedy such breach, and, shall, in any event, within thirty (30) days after receipt of notice, cure or remedy

such default. If the breach shall not be cured or remedied, the aggrieved Party may hold the breaching Party in default of this Agreement and thereupon may terminate this Agreement, terminate the defaulting or breaching Party's rights under this Agreement, and/or institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching Party, withholding funds, or exercising any other right or remedy allowed by law. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive its right to use any or all other remedies. For purposes of this Section, no Party may be deemed in default of this Agreement unless and until it has received notice of any claimed breach and has been given an opportunity to cure the same. Notwithstanding any other provision in this Agreement, it is the parties' intent that Abilene's compensation obligations listed in Section 2 of Exhibit B shall survive termination of this Agreement; provided, however, that Abilene's obligation to pay Heartland compensation following termination of this Agreement shall be limited to a pro-rata portion of the total amount distributed to Abilene pursuant to K.S.A. 12-5250 that is attributable to the Development, in accordance with the formula described in Section 2 of Exhibit B, from any funds received by Abilene that are attributable to homes for which commencement of construction occurred prior to termination of this Agreement. For the sake of clarification, the post-termination compensation obligations of Abilene shall not require Abilene to pay compensation under Section 2 of Exhibit B for amounts distributable to Abilene pursuant to K.S.A. 12-5250 that are attributable to homes for which commencement of construction occurred after termination of this Agreement.

1.5.2 Right to Cure Home Starts. In the event of a breach of the Minimum Home Starts requirement under Section 1.4, Heartland shall have 1 year (365 days) to cure such default by causing the commencement of construction of a sufficient number of new homes to ensure that the Minimum Home Starts are met. If such Minimum Home Starts continue to not be met after this right to cure period, and such Minimum Home Starts are not waived by the Abilene, in writing, then Abilene shall have the right to terminate this Agreement without further notice. During this cure period, all compensation due pursuant to Exhibit B shall be reduced proportionately (i.e. if only 3 of the 5 housing starts were met, 60% of compensation is due pursuant to Exhibit B during the right to cure period). Notwithstanding the foregoing, Heartland shall not be deemed to have failed to cure the Minimum Home Starts requirement during the one-year right-to-cure period, if such failure arises because of an Excusable Delay. For purposes of this section, an "Excusable Delay" means any delay beyond the reasonable control of Heartland that is caused by damage or destruction by fire or other casualty, strike, shortage of materials, unavailability of labor, adverse weather conditions such as, by way of illustration and not

limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, or by any litigation interfering with or delaying the construction of all or any portion of the project, which in fact prevents Heartland from discharging its obligations. Heartland's right-to-cure period shall be extended by an amount of time equal to the duration of the circumstances causing the Excusable Delay, not to exceed an additional 1 year. The parties acknowledge and agree that general housing market conditions shall not serve as the basis for an Excusable Delay.

ARTICLE TWO: INDEPENDENT CONTRACTOR

- 2.1 **Independent Contractor.** The parties intend that the relationship between them created by this Agreement is that of an independent contractor only. Neither Heartland nor its owner, Ross Vogel, shall be considered an agent or employee of Abilene for any purpose and Abilene is interested in the results obtained under this Agreement; the manner and means of performing the consulting services are subject to Heartland's sole discretion and control. Heartland shall be responsible for all federal, state, and local taxes. Provided that, the parties understand and agree that the purpose of this Consulting Agreement is to ensure Abilene is making progress with the Development; and that Heartland will spend as much time as required to achieve these goals.
- 2.2 **Relationship.** Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose. Heartland hereby expressly acknowledges and agrees that: (a) it and each of its employees is an independent contractor and is not an employee of Abilene; and (b) neither this Agreement nor any action taken pursuant to this Agreement shall constitute or be evidence of any agreement or understanding, express or implied, that Heartland or any employee of Heartland is an employee of Abilene or has any rights as an employee of Abilene.
- 2.3 **General Conduct of the Consultant.** The Consultant will comply with all applicable laws and regulations in the course of the Consultant's activities on the City's behalf. Consultant will refrain from performing any act or engaging in any course of conduct which has or may reasonably be expected to have the effect of demeaning the name or business reputation of the City or affects adversely or may reasonably be expected to affect adversely the City's best interests, economic or otherwise.
- 2.4 **Other Work.** Heartland shall be permitted to engage in activities that are not inconsistent with Heartland's duties under this Agreement or that would not result in a breach by Heartland of its obligations hereunder, including activities in connection with personal investments, community affairs, consulting work for other companies and service on boards, where such service is not otherwise impermissible or does not constitute a conflict of interest. It is expressly understood that Heartland will be performing, and plans to perform in the future, similar Services to other companies or municipal entities during the time that Heartland is

under Agreement with City, and it is expressly agreed to by City that Heartland's performance of such services do not conflict with or violate the terms or intent of this Agreement.

ARTICLE THREE: LIMITATION OF LIABILITY AND INDEMNIFICATION

3.1 Limitation of Liability.

3.1.1 In no event shall Heartland, its employees or owners(s), be liable for any consequential, incidental, special or exemplary damages (including without limitation, damages for loss of profits, business interruption, loss of information or data, or other pecuniary loss) in connection with or arising out of the furnishing, performance, use of, or inability to use, the Services furnished or provided hereunder or otherwise arising out of this Agreement even if Heartland has been advised of the possibility of such damages and notwithstanding the failure of essential purpose of any limited remedy provided herein. Subject to Heartland's indemnification obligations set forth in Section 3.2, in no event shall the aggregate or cumulative liability of Heartland, its employees or owner(s), whether in contract or tort or otherwise, exceed the amount of fees paid to Heartland hereunder.

3.1.2 **RELEASE OF LIABILITY.** HEARTLAND SHALL NOT BE LIABLE IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE) TO CITY, OR ANY RELATED ENTITIES, REGARDLESS OF TIER, FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, ARISING OUT OF OR RESULTING FROM HEARTLAND'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR FROM HEARTLAND'S TERMINATION OR SUSPENSION OF THE DUTIES UNDER THIS AGREEMENT. SUBJECT TO HEARTLAND'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 3.2, HEARTLAND'S LIABILITY UNDER THIS AGREEMENT OR RELATED TO ACTIVITIES PERFORMED RELATED TO THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE FEE PAID BY ABILENE TO HEARTLAND UNDER THIS AGREEMENT.

3.2 Indemnification.

3.2.1 **Indemnification by Heartland.** Heartland agrees to defend, indemnify and hold harmless Abilene and its officials, directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "Losses") suffered by such parties, arising out of or in connection with any intentional misconduct or fraud of Heartland and/or its

officers, members, employees, or agents. Provided, however, the foregoing indemnification shall not extend to Losses to the extent such Losses arise out of the negligent acts or omissions or intentional misconduct of Abilene or any of its employees or agents, or any default or breach of this Agreement by Abilene.

3.2.2 Indemnification by Abilene. Only in the manner and to the extent permitted under applicable law, including but not limited to the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, Abilene agrees to defend, indemnify and hold harmless Heartland, its members, officers, employees, agents, successors and assigns, against any Losses suffered by such parties arising out of or in connection with any negligent acts or omissions, or intentional misconduct or fraud, by Abilene and its officials, directors, officers, employees,, but only to the extent the aggregate of such Losses do not exceed applicable policy limits under Abilene's commercial general liability insurance policy.

3.2.3 Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnatee") is indemnified by the other party ("Indemnitor") under this Section 3.2, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that the Indemnatee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice. In any event, Indemnitor and Indemnatee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnatee shall promptly (and in no event more than twenty (20) days after any third-party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

3.2.4 Survival. The obligations of the parties contained in this Section 3.2 shall survive the termination or expiration of this Agreement.

ARTICLE FOUR: MISCELLANEOUS PROVISIONS

4.1 Termination of Covenants In the event Abilene fails to make any payment when due to Heartland as called for in Article 1.3 of this Agreement, the obligations of Heartland shall immediately cease on the date falling twenty (20) days after Heartland has delivered notice to Abilene that Abilene is not in compliance with the terms of the Agreement and shall have demanded Abilene cease such non-compliance.

- 4.2 Waiver and Amendment** A waiver or amendment of this Agreement, or any provision of it, will be valid and effective only if it is in writing and signed by both parties or the party waiving such provision.
- 4.3 Force Majeure.** Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.
- 4.4 Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.
- 4.5 Rights Cumulative** No right or remedy available to any party is exclusive of any other remedy. Each and every remedy will be cumulative to any other remedy given under this Agreement, or otherwise legally existing upon the occurrence of a breach of this Agreement.
- 4.6 Applicable Law and Consent to Jurisdiction** This agreement shall be construed and enforced in accordance with the laws of the State of Kansas. All actions or proceedings arising directly, indirectly, or otherwise in connection with, out of, or related to this Agreement, shall be litigated only in Dickinson County, Kansas District Court.
- 4.7 Attorneys' Fees and Costs:** Each party to this Agreement shall bear all attorney's fees and costs arising from that party's own counsel in connection with this Agreement and the matters referred to herein, except as otherwise provided in this Agreement. In the event of a breach of this Agreement or any covenant or agreement herein, the prevailing party in litigation resulting from a breach shall be entitled to recovery of its costs and expenses, including reasonable attorney's fees, except as otherwise provided in the Agreement.
- 4.8 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Kansas without regard to choice of law or conflict of law principles, and Kansas choice of law provisions will apply.
- 4.9 Mediation and Dispute Resolution:** Abilene and Heartland acknowledge that in the event of a dispute, both parties wish to avoid the expense of litigation, and that all claims, disputes and other matters in question between Abilene and Heartland arising out of or relating to this Agreement or the breach thereof, will be resolved in accordance with the provisions below. Disputes claimed by either party must be made by written notice promptly upon the recognition of the event giving rise to such claim. After written notice is provided, disputes will be resolved as follows:
- 5.9.1 Informal Meeting:** The parties first agree to each appoint a representative to meet informally in an attempt to resolve any dispute arising pursuant to this Agreement. If the representatives reach an agreement, then the dispute will be deemed to be resolved.
- 5.9.2 Formal Mediation:** If the parties cannot resolve the dispute by way of informal meeting, within fifteen (15) days of the informal meeting, each

party agrees to submit their dispute to non-binding mediation in an attempt to resolve their dispute. Each party will pay one-half of the costs of the mediator. The mediator shall be selected by agreement between the parties. If no agreement can be reached, the names of two professional mediators shall be submitted by each party, and the name of one of the four shall be selected by random selection, and the mediator so selected shall be used for the mediation process.

5.9.3 Litigation: If the parties cannot resolve the dispute by way of formal mediation, then the dispute shall be resolved by litigation.

4.10 Notices. Any notice, demand or other communication required or desired to be given hereunder shall be in writing and shall be effective if delivered to the address of record of the other party. Such address for either party may, from time-to-time, change following due notification of the other party of such change.

City of Abilene
ATTN: City Manager
P.O. Box 519
Abilene, KS 67410

Heartland to: Heartland HOUSING PARTNERS, LLC
c/o Ross Vogel
4851 Meadowbrook Parkway
Unit 149
Prairie Village, KS 66207

4.11 Counterparts This Agreement may be executed in counterparts which when taken together will constitute one instrument. Any copy of this Agreement with the original signatures of all parties appended will constitute an original.

4.12 General Interpretative Principles Unless the context otherwise requires, this Agreement shall not be construed in favor of or against any party hereto and, except as otherwise herein specifically provided, all of the words and phrases contained herein shall be given their usual and ordinary meanings.

4.13 Binding Effect This agreement shall be binding and conclusive upon and inure to the benefit of the respective parties hereto and their successors and permitted assigns.

4.14 Assignment Due to the unique qualifications and capabilities of Heartland, the responsibilities provided for under this Agreement shall not be assignable, either in whole or in part, without Abilene's prior written consent, which shall not be unreasonably withheld.

4.15 Severability; Reservation of Rights. If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this

Agreement shall continue in full force and effect. A delay or failure in enforcing any right or remedy afforded hereunder or by law shall not prejudice or operate to waive that right or remedy or any other right or remedy, including any remedy for a future breach of this Agreement, whether of a like or different character.

4.16 Non-appropriation. Abilene is subject to Kansas budget and cash basis laws, and operates on a calendar fiscal year. In the event that this Agreement involves financial obligations spanning multiple fiscal years for Abilene, it is subject to annual appropriation by Abilene's governing body for future fiscal years. If the governing body does not appropriate the funds necessary to fulfill Abilene's financial obligations pursuant to this Agreement, Abilene shall so notify the other parties to this Agreement and this Agreement shall be null and void for purposes of the fiscal year(s) affected by the decision of the governing body not to appropriate.

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EXHIBIT A
DESCRIPTION OF DEVELOPMENT

EXHIBIT B

Section 1. RHID Compensation – Unit Sale Payments

The City agrees to pay Heartland Five Thousand Dollars (\$5,000.00) after the issuance of a construction permit, or at the beginning of construction, whichever is sooner, for each Unit (as hereinafter defined) to be constructed within the Rural Housing Incentive District area, which is anticipated to include the Highlands East and West currently developed areas. For purposes of this Agreement, a Unit is comprised of one or more rooms in a residential building or residential portion of a building which are arranged, designed, used, or intended for use by one (1) family, and which includes cooking space and lawful sanitary facilities reserved for the occupants thereof. For the sake of clarification, a duplex shall be deemed two Units, a triplex shall be deemed three Units, and a fourplex shall be deemed four Units. Notwithstanding the foregoing, in no case shall Abilene be obligated to pay Heartland an amount that exceeds two-thirds (2/3rds) of the gross sale proceeds arising from Abilene's sale of the underlying lot(s) upon which any Unit(s) is/are to be constructed. By way of example, if Abilene sells two lots for a combined gross sales price of \$15,000.00, and a construction permit is issued for the construction of a triplex on such lots, Abilene shall only be obligated to pay Heartland \$10,000.00 pursuant to this section.

The lot sale payments are due within thirty (30) days of issuance of the construction permit or beginning of construction on a lot, whichever is sooner.

Section 2. RHID Compensation – Revenue Stream Payments

Upon the City's annual receipt of funds per K.S.A. 12-5250, Heartland shall be paid by the City, an amount equal to fifteen percent (15%) of the total amount distributed to the City that is attributable to the property included in the RHID.

For any calendar year in which the annual amounts distributed to the City exceed 113.33% of the total annual principal and interest payments due on the bonds issued related to the property included in the RHID, Heartland's payments shall be an amount equal to twenty five percent (25%) of the total amount distributed to the City for such calendar year.

The revenue stream payments are due within thirty (30) days of City's receipt of funds from the County or State.

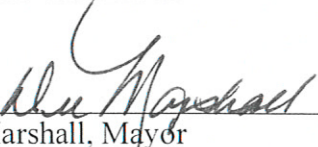
Section 3. Direct Funds/Grant from Other Sources:

Heartland will receive Fifteen (15%) percent of any direct grants or public incentives (other than those paid directly from City funds) received by the City, or lot owners, from any grant or public incentives related to the Development that Heartland assists the City with obtaining at the City's written request.

All payments shall be paid within thirty (30) days of the grant recipient receiving the grant funds.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first written above.

CITY OF ABILENE

By: 
Dee Marshall, Mayor

HEARTLAND HOUSING PARTNERS, LLC

By: 
Ross Vogel, Member