



City of Leavenworth
 100 N. 5th Street
 Leavenworth, Kansas 66048

CITY COMMISSION REGULAR MEETING
COMMISSION CHAMBERS
TUESDAY, FEBRUARY 23, 2021 7:00 P.M.

Welcome to your City Commission Meeting – Please turn off or silence all cell phones during the meeting

Meetings are televised everyday on Channel 2 at 7 p.m. and midnight and available for viewing on YouTube and Facebook Live
In accordance with Kansas Open Meetings Act (KOMA), the meeting can be viewed on Channel 2 and via Facebook Live. The public is encouraged to view the meeting using one of those options. The Leavenworth City Commission meeting is open to the public with limited seating capacity. To mitigate the spread of COVID-19 face coverings and social distancing is REQUIRED to attend the meeting. To attend the meeting in person, email cwilliamson@firstcity.org no later than 4:00 pm on the day of the meeting to reserve a seat. Seats are available on a first come first serve basis. If you are not attending the meeting but would like to submit public comments to be read during the Public Comments portion of the meeting, or submit comments on an agenda items to be read during discussion on that topic, email your comments to cwilliamson@firstcity.org no later than 6:00 pm on the day of the meeting.

Call to Order – Pledge of Allegiance Followed by Silent Meditation

Presentations:

1. Mayor’s Award – Workforce Partnership
2. Parks & Recreation Department Park Adoption Presentations (pg. 2)
 - a. Families of Billy Goat Hill –Adoption of Southside Park
 - b. GLJ Accounting LLC – Adoption of Cody Park
 - c. Women’s Division, Leavenworth-Lansing Chamber of Commerce – Adoption of Union Park
 - d. Boy Scout Troop 176 – Adoption of Stubby Park

Consideration of Previous Meeting Minutes:

3. Minutes from February 9, 2021 Regular Meeting **Action:** Motion (pg. 3)

NEW BUSINESS:

Public Comment: *(i.e. Items not listed on the agenda or receipt of petitions- Please state your name and address)*
Any emails received by the public for public comment on non-agenda items will be read at this time.

General Items:

4. Mayor’s Appointment – First Judicial District Juvenile Corrections Advisory Board **Action:** Motion (pg. 8)

Resolutions:

5. Resolution B-2277 Annual Report for Stormwater 2020 **Action:** Motion (pg. 9)

Bids, Contracts and Agreements:

6. Consider Proposal for Kansas State Rehabilitation Tax Credits **Action:** Motion (pg. 24)
7. Consider Small Cell Facility Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility **Action:** Motion (pg. 41)
8. Consider Bids for 2020 City Hall Parapet/Building Repair Project **Action:** Motion (pg. 67)

Consent Agenda:

Claims for February 6, 2021, through February 19, 2021, in the amount of \$924,607.50; Net amount for Payroll #3 effective February 12, 2021 in the amount of \$314,943.96 (No Police & Fire Pension). **Action:** Motion

Other:

Adjournment **Action:** Motion

POLICY REPORT NO. P&R 01-21
Parks and Recreation Department
Park Adoptions
February 23, 2021

PREPARED BY:


Steve Grant
Parks and Recreation Director

REVIEWED BY:


Paul Kramer
City Manager

ISSUE:

Acknowledge the adoption of the following parks by their respective groups:

- 1) Southside Park, adopted by the “Families of Billy Goat Hill”.
- 2) Cody Park, adopted by GLJ Accounting, LLC.
- 3) Union Park, adopted by the Women’s Division, Leavenworth-Lansing Chamber of Commerce.
- 4) Stubby Park, adopted by Boy Scout Troop 176.

BACKGROUND:

The Parks and Recreation Department offers an Adopt-A-Park program which encourages residents, community organizations, and businesses to become directly involved in improving our city parks and other landscaped areas. In the fall of 2020, staff worked to re-vitalize the program by contacting all groups that had adopted a park. At the time there were 15 in total. After correspondence, 10 groups displayed interest in continuing their adoption. Upon completion of the contacts, staff promoted the Adopt-A-Park program on the city’s facebook page, as well as the parks page on the city website. Staff put a direct link on the webpage to the Adopt-A-Park program where interested parties can get more information, review parks available for adoption, as well as fill out and submit an application.

Groups adopting a park provide assistance in the park with general trash and litter pick up, weeding flower beds, planting flowers and applying mulch, and general maintenance on the shelters and structures as deemed necessary and appropriate. A sign will be erected at each park to designate the adoption.



CITY OF LEAVENWORTH
100 N. 5th Street
Leavenworth, Kansas 66048

City Commission Regular Meeting
Commission Chambers
Tuesday, February 9, 2021 7:00 p.m.

CALL TO ORDER - The Governing Body met for a regular meeting and the following commission members were present in the commission chambers: Mayor Nancy Bauder, Mayor Pro-Tem Camalla Leonhard, Commissioners Mark Preisinger and Jermaine Wilson. Commission members attending via teleconference: Commissioner Myron J. (Mike) Griswold.

Others present in the commission chambers: City Manager Paul Kramer, Assistant City Manager Taylour Tedder, Police Chief Patrick Kitchens, Public Works Director Mike McDonald, Director of Planning and Community Development Julie Hurley and City Clerk Carla K. Williamson.

Members participating via teleconference: City Attorney David E. Waters and Finance Director Ruby Maline.

Mayor Bauder asked everyone to stand for the pledge of allegiance followed by silent meditation.

Proclamations:

Susan B. Anthony Day, February 15, 2021 – Mayor Bauder read the proclamation. The proclamation will be mailed to the Leavenworth County Historical Society.

OLD BUSINESS:

Consideration of Previous Meeting Minutes:

Commissioner Leonhard moved to approve the minutes from the January 26, 2021 regular meeting. Commissioner Wilson seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Second Consideration Ordinance:

Second Consideration Ordinance 8159 Rezoning 1440 & 1460 Quincy Street – City Manager Paul Kramer presented the ordinance for approval. The ordinance was introduced at the January 26, 2021 meeting with a consensus to place on first consideration. There have been no changes since introduced on January 26, 2021.

Mayor Bauder called the roll and Ordinance 8159 passed 4-1 with Commissioner Wilson voting no.

NEW BUSINESS:

Public Comment: *(emails received by the public for public comment on non-agenda items will be read at this time.) No emails were received.*

General Items:

Review 504 Miami and 824 Osage Demolition Properties - Director of Planning and Community Development Julie Hurley reviewed the two properties that were reviewed at the December 8, 2020 City Commission meeting and agreed by the City Commission to review the properties again at the February 9, 2021 Commission meeting.

- **504 Miami Street – Single-family house** – Building permit issued on May 11, 2020 for exterior and interior renovations. Front porch has been removed and replaced, upstairs windows on front and rear of house have been replaced. Building permit for new roof issued on January 13, 2021. Roof and remaining windows still in need of repair or replacement. Owner provided a copy of acceptance of a proposal with a roofing company to complete the roof repairs. As of February 9, 2021 the water service has been restored to the property.
 - Comments by Owner – Ramon Muhammad (1208 W 21st Street Lawrence KS)
 - Power is also on at the property and has been
 - Roofer will do the main part of the roof and is no longer leaking
 - Will start interior work soon
 - Hopes to have the property ready for occupancy in about 6 months
 - Would like to add another bathroom to the main floor
 - No set date on when the roofing company will complete the roof with the weather
 - Roofers said should get to it in February

Commissioner Preisinger

- Neighbors concerned that squatters may get into the house now that it is cold and possibly start a fire that would spread to neighboring properties
- Concerned about when the roof will be completed
- Stated that on December 8th Mr. Muhammad said in 60 days would be completed

Commissioner Leonhard

- Asked if the house is secure so that people and or animals could not get in

Mr. Muhammad stated that the property is secure and is checked on regularly.

There was a consensus to review again at the March 23, 2021 meeting.

- **824 Osage Street – Single-family house and detached garage** – Building permit issued on May 22, 2020 for roof. A three (3) month extension on the permit was approved on October 16, 2020. On February 3, 2021 building inspection staff visited the site and indicated that the work performed to this point does not meet building code requirements. Inspections staff sent a follow up letter informing the owners that the permit is considered void due to lack of progress on the project. Roof, siding and window/doors are still in need of repair or replacement. Last water service was in 2018. In October the inspections department did an electrical inspection and noted that an entire electrical box needed to be replaced.
 - Comments by Owner – Darleen Derringer (112 East Kay, Lansing KS)
 - Property vacant for a couple years; husband used to stay there
 - Husband is unable to work
 - They have all the stuff for the roof; boards are being replaced and tarp on the roof

- Slowly but surely working
- No way it will be done in 30 days

Commissioner Preisinger:

- At the last meeting stated she need to have a roofing contract in place
- Feels we have reached the end of the limit on this property

Ms. Hurley:

- Stated that Mr. Derringer came in to City Hall today to extend the permit
- Ms. Hurley informed Mr. Derringer that since the item was being heard this evening the city would not extend the permit until after the Commission reviewed the property

City Manager Kramer:

- Mr. Kramer stated that the work that has been done was reviewed by the City inspectors and does not meet building standards

There was a consensus to move forward with demolition.

Commissioner Preisinger moved to review 504 Miami at the March 23rd meeting and to move forward with the demolition of 824 Osage. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Review Draft 2020 Kansas Department of Health and Environment (KDHE) Annual Report for Stormwater – Public Works Director Mike McDonald presented for review the draft 2020 KDHE report to be submitted by February 28, 2021. Staff is requesting any comments from the Commission or public prior to final approval. COVID has had an impact on the activities that the City would normally undergo during the year. The final report will be brought back to the Commission at the February 23, 2021 meeting for approval via Resolution. No formal action required at this time.

Resolutions:

Resolution B-2276 Set Limits for 2021 General Improvement Bonds – City Clerk Carla Williamson presented for adoption and approval Resolution B-2276 setting the maximum amount for 2021 General Improvement Bonds in the amount of \$2,038,938.00. This amount is set by Charter Ordinance 56.

Commissioner Leonhard moved to adopt Resolution B-2276 as presented. Commissioner Wilson seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Bids, Contracts and Agreements:

Consider Purchase of Animal Control Replacement Vehicle – Police Chief Pat Kitchens presented for consideration the purchase of a replacement vehicle for animal control using the 2020 Mid America Council of Public Purchasing (MACPP) contract. Staff recommends approval of one (1) 2021 Ford T-250 Cargo Van from Shawnee Mission Ford at a total price of \$40,346.00.

Commissioner Preisinger moved to approve the purchase of one (1) 2021 Ford T-250 Cargo Van from Shawnee Mission Ford at a total price of \$40,346.00. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Consider Stormwater Cost Share Agreement with USD 453 – City Manager Paul Kramer presented for consideration a 50% cost share of a study performed by Water Resource Solutions (WRS) on conceptual ideas on bank stabilization and improvements on the property located at the new 10th Avenue park baseball and softball complex being constructed by USD 453. USD 453 will enter into an agreement with WRS for a total cost of \$45,899.00 and the City will agree to pay \$27,449.50 to USD 453. A Memorandum of Understanding (MOU) would be entered into with the school after the findings.

Commissioner Leonhard moved to authorize payment of \$27,449.50 to USD 453 for 50% of the total cost of \$54,899.00 for the study. Commissioner Preisinger seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Consider Design Contract with Wilson & Co. for Stormwater Improvements 700 Block of Pottawatomie Street - Public Works Director Mike McDonald presented for consideration a contract in the amount of \$29,450.00 with Wilson & Company for the design of storm drainage improvements at 741 Pottawatomie.

Commissioner Preisinger moved to approve the contract with Wilson & Company Corporation for the design of storm drainage improvements at 741 Pottawatomie not to exceed \$29,450.00. Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Consent Agenda:

Commissioner Wilson moved to approve claims for January 23, 2021, through February 5, 2021, in the amount of \$1,884,336.76; Net amount for Payroll #2 effective January 29, 2021 in the amount of \$334,840.92 (Includes Police & Fire Pension in the amount of \$9,624.04). Commissioner Leonhard seconded the motion and the motion was unanimously approved. The Mayor declared the motion carried 5-0.

Other:

Public Works Director Mike McDonald:

- Updated the Commission on the snow and ice removal efforts of the City during the recent snow that began on Saturday

Commissioner Preisinger

- Price Chopper has started their \$12 million renovation
- Two restaurants temporarily closed down due to COVID exposures for deep cleaning
- Walmart in Leavenworth announced they will have vaccine at some point
- Verified with Mr. Kramer that he did mail letters to delegations about health clubs and the legislation proposed to exempt taxes; this is an effort brought up by Rodney Stephens owner of Genesis Health Clubs

- Mr. Kramer confirmed he sent the letters to State delegates and received a couple responses

Mayor Bauder:

- County and City partnering to give vaccinations at the Riverfront Community Center
- Use south entrance of the gym and vaccines are by appointment only

Adjournment:

Commissioner Preisinger moved to adjourn the meeting. Commissioner Leonhard seconded the motion and the motion was unanimously approved.

Time Meeting Adjourned 8:17 p.m.

Minutes taken by City Clerk Carla K. Williamson, CMC

Draft

MAYOR'S APPOINTMENTS

FEBRUARY 23, 2021

Mayor Bauder

Motion:

"Move to

*Appoint to the **1st Judicial District Juvenile Corrections Advisory Board** Jermaine Wilson to a term ending February 14, 2024".*

Requires a second and vote by the Governing Body.

POLICY REPORT PWD NO. 21-10

**REVIEW FINAL DRAFT 2020 KDHE ANNUAL REPORT
FOR STORMWATER AND ADOPT RESOLUTION NO. B-2277**

February 23, 2021

Prepared by:



Michael G. McDonald, P.E.,
Director of Public Works

Submitted by:



Paul Kramer,
City Manager

ISSUE:

Adopt a resolution approving the annual KDHE report for 2020 stormwater activities.

BACKGROUND:

The City of Leavenworth is regulated by the Kansas Department of Health and Environment (KDHE) and US Environmental Protection Agency (EPA) as a Phase II City for stormwater purposes. The City has been required to submit an annual report on stormwater activities every year since 2003. The report is to summarize the actions the City has taken the previous year to protect and enhance stormwater quality. The guidelines for the activities to be reported on are set by the Stormwater Management Program (SMP) which was adopted by the City Commission in 2016. Future reports will be based on the guidelines set by the new SMP (2020-2024) that was adopted by the City Commission on October 27, 2020.

The City has submitted reports in accordance with KDHE requirements in previous years. Interaction with KDHE and EPA suggest that the report be reviewed in a public forum rather than simply submitted by staff. The draft report was reviewed by the Commission on February 9th, 2021. No other comments were received.

The final report includes statements that the City has reduced pollution in accordance with the requirements to the "Maximum Extent Practicable" (MEP). MEP can be used as a legal term; however, there is no single definition of what it means in individual situations. Staff opinion is that the City has met the intent of the regulations to reduce pollution through the Six Minimum Control Measures as described in the report.

There is considerable additional information in the appendices that will be included when the report is submitted.

RECOMMENDATION:

The report is due at KDHE on February 28th via digital delivery. It is recommended the City Commission adopt the resolution supporting the final report at the February 23rd Commission meeting.

ATTACHMENT:

Final Draft Report (partial)

- Executive Summary
- Comments on Section V of the Permit (Final Report)
- Section E - Stormwater Management Program Requirements (Six Minimum Control Measures)

- Links – Final Draft KDHE Report for 2020:

<https://www.leavenworthks.org/publicworks>

Previous KDHE Annual Reports:

<https://www.leavenworthks.org/publicworks/page/annual-stormwater-reports>

RESOLUTION NO. B-2277

A RESOLUTION APPROVING THE 2020 KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT (KDHE) ANNUAL REPORT FOR STORMWATER AND AUTHORIZING THE CITY OF LEAVENWORTH, KANSAS, TO SUBMIT THE REPORT TO KDHE.

WHEREAS, the City of Leavenworth, Kansas is regulated by the Kansas Department of Health and Environment (KDHE) and the US Environmental Protection Agency (EPA) as a Phase II City for stormwater purposes; and

WHEREAS, the City of Leavenworth, Kansas has prepared the Annual Report for Stormwater as required and reviewed such report at the February 9, 2021 City Commission meeting allowing time for public review and input prior to approval by the Governing Body.

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

Section 1. That the 2020 Annual Report for Stormwater reflects the direction, efforts and accomplishments by City of Leavenworth for calendar year 2020. It shall be an official record of these actions to meet the requirements of Kansas Department of Health and Environment (KDHE) for an Annual Report until or unless changed by official action.

PASSED AND APPROVED this 23rd day of February 2021.

CITY OF LEAVENWORTH, KANSAS

Nancy D. Bauder, Mayor

ATTEST:

Carla K. Williamson, CMC, City Clerk

(SEAL)

CITY OF LEAVENWORTH

Kansas Stormwater Annual Report Form for Municipal Separate Storm Sewer Systems

January 1, 2020 - December 31, 2020

Kansas Permit No: M-MO12-SN01

SECTION 1: EXECUTIVE SUMMARY

To satisfy the requirements of the NPDES permit, this annual report summarizes the City of Leavenworth's plans and actions to reduce the discharge of pollutants from the municipal separate storm sewer system (MS4) to the maximum extent practicable, to protect water quality, and to meet the appropriate water quality requirements of the Clean Water Act. The information contained within this report was obtained through interviews with City staff, review of permits and projects from 2020, and examining communications and publications made available to the citizens of Leavenworth.

The COVID-19 Pandemic had significant impact on the City of Leavenworth activities beginning in March 2020. Ultimately, staff and the public adapted to various work-from-home options, online meetings, sudden absences of key persons and other changes in operations. City operations are still being impacted from the pandemic.

City staff pursue activities in all of the Six Minimum Control Measures throughout the year. Key observations for the purposes of this report are shown below.

- **Were there any aspects of the program that appeared especially effective at reducing pollutants in your stormwater discharge?**
 - Contractor and public compliance with implementation of the Land Disturbance Permit requirements is improved over the initial years and is generally satisfactory.
 - Street sweeping is an effective tool for removing pollutants.
 - Use of "Stormwater Utility" funds to address long-standing small to medium-sized issues has reduced erosion in several locations through the "Orange Fence Repair Projects".

- **Were there any aspects of the program that provided unsatisfactory results?**

While most items identified as BMPs (Best Management Practices) are believed to be effective at some level, the passive education and information sharing such as leaving material at the library and having informational brochures available were probably the least effective tools identified.

- **What was the most successful part of the program?**

The visibly effective measures of correctly installed construction site runoff control and post-construction activities were the most successful parts of the program.

- **What was the most challenging aspect of the program?**

The Grease Trap Program is easily the most challenging activity. Owners of Grease Traps and Interceptors are often working hard to grow their business and see City efforts to ensure compliance with regulations as a hindrance. Staff has improved compliance in this area over the last few years.

- **Describe any City/County area MS4 clean ups and the participation.**

- City of Leavenworth usually sponsors a "City-Wide Clean Up" effort each year, but due to COVID-19 and its restrictions, this event did not take place. The City did, however, conducted its annual free paper-shredding event in August, 2020.

- The City has created a “Three-Mile Creek” monthly clean-up program for six citizen groups that received \$500 donation per group from transient guest tax dollars in 2020.

- **Describe the elected officials' participation in the stormwater pollution elimination.**

The City Commission has supported stormwater pollution elimination by creating a “Stormwater Utility” that is funded by a fee on all properties. This fee is used to address longstanding stormwater problems in the community, typically including reduction or elimination of erosion that has been causing failed roadways, culverts and streambanks. The Commission has also supported staff goal to have all public and private projects have some level of permanent water quality improvement included.

The City Commission reviewed and approved the new Stormwater Management Plan (SMP) on October 27, 2020. Staff was also direct to proceed with ordinances related to fees/fines for operation of BMP installations, construction sites, grease traps and general maintenance of permanent water quality structures.

- **Describe the collaboration with other organizations to eliminate stormwater pollution.**

The City typically coordinates a “City-Wide” clean-up day with about 35-50 groups. This event was cancelled in 2020 due to COVID; however, several groups are believed to have picked up trash in a less formal manner throughout the City. Leavenworth County provided one HHW (Household Hazardous Waste) collection service on September 5, 2020

- **If an audit/inspection of your MS4 program was conducted by EPA or KDHE during the year, list the items the audit/inspection report identified as required changes and provide a narrative explanation of how the changes were implemented or explain the plan to implement the changes and identify a target date for final implementation.**

There were no known inspections of the MS4 program by KDHE or EPA in 2020.

CITY OF LEAVENWORTH

Kansas Stormwater Annual Report Form for Municipal Separate Storm Sewer Systems
January 1, 2020 - December 31, 2020
Kansas Permit No: M-MO12-SN01

The permittee is well advised to accurately report the conditions and status of their stormwater program and give due consideration to improving or enhancing their program where it is weak, or deficient in any of the core aspects (stormwater management program, six minimum control measures and TMDL best management practices - if applicable - also for Phase I permittees monitoring industrial facilities).

TOPICS REQUIRED TO BE ADDRESSED IN THIS REPORT AS IDENTIFIED IN PART V OF THE PERMIT

Within the next one or two pages, or perhaps more if so desired, provide comments addressing the following items:

- 1. Provide the status of compliance with permit conditions, an assessment of the appropriateness of the implemented Best Management Practices, progress towards achieving the statutory goal of reducing the discharge of pollutants to the maximum extent practicable (MEP), and the measurable goals with an indication of the progress toward meeting the goals for each of the six minimum control measures.***

City of Leavenworth opinion is that the information shown in each of the "Six Minimum Control Measures" tables support the conclusion that meaningful reduction in discharge of pollutants has occurred over the last five years of the permit. This was especially true in 2019 and slightly reduced due to COVID in 2020.

- 2. Provide results of information collected and analyzed, (for example test results, surveys, or public comments/input) during the annual reporting period. This may include monitoring data used to assess the success of best management practices with respect to reduction in pollutant discharge. Include an interpretation of the information which addresses success or failure of the portion of the program for which the information applies.***

The City has collected information on a wide variety of municipal activities associated with various BMPs. This includes data on street sweeping, deicing use (salt), grease trap program, land disturbance permit issuance, SSO reporting, creek crossing inspections, BMP operation (particularly detention basins) annual meeting, recycling, grass/leaf/brush disposal and others. There has been no overall "trend" noticed in this data, but it is indicative of the effort of our community to be aware of important issues related to water quality. Specific data for many of these reporting items is in the assessment of the various BMP activities for the last year. It is clear that staff, public, contractors and businesses are aware of the various permitting programs associated with the SMP, and water quality is improved and/or maintained as a result. Participation in individual programs may have been reduced during the year due to COVID.

- 3. Provide results of information collected and analyzed, if any, during the annual reporting period, including monitoring data used to assess the success of the program at reducing the TMDL regulated pollutants.***

KDHE removed the requirement that the City sample stormwater entering and leaving the City beginning in the 2019 Calendar Year. The City does continue to sample rivers and creeks (especially for E. coli) when evaluating action for SSO events. Sampling is also done as part of the NPDES Permit for the Wastewater Plant as well as within the Sanitary Sewer System for industrial chemicals that are not easily removed with the systems in place at the WWTP.

4. Provide a summary of the stormwater activities that were scheduled to be undertaken during the previous calendar year and the status of these activities.

Key programs associated with stormwater activities, all of these programs were conducted in 2020 as noted. There are many other smaller programs as well.

- ✓ Building Permits, Fills, Excavations are evaluated for needing an NOI, Land Disturbance Permit, Basic Erosion Control, SWPP and other clean water related elements
- ✓ Projects under construction are inspected and deficiencies brought to the attention of the contractor, owner or other appropriate person
- ✓ City-wide civic effort for "Spring Clean-up" - not held due to COVID-19 restrictions
- ✓ Grease Trap Program inspections and reports
- ✓ BMP annual meeting
- ✓ Street Sweeping Program - Goal of once per month on Arterials and three times per year on residential streets was met.
- ✓ Leaf Collection Program – eliminated curbside pick-up program in 2019, but retains free drop off site and collection by Refuse Service. Leaf disposal site was closed March 16, 2020 through April 27, 2020 due to COVID-19 restrictions.
- ✓ Free Drop-Off Recycling Program was closed March 16, 2020 through April 27, 2020 due to COVID-19 restrictions.
- ✓ Household Hazardous Waste Program (Coordinated with Leavenworth County) was postponed to later in 2020 due to COVID-19.
- ✓ Free drop-off refuse disposal once per month (April event was cancelled due to COVID-19 restrictions)
- ✓ Maintain "Clean-up you Dog Poop" effort at selected City parks
- ✓ Aggressive response to SSO calls 24/7
- ✓ Creek Crossing (Sanitary Sewer) Inspections at least four times each year
- ✓ Sewer line cleaning and TV program
- ✓ Stormwater articles in City newsletters

5. Provide a summary of the stormwater activities which are scheduled to be undertaken during the next calendar year (including an implementation schedule).

All activities as noted in #4 are expected to be continued in 2021 as part of the Commission adopted Stormwater Management Program that incorporates these activities and others for implementation in 2021.

6. Provide a map showing changes in the permittee's Permit Area if the permit area has changed within the year.

There were no changes to the City Limits in 2020.

7. Provide a description of significant changes in any of the BMPs.

The City has made the following changes to BMPs in 2020:

- City-Wide Clean-up was cancelled and is expected to return post-COVID
- Leaf Collection Program – city eliminated curbside pick-up in 2019, but retains free drop off site and collection by Refuse Service. Leaf disposal site was closed six weeks due to COVID, but is now back in normal operation with appropriate safeguards.
- Recycling Center Operations and Free Saturday Drop off activities were closed six weeks due to COVID, but is now back in normal operation with appropriate safeguards.

- 8. Provide a list of any ordinances or resolutions which were updated in the last year and are associated with the SMP. Please note, page one of this report requires submission of any new stormwater-related ordinances or resolutions, or any such updated ordinances or resolution be submitted with this annual report.**

There were several ordinances and resolutions passed and adopted by the City Commission in 2020. Most notably was the new SMP document and establishing a fee/fine structure for erosion control, grease traps and permanent BMP maintenance. Titles and links to the documents are shown in this report. *Appendix E, Resolution No. B-2267 attached.*

- 9. Provide a list of other parties (such as other municipalities or consultants), which are responsible for implementing any of the program areas of the Stormwater Management Program.**

There were no other municipalities or consultants involved with implementing the SMP.

- 10. For Phase I permittees only, provide a summary of the inspection results, including the wet weather surface water quality monitoring test results, and information obtained under PART III Monitoring Industrial Stormwater Discharges section of this permit.**

KDHE has released the City of Leavenworth from sampling stormwater entering and leaving the City limits in 2019.

Stormwater Management Program Requirements (Six Minimum Control Measures)

1. Public Education and Outreach (Table) - Please fill out accordingly

List all of the public education and outreach BMPs as identified in the SMP and provide the requested information in the following table.

(List presentations and media)

BMP ID NUMBER	BRIEF BMP DESCRIPTION	MEASURABLE GOAL(S)	PROGRESS ACHIEVING GOAL(S) (MEASURED RESULT)
1.1	Webpage link to stormwater infrastructure information – City Stormwater Management Program, Stormwater Guidelines, 2019 Stormwater Permit.	# of visitors – in June 2019 the City switched to a new website that monitors views since the switch. The new site had 819,022 views, with 32,440 views on the Solid Waste Division page and 6,942 views on the Brush Site page during the reporting period.	All previous permits and annual reports are available online at the City's webpage. Posted are brochures listing steps to slow down or stop soil erosion. Brochures can be found at: https://www.leavenworthks.org/publicworks
1.2	Place documents in public library.	# Check-out requests – Unknown	All items available in the reference section at the public library. No check out requests are known.
1.3	Include articles or stories related to stormwater in City newsletter in at least two issues per year.	# Articles/Stories – 6 articles from the 2 issues in 2020 can be found at: https://www.leavenworthks.org/citymanager/page/public-information-office # Issues – 2 issues of City Connection delivered in 2020, and the link is: https://issuu.com/melissabower	Coordination between Public Information Office and Public Works has stories on the City's stormwater project/programs. From the Parks Division: Legacy Trees, Adopt-a-Park - all can be found at this link: https://www.leavenworthks.org/parksrec Due to COVID-19 and its restrictions, there was no Spring Cleanup; however, a Community Paper Shredding Even & Household Hazardous Waste drop off was held during the City's Free First Saturday on September 5, 2020.
1.4	City-generated posts on social media related to stormwater issues at least ten occurrences per year.	# Posts - 35	Public Information Office interacts with the public on social media on a wide range of stormwater-related issues. Two examples of social media posts can be found at BMP 1.4.
1.5	Provide information to citizens regarding the City of Leavenworth Solid Waste Division.	Distribute trash bags to citizens with proper disposal handout.	The City continues to provide citizens with information via the City website, handouts, and a recycling coach app. A paper insert with solid waste and other City information is provided to the doorstep of nearly all residences twice per year in a roll of trash bags. The City also utilizes free notification space on monthly residential water billing for trash bag delivery that falls one month prior to the event, twice per year, and a "Recycle Coach App" to assist residents with refuse issues.
1.6	Show stormwater information on local cable TV station.	Broadcast community forums in which continued water quality discussions take place. There were 14 City Commission meetings (study sessions and regular meetings) during the course of the year that specifically discussed stormwater. These meetings can be viewed on the City's channel cable TV station and YouTube.	Public Information Office broadcasts City Commission Meetings, Planning Commission Meetings and others on City channel cable TV which began live broadcast online in 2017. The list of meetings can be found at Appendix D, BMP 1.6 & 2.1.

E. SMP Requirements (Six Minimum Control Measures) (Continued)

2. Public Involvement and Participation (Table) - Please fill out accordingly

List all of the public improvement and participation BMPs as identified in the SMP and provide the requested information in the following table. (List all associated and partnerships)

BMP ID NUMBER	BRIEF BMP DESCRIPTION	MEASURABLE GOAL(S)	PROGRESS ACHIEVING GOAL(S) (MEASURED RESULT)
2.1	Hold public information meetings regarding stormwater issues.	Annual review by City Commission of Stormwater Annual Report – YES. Review of stormwater projects in annual Capital Improvement Plan - YES.	City Commission reviewed KDHE annual stormwater report February 25th, 2020. The meetings were also broadcast on the City's channel cable TV station and YouTube. City Commission reviewed stormwater projects for CIP in 2020 and approved design and construction of several projects. See listing in appendix D for 2.1 & 1.6.
2.2	Create an "Adopt a Stream Program"	# Streams adopted - None # Streams cleaned – None	The City's "Three-Mile Creek" monthly clean-up program had six citizen groups that received \$500 donations per group from transient guest tax dollars in 2020.
2.3	Improve lines of communication with the public through use of website and social media.	Integrate contemporary methods of providing and receiving information to the public. - Ongoing	Public Information Office continues a robust social media program for all City issues. Posted information on other efforts such as detention ponds, creek bank erosion, and water quality issues improves as staff skills increase. Additionally, the many ways to slow down or stop soil erosion can be found in erosion control brochures which can be found at: https://www.leavenworthks.org/publicworks
2.4	Annual Citywide Clean-Up Program.	# Groups - N/A # Participants - N/A	Due to COVID-19 and its restrictions, this event did not take place.
2.5	Customer surveys – conduct at least one survey each year on stormwater related issues in an on-line environment.	# of responses – N/A	No survey was conducted in 2020 as surveys in previous years have resulted in extremely limited responses.
2.6	Encourage groups to participate in activities such as inlet stencil program and similar.	# Groups – None # Programs – None	Due to COVID-19 and its restrictions, this event did not take place.

E. Stormwater Management Program Requirements (Six Minimum Control Measures)

3. Illicit Discharge Detection and Elimination (Table) - Please fill out accordingly

List all of the illicit discharge detection and elimination BMPs as identified in the SMP and provide the requested information in the following table.

BMP ID NUMBER	BRIEF BMP DESCRIPTION	MEASURABLE GOAL(S)	PROGRESS ACHIEVING GOAL(S) (MEASURED RESULT)
3.1	Inspect complaints of illicit discharge.	Inform public of methods to communicate concerns regarding illicit discharges - YES # Reports investigated – in 2020 there were 154 total incoming calls regarding sewer issues: WPC: 28, Public Works: 12, Street: 1, Citizens: 113.	Public Information Officer has created social media space for complaints. Other calls are forwarded to WPC for evaluation and possible action. 24/7 “real person” phone answering service can dispatch City forces for emergencies during off-duty hours.
3.2	Update stormwater outfall maps.	Continue efforts to accurately locate and measure existing and new stormwater infrastructure.	City maps are updated constantly. The GIS staff and the stormwater crew assist in obtaining accurate measurements and locations. In 2016 the maps were made available online to the public. The GIS link is: https://gis.firstcity.org
3.3	Inspect outfalls	# Outfalls inspected – over 1,826 inlets and drains were inspected. No specific notation on “outfall”.	Continued effort by the stormwater crew has inspected infrastructure throughout the year as part of their routine work and for the GIS staff. Additionally, stormwater crew inspects for pollution evidence either entering or exiting the area. See also BMP 6.4.
3.4	Collect yard waste at City composting facility.	# Customers: for 2020, Grass – 181, Leaves - 1,505.	City provides free drop off of yard waste for composting. There may be slight overlap with #3.5. Note: Due to COVID-19, the brush site and recycling center were closed from March 16 - April 27, 2020.
3.5	Collect tree and brush debris at brush disposal site.	# Customers – 2,011 for 2020. (1,077 on free Saturdays, 522 on other days).	City provides a KDHE-approved site for drop off of tree and brush debris for disposal through a combination of mulching, composting and burning. Note: Due to COVID-19, the brush site and recycling center were closed from March 16 - April 27, 2020.
3.6	Collect household hazardous waste (HHW) as part of Citywide clean-up event.	# Pounds of household hazardous waste recycled – approximately 4,310 lbs.	City residents are directed to Leavenworth County facility during most of the year. Citywide clean up accepts HHW at MSC; however, this event was cancelled due to COVID-19. One HHW event was held later in 2020.
3.7	Conduct free disposal. Saturdays (first Saturday)	# Events - 11 # Tons collected – 249.75 (trash)	The free Saturdays are well attended; however, volume of recycling material is not weighed separately.
3.8	Staff training	# of staff trained – 2 staff participated in 19 online training opportunities.	Due to COVID-19, there was no in-person training held.
3.9	Storm sewer maintenance and inspection.	Provide dry weather storm sewer inspection. - YES.	Two-person crew inspects stormwater structures and works with GIS staff. City began development of stormwater inspection “app” in 2019.

3.10	Inspection of sanitary sewer systems.	<p>Inspect residential and commercial sanitary systems for improper discharge into storm drains. - YES</p> <p>Inspect sanitary sewer system to reduce number and volume associated with SSO - YES</p> <p>Coordinate SSO events between wastewater staff, building officials and engineering. - YES</p>	<p>City operates CCTV of sewer and storm sewer systems throughout the year. Approximately 44.7 total miles of sanitary sewer lines were cleaned in 2020. City inspected 8.7 miles of sanitary sewer and .56 miles of storm sewers with CCTV.</p> <p>City completed \$89,194.87 in work within the sanitary sewer system in 2020 to reduce Inflow and Infiltration to and from the storm sewer system.</p> <p>The WPC staff's aggressive response to SSOs greatly improved coordination between wastewater staff and building inspection staff on review and resolution of SSO events.</p>
3.11	Commercial Grease Trap Inspection Program	Review status of commercial grease traps through record review and physical inspection – YES.	An aggressive Grease Trap Inspection Program has improved participation and recordkeeping from the approximately 70 entities required to have a grease trap. At least 44 different installations were visited by City staff in 2020 as a result of this program, and 2 establishments/businesses that had grease traps closed, and one changed ownership during the reporting period. A summary of this program for 2020 can be found at the appendix for BMP 3.

E. Stormwater Management Program Requirements (Six Minimum Control Measures)

4. Construction Site Stormwater Runoff Control (Table) - Please fill out accordingly

List all of the Site Stormwater Runoff Control BMPs as identifies in the SMP and provide the requested information in the following table.

BMP ID NUMBER	BRIEF BMP DESCRIPTION	MEASURABLE GOAL(S)	PROGRESS ACHIEVING GOAL(S) (MEASURED RESULT)
4.1	Construction drawing plan review and site runoff control.	# Plans reviewed – 86 (74 were construction and 12 were development). # LDPs issued - 86 (66-residential, 8-commercial construction, 12-site development/utility work.)	All development projects were reviewed related to installation of appropriate BMPs. All construction projects were reviewed to ensure adequate BMPs were included in the work to prevent erosion runoff.
4.2	Publish updated standard details and design criteria for erosion control.	Make available on-line - YES Review annually with staff – no formal meeting; however, staff has met informally throughout the year.	Discussed with the Development Review Committee (DRC) and with the designers.
4.3	Staff training on runoff inspection.	# Inspectors trained – Staff, see section 3.8.	Due to COVID-19, there was no in-person training held.
4.4	Inform local contractors of LDP.	Annual notification of LDP requirements - YES LDP documents available online - YES	Contractor's LDPs are regularly inspected and contractors are informed of any deficiencies. LDPs were discussed when the permit was issued. A completed LDP example can be found at BMP 4 - Land Disturbance Permit Applications.
4.5	Pre-construction meetings with owner and contractor - require meetings with owner and contractor prior to commencement of grading operations.	# Meetings – 13 (City projects)	All City-funded projects have a pre-construction conference. Development projects typically meet at the Development Review Committee where BMP requirements are discussed and then incorporated into the plans. City has no requirement that private development have a pre-con with the City.
4.6	Construction site inspection and enforcement - increase the frequency of inspections and communications back to owner/contractor.	Documentation of inspections – YES 534 total inspections were conducted in 2020; including detention basin inspections.	Extensive documentation of site visits (both random and after rainfall) are included in each project file. This includes City and development projects, and individual LDP inspections (such as home construction).

E. Stormwater Management Program Requirements (Six Minimum Control Measures)

5. Post-Construction Site Stormwater Runoff Control (Table) - Please fill out accordingly

List all of the post-construction site stormwater runoff BMPs as identified in the SMPs and provide the requested information in the following table.

BMP ID NUMBER	BRIEF BMP DESCRIPTION	MEASURABLE GOAL(S)	PROGRESS ACHIEVING GOAL(S) (MEASURED RESULT)
5.1	Construct sediment vane traps on new and reconstructed inlets.	# Inlets - 20	Sediment traps were installed on new and replacement inlets on various projects.
5.2	Protect sensitive areas, such as wetlands and riparian areas through plan review and selected land acquisition from developers and at tax sales.	# Tracts acquired from developers - 0 # Tracts from tax sale - 0 # Acres acquired/year – 2.43	Property on NE corner of 3rd and Olive for future detention pond.
5.3	Enforce post construction runoff control ordinance.	#LDP releases – 60 Documentation of inspection and communication – YES.	LDPs are closed out when the danger of off-site erosion has been eliminated through either vegetation or other means. This is documented in the various permits. Several LDPs are still open through 2020 - 4 from 2017 and 5 from 2019.
5.4	Conduct long-term BMP maintenance inspections.	Documentation of inspection and communication - YES. City spent 65 hours conducting inspections of selected sites on random, after rainfall, or with depth-recording equipment.	City continues outreach to detention basin BMP owners. A meeting was held on January 30, 2020 with 10 attendees where they were given a packet with the meeting's agenda and a basic overview of detention basin maintenance. The packet also included examples of an emergency spill plan and an inspection form. This effort will continue and expand. Currently there are 68 BMP sites.
5.6	Analyze existing structural BMP performances at selected sites (particularly detention basins).	# Sites evaluated – 2	City installed depth-recording devices in locations in 2020. This is to facilitate evaluation of performance. Selected graphs and charts are shared informally with interested parties via email. Examples can be found at Appendix D.
5.7	Measure rain gauge and creek depth to evaluate flow quantity and duration from at least March – October.	# Rain gauges - 4 # Stream gauges - 5	City continues to maintain rain and creek monitors. The City also collaborates with other local governments on an extended rain gauge network. Selected graphs and charts are shared informally with interested parties via email.

E. Stormwater Management Program Requirements (Six Minimum Control Measures) (CONTINUED)

6. Municipal Pollution Prevention / Housekeeping (Table) - Please fill out accordingly

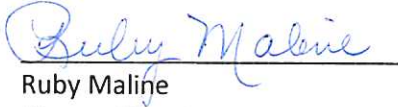
List all of the municipal pollution prevention / housekeeping BMPs as identified in the SMPs and provide the requested information in the following table.

BMP ID NUMBER	BRIEF BMP DESCRIPTION	MEASURABLE GOAL(S)	PROGRESS ACHIEVING GOAL(S) (MEASURED RESULT)
6.1	Review City facilities for water quality concerns and develop plans to address them, goal is at least three facilities per year.	# Reports prepared: 0 design reports were completed.	3 sites with enhanced water quality - City Hall lot & Thornton Street were constructed in 2020.
6.2	Street sweeping program – goal is residential areas three times per year and collector/arterial streets once per month (8 months).	# Times completed residential area sweeping – exceeded annual goals - met goal of 3 sweepings. # Times completed collector/arterial sweeping – exceeded annual goals - met goal of 3 sweepings. # Miles of streets swept – 2,400 # Pounds of debris removed – 532.67 tons.	Street sweeping program operations continued throughout the year. There are 2 sweepers. Equipment repair and turnover reduced effectiveness also.
6.3	Snow removal operations - use ground speed control and GPS equipment to keep salt use within guidelines.	# Tons of salt used per year - 490. # Pounds per lane mile per storm – 419 lbs/lane-mile average for 2020.	Use of ground speed control resulted in application rates between 256 & 551 lbs/lane-mile.
6.4	Stormwater inlet cleaning.	# Inlets – 589.	Stormwater crew inspected and/or maintained approximately 4,761 inlets, and cleaned 667 area drains and other stormwater facilities. See also 3.3.
6.5	Continue Citywide Leaf Collection Program.	Program was modified in 2019. COVID-19 precautions closed leaf disposal area between mid-March and late-April .	Leaf Collection Program – modified by eliminating curbside leaf pick-up in 2019, but retained free drop off site and collection by Refuse Service.

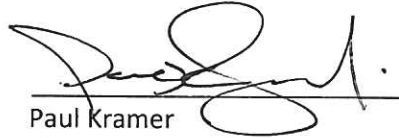
Policy Report
Bid for Kansas State Rehabilitation Tax Credits
February 23, 2021

Prepared by:

Approved by:



Ruby Maline
Finance Director



Paul Kramer
City Manager

Issue:

The City of Leavenworth is in possession of \$96,374.00 in Kansas State Rehabilitation Tax Credits. As the City pays no state tax, there are currently no uses for the tax credits. Therefore, to receive any benefit from the tax credit allocation, the City must sell the tax credits.

Background

In December 2019, the City completed \$385,495 of qualifying expenditures for the stone replacement on the Old Union Depot, now known as the River Front Community Center. Because of the building's historic nature, the City applied for Kansas State Rehabilitation Tax Credits to help with the repairs. In November 2020, the City was notified that it had received a credit for 25% (or \$96,374) of the total project cost. As mentioned above, the City cannot use these tax credits, and must sell them to be able to benefit from the award.

Process

Based on procedures the City has used before, City staff drafted an RFP for the tax credits, and generated a list of more than 15 entities, including banks, private individuals and other financial industry organizations to solicit bids. Additionally, an ad was placed in the Leavenworth Times. The RFP asked firms to indicate the maximum amount they would pay for the tax credits. The proceeds from the sale will be used to offset remaining costs associated with the project.

Recommendation:

The City received one bid for the tax credits from Fallbrook Tax Credits, in the amount of 91.1% or \$87,796.71. It is recommended that the City Commission accept Fallbrooks Tax Credits for \$87,796.71.

6425 SW 6th Avenue
Topeka, KS 66615



phone: 785-272-8681
fax: 785-272-8682
Kshs.culturalresources@ks.gov

Kansas Historical Society

Laura Kelly, Governor
Jennie Chinn, Executive Director

City of Leavenworth
100 N 5th Street
Leavenworth, KS 66048

RE: Rehabilitation Completion Certification for the rehabilitation of Old Union Depot in Leavenworth, KS (Project 1595)

Dear: City of Leavenworth

Please find enclosed a tax credit certificate, issued by the Kansas State Historical Society, acknowledging completion of a qualified rehabilitation project on a qualified historic structure. All completed work submitted for this project appears to meet the Secretary of the Interior's *Standards for Rehabilitation* and has followed the scope of work set out in the Description of Rehabilitation approved by this office. This certificate verifies that this work was completed in tax year 2019 and, therefore, the property owner(s) is/are eligible to receive a state income tax credit equal to 25% of qualifying expenses.

As the entity holding ownership of this property is a not-for-profit entity that does not have a state income tax liability, the tax credits presented here may be transferred or sold to other taxpayers. Please contact me with any questions or if you need any assistance.

A copy of this certificate will be provided to the KDOR. Taxpayers may claim their credits by submitting a K-35 with their Kansas state tax return. The taxpayer(s) claiming the credits are required to keep this certificate and the enclosed KDOR letter on file with their tax records.

Please contact me at 785-272-8681 or Kshs.culturalresources@ks.gov with any questions or concerns.

Sincerely,

State Historic Preservation Office
Cultural Resources Division

6425 SW 6th Avenue - Topeka KS 66615 - 1099

Phone 785-272-8681, ext. 240 - Fax 785-272-8682 - Kshs.culturalresources@ks.gov - TTY 785-272-8683

kshs.org



TAX CREDIT CERTIFICATE
KANSAS STATE REHABILITATION TAX CREDIT PROGRAM

<p>APPROVED PROJECT</p> <p>PROJECT NUMBER: 1595 Building Name: Old Union Depot Address: 123 S Esplanade City: Leavenworth State: KS Zip: 66048</p>	<p>OWNER OF PROPERTY</p> <p>NAME: City of Leavenworth</p> <p>EIN: 46-6034051</p>
<p>PROJECT START DATE:</p> <p style="text-align: center;">October 24, 2018</p>	<p>DATE PROJECT PLACED IN SERVICE (COMPLETION DATE):</p> <p style="text-align: center;">December 11, 2019</p>
<p>TOTAL QUALIFYING EXPENSES ALLOWED FOR CREDIT:</p> <p style="text-align: center;">\$385,495.00</p>	<p>TOTAL STATE REHABILITATION TAX CREDIT REMAINING FOR THIS PROJECT:</p> <p style="text-align: center;">\$96,374.00</p>
<p>TAX CREDIT CERTIFICATE NUMBER: SH0664323200</p>	

This certificate acknowledges completion of a qualified rehabilitation project on a qualified historic structure pursuant to K.S.A. 2001 Supp. 79-32,211, as amended, and regulations set forth by the Kansas State Historical Society.

Kansas State Rehabilitation Tax Credits may be used to offset income, privilege, or premium tax liability for the year in which the qualified rehabilitation plan was placed in service. Excess amounts may be carried over for deduction from such taxpayer's income, privilege, or premium tax liability in the next succeeding year or years until the total amount of the credit has been deducted from the tax liability, except that no such credit shall be carried over for deduction after the 10th taxable year succeeding the taxable year in which the qualified rehabilitation plan was placed in service.

A copy of this certificate will be provided to the Kansas Department of Revenue. You are required to keep this Tax Credit Certificate on file with your tax records. You may claim your credits by submitting Schedule K-35 with your income or privilege tax return. We encourage you to file your income tax return electronically. Electronic filing information can be found at webtax.org. Please contact the Cultural Resources Division of the Kansas State Historical Society with any questions about this certificate or requests to transfer these tax credits.

Patrick Zollner, Deputy State Historic Preservation Officer
 Cultural Resources Division
 Kansas State Historical Society

Date Issued: November 25, 2020

Kansas Rehabilitation Tax Credit Application
Qualified Historic Structure Certification

RECEIVED
 NOV 16 2020
 CULTURAL RESOURCES

Part 3

STC Project Number: 1595

Upon completion of the rehabilitation project, fill out and submit this form with photographs of the finished work, along with KDOR Schedules 1 and 2. All materials must be submitted to the Kansas State Historic Preservation Office. Type or print clearly. If there are additional property owners, please use the Additional Ownership form to submit that information. Please refer to the application instructions and photo policy for submission requirements.

Property Name: Old Union Depot (currently Riverfront Community Center)

Street: 123 S. Esplanade

City: Leavenworth County: Leavenworth Zip Code: 66048

Completed Project Data:

Project Starting Date (mm/dd/yy): 10-24-2018 Square footage before project: n/a - exterior repairs

Project Completion Date (mm/dd/yy): 12-11-2019 Square footage after project: same

Total Qualified Expenses: \$385,476.58 Total Non-qualifying expenses: \$500,000.00

Owner Information

Legal Property Owner(s): City of Leavenworth

Type of Ownership Entity (check one):

- Individual Corporation LLC/LP* Bank Insurance Non-Profit
 Government School Dist. University Fiduciary Other

Owner's Tax ID Number: 46-6034051 SSN or FEIN (circle one)

Street Address: 100 N 5th Street City: Leavenworth State: KS Zip: 66048

Daytime Phone: Mike Hooper: (913) 684-0396 Email: mhooper@firstcity.org

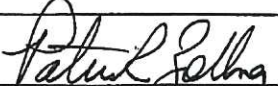
Signature of Owner:  Date: 11-10-20

*All Pass-Through entities must fill out the Additional Ownership form providing ownership information for each shareholder within the entity.

State Office Use Only:

The State Historic Preservation Office has reviewed the Part 2 Application for the above-named property and determines that the rehabilitation:

- The completed rehabilitation meets the Secretary of the Interior's "Standards for Rehabilitation"
 The rehabilitation described does not meet the Secretary of the Interior's Standards for Rehabilitation.

Date:	# <u>11-25-20</u>	SHPO/Deputy SHPO Signature:	<u></u>
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CONTRACT FOR THE SALE AND PURCHASE OF TAX CREDITS

This contract to sell and purchase tax credits (this "contract") made and entered into this 24th day of February 2021 (the effective date), by and between Leavenworth, KS ("Seller") and Fallbrook Tax Credits("Buyer").

Recitals

Whereas, Seller is the owner of one Tax Credit Certificate of the Kansas State Rehabilitation Tax Credit Program, evidencing entitlement to a credit to offset certain Kansas income, privilege or premium tax liability, more particularly described by number as follows:

<u>Tax Credit No.</u>	<u>Project No.</u>	<u>Certified Tax Credit Amount</u>	<u>Year Project Placed in Services</u>
SH0664323200	1595	\$96,374.00	2019

WHEREAS, Kansas law provides that the Tax Credits are assignable and Seller has previously publicized a Request for Proposals, seeking proposals for the purchase of the Tax Credits.

WHEREAS, Seller has accepted Buyer's bid for the purchase of the Tax Credits, and Seller desires to assign and sell the Tax Credits to Buyer and Buyer desires to acquire and purchase the Tax Credits from Seller, all in accordance with the terms and conditions of this Contract.

NOW THEREFORE, in consideration of the mutual agreement herein contained, Seller and Buyer agrees as follows:

Terms of Agreement

1. Sale and Purchase of Tax Credits. Seller agrees to sell and assign to Buyer, and Buyer agrees to purchase and acquire from Seller, the Tax Credits in accordance with the terms and conditions of this Contract.
2. Purchase Price. The purchase price for the Purchase and Sale of the Tax Credit of the certified amount of each Tax Credit, as follows:

<u>Tax Credit No.</u>	<u>Purchase Price</u>
SH0664323200	\$87,796.71

3. Payment of Purchase Price. Within 7 business days of the Effective Date, Buyer shall deliver to Seller Payment Equal to the sum of the Purchase Price and the fees assessed by the State of Kansas for the transfer (except that the seller agrees to pay one-half of the transfer fees: \$150). If the Buyer desires to assign the Tax Credit to multiple additional persons or companies and the State charges higher transfer fees, the buyer will pay the excess fees.

4. Deliveries by Seller. Upon receipt of payment specified in Section 3, Seller shall initiate the transfer of Tax Credits, which shall include the following: a) send written notification to the Kansas State Historical Preservation Officer (“SHPO”), containing the following: (i) a transfer fee in the amount of \$300, (ii) a statement that Seller has transferred the Tax Credits to Buyer, with buyers address and contact information (as provided below, unless Buyer provides different contact information) and (iii) the date that the buyer Paid Seller the Purchase Price, and (c) provide Buyer and/or the SHPO with additional information or the documents reasonably determined necessary to consummate and effectuate the transfer of the Tax Credits.
5. Warranty; Buyers Acknowledgements. Seller warrants that Seller will sign the Tax Credits to the Buyer, free and clear of all mortgages, lien, and encumbrances. Buyer acknowledge that the State of Kansas places restrictions and limitation on the use of the Tax Credits to offset Kansas income, privilege, or premium tax liability, including but not limited to a time period within which the Tax Credits must be used. Buyer represents that Buyer is fully familiar with such restrictions an limitations, and that Buyer has received no representations or warranties from Seller in connection with any such restrictions and limitations.
6. Rights and Remedies. If the payment specified in Section 3 is not timely received. Seller shall have the right to terminate this Contract and accept a bid from one or more other purchasers. If this contract is terminated, the Seller, in addition to any other rights provided for at law or equity, may require the buyer to pay the Seller the difference between the Purchase Price provided for in this Contract and the purchase price for which the Seller sells the Tax Credits to another purchaser.
7. Buyer’s Assignment. Buyer may assign Buyer’s rights under this Contract by providing written notice thereof to Seller prior to Seller’s notifications to the SHPO, as provided for in Section 4of the Tax Credits transfer. Notwithstanding the foregoing, Buyer or Buyer’s assignee shall pay any additional expenses or transfer fees occurring as a result of such assignment.
8. Miscellaneous.
 - (a.) Successors and Assigns. This Contract shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.
 - (b.) Amendments. This Contract may be amended or modified by, and only by, a written instrument executed by Seller and Buyer.
 - (c.) Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Kansas.
 - (d.) Counterparts. This Contract may be executed in counterparts, including facsimile and PDF copies, each of which shall be deemed to be original, but such counterparts when taken together shall constitute but one Contract. In the event the parties

exchange facsimile or PDF counterparts, one original execution counterpart of this Contract shall be delivered to the other party within 5 business days after the Effective Date.

- (e.) Severability. If any provision or any portion of any provision of this Contract shall be held invalid or unenforceable, the remaining portion of such provision, and the remaining provisions of this Contract shall not be affected thereby.
- (f.) Headings. The paragraph heading are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this Contract or any provision hereof.
- (g.) Computation of Time. The time in which any act is to be done under this Contract is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. Unless expressly indicated otherwise, (a) all references to time shall be deemed to refer to central standard time, and (b) all time periods shall expire at 5:00p.m. central standard time. A "business day" shall include only weekdays, but shall exclude any legal holiday in which the Seller's offices are closed.
- (h.) Inserted Provisions. Each and every provision of law and clause required by law to be inserted in the Contract to effectuate the transactions contemplated by this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted then on the application of either party the contract shall be amended to make such insertion or correction.

IN WITNESS WHEREOF, this contract is signed on the dates specified below, and is effective on the date the last party signs. Which shall be the "Effective date" and shall be the date inserted above.

SELLER:

BUYER:

THE CITY OF LEAVENWORTH, KS
Attn: Paul Kramer Jr.
100 N 5th Street
Leavenworth, KS 66048

Fallbrook Tax Credits
26610 Agoura Road Suite 1202
Calabasas, CA 91302

Name: _____
Title: _____
Date: _____

Buyer (name)
Date: _____







06.14.2011



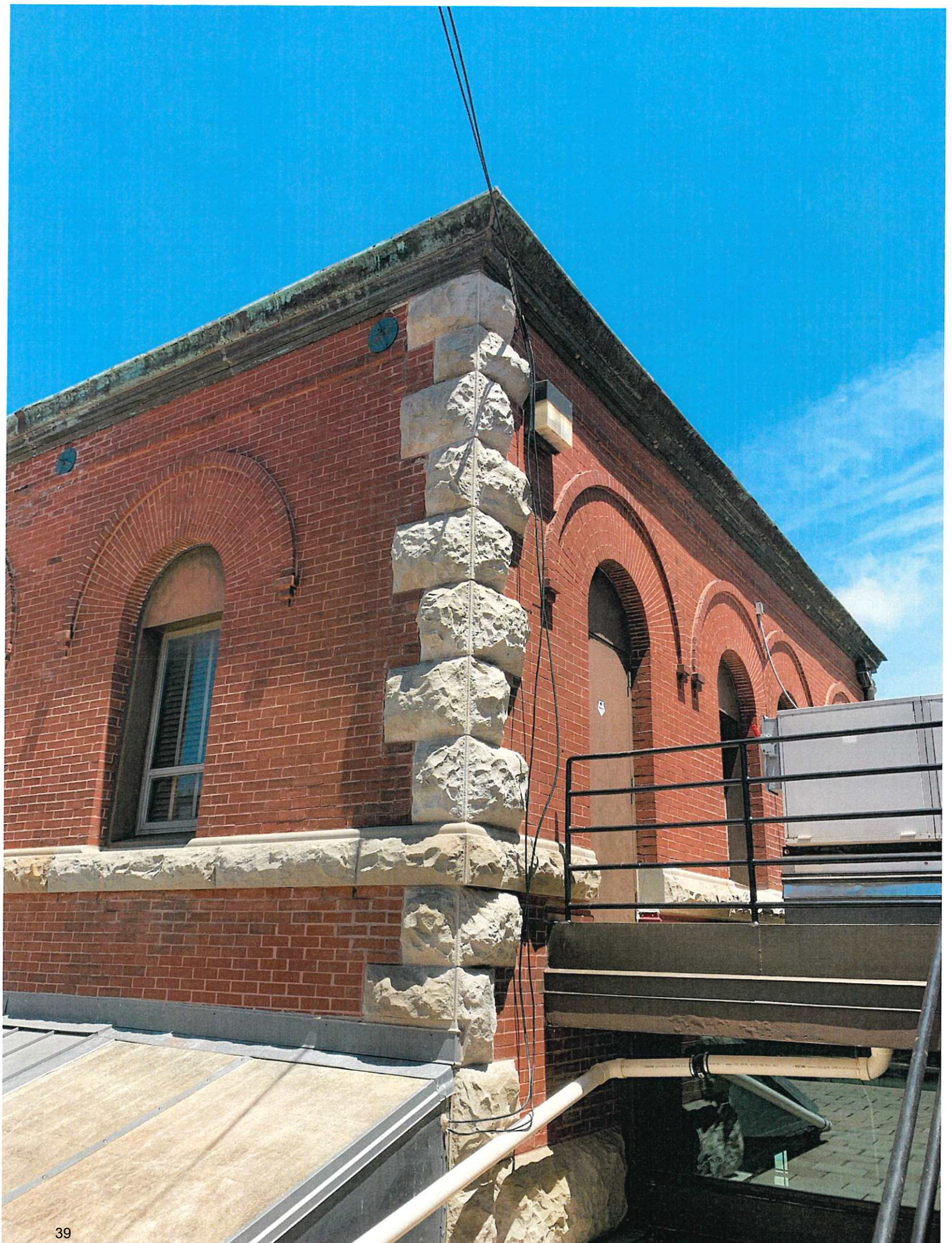


15.06.2011











POLICY REPORT
CONSIDER SMALL CELL FACILITY DEPLOYMENT AND MASTER RIGHT-OF-WAY AGREEMENT
WITH NEW CINGULAR WIRELESS PCS, LLC D/B/A AT&T MOBILITY

FEBRUARY 23, 2021


Carla K. Williamson, CMC City Clerk


Paul Kramer, City Manager

ISSUE:

To consider the Small Cell Facility Deployment and Master Right-of-Way License Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility. Last fall the City of Leavenworth received interest from wireless services providers (such as AT&T) and wireless infrastructure providers (companies that build out networks and then lease the facilities to the wireless service providers themselves) to install wireless and "small-cell" facilities within the City and on City-owned light poles. These small-cell antennae are low-powered cellular radio antennae used to enhance or boost wireless services, without the need for installing larger towers or antennae. Providers have been making applications throughout the Kansas metropolitan area.

The agreement was prepared by our City Attorney Mr. Waters and reviewed by AT&T. The agreement, if approved by the Commission, would be effective March 1, 2021 and have an initial term of (10) ten years ending February 28, 2031. Thereafter, the agreement will automatically renew for up to two additional 5-year terms unless either party notifies the other party of its intent to terminate the agreement at least 90 days before the termination of the then current term. Pages 24 and 25 of the agreement (Exhibit A Supplement to Master License Agreement and Attachment 1, Site Plan of Facilities and Attachments) will be completed at a later date when the grantee is ready to deploy, attach and access the City Right-of-Way. Staff recommends approval of the Agreement as presented.

BACKGROUND:

At the January 19, 2021 Study Session, Staff reviewed the topic with the Commission. At that time, it was discussed that the next step prior to entering into any agreements was to establish the fees associated with the agreements. At the January 26, 2021 Regular Meeting the City Commission approved the fees to be incorporated into the City Fee Schedule effective January 27, 2021. As you may remember these fees adopted by the Commission are consistent with fees adopted by cities in Johnson County.

ACTION:

Motion to approve the Small Cell Facility Deployment and Master Right-of-Way License Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility effective March 1, 2021.

ATTACHMENT:

- Small Cell Facility Deployment and Master Right-of-Way License Agreement

**SMALL CELL FACILITY DEPLOYMENT
AND MASTER RIGHT-OF-WAY LICENSE AGREEMENT**

NEW CINGULAR WIRELESS PCS (D/B/A AT&T MOBILITY)

THIS SMALL CELL FACILITY DEPLOYMENT AND MASTER RIGHT-OF-WAY LICENSE AGREEMENT (this "Agreement") is effective as of March 1, 2021 (the "Effective Date") is made by and between the CITY OF LEAVENWORTH, KANSAS (the "City"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company d/b/a AT&T Mobility ("Grantee") (collectively the "Parties").

RECITALS

WHEREAS, the City owns, operates, maintains and regulates the Right-of-way, and the City further owns, operates and maintains certain facilities within the Right-of-way, including but not limited to those defined herein as City Facilities; and

WHEREAS, Grantee proposes to construct, attach, operate and maintain Grantee's Wireless Facilities within the Right-of-way on or within: (i) the facilities (*i.e. poles, lines and conduit*) of third parties (*e.g., Kansas City Power & Light Company, Southwestern Bell Telephone Company, etc.*); (ii) Grantee's own poles (*e.g., a small cell monopole*); and/or (iii) City Facilities as Attachments; and

WHEREAS, the lease of a City Facility is a commercial transaction involving the rental of City (personal) property and the City's intention to act in a non-discriminatory manner notwithstanding, such commitment shall only apply to this Agreement when viewed as a whole and nothing herein shall be construed as a requirement that any other license agreements be identical. Nor shall it be construed as an obligation to proactively ensure competitive neutrality or prevent the City from obtaining in-kind consideration in instances where it is mutually agreeable to the Parties; and

WHEREAS, pursuant to above-referenced Statutes and the City's Home Rule authority, the Parties are entering into this Agreement to address both Grantee's siting of Grantee's Wireless Facilities within the Right-of-way (*as described further in Part II*) and the attachment of Grantee's Attachments on City Facilities (*as described further in Part III*).

NOW, THEREFORE, in consideration of the above recitals and the following mutual covenants, agreements, and obligations, which constitute good and valuable consideration, the sufficiency of which is acknowledged, and with the intention to be legally bound hereby, the Parties agree as follows:

PART I - INTRODUCTION

1. ORGANIZATION

This Agreement is organized into four parts in order to account for the difference in the City's general regulatory authority of the Right-of-way (Part II) and the City's proprietary ownership of City Facilities and its decision to grant a license for the use thereof (Part III). This Introduction (Part I) and the General Provisions (Part IV) apply to both the regulatory and proprietary interests.

2. DEFINITIONS

For the purposes of this Agreement, the following terms and their derivations shall have the meaning given herein, unless more specifically defined within a specific Section or Subsection. When not inconsistent with the context, words in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Applicable Laws: means all applicable federal, state and local laws, rules and regulations. (See Section 4).

Applicable Standards: means all applicable engineering and safety standards governing the installation, maintenance and operation of equipment and the performance of all work in or around City Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of the City or other federal, State or local authority with jurisdiction over City Facilities.

Attaching Entity: means any public or private entity, including Grantee, who, pursuant to a valid authorization with the City, places small cell facilities (as defined by K.S.A. 66-2019(b), as amended) on City Facilities to provide Wireless Services.

Attachment(s): means Grantee's Wireless Facilities placed directly on a City Facility (subject to the authorization process in Part III). For billing purposes an Attachment shall include Grantee's antenna(s) on each City Facility together with the associated cables and small-cell equipment.

Capacity: means the ability of a City Facility to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

City Facility(ies): means City Streetlights and associated property, that are capable of accommodating Grantee's Wireless Facilities in accordance with Applicable Standards. Provided, no Attachments will be allowed on any traffic control signal (as defined in the Manual on Uniform Traffic Devices).

City Streetlight: means each City-owned streetlight fixture, pole and attached photocell, together with the lateral arm on which the streetlight fixture is mounted.

Days: means calendar days unless business days are specified.

FCC: means the Federal Communications Commission.

Grantee: means NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company d/b/a AT&T Mobility, authorized to do business in Kansas, its authorized agents, successors, designees and assigns.

KCC: means the Kansas Corporation Commission.

Make-Ready Work: means all work, as reasonably determined or approved by the City, required to accommodate Grantee's Attachment and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement of City Facilities or existing attachments, inspections, engineering work, permitting work, design, planning, construction, materials, removal (less any salvage value), (City-approved) substitution of a streetlight pole, tree trimming (other than for normal maintenance purposes), and City Facility construction, but does not include routine maintenance.

Post-Construction Inspection: means the inspection by the City to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Supplement.

Pre-Construction Survey: means all work or operations required by Applicable Standards and/or the City to determine the potential Make-Ready Work necessary to accommodate Grantee's Attachment on a City Facility. Such work includes, but is not limited to, field inspection and administrative processing.

Right-of-way: means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include utility easements.

Site: means each place for which the Parties enter into a Supplement pursuant to this Agreement for the purposes of installing Grantee's Attachment on a designated City Facility.

Supplement: means the written sublicense, substantially in the form attached hereto as Exhibit A, which will be executed by the Parties and shall document Grantee's authorization to make and maintain a specific Attachment to a specific City Facility at a specific Site pursuant to the requirements of this Agreement and any applicable city code or regulation.

Supplement Application: means the application for a Supplement pursuant to the applicable requirements of this Agreement and any applicable city code or regulation. The Supplement Application shall include the application for any applicable ROW Permit.

Tag: means to place distinct markers on wires and cables, coded by color or other means specified by Applicable Laws, that will readily identify the type of Attachment and its owner.

Wireless Facilities: means Grantee's "small cell facilities," and any applicable "wireless support structure" comprising of Grantee's "small cell network system" facilities located within the Right-of-way that are designed and constructed for the purpose of producing, receiving, amplifying or distributing Wireless Services. (Terms in quotations shall have the meanings set forth in K.S.A. 66-2019(b), as amended.)

Wireless Services: means "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities. (See K.S.A. 66-2019(b)(19) as amended.)

Wireless Services Provider: means a provider of Wireless Services. (See K.S.A. 66-2019(b)(24)).

PART II – REGULATIONS FOR THE USE OF RIGHT-OF-WAY

3. GRANT

3.1. There is hereby granted to Grantee this nonexclusive Agreement governing the construction, operation and maintenance of Grantee's Wireless Facilities along, across, upon or under any Right-of-way for the purpose of supplying Wireless Services as a Wireless Services Provider within the corporate boundaries of the City, for the term of this Agreement, subject to the terms and conditions of this Agreement. This Agreement does not:

3.1.1 Convey title, equitable or legal, in the Right-of-way, and shall give only the right to occupy the Right-of-way, for the purposes and for the period stated in this Agreement.

3.1.2 Grant the authority to construct, operate or maintain any of Grantee's Wireless Facilities on any easements dedicated to the City or on any (real) property owned or controlled by the City outside of the Right-of-way, specifically including, but not limited to, parkland, arboretum, golf courses, farmstead, soccer complex, pools, community center property, city hall property, other city office property, or public works facility property.

3.1.3 Grant the right to use the facilities, equipment or any other (personal) property owned or controlled by the City. (Except as specifically set forth in Part III hereafter.)

3.1.4 Grant the right to use the facilities or other (real or personal) property owned or controlled by a third party without the consent of the third party.

3.2 As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC and the KCC. Grantee shall also comply with all Applicable Laws. (See Section 4.)

3.3 Grantee shall not provide any additional services for which a separate agreement or franchise is required without first obtaining such agreement or franchise from the City.

3.4 Grantee shall not knowingly allow the use of Grantee's Wireless Facilities by any third party in violation of any federal, state or local law.

This authority to occupy the Right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

4. REGULATORY COMPLIANCE

4.1 **Lawful Purpose and Use.** Grantee's Wireless Facilities must at all times serve a lawful purpose, and the use of the Right-of-way or any City Facilities must comply with all Applicable Laws (federal, state and local laws, rules and regulations).

4.2 **City Right-of-way Regulations.** Grantee's use of the Right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations or policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Right-of-way, including, but not limited to Chapter 42 and Chapter 46, and the City's zoning and land use ordinances (Appendix A Development Regulations), of the City Code, and related rules and regulations and amendments thereto, to the extent such laws do not conflict with or are not preempted by any federal or state law or regulation.

4.3 **Necessary Authorizations.** Grantee shall be responsible for obtaining from the appropriate public or private authority or other appropriate persons any required authorization to construct, operate

and/or maintain Grantee's Wireless Facilities on public and/or private property before it occupies any portion of the Right-of-way or attaches onto any City Facilities. The City retains the right to require evidence that appropriate authorization has been obtained before any ROW Permit is issued or any Supplement is finalized. Grantee's obligations under this Subsection include, but are not limited to, its obligation to obtain all necessary approvals to occupy Right-of-way, including, but not limited to, any applicable FCC or KCC authorization, any ROW Permit, or any applicable zoning or land use approval, and to pay all costs associated therewith. Grantee shall defend, indemnify and reimburse the City for all reasonable loss and expense, including reasonable attorney's fees, that the City may incur as a result of claims by owners of private property, or other persons, that Grantee does not have sufficient rights or authority to occupy any specific portion of the Right-of-way, to attach Grantee's Attachments on City Facilities, or to provide particular Wireless Services.

5. SPECIFICATIONS

- 5.1 **Applicable Standards.** Grantee's use of the Right-of-way, its Wireless Facilities and its attachment of Attachments to City Facilities shall be subject to and shall meet all Applicable Standards, Notwithstanding, unless required by federal or state law or regulation or due to a threat to the public health safety and welfare, Grantee shall not be required to retrofit any existing Wireless Facilities or Attachments to comply with any change in the Applicable Standards.
- 5.2 **No Obstruction.** Grantee's Wireless Facilities shall be so constructed, operated and maintained so as not to obstruct or hinder the usual travel or public safety in the Right-of-way or obstruct the legal use by other utilities and service providers.
- 5.3 **Tagging.** Grantee shall Tag all of Grantee's Wireless Facilities in accordance with any Applicable Laws.
- 5.4 **Protective Equipment.** Grantee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities.
- 5.5 **Pedestals, Enclosures and Cabinets.** Except as permitted by Applicable Laws, nothing in this Agreement shall authorize Grantee to place above-ground pedestals, enclosures or cabinets in the Right-of-way or at the base of any City Facilities upon which Grantee has made authorized Attachments.
- 5.6 **RF Emissions.** Grantee's operation of its Wireless Facilities shall comply with all FCC regulations regarding RF emissions and exposure limitations. Grantee is allowed to install signage and other mitigation, such as a power cut-off switch on its facilities and the facilities on which it attaches, to allow workers and third parties to avoid excess exposure to RF emissions. Except in an emergency, the City's authorized field personnel will contact Grantee's designated point of contact at least one business day in advance to inform Grantee of the need for a temporary power-shut-down. In the event of an unplanned outage or cut-off of power or an emergency, the power-down will be performed with such advance notice as practicable. Once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Grantee as soon as possible that power has been restored. The Parties acknowledge that they understand the vital nature of Grantee's Wireless Facilities and agree to limit the frequency of power-downs and to restore power as promptly as reasonably possible.
- 5.7 **Interference.** Grantee shall not allow Grantee's Wireless Facilities to impair the ability of the City or any third party which exists prior to the installation of Grantee's Wireless Facilities to use City Facilities, nor shall Grantee allow its Attachments to interfere with the operation of any City or other governmental facilities and equipment.
 - 5.7.1 Grantee shall comply with all FCC and other federal, state and local laws, rules, orders and regulations and all directives of the relevant regulatory agencies that are applicable in connection with the installation and operation of Grantee's Wireless Facilities.
 - 5.7.2 In the event that the installation, operation or maintenance of Grantee's Wireless Facilities on a City Facility, whether or not such operation is in compliance with the terms of Grantee's applicable FCC licenses, creates any interference with the operation of the City's or any other governmental entity's communication or other equipment, Grantee shall as soon as reasonably possible, at Grantee's sole cost and expense, take such reasonable steps as

may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements.

- 5.7.3 In the event that the installation, operation or maintenance of one of Grantee's Attachments creates any interference with the operation of the pre-existing equipment of third parties using a designated City Facility pursuant to an agreement with the City or any other pre-existing uses of electronic equipment, Grantee shall as soon as reasonably possible, at Grantee's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements.
- 5.7.4 If Grantee is unable or refuses to eliminate such interference (set forth in Subsections 5.7.2 and 5.7.3), the City may require Grantee to power down Grantee's Wireless Facilities to eliminate the interference. In the event Grantee is thereafter unable to take necessary action to eliminate such interference within a period of 90 days or such period as the Parties otherwise agree to in writing, the City may (if applicable) terminate Grantee's use of or right to use the City Facility upon which such interfering Wireless Facilities is located, and Grantee shall promptly remove the Wireless Facilities from the City Facility. The City agrees to include a provision substantially similar to this Subsection in any future agreements with third parties seeking to install wireless facility equipment on City Facilities.
- 5.7.5 Notwithstanding the foregoing, if equipment installed on a City Facility by any third party using the City Facility pursuant to an agreement with the City subsequent to the installation of Grantee's Attachment on the Site causes interference, either electronically or physically, with Grantee's previously installed Attachments, Grantee shall immediately notify City and such third party and City shall work in good faith with the parties to develop workable solutions to resolve the interference in a mutually acceptable manner in accordance with FCC or other applicable regulatory requirements. Alternatively, Grantee may upon 30 days written notice to the City terminate the affected Supplement.

6. DUTIES AND RESPONSIBILITIES

- 6.1 **Kansas One Call.** Grantee shall participate in the Kansas One Call utility location program.
- 6.2 **As-Is Condition.** Grantee acknowledges and agrees that the City does not warrant the **condition** or safety of the Right-of-way or any City Facilities, or the premises surrounding the same.
- 6.3 **Knowledge of Work Conditions.** By executing this Agreement, Grantee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Grantee will undertake under this Agreement and that it fully understands or will acquaint itself with the Right-of-way or applicable City Facilities, and with any difficulties and restrictions attending the execution of such work.
- 6.4 **Duty of Competent Supervision and Performance.** Grantee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, City employees and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Grantee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.
- 6.5 **Protection of Grantee's Wireless Facilities.** It shall be the responsibility of Grantee to take adequate measures to protect and defend its Wireless Facilities from harm or damage. If Grantee fails to accurately or timely locate its Wireless Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence or intentional conduct.
- 6.6 **Environmental Hazards.** Grantee represents and warrants that its use of the Right-of-way or any City Facilities will not generate any Hazardous Substances, that it will not store or dispose on or about or transport to the Right-of-way or any City Facilities any hazardous substances and that Grantee's Wireless Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. Notwithstanding the foregoing, Grantee shall be permitted to bring and keep equipment commonly

used in the wireless industry, including without limitation, electrical components and batteries. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Grantee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the City and its officials, officers, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs of litigation) arising from or due to the release, threatened release, or storage of any Hazardous Substances on, under or adjacent to the Right-of-way or any City Facilities attributable to Grantee's use, except to the extent of the City's negligence or willful misconduct in connection with such liability. The City acknowledges Grantee shall not be responsible for any contamination to the extent caused in whole or in part by the City or a third party.

- 6.7 **Liens.** In no event shall Grantee permit any lien to be filed or to exist upon the Right-of-way, any City Facilities, or any other City property, as a result of any claim against Grantee. In the event such lien is filed as a result of any claim against Grantee, Grantee agrees, within 60 days of the receipt of notice of such lien, to cause the lien to be released of record by payment or posting of a bond; provided, however, Grantee shall have the right to contest in good faith such lien, and in such event, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom as long as such lien is bonded over and/or released of record as set forth herein.

PART III – LICENSE TO USE CITY FACILITIES

(City's Proprietary Interests)

7. GRANT OF LICENSE

- 7.1 **Grant.** Subject to the provisions of this Agreement, the City hereby grants Grantee a revocable, nonexclusive license authorizing Grantee to construct, attach, operate and maintain permitted Attachments on specified City Facilities, as further detailed and authorized through individual Supplements to this Agreement. Placement of Grantee's Attachments on any specific City Facility shall be at the sole but reasonable discretion of the City so long as Grantee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third parties.
- 7.2 **Supplement Issuance and Attachment Conditions.** The City will enter into a Supplement with Grantee for a proposed Attachment on a specific City Facility only when the City determines, in its sole judgment, exercised reasonably, that: (i) it has sufficient Capacity to accommodate the requested Attachment; (ii) Grantee meets all requirements set forth in this Agreement; and (iii) such Attachment complies with all Applicable Standards. Notwithstanding, the City reserves the right to deny or modify Grantee's access to any City Facility, on a competitively-neutral and non-discriminatory basis, where City determines that Grantee's proposed Attachment will: (a) jeopardize the public health, safety or welfare; or (b) unreasonably limit or harm the capacity, functionality, reliability, governmental interests or aesthetics of the City Facility; or (c) violate Applicable Laws or zoning restrictions; or (d) exceed the capacity of the City Facility, to include taking into consideration the Reserved Capacity of the City Facility; or (e) interfere with the City's intended use of the City Facility; or (f) interfere with any other reasonable governmental interest.
- 7.3 **No Interest in Property.** No use, however lengthy, of any City Facility, and no payment of any fees or charges required under this Agreement, shall create or vest in Grantee any easement or other ownership or property right of any nature in any portion of such City Facility. Neither this Agreement nor any Supplement shall constitute an assignment of any of the City's rights to any City Facility. Notwithstanding anything in this Agreement to the contrary, Grantee shall, at all times with respect to City Facilities, be and remain a Grantee of a license only.
- 7.4 **Grantee's Right to Attach.** Nothing in this Agreement, other than a Supplement executed by the Parties, shall be construed as granting Grantee any right to attach Grantee's Attachment to any specific City Facility.

- 7.5 **City's Rights over City Facilities.** The Parties agree that this Agreement does not in any way limit the City's right to locate, operate, maintain or remove the City Facilities in the manner that will best enable it to fulfill any governmental purposes.
- 7.6 **Expansion of Capacity.** The City may take steps as reasonably appropriate, in a competitively neutral manner, to expand City Facilities to accommodate Grantee's request for Attachment. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the City to install, retain, extend or maintain any City Facility or portion of thereof for use when such City Facility is not needed for the City's or any other governmental service requirements. Likewise, the City may agree – but is not required – to allow Grantee to provide a substitute for the City Facility that can accommodate Grantee's Attachment; provided, the Parties agree that City will have ownership of the substitute City Facility. (For example, Grantee might provide a replacement light pole that is aesthetically comparable to the City's light pole but has more structural capacity so that it can support Grantee's Attachment.)
- 7.7 **Effect of Consent to Construction/Maintenance.** Consent by the City (granted through a Supplement) to the construction, operation or maintenance of any Attachment by Grantee to a City Facility shall not be deemed consent, authorization or an acknowledgment that Grantee has the authority to construct, operate or maintain any other such Attachments. It is Grantee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.
- 7.8 **No Forfeiture of City's Rights.** In the event an Attachment creates a forfeiture of City's rights, City shall notify Grantee in writing of the reasons why City believes such a forfeiture would occur and afford Grantee a reasonable time period in which to attempt to resolve the issue. If after exhausting all of its remedies Grantee is unable to resolve the matter in a period not to exceed thirty (30) days or such reasonable time as agreed to by the parties, Grantee shall remove its Attachments from the subject City Facility within ninety (90) days. Upon such removal, City shall provide an alternate City Facility for relocation of the Attachment equivalent to Grantee's current use of the City Facility, in which case Grantee shall submit a Supplement Application for such new location and City shall waive the applicable Supplement Application Fee.
- 7.9 **No Use After Termination.** Nothing in this Agreement shall be construed to require the City to allow Grantee to use City Facilities after the termination of this Agreement.

8. SPECIFICATIONS

- 8.1 **Installation and Maintenance of Attachment.** Upon execution of a Supplement pursuant to this Agreement, Grantee's Attachment shall be installed and maintained in accordance with the City's applicable requirements and specifications and all Applicable Laws. All of Grantee's Attachments must comply with all Applicable Standards Grantee shall be responsible for the installation and maintenance of its Attachments. Grantee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards; and Grantee shall replace, remove, reinforce or repair any defective Attachments (unless otherwise agreed to by the City in writing). Notwithstanding, unless required by federal or state law or regulation or due to a threat to the public health safety and welfare, Grantee shall not be required to retrofit any existing Wireless Facilities or Attachments to comply with any change in the Applicable Standards.
- 8.2 **Authorized Attachment(s) and Installation Methods.**
- 8.2.1 Prior to any installation of an Attachment, the City must approve the Attachment that Grantee is proposing to place on a City Facility. Except as authorized by the City in writing, only the Attachments depicted and described in the approved Supplement Application may be attached to the City Facility; provided, however, subsequent to the original installation of an Attachment on a City Facility, Grantee may modify or replace all or a portion of the Attachment without City approval so long as such modification or replacement results in different internal components being substituted as part of an upgrade of Grantee's Attachment (assuming the external appearance remains the same). Provided, any said upgrade or substitution must not create a nuisance and must maintain the structural integrity of the City Facility, and Grantee will provide all necessary supporting documentation, such as a structural certification and calculations; and further provided, any excavation or any modification to or work within the City Facility itself shall require advance notice to the City.

Notwithstanding the foregoing, Grantee may modify and/or replace Wireless Facilities on a Grantee or third party structure at its discretion in accordance with Applicable Laws.

- 8.2.2 Grantee shall make all reasonable effort to ensure the design, color, and aesthetics of the Attachment blend with and do not contrast with the City Facility to which it is to be attached.
- 8.2.3 In no event may Grantee or any of its subcontractors install or construct new City Facilities or modify or repair existing City Facilities except as may be expressly authorized by this Agreement or by a Supplement, or as is otherwise authorized in writing by the City.
- 8.2.4 Nothing in this Agreement shall be construed as a guaranty of the condition of any City Facility in connection with Grantee's Attachments or impose any obligation upon the City to repair or replace an existing City Facility in order to accommodate a request by Grantee to install an Attachment; provided, however, if City elects not to replace a City Facility, City will work with Grantee to find a new location.

8.3 **Other Specifications.** Grantee's Attachments shall also meet the specifications in Section 5.

8.4 **Violation of Specifications.** If Grantee's Attachment(s), or any part thereof, are installed, used or maintained in violation of the Specifications set forth in Section 5, and Grantee has not corrected the violation(s) within 45 days from receipt of written notice of the violation(s) from the City (or if the violation cannot be reasonably corrected in such timeframe, Grantee has not timely commenced work and diligently pursued the cure to completion), the City at its option, may unilaterally correct such conditions. Notwithstanding the foregoing, if such violation results from or is in connection with the defective or other condition of a City Facility, Grantee and/or Grantee's Attachment will not be deemed to be in violation of this Agreement until the condition of the City Facility is sufficiently repaired and, if such Attachment violation still exists, Grantee fails to correct such violation within the applicable cure periods set forth above. The City will attempt to notify Grantee in writing prior to performing such work whenever practicable. When the City reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the City's service obligations or pose an immediate threat to the physical integrity of City Facilities, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Grantee. As soon as practicable thereafter, the City will advise Grantee of the work performed or the action taken. Grantee shall be responsible for all actual and reasonable costs incurred by the City in taking action pursuant to this Subsection.

8.5 **Restoration of City Service.** The City's service restoration requirements shall take precedence over any and all work operations of Grantee on City Facilities.

8.6 **Effect of Failure to Exercise Access Rights.** If Grantee does not commence to exercise any access right granted pursuant to this Agreement by the applicable Supplement or any other written City approval (e.g., a ROW Permit) within one (1) year of the later of the approval of the applicable Supplement or other City approval, the City may terminate the Supplement or other approval and use the space scheduled for Grantee's Attachment for its own needs or for other Attaching Entities. In such instances, the City shall endeavor to make other space available to Grantee, upon written Supplement Application, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.

9. SUPPLEMENT APPLICATION PROCEDURES

9.1 **Supplement Required.** Grantee shall not install any Attachments on any City Facilities without first completing a Supplement Application (which includes the applicable ROW Permit application) pursuant to the applicable City requirements and entering into a Supplement for such Attachment(s) with the City pursuant to this Agreement. Such application shall not be considered complete until the applicable Supplement Application Fee is submitted. Attachments to or rights to occupy or utilize City property not covered by this Agreement, such as the lease and use of City-owned conduit, fiber optic capacity or any other City property (including, but not limited to, City offices, parks, swimming pools, soccer complex, farmstead recreational centers, arboretum or the like, as these properties are generally not available for third party use) must be separately negotiated.

9.1.1 Unless otherwise agreeable to the Parties, Grantee shall submit a Supplement Application for every proposed above-ground Site of Attachment that shall be accompanied by: (i) photos

of the subject City Facility and surrounding location; (ii) equipment specifications; (iii) a site sketch that depicts the proposed installation specifications such as attachment height, and attachment methods on the subject City Facility; (iv) structural calculations; (v) traffic control plan for any work that includes temporary lane reduction or closure; and (vi) additional information which may be reasonably required by City as necessary.

9.1.2 Grantee shall have a copy of the approved Supplement or ROW Permit, the approved Attachment plans, and (if required) the approved traffic control plan at the job site at all times during installation or any modification requiring permitting. Provided, a copies are not required for any routine maintenance not requiring permitting or during an emergency.

9.2 **Professional Certification.** Unless otherwise waived in writing by the City, as part of the Supplement Application process and at Grantee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Grantee who has been approved by the City, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Grantee's Attachment can be and was installed on the identified City Facility in compliance with all Applicable Standards and Applicable Laws, and in accordance with the Supplement.

9.3 **City Review of Supplement Application.** Upon receipt of a properly executed Supplement Application, which shall include the Pre-Construction Survey, and detailed plans for the proposed Attachments in a form acceptable to City staff, the City will review the Supplement Application and notify Grantee if such Supplement Application is incomplete within thirty (30) days after submission identifying the specific grounds of incompleteness. The City acceptance of the submitted design documents does not relieve Grantee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed the Supplement Application process shall be consistent with the following timeline.

9.3.1 **Review Period.** In accordance with K.S.A. 66-2019(g) and 66-2019(h)(1) and (3)¹, the City shall review and respond to properly executed and complete Supplement Applications within 60 days of receipt for an existing City Facility or 150 days for a City Facility requiring a new or replacement City Facility. The City will either accept the Supplement or provide a written explanation why the Supplement Application is being denied, either in whole or in part.

9.4 **Supplement as Authorization to Attach.** The Parties shall document the Make-Ready Work required in the applicable Supplement. Upon completion of any necessary Make-Ready Work, Grantee shall be authorized to make its Attachment.

10. MAKE-READY WORK/INSTALLATION

10.1 **Make-Ready Survey.** The Grantee shall prepare a make-ready survey (the "Make-Ready Survey"), at Grantee's cost, to determine the adequacy or the capacity of the City Facility to accommodate Grantee's proposed Attachment without jeopardizing the safety (engineering or otherwise) of the City Facility or placing the City in violation of generally applicable zoning or other restrictions. Grantee shall be responsible for performing and paying all actual costs associated with the Make-Ready Survey. The City may perform a field inspection and structural analysis as part of the Make-Ready Survey. The City shall provide reasonable advance notice of such a field inspection and a representative of Grantee may be present for the inspection.

10.2 **Make-Ready Work.**

10.2.1 Except where the City denies a Supplement Application, whenever any City Facility to which Grantee seeks attachment or occupancy requires modification or replacement to accommodate both Grantee's Attachment and the existing attachments or equipment of the City or other Attaching Entities, Grantee will prepare the City Facility for Grantee's Attachment. All actual costs for Make-Ready Work will be borne by Grantee. (See definition for specific components of Make-Ready Work.)

¹ AT&T reserves its right to challenge a failure to timely process this Supplement Application under the time frames and requirements specified in FCC Rules. See 47 C.F.R. § 1.6003. AT&T agrees to extend the applicable FCC shot clock to run concurrently with state law.

- 10.2.2 After receiving notification that Make-Ready Work is required, if Grantee still desires to make the Attachment, Grantee may within 90 days of receiving the notice, elect by written notice to the City that Grantee or Grantee's contractors will perform all the Make-Ready Work. The contractors shall be approved by the City to work on the City Facility. Approval shall be based upon reasonable and customary criteria employed by the City in the selection of its own contract labor.
- 10.2.3 If Grantee submits a Supplement Application that impacts existing Attaching Entities on the requested City Facility, the City will inform Grantee, and upon request, will provide Grantee with the existing Attaching Entities' contact information so Grantee can discuss the possibility of collocation with the Attaching Entities. To the extent collocation is feasible with the existing Attaching Entities, and that their third-party equipment is affected by Grantee's request, the City will follow the procedure as described in Subsection 10.2.1, but only to the extent the existing Attaching Entities do not elect to perform the rearrangement or are not already obligated to rearrange their third-party equipment and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.

10.3 **Grantee's Installation/Removal/Maintenance Work.**

- 10.3.1 All of Grantee's installation, removal and maintenance work shall be performed at Grantee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of City Facilities or other property or equipment, or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Section 23.
- 10.3.2 All of Grantee's installation, removal and maintenance work performed on City Facilities or in the vicinity of other City property, either by its employees or contractors, shall be in compliance with all Applicable Standards and all Applicable Laws. Grantee shall assure that any person installing, maintaining, or removing its Attachment is fully qualified and familiar with all Applicable Standards, all Applicable Laws and the provisions of this Agreement, including but not limited to, the provisions of Sections 4, 5, 6, 8, 9 and 10.
- 10.3.3 After completion of any installation, removal and maintenance work, Grantee shall, if applicable, provide City with updates plans and specifications for the Attachments and City Facilities including but not limited to as-builts and structural analysis.

11. INSPECTION OF ATTACHMENTS

- 11.1 **Inspections.** The City may conduct an inventory and inspection of Attachments at any time at City's cost and expense. Grantee shall correct all Attachments that are not found to be in compliance with Applicable Standards within sixty (60) days of notification.
- 11.2 **Notice.** The City will give Grantee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.
- 11.3 **No Liability.** Inspections performed under this Section 11, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Grantee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.
- 11.4 **Attachment Records.** Notwithstanding the above inspection provisions, upon the written request from City, Grantee is obligated to furnish the City on an annual basis an up-to-date map or list depicting the locations of Grantee's Attachments in an electronic format specified by the City.

12. RELOCATIONS

- 12.1 **Required Relocations of Grantee's Attachments.** If the City reasonably determines that a relocation of Grantee's Attachments is necessary in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, Grantee agrees to allow such relocation or remove the affected Attachment pursuant to Subsection 15.1, and the City agrees to reasonably cooperate with Grantee to locate a replacement City Facility on which to relocate Grantee's Attachment that provides substantially similar signal coverage as the original City Facility. In such instances, the City shall require Grantee to perform

such relocation or removal at its own expense within 180 days after receipt of notice from the City. If Grantee fails to relocate Grantee's Attachment within said 180-day period, the City shall have the right to relocate Grantee's Attachment using its personnel and/or contractors. The costs of such relocations shall be apportioned as specified under Section 13. The City shall not be liable for damage to Grantee's Attachment except to the extent provided in Section 22. The written advance notification requirement of this Subsection shall not apply to emergency situations, in which case the City shall provide such advance notice as is practical given the urgency of the particular emergency situation. The City shall then provide written notice of any such actions taken within 5 business days of the occurrence.

13. MODIFICATIONS AND/OR REPLACEMENTS

- 13.1 **Grantee's Action Requiring Modification/Replacement.** In the event any City Facility to which Grantee desires to make an Attachment is unable to support or accommodate the additional equipment in accordance with all Applicable Standards, the City will notify Grantee. If the City is willing to allow a modification or replacement of the City Facility to accommodate Grantee's Attachment, the City will notify Grantee and the Parties will discuss the necessary Make-Ready Work to provide an adequate City Facility, including but not limited to replacement of the City Facility and rearrangement or transfer of the City's equipment and fixtures. Before any modification or replacement of any City Facilities commences, plans for the same must first be approved in writing by the City and the timing for the same must be coordinated with City staff. If Grantee elects to go forward with the necessary changes, Grantee shall bear the actual cost of any Make-Ready Work, per Subsection 10.2. When applicable, the Make-Ready Work must also include the arrangement or transfer of any existing equipment of other Attaching Entities; and Grantee shall be responsible for separately entering into an agreement with the other Attaching Entities concerning the allocation of costs for the same. In such event, and before the commencement of any Make-Ready Work, Grantee shall provide the City the agreements between Grantee and the other Attaching Entities concerning the relocation or rearrangement of their attachments and the costs involved.
- 13.2 **Treatment of Multiple Requests for Same City Facility.** If the City receives Supplement Applications for the same City Facility from two or more prospective grantees within 60 days of the initial request, and accommodation of both requests is not possible, the City will authorize the earliest complete Supplement Application received. If it is possible to accommodate more than one Attachment request through a modification, the City will consider, but is not required to authorize, such requests. If the City approves, the prospective grantees must reach an agreement on how to allocate the applicable costs associated with such modification or replacement among such grantees.
- 13.3 **Allocation of Costs.** The costs for any rearrangement or relocation of Grantee's Attachment or the replacement of a City Facility (including any related costs for tree cutting or trimming) shall be allocated to the City and/or Grantee and/or other Attaching Entity and/or other third party on the following basis:
- 13.3.1 If the City intends to modify or replace a City Facility solely for its own requirements, it shall be responsible for the costs related to the modification or replacement of the City Facility. Grantee shall be responsible for all costs associated with any necessary modification or relocation of Grantee's Attachment. Prior to making any such modification or replacement of the City Facility the City shall provide Grantee at least 180 days' written notification of its intent in order to allow Grantee a reasonable opportunity to elect to modify, relocate or add to its existing Attachment. Should Grantee so elect, it must seek the City's written permission per this Agreement. The notification requirement of this Subsection shall not apply in the event of routine maintenance or emergency situations, in which case the City shall provide such advance notice as is practical given the urgency of the particular emergency situation. If Grantee elects to add to or modify its Attachment, Grantee shall bear the total incremental costs incurred by the City in making the space on the City Facilities accessible to Grantee.
- 13.3.2 If the modification or replacement of a City Facility is necessitated by the requirements of Grantee, Grantee shall be responsible for the costs related to the modification or replacement of the Facilities and for the costs associated with the relocation or rearrangement of any other Attaching Entity's wireless facilities as well as those of the City. Grantee shall submit to the City evidence, in writing, that it has made arrangements to reimburse all affected Attaching

Entities for the cost to relocate or rearrange such Entities' equipment prior to the commencement of any Make-Ready Work. The City shall not be obligated in any way to enforce or administer Grantee's responsibility for the costs associated with the relocation or rearrangement of another Attaching Entity's equipment pursuant to this Subsection.

- 13.3.3 If the modification or the replacement of a City Facility is the result of an additional attachment or the modification of an existing attachment sought by an Attaching Entity other than the City or Grantee, the Attaching Entity requesting the additional or modified attachment shall bear the entire cost of the modification or pole replacement, as well as the costs for rearranging or relocating Grantee's Attachment. Grantee shall cooperate with such third-party Attaching Entity to determine the costs of moving Grantee's Attachment
 - 13.3.4 If a City Facility must be modified or replaced for a solely private benefit that would cause relocation or adjustment of Grantee's Attachment, Grantee shall not bear the cost of the relocation or adjustment to the extent of such private benefit and Grantee shall not be obligated to commence relocation or adjustment until receipt of funds for such relocation or adjustment. Grantee shall have no liability for any delays caused by a failure to receive funds for the cost of such relocation or adjustment.
 - 13.3.5 If a City Facility must be modified or replaced for other reasons unrelated to the use of the City Facility by Attaching Entities (*e.g., storm, accident, deterioration*), the City shall pay the costs of the modification or replacement of the City Facility and Grantee shall pay any cost related to its Attachment; provided, however, that Grantee shall also be responsible for any additional costs or expenses occasioned by or resulting from the use of a substitute pole or other City Facility previously installed by Grantee in order to accommodate Grantee's Attachment or meet structural standards attendant thereto. In the alternative, Grantee may replace the City Facility at Grantee's cost or the City may replace its City Facility with a similar City Facility which existed prior to the provision of a substitute by Grantee. Under all such circumstances, Grantee shall be responsible for the costs of rearranging or relocating its Attachment.
- 13.4 **City Not Required to Relocate.** No provision of this Agreement shall be construed to require the City to relocate Grantee's Attachments or to modify or replace City Facilities for the benefit of Grantee; provided, however, if City elects not to replace a City Facility, City shall cooperate with Grantee to identify a mutually agreeable alternate City Facility.

14. ABANDONMENT OR REMOVAL OF CITY FACILITIES

- 14.1 **Notice of Abandonment or Removal of City Facilities.** If the City desires at any time to abandon, or remove any City Facilities to which Grantee's Attachment is attached, the City shall give Grantee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon or remove such City Facilities. Such notice shall indicate whether the City is offering Grantee an option to acquire the City Facilities. If, following the expiration of the applicable notice period, Grantee has not yet removed and/or relocated all of its Attachments therefrom and has not elected to acquire the City Facilities pursuant to Subsection 14.2, the City shall have the right to have Grantee's Attachment removed and/or relocated from the City Facility at Grantee's expense. The City shall give Grantee 15 days prior written notice of any such removal or relocation of Grantee's Attachment.
- 14.2 **Option to Purchase Abandoned City Facilities.** Should the City desire to abandon any City Facility, the City, in its sole discretion, may grant Grantee the option of purchasing such City Facility in "as is, where is" condition at a reasonable rate negotiated by the parties. Grantee must notify the City in writing within thirty (30) days of the date of the City's notice of abandonment that Grantee desires to purchase the abandoned City Facility. If Grantee elects to acquire title, then City shall promptly execute and deliver a bill of sale and assignment transferring the City Facility to Grantee in "as is, where is" condition, subject only to City's representation and warranty that City is the sole owner, and City owns the City Facility, as the case may be, free and clear of any liens, leases, licenses or other third party rights or encumbrances. Should Grantee not provide notice of its intent to purchase or should the parties fail to enter into an agreement for Grantee to purchase Grantee must remove its Attachments as required under Section 14.1. The City is under no obligation to sell Grantee the City Facilities that it intends to remove or abandon.

15. REMOVAL OF GRANTEE'S ATTACHMENTS

- 15.1 **Removal on Expiration/Termination.** At the expiration or other termination of this Agreement or any individual Supplement(s), Grantee shall remove its Attachment(s) from the affected City Facilities at its own expense. After removal, Grantee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear and damage by other parties. Provided, if the City Facility was modified or replaced in accordance with Section 13, the City may, at its option, agree to keep the modified or replacement pole in place instead of having Grantee remove it and replace it with a standard City Streetlight pole. If Grantee fails to remove such Attachments and restore the City Facilities within 60 days of expiration or termination or some greater period as allowed by the City, the City shall have the right to do so at Grantee's expense.
- 15.2 **Grantee Removal.** Grantee may, at any time, remove its Attachment from any City Facility, provided it gives the City at least 14 days prior written notice. Provided, the City may require Grantee to leave in place any conduit, innerduct or similar wireless facility equipment in order to prevent damage to the City Facility. After removal, Grantee shall pay for the actual cost to restore the City Facility to its condition immediately prior to the date the Attachment was made, including the cost for removal and replacement of a City Facility that Grantee installed, excepting normal wear and tear.
- 15.3 **Emergency Removal.** In the event of any emergency that threatens person or property, the City may, in its sole discretion, without prior notice, remove any of Grantee's Attachments. In such event, the City will contact Grantee as soon as practicable to provide notice of such removal. Such removal shall be at Grantee's sole cost and expense, unless the removal was the result of negligence or willful misconduct by the City. The City will give notice to Grantee as soon as practicable under the circumstances.
- 15.4 **Casualty.** In the event of damage to a City Facility due to any casualty, fire, act of God, or other harm affecting a City Facility licensed in whole or in part to Grantee pursuant to a Supplement ("Casualty Event") that cannot reasonably be expected to be repaired within sixty (60) days following such Casualty Event or which City elects not to repair, then Grantee may, at any time following such Casualty Event; (i) terminate the applicable Supplement or affected portion thereof upon fifteen (15) days' written notice to City; or (ii) submit a new Supplement Application for an alternate location equivalent to Grantee's current use of the City Facility, in which case City, upon City approval of the Supplement application, shall waive the applicable application fee and transfer all remaining rights to the new City Facility, as long as such relocation was due to a Casualty Event not caused by Grantee. If Grantee elects to terminate the Supplement, notice of termination shall cause the applicable Supplement or affected portion thereof to terminate with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the applicable Supplement. Grantee will be entitled to collect all insurance proceeds payable to Grantee on account thereof, and to be reimbursed for any prepaid Annual Attachment Fee on a pro rata basis. If Grantee does not elect to terminate the applicable Supplement, then the Annual Attachment Fee shall fully abate during the period of repair following such Casualty Event until the date that the Attachment is returned to full on-air operation in the ordinary course of Grantee's business.

16. TERMINATION OF SUPPLEMENT

- 16.1 **Automatic Termination of Supplement.** Any Supplement issued pursuant to this Agreement shall automatically terminate when Grantee ceases to have authority to construct operate and maintain its Attachment on public or private property at the Site of the particular City Facility covered by the Supplement.
- 16.2 **Surrender of Supplement.** Grantee may terminate a Supplement at any time upon written notice to the City, and remove its Attachment from the affected City Facilities, provided, however, that before commencing any such removal Grantee must, to the extent required by Applicable Laws, obtain the City's written approval of Grantee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance and bond requirements of Section 23. No refund of any fees or charges will be made upon removal. However, rental fees shall cease for the Attachment at the time Grantee's Attachment is removed and, if applicable, Grantee has provided to the City the actual costs for the City Facility to be properly restored to its condition immediately prior to the date the Attachment was

made, excepting normal wear and tear and damage by other parties. If Grantee terminates such Supplement pursuant to the provisions of this Section, but fails to remove its Attachments from City Facilities within 30 days thereafter, the City shall have the right to remove Grantee's Attachments at Grantee's expense.

17. UNAUTHORIZED OCCUPANCY OR ACCESS

- 17.1 **Penalty Fee.** If any of Grantee's Attachments are found occupying any City Facility for which no Supplement has been executed, the City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Penalty Fee as specified in Subsection 22.2. In the event Grantee fails to pay such Fee within 30 days of receiving notification thereof, the City has the right to remove such Attachment at Grantee's expense and without liability, subject to the dispute resolution provisions of Subsection 28.10.
- 17.2 **No Ratification of Unlicensed Use.** No act or failure to act by the City with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Supplement should be subsequently executed, such Supplement shall not operate retroactively or constitute a waiver by the City of any of its rights or privileges under this Agreement or otherwise; provided, however, that Grantee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

18. REPORTING REQUIREMENTS

Concurrently with Grantee's Annual Attachment Fee payment, Grantee shall report any Attachment Grantee has removed from City Facilities during the relevant reporting period. The report shall identify the City Facility from which the Attachment was removed and indicate the approximate date of removal. This requirement does not apply where Grantee is terminating a Supplement pursuant to Subsection 16.2.

19. RIGHT TO OPERATE CITY FACILITIES

The City reserves to itself the right to maintain and operate the City Facilities in such manner as will best enable it to fulfill its governmental service requirements. Grantee agrees to use City Facilities at Grantee's sole risk.

PART IV – GENERAL PROVISIONS

20. TERM

- 20.1 This Agreement shall be effective for an initial term of ten (10) years term beginning on the Effective Date and ending on February 28, 2031. Thereafter, this Agreement will automatically renew for up to two additional 5-year terms, unless either Party notifies the other Party of its intent to terminate the Agreement at least 90 days before the termination of the then current term. The additional term shall be deemed a continuation of this Agreement and not as a new agreement.
- 20.2 Upon written request of either Party, this Agreement shall be renegotiated in good faith at any time in accordance with the requirements of state law with respect to specific terms that are materially affected upon any of the following events: a final, non-appealable change in federal or state laws or orders that materially affect any rights or obligations of either Party, including but not limited to the scope of the Agreement granted to Grantee or the compensation to be received by the City hereunder. All terms in the existing Agreement shall remain in effect while the Parties are negotiating.
- 20.3 In the event the Parties are actively negotiating in good faith a new Agreement or an amendment to this Agreement upon the termination date of this Agreement, the Parties by written mutual agreement may extend the termination date of this Agreement to allow for further negotiations. Such extension period shall be deemed a continuation of this Agreement and not as a new Agreement.
- 20.4 Even after the termination of this Agreement, Grantee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Grantee's Attachments or Wireless Facilities as provided for in Section 16.

21. FEES

21.1 **Fees for Wireless Facilities² in Right-of-way.** Prior to the installation of any of Grantee's Wireless Facilities in the Right-of-way, Grantee agrees to pay the applicable Supplement Application Fee. Thereafter, Grantee agrees to pay an Annual ROW Access Fee for each of Grantee's Wireless Facilities located on:

1. An existing non-city owned structure in the Right-of-way (e.g. an existing utility pole); and
2. A new non-city owned structure in the Right-of-way (e.g., a new small cell monopole)

The amount of the ROW Permit Application Fee and the Annual ROW Access Fee shall be the amounts specified in the City Fee Schedule (defined below) for all similarly-situated providers with small cell facilities. (See Section 21.3 regarding the City Fee Schedule.)

21.2 **Fees for Attachments to City Facilities.³** Prior to the installation of any Attachment on a City Facility, Grantee agrees to pay the applicable Supplement Application Fee. Thereafter, Grantee agrees to pay an Annual Attachment Fee for each Attachment located on a City Facility. (The Annual Attachment Fee shall include any applicable Annual ROW Access Fee.) Grantee also agrees to pay any other Non-Recurring Fees when applicable; and that, at the discretion of the City, Grantee may be required to pay such fees in advance. Non-Recurring Fees may include any of the following:

1. Supplement Application Fee – to reimburse the City for costs incurred for project management services, review of the ROW Permit and/or Supplement Application, and site design approval.
2. Make-Ready Work Costs – to reimburse the City for costs incurred for any Make-Ready Work done to accommodate the Attachment on the City Facility. (Includes reasonable material, labor, engineering and administrative and overhead costs.)
3. Inspection Fees – to reimburse the City for costs incurred with inspections of Grantee's Attachments. (Includes reasonable material, labor, engineering and administrative and overhead costs.)
4. Unauthorized Attachment Penalty Fee – for Attachments made without City approval. Payment of this fee does not guarantee the Attachment may remain on the City Facility.
5. Failure to Timely Transfer, Abandon or Removal Attachment Penalty Fee (holdover fee).

The amount of the Supplement Application Fee, Annual Attachment Fee, and other Non-Recurring Fees shall be the amounts specified in the City's Resolution of fees for all similarly-situated providers with small cell facilities. (See Section 21.3 regarding City Fee Resolutions.)

21.2.1 Attachment Supplement. The Annual Attachment Fee shall be memorialized in each individual Supplement. In the event of a modification to the City's Resolution of fee that changes the amount of the Annual Attachment Fee (subject to the notice requirement of Section 21.1), the Parties agree to enter into an amendment of the Supplement(s) to document the revised Annual Attachment Fee.

21.3 **City Fee Schedule.** With respect to the City's Supplement Application Fee and Annual ROW Access Fee for Grantee's Wireless Facilities in the Right-of-way that are not attached to City Facilities (see Section 21.1), and the City's Supplement Application Fee, Annual Attachment Fee and other Non-Recurring Fees for Attachments on City Facilities in the Right-of-way (see Section 21.2), the parties acknowledge and agree as follows:

21.3.1 As of the date of execution of this Agreement, the City Fee Schedule, effective as of January 27, 2021 (the "City Fee Schedule") specifies the City's current Supplement Application Fee,⁴ and the City Fee Schedule effective specifies the City's current Annual

² May be referred to in the City Fee Resolution as small cell facilities.

³ May be referred to in the City Fee Resolution as city streetlight.

⁴ Referred to therein as the "ROW Permit Fee."

ROW Access Fee, Annual Attachment Fee⁵ and Non-Recurring Fees.

- 21.3.2 After specifying the City's current Annual ROW Access Fee and Annual Attachment Fee amounts, the City Fee Schedule acknowledges the FCC's 2018 Declaratory Ruling regarding fee amounts, but disputes the FCC's authority to establish such fee limitations.⁶ This said, the City Fee Schedule provides an option for a provider to only pay the FCC's "safe harbor" annual fee of \$270 in lieu of these specified fee amounts, provided it first agrees in writing to pay any outstanding balance within sixty (60) days in the event the FCC Ruling or its fee limitations are vacated without any further appeal. Accordingly, Grantee hereby exercises this option and consents its condition with respect to the Annual ROW Access Fee and Annual Attachment Fee. Provided, both parties agree that Grantee will not be required to pay any outstanding balance for any period of time more than 18 months prior to the event of any such final, non-appealable order.
- 21.3.3 In the event the City ever seeks to amend or replace the City Fee Schedule (or any subsequent annual fee schedule)) in such a manner as would impact the fees described in this Agreement, the City shall first provide Grantee a minimum of 30 days written notice before any such fee modification takes effect with respect to Grantee's Wireless Facilities.
- 21.4 **Payment.**
- 21.4.1 **Annual Fees.** Grantee shall pay all applicable Annual ROW Access Fees and all Annual Attachment Fees without requirement for invoice or reminder from the City by January 1 each year. Said annual fee payments are due in advance and not in arrears. As to any new Grantee's Wireless Facilities installed by or for Grantee during any calendar year, such fee may be prorated based on the number of days in the calendar year in which the Wireless Facilities were installed and shall commence upon the first day of the month following the effective date of the applicable Supplement and/or ROW Permit for the Wireless Facilities. In such event, Grantee shall clearly identify the same and the proration amount when Grantee's payment is made.
- 21.4.2 **Non-Recurring Fees.** The Supplement Application Fee is due when an application is submitted and an application is not considered complete without payment of the fee. All other Non-Recurring Fees are due within 60 days after the City issues the invoice.
- 21.4.3 All invoices and other requests for payment to City under this Agreement (other than the payment of the Annual ROW Access Fee and Annual Attachment Fee) shall be timely presented in writing to Grantee and accompanied with reasonable substantiation of the costs incurred by City. Properly presented invoices shall be paid by Grantee within sixty (60) days of receipt of invoice accompanied by such substantiation.
- 21.4.4 All fees paid under this Agreement are compensation for the use of the Right-of-way or for the attachment to City Facilities and shall in no way be deemed a tax of any kind.
- 21.5 **Late Charge and Billing Dispute Resolution.** If the City does not receive payment for any fee or other amount owed hereunder within 60 days after it becomes due, Grantee shall pay interest to the City on the amount due at the rate of 10% simple interest per annum; provided, however, under no circumstance shall interest under this Agreement exceed the maximum interest allowable under applicable Kansas law. Billing disputes will be resolved in accordance with Subsection 28.10.
- 21.6 **Determination of Fees and Charges of City Work.** Wherever this Agreement requires Grantee to pay for work done or contracted by the City, the City may utilize its employees or contractors, or any

⁵ Referred to therein as "Annual ROW Access and Streetlight Attachment Fee."

⁶ The City Fee Schedule specifically states, "The FCC issued a Declaratory Ruling on September 27, 2018, in WT Docket Nos. 17-79 and 17-84 (FCC 18-133, 33 FCC Rc'd 9088) ("FCC Ruling") in which the FCC seeks to limit attachment, franchise and/or other small cell ROW access fees to the "reasonable approximation" of a local jurisdiction's cost for processing applications and managing deployment in the right-of-way, but then also establishes a "safe harbor" annual fee of \$270/site. The City disputes the FCC's authority to establish such fee limitations and notes several jurisdictions have filed legal challenges to the FCC Ruling. Given this status, until and unless a court of competent jurisdiction issues a final, non-appealable order vacating the FCC Ruling or its fee limitations, a provider may opt to pay the City only \$270/site towards the Annual Fees (items 2 or 3 above) provided it first agrees in writing that, in the event the FCC Ruling or its fee limitations are vacated without any further appeal, the provider shall pay any outstanding balance for said Annual Fees within 60 days thereof."

combination of the two, to perform such work, or to permit Grantee to perform the work. Grantee will be responsible for payment to the City for all of the actual costs of all work the City or its contractors perform pursuant to this Agreement to accommodate Grantee's Attachments. The charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. The City shall bill its services based upon actual costs, and such costs will be determined in accordance with the City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Grantee was required to perform work and fails to perform such work necessitating its completion by the City, the City may charge the actual costs associated with completion of such work. When requested by Grantee, the City agrees to provide Grantee with reasonable documentation to determine actual and estimated costs.

- 21.7 **True Up.** Wherever the City, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Grantee and the actual cost of activity exceeds the advance payment of estimated expenses, Grantee shall pay the City for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, the City shall refund to Grantee the difference in cost.
- 21.8 **Refunds.** No fees or charges shall be refunded on account of any removal of any of Grantee's Wireless Facilities (including any Attachment) or any termination of a Supplement granted hereunder. Notwithstanding the forgoing, the City shall not continue to charge going forward for any Supplement terminated in the previous calendar year, and Grantee shall be entitled to a refund upon discovery of such a billing error.
- 21.9 **No Accord.** No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim of the City.
- 21.10 **Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond 90 days following receipt of written notice of nonpayment shall constitute a default of a material term of this Agreement as set forth in Subsection 27.1.
- 21.11 **Incremental Property Taxes.** If the personal property, real property or ad valorem taxes payable by the City with respect to City Facilities or lands at a Site(s) where Attachments are located or the basis on which such taxes are calculated, increase following installation of the Attachment, Grantee shall reimburse the City for the portion of such increase or change attributable to any construction, installation or improvements provided pursuant to this Agreement. Grantee shall be solely responsible for, and shall pay in a timely manner, any personal property, real property or ad valorem taxes or other taxes or fees levied upon or with respect to the Attachment and other Grantee property located on the Site(s) that are billed directly to Grantee by the taxing authorities.

22. INDEMNITY AND HOLD HARMLESS

- 22.1 It shall be the responsibility of Grantee to take adequate measures to protect and defend its Wireless Facilities in the Right-of-way from harm or damage. If Grantee fails to accurately or timely locate its Wireless Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, and amendments thereto, it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Wireless Facilities.
- 22.2 Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee or subcontractor of Grantee, while installing, repairing or maintaining Wireless Facilities in the Right-of-way.

- 22.3 The indemnity provided by this Section does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. Likewise, the indemnity provided by this Section does not apply to any liability resulting from the negligence of any third party not associated with Grantee, or for any portion of any harm caused by the same. This Section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- 22.4 Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Right-of-way.

23. INSURANCE AND BOND

- 23.1 **Certificate of Insurance.** Grantee shall at its sole expense maintain the insurance coverage and limits required by this Section during the Term of this Agreement. Grantee agrees to procure the required insurance from an insurance company having and maintaining an A.M. Best rating of at least A-VII and deliver to the City a Certificate of Insurance evidencing the types of insurance and policy limits required.
- 23.2 **Required Insurance.**
 - 23.2.1 **Workers' Compensation and Employer's Liability Insurance.** As required by statute, with Employer's Liability limits of \$500,000 each accident, \$500,000 by disease policy limits, and \$500,000 by disease each employee. To the extent allowed by Applicable Laws, the policy must include a blanket waiver of subrogation in favor of the City.
 - 23.2.2 **Commercial General Liability Insurance.** Written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, with limits of:

\$2,000,000	General Aggregate Limit
\$1,000,000	Each Occurrence
\$1,000,000	Each Occurrence - Personal Injury and Advertising Injury
\$2,000,000	Products/Completed Operations Aggregate Limit

The required Commercial General Liability policy must include the City of Overland Park as an additional insured on a primary and non-contributory basis and a waiver of subrogation in favor of the City.
 - 23.2.3 **Business Automobile Liability insurance.** With limits of \$1,000,000 Combined Single Limit for each Accident for Bodily Injury and Property Damage, extending to all company owned, leased, and non-owned vehicles.
 - 23.2.4 **Umbrella/Excess Liability Insurance.** Coverage is to be in excess of the employers' liability, commercial general liability, and automobile liability insurance required above with limits of \$4,000,000 each occurrence, \$4,000,000 aggregate.
- 23.3 **Notice of Cancellation.** Grantee may meet the required insurance coverage and limits with any combination of primary and umbrella/excess liability insurance. Grantee shall provide at least 30 days advance written notice of cancellation or non-renewal of any required insurance that is not replaced. Notwithstanding the foregoing, Grantee may self-insure the required insurance under the same terms and conditions as outlined above; provided, Grantee or its parent company shall have and continuously maintain a tangible net worth of at least one hundred million dollars (\$100,000,000.00).
- 23.4 **Bond.** Grantee shall, as a material condition of this Agreement, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$50,000, payable to the City to ensure the appropriate and timely performance in the construction operation and maintenance of Grantee's Wireless Facilities located in the Right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and reasonably satisfactory to the City Attorney in form and substance.

24. ASSIGNMENT

- 24.1 **Assignment.** This Agreement is granted solely to Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, or to an entity with which Grantee is under common ownership or control or in connection with the sale or other transfer of substantially all of Grantee's assets in the FCC market area where the City Facility or structures are located, upon written notice to the City. In the event of any transfer or assignment of either this Agreement or Grantee's business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. No assignment or transfer shall be allowed and Grantee shall remain fully liable under this Agreement until the successor entity becomes a signatory to this Agreement and assumes all obligations of Grantee arising under this Agreement. Additionally, Grantee's obligations under this Agreement with regard to indemnity, bonding and insurance shall continue until the successor entity has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.
- 24.2 **Sub-licensing.** Without the City's prior written consent, Grantee shall not sub-license or lease its rights under this Agreement to any third party, including but not limited to allowing third parties to place Attachments on City Facilities. Any such action shall constitute a default of material term of this Agreement as set forth in Subsection 27.1. Notwithstanding the foregoing, and subject to the reasonable approval of the City, the installation and use of internal space within Grantee's Attachments for third party wireless providers utilizing Grantee's Wireless Services is not subject to this Subsection. Furthermore, the use of Grantee's Attachments by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or overlashing is not subject to this Subsection.

25. DISCLAIMER

THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE RIGHT-OF-WAY OR THE CITY FACILITIES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

26. RESERVATION OF RIGHTS

- 26.1 In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- 26.2 In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- 26.3 In entering into this Agreement, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Agreement, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, ordinances and/or rulings.
- 26.4 The City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, and as a customer (or potential customer) of Grantee, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Wireless Services and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

27. TERMINATION

- 27.1 If a Party is in default of any material term or condition of this Agreement or a Supplement, the other Party may terminate the Agreement, if such default is in relation to the Agreement as a whole, or the applicable Supplement(s) if such default is in connection with the Supplement(s). Before terminating the Supplement(s) or this Agreement, the Party will first notify the Party in default in writing of the details of such default. The Party in default shall take immediate corrective action to eliminate any such condition(s) within 60 days (or, if such default is not curable within 60 days, if the defaulting Party fails to commence that cure within 60 days or fails thereafter diligently to prosecute such cure to completion) and shall confirm in writing to other Party that the cited condition(s) has ceased or been corrected, or is in the process of being corrected. If the Parties are unable to resolve the dispute and the Party in default fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, the initial Party may immediately terminate the applicable Supplement(s) or the Agreement, as applicable. In the event of termination of the Supplement(s) or the Agreement (as applicable), Grantee shall remove its Attachment(s) or Wireless Facilities pursuant to Section 16. In such instance, Grantee shall remain liable for and pay all fees and charges accrued pursuant to the terms of this Agreement to the City until Grantee's Attachment(s) or Wireless Facilities is actually removed.
- 27.2 Default of any material term or condition includes, but is not limited to, any of the following circumstances:
- 27.2.1 Construction, operation or maintenance of Grantee's Wireless Facilities in violation of Applicable Standards or the City's regulatory provisions (per Part II).
- 27.2.2 Construction, operation or maintenance of Grantee's Wireless Facilities in violation of law or in aid of any unlawful act or undertaking.
- 27.2.3 Construction, operation or maintenance of Grantee's Wireless Facilities after any authorization required of Grantee has lawfully been denied or revoked by any governmental or private authority.
- 27.2.4 The expiration, termination or revocation of any other required regulatory authorization (as required by Section 4); provided, Grantee shall have a reasonable period of time to obtain the reinstatement of any such authorization.
- 27.2.5 Construction, operation or maintenance of Grantee's Wireless Facilities without maintaining current insurance coverage or bond as set forth in Section 23.
- 27.2.6 Nonpayment of any amount due under this Agreement beyond 90 days of written notice as set forth in Subsection 21.10.
- 27.2.7 Unauthorized occupancy or access to City Facilities. (See Section 17.)
- 27.2.8 Unauthorized sub-license or lease of City Facilities as set forth in Subsection 24.2.
- 27.2.9 Failure to eliminate interference with a City Facility as set forth in Section 5. (Termination of applicable Supplement only.)
- 27.3 Nothing herein shall prevent either Party from invoking any other remedy that may otherwise exist under this Agreement, at law or in equity.

28. MISCELLANEOUS PROVISIONS

- 28.1 **Emergency Contact.** Grantee shall maintain with the City an emergency contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee's emergency contact number shall be 1-800-638-2822. Failure to maintain an emergency contact shall eliminate the City's liability to Grantee for any actions that the City deems reasonably necessary given the specific circumstances. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director.
- 28.2 **Notices.** All notices, requests and demands hereunder shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, or refused. Except where specifically provided for elsewhere, notices will be as follows:

<p>The City: City of Leavenworth, Kansas 100 N. 5th Street Leavenworth, Kansas 66048 Attn: City Clerk (913) 684-0335</p>	<p>Grantee: New Cingular Wireless PCS, LLC Attn: Tower Asset Group – Lease Administration Re: Wireless Installation on Public Structures City of Overland Park, Kansas FA No.: _____ 1025 Lenox Park Blvd NE, 3rd Floor Atlanta, GA 30319 Day to day operations - contact 1-800-638-2822</p>
<p>With a copy to: City of Leavenworth, Kansas 100 N. 5th Street Leavenworth, Kansas 66048 Attn: Public Works Director (913) 684-0375</p>	<p>With a copy to: New Cingular Wireless PCS, LLC Attn: AT&T Legal Dept. – Network Operations Re: Wireless Installation on Public Structures (City of Overland Park, Kansas) FA No.: _____ 208 S. Akard Street Dallas, TX 75202-4206</p>

Any Party may change its address or other contact information at any time by giving the other Party and persons named above written notice of said change.

The above notwithstanding the Parties may agree to utilize electronic communications such as email for notifications related to the Supplement Application and approval process and necessary relocation or City Facility modifications.

- 28.3 **Entire Agreement.** This Agreement supersedes all previous agreements, whether written or oral, between the City and Grantee with respect to the subject matter of this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both Parties.
- 28.4 **Conflict of Agreement and Supplements.** In the event of any conflict between this Agreement and any Supplement or exhibit hereto, the terms and conditions of this Agreement, as amended from time to time, shall control.
- 28.5 **Not Exclusive.** The City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use the Right-of-way or City Facilities. Such rights shall not interfere with the rights granted to Grantee by the specific Supplements issued pursuant to this Agreement.
- 28.6 **Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding the Right-of-way or City Facilities into which the City has previously entered, or may enter in the future, with others not party to this Agreement, provided that any future attachments on City Facilities shall not interfere with Grantee's Attachments.
- 28.7 **Relationship of Parties.** Nothing in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.
- 28.8 **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to confer rights on any third party, as a third-party beneficiary or otherwise.
- 28.9 **Failure to Enforce.** Failure of either Party to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement. No waiver or relinquishment shall be deemed to have

been made by either Party unless said waiver or relinquishment is in writing and signed by both the City and Grantee.

- 28.10 **Dispute Resolution.** Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after pursuing good faith negotiations, the Parties are unable to resolve the dispute, then all disputes relating to this Agreement, or the breach thereof, the Parties shall be entitled to pursue all available remedies at law or equity. Each Party will bear its own costs for dispute resolution activity. Unless otherwise agreed in writing, and to the extent permitted under Applicable Laws, communication between the Parties under this Subsection will be treated as confidential information developed for settlement purposes, exempt from discovery, and inadmissible in litigation.
- 28.11 **Confidentiality.** Information provided to the City under this Agreement shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City, at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Agreement.
- 28.12 **Force Majeure.** Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, earthquake, acts of terrorism, war and other disasters beyond either Party's control.
- 28.13 **Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable State limits on municipal liability or governmental immunity. Nothing herein shall be construed to waive or limit the City's immunities, limitation of liability, or defenses under the Kansas Tort Claim Act or other law.
- 28.14 **Survival.** Any termination of this Agreement shall not release Grantee from any liability, amount due, or other obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.
- 28.15 **Severability.** If any provision or portion thereof of this Agreement is held to be invalid by any Applicable Laws or court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, either Party may elect to declare the entire Agreement invalidated if the portion declared invalid is, in the judgment of the Party, an essential part of the Agreement; provided further, before any such termination, the Parties shall begin negotiate in good faith for a replacement of the invalid or unenforceable portion.
- 28.16 **Governing Law.** The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Kansas.
- 28.17 **Execution in Counterparts.** This Agreement may be executed in multiple counterparts, including scanned email counterpart signature, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.
- 28.18 **Waiver of Jury Trial.** Each Party waives its right to a trial by jury on disputes arising from this Agreement.

[Remainder of Page Intentionally Left Blank. Signature Page Follows Directly]

Exhibit A

(Form of Supplement)

**SUPPLEMENT NO. _____
TO MASTER LICENSE AGREEMENT**

This Supplement to Small Cell Facility Deployment and Master Right-of-Way License Agreement ("Supplement"), is made this ____ day of _____, 20__ (the "Effective Date") by and between the CITY OF LEAVENWORTH, KANSAS (the "City"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company d/b/a AT&T Mobility ("Grantee") (collectively the "Parties").

1. **Supplement to the Agreement.** This Supplement is a Supplement as referenced in the Small Cell Facility Deployment and Master Right-of-Way License Agreement between the City and Grantee dated _____, 202_, (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of the Agreement shall govern. Terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. **Site Description and Site Plan for Attachment.** City hereby licenses to Grantee certain spaces on the City Facility located at the Site described below:

Grantee Site Number: _____
Property Address: _____
City Pole Address: _____
Electric Service Address: _____

Site Plan: The Attachments of Grantee's Wireless Facilities are as shown on Attachment 1, attached hereto and made a part hereof.
3. **Term.** The Effective Date of this Supplement is set forth above; and the Term of this Supplement shall coincide with the Term of the Agreement.
4. **Fee.** As prescribed by Section 21 of the Agreement and commencing on the Effective Date of this Supplement, Grantee shall pay to the City the Annual Attachment Fee for use of the above-cited City Facility in the amount of: _____.
5. **Site Specific Terms.** (Include any site-specific terms, e.g., replace lighting with LEDs)

IN WITNESS WHEREOF, the City and Grantee have executed this Supplement effective the day and year first above written.

CITY OF LEAVENWORTH, KANSAS

NEW CINGULAR WIRELESS PCS, LLC

By: _____
Nancy D Bauder, Mayor

By: **AT&T Mobility Corporation**
Its: **Manager**

ATTEST:

By: _____
Carla K. Williamson, CMC, City Clerk

By: _____

Printed Name: _____

APPROVED AS TO LEGAL FORM:

By: _____
David E. Waters, City Attorney

Title: _____

Attachment 1

(Site Plan of Facilities and Attachments)

POLICY REPORT PWD NO. 21-09

**APPROVE THE LOW BID FOR THE
2020 CITY HALL PARAPET/BUILDING REPAIR PROJECT**

Project 2018- 881

February 23, 2021

Prepared by:



Michael G. McDonald, P.E.,
Director of Public Works

Reviewed by:



Paul Kramer,
City Manager

ISSUE:

Approve the low bid from Mid-Continental Restoration Co., Inc. for the 2020 City Hall Parapet/Building Repair Project.

BACKGROUND:

The City hired Strata Architects in September of 2018 to develop plans and specifications for work on City Hall building and grounds. This work was focused on addressing exterior terra-cotta condition, terra-cotta above the water table (roof slab) and grounds upgrades. The current project also addresses issues with the Statue of Liberty base. The recent landscaping project is associated with this effort. Future projects are expected to address concrete walkways, handrails and similar issues.

The 2020 City Hall Parapet/Building Repair Project consists of the following work, as outlined in the Specifications & Plans.

- Lady Liberty Stone Planter Base Reconstruction
- West Facade Plinith, Exterior Stone, and Window Sealant Repairs
- East Facade Exterior Stone, Gutter & Downspout, and Window & Door Sealant Repairs
- North Facade Plinith, Exterior Stone, and Window Sealant Repairs
- South Facade Exterior Stone, Terra Cotta, Window Sealant Repairs, and Structural Evaluation with Report/Recommendations

The project plans were developed by Strata Architecture and Preservation to meet City Building Restoration requirements and was advertised for bidding in the Leavenworth Times in January of 2021. Bids were opened on February 17, 2021. Two (2) bids were received from pre-qualified restoration contractors. There was only one bidder meeting the requirements of the bid submittal. The qualifying bid was reviewed by staff and Trudy Faulkner of Strata Architecture & Preservation.

Late start date is April 1, 2021, with final completion to be no later than November 1, 2021.

MTS Contracting, Inc., N. Kansas City, MO	Incomplete
Mid-Continental Restoration, Ft. Scott, KS.....	\$249,521.00

POLICY:

The City Commission generally approves the award of a project to the lowest qualified low bidder. Staff and Strata have worked with Mid-Continent Restoration on previous restoration projects with satisfactory results.

RECOMMENDATION:

Staff recommends that the City Commission approve the award of contract to Mid-Continental Restoration Co., Inc. for the 2020 City Hall Parapet/Building Repair Project in the amount of \$249,521.00.

ATTACHMENTS:

Bid Tabs



CITY OF LEAVENWORTH
Project No. 2018-881
2020 City Hall Parapet/Building Repair Project Bid Tab Review
February 17, 2021

BASE BID				Engineer's Estimate		MTS Contracting Inc.		Mid-Continental Restoration Co.	
Item	Description	Unit	Quantity	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	Mobilization	LS	1	\$10,000.00	\$10,000.00	\$6,500.00	\$6,500.00	\$67,520.00	\$67,520.00
2	Removal/Replace Lady Liberty Stone Planter Base	LS	1	\$32,860.00	\$32,860.00	\$22,880.00	\$22,880.00	\$17,087.00	\$17,087.00
WEST FAÇADE BUILDING REPAIRS									
3	Plinth Repairs	LS	1	\$59,050.00	\$59,050.00	\$23,750.00	\$23,750.00	\$16,712.00	\$16,712.00
4	Remove metal anchor and patch stone	LS	1	\$1,680.00	\$1,680.00	\$500.00	\$500.00	\$1,316.00	\$1,316.00
5	Install bond break @ stone bases under terra cotta and engaged pilasters	LS	1	\$4,480.00	\$4,480.00	\$880.00	\$880.00	\$1,346.00	\$1,346.00
6	Install sealant on west, 1st floor windows	LS	1	\$7,280.00	\$7,280.00	\$1,760.00	\$1,760.00	\$1,896.00	\$1,896.00
EAST FAÇADE BUILDING REPAIRS									
7	Install new neoprene weather seals on pedestrian doors	EA	3	\$350.00	\$1,050.00	\$333.33	\$999.99	\$348.00	\$1,044.00
8	Repair north downspout and metal flashing	LS	1	\$1,456.00	\$1,456.00	\$3,350.00	\$3,350.00	\$1,804.00	\$1,804.00
9	Clean gutter system	LS	1	\$500.00	\$500.00	\$1,500.00	\$1,500.00	\$1,342.00	\$1,342.00
10	Install new penetration sealant surrounds at utility connections	LS	1	\$2,800.00	\$2,800.00	\$2,500.00	\$2,500.00	\$899.00	\$899.00
11	Install sealant on east, 1st floor windows	LS	1	\$1,680.00	\$1,680.00	\$850.00	\$850.00	\$508.00	\$508.00
NORTH FAÇADE BUILDING REPAIRS									
12	Plinth Repairs	LS	1	\$25,032.00	\$25,032.00	\$4,240.00	\$4,240.00	\$5,901.00	\$5,901.00
13	1st floor opening repairs	LS	1	\$8,232.00	\$8,232.00	\$10,000.00	\$10,000.00	\$4,982.00	\$4,982.00
14	Install sealant on north, 1st floor windows	LS	1	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$551.00	\$551.00
SOUTH FAÇADE BUILDING REPAIRS									
15	Terra cotta unit repairs	LS	1	\$5,264.00	\$5,264.00	\$5,000.00	\$5,000.00	\$2,591.00	\$2,591.00
16	Install new neoprene weather seals on pedestrian doors	LS	1	\$1,050.00	\$1,050.00	\$500.00	\$500.00	\$484.00	\$484.00
17	Install sealant on south, 1st floor windows	LS	1	\$2,240.00	\$2,240.00	\$1,400.00	\$1,400.00	\$967.00	\$967.00
18	Structural evaluation with report/recommendations	LS	1	\$5,040.00	\$5,040.00	\$9,300.00	\$9,300.00	\$8,687.00	\$8,687.00
	Site Work - Exterior Façade Repairs - (Reference Addendum No. 1, Page 4 of 4, Question 6., Answer a.)	LS	1	\$68,855.00	\$68,855.00	* "Incomplete"	\$0.00	\$113,884.00	\$113,884.00
TOTAL - BASE BID						\$240,049.00		\$97,409.99	\$249,521.00

* "Incomplete" - Contractor confirmed via phone that this Line Item from Addendum No. 1 was omitted from their Bid Proposal, thus this bid was rejected as incomplete.