SUNFLOWER REDEVELOPMENT DISTRICT
PROJECT PLAN 1
DEVELOPMENT AGREEMENT

by and between the

CITY OF DE SOTO, KANSAS

and

PANASONIC ENERGY CORPORATION OF NORTH AMERICA

DATED AS OF OCTOBER 19, 2023

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SUNFLOWER REDEVELOPMENT DISTRICT
PROJECT PLAN 1
DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the **CITY OF DE SOTO, KANSAS**, a municipal corporation duly organized and existing under the laws of the State of Kansas as a city of the second class (the **"City"**), and **PANASONIC ENERGY CORPORATION OF NORTH AMERICA**, a corporation organized and existing under the laws of the State of Delaware (the **"Developer,"** and together with the City, the **"Parties"**), and is dated as of October 19, 2023.

RECITALS

WHEREAS, on January 20, 2022, the City created the Sunflower Redevelopment District (the **"Redevelopment District"**) pursuant to K.S.A. 12-1770 *et seq.* (the **"TIF Act"**) and Ordinance No. 2527 of the City; and

WHEREAS, pursuant to Ordinance No. 2527, the Redevelopment District consists of four redevelopment project areas, and the boundaries of Project Area 1 (**"Project Area 1"**) are depicted on **Exhibit A** and legally described on **Exhibit B**, both attached hereto; and

WHEREAS, the City adopted Tax Increment Financing Redevelopment Project Plan 1 (**"Project Plan 1"**), which was approved by the City on July 21, 2022, pursuant to Ordinance No. 2540, to govern redevelopment of Project Area 1; and

WHEREAS, the City and the Developer desire to enter into this Agreement to address matters related to development of Project Area 1 and implementation of Project Plan 1.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement.

A. The terms defined in this Article include the plural as well as the singular.

B. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.

C. All references herein to "generally accepted accounting principles" refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

D. All references in this instrument to designated "Articles," "Sections" and other subdivisions are to be the designated Articles, Sections and other subdivisions of this instrument as originally executed.

E. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

F. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

G. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The provisions of Project Plan 1, and such resolutions and ordinances of the City introduced or adopted by the City Council which designate the Redevelopment District and Project Area 1 and adopt Project Plan 1, the Community Improvement District Special Assessments, and the provisions of the TIF Act and the CID Act are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof.

Section 1.02. Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

"Action" has the meaning set forth in **Section 9.01**.

"Agreement" means this Sunflower Redevelopment District Project Plan 1 Development Agreement, as amended from time to time.

"Applicable Law and Requirements" means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities.

"CERCLA" has the meaning set forth in **Section 9.01**.

"Certificate of Redevelopment Project Costs" means a certificate relating to Redevelopment Project Costs in substantially the form attached hereto as **Exhibit D**.

"Certificate of Substantial Completion" means a certificate evidencing Substantial Completion of the Project, in substantially the form attached hereto as **Exhibit E**.

"CID Act" means K.S.A. 12-6a26 *et seq.*, as amended and supplemented from time to time.

"CID Petition" has the meaning set forth in **Section 3.02**.

"City" means the City of De Soto, Johnson County, Kansas.

"City Administrative Fee" means the annual fee payable to the City from funds held in the Tax Increment Fund as set forth in **Section 7.02**.

"City Administrator" means the City Administrator of the City.

"City Code" means the Code of the City of De Soto, Kansas.

"City Council" means the governing body of the City.

"City Event of Default" means any event or occurrence defined in **Section 10.02** of this Agreement.

"City Indemnified Parties" has the meaning set forth in **Section 9.01**.

"Commenced Operations" or **"Commencement of Operations"** shall mean that the Developer has commenced production of electric vehicle battery cells at the Project in commercial quantities.

"Community Improvement District Special Assessments" means the special assessments levied pursuant to the CID Petition and CID Act as further set forth in **Section 3.02**.

"Construction Plans" means plans, drawings, specifications and related documents, and construction schedules for the construction of the Project, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with this Agreement.

"County" means Johnson County, Kansas.

"Developer" means Panasonic Energy Corporation of North America, a corporation organized and existing under the laws of the State of Delaware, and any successors and assigns of Developer's rights under this Agreement who are approved pursuant to this Agreement.

"Developer Event of Default" means any event or occurrence defined in **Section 10.01** of this Agreement.

"Developer Indemnified Parties" has the meaning set forth in **Section 9.01**.

"Developer's Representative" means Koya Takahasi, with respect to construction matters, and Tom Fickett, with respect to finance matters, or such other person or persons at the time designated to act on behalf of the Developer in matters relating to this Agreement as evidenced by a written certificate furnished to the City containing the specimen signature of such person or persons and signed on behalf of the Developer by its general counsel.

"Event of Default" means any event or occurrence as defined in **Article X** of this Agreement.

"Excusable Delays" means any delay beyond the reasonable control of the Party affected, caused by damage or destruction by fire or other casualty, strike, shortage of materials, unavailability of labor, pandemics materially affecting Project construction or operations, 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, delay in governmental approvals, including by the City, not due to the failure of Developer to submit complete and timely applications for such approvals, failure of one Party to timely provide necessary information to the other Party (which shall not be an Excusable Delay for the party failing to provide such information), and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of all or any portion of the Project, the Water and Sewer Treatment Facility Improvements, or other construction obligation of a Party in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

"Existing System" has the meaning set forth in **Section 3.01**.

"Existing System Deadline" has the meaning set forth in **Section 3.01**.

"Fire District" means Northwest Consolidated Fire District, Johnson County, Kansas.

"Fire Station" has the meaning set forth in **Section 3.02**.

"Fire Truck" has the meaning set forth in **Section 3.02**.

"Flint" means Flint Commerce Center LLC or its affiliate(s).

"Flint Portion" has the meaning set forth in **Section 3.01**.

"Governmental Approvals" means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Project and consistent with Project Plan 1, the Site Plan, and this Agreement.

"Governmental Authorities" means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

"Hauled Load" has the meaning set forth in **Section 3.01**.

"Hauled Load Deadline" has the meaning set forth in **Section 3.01**.

"Incremental Tax Revenues" means **100%** of the incremental increase in real property taxes above the base year assessed valuation (as defined in the TIF Act) within Project Area 1 that are eligible to be captured by the Redevelopment District, determined in accordance with the TIF Act and Project Plan 1.

"Infrastructure Improvements" has the meaning set forth in **Section 3.08**.

"Initial Water Supply" has the meaning set forth in **Section 3.01**.

"Initial Water Supply Deadline" has the meaning set forth in **Section 3.01**.

"KDOT Project" has the meaning set forth in **Section 3.03**.

"MGD" means million gallons per day.

"Offsite Sewer Improvements" has the meaning set forth in **Section 3.01**.

"Parties" or **"Party"** means the City and/or the Developer.

"Pay As You Go" has the meaning set forth in **Section 4.02**.

"Permitted Subsequent Approvals" means the building permits and other Governmental Approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

"Plat" means the Final Plat of Astra Enterprise Park, Section 5, 7, 8, & 18, Township 13 South, Range 22 East, in the City of De Soto, Johnson County, Kansas, showing the proposed general patterns of streets, lots, utilities, drainage elements, rights-of-way and easements within Project Area 1, indicating the proposed manner or layout of the subdivision submitted by the Developer to the City and approved by the City pursuant to applicable City ordinances, regulations and City Code provisions, as shown on **Exhibit F**.

"Prescribed Time Period" has the meaning set forth in **Section 3.05**.

"Private TIF Expenses" means Redevelopment Project Costs of the Project that are not Public TIF Expenses.

"Progress Meetings" has the meaning set forth in **Section 3.08**.

"Project" means an advanced manufacturing facility consisting of approximately five (5) million square feet, along with existing supporting facilities, related amenities, utilities, landscaping, and all other related infrastructure improvements, including costs to finance the project, as further described in Project Plan 1 and as generally depicted in **Exhibit G**.

"Project Area 1" means Project Area 1 within the Redevelopment District, the boundaries of which are depicted in **Exhibit A** hereto and legally described in **Exhibit B** hereto.

"Project Budget" means the project budget for Redevelopment Project Costs as set forth in **Exhibit H** hereto.

"Project Plan 1" means the Tax Increment Financing Redevelopment Project Plan 1 for the Sunflower Redevelopment District, which was approved by the City on July 21, 2022, pursuant to Ordinance No. 2540.

"Public TIF Expenses" means Redevelopment Project Costs related to the Offsite Sewer Improvements, Water and Sewer Treatment Facility Improvements, Fire Station, Fire Truck, KDOT Project, Water Tower, Sunk Costs, and Series 2022-A Bonds Defeasance Amount.

"RCRA" has the meaning set forth in **Section 9.01**.

"Redevelopment District" means the Sunflower Redevelopment District, created by the City on January 20, 2022, by the passage of Ordinance No. 2527, pursuant to the TIF Act, as may be amended and supplemented.

"Redevelopment Project Costs" means "redevelopment project costs" as defined in the TIF Act and as set forth in Project Plan 1, the Project Budget, and this Agreement.

"Series 2022-A Bonds" means the City's $13,375,000 General Obligation Improvements Bonds, Series 2022-A, dated December 15, 2022.

"Series 2022-A Bonds Defeasance Amount" has the meaning set forth in **Section 3.05.B**.

"Site Plan" means the final development plan or plans for Project Area 1 attached hereto as **Exhibit G** and any amendments thereto submitted by the Developer to the City and approved by the City pursuant to applicable City ordinances, regulations and City Code provisions.

"Sunflower" means Sunflower Redevelopment, LLC, a Kansas limited liability company.

"Statutory Limitations" means, with respect to the City, the Kansas Cash-Basis Law (K.S.A. 10-1101 *et seq.*) and the Budget Law (K.S.A. 79-2925 *et seq.*).

"Substantial Completion" has the meaning set forth in **Section 5.07**.

"Sunk Costs" has the meaning set forth in **Section 3.05**.

"Tax Increment Fund" means the Sunflower Redevelopment District Project Plan 1 Tax Increment Fund, created pursuant to the TIF Act and **Section 7.01** hereof.

"TIF Act" means the Kansas Tax Increment Financing District Act, K.S.A. 12-1770 *et seq.*, as amended and supplemented from time to time.

"Tort Claims Act" means the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).

"TIF Financing Conditions" means that a Certificate of Substantial Completion for the Project has been executed by the City, each payment listed under **Section 2.04.E** and **Section 2.04.F** has been paid by Developer or provided by another source of funds, one hundred percent (100%) of the costs of the Water and Sewer Treatment Facility Improvements, not to exceed the cap in **Section 3.05.B.2**, has been paid by Developer or provided by another source of funds, one hundred percent (100%) of the Developer's portion of the costs of the Fire Station and Fire Truck in the amount of $11,450,418 has been paid by Developer or provided by another source of funds, and one hundred percent (100%) of the Developer's portion of the costs of the KDOT Project in the amount of $9,570,000 has been paid by Developer or provided by another source of funds.

"Water and Sewer Treatment Facility Improvements" has the meaning set forth in **Section 3.05**.

"Water Tower" has the meaning set forth in **Section 3.04**.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations of City. The City makes the following representations and warranties as of the date hereof, which to the best of the City's actual knowledge, are true and correct on the date hereof:

A. Due Authority. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

B. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. No Litigation. To the best of the City's knowledge, there is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to Project Plan 1 or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

D. Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

E. No Default. No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an Event of Default in any material respect on the part of the City under this Agreement.

Section 2.02. Representations of the Developer.

The Developer makes the following representations and warranties as of the date hereof, which to the best of the Developer's actual knowledge, are true and correct on the date hereof:

A. Due Authority. The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. No Litigation. No litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Project, the Developer or any officer, director, member or shareholder of the Developer with respect to Project Plan 1 or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

D. No Material Change. (1) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (2) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could affect the Developer's ability to perform its obligations pursuant to this Agreement since August 1, 2023.

E. Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the Developer of this Agreement.

F. No Default. No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an Event of Default in any material respect on the part of the Developer under this Agreement.

G. Approvals. Except for Permitted Subsequent Approvals, the Developer has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as heretofore conducted by it with respect to Project Plan 1 and this Agreement and to own or lease and operate its properties as now owned or leased by it with respect to Project Plan 1 and this Agreement. Except for Permitted Subsequent Approvals, the Developer has obtained all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to acquire, construct, equip, operate and maintain the Project. The Developer reasonably believes that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will be obtained in due course. Developer represents that, to the extent necessary, Panasonic Holdings Corporation has duly approved proceeding with the Project.

H. Construction Permits. Except for Permitted Subsequent Approvals, all governmental permits and licenses required by applicable law to construct, occupy and operate the Project have been issued and are in full force and effect or, if the present stage of development does not allow such issuance, the Developer reasonably believes, after due inquiry of the appropriate governmental officials, that such permits and licenses will be issued in a timely manner in order to permit the Project to be constructed.

I. Compliance with Laws. The Developer is in material compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, and operations as contemplated by this Agreement.

J. Other Disclosures. The information furnished to the City by the Developer in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

K. Waiver. The Developer understands and accepts that the City reserves the right to grant future economic development incentives on other projects in amounts different than those granted to the Developer under this Agreement. The Developer expressly waives any right to request modification or amendment of the incentives established under this Agreement that might arise by such future grant of economic development incentives for other projects by the City.

L. Project. The Developer represents and warrants that Project Area 1 is sufficient to construct the Project as contemplated in Project Plan 1 and this Agreement.

Section 2.03. Developer's Ownership of Project Area 1. Developer represents that it owns legal title to all real property within Project Area 1, including rights to receive reimbursements for Redevelopment Project Costs from the Tax Increment Fund. All of the real property acquired by the Developer, subject to the rights of transfer and assignment under **Article VIII** and further subject to **Section 6.04**, shall be held in the name of the Developer and shall be subject to the terms, conditions and covenants contained in this Agreement and in Project Plan 1.

Section 2.04. Conditions to the Effectiveness of this Agreement. Contemporaneously with the execution of this Agreement, and as preconditions to the effectiveness of this Agreement:

A. The Developer shall submit to the City a copy of the Developer's Articles of Incorporation certified by the Secretary of State of the State of Delaware.

B. The Developer shall submit to the City a copy of the Bylaws adopted by the Developer. Such copy may be redacted to protect the confidential information of the Developer as long as the redacted version provides enough information for the City to determine, in its reasonable discretion, that the Developer is validly existing and duly authorized to enter into this Agreement.

C. The Developer shall submit to the City a certificate of good standing dated within one month of the date of this Agreement certified by the Secretary of State of the State of Kansas.

D. The Developer shall submit to the City a legal opinion from counsel to the Developer in form and substance acceptable to the City regarding (i) the due organization of Developer and the power and authority of the Developer to execute this Agreement, and (ii) the enforceability of this Agreement against Developer.

E. The City hereby confirms receipt from Developer of the following amounts prior to the date hereof:

1. the Deposit in the aggregate amount of $550,000 as set forth in **Section 3.06.B**.

2. the building permit fees for permits issued as of the date hereof in the amount of $955,105 as set forth in **Section 3.07**.

3. the excise tax fee in the amount of $1,257,785 as set forth in **Section 3.07**.

F. Within five (5) days of the execution of this Agreement, the Developer shall pay to the City or its designee, as applicable:

1. a portion of the costs of the Water and Sewer Treatment Facility Improvements in the amount of $16,100,000.

2. that portion of the costs of the Water Tower in the amount of $11,000,000, as set forth in **Section 3.04**.

3. the Series 2022-A Bonds Defeasance Amount, as set forth in **Section 3.05.B**.

4. the Sunk Costs in the amount of $200,000 as set forth in **Section 3.05.B.1**.

ARTICLE III

PUBLIC INFRASTRUCTURE AND SERVICES

Section 3.01. Offsite Sewer Improvements.

A. Developer Obligations. Developer will construct, or cause to be constructed, offsite sewer line

improvements to serve Project Area 1 as generally depicted in **Exhibit I** (the "**Offsite Sewer Improvements**"). As shown on **Exhibit I**, a portion of the Offsite Sewer Improvements consisting of approximately 1,060 linear feet of 42" pipe is the responsibility of Flint (the **"Flint Portion"**). The City will work in good faith to obtain reimbursement of the costs associated with the Flint Portion from Flint and disburse such funds to Developer promptly upon the City's receipt from Flint. If such reimbursement has not been received by Developer within six months of the completion of the Offsite Sewer Improvements, then Developer shall be the City's designee to assert the City's rights with regards to Flint and seek reimbursement from Flint on behalf of the City through all legal remedies. Developer will be responsible for designing, constructing, and advancing all costs associated with the Offsite Sewer Improvements. To the extent allowable under the TIF Act, the costs of the Offsite Sewer Improvements will be Redevelopment Project Costs to be reimbursed from the Tax Increment Fund.

B. City Obligations.

1. City acknowledges that Developer is relying on City to procure necessary easements and property rights for Developer's construction of the Offsite Sewer Improvements, and City's delay would increase Developer's construction costs and cause delay to Developer's construction and production schedule. Accordingly, City will procure all easements and other property rights necessary for the construction of the Offsite Sewer Improvements such that construction of the Offsite Sewer Improvements can commence on all parcels that will contain the Offsite Sewer Improvements along and adjacent to 95th Street by December 15, 2023, and will use its best efforts to acquire the remainder of easements and property rights by December 15, 2023 but no later than January 31, 2024. Additionally, the City will ensure that Developer and its contractors can avail itself of the City's property rights in order to construct the Offsite Sewer Improvements. To the extent the City has procured such easements or property rights as of the date of this Agreement, the City hereby grants, and as such easements and property rights are obtained in the future the City will grant pursuant to this Agreement with no further action of the City, Developer, and its contractors the right to enter the parcels that will contain the Offsite Sewer Improvements for the purpose of constructing the Offsite Sewer Improvements. Other than naming the City as an additional insured in the customary policies and bonds that Developer will obtain, the City will ensure that such property rights do not require Developer to name any other parties as additional insureds. For the sake of clarity, at an estimated total cost of $638,520, the cost of procuring such easements and other property rights is a cost of the Offsite Sewer Improvements and will be advanced to the City by Developer pursuant to subsection A. above. City will ensure that the Water and Sewer Treatment Facility Improvements conducted by the City pursuant to **Section 3.05** below do not prevent the connection of the Offsite Sewer Improvements to the existing water and sewer plant ("**Existing System**") in a timely manner and will ensure that all other work and coordination necessary to connect the Offsite Sewer Improvements to the Existing System is completed such that the Existing System is functioning and accepting up to 0.2 MGD of Developer's effluent emissions by September 1, 2024 (the "**Existing System Deadline**").

2. In order to facilitate start-up and commissioning of the Project, the City will be prepared to accept the amounts of effluent (collectively, the **"Hauled Load"**) by the dates (collectively, the **"Hauled Load Deadline"**) set forth in the table below until the Offsite Sewer Improvements can be connected to the Existing System.

Hauled Load amounts (up to)	**Hauled Load Deadline**
75,000 gallons per day	April 1, 2024
200,000 gallons per day	September 1, 2024

The Parties agree that the chemical composition of the Hauled Load will not be permitted to interfere with the operation and performance of the Existing System. In the event this occurs, the Parties agree

to work cooperatively to address and/or prevent the introduction of pollutants into the sewer plant that would pass through inadequately treated and hinder the City's ability to comply with its discharge permit, sludge use, and disposal requirements.

As further set forth in **Article V** hereof, the design and construction of the Offsite Sewer Improvements will be overseen by the City in its normal course regarding such public improvements, and upon completion Developer will dedicate the Offsite Sewer Improvements to the City at no cost to the City pursuant to a turnover agreement in substantially the form attached hereto as **Exhibit J**.

3. Subject to Excusable Delays and Developer's prompt payment of all costs thereof as set forth herein, the City will also ensure that the Project is supplied with per day quantities of treated water ("**Initial Water Supply**") according to the following chart (the "**Initial Water Supply Deadline**"):

Initial Water Supply (up to)	Initial Water Supply Deadline
0.2 MGD	April 1, 2024
1.475 MGD	May 5, 2025

The City will use its best efforts to meet the growing water supply demands of Developer between April 1, 2024 and May 5, 2025.

C. Remedies. Subject to Excusable Delay and Statutory Limitations, if the City fails to ensure that the Hauled Load can be accepted by the Hauled Load Deadline and/or provide the Initial Water Supply by the Initial Water Supply Deadline, then the City will pay the Developer's actual damages under its contracts with its contractors doing the Infrastructure Improvements and constructing the Project, upon demand and with appropriate documentation provided, in an aggregate amount not to exceed $300,000, which the Parties agree the City may pay to Developer in the form of a credit on development fees or related costs typically charged by the City in its ordinary course.

Section 3.02. Fire Protection.

A. Petition to Attach to Fire District. Developer has petitioned (or will petition promptly upon execution of this Agreement) to attach to the Fire District in order for the Fire District to provide service to the site of the Project.

B. Fire Protection Facilities. Subject to the attachment of the site of the Project to the Fire District's service territory, the Fire District, in conjunction with the County, have declared an intent to construct, furnish, and equip a fire station to serve Project Area 1 (the "**Fire Station**"), at an estimated cost of $17,150,418, and purchase a new aerial fire truck capable of serving the Project (the "**Fire Truck**"), at an estimated cost of $1,800,000. If sufficient funds to construct the Fire Station and purchase the Fire Truck are not available to the County and/or Fire District (as evidenced by formal action of a governing body dedicating such funds, with funds to be made available not later than December 7, 2023) by December 1, 2023, Developer will contribute up to $11,450,418 to the City or its designee by December 7, 2023, such amount consisting of (i) the cost of the Fire Truck and (ii) a portion of the cost of the Fire Station. To the extent Developer pays such costs of the Fire Truck or Fire Station and such costs are lower than contemplated by this Agreement, then Developer will be refunded the full amount by which funds exceed such costs in the case of the Fire Truck and its pro rata share in the case of the Fire Station. To the extent that the cost of either of the Fire Truck or Fire Station are higher than contemplated by this Agreement, Developer will have no responsibility for any such higher costs. The City will use good faith efforts to coordinate with the County and Fire District to ensure that construction of the Fire Station does not impede Developer's access to Project Area 1 along String Town Road. To the extent

allowable under the TIF Act, the costs of the Fire Station and the Fire Truck paid by the Developer will be Redevelopment Project Costs to be reimbursed from the Tax Increment Fund.

C. Fire Protection Services; CID. The Developer has executed or will execute a petition and waiver of special assessments proceedings in substantially the forms attached as **Exhibit K** (as may be revised to the satisfaction of the parties hereto, the "**CID Petition**") requesting the creation of a community improvement district upon Project Area 1 pursuant to the CID Act to impose special assessments (the **"Community Improvement District Special Assessments"**) which will be dedicated to finance certain costs of fire protection and other municipal services. Developer will pay each installment of the Community Improvement District Special Assessments on or before each December 20 during the term of the Community Improvement District Special Assessments; *except*, Developer will pay to the City $800,000 no later than January 31, 2024, and the City will deem such payment as satisfaction of the first installment of the Community Improvement District Special Assessments, and no Community Improvement District Special Assessments will be certified to the County in calendar year 2024 to the extent the City timely receives such payment. Further, beginning in 2025 and for every year thereafter in which the Community Improvement District Special Assessments are imposed, Developer may pay to the City by January 31 of each such year the applicable amount of Community Improvement District Special Assessments that would be imposed for such year (as set forth in the CID Petition), and the City will deem such payment as satisfaction of the applicable installment of the Community Improvement District Special Assessments, and no Community Improvement District Special Assessments will be certified to the County for such calendar year to the extent the City timely receives such payment. If Developer does not make such annual payment by January 31, Developer will promptly notify the City that Developer does not intend to make such payment, and the City will certify to the County the Community Improvement District Special Assessments for such calendar year.

The City will administer disbursement of the revenues received by the City pursuant to this subparagraph and from the Community Improvement District Special Assessments in the manner set forth in the CID Petition and the CID Act, and Developer hereby disclaims and waives any rights to such revenues. Additionally, the City intends to require future development of property adjacent to Project Area 1 (generally consisting of property within the Plat) to be responsible for payment of charges and/or assessments similar to the Community Improvement District Special Assessments and will agree to a commensurate reduction in the Community Improvement District Special Assessments to the extent such future development occurs and becomes responsible for such payments.

Section 3.03. KDOT Road Improvements. The Kansas Department of Transportation ("**KDOT**") is constructing certain road improvements to serve Project Area 1 (the "**KDOT Project**") at an estimated cost of $84,200,000. If sufficient funds to construct the KDOT Project are not available to KDOT, Developer will contribute up to a maximum of $9,570,000 for the costs of the KDOT Project. If a Developer contribution to the KDOT Project is necessary, Developer will pay to the City or its designee a portion of the cost of the KDOT Project up to a maximum of $9,570,000 promptly upon request from the City or its designee, which may be made in one or multiple requests, and in any event no later than thirty (30) days from receipt of such request. Based on representations from KDOT to the City, the City expects that such request, if any, will occur in 2025. To the extent allowable under the TIF Act, the costs of the KDOT Project paid by the Developer will be Redevelopment Project Costs to be reimbursed from the Tax Increment Fund.

Section 3.04. Water Tower. The City will construct a water tower as generally depicted in **Exhibit L** to serve Project Area 1 (the "**Water Tower**") at an estimated cost of $11,000,000, and in any case not to exceed $15,000,000. Within five (5) days of the execution of this Agreement, Developer will pay to the City the estimated costs of the Water Tower in the amount of $11,000,000. If the costs of the Water Tower exceed $11,000,000, Developer will pay to the City or its designee a portion of the cost of the Water Tower up to a maximum of $15,000,000 in aggregate promptly upon request from the City or its designee, which may be made in one or multiple requests, and in any event no later than thirty (30) days from receipt of such request.

Except for funds deposited with the City by Developer for such purpose, the City will pay no costs of the Water Tower. To the extent allowable under the TIF Act, the costs of the Water Tower paid by the Developer will be Redevelopment Project Costs to be reimbursed from the Tax Increment Fund.

Section 3.05. Water and Sewer Treatment Facility Improvements.

A. Construction Schedule. Subject to Excusable Delays and Developer's prompt payment of all costs thereof as set forth herein, the City will diligently pursue completion of certain water and sewer treatment plant and related improvements necessary to serve the Project at a cost currently estimated to be $87,000,000 (collectively, the **"Water and Sewer Treatment Facility Improvements")** by May 5, 2025. Upon reasonable advance notice, the City shall meet with a Developer representative to review and discuss the design and construction of the Water and Sewer Treatment Facility Improvements in order to enable the Developer to monitor the status of design and construction and to determine that the Water and Sewer Treatment Facility Improvements are being performed and completed in accordance with this Agreement.

B. Payment of Water and Sewer Treatment Facility Improvements and Series 2022-A Bonds.

1. Within five (5) days of the execution of this Agreement Developer will pay to the City or its designee (i) a portion of the costs of the Water and Sewer Treatment Facility Improvements in the amount of $16,100,000, (ii) the Sunk Costs (as defined below) in the amount of $200,000, and (iii) an amount sufficient to defease all principal and interest to September 1, 2030 (the first optional call date of the Series 2022-A Bonds) of $6,785,000 principal amount of the Series 2022-A Bonds, to be confirmed by the City's financial advisor or other third-party professional, plus associated costs of counsel, advisors, and escrow trustee, in an aggregate amount not to exceed $7,000,000 (the **"Series 2022-A Bonds Defeasance Amount"**).

2. Thereafter, Developer will, promptly upon request from the City (which may be made in one or multiple requests), and in any event no later than thirty (30) days from receipt of such request(s) (the "**Prescribed Time Period**"), pay to the City or its designee all costs of the Water and Sewer Treatment Facility Improvements in a maximum amount of $100,000,000, such cap to include any costs paid toward the Series 2022-A Bonds Defeasance Amount but exclude the Sunk Costs.

3. Developer acknowledges that (i) the City's current expectations for funding needs to enter into construction contracts for the costs of the Water and Sewer Treatment Facility Improvements is set forth below, (ii) Developer must deposit sufficient funds with the City prior to the City's execution of each construction contract for the Water and Sewer Treatment Facility Improvements, and (iii) any delay in the City's receipt of such funds would materially adversely affect the City's ability to deliver the Water and Sewer Treatment Facility Improvements. Developer hereby represents that it has the financial wherewithal and ability to timely fund such costs in accordance with the approximate schedule below and as otherwise set forth in the Section.

Approximate Date of Request for Funding	**Current Estimated Amount of Developer Payment for Water and Sewer Treatment Facility Improvements**
Concurrent with Execution of Agreement	$16,100,000 (§2.04.F.1) $7,000,000 (§2.04.F.3)
On or About Nov. 9, 2023	$19,500,000
On or About Jan. 15, 2024	$34,000,000
On or About Jan. 25, 2024	$10,400,000
Total Amounts Expected	**$ 87,000,000**

4. Except for funds deposited with the City (or the escrow trustee for the Series 2022-A Bonds Defeasance Amount) by Developer for such purposes, the City will pay no costs of the Water and Sewer Treatment Facility Improvements. If any of Developer's payments for the Water and Sewer Treatment Facility Improvements contemplated by this section are not received by the City within the Prescribed Time Period, the City is entitled to a day-for-day delay of the completion date of the Water and Sewer Treatment Facility Improvements set forth above.

5. Developer acknowledges that, at the direction of the Developer and with water usage and sewer flow demand projections provided by the Developer in December of 2022, the City executed contracts and incurred costs for the planning, design, regulatory compliance, and construction of the Water and Sewer Treatment Facility Improvements of a scope and scale that will meet the stated needs of the Developer, and that Developer subsequently lowered the water usage and sewer flow demand projections resulting in duplications of planning, coordination, and design efforts by the City (the **"Sunk Costs"**). The Sunk Costs spent by the City and its consultants total $200,000, and within five (5) days of the execution of this Agreement Developer will fully reimburse the City for such Sunk Costs.

6. To the extent allowable under the TIF Act, the costs of the Water and Sewer Treatment Facility Improvements paid by the Developer will be Redevelopment Project Costs to be reimbursed from the Tax Increment Fund. Any amount of funds deposited with the City by Developer for payment of the Water and Sewer Treatment Facility Improvements that remains following completion of such improvements and payment in full of all City costs will be returned to the Developer without interest.

C. Remedies.

1. Subject to Excusable Delay, if (i) the City fails to complete the Water and Sewer Treatment Facility Improvements by the deadline set forth above, (ii) a contractor of the City informs Developer in writing that the City is behind schedule in completing the Water and Sewer Treatment Facility Improvements, or (iii) Developer reasonably determines in good faith that it is impossible for the City to complete the Water and Sewer Treatment Facility Improvements by the deadline set forth above, then Developer will be entitled to the following remedies:

Delay	**Developer Remedy**
2 months or less	No remedy
Greater than 2 months up to 6 months	Developer and City will enter good-faith discussions regarding expedient completion of the Water and Sewer Treatment Facility Improvements.
Greater than 6 months	Developer may, upon providing written notice to the City and allowance for the same cure period as prescribed for a City Event of Default under **Article X** hereof, perform any and all such work and labor necessary as reasonably determined by Developer to complete the Water and Sewer Treatment Facility Improvements. To the extent allowable under the TIF Act, costs expended by Developer for such purpose will be Redevelopment Project Costs to be reimbursed from the Tax Increment Fund.

D. Developer Sewer Discharge. Developer and the Project will comply with all standards and requirements set forth by the Kansas Department of Health and Environment, including pretreatment of sewer discharge from the Project.

E. Commodity Charges Discount. During the Term of this Agreement, and so long as the Developer is not in default of this Agreement, Developer will be provided a 25% reduction in City commodity charges for water and sewer utilities as such charges are defined in the City's fee resolution applicable at the time of such service. Developer will timely pay when due all utility charges and fees properly applicable to the Project.

Section 3.06. Deposit for Third Party Expenses.

A. Identification of Expenses. The Developer will promptly pay the following third-party expenses of the City related to the Project (collectively, the "**Third Party Expenses**"), which will be billed on a pass-through basis with no City administration fee added:

1. building inspection costs (estimated to total approximately $1,000,000);

2. plan review costs (estimated to total approximately $700,000);

3. Owners' Representatives' fees for public construction projects, including the Offsite Sewer Lines, KDOT Project, and Water Tower (estimated to total approximately $175,000, but not to exceed $200,000); and

4. out-of-pocket expenses incurred by the City to the date hereof relating to this Agreement using Gilmore & Bell, P.C. as counsel to the City, Columbia Capital as the City's financial advisor, and such other special consultants and advisors as the City deems reasonably necessary in the amount of $200,000, which the City confirms was received prior to the date hereof; provided, expenses for such consultants for services rendered in relation to a bond financing, including any financing of the Water and Sewer Treatment Facility Improvements, will be handled separately from this Agreement, and fees for such consultants relating to a bond financing would be paid from proceeds of such bonds; provided further that should the City desire to engage special consultants and advisors that are not engaged as of the date hereof (excluding an escrow trustee and/or verification agent relating to the defeasance of the Series 2022-A Bonds, which will be factored into the Series 2022-A Bonds Defeasance Amount), Developer will have the right to consult on the City's engagement of such special consultants and advisors; notwithstanding anything herein to the contrary, Developer will have no responsibility to pay any expense for any single special consultant or advisor not engaged as of the date of hereof which exceed $50,000 for that special consultant or advisor unless Developer has approved such special consultant or advisor in advance and such approval will not be unreasonably withheld, conditioned or delayed.

B. Deposit. In order to insure the prompt and timely payment of the Third Party Expenses, the Developer has established a fund with the City prior to the execution of this Agreement in the initial amount of Three Hundred and Fifty Thousand Dollars ($350,000), increased by an additional amount of Two Hundred Thousand Dollars ($200,000), for an aggregate amount of Five Hundred and Fifty Thousand Dollars ($550,000) (the "**Deposit**"), receipt of which is hereby acknowledged by the City. In accordance with this Agreement, the City shall pay Third Party Expenses from the Deposit and shall promptly upon request submit an itemized statement therefor to the Developer. At such time Developer receives notice from the City that the Deposit balance is less than Fifty Thousand Dollars ($50,000.00), Developer shall provide additional funds to re-establish the Deposit (the "**Additional Funds**") so that there is always a Fifty Thousand Dollar ($50,000.00) cash balance available against which additional Third Party Expenses may be applied on a current basis. The City shall submit monthly statements itemizing the Third Party Expenses paid from the Deposit during the preceding month for any month during which the City makes a payment from the Deposit. Developer shall supply the Additional Funds in a timely manner, not to exceed thirty (30) days after Developer's receipt of the

City's request so that City activities may continue without interruption. If such funds are not so received, the unpaid balance shall be subject to a penalty of one and one half percent (1.5%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%) per annum.

C. Disbursement of Funds. The City shall disburse the Additional Funds to either replenish the Deposit if the Third Party Expenses for which said Additional Funds were given have been paid by the City or to pay the Third Party Expenses identified on the monthly statements if said charges have not yet been paid by the City. Upon reasonable notice, the City shall make its records available for inspection by Developer with respect to such disbursements. Any amount of the Deposit or Additional Funds held by the City following completion of the Project (as evidenced by the City's execution of the Certificate of Substantial Completion regarding the Project) and payment in full of all Third Party Expenses incurred to such date will be returned to the Developer without interest.

D. Ongoing Third Party Expenses. Developer acknowledges that, during the Term and following completion of the Project and the City returning to Developer any remaining Deposit or Additional Funds as set forth in the subparagraph above, the ongoing interpretation, administration, amendment, or performance of this Agreement and related activities will result in additional Third Party Expenses, including engaging third-party consultants to assist with such activities. Developer will be responsible for payment of such reasonable Third Party Expenses as set forth in this Section but only to the extent the Third Party Expenses incurred in any calendar year exceed the City Administrative Fee received by the City during such calendar year. Developer acknowledges that the City Administrative Fee will not be accessible for use by the City until the effective date of Project Plan 1.

Section 3.07. Development and Permitting Fees.

A. Discount. Developer shall receive a fifty percent (50%) discount on (i) building permit fees for any permits pulled for the Project on or before April 1, 2025, and (ii) excise tax applicable to the Project.

B. Receipt of Development and Permitting Fees. The City acknowledges receipt of certain development and permitting costs prior to execution of this Agreement, consisting of: (i) building permit fees in the amount of $955,105 and (ii) excise tax in the amount of $1,257,785. Such fees account for the fifty percent (50%) discount referenced in paragraph A of this Section.

Section 3.08. City and Developer Coordination.

A. Coordination. Developer and the City will continue to coordinate in good faith to keep all the work contemplated by this **Article III** (the "**Infrastructure Improvements**") on schedule and on budget. The Parties will schedule and conduct meetings at least every two (2) weeks unless otherwise mutually determined to discuss such matters as procedures, progress, coordination, communication and scheduling of the work on the Project and Infrastructure Improvements (the "**Progress Meetings**"). Each of the City and Developer shall designate the representatives of the City and Developer, respectively, to be present at the Progress Meetings. Developer will timely submit and the City will expeditiously consider approval of all plans and permits required for the Infrastructure Improvements.

B. Audit. The City acknowledges that Developer is committing to expending considerable sums of money that will fund the construction of infrastructure that will benefit the City and its citizens. Accordingly, until the Infrastructure Improvements have been completed, with reasonable advance notice and during normal business hours, Developer shall have the right and authority to review, audit, and copy, from time to time, all the City's books and records relating to the Infrastructure Improvement costs (including, but not limited to, all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices) relating to the Infrastructure Improvements.

C. Inspection. Developer's Representative, or a person or persons designated by the Developer's Representative, has the right to attend all significant meetings concerning the design and construction of the Infrastructure Improvements. The City shall advise the City's lead consultants on the Infrastructure Improvements of this right and request that said consultants use reasonable efforts to provide reasonable advance notice of such significant meetings to the Developer's Representative. In cases where advance notice is not possible, such as in cases of emergency, or where the Developer's Representative is unable to attend, the City or its consultants shall promptly, upon request of Developer's Representative, meet, virtually or in person, with Developer's Representative or its designee to bring Developer's Representative or its designee up to speed on the information conveyed and the decisions made at such significant meetings.

D. Design. The Parties acknowledge that in many cases the designs for the Infrastructure Improvements are preliminary and not final. Therefore, the Parties agree to collaborate in good faith to achieve mutually agreeable final designs for each component of the Infrastructure Improvements. Such mutually agreeable design must meet all applicable regulatory requirements.

E. Value engineering. The Parties agree to use best efforts to seek the design and construction of the Infrastructure Improvements at the lowest cost possible to achieve the objectives of each Party. Such efforts will include value engineering whenever practicable.

ARTICLE IV

REIMBURSEMENT OF REDEVELOPMENT PROJECT COSTS

Section 4.01. Developer to Advance Costs and Construct Project. Except as otherwise specifically set forth in this Agreement, the Developer agrees to advance all costs as necessary to complete the Project within the deadline set forth in **Section 5.02** hereof.

Section 4.02. City's Obligation to Reimburse Developer. Subject to the terms of this Agreement and the conditions in this Section, the City agrees, solely and exclusively from funds accrued in the Tax Increment Fund, to reimburse Developer or its designee for Redevelopment Project Costs in an amount not to exceed the Project Budget set forth on **Exhibit H**. Developer will be reimbursed for Redevelopment Project Costs from the Tax Increment Fund by the City on a monthly basis as funds are collected in the Tax Increment Fund (the **"Pay As You Go"** method) in accordance with **Section 7.01**. The City shall have no obligation to reimburse Developer unless at least ten thousand dollars ($10,000) is available in the Tax Increment Fund after accounting for the City Administrative Fee. Nothing in this Agreement shall obligate the City to reimburse Developer for any cost that is not a "Redevelopment Project Cost" as defined by the TIF Act. No bonds secured by the Incremental Tax Revenues will be issued by the City for the Project, and the City will not consent to, and the Developer is prohibited from seeking, the issuance of municipal bonds by another party to be secured by the Incremental Tax Revenues. In the event that Developer has been reimbursed for all Redevelopment Project Costs incurred directly by Developer or on behalf of Developer and monies remain in the Tax Increment Fund, then Sunflower is Developer's designee to submit and receive reimbursement of Redevelopment Project Costs pursuant to this **Section 4.02**, **Section 7.01**, the Pre-Development Agreement between Sunflower and the City, and as may be further detailed in a forthcoming Master Development agreement between Sunflower and the City.

Section 4.03. Developer Reimbursement Process.

A. Certificate of Redevelopment Project Costs. All requests for reimbursement of Redevelopment Project Costs shall be made in a Certificate of Redevelopment Project Costs in substantial

compliance with the form attached hereto as **Exhibit D**. The Developer shall not submit to the City more than one Certificate of Redevelopment Project Cost per month. The Developer shall provide itemized invoices, receipts or other information as requested by the City, if any, to confirm that any such cost is so incurred and does so qualify as a Redevelopment Project Cost.

B. Inspection. The City reserves the right to have its engineer or other agents or employees inspect all work in respect of which a Certificate of Redevelopment Project Costs is submitted, to examine the Developer's and others' records relating to all expenses related to the invoices to be paid, and to obtain from such parties such other information as is reasonably necessary for the City to evaluate compliance with the terms hereof.

C. City Review. The City shall have 30 calendar days after receipt of any Certificate of Redevelopment Project Costs to review and respond by written notice to the Developer. If the submitted Certificate of Redevelopment Project Costs and supporting documentation demonstrates that (1) the request relates to the Redevelopment Project Costs; (2) the expense was incurred; (3) Developer is not in material default under this Agreement; and (4) there is no fraud on the part of the Developer, then the City shall approve the Certificate of Redevelopment Project Costs and make, or cause to be made, reimbursement from the Tax Increment Fund in accordance with this **Section 4.03** and **Article VII** hereof, within thirty (30) days of the City's approval of the Certificate of Redevelopment Project Costs. If the City disapproves of the Certificate of Redevelopment Project Costs, the City shall notify the Developer in writing of the reason for such disapproval within such 30-day period, whereupon the Developer shall have the right to identify and substitute other costs for reimbursement with a supplemental application for payment, subject to the limitations of this Agreement, or otherwise satisfy the conditions for approval set forth in this Section. Approval of the Certificate of Redevelopment Project Costs will not be unreasonably withheld and the City's identification of any ineligible costs shall not delay the City's approval of the remaining costs on the Certificate of Redevelopment Project Costs that the City determines to be eligible.

D. Insufficient Tax Increment Fund. If the Developer submits a Certificate of Redevelopment Project Costs for an amount greater than the current balance in the Tax Increment Fund, any unpaid Redevelopment Project Costs described in such Certificate shall remain approved by the City and shall be paid within thirty (30) calendar days of the date additional funds are deposited in the Tax Increment Fund, to the extent of such funds, until the Developer is fully reimbursed for the Redevelopment Project Costs described in such Certificate.

Section 4.04. Right to Inspect and Audit. The Developer agrees that, up to three (3) years after completion of the Project, the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, audit, and copy, from time to time, all the Developer's books and records relating to the Redevelopment Project Costs (including, but not limited to, all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices).

Section 4.05. Limitation on City's Payment Obligations. Notwithstanding any other term or provision of this Agreement, the City's obligation to reimburse Developer for Redevelopment Project Costs shall be limited to monies actually received by the City and deposited in the Tax Increment Fund on or before the expiration of Project Plan 1 (currently March 31, 2045) and shall not be payable from any other source.

ARTICLE V

THE PROJECT

Section 5.01. Scope of Project. Subject to the terms and conditions of Project Plan 1 and this Agreement, the Developer shall construct, or cause to be constructed, the Project and related street, sidewalk, curb and gutter, storm and sanitary sewer, water lines, street lighting, retaining walls, landscaping, parking areas and other related improvements listed in Project Plan 1 and the Project Budget and generally depicted in the Site Plan attached as **Exhibit G** hereto.

Section 5.02. Project Schedule. The Developer has commenced construction of the Project and, subject to Excusable Delays, Developer will diligently pursue Substantial Completion of the Project with a targeted completion date of on or by June 1, 2025; provided, such target date will be extended in the event the City's failure to timely complete its portion of the Infrastructure Improvements is the direct cause for Developer's failure to meet such targeted date.

Section 5.03. Project Budget. The Redevelopment Project Costs of the Project shall be constructed substantially in accordance with the Project Budget attached as **Exhibit H** hereto. Notwithstanding the foregoing, the amounts listed in **Exhibit H** do not represent caps on any individual expenditure or category of expenditures, as reimbursable amounts may be moved from one line item or category to another, to the full extent permitted by law, to reflect actual expenditures; provided that the City will not reimburse the Developer for any cost that is not eligible for reimbursement under the TIF Act.

Section 5.04. Design of Project.

A. Final Plans. In order to further the development of Project Area 1, the City hereby authorizes the Developer to construct, or cause to be constructed, the Project and Offsite Sewer Improvements according to the final plans approved in writing by the City during the normal course of obtaining the Permitted Subsequent Approvals.

B. Design Standards. Developer shall comply or cause compliance with the design standards and requirements for the Project and Offsite Sewer Improvements, which are considered and approved through the approval processes referenced in **Section 5.05**.

Section 5.05. Project Zoning, Planning, Platting and Construction.

A. Plat. The Plat has been approved by the City and recorded. The Plat shall remain in conformance with Project Plan 1 and this Agreement.

B. Zoning, Planning and Platting. The City agrees to consider and act on any zoning, planning and platting applications by the Developer in due course and good faith. Except as otherwise set forth herein (including particularly **Section 3.07**), promptly upon request from the City, and in any event no later than thirty (30) days from receipt of such request, Developer will pay to the City any excise tax due.

C. Construction Plans. After approval of the Site Plan, the Developer shall submit Construction Plans for the Project and Offsite Sewer Improvements for review and approval pursuant to City Code. Construction Plans may be submitted in phases or stages. The Construction Plans shall be in sufficient completeness and detail to show that construction will be in conformance with Project Plan 1 and this Agreement. The Developer agrees that all construction, improvement, equipping, and installation work on the Project and Offsite Sewer Improvements shall be done in accordance with the Plat, Construction Plans, and related documents to be approved by the City in compliance with City Code.

D. Construction Permits and Approvals. Before commencement of construction or development of any buildings, structures or other work or improvements, the Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by the City and any other Governmental Authorities having jurisdiction as to such construction, development or work. The City shall cooperate with and provide all usual assistance to the Developer in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law. Except as otherwise set forth herein (including particularly **Section 3.07**), promptly upon request from the City, and in any event no later than thirty (30) days from receipt of such request, Developer will pay to the City any building permit fees due.

E. Construction. The Developer shall construct the Project and Offsite Sewer Improvements in good and workmanlike manner in accordance with the terms of this Agreement. The Developer shall cause the Project and Offsite Sewer Improvements to be completed with due diligence.

F. Continuation and Completion. Subject to Excusable Delays, the Developer shall not permit cessation of work on the Project or Offsite Sewer Improvements for a period in excess of 30 consecutive days or 60 days in the aggregate without prior written consent of the City.

G. Periodic Review. Upon reasonable advance notice, the Developer will meet with the City to review the design and construction of the Project and Offsite Sewer Improvements to determine that they are being performed and completed in accordance with this Agreement, Project Plan 1, and all Applicable Law and Requirements. If the Project or Offsite Sewer Improvements are not being designed or constructed in accordance with the approved Site Plan, Project Plan 1, or this Agreement, after consulting with the Developer, the City shall promptly deliver written notice to the Developer and the Developer shall promptly correct such deficiencies.

H. Antidiscrimination During Construction. The Developer, for itself, its successors and assigns, and any contractor with whom the Developer has contracted for the performance of work on the Project and Offsite Sewer Improvements, agrees that in the construction, renovation, improvement, equipping, repair and installation of the Project and Offsite Sewer Improvements provided for in this Agreement, the Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin, sexual orientation or ancestry.

I. Local Labor, Vendors, and Businesses. The Developer shall use reasonable efforts to utilize local labor, vendors, and businesses during construction of the Project and Offsite Sewer Improvements; provided, however, that the Developer shall have no obligation to utilize local labor, vendors of businesses to the extent they are not the lowest and best bid for the applicable work. The Developer shall communicate such efforts to the City upon the City's request.

J. Chamber and Economic Development Council Participation. During the term of this Agreement, the Developer shall be a member of and reasonably participate in the De Soto Chamber of Commerce (the **"Chamber"**) and the De Soto Economic Development Council (**"EDC"**). Such participation shall include annual payment of dues to the Chamber and EDC. Such dues for the EDC shall be at least $10,000 per year. Additionally, the Developer shall use reasonable efforts to encourage employees, tenants, and successor owners within Project Area 1 to become members of and actively participate in such organizations.

Section 5.06. Rights of Access. Until the City's certification of both Developer's final Certificate of Redevelopment Project Costs and a Certificate of Substantial Completion regarding the

Project in accordance with **Section 5.07** hereof, representatives of the City shall have the right of access to Project Area 1, without charges or fees, upon at least 24 hours prior written notice, at normal construction hours during the period of construction, for the purpose of ensuring compliance with this Agreement, including, but not limited to, the inspection of the work being performed in constructing, renovating, improving, equipping, repairing and installing the Project, so long as they comply with all safety rules. Except in case of emergency, prior to any such access, such representatives of the City will check in with the on-site manager and Developer's Representative. Such representatives of the City shall carry proper identification, shall insure their own safety, assuming the risk of injury, and shall not interfere with the construction activity. The Developer may require such representatives to sign a waiver of liability prior to being permitted on-site. Notwithstanding any provision in this Agreement to the contrary, the City and its officers, employees and agents shall retain all rights of access to the Project pursuant to State law and the City Code.

Section 5.07. Certificate of Substantial Completion. Promptly after Substantial Completion of the Project in accordance with the provisions of this Agreement, the Developer may submit a Certificate of Substantial Completion to the City. "**Substantial Completion**" shall mean that the Developer has Commenced Operations and obtained a Certificate of Occupancy for its initial facility (or applicable portion thereof) allowing for the Commencement of Operations. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit E**. The City shall, within a reasonable period of time following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The City's execution of the Certificate of Substantial Completion shall constitute evidence of the satisfaction of the Developer's agreements and covenants to construct the Project.

Section 5.08. Project Operation Requirements .

A. Minimum Capital Investment; Continuous Operations. In order to be eligible to collect Incremental Tax Revenues as described herein, Developer will invest at least $1 billion on Project Area 1 and, once commenced, Developer will maintain operations at the Project site consistent with the described nature and purpose of the Project throughout the term of Project Plan 1, which is scheduled to expire March 31, 2045.

B. Project Employment. Developer will employ no fewer than 2,500 full-time equivalent employees ("**FTEs"**) at the facility located at the Project site, as certified to the State annually, with a copy provided to the City no later than two months after the Developer provides such certification to the State each year beginning no later than the tax year that begins in 2026. For years during the Term that are after the Developer's obligation to file such a certification to the State has ended, it will file a certification directly with the City on the same cycle and in substantially the same format as the certification previously filed with the State. If fewer than 2,500 FTEs are employed at the Project on any two consecutive calendar years, Developer will forfeit rights to the Incremental Tax Revenues collected during such period on a pro rata basis in proportion to the allocable to the amount of certified but unreimbursed Private TIF Expenses until the next calendar year for which Developer employs at least 2,500 FTEs or the expiration of Project Plan 1, as applicable.

1. For example, if City has certified Redevelopment Project Costs in the amount of $200M—and there remains incurred but unpaid Redevelopment Project Costs to Developer of $20M of Public TIF Expenses (10% of overall certified/unpaid Redevelopment Project Costs) and $180M Private TIF Expenses (90% of overall certified/unpaid Redevelopment Project Costs) and 2,000 FTEs are employed on two consecutive testing dates (80% of target)—the Developer's rights to Incremental Tax Revenues captured during such period will be reduced from 100% to 82% (90%

Private TIF Expenses multiplied by 80% jobs target equals 72%, plus the 10% allocable to Public TIF Expenses, equals 82%).

2. The City and Sunflower may utilize for Redevelopment Project Costs any Incremental Tax Revenues to which the Developer forfeits its rights pursuant to subsection (i) above in accordance with **Section 4.02** herein and the Pre-Development Agreement between Sunflower and the City. For the avoidance of doubt, and subject to a future agreement between Sunflower and the City if and when executed, if Incremental Tax Revenues are made available to the City and Sunflower pursuant to this subsection, such Incremental Tax Revenues will be allocated to the City and Sunflower in accordance with the TIF Allocation (as defined in the Pre-Development Agreement), meaning twenty percent (20%) of such revenues would be allocated to the City and eighty percent (80%) would be allocated to Sunflower.

C. Maintenance and Use. Developer will maintain in a sightly manner the Project, access drives (other than those dedicated and accepted as public streets), parking areas, private road network, landscaped areas, open space areas, and areas owned by Developer within Project Area 1 to in accordance with all applicable codes and property maintenance standards required by the City. Developer will repair any and all damage to such areas in a timely manner in accordance with all applicable codes and property maintenance standards required by the City.

D. Compliance with State Agreement. Developer will be in material compliance with all agreements between Developer and the State of Kansas.

ARTICLE VI

USE OF THE REDEVELOPMENT DISTRICT

Section 6.01. Land Use Restrictions. At all times while this Agreement is in effect:

A. Conformance with Project Plan 1. Project Area 1 shall be developed, and the Project constructed, in accordance with this Agreement and Project Plan 1 approved by the City. No "substantial changes," as defined by K.S.A. 12-1770a(t), shall be made to the Project except as may be mutually agreed upon, in writing, between the Developer and the City and as provided in the TIF Act.

B. Land Use Restrictions. Project Area 1 will be used as an advanced manufacturing facility owned and operated by Developer, along with existing supporting facilities, related amenities, utilities, landscaping, and all other related infrastructure improvements. Other uses are prohibited within Project Area 1 unless approved in writing by the City.

C. No Tax-Exempt Organizations. The Developer may not sell or lease property within Project Area 1 to a tax-exempt organization, except that this prohibition shall not prevent (i) the granting of any temporary or permanent easements necessary to facilitate the construction of the Project or (ii) the construction of any training facility operated by a nonprofit or governmental educational institution.

Section 6.02. Project Compliance. The Project shall comply with all applicable building and zoning, health, environmental and safety resolutions and laws and all other applicable laws, rules and regulations. The Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Project, including but not limited to, obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses.

Section 6.03. Taxes, Assessments, Charges, and Fees.

A. Ad Valorem Taxes and Assessments. The Developer shall pay when due all real estate taxes and assessments for the real property owned by Developer within Project Area 1. Developer acknowledges that, under current Kansas law, real estate taxes and assessments may be paid in halves, with the first half due by December 20 and the second half due by May 10 of the following calendar year. However, Developer will pay in full each installment of the Community Improvement District Special Assessments no later than each December 20.

B. Fees. The Developer shall pay when due all applicable utility, permitting, inspection, and other fees relating to the Project, subject to any adjustments set forth herein.

Section 6.04. Financing During Construction; Rights of Holders.

A. No Encumbrances Except Mortgages during Construction. Notwithstanding any other provision of this Agreement, mortgages and other similar financial instruments such as lines of credit are permitted for the acquisition, construction, renovation, improvement, equipping, repair and installation of the Project and to secure permanent financing thereafter. However, nothing contained in this paragraph is intended to permit or require the subordination of general property taxes, special assessments or any other statutorily authorized governmental lien to be subordinate in the priority of payment to such mortgages.

B. Holder Not Obligated to Construct Improvements. The holder of any mortgage authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the deed for Project Area 1 be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote Project Area 1 to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

C. Notice of Default to Mortgage Holders; Right to Cure. With respect to any mortgage granted by Developer as provided herein, whenever the City shall deliver any notice or demand to Developer with respect to any breach or default by the Developer in completion of construction of the Project, the City shall at the same time deliver to each holder of record of any mortgage authorized by this Agreement a copy of such notice or demand, but only if City has been requested to do so in writing by Developer. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Project or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to and with the City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, that portion of the Project to which the lien or title of such holder relate, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations.

D. The restrictions on Developer financing in this Section are intended to and shall apply only to financing during the construction period for the improvements and any financing obtained in connection therewith. Nothing in this Agreement is intended or shall be construed to prevent the Developer from obtaining any financing for the Project or any aspect thereof.

Section 6.05. Covenant for Non-Discrimination. The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, familial status, marital status, age, handicap, national origin, sexual orientation or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Project Area 1, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of Project Area 1.

The covenant established in this Section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns and any successor in interest to Project Area 1 or any part thereof. The covenants contained in this Section shall remain for so long as this Agreement is in effect.

ARTICLE VII

TAX INCREMENT FUND

Section 7.01. Tax Increment Fund.

A. Creation of Fund; Deposit of Incremental Tax Revenues. The City shall establish and maintain a separate fund and account known as the Sunflower Redevelopment District Project Plan 1 Tax Increment Fund (the "**Tax Increment Fund**"). All Incremental Tax Revenues received by the City after payment of the City Administrative Fee and expenses provided in **Section 7.02** shall be deposited into the Tax Increment Fund.

B. Disbursements from Fund. All disbursements from the Tax Increment Fund shall be made only to pay Redevelopment Project Costs and the City Administrative Fee provided in **Section 7.02**. The City shall have sole control of the disbursements from the Tax Increment Fund. Such disbursements to Developer or other third parties (excluding payment of the City Administrative Fee) shall not be made until Project Plan 1 becomes effective and the TIF Financing Conditions have been satisfied, and such disbursements shall be made in the following order:

1. Payment of the City Administrative Fee.

2. Reimbursement to Developer of Public TIF Expenses other than interest costs.

3. Reimbursement to Developer of Private TIF Expenses other than interest costs.

4. Reimbursement to Developer of interest costs related to Public TIF Expenses and Private TIF Expenses at a rate of 5.00%, as further described in **Section 7.01.B**.

5. Reimbursement to Sunflower of any of its Public TIF Expenses and/or Private TIF Expenses pursuant to the terms of the Pre-Development Agreement between Sunflower and the City. For purposes of clarity, Sunflower shall be reimbursed for 100% of the Public TIF Expenses and/or Private TIF Expenses submitted for reimbursement pursuant to this subsection (i.e., the TIF Allocation (as defined within the Pre-Development Agreement) does not apply to reimbursement to Sunflower pursuant to this subsection).

The City will first reimburse Redevelopment Project Costs in the order set forth above; then, within each category above, in such order Redevelopment Project Costs are certified by the City (i.e., on a "first-in, first-out" basis). For the avoidance of doubt, no Redevelopment Project Costs in subcategory "5" above will be reimbursed unless and until all costs in subcategories "1" through "4" are fully reimbursed. The City may use any surplus amounts of Incremental Tax Revenues that result after all of the above payments have been made for any purpose authorized by the TIF Act until such time as the Project is completed, but for not to exceed twenty (20) years from the effective date of Project Plan 1; provided, the City may use such Incremental Tax Revenues only after the Developer and Sunflower have confirmed to the City in writing that each such party will not submit any further Redevelopment Project Costs for reimbursement pursuant to the terms of this Agreement.

For purposes of reimbursement of interest under this Agreement, interest shall be calculated on the basis of a 360-day year of twelve 30-day months and shall accrue on certified but not yet reimbursed Redevelopment Project Costs at a rate equal to 5.00% per annum from the date the respective Certificate of Redevelopment Project Costs is approved by the City until such certified Redevelopment Project Costs have been reimbursed to Developer.

Section 7.02. City Administrative Fee. The City shall charge an annual administrative service fee in connection with the administration and other City costs of the Incremental Tax Revenues in an amount equal to the lesser of (i) one percent (1%) of all Incremental Tax Revenues for the applicable year or (ii) $30,000 (the **"City Administrative Fee"**).

ARTICLE VIII

ASSIGNMENT; TRANSFER

Section 8.01. Transfer of Obligations.

A. Assignment. The rights, duties and obligations hereunder of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval, such approval not to be unreasonably withheld, of the City Council by resolution following verification by the City Attorney that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City Administrator, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of Project Area 1 being transferred. The City or its third-party advisors may conduct reasonable due diligence of the proposed assignee in furtherance of this determination. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of Project Area 1, such obligations, conditions and restrictions to the extent that they relate to such portion). The Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release the Developer; provided, Developer acknowledges that the Community Improvement District Special Assessments attach to the real estate and may not be transferred to another party via contractual agreement. The Developer agrees to record all assignments in the office of the Register of Deeds of Johnson County, Kansas, in a timely manner following the execution of such agreements.

B. Binding Obligations. The Parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land, enforceable against the purchasers or other transferees as if such purchaser or

transferee were originally a party and bound by this Agreement. Notwithstanding the foregoing, no tenant of any part of Project Area 1 shall be bound by any obligation of the Developer solely by virtue of being a tenant; provided, however, that no transferee or owner of property within Project Area 1 except the Developer shall be entitled to any rights whatsoever or claim upon the Incremental Tax Revenues as set forth herein, except as specifically authorized in writing by the Developer.

C. Exception. The foregoing restrictions on assignment, transfer and conveyance shall not apply to any security interest granted to secure indebtedness to any construction or permanent lender.

Section 8.02. Transfer of Project Area 1, the Buildings or Structures Therein.

A. Developer may not transfer any property interest within the boundaries of Project Area 1 without the prior approval, such approval not to be unreasonably withheld, of the City Council by resolution following verification by the City Attorney that the assignment complies with the terms of this Agreement. Any proposed transferee shall have qualifications and financial responsibility, as reasonably determined by the City Administrator, necessary and adequate to fulfill the obligations of the Developer with respect to the portion of Project Area 1 being transferred. Any proposed transferee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of Project Area 1, such obligations, conditions and restrictions to the extent that they relate to such portion). The Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release the Developer. The Developer agrees to record all assignments in the office of the Register of Deeds of Johnson County, Kansas, in a timely manner following the execution of such agreements.

B. The restrictions in this **Section 8.03** shall not be deemed to prevent the granting of temporary or permanent easements or permits to facilitate the development of Project Area 1 or to prohibit or restrict the leasing of any part or parts of a building, structure, or land for a term commencing on completion.

ARTICLE IX

GENERAL COVENANTS

Section 9.01. Indemnification.

A. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the **"City Indemnified Parties"**) harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and attorneys fees, to the extent resulting from, arising out of, or in any way connected with:

1. the Developer's actions and undertaking in implementation of Project Plan 1 or this Agreement;

2. the negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project; and

3. any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor.

This section shall not apply to willful misconduct or negligence of the City or its officers, employees or agents. This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act (**"CERCLA"**; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act (**"RCRA"**; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer's activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

For the avoidance of doubt, the indemnity provided under this section shall not be limited by the $50,000 cap on consultant costs stated in **Section 3.06.A.4**.

B. Subject to Statutory Limitations and the Tort Claims Act, the City agrees to indemnify and hold Developer, its employees, agents and independent contractors and consultants (collectively, the **"Developer Indemnified Parties"**) harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and attorneys fees, to the extent resulting from, arising out of, or in any way connected with:

1. the City's actions and undertaking in implementation of the Infrastructure Improvements except for the Offsite Sewer Improvements, inspections by its employees, agents, contractors, or this Agreement;

2. the City's designs for the Infrastructure Improvements except for the Offsite Sewer Improvements; and

3. the negligence or willful misconduct of the City, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Infrastructure Improvements.

This section shall not apply to willful misconduct or negligence of Developer or its officers, employees or agents.

C. In the event any suit, action, investigation, claim or proceeding (collectively, an **"Action"**) is begun or made as a result of which the Developer or City may become obligated to one or more of the City Indemnified Parties or Developer Indemnified Parties hereunder, any one of the City Indemnified Parties or Developer Indemnified Parties shall give prompt notice to the Developer or the City, as appropriate, of the occurrence of such event which in no case shall be later than ten days after which the City or Developer has knowledge of such occurrence.

D. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

Section 9.02. Insurance.

A. Developer insurance. Developer shall maintain or cause to be maintained insurance with respect to the Project covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar properties and engaged in similar operations (including but not limited to property and casualty, worker's compensation and general liability) and in such amounts as, in the reasonable judgment of Developer, are adequate to protect the Developer and the Project. Throughout the term of this Agreement, Developer agrees to provide the City upon request evidence of property insurance and a certificate of liability insurance demonstrating compliance with this **Section 9.02**.

B. City insurance.

1. During the construction period of the Infrastructure Improvements being constructed by the City, the City will maintain or cause to be maintained performance and payment bonds in accordance with K.S.A. 60-1111, and the City's contractor for the applicable Infrastructure Improvements will maintain insurance with respect to the insurable components of the Infrastructure Improvement work that it conducts covering such risks that are of an insurable nature and of the character customarily insured against by organizations engaged in similar operations (including but not limited to builder's risk, worker's compensation, and general liability) and in such amounts as, in the reasonable judgment of the City, are adequate to protect the City and the applicable portion of the Infrastructure Improvements.

2. Upon dedication to the City of the Infrastructure Improvements, the City shall maintain or cause to be maintained insurance with respect to the insurable components of the Infrastructure Improvements covering such risks that are of an insurable nature and of the character customarily insured against by public agencies operating similar facilities and works and engaged in similar operations and in such amounts as, in the reasonable judgment of the City, are adequate to protect the City and the applicable portion of the Infrastructure Improvements. The City shall have the right to execute on its insurance programs in a manner in which the City determines to be reasonable and in the best interests of the City, and consistent with the common practices of other public agencies, including, without limitation, to self-insure in whole or in part, individually or in connection with other organizations, to participate with other organizations in mutual or other cooperative insurance or other risk management programs, or to establish or participate in other risk management programs. Throughout the term of this Agreement, once such improvements are completed and accepted by the City, Developer may request from time to time evidence of and details regarding the City's insurance program demonstrating compliance with this **Section 9.02**.

Section 9.03. Obligation to Restore.

A. Restoration of Project by Developer. In order to be eligible to collect Incremental Tax Revenues as described herein, Developer hereby agrees that if any portion of the Project shall be damaged or destroyed, in whole or in part, by fire or other casualty, the Developer shall promptly restore, replace or rebuild the same, or shall promptly cause the same to be restored, replaced or rebuilt, to as nearly as possible the value, quality, and condition it was in immediately prior to such fire or other casualty or taking; provided, the Parties may agree to any alterations or changes or the construction of new facilities to serve a similar purpose as the Project in satisfaction of this Section, such approval not to be unreasonably withheld by the City.

B. Restoration of Project by Third Parties. The Developer further agrees that, in order to be eligible to collect Incremental Tax Revenues as described herein, each contract, lease or sublease relating to the development, ownership or use of any portion of the Project not owned or controlled by the Developer

shall include a provision to the effect that if any portion of the Project controlled by such owner, lessee or sublessee shall be damaged or destroyed, in whole or in part, by fire or other casualty, such owner, lessee or sublessee shall promptly restore, replace or rebuild the same (or shall promptly cause the same to be restored, replaced or rebuilt) to as nearly as possible the value, quality and condition it was in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by the Developer and the City, which approval shall not be unreasonably withheld. The Developer agrees that, in order to be eligible to collect Incremental Tax Revenues as described herein, each contract, lease or sublease relating to the development, ownership or use of any portion of the Project shall include a requirement that, in the event insurance covering fire or other casualty results in payment of insurance proceeds to a lender, the lender shall be obligated to restore certain portions of the Project in accordance with this Section.

Section 9.04. Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the reimbursement of the Redevelopment Project Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

ARTICLE X

DEFAULTS AND REMEDIES

Section 10.01. Developer Event of Default. Subject to **Section 10.05**, a **"Developer Event of Default"** shall mean a default in the performance of any material obligation or breach of any material covenant or agreement of the Developer in this Agreement (other than a covenant or agreement, a default in the performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of thirty (30) days after City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 10.02. City Event of Default. Subject to **Section 10.05**, a **"City Event of Default"** shall mean a default in the performance of any material obligation or breach of any other material covenant or agreement of the City in this Agreement (other than a covenant or agreement, a default in the performance or breach of which is specifically dealt with elsewhere in this Section or in **Section 3.05** relating to the completion date for the Water and Sewer Treatment Facility Improvements), and continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such thirty (30) day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 10.03. Remedies Upon a Developer Event of Default.

A. Upon the occurrence and continuance of a Developer Event of Default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to terminate this Agreement or terminate all or a portion of the Developer's rights under this Agreement, including suspension or termination of Developer reimbursement from moneys held in the Tax Increment Fund.

2. The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City or any other beneficiaries of this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default.

B. Upon termination of this Agreement in accordance with its terms hereof, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

C. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

D. The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived.

E. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 10.04. Remedies Upon a City Event of Default.

A. Upon the occurrence and continuance of a City Event of Default the Developer shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The Developer shall have the right to terminate the Developer's obligations under this Agreement, except Developer may not terminate its obligation to pay the Community Improvement District Special Assessments during the term of such special assessments.

2. The Developer may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement, to enforce or preserve any other rights or interests of the

Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default.

B. If the Developer has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Developer, then and in every case the Developer and the City shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Developer shall continue as though no such proceeding had been instituted.

C. The exercise by the Developer of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the Developer shall apply to obligations beyond those expressly waived.

D. Any delay by the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the Developer of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 10.05. Excusable Delays. Neither the City nor the Developer shall be deemed to be in default of this Agreement because of an Excusable Delay.

Section 10.06. Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Johnson County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

Section 10.07. Limitation of Damages. The Parties hereby agree that a Party's sole and exclusive remedies for a breach by the other Party of any commitment, obligation, representation, warranty, or other undertaking included herein or otherwise shall be those contained in this **Article X** and that in in no case shall either Party be liable for any indirect, reliance, exemplary, incidental, speculative, punitive, special, or similar damages that may arise in connection with this Agreement. Nothing in this **Section 10.07** shall be construed to limit the indemnification provisions under **Section 9.01**.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01. Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

Section 11.02. Effect of Violation of the Terms and Provisions of this Agreement; No Partnership. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Project or the Redevelopment District. Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

Section 11.03. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 11.04. Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest. Provided, however, that Sunflower is a third party beneficiary of this Agreement with regard to **Sections 4.02**, **5.08**, and **7.01**, and therefore any amendment of any portion of this Agreement which materially affects the rights of Sunflower contained therein also requires the consent of Sunflower. Further, any amendment of this Agreement which does not materially affect the rights of Sunflower contained in **Sections 4.02**, **5.08**, and **7.01** hereof will not require the consent of Sunflower.

Section 11.05. Agreement Controls. The Parties agree that Project Plan 1 will be implemented as agreed in this Agreement. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of Redevelopment Project Costs and all other methods of implementing Project Plan 1. The Parties further agree that this Agreement contains provisions that are in greater detail than as set forth in Project Plan 1 and that expand upon the estimated and anticipated sources and uses of funds to implement Project Plan 1. Nothing in this Agreement shall be deemed an amendment of Project Plan 1. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

Section 11.06. Conflicts of Interest.

A. No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

B. The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its best knowledge and belief, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 11.07. Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until the latest of (i) expiration of Project Plan 1; or (ii) the expiration of the community improvement district established pursuant to the CID Petition.

Section 11.08. Validity and Severability. It is the intention of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement.

Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 11.09. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 11.10. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 11.11. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Administrator and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Administrator may seek the advice, consent or approval of the City Council before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section.

Section 11.12. Notice. All notices and requests required pursuant to this Agreement shall be sent as follows:

To the City:

City Administrator
City of De Soto, Kansas
32905 W. 84th St.
P.O. Box C
De Soto, Kansas 66018

With a copy to:

City Attorney
City of De Soto, Kansas
32905 W. 84th St.
P.O. Box C
De Soto, Kansas 66018

and

Kevin Wempe
Gilmore & Bell, P.C.

To the Developer:

Panasonic Energy Corporation of North America
1 Electric Avenue, Suite 110
Sparks, Nevada 89434
Attn: Carli Kinne, General Counsel

With a copy to:

Bradley Arant Boult Cummings LLP
One Federal Place
1819 5th Avenue North
Birmingham, Alabama 35203
Attn: Alex B. Leath

2405 Grand Blvd., Suite 1100
Kansas City, Missouri 64108

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 11.13. Kansas Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 11.14. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 11.15. Recordation of Agreement. Developer shall record a memorandum of this Agreement (and a memorandum of any amendments or supplements hereto) in the real estate records of Johnson County, Kansas, and Developer shall provide a proof of recording such memorandum to the City.

Section 11.16. Consent or Approval. Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld or unduly delayed.

Section 11.17. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 11.18. Cash Basis and Budget Laws. The Parties acknowledge and agree that the ability of the City to perform certain financial obligations pursuant to this Agreement beyond the current fiscal year are subject to Statutory Limitations.

Section 11.19. Public Relations Coordination. The Parties agree that during the term of this Agreement they will use good faith efforts to coordinate press releases and public relations efforts regarding the other Party.

[Balance of page intentionally left blank]

THIS AGREEMENT has been executed as of the date first hereinabove written.

CITY OF DE SOTO, KANSAS

_____
Rick Walker, Mayor

(SEAL)

ATTEST:

_____
Brandon Mills, MPA, City Clerk

PANASONIC ENERGY CORPORATION OF NORTH AMERICA
a Delaware corporation

By: _____

Name: _____

Title: _____