CITY OF LEAWOOD
GOVERNING BODY
MEETING AGENDA

Tuesday, January 22, 2019
Council Chamber
4800 Town Center Drive
Leawood, KS 66211
7:30 P.M.

AGENDA

(This agenda is subject to changes, additions or deletions at the discretion of the City Council)

<table>
<thead>
<tr>
<th>Mayor Peggy Dunn</th>
<th>Councilmembers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ward One</td>
<td>Ward Two</td>
</tr>
<tr>
<td>Debra Filla</td>
<td>Jim Rawlings</td>
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<tr>
<td>Andrew Osman</td>
<td>Mary Larson</td>
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<tr>
<td>Ward Three</td>
<td>Ward Four</td>
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<tr>
<td>Chuck Sipple</td>
<td>Julie Cain</td>
</tr>
<tr>
<td>Lisa Harrison</td>
<td>James Azeltine</td>
</tr>
</tbody>
</table>

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

3. CITIZEN COMMENTS
Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to use profanity or comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.

4. PROCLAMATIONS

5. PRESENTATIONS/RECOGNITIONS

6. SPECIAL BUSINESS
   A. Ordinance No. 2925, authorizing and providing for the acquisition of lands or interest therein by condemnation for the Patrician Woods Stormwater Project located at approximately 127th Street and Catalina in Leawood, Johnson County, Kansas [SMAC Project TM-04-006] [Leawood Project # 77018] [ROLL CALL VOTE]

   B. Resolution approving and authorizing the Mayor to execute an Amended Independent Contractor Agreement between the City and Van Booven Tree Care, for an amount not to exceed $15,000.00, for storm debris removal, related to the January, 2019, winter snow storm [Project # 74102]

If you require any accommodation (i.e. qualified interpreter, hearing assistance, etc.) in order to attend this meeting, please notify this office at 913.339.6700 or at www.leawood.org no later than 96 hours prior to the scheduled commencement of the meeting.
C. Resolution approving and authorizing the Mayor to execute an Amended Independent Contractor Agreement between the City and Arbor Masters Tree & Landscape, for an amount not to exceed $15,000.00, for storm debris removal, related to the January, 2019, winter ice storm

7. CONSENT AGENDA
Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted upon in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

A. Accept Appropriation Ordinance Nos. 2018-53, 2018-54 and 2019-1

B. Accept minutes of the January 7, 2019 Governing Body meeting

C. Accept minutes of the November 13, 2018 Historic Commission meeting

D. Accept minutes of the August 27, 2018 I-Lan Sister City Committee meeting

E. Approve payment in the amount of $59,225.00 to Leawood Chamber of Commerce pertaining to that certain Service & Funding Agreement dated February 2, 2015, between the City and the Leawood Chamber of commerce to provide funding for certain economic development services

F. Approve renewal of Cereal Malt Beverage [CMB] License to Hen House, located at 11721 Roe Avenue

G. Approve 2nd and Final Payment in the amount of $94,854.82, to McConnell & Assoc. Corp., pertaining to the 2018 Tennis Court Renovation Project, located at City Park, 10601 Lee Boulevard [Project # 71025]

H. Approve Change Order No. 1 in the amount of $960.00, to Total Electric Contractors, Inc., pertaining to the Installation of Traffic Signals at Mission Road and Lee Boulevard [Project # 72081]

I. Approve 3rd and Final Payment in the amount of $6,728.65, to Total Electric Contractors, Inc., pertaining to the Installation of Traffic Signals at Mission Road and Lee Boulevard [Project # 72081]

J. Approve Change Order No. 2 in the amount of $65,522.00, to Bruner Contracting, pertaining to the Public Works Maintenance Facility Expansion Project, located at 14303 Overbrook Road [Project # 76050]

K. Resolution approving and authorizing the Mayor to execute a Service Agreement between the City and Great Plains SPCA for animal impoundment and other related services

L. Resolution approving and authorizing the Mayor to execute a Construction Agreement in the amount of $43,636.00, between the City and Gunter Construction Company, pertaining to the 119th Street and Mission Road Retaining Wall Project [Project # 82065]

M. Resolution approving and authorizing the Mayor to execute a Non-Finance Governmental Roll-Out Agreement in the amount of $99,828.00, between the City and KC Bobcat for [2] Bobcat Skid Steer Loaders

N. Resolution accepting new Public Infrastructure [storm sewer] in connection with the Bi-State Centennial Park Development, located at 1900 W. 142nd Street, in accordance with the GASB-34 Guidelines of Reporting Inventory of Assets [2018 GASB-34 Inventory of Assets]

O. Resolution accepting new Public Infrastructure [New Development Permit/storm sewer ] in connection with Brookwood Elementary School, located at 3411 W. 103rd Street, in accordance with the GASB-34 Guidelines of Reporting Inventory of Assets [2018 GASB-34 Inventory of Assets]

The next regular meeting of the Leawood Governing Body will be

Monday, February 4, 2019
Resolution accepting new Public Infrastructure [storm sewer/ROW] in connection with Leawood Pines Development, located at northwest corner of 103rd & Lee Boulevard, in accordance with the GASB-34 Guidelines of Reporting Inventory of Assets [2018 GASB-34 Inventory of Assets]

Resolution accepting new Public Infrastructure [traffic signal] in connection with the Lee Boulevard and Mission Road Intersection Improvement Project, in accordance with the GASB-34 Guidelines of Reporting Inventory of Assets [2018 GASB-34 Inventory of Assets]

Declaration of Surplus Property, [2] Bobcat Skid Steer Loaders; Asset # 02243 [Unit # 475]; and Asset # 02244 [Unit # 476]

Police Department Monthly Report

Fire Department Monthly Report

Municipal Court Monthly Report

8. MAYOR’S REPORT

9. COUNCILMEMBERS’ REPORT
Councilmember Cain- Update on Leawood Banners

10. CITY ADMINISTRATOR REPORT

11. STAFF REPORT

COMMITTEE RECOMMENDATIONS

12. PLANNING COMMISSION

13. OLD BUSINESS

14. OTHER BUSINESS

15. NEW BUSINESS

A. Ordinance granting to Verizon Wireless [VAW] LLC, a Delaware Limited Liability Company, d/b/a Verizon Wireless, a contract franchise to construct, operate and maintain wireless facilities as a wireless service provider in the public right-of-way of the City of Leawood, Kansas [ROLL CALL VOTE]

B. Resolution approving and authorizing the Mayor to execute a Master License Agreement between the City and Verizon Wireless, LLC [VAW] for attachments to City facilities

ADJOURN
Leawood operates under a Council/Mayor form of government, with a separately elected mayor and 8 council persons. Council members are elected on a non-partisan basis from 4 wards. The Council develops policies and provides direction for the professional city administration. Regular meetings of the Leawood City Council are held the first and third Mondays of each month beginning at 7:30 PM. Copies of the agenda are available at the Office of the City Clerk on the Friday prior to the meeting.

Number of Votes Required:
Non-zoning Ordinances: Majority of the members-elect of the City Council [5]

Zoning Ordinances and other Planning Commission Recommendations:
• Passage of Ordinances Subject to Protest Petition: ¾ majority of members of Governing Body [7]
• Approving Planning Commission Recommendation: Majority of the members-elect of the City Council [5]
• Remanding to Planning Commission: Majority of the members-elect of the City Council [5]
• Approving, Overriding, Amending or Revising Recommendation after Remand: Majority of the members-elect of the City Council [5]
• Overriding, Amending or Revising Recommendation: 2/3 majority of membership of Governing Body [6]

Note: Mayor may cast deciding vote when vote is one less than required.

The next regular meeting of the Leawood Governing Body will be
Monday, February 4, 2019
<table>
<thead>
<tr>
<th>DATE</th>
<th>TIME</th>
<th>SUBJECT</th>
<th>LOCATION</th>
</tr>
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<tbody>
<tr>
<td>January 22</td>
<td>6:00 P.M.</td>
<td>NO WORK SESSION</td>
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<tr>
<td>January 28</td>
<td>6:00 P.M.</td>
<td>Discuss GB Short, Near &amp; Long-term Goals</td>
<td>Main Conf. Room</td>
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<tr>
<td>February 4</td>
<td>6:00 P.M.</td>
<td>Review proposal, plans, elevation and layout of new Fire Station No. 1 Building, to be located at 96 &amp; Lee Boulevard [not park portion]</td>
<td>Main Conf. Room</td>
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<tr>
<td>February 18</td>
<td>6:00 P.M.</td>
<td>Review CID Application for Ranchmart North Shopping Center, located at 95th &amp; Mission Road</td>
<td>Main Conf. Room</td>
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<tr>
<td>April 15</td>
<td>6:00 P.M.</td>
<td>Presentation of CIP; Discuss 2020-2024 Budget Model Assumptions</td>
<td>Main Conf. Room</td>
</tr>
<tr>
<td>June 10</td>
<td>5:30 P.M.</td>
<td>Budget &amp; Finance Committee Work Session</td>
<td>Main Conf. Room</td>
</tr>
<tr>
<td>June 11</td>
<td>5:30 P.M.</td>
<td>Budget &amp; Finance Committee Work Session [tentative]</td>
<td>Main Conf. Room</td>
</tr>
<tr>
<td>August 5</td>
<td></td>
<td>NO GOVERNING BODY MEETING; NO WORK SESSION</td>
<td></td>
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</table>

The next regular meeting of the Leawood Governing Body will be Monday, February 4, 2019
Staff Review

Fact Sheet

SUBJECT: REQUEST TO APPROVE ORDINANCE PROVIDING FOR THE ACQUISITION OF LANDS OR INTERESTS BY CONDEMNATION ON THE PATRICIAN WOODS STORMWATER PROJECT (SMAC TM-04-006) January 22, 2019

DISCUSSION
This is a request for the Governing Body to approve an Ordinance providing for the acquisition of property through condemnation. This is needed to obtain the necessary storm sewer and temporary construction easements for the stormwater improvements in Patrician Woods near 12600 Delmar to 12700 Catalina.

We have been unable to obtain the easements from two (2) properties:

12528 Catalina – Storm Sewer Easement and Temporary Construction Easement.

12640 Catalina – Storm Sewer Easement and Temporary Construction Easements.

In order to keep the schedule for a Spring 2019 bid letting, we need to proceed with condemnation for the easements.

It is the recommendation of the Public Works Department that the Governing Body approve the Ordinance to begin condemnation in order to acquire the necessary property for this project.

David Ley, P.E.
Director of Public Works

COUNCIL ACTION TO BE TAKEN
Approve Ordinance for Condemnation Proceedings

STAFF RECOMMENDATION
☑ For
☐ Against
☐ No position

COMMITTEE RECOMMENDATION
☐ For
☐ Against
☐ No position
☑ No Assignment

POLICY OR PROGRAM CHANGE
☑ No
☐ Yes

OPERATIONAL IMPACT

COSTS
Court and easement costs to be determined through court process.

FUND SOURCES
Project 77018
ORDINANCE NO. ______

ORDINANCE AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF LANDS OR INTEREST THEREIN BY CONDEMNATION FOR THE PATRICIAN WOODS STORMWATER PROJECT LOCATED AT APPROXIMATELY 127TH STREET AND CATALINA IN LEAWOOD, JOHNSON COUNTY, KANSAS [SMAC PROJECT TM-04-006] [LEAWOOD PROJECT # 77018]

WHEREAS, the Governing Body of the City of Leawood, Kansas did by Resolution No. 5111 declare the necessity to appropriate private property for public use, and authorize a survey and description of lands or interests therein to be condemned by the City for the following:

the construction, improvement and future maintenance of the stormwater system in and around the Patrician Woods subdivision including grading, removing and replacing existing metal pipes, modifications and construction of curb inlets, modifying and removing part of an open channel, installation of a concrete box culvert, and any other necessary modifications to minimize flooding in the area from the 12600 block of Delmar Street to 127th Street.

WHEREAS, said survey and description of lands or interests was prepared and is maintained on file with City Clerk at the Leawood City Hall.

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

SECTION ONE: It is hereby authorized and provided that the lands or interests hereafter described be acquired for the construction, improvement and future maintenance of the stormwater system in and around the Patrician Woods subdivision including grading, removing and replacing existing metal pipes, modifications and construction of curb inlets, modifying and removing part of an open channel, installation of a concrete box culvert, and any other necessary modifications to minimize flooding in the area from the 12600 block of Delmar Street to 127th Street, all within the City of Leawood, Kansas.

Description of the Property:

Owner: Nathan J. Kiewiet and Margaret A Kiewiet, husband and wife as joint tenants

Address: 12528 Catalina Street
Leawood, KS 66209

Parties in Interest:

Mortgage Holders: Commerce Bank
Description of the Taking:

**Permanent Drainage Easement**

Legal Description:

A 10.00 foot wide Permanent Drainage Easement over part of Lot 3, Block 3, Aintree Manor, a subdivision in the City of Leawood, Johnson County, Kansas, as described in the Warranty Deed, recorded in Bk. 201307 at Page 006309, and being more particularly described as follows:

COMMENCING at the Northwest corner of Lot 3, Aintree Manor, a subdivision in the City of Leawood, Johnson County, Kansas; thence South 81 degrees 23 minutes 24 seconds East, along the North line of said Lot 3, a distance of 7.63 feet, to a point on the East line of an existing 7.50 foot wide Utility Easement, as established with said Aintree Manor, said point also being the POINT OF BEGINNING; thence South 81 degrees 23 minutes 24 seconds East, continuing along the North line of said Lot 3, a distance of 10.17 feet; thence South 02 degrees 01 minutes 29 seconds East, departing the North line of said Lot 3, a distance of 10.17 feet, thence North 81 degrees 23 minutes 24 seconds West, along a line 10.00 feet South of and parallel with said North line, a distance of 10.17 feet, to a point on the East line of said existing 7.50 foot wide Utility Easement; thence North 02 degrees 01 minutes 29 seconds West, along the East line of said existing 7.50 foot wide Utility Easement, a distance of 10.17 feet, to the POINT OF BEGINNING, containing 102 square feet or 0.0023 acres, more or less.

**Temporary Construction Easements**

Legal Description:

Temporary Construction Easement No. 1:

A 5.00 foot wide Temporary Construction Easement over part of Lot 3, Block 3, Aintree Manor, a subdivision in the City of Leawood, Johnson County, Kansas, as described in the Warranty Deed, recorded in Bk. 201307 at Page 006309, and being more particularly described as follows:
COMMENCING at the Northwest corner of said Lot 3; thence South 81 degrees 23 minutes 24 seconds East, along the North line of said Lot 3, a distance of 17.81 feet, to the POINT OF BEGINNING NO. 1; thence South 81 degrees 23 minutes 24 seconds East, continuing along the North line of said Lot 3, a distance of 5.09 feet; thence South 02 degrees 01 minutes 29 seconds East, departing said North line, a distance of 15.26 feet; thence North 81 degrees, 23 minutes, 24 seconds West, a distance of 15.26 feet to a point on the West line of an existing 7.50 foot wide Utility Easement, as established with said Aintree Manor; thence North 02 degrees 01 minutes 29 seconds West, along said West line, a distance of 5.09 feet, to a point 10.00 feet South of and at right angles to said North line; thence South 81 degrees 23 minutes 24” seconds East, departing said West line, along a line 10.00 feet South of and parallel with said North line, a distance of 10.17 feet; thence North 02°01’29” West, a distance of 10.17 feet, to the POINT OF BEGINNING, containing 127 square feet or 0.0029 acres, more or less.

AND

Temporary Construction Easement No. 2:

A Temporary Construction Easement over part of Lot 3, Block 3, Aintree Manor, a subdivision in the City of Leawood, Johnson County, Kansas, as described in the Warranty Deed, recorded in Bk. 201307 at Page 006309, and being more particularly described as follows:

COMMENCING at the Southeaster corner of said Lot 3, said point being on the Southwesterly right-of-way line of Catalina Street, as now established, said point also being a point on a non-tangent curve; thence in a Northwesterly direction, along a curve to the right and said Southwesterly right-of-way line, whose initial tangent bears North 32 degrees 13 minutes 36 seconds West, having a radius of 50.00 feet, through a central angle of 08 degrees 37 minutes 37 seconds, an arc length of 7.53 feet, to a point on the Northwesterly line of an existing 15.00 foot wide Utility Easement, as established with said Aintree Manor, said point also being the POINT OF BEGINNING NO. 2; thence South 49 degrees 08 minutes 49 seconds West, along said Northwesterly line, a distance of 177.88 feet, to a point on the East line of an of an existing 7.50 foot wide Utility Easement, as established with said Aintree Manor; thence North 02 degrees 01 minutes 29 seconds West, departing said Northwesterly line and along said East line, a distance of 9.63 feet, to a point being 7.50 feet Northwesterly of and at right angles to said Northwesterly line; thence North 49 degrees 08 minutes 49 seconds East, departing said West line and along a line 7.50 feet Northwesterly of and parallel with said Northwesterly line, a distance of 118.73 feet; thence South 40 degrees 51 minutes 11 seconds East, along a line perpendicular to said Northwesterly line, a distance of 3.00 feet, to a point being 4.50 feet Northwesterly of and at right angles to said Northwesterly line; thence North 49 degrees 08 minutes 49 seconds East, along a line 4.50 feet Northwesterly of and parallel with said Northwesterly line, a distance of 54.00 feet, to a point on the Southwesterly right-of-way line of said Catalina Street, said point also being a point on a non-tangent curve; thence in a Southeasterly direction along a curve to the left and said Southwesterly right-of-way line, whose initial tangent bears South 26
degrees 58 minutes 01 seconds East, having a radius of 50.00 feet, through a central angle of 05 degrees 15 minutes 35 seconds, an arc length of 4.59 feet, to the POINT OF BEGINNING, containing 1,154 square feet or 0.0265 acres, more or less.

SECTION TWO: It is hereby authorized and provided that the lands or interests hereafter described be acquired for the construction, improvement and future maintenance of the stormwater system in and around the Patrician Woods subdivision including grading, removing and replacing existing metal pipes, modifications and construction of curb inlets, modifying and removing part of an open channel, installation of a concrete box culvert, and any other necessary modifications to minimize flooding in the area from the 12600 block of Delmar Street to 127th Street, all within the City of Leawood, Kansas.

Description of the Property:

Owner: Aintree Manor Homes Association

Address: 12640 Catalina Street
           Leawood, KS 66209

Parties in Interest:

Mortgage Holders: NONE

Description of the Taking:

Permanent Drainage Easement

Legal Description:

A Permanent Drainage Easement over part of Tract A, Aintree Manor, a subdivision in the City of Leawood, Johnson County, Kansas, as described in the Kansas Warranty Deed, recorded in Vol. 2477 at Page 848, and being more particularly described as follows:

COMMENCING at the Southeast Corner of said Tract A, said point being the intersection of the North right-of-way line of 127th Street, as now established, and the West right-of-way line of Catalina Street, as now established; thence North 02 degrees 13 minutes 51 seconds West, along said West right-of-way line and the East line of said Tract A, a distance of 15.00 feet, to a point of curvature; thence in a Northerly direction along a curve to the right and said West right-of-way line, having a radius of 225.00 feet, through a central angle of 03 degrees 49 minutes 21 seconds, an arc length of 15.01 feet, to a point on the North line of an existing 15.00 foot wide Utility Easement, as established with said Aintree Manor; thence South 87 degrees 46 minutes 09 seconds West, departing said West right-of-way line and said East line, along said North line being 30.00 feet North of and parallel with said North right-of-way line, a distance of 92.35 feet, to the POINT OF BEGINNING; thence continuing South 87 degrees 46
minutes 09 seconds West, along said North line, a distance of 90.07 feet, to a point on the Northeasterly line of an existing 30.00 foot wide Drainage Easement, as established with said Aintree Manor; thence North 44 degrees 49 minutes 12 seconds West, departing said North line and along said Northeasterly line, a distance of 13.50 feet, to a point of curvature; thence in a Norwesterly and Northerly direction along a curve to the right and said Northeasterly line, having a radius of 75.00 feet, through a central angle of 34 degrees 23 minutes 25 seconds, an arc length of 45.02 feet, to the beginning of a reverse curve; thence in a Northerly direction along a curve to the left and said Northeasterly line, having a radius of 105.00 feet, through a central angle of 00 degrees 27 minutes 04 seconds, an arc length of 0.83 feet, to a point of non-tangency, said point being a job to the East of said existing 30.00 foot wide Drainage Easement, as established with said Aintree Manor; thence North 70 degrees 54 minutes 25 seconds East, departing said Northeasterly line and along said jog to the East, a distance of 6.83 feet, to a point being a jog to the North of said existing 30.00 foot wide Drainage Easement; thence North 19 degrees 05 minutes 35 seconds West, departing said jog to the East line and along said jog to the North, a distance of 30.00 feet; thence South 36 degrees 00 minutes 00 seconds East, departing said jog to the North, a distance of 10.27 feet; thence North 54 degrees 00 minutes 00 seconds East, a distance of 22.00 feet; thence South 36 degrees 00 minutes 00 seconds East, a distance of 15.00 feet; thence South 54 degrees 00 minutes 00 seconds West, a distance of 22.00 feet; thence South 36 degrees 00 minutes 00 seconds East, a distance of 39.09 feet; thence South 11 degrees 00 minutes 00 seconds East, a distance of 20.75 feet, to a point being 7.50 feet North of and at right angles to an existing 15.00 foot wide Utility Easement, as established with said Aintree Manor; thence North 87 degrees 46 minutes 09 seconds East, along a line being 7.50 feet North of and parallel with said existing 15.00 foot wide Utility Easement, a distance of 81.58 feet; thence South 02 degrees 13 minutes 51 seconds East, a distance of 7.50 feet, to the POINT OF BEGINNING, containing 2,189 square feet or 0.0503 acres, more or less.

**Temporary Construction Easements**

**Legal Description:**

**Temporary Construction Easement No. 1:**

A Temporary Construction Easement over part of Tract A, Aintree Manor, a subdivision in the City of Leawood, Johnson County, Kansas, as described in the Kansas Warranty Deed, recorded in Vol. 2477 at Page 848, and being more particularly described as follows:

COMMENCING at the Southeast Corner of said Tract A, said point being the intersection of the North right-of-way line of 127th Street, as now established, and the West right-of-way line of Catalina Street, as now established; thence North 02 degrees 13 minutes 51 seconds West, along said West right-of-way line and the East line of said Tract A, a distance of 15.00 feet, to a point of curvature; thence in a Northerly direction along a curve to the right and said West right-of-way line, having a radius of 225.00 feet, through a central angle of 03 degrees 49 minutes 21 seconds, an arc length of 15.01 feet,
to a point on the North line of an existing 15.00 foot wide Utility Easement, as established with said Aintree Manor; thence South 87 degrees 46 minutes 09 seconds West, departing said West right-of-way line and said East line, along said North line being 30.00 feet North of and parallel with said North right-of-way line, a distance of 92.35 feet; thence North 02 degrees 13 minutes 51 seconds West, along a line perpendicular to and departing said North line, a distance of 7.50 feet; thence South 87 degrees 46 minutes 09 seconds West, along a line 37.50 feet North of and parallel with said North right-of-way line, a distance of 76.52 feet, to the POINT OF BEGINNING; thence continuing South 87 degrees 46 minutes 09 seconds West, along said line being 37.50 feet North of and parallel with said North right-of-way line, a distance of 5.06 feet; thence North 11 degrees 00 minutes 00 seconds West, a distance of 20.75 feet; thence North 36 degrees 00 minutes 00 seconds West, a distance of 39.09 feet; thence North 54 degrees 00 minutes 00 seconds East, a distance of 22.00 feet; thence North 36 degrees 00 minutes 00 seconds West, a distance of 15.00 feet; thence South 54 degrees 00 minutes 00 seconds West, a distance of 22.00 feet; thence North 36 degrees 00 minutes 00 seconds West, a distance of 10.27 feet, to a point being on the Northeasterly line and a jog to the West of an existing 30.00 foot wide Drainage Easement, as established with said Aintree Manor; thence South 70 degrees 54 minutes 25 seconds West, along said Northeasterly line and said jog to the West, a distance of 6.83 feet, to a point on a non-tangent curve; thence in a Northwesterly direction along a curve to the left and said Northeasterly line, whose initial tangent bears North 27 degrees 18 minutes 26 seconds West, having a radius of 105.00 feet, through a central angle of 29 degrees 37 minutes 22 seconds, an arc length of 54.29 feet, to a point on the Southerly line of an existing 15.00 foot wide Utility Easement, as established with said Aintree Manor; thence South 82 degrees 21 minutes 11 seconds East, departing said Northeasterly line and along said Southerly line, a distance of 37.77 feet; thence South 35 degrees 52 minutes 08 seconds East, departing said Southerly line, a distance of 34.56 feet; thence North 54 degrees 00 minutes 00 seconds East, a distance of 12.00 feet; thence South 36 degrees 00 minutes 00 seconds East, a distance of 25.00 feet; thence South 54 degrees 00 minutes 00 seconds West, a distance of 17.00 feet; thence South 36 degrees 00 minutes 00 seconds East, a distance of 24.48 feet; thence South 11 degrees 00 minutes 00 seconds East, a distance of 34.46 feet, to the POINT OF BEGINNING, containing 1,715 square feet or 0.0394 acres, more or less.

AND

Temporary Construction Easement No. 2:

A Temporary Construction Easement over part of Tract A, Aintree Manor, a subdivision in the City of Leawood, Johnson County, Kansas, as described in the Kansas Warranty Deed, recorded in Vol. 2477 at Page 848, and being more particularly described as follows:

COMMENCING at the Southeast Corner of said Tract A, said point being the intersection of the North right-of-way line of 127th Street, as now established, and the West right-of-way line of Catalina Street, as now established; thence South 87 degrees 46
minutes 09 seconds West, along said North right-of-way line and the South line of said Tract A, a distance of 202.09 feet, to a point being on the West line of an existing 30.00 foot wide Drainage Easement, as established with said Aintree Manor, said point also being the POINT OF BEGINNING; thence continuing South 87 degrees 46 minutes 09 seconds West, along said North right-of-way line and said South line, a distance of 32.68 feet, to a point being on the Northeasterly line of an existing 10.00 foot wide Sanitary Sewer Easement, as established with said Aintree Manor; thence North 22 degrees 40 minutes 02 seconds West, along said Northeasterly line, a distance of 93.33 feet; thence North 52 degrees 45 minutes 53 seconds West, a distance of 20.96 feet, to a point being on the East line of an existing 7.50 foot wide Utility Easement, as established with said Aintree Manor; thence North 02 degree 01 minutes 29 seconds West, along said East line, a distance of 32.73 feet, to a point being on the Southwesterly line of an existing 30.00 foot wide Drainage Easement, as established with said Aintree Manor, said point also being a point on a non-tangent curve; thence in a Southeasterly and Southerly direction along a curve to the right and said Southwesterly line, whose initial tangent bears South 68 degrees 10 minutes 26 seconds East, having a radius of 75.00 feet, through a central angle of 57 degrees 44 minutes 38 seconds, an arc length of 75.59 feet, to the beginning of a reverse curve; thence in a Southerly and Southeasterly direction, along a curve to the left and said Southwesterly line, having a radius of 105.00 feet, through a central angle of 34 degrees 23 minutes 25 seconds, an arc length of 63.02 feet, to a point of non-tangency, said point being a jog to the South of said existing 30.00 foot wide Drainage Easement; thence South 02 degrees 13 minutes 51 seconds East, along said jog to the South and the West line of said existing 30.00 foot wide Drainage Easement, a distance of 7.61 feet, to the POINT OF BEGINNING, containing 3,314 square feet or 0.0761 acres, more or less.

SECTION THREE: It is further authorized and provided that, as soon as practicable after the passage of this ordinance, action be initiated to exercise the power of eminent domain in accordance with K.S.A. 26-501 et seq., the Eminent Domain Procedure Act, to condemn all lands and interests therein hereinbefore described.

SECTION FOUR: This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

__________________________
Peggy J. Dunn, Mayor

[SEAL]
ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

Andrew K. Hall, Assistant City Attorney
Staff Review
Fact Sheet

SUBJECT: REQUEST TO APPROVE AMENDED AGREEMENTS WITH ARBOR MASTERS AND VAN BOOVEN TREE CARE FOR CURB SIDE TREE LIMB PICKUP AS A RESULT OF THE JANUARY 11th & 12th SNOW STORM
January 22, 2019

DISCUSSION
Staff is requesting approval of two amended agreements. One will be with Arbor Masters and one with VanBooven Tree Care. These two companies will provide curbside pickup of tree limbs from the January 11th and 12th snow storm. The original contracts were approved in the amount of $7,500.00 each by the City Administrator. These two amounts total his legal authority without Governing Body approval. He is requesting an additional $7,500 be added to each contract for a not to exceed amount of $15,000 each.

At this time we do not have a total estimated cost for the pickup. With approval of these amendments the contractors would be able to complete approximately three weeks of work.

Weather permitting, curbside pickup is proposed to begin on January 22, 2019. Arbor Masters will provide curb side pickup north of I-435 and VanBooven will provide curb side pickup south of I-435.

The contractors will be paid an hourly rate for their grappler truck and operator. City staff will provide ground personnel, trucks and pay the disposal fees.

It is a recommendation of the Public Works Department that the Governing Body approve the referenced amended agreements and authorize the Mayor to execute the same.

David Ley, P.E.
Director of Public Works

SPONSOR
Public Works Department

COUNCIL ACTION TO BE TAKEN
Approve Amendment

STAFF RECOMMENDATION
☑ For
☐ Against
☐ No position

COMMITTEE RECOMMENDATION
☐ For
☐ Against
☐ No position ☐ No Assignment

POLICY OR PROGRAM CHANGE
☑ No
☐ Yes

OPERATIONAL IMPACT

COSTS
$15,000 to each contractor

FUND SOURCES
11110.33110.612000
Public Works General Operating Budget
Administrative Services-Professional Services fund

Project #74102
RESOLUTION NO._

RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE CITY AND VAN BOOVEN TREE CARE, FOR AN AMOUNT NOT TO EXCEED $15,000.00, FOR STORM DEBRIS REMOVAL, RELATED TO THE JANUARY, 2019, WINTER ICE STORM

WHEREAS, the City is in need of services pertaining to removal of tree debris;

WHEREAS, Van Booven Tree Care provides such services; and

WHEREAS, the parties desire to execute an Amended Independent Contractor Agreement to provide such services.

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

SECTION ONE: That the Governing Body hereby authorizes the Mayor to execute an Amended Independent Contractor Agreement between the City and Van Booven Tree Care, in an amount not to exceed $15,000.00, attached hereto as Exhibit “A,” and incorporated herein by reference as if fully set out.

SECTION TWO: This resolution shall become effective upon passage.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

[SEAL]

__________________________
Peggy J. Dunn, Mayor

ATTEST:

__________________________
Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

__________________________
Patricia A. Bennett, City Attorney
CITY OF LEAWOOD

Amended Independent Contractor Agreement

AGREEMENT BETWEEN the City of Leawood, Kansas ("City"), a Kansas Municipal Corporation located at 4800 Town Center Drive, Leawood, Kansas, and VanBooven Tree Care ("Independent Contractor"), dated ____________________.

The Independent Contractor is a (n):
___ Individual
___ Sole proprietorship
___ Partnership
X Corporation

The Independent Contractor is located at:

Address: PO Box 9377
City/State/ZIP: Shawnee Mission, Ks.
66201 Cell Phone (913) 226-7211
Email: greg@vanbooventreecom

The Independent Contractor’s Social Security or Employer Identification Number is:

or ON FILE

The City and the Independent Contractor entered into an Independent Contractor Agreement on or about _______________ 2019 for an amount not to exceed $7,500.00. The parties now wish to increase the amount to $15,000.00 with all other provisions remaining the same. Therefore, the parties agree as follows:

IN CONSIDERATION of the promises and mutual covenants and agreements contained herein, the parties agree as follows:

A. Work to Be Performed
City desires that the Independent Contractor perform, and the Independent Contractor agrees to perform, the following work:
Work shall include providing Grapple truck, Dump truck, limb pick up at curbside, hauling, dumping, fees, fuel & labor within the Leawood City limits as directed by City Staff: listed on attached “Exhibit A”.

1
B. Term of Agreement

The services called for under this Agreement shall commence on January 22, 2019, and shall be concluded on or before February 19th, 2019. All work will be coordinated with City Representative Bill Billings, Superintendent of Public Works or designee only at times approved by the City.

C. Terms of Payment
City shall pay the Independent Contractor the following amounts, according to the following terms and conditions:

The City shall pay Independent Contractor, an amount not to exceed $15,000,000.

City agrees to remit payments to the Independent Contractor within 30 days of receipt of verified invoice of hours and amounts due.

☐ Check if tax exemption is requested. Tax exemption is applicable in State of Kansas for goods only on this project.

D. Reimbursement of Expenses
City shall not be liable to the Independent Contractor for any expenses paid or incurred by the Independent Contractor unless otherwise agreed to in writing.

E. Federal, State, and Local Payroll Taxes
Federal, state, and local income tax and payroll tax of any kind shall not be withheld or paid by the City on behalf of the Independent Contractor or the employees of the Independent Contractor. The Independent Contractor is not an employee and shall not be treated as an employee with respect to the services performed hereunder for federal, state, or local tax purposes.

F. Responsibility for Workers' Compensation and other Insurance
The City will not obtain workers’ compensation insurance covering the Independent Contractor or employees of the Independent Contractor. The Independent Contractor shall comply with the workers' compensation law concerning the Independent Contractor and the employees of the Independent Contractor. Independent Contractor shall also procure sufficient insurance to cover general liability, personal injury and property damage in the following types and amounts as approved by City:

Independent Contractor shall maintain throughout the duration of this Agreement, insurance in, at a minimum, the amounts specified below, unless waived in writing by the City. The City will only accept coverage from an insurance carrier offering proof that the carrier is authorized to do business in Kansas; carries a Best’s Policyholder rating of A-:VII or better or is otherwise approved by the City. The Independent Contractor is required to carry insurance while performing the proposed work for the City. The Independent Contractor will furnish a Certificate of Insurance to the City as part of their proposal.
All general and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by the City. The Independent Contractor shall name the City as an additional insured in the amount of $500,000 for all claims determined to be subject to the Kansas Tort Claims Act. The Contractor shall name the City as an additional insured for all other claims set forth below:

1. **Commercial General Liability**
   (a) General Aggregate.............................................. $2,000,000.00
   (b) Products / Completed Operations Aggregate........... $2,000,000.00
   (c) Personal and Advertising Injury (Each Person)........ $1,000,000.00
   (d) Each Occurrence.............................................. $1,000,000.00

2. **Automobile Liability**
   Policy shall protect the Contractor against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either (a) Any Auto; or (b) All Owned Autos, Hired Autos, and Non-Owned Autos.

   (a) All autos Combined Single Limits (CSL)...................... $1,000,000.00
   (b) Uninsured motorists........................................... $1,000,000.00

   Umbrella policy may be used to meet coverage limits.

3. **Workers Compensation (includes “all states” insurance)**
   (a) Workers Compensation........................................ Statutory
   (b) Contractor shall also be protected against claims for disease, injury, or death of employees, which, for any reason, may not fall within the provisions of a Workers Compensation Law.
   (c) Employer’s Liability:
       - Bodily Injury by Accident $500,000 each accident
       - Bodily Injury by Disease $500,000 policy limit
       - Bodily Injury by Disease $500,000 each employee

4. **Subcontractor’s Insurance**
   If any part of this Agreement is to be sublet, the Contractor shall either:
   (a) Cover all subcontractors under its insurance policies; or
   (b) Require each subcontractor not so covered to secure insurance which will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, unless waived by the City.

5. **Notice of Claim Reduction of Policy Limits**
   The Contractor, upon receipt of notice of any claim in connection with the Proposal, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.
The Contractor shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate in excess of $100,000.00, whether or not such impairment came about as a result of this Contract.

G. Termination of Agreement
City may terminate this Agreement at any time. Independent Contractor may terminate this Agreement upon 30 days written notice to the City. Notice shall be sufficient either when served personally or when sent by first-class mail addressed to the City at the address set forth in this Agreement. City shall not be liable for, nor shall the Independent Contractor be liable to perform, any services or expenses incurred after the receipt of notice of termination.

H. Independent Contractor Status
The Independent Contractor expressly represents and warrants to City that (1) he/she/it is not and shall not be construed to be an employee of City and that his/her/its status shall be that of an independent contractor for which he/she/it is solely responsible for his/her/its actions and inactions; and (2) the Independent Contractor shall act solely as an Independent Contractor, not as an employee or agent of City; and (3) the Independent Contractor is not authorized to enter into contracts or agreements on behalf of City or to otherwise create obligations of City to third parties.

I. Equal Opportunity
Independent Contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin or ancestry; in all solicitations Independent Contractor shall include the phrase, "equal opportunity employer"; if Independent Contractor fails to comply with the manner in which Independent Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Independent Contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by City; if Independent Contractor is found guilty of a violation of the Kansas Act Against Discrimination or any other act banning discrimination or retaliation, under a decision or order of the commission which has become final, Independent Contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by City; and Independent Contractor shall include the provisions of this paragraph in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

J. Assignability
This Agreement shall not be transferred or assigned, in whole or in part, by the Independent Contractor without the prior written consent of City.

K. Choice of Law
Any dispute under this Agreement, or related to this Agreement, shall be decided in accordance with the laws of the state of Kansas.
L. Agreement
This Agreement supersedes all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties. The Agreement cannot be changed or modified orally. This Agreement may be supplemented, amended, or revised only in writing by agreement of the parties.

M. Title to Works, Trademarks, and Inventions Produced.
Independent Contractor has acquired or shall acquire from each of his/her/its employees, consultants, and subcontractors, if any, the necessary rights to all works, trademarks, copyrights and inventions utilized in the performance of this Agreement.

N. Hold Harmless
Independent Contractor shall indemnify and hold the City harmless from and against any claims, allegations, charges, damages, costs, attorneys’ fees or other expenses incurred due to the actions, inactions, fault or negligence, or the claimed actions, inactions, fault or negligence of Independent Contractor or its agents or employees.

O. Lien Waivers
The Independent Contractor will provide the City with a list of any subcontractors or others performing work on this project and the Independent Contractor will not use any other subcontractors or others on the project. The Independent Contractor will provide a lien waiver from any such subcontractor. Such waivers will hold the City free from any liens for work or materials and must be received by the city prior to final payment to the Independent Contractor.

P. Previous Agreement
The Independent Contractor Agreement between the parties, entered into on the ___________ 2019, is hereby rescinded.
CITY OF LEAWOOD, KANSAS

By: ___________________________
Peggy Dunn, Mayor

ATTEST:

______________________________
Debra Harper, CMC, City Clerk

AS TO FORM

______________________________
Patricia A. Bennett, City Attorney
INDEPENDENT CONTRACTOR

VanBooven Tree Service

By: ______________________________

Title: ____________________________

Address: PO Box 9377
         Shawnee, Ks. 66201

Email __________________________________

Date: ________________________________
RESOLUTION NO. __________

RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE CITY AND ARBOR MASTERS TREE & LANDSCAPE, FOR AN AMOUNT NOT TO EXCEED $15,000.00, FOR STORM DEBRIS REMOVAL, RELATED TO THE JANUARY, 2019, WINTER ICE STORM

WHEREAS, the City is in need of services pertaining to removal of tree debris;

WHEREAS, Arbor Masters Tree & Landscape provides such services; and

WHEREAS, the parties desire to execute an Amended Independent Contractor Agreement to provide such services.

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

SECTION ONE: That the Governing Body hereby authorizes the Mayor to execute an Amended Independent Contractor Agreement between the City and Arbor Masters Tree & Landscape, in an amount not to exceed $15,000.00, attached hereto as Exhibit “A,” and incorporated herein by reference as if fully set out.

SECTION TWO: This resolution shall become effective upon passage.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

[SEAL]  

___________________________________  
Peggy J. Dunn, Mayor

ATTEST:

___________________________________  
Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

___________________________________  
Patricia A. Bennett, City Attorney
CITY OF LEAWOOD

Amended Independent Contractor Agreement

AGREEMENT BETWEEN the City of Leawood, Kansas ("City"), a Kansas Municipal Corporation located at 4800 Town Center Drive, Leawood, Kansas, and Arbor Masters Tree and Landscape ("Independent Contractor"), dated ____________________.

The Independent Contractor is a (n):

[ ] Individual
[ ] Sole proprietorship
[ ] Partnership
[ ] Corporation

The Independent Contractor is located at:

Address: 8250 Cole Pkwy
City/State/ZIP: Shawnee Mission, Ks. 66227
Cell Phone (913) 441-8888
Email: greg@vanbooveentry.com

The Independent Contractor’s Social Security or Employer Identification Number is:

________________ or ON FILE

The City and the Independent Contractor entered into an Independent Contractor Agreement on or about ___________, 2019 for an amount not to exceed $7,500.00. The parties now wish to increase the amount to $15,000.00 with all other provisions remaining the same. Therefore, the parties agree as follows:

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A. Work to Be Performed
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Work shall include providing Grapple truck, Dump truck, limb pick up at curbside, hauling, dumping, fees, fuel & labor within the Leawood City limits as directed by City Staff: listed on attached “Exhibit A”.

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☐ Check if tax exemption is requested. Tax exemption is applicable in State of Kansas for goods only on this project.

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   (b) Products / Completed Operations Aggregate............... $2,000,000.00
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   Policy shall protect the Contractor against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either (a) Any Auto; or (b) All Owned Autos, Hired Autos, and Non-Owned Autos.

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   (a) Workers Compensation.................................................. Statutory
   (b) Contractor shall also be protected against claims for disease, injury, or death of employees, which, for any reason, may not fall within the provisions of a Workers Compensation Law.
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Independent Contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin or ancestry; in all solicitations Independent Contractor shall include the phrase, "equal opportunity employer"; if Independent Contractor fails to comply with the manner in which Independent Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Independent Contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by City; if Independent Contractor is found guilty of a violation of the Kansas Act Against Discrimination or any other act banning discrimination or retaliation, under a decision or order of the commission which has become final, Independent Contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by City; and Independent Contractor shall include the provisions of this paragraph in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

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Any dispute under this Agreement, or related to this Agreement, shall be decided in accordance with the laws of the state of Kansas.

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Independent Contractor has acquired or shall acquire from each of his/her/its employees, consultants, and subcontractors, if any, the necessary rights to all works, trademarks, copyrights and inventions utilized in the performance of this Agreement.

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The Independent Contractor Agreement between the parties, entered into on the _______________ 2019, is hereby rescinded.
CITY OF LEAWOOD, KANSAS

By: __________________________________
    Peggy Dunn, Mayor

ATTEST:

______________________________
Debra Harper, CMC, City Clerk

AS TO FORM

______________________________
Patricia A. Bennett, City Attorney
INDEPENDENT CONTRACTOR

Arbor Masters Tree & Landscape

By: ________________________________

Title: _______________________________

Address: 8250 Cole Parkway
Shawnee Mission, Ks. 66227

Email  mcantrell@arbormasters.com

Date: _______________________________
January 16, 2019

David Ley,
City Engineer
City of Leawood, Kansas

David,
These are the bids and rates requested for Grapple Trucks for Storm Debris Disposal. The following outline the scope of services to be provided.

SCOPE OF SERVICES

Provide curbside pickup of limbs within the Leawood City Limits as directed BY City Staff. Work shall include providing Grapple Truck, picking up limbs at curbside, hauling, dumping, fees, fuel, and labor.

PRICING

1. Grapple Truck/Operator - $200.00 per hr.(one way travel)
2. Grapple Truck/Operator and Laborer - $250.00 per hr.(one way travel)
3. Uni-Loader/Operator - $125.00 per hr.

If you have any questions please feel free to contact me at 913-530-8831

Sincerely,

Mark Cantrell

8250 Cole Parkway • Shawnee, KS 66227 • 913-441-8888 • www.ArborMasters.com
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39 checks in this report.

Grand Total All Checks: 66,502.75
Minutes

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, 7:30 P.M. on Monday, January 7, 2019. Mayor Peggy Dunn presided.

Councilmembers Present: Lisa Harrison, Chuck Sipple, James Azeltine, Jim Rawlings and Andrew Osman [arrived 7:45 P.M.]

Councilmembers Absent: Mary Larson and Debra Filla

Staff Present: Scott Lambers, City Administrator
Richard Coleman, Comm. Dev. Director
Nic Sanders, Human Resources Director
Chief Troy Rettig, Police Department
David Ley, Public Works Director
Mark Tepesch, Info. Services Specialist III
Dustin Branick, Horticulture Specialist
Mark Klein, Planning Official
Debra Harper, City Clerk

Patty Bennett, City Attorney
Chris Claxton, Parks & Rec. Director
Chief Dave Williams, Fire Department
Ross Kurz, Info. Services Director
Dawn Long, Finance Director
Brian Anderson, Parks Superintendent
Marcia Knight, Assistant City Attorney
Cindy Jacobus, Assistant City Clerk

Others Present: Kevin Jeffries, President, Chief Executive Officer and Director of Economic Development, Leawood Chamber of Commerce

1. PLEDGE OF ALLEGIANCE

Mayor Dunn stated for the benefit of the students attending, Scouts are invited to lead the Pledge of Allegiance.

2. APPROVAL OF AGENDA

Mayor Dunn stated the agenda had been amended to add a proclamation under Agenda Item 4.

A motion to approve the amended agenda was made by Councilmember Rawlings; seconded by Councilmember Cain. The motion was approved with a unanimous vote of 5-0.

3. CITIZEN COMMENTS

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to use profanity or comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.
Mayor Dunn stated the citizen who had signed in to speak on Agenda Topic 9., Councilmembers' Report, would be called upon when the topic was discussed.

4. PROCLAMATIONS

Martin Luther King, Jr., Day, January 21, 2019

Mayor Dunn read the proclamation. She pointed out the City would be observing the holiday and therefore the next Governing Body meeting would be held Tuesday, January 22, 2019.

5. PRESENTATIONS/RECOGNITIONS – None

6. SPECIAL BUSINESS – None

7. CONSENT AGENDA

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted upon in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

A. Accept Appropriation Ordinance Nos. 2018-50, 2018-51 and 2018-52

B. Accept minutes of the December 17, 2018 Governing Body meeting

C. Approve payment of $23,677.38 to the League of Kansas Municipalities for 2019 membership dues

D. Approve Co-op Bid in the amount of $275,000.00, from Carter Energy, for the purchase of fuel

E. Resolution No. 5107, approving and authorizing the Mayor to execute a Service Agreement in the amount of $15,718.00, between the City and Lexipol, LLC, for a police policy software product

F. Resolution No. 5108, approving and authorizing the Mayor to execute a Real Estate Agreement by and between the City of Leawood, Kansas and Paul and Barbara Kellerman, and other necessary documents, for the purchase of real estate for $435,000.00, pertaining to the 143rd Street Improvement Project from Windsor Lane to Kenneth Road [Project #80129] [situs address: 3204 W. 143rd Street]

G. Resolution No. 5109, approving and authorizing the Mayor to execute an Independent Contractor Agreement in the amount of $59,195.00, between the City and APEX Envirotech, Inc., pertaining to the 2018 Storage Tank Removal Project, located at 2008 W. 104th Street [former Parks & Recreation Maintenance Facility] [Project # 74095-FEMA Flood Project]

H. Resolution No. 5110, approving and authorizing the Mayor to execute an Interlocal Agreement between the City and the Board of County Commissioners of Johnson County, Kansas, pertaining to the Lee Boulevard Improvement Project from 95th Street to 103rd Street [County Project # 3200001303] [Leawood Project # 72066]

I. Resolution No. 5111, declaring it necessary to appropriate private property for the use of the City of Leawood for the Patrician Woods Stormwater Project, located in Leawood, Johnson County, Kansas, in accordance with K.S.A. § 26-201 [SMAC Project TM-04-006] [Project # 77018]

J. Resolution No. 5112, calling for a Public Hearing to be heard on February 4, 2019, at 7:30 P.M., or as soon thereafter as may be heard to consider the vacation of a Right-of-Way located at 135th Street & Kenneth Road within the City of Leawood, Johnson County, Kansas [Requestor: Vic Regnier Builders, Inc.]
K. **Resolution No. 5113**, approving and authorizing the Mayor to execute a Utility Agreement between the City and Kansas City Power & Light [KCP&L] for the burying of power lines on Mission Road from north of 92nd Street to south of Cure of Ars property [Project # 82074]

L. Declaration of Surplus Property from Ironhorse Golf Course; Fire Dept. Range Serial/FB1030764

Councilmember Sipple requested Consent Agenda Item 7.F. be pulled.
Councilmember Azeltine requested Consent Agenda Item 7.I. be pulled.

A motion to approve the remainder of the Consent Agenda was made by Councilmember Harrison; seconded by Councilmember Sipple. The motion was approved by a unanimous vote of 5-0.

7.F. **Resolution No. 5108**, approving and authorizing the Mayor to execute a Real Estate Agreement by and between the City of Leawood, Kansas and Paul and Barbara Kellerman, and other necessary documents, for the purchase of real estate for $435,000.00, pertaining to the 143rd Street Improvement Project from Windsor Lane to Kenneth Road [Project #80129] [situs address: 3204 W. 143rd Street]

Councilmember Sipple asked about the condemnation process, the status of acquiring all required easements along 143rd Street and moving expenses for the Kellermans. Mr. Ley stated work continues on condemnations for two other properties. When those are finished, all easements will be in-hand. Estimated closing and moving expenses for the Kellermans is $15,000. The City would obtain property so the project, including closing and moving costs, would be capitalized and bonded.

Ms. Bennett confirmed to Councilmember Azeltine that deed and title delivery to the buyer [City] within 60 days of closing was time allowance requested by the title company. The City will pay the Kellermans at closing. The $10,000 paid by the City and held in escrow will be credited to the City against the purchase price. The deed will be filed in the City’s name.

A motion to approve Consent Agenda Item 7.F. was made by Councilmember Sipple; seconded by Councilmember Azeltine. The motion was approved with a unanimous vote of 5-0.

7.I. **Resolution No. 5111**, declaring it necessary to appropriate private property for the use of the City of Leawood for the Patrician Woods Stormwater Project, located in Leawood, Johnson County, Kansas, in accordance with K.S.A. § 26-201 [SMAC Project TM-04-006] [Project # 77018]

Councilmember Azeltine, Stormwater Management Committee Chair, stated the project had been reviewed by the committee a year ago last November. Construction is anticipated to begin in May 2019. He asked if the declaration at this time was appropriate, based on construction start date and time required for possible condemnation filings.

Mr. Ley confirmed the timing to Councilmember Azeltine, stating the plan would be to bring condemnation ordinances to the next Governing Body meeting in two weeks. It is not possible to start construction before May 2019 and the project will take about four months.
Ms. Bennett confirmed to Councilmember Azeltine there are several steps in the condemnation process including ordinance approval, publication and court filing.

Mayor Dunn noted the cover memo mentions that Staff will continue to work with property owners to obtain the three remaining storm sewer and temporary construction easements required for the project up to and through the condemnation process. She asked Mr. Ley for his estimate for successful outcome of continued work. Mr. Ley stated discussions of compensation were radically different, about $100,000.

Mr. Lambers anticipated there would be no chance to come to agreement and the City would condemn because the project is at a critical point; the City needs to move forward. In the past the City would not undertake a project unless all easements were available. The property owners that have not provided required easements are not impacted by flooding. For fair treatment of those who voluntarily provided easements, he recommended volunteers be compensated a similar amount per square foot of the condemnation results.

Mr. Ley gave an example of Mr. Lambers’ recommendation. For this project the hired appraiser determined an average value of $6,900 for the three outstanding property easements. Based on the average cost per square foot and all easements necessary for the project, the total dollar amount that could be paid amongst all volunteers would be about $29,000. The City pays all costs for condemnation. Mayor Dunn pointed out it had been a longstanding City practice to walk away from projects unless easements were dedicated.

Councilmember Harrison pointed out the opportunity for a teaching moment for the audience. She asked for confirmation of the properties with outstanding easements. Mr. Ley stated storm sewer easements are required for the three properties depicted in red on the map provided in the agenda documentation packet. He stated two easements are in the neighboring Aimtree Manor subdivision, with the one at 12640 Catalina being owned by the Aimtree Manor Home Owners Association. The third property is located in Patrician Woods subdivision. All flooding is occurring in Patrician Woods.

Councilmember Harrison asked if lack of cooperation is frequently encountered. Mr. Ley stated it can be a challenge to obtain storm water easements from owners whose properties that are not flooding.

Councilmember Osman arrived 7:45 P.M.

Mr. Lambers stated this involves the possibility to hold the City hostage for more money. To expedite future projects, he recommended the City’s future policy be to initially approach property owners to see who would dedicate. If the City does not have to condemn for easements, volunteers would receive a share of the costs the City did not incur to condemn. If the City has to condemn for some easements, volunteers would receive additional money based on square footage of easements obtained through condemnation. The result would be property owners who initially dedicate would receive more money. Alternately, City practice could be to just condemn, always be prepared to pay condemnation costs and build condemnation process into the project timeline. He stated review of City process should be done by the Stormwater Management Committee and their recommendation brought back to the Council.
Mr. Lambers stated difficulty obtaining easements had not been anticipated on this project and predicted this will become a regular occurrence in the future. The City would condemn to procure needed easements for this project. It would be up to the Council if they wish to consider paying a portion of condemnation costs to property owners who voluntarily provided easements for this project. Mr. Lambers clarified to Councilmember Azeltine that Overland Park and other cities initially condemn for easements and incorporate the condemnation process timeline into the project. Mr. Lambers stated the City’s longstanding policy has run its course. Councilmember Azeltine stated those being impacted by the flooding want the project and have waited over a year.

A motion to approve Consent Agenda Item 7.I. was made by Councilmember Azeltine; seconded by Councilmember Sipple. The motion was approved with a unanimous vote of 6-0.

8. MAYOR’S REPORT
A. Happy New Year to one and all!
B. Acceptance of $2,005.00 gift donation to Police and Fire Departments from The Cloisters Homes Association

Pleasure to report a letter was received from The Cloisters Homes Association providing a holiday gift in the amount of $2,005 to be shared equally by the Police and Fire Departments. The gift comes from their residents on a voluntary basis in appreciation for services both rendered and available. An annual gift from The Cloisters Homes Association has been received for many years. The President of The Cloisters Homes Association and author of the gift letter, Robert Arther, has received written thanks from myself, Fire Chief Dave Williams and Police Chief Troy Rettig. Congratulations to Chiefs Williams and Rettig, and to their hard-working teams.

A motion to accept the gift was made by Councilmember Cain; seconded by Councilmember Rawlings. The motion was approved with a unanimous vote of 6-0.

Chief Rettig recalled a gift from The Cloisters has been received annually during his 25 years with the Police Department. Councilmember Sipple stated The Cloisters has raised the bar for other Home Owner Associations [HOA] and this needs to be shared at the upcoming HOA Sustainability Summit and HOA meeting.

C. Police Chief Troy Rettig joined me at the Corinth D.A.R.E. [Drug Abuse Resistance Education] Graduation. Officer Phil Goff is doing a superb job with the students.
D. Kansas City, Kansas & Wyandotte County Unified Government Mayor David Alvey hosted the Johnson & Wyandotte Counties Council of Mayors at the Pinnacle KC Training Complex in Kansas City, Kansas. Our guest speaker was Tim Deweese, Director of the Johnson County Mental Health Department, who provided information on the Crisis Intervention Team, Co-responder Program, two-person After Hours Unit, Mental Health First Aid, Juvenile Crisis Intervention Center, 12-week Strengthening Families Sessions and Suicide Prevention Coalition. Mike Taylor, lobbyist for Kansas City, Kansas & Wyandotte County also provided a legislative update regarding expectations for the upcoming session.
E. Holiday greetings were exchanged between Leawood and our two Sister Cities. I will pass for your viewing the message from newly-elected Gezer Region of Israel Mayor Rotem Yadlin and re-elected I-Lan, Taiwan, Mayor Chiang Tsung-Yuan.
F. Congratulations to Community Development Director Richard Coleman and his team for the 2018 Landscape Inspection Report. All properties inspected were either in compliance or working diligently on resolutions.

G. Congratulations also in order on two recent recognitions noted in the January 2019 issue of 435 Kansas City's Magazine. “The Ice at Park Place” was ranked first of six of the coolest chill-out skating rinks. The hill between City Hall and the Johnson County Leawood Pioneer Library ranked fourth of eleven of the coolest sledding hills. “There are tree hazards at the bottom of this hill, so sledgers with intense speed have been known to jump or roll off their sleds. The hill gets bonus points for being next to the library and its restrooms.”

9. COUNCILMEMBERS’ REPORT

[from the November 8, 2018, Sustainability Advisory Board Committee meeting]

Councilmember Sipple— Recommendation to appoint permanent Tree Committee

Councilmember Sipple, Sustainability Advisory Board Chair, stated the Tree Task Force had discussed the formation of a permanent Tree Committee, which would be a sub-committee of the Sustainability Advisory Board [SAB]. The SAB currently has one sub-committee, Bike-Walk Leawood. The Tree Task Force started in the Fall of 2016, being comprised of concerned and knowledgeable Staff and citizens to collaborate on a response to the Emerald Ash Borer [EAB] tree infestation. An EAB triage program was developed to classify Ash trees as 1) survive if treatment was provided, 2) expected to survive without treatment, and 3) perish regardless of treatment.

Councilmember Sipple stated the Tree Task Force worked with HOAs and residents to fight the EAB, hosting a number of educational meetings and offering expert advice for street trees. The Task Force did not meet in 2017 because of the two flood events which impacted equipment availability and workload of Parks & Recreation staff. The Tree Task Force also participated in changes adopted in the Leawood Development Ordinance regarding size/caliper of new shrubs and trees. Current Tree Task Force members include Councilmember Filla, Parks Superintendent and Certified Arborist Brian Anderson, and Horticulture/Forest Supervisor and Certified Arborist Dustin Branick, and himself.

Councilmember Sipple stated if a permanent Tree Committee, as a sub-committee of the SAB, was approved the committee would organize Arbor Day activities which are required to continue Leawood’s Tree City U.S.A. designation, assist with application for Tree City U.S.A. designation, participate in Best Management Practices for selection of street trees, disseminate information to HOAs and residents on new and existing tree ordinances, use of “tree plotter” software, be a resource on tree issues and encourage excellent landscape plantings through a possible recognition program. The Tree Committee would strive to inspire citizens and Staff to nurture and maintain trees throughout the City. The Tree Committee would not be the “tree police” and would focus on street trees and not those on private property, and also commercial projects.

Councilmember Sipple confirmed to Councilmember Azeltine the draft by-laws were authored by proposed members of the Tree Committee, had been developed in conjunction with the Parks & Recreation Department and reviewed by the City Attorney. Any amendments to the by-laws would be brought forth through the SAB to Council.
Councilmember Azeltine inquired if the committee's Council Liaison would be counted in quorum. Mayor Dunn stated since the proposed permanent committee would be a sub-committee, its Council representative would be a committee member and part of quorum. She would foresee a Councilmember chairing the proposed committee and meeting minutes would be approved by the SAB and brought forth to the Governing Body for acceptance. If the committee is approved, the Tree Task Force would be dissolved. She suggested pages of the by-laws be numbered.

Ms. Bennett stated if the Council approves the concept, by-laws would be reviewed to address concerns and returned to the Governing Body for adoption. Any concerns would be addressed through the SAB to the Governing Body.

Councilmember Cain applauded the proactive proposed committee creation, noting this would be the second SAB sub-committee. She stated some HOAs in the southern part of the City have only Ash street trees and once EAB strikes, these street trees will be wiped out. In general, as trees mature they are considered more valuable. She shared the “tree-plotter” software program was recently used to determine trees had been removed by individuals who did not own the trees. She thanked everyone for their effort.

Mayor Dunn complimented the mission of the proposed sub-committee, especially the focus on inspiration, education and being a resource. She stated the sub-committee would not be the “tree police”.

Mr. Thad Carver, 12408 Eaton Street, stated he had served on the Tree Task Force. The arrival of EAB brought to light the need to reconsider tree ordinances and give better thought to management of the urban forest. He thanked Councilmembers Filla and Sipple for keeping Tree Task Force work on track. In addition to ordinances, the Tree Task Force has proposed a permanent Tree Committee be established. A permanent committee can organize the Arbor Day event, which is a requirement to maintain designation as a Tree City U.S.A.; in the past this has fallen by default on the Parks & Recreation Department. The City is blessed that Horticulturist Dustin Branick and Parks Superintendent Brian Anderson have expert skills and particular knowledge. The Parks & Recreation Department will have a representative on the proposed committee. Overland Park, Prairie Village, Fairway and Lawrence, and likely others have tree committees with various mandates and level of authority. The proposed committee will focus on trees between the street and sidewalk, can inform the public on ordinances, can make recommendations for tree protection during tear-down/rebuild projects and will make tree-plotter software the subject of an SAB event. The committee will need to set realistic agendas.

Mayor Dunn asked volunteers Mr. John Ernest and Messrs. Anderson and Branick, as well as any others who had worked on the initiative to stand. Mr. Carver recognized two residents and Johnson County Extension Master Gardeners, Dr. John Kenny and Ms. Debbi Adams, who are interested and would be a valuable addition to the proposed committee. Councilmember Sipple pointed out Mr. Carver is also a Johnson County Extension Master Gardener.

Mayor Dunn asked Mr. Carver to provide any suggested contact information to Mr. Branick. She thanked everyone for their work, including Councilmember Filla who was unable to attend the meeting.
A motion to form a standing Tree Committee, as a sub-committee of the Sustainability Advisory Board, was made by Councilmember Sipple; seconded by Councilmember Cain. The motion was approved with a unanimous vote of 6-0.

10. CITY ADMINISTRATOR REPORT – None

11. STAFF REPORT – None

COMMITTEE RECOMMENDATIONS

12. PLANNING COMMISSION

[from the November 27, 2018 Planning Commission meeting]

Ordinance No. 2920, approving a Preliminary Plan, Final Plan, Preliminary Plat and Final Plat for State Line North Office Building, located south of 127th Street and west of State Line Road. [PC Case 130-18] [ROLL CALL VOTE]

Applicant Mr. Scott Coryell, Architect Bell/Knott & Associates, 12730 State Line Road, stated the Staff Report was thorough and he provided a brief project overview. The building would be located on vacant property on State Line Road, north of the existing State Line Office Building, south of an assisted living facility, and east and west of residential. Site layout would be similar to that of the existing office building, having a southerly entrance. The proposed building would have a peak height of 20 ft. compared to the existing building peak height of 26 ft. Exterior materials would be a brick, stone and cementitious siding. The cementitious siding is a maintenance-free product, having a wood texture, faux-painted to resemble cedar, and has a 20-year warranty. Aluminum windows with a light gray tint and synthetic shake-roof from the City’s approved list of roofing would be used. Various elevations were displayed. Two-thirds of the new building would be occupied by a physical therapist and the remainder would be available for lease. The in-fill site is very small, so a deviation to the north property line was requested. During the two Citizen Interact meetings, Missouri residents to the east stated flooding was a concern. The team reassured the project would utilize Best Management Practices and actually reduce stormwater run-off due to three underground containment basins. The applicant is in agreement with stipulations, with clarifications to Stipulations 2, 14, 17, and 5 and 26.

Mr. Coryell stated for Stipulation 2 regarding utility services, existing poles on the adjacent property to the west have overhead lines that also feed residential homes in the area and these poles will remain. Mr. Coleman stated the poles are not located on the project property and therefore undergrounding is not required, but utility lines that supply the proposed building will be buried in compliance with City code. Mr. Klein stated this is a standard stipulation; the property does not have street frontage or public right-of-way. Councilmember Azeltine suggested language revision to state “any power lines” rather than “all power lines”.

Mr. Coryell stated for Stipulation 14 regarding screening, manufacturer ground-mounted equipment will not be painted. Mr. Klein clarified that utilities mounted on a building must blend in with the building and those that cannot be painted to match must be landscaped to screen.

Mr. Coryell stated for Stipulation 17 regarding visibility of illumination lighting source, LED light fixture sheets have been submitted and are acceptable. The applicant understands that light source cannot be visible. Mr. Klein stated there should not be a “hot spot” seen with the LED lighting. LED fixtures tend to be rather flat.
Mr. Coryell stated for Stipulations 5 and 26 regarding fire truck entrance/access, fire truck would enter from the west and pull/back out to the south side using a dedicated space. Mr. Coleman stated resolution was satisfactory and approved by him administratively. The dedicated pull/back space would be for emergency use only. He has confirmed acceptability with Fire Marshal Gene Hunter; it is not desirable to have trucks back out into State Line Road. Councilmember Sipple asked Chief Williams if this situation occurs elsewhere in the City and resolution acceptable. Chief Williams confirmed the layout was satisfactory and stated he was not aware of other instances, but would check with Fire Marshal Hunter.

Mr. Coleman confirmed to Councilmember Azeltine roof shakes would be used that are similar to those used on the Johnson County Library. Mayor Dunn stated the shakes are “DaVinci 2” type and used throughout the City.

Mr. Coleman confirmed to Councilmember Cain the sidewalk would remain as planned.

A motion to pass Agenda Item 12. was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The motion was approved with a unanimous roll call vote of 6-0.

Mayor Dunn wished the project success and thanked Mr. Coryell and his team for attending.

13. SUSTAINABILITY COMMITTEE

[from the November 8, 2018, Sustainability Committee meeting]

Ordinance No. 2921C, amending Chapter 13 Article 4 of the Code of the City of Leawood, Kansas, 2000, entitled, ‘Trees and Shrubs’ and repealing Chapter 13 Article 4 and other sections in conflict herewith [ROLL CALL VOTE]

Mr. Anderson, Parks Superintendent and Sustainability Advisory Board [SAB] Staff Liaison, reviewed highlights of the proposed ordinance amendment regarding street trees in the right-of-way developed that was developed by the Tree Task Force and reviewed by the SAB. The effort of Mr. Thad Carver and Councilmember Sipple is greatly appreciated, as well as the work of the entire Parks & Recreation Department, Messrs. Ley and Coleman, and Ms. Bennett. Their help was invaluable to ensure the ordinance was not the “tree police”.

Mayor Dunn was delighted to see the addition of Section 13-404a, in regard to street trees for new construction only.

Councilmember Cain asked how the amended ordinance would be communicated to the Home Owner Associations [HOA]. Mr. Anderson stated the ordinance would be provided at the upcoming SAB Summit and HOA Meeting, and perhaps could be shared on social media. Ms. Bennett noted the HOA database could be utilized. Councilmember Sipple stated review of ordinances and tree-plotter software demonstration by City Arborists are planned for the SAB Summit and HOA Meeting. Mayor Dunn suggested information could also be provided during the planning process for residential teardowns/rebuilds.

Mr. Coleman confirmed to Councilmember Azeltine, as always, Code Enforcement Courtesy Notices would be issued as appropriate.
Councilmember Osman inquired if the ability for a home owner to appeal, to request a deviation or variance, and the process was provided. He stated hypothetical examples of street tree planting 35 ft. from a corner that would block traffic sight lines or difficulty planting street trees in conjunction with a circular drive on a deep, but not very wide, property. Issues may be encountered, especially with mature trees in north Leawood.

Ms. Bennett stated the ordinance is part of City Code so there would not be, but provisions of the Leawood Development Ordinance could be subject to variance. Per section 13-403 of the proposed ordinance, home owners would be referred to the Public Works Director for review and administrative approval as appropriate. Mr. Ley stated street trees cannot be planted with 35 ft. of an intersection to maintain sight triangle, and any work in a right-of-way requires a permit. Being responsible for public safety, he would work closely with Mr. Coleman and Mr. Anderson in this regard.

Councilmember Harrison requested an explanation of “tree-topping” which has been done by many neighbors in Waterford subdivision, and she expressed concern the ordinance felt somewhat like “tree police”. Mr. Anderson stated tree-topping is the practice of cutting back a tree’s crown, leaving just a few major limbs about 4 inches or greater in diameter. This removes most of the leaves and creates open wounds, which can force weakly-attached sprouts. The sprouts are more likely to be storm-damaged and the trees have health issues from open wounds. Tree-topping is bad for the tree and its appearance. Ms. Bennett pointed out tree-topping of street trees is prohibited by existing ordinance, and the ordinance only applies to street trees.

Councilmember Harrison questioned how the ordinance would apply to “L” cuts made in tree canopies to accommodate power lines. Mr. Anderson stated these cuts are an example of a utility company clearing their easement by legal right. Utility companies typically clear limbs for five to seven years of anticipated growth. The City recommends plantings stay away from utilities and requires power line burial. The proposed ordinance would allow more trees to be planted near underground utilities as it has been determined utility lines are not as impacted by tree roots and lines are generally bored. The prior ordinance required trees to be 5 ft. away from utilities.

Mayor Dunn pointed that Leawood and Leawood Estate HOAs are responsible for street tree maintenance. She questioned if the proposed ordinance would increase the City’s responsibility, wanting to ensure Mr. Anderson was not unknowingly assuming more responsibility. She also questioned if existing right-of-way trees would count as part of the new requirement. Mr. Anderson stated he would not have increased responsibilities for street trees and that existing street trees would be included.

Councilmember Sipple stated the Tree Task Force and SAB had spent many hours on the proposed ordinance. The ordinance would provide great clarification and be presented at the Sustainability Summit and HOA Meeting in February.

A motion to pass Agenda Item 13. was made by Councilmember Osman; seconded by Councilmember Sipple. The motion was approved with a unanimous roll call vote of 6-0.
14. PUBLIC WORKS COMMITTEE
(from the December 5, 2018, Public Works Committee meeting)

Assignment: Review Traffic Calming Petition on 97th Street between Lee Boulevard and State Line Road

Recommendation: Purchase and install two [2] electronic speed limit signs on 97th Street

Councilmember Osman, Public Works Committee Chair, stated the Staff Review memo summarizes history and recommendation, but does not mention this is a second request to review an entire street made after the request for 85th Terrace. The Public Works Committee deemed this close enough to take advantage for review/recommendation for a second phase. The committee believes there is an issue and provided residents options including speed tables and speedometers mounted on posted speed-limit signs. The committee recommends estimated $8,000 purchase and installation of the electronic speed limit signs and to re-evaluate in two-years.

Mayor Dunn noted residents would have been required to pay for other traffic calming devices such as speed tables. Councilmember Osman stated a district of speed tables on 97th Street would have cost about $400,000, so the electronic speed limit signs were considered the most cost-efficient option.

A motion to approve Agenda Item 14. was made by Councilmember Osman; seconded by Councilmember Rawlings. The motion was approved with a unanimous vote of 6-0.

15. OLD BUSINESS – None

16. OTHER BUSINESS – None

17. NEW BUSINESS
A. Schedule a Governing Body Work Session at 6:00 P.M., on Monday, February 4, 2019 to review proposal, plans, elevation and layout of new Fire Station No. 1 Building, to be located at 96 & Lee Boulevard [not park portion]

Mayor Dunn noted the purpose of the proposed Governing Body Work Session would not include the park portion of the site.

A motion to schedule the Governing Body Work Session was made by Councilmember Azeltine; seconded by Councilmember Rawlings. The motion was approved with a unanimous vote of 6-0.

B. Ordinance No. 2922C, amending Sections 2-111 and 2-112 of the Code of the City of Leawood, Kansas, 2000, entitled, ‘Bite and Scratch Procedures’ and ‘Unsecured Animal,’ respectively, and repealing existing Sections 2-111 and 2-112 and other sections in conflict herewith [ROLL CALL VOTE]

Ms. Knight stated the impetus for proposed revision was to reduce holding period for strays from seven to five days, and to prepare for the possibility of a new service provider.
Councilmember Cain asked if the new service provider had been identified, if dog-to-dog biting was addressed and if electric fences are prohibited. Ms. Knight stated the City has had discussions with Great Plains SPCA in Merriam, a location which would not be as convenient as the City’s current service provider. Dog-to-dog biting would be an animal nuisance, for which recourse is available. Typically this involves a fine, restitution and payment of medical bills. Electric fences are allowed, but must be a minimum of 10 ft. from sidewalk and an adult must be present to command the animal with an electric fence. If an adult is not present, citation would be for unsecured animal.

Councilmember Harrison inquired for the disposition of animals after five days, and if owner fine of $1,000 for an animal biting or causing harm to a person was similar to the fines of nearby cities. Ms. Knight stated after five days an animal would be adoptable. She was not aware of fine imposed by other cities. The fine for a Class A Misdemeanor could be $2,500. In the past, the City has usually fined $100 to $200. The proposed amendment would allow the City to fine for an egregious case or repeat offender not more than $1,000.

Councilmember Sipple noted State Line Animal Hospital is a no-kill facility and he inquired if the Great Plains SPCA was also a no-kill facility. Ms. Knight and Chief Rettig confirmed Great Plains SPCA is a no-kill facility. Councilmember Osman pointed out the facility is near IKEA on Johnson Drive. He suggested new service provider information be posted on the City’s website and social media accounts. Mayor Dunn stated the facility has an excellent reputation.

A motion to pass Agenda Item 17.B. was made by Councilmember Osman; seconded by Councilmember Sipple. The motion was approved with a unanimous roll call vote of 6-0.

C. Ordinance No. 2923C, amending Section 15-405 of the Code of the City of Leawood, Kansas, 2000, entitled ‘Collection and Disposal of Solid Waste’ and repealing existing Section 15-405 and other sections in conflict herewith [ROLL CALL VOTE]

Ms. Bennett stated the proposed amendment was mainly for the purpose of clean-up. For many years the City has required a waste-hauler operating in Leawood to offer pick up of recyclables. Johnson County also mandates providers offer customers to contract for yard waste pick up.

Ms. Bennett confirmed to Mayor Dunn that specific months for yard waste pick up would be based on contract terms.

A motion to pass Agenda Item 17.C. was made by Councilmember Azeltine; seconded by Councilmember Osman. The motion was approved with a unanimous roll call vote of 6-0.

D. Ordinance No. 2924C, adding a new Chapter 11, Article 10, of the Code of the City of Leawood, Kansas, 2000, pertaining to Alarm Systems, and repealing Chapter 11, Article 3, and other sections in conflict herewith [ROLL CALL VOTE]

Ms. Knight stated the impetus for the proposed ordinance addition was in preparation for a potential move to a third-party vendor for alarm registrations. The existing ordinance had not been reviewed for several years and it was deemed easier to start fresh with a recommendation for a whole new article; no red-line was provided because of numerous revisions. The cover memo authored by Chief Rettig presents main points.
Councilmember Azeltine stated in the future, specific details should be provided in the cover memo about the ordinance sections that were eliminated and retained, if no red-line is provided. A list of changes gives the Council the opportunity to compare original to new. Chief Rettig confirmed to Mayor Dunn there would be no time constraint to continue the item to provide the requested detail at the next Governing Body meeting. The ordinance was planned in preparation for retirement of the current Alarm Coordinator, Jim Cogswell, on April 30, 2019. Councilmember Azeltine did not support continuance at this time.

Councilmember Azeltine asked for the benefit of eliminating annual alarm registration renewals, and if Government entities would be exempt. Chief Rettig stated the benefit of $10 annual registration renewal was not be cost-effective and confirmed exemptions for facilities such as City Hall, Library and school districts. Ms. Knight stated exemption is part of the current ordinance.

Councilmember Cain supported the ordinance, but questioned how residents would be notified of the ordinance. As a realtor, she had never informed a client and suspected there was a large disparity in the number of alarms in the City and the number of registered alarms. She suggested this might be of interest to HOAs. Ms. Knight stated false alarms have resulted in many registrations and registration provides contact information. Home owners/occupants/businesses are tasked with registration of their alarms that summon law enforcement, including wireless alarm systems without a local presence such as SimpliSafe. Registration of alarm systems that notify only the home owner/occupant/business would not be required. Alarm companies having a presence in the City are required to have an Occupational License.

Ms. Knight confirmed to Councilmember Cain the Alarm Appeal Committee would not be eliminated, but exact handling process for appeals working with a third-party vendor needs to be addressed. At this time, initial appeal is made to City Staff; there have been instances where an alarm was activated due to lightening and no false alarm fee was charged. Chief Rettig confirmed that the City’s Alarm School for those having repeated false alarms, would be eliminated.

Councilmember Sipple asked Ms. Knight to work with the SAB within the next 15 days to develop presentation/information that could be presented at the SAB Summit and HOA Meeting in this regard.

A motion to pass Agenda Item 17.D. was made by Councilmember Cain; seconded by Councilmember Osman. The motion was approved with a unanimous roll call vote out 6-0.

Mayor Dunn thanked Chief Rettig and Ms. Knight for their effort.

ADJOURN

There being no further business, the meeting was adjourned at 9:12 P.M.

Debra Harper, CMC, City Clerk

Cindy Jacobus, Assistant City Clerk
Minutes

The Leawood Historic Commission met in the Planning and Development Conference Room at 4:30 P.M., on Tuesday, November 13, 2018. Chair Bruce Martin presided.

Commissioners Present:  
Alice Hawk  
Charles Lusk  
Janet O’Neal  
Dan Throckmorton  
Mike Reed  
Barbara Holzmark

Absent:  
Councilmember Lisa Harrison

Others Present:  
Councilmember Debra Filla  
April Bishop, Cultural Arts Coordinator  
Deb Harper, Staff Liaison

1. **Call to Order:** Chair Martin called the meeting to order at 4:30 P.M.

2. **Approve September 11, 2018 Minutes**  
A motion was made by Alice Hawk, seconded by Charles Lusk, to accept the minutes. The motion was approved following a unanimous vote.

3. **Opening Comments**

   **A.** At the request of Mayor Peggy Dunn, Chris Claxton, April Bishop, and Bruce Martin met with McCarthy Buildings Company representatives Walt Eldridge and Mike Wigness at the site of the Old City Hall Building on Sept. 17th. The building was opened for them to get a visual of the interior and basement level. A walk-around of the exterior was also done. They will evaluate their feasibility of lifting and moving the building and respond directly to the City Administrator.

   **B.** An updated LHC “Recommendations and Scope Considerations for Reuse of the Old City Hall Building” was submitted to the Governing Body on Sep. 21st.

   **C.** Mr. Mark Morgan of Prairie Village has contacted the LHC for information relating to its 1993 formation to perhaps be used as a model for establishing a Prairie Village Historic Commission.

   **D.** The Leawood Historic Commission, created on at the April 30, 1993 Governing Body meeting, has completed a quarter-century of service. Of special note, Alice Hawk was a Founding Member, appointment approved July 6, 1993.
At the November 5th Governing Body meeting, Chair Martin stated Alice Hawk was presented with a Certificate of Appreciation for serving on the Historic Commission for the past 25 years, and was a Founding Member, when the Historic Commission was created in April, 1993. It was also announced she was the recipient of the Recreation of Parks Association Award, which will be presented in February, 2019. The annual ‘Turn on your Porch Lights’ proclamation was also recognized.

**McCarthy Buildings Company has clarified, the relocation of the former City Hall building is a specialized service and are not qualified to perform that work; however, can assist in developing a bidders list and evaluating proposals once received.**

4. **Old Business**
   A. **Status of Somerset Shops Commemorative**
   April advised a 16 X 12 plaque has been created and will be installed by the current owners. Due to daylight savings time and early winter weather, a dedication will be scheduled in the spring.

B. **Synopsis of Oct. 15th Governing Body Work Session, as related to the Relocation and Re-Purposing of the Old City Hall Building and Amenities.**
Chair Martin advised it was decided at the October 15th Governing Body Work Session, a public meeting would be held on Monday, November 12th, for residents’ comments on the future location of former city hall building. At the November 12th meeting, following residents’ comments, the Governing Body unanimously decided to keep the former city hall building on site; the City will now proceed with the new fire station plans; and Request for Proposals [RFPs] will go out for a conceptual plan for the site plan; with options available, including but not limited to keeping a portion of the old fire station on the site as a shelter, etc.

Alice commended Councilmember Filla’s efforts to support the Commission’s position in keeping the old city hall building on the current site. Barbara Holzmark recommended an option of retaining the old fire station for re-purposing. Chair Martin advised this would be a topic to discuss at the next meeting. It was also determined that a memo should be disseminated to the Governing Body, advising the Historic Commission’s position on same, prior to a future discussion in March, 2019, by the Governing Body.

Councilmember Filla advised some of the area homes association have stated the brown HD signs appear to be outdated. April advised this was the national standard to have these HD signs colored brown.
5. **New Business**
Prepare for discussion and brain-storming of Fund Raising opportunities at the scheduled January 15, 2019 Meeting.

Chair Martin reminded all to bring some ideas for this afore-mentioned discussion.

Councilmember Filla asked about the historic value of the residence located at 8000 Lee Boulevard. Following discussion, it was suggested this should be looked into.

April advised the annual ‘Holiday Traditions on the Prairie' would be held at the Oxford school on Saturday, December 8th.

6. **Upcoming Events**
Chair Martin reminded of the upcoming holiday gathering at Alice’s on December 4th.

7. **Next HC Meeting**
The next upcoming meetings will be held on Tuesday, January 15, 2019.

8. **Adjourn**
There being no further business, a motion was made by Charles, seconded by Bruce to adjourn. The motion was approved following a unanimous vote. The meeting adjourned at 5:15 PM.

________________________________________
/s/ Deb Harper
Deb Harper, City Clerk/Staff Liaison
Leawood / I-Lan Sister City Committee Meeting
Minutes – August 27, 2018

Meeting convened at 5:00 pm in the Community Room at the Justice Center.
Attending committee members: Jean Asbury, Julie Berger (City staff), Annie Best, Debra Filla (City Council liaison), Tom Hammonds, Valerie Horton, Bette Monson (Chair), Jim Rawlings (City Council liaison), Jim Rochel, Cindy Siemers, Diana Sun. Excused: Patty Hattaway

Chairman’s Comments: Bette
• Motion to accept Minutes of May, 2018 meeting; approved unanimously. Julie will forward Minutes on to Deb Harper, City Clerk.
• Reminder of picnic in I-Lan Park for visitors from Lan Yang High School; all committee members welcome.
• Distributed invitations to 107th National Day Reception; members encouraged to consider attending.
• Distributed updated email listing of committee members.

Invitations: Valerie
• Shared samples of both Save the Date cards and formal invitation for the 2019 event. Both samplers were most creative and appealing. She will let committee know if assistance is needed for the mailings.
• Bette encouraged members to submit new names for mailing list – goal of 150 guests has been set.
• Parks / Rec brochure passed around for members to view the ad promoting the Lunar New Year event.

Publicity / Marketing: Cindy / Diana
• Promotion of event via Leawood service groups, Chinese School, Taiwanese Association, etc.
• Flyers will be placed in Leawood Library, City Hall, possibly on bulletin board at Ironhorse Golf Club.

Decorations: Jean
• Reported July action of reviewing all decorations and supplies.
• Purchasing of additional lanterns (possibly parasols) has been approved, as well as purchasing live bamboo plants for centerpieces.
• Cindy will purchase 2020 table favors during her Taiwan visit in March. She prefers not to purchase additional coins. There are enough coins for the 2019 event.

Entertainment: Annie
• Confirmation from Daniel Xue for performance by Drum Roller for 2019 event.
• Discussion with Drum Roller lead, Wei, is suggested by early Dec. to visit about performance.
• Asian music will be used again from Monson’s iPod for event background music.
• Annie / Julie will locate last year’s video montage; connect with Chris Claxton.
• Cindy will investigate additional videos of Taiwanese scenery, etc. for showing during evening’s event.

Reservations: Julie
• Confirmed Marica Putnam is available for photography needs for event.
• Will work with city website facilitator to activate invitation information per timeline of mailing formal invites.

Venue: Bette
• Meeting with Theresa Ng from Bolings will happen in early fall.
• Discussion/ critique of last year’s food was reviewed; committee expecting better results for 2019 event.
• Jim Rochel will coordinate alcoholic beverages for event with Ironhorse staff.

Set up/Take down: Jim / Tom
• No report; anticipate ease of job due to good cooperation with Ironhorse staff.

Next Meeting: TBD (early January, 2019). Email notice will be sent soon to committee.

Adjourned at 5:40 pm.

Submitted by Bette Monson
Venue notes for meeting with Lisa Hyatt (Event Coordinator) at Ironhorse Golf Club  Nov 12, 2018
In attendance: Bette Monson, Jean Asbury, Julie Berger
Subject: Lunar New Year dinner details for Sunday, Jan 27, 2019 from 5pm – 8p

City event... rental restrictions lifted; Security restrictions lifted.
Bartender available; preferably two as 150 guests expected. No fee for bartenders.
- Full cash bar offered. (Jim Rochel, Sister City committee, will coordinate with Troy Newport)

See facility specifics for tables/chairs avail but all needs will be met.
- 72" tables seat 10 very well and preferred by Bo Lings.
- White table covers (not to the floor) with red napkins (extra fee for red napkins)
- All set-up provided by Troon Co (Troy Newport, Mgr; Lisa - Coordinator)
- Water beverage glassware – 150 avail.
- Wine glassware avail – heavy plastic, stemmed
- Bar beverage drinkware will be disposable.
- TEA CUPS – renting from Bo Lings ($75 fee for 150 guests: pre-set at table)
- Ironhorse to provide soup spoons for event / dinner utensils.

Sound system avail to pipe in music; microphone avail. Podium may be needed.
- Monson to provide iPod with 4 hr. of Asian music.
- Picture montage – Annie Best has either DVD or flash drive (Monson to inquire w Annie)

Bo Lings: Confirmed the catering needs avail for Bo Lings – warming oven, 2 burners, cooler, prep space / serving areas. No usage of dishwasher or fryer is allowed. Lisa to visit with Bo Lings at a Jan. meeting.
Theresa specifically asked for a table for “tea service” so it will be provided in far corner of ballroom, across from bar area.
- Lisa will provide “rules for caterers” to Monson / Bo Lings ASAP.

Decorations: light weight lanterns (8) / parasols (4) can be suspended from metal poles (Ironhorse STAFF to hang; provide to ironhorse several days in advance of event).
- Facility availability for committee decorating: Possibly on Sat., Jan 26; for sure, on Sunday, Jan 27
- Tables should be set and decorating team can come in early and do centerpieces. Committee return for event later that day.

Entertainers: Monson will have Lion Dance director visit Ironhorse in January to view the ballroom.
- Lion Dance performers (under direction of Daniel Xue 013-609-6462)
- Lisa will investigate usage of raised stage (Ironwood facility – per Troy).

Evening Timeline:
- Monson to schedule performing time and send timeline of evening to Theresa Ng, Julie, Lisa, etc.
- Signage: Julie to connect with Chris Claxton to have signage placed by weekend of event.

Miscellaneous:
- Water carafes – filled per Ironhorse staff
- Table numbers – stanchions provided by Ironhorse
- Reservation table – end of entrance hallway
- High top tables (6) set up by fireplace area; furniture may be moved to far end of fireplace area.
- Schematic setup for tables TBD w advice from Lisa once reservation numbers in place.
- Invocation

Ironhorse Contact: Lisa Hyatt  lhyatt@ironhorsegolf.com
Troy Newport with Troon Management: TNewport@Troon.com
Leawood Chamber of Commerce
13451 Briar Dr. Suite 201
Leawood, KS 66209
chamber@leawoodchamber.org
(913) 498-1514 * Fax: (913) 491-0134

Ms. Deb Harper
City of Leawood
4800 Town Center Drive
Leawood, KS 66211

--- INVOICE ---

Date: 01/08/2019
Account #: 1040
Invoice #: 24485
Amount Due: $59,225.00
Amount Remitted: 

Leawood Chamber of Commerce

Thank you for your continued partnership in Leawood's Economic Development Council efforts!

If you have any questions regarding this invoice, please contact the Chamber office 913-498-1514 or by email at chamber@leawoodchamber.org. Our hours are Monday - Thursday 8:30 am - 5:00 pm and Friday 8:30 am - 4:00 pm

Initial 50% Inv. for 2019 Economic Development Agreement $59,225.00

Invoice Total: $59,225.00
MEMORANDUM

TO: MAYOR AND CITY COUNCILMEMBERS
   SCOTT LAMBERS, CITY ADMINISTRATOR

FROM: CINDY JACOBUS, ASSISTANT CITY CLERK

RE: CEREAL MALT BEVERAGES [CMB] LICENSE RENEWAL
   HEN HOUSE
   11721 ROE

DATE: JANUARY 22, 2019

A Cereal Malt Beverages [CMB] License application is scheduled for renewal for the above-referenced applicant. I recommend renewal of the license, pending no disqualifying information.

Please feel free to contact the City Clerk’s Office, should you have any questions.
Subject: Approve 2nd and Final Payment in the amount of $94,854.82, pertaining to the City Park Tennis Court Renovation McConnell & Associates, Corporation

January 22, 2019

Discussion

All six tennis courts are available and open for play. This project included the painting of eight pickleball courts as well.

The force account in this project was used to replace the most worn out fence sections with new fence and also to regrade the land along the east edge of the tennis courts to allow rainwater to runoff and not pond on the new surfacing. The soil along the outside edge was found to be slightly higher than the concrete edge, so some soil was removed and new sod placed.

A special blend of asphalt incorporating fiber reinforcement was used in this project. The court surface has turned out very smooth.

The early cold weather this fall caused a delay in finishing because the surface coatings needed to have warmer temperatures than we were having.

After closeout, the two year maintenance bond period will begin.

Brian Anderson,
Superintendent of Parks

Sponsor

Parks & Recreation Department

Council Action to Be Taken

Approve final payment and close out services agreement with McConnell & Associates, Corporation

Staff Recommendation

☑ For
☐ Against
☐ No position

Committee Recommendation

☐ For
☐ Against
☐ No position

Policy or Program Change

☑ No
☐ Yes

Operational Impact

Costs

$94,854.82

Fund Sources

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1 of 2
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<td><strong>$17,758.58</strong></td>
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Total Work Completed This Period | $70,186.49
Retainage This Period (5%) | $3,509.34

Total Work Completed to Date | $371,048.76
Retainage This Period (5%) | $18,552.43
Amount Due to Date | $332,496.33
Less Previous Payments | $222,194.83
Release Retainage | $24,866.33
Amount Due This Request | $84,456.82

Original contract Amount | $324,977.15
Total Change Orders to Date | $0.00
Revised Contract Amount | $324,977.15
Percent Complete | 100%

Mayor Peggy J. Dunn Date
APPROVED FOR PAYMENT
LEAWOOD CITY COUNCIL
**CONTRACTOR PERFORMANCE EVALUATION**

**Project:** City Park Tennis Court Renovation  
**Contractor:** McConnell & Associates

<table>
<thead>
<tr>
<th>Evaluation Date</th>
<th>Average Final Score</th>
<th>Final Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>3</td>
<td>Project finished on budget. Took longer than expected.</td>
</tr>
<tr>
<td>B</td>
<td>2</td>
<td>There were some good weather days the contractor wasn't on site.</td>
</tr>
<tr>
<td>C</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>5</td>
<td>The milling process damaged the concrete grade beam more than anticipated but the contractor repaired the look well.</td>
</tr>
<tr>
<td>E</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>F</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>G</td>
<td>5</td>
<td>Contractor cooperated with staff that marked the tennis light power.</td>
</tr>
<tr>
<td>H</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>I</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>J</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>K</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>L</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>5</td>
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<tr>
<td>N</td>
<td>5</td>
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</tr>
<tr>
<td>O</td>
<td>0</td>
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</tr>
</tbody>
</table>

* Each Category will be rated on a scale of 1 to 5 with 5 being the highest rating.
* A score of 0 indicates not applicable for this review period.
* The average score of all categories will be the final score.
* Scores of 3 and above will be considered acceptable while scores less than 3 will be considered unsatisfactory.

**COMPLETING THE FORM**
1. Record the number and nature of any valid complaints.
2. List any instances of failure to meet the requirements of the contract performance evaluation.
3. Identify performance goals that have not been met during the reporting period.
4. Recommend actions to be taken by contractor to improve performance or correct deficiencies.
5. If evaluation shows acceptable performance, congratulate the contractor.

Completed by: [Signature]  
Date: 1/11/2014
**Staff Review**

**Fact Sheet**

**SUBJECT:** REQUEST TO APPROVE CHANGE ORDER NO. 1 WITH TOTAL ELECTRIC CONTRACTORS INC. FOR THE MISSION ROAD AND LEE BOULEVARD TRAFFIC SIGNAL PROJECT

**JANUARY 22, 2019**

**DISCUSSION**

The Public Works Department requests approval of Change Order No. 1 for $960.00 on the Construction Contract with Total Electric Contractors Inc. for the Mission Road and Lee Boulevard Traffic Signal Project.

The City approved the contract with Total Electric on August 20, 2018 for a bid price of $115,373.00.

As you will recall, the City has authorized a Traffic Signal Agreement with the Board of County Commissioners of Johnson County for the installation of traffic signals at Mission and Lee and will be sharing in the cost with the County. The County will have 60% and Leawood 40%. The project is in conjunction with the Johnson County Wastewater Project in the area.

Change Order No. 1 is for a change in street light luminaires and street signage needed on the project. The change order will revise the contact to $116,333.00.

It is the recommendation of the Public Works Department the City Council approves the Change Order No. 1 Total Electric Contractors Inc. for the Mission Road and Lee Boulevard Traffic Signal Project in the amount of $960.00 and authorizes the Mayor to sign.

**COUNCIL ACTION TO BE TAKEN**

Approve Change Order

**STAFF RECOMMENDATION**

☑ For

☐ Against

☐ No position

**COMMITTEE RECOMMENDATION**

☐ For

☐ Against

☐ No position ☐ No Assignment

**POLICY OR PROGRAM CHANGE**

☑ No

☐ Yes

**OPERATIONAL IMPACT**

**COSTS**

$960.00

**FUND SOURCES**

Project 72081
13020 Street Improvement
CITY OF LEAWOOD

CONTRACT CHANGE ORDER

Project Name: 2018 Mission Rd. And Lee Blvd. Traffic Signal Project
Contractor: Total Electric Contractors, Inc.

City Project No.: 72081
Change Order No.: 1

The following changes are hereby authorized in the subject agreement dated: 8/24/2018

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Change Street Light Luminaires</td>
<td>LS</td>
<td>1.0</td>
<td>$450.00</td>
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</tr>
<tr>
<td>2</td>
<td>Change Mission Rd. Street Signage</td>
<td>LS</td>
<td>1.0</td>
<td>$510.00</td>
<td>510.00</td>
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</table>

**TOTAL:** $960.00

Summary of Change in Contract Price due to this Change Order:

- Contract price before this change order: $115,373.00
- Total Increase/Decrease of this change order: $960.00
- Contract price after this change order: $116,333.00
CITY OF LEAWOOD

CONTRACT CHANGE ORDER

Summary of Change in Contract Time due to this Change Order:

Contract time before this change order: October 26, 2018 calendar/working days
Total increase/decrease in time for this change order: 0 calendar/working days
Contract time after this change order: October 26, 2018 calendar/working days

This document shall become an amendment to the Agreement and all provisions of the Agreement and Contract Documents shall apply hereto. It is the Contractor's responsibility to notify its surety of this change order but its failure to do so will not relieve the surety of its obligations to the City of Leawood.

Indicate below the attached items, which are to be made a part of this Change Order.

This Contract Change Order is effective after sufficient originals are signed by the Contractor, reviewed by the Project Manager (if applicable), accepted by the City Engineer, and approved by the City of Leawood Governing Body. Deliver one copy to the City Engineer, Contractor, and Project Manager, if applicable.

Submitted by the Contractor: Total Electric Contractors, Inc
Date: 1/9/19

Accepted by the City of Leawood:

Date: ____________________________

Reviewed by the Project Manager:

By: ________________________________
Steven Wallace
Date: 1-9-19

Approved by the City of Leawood:

Date: ____________________________
### Traffic Signal Installation

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<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>QTY</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
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<th>QUANTITY THIS PERIOD</th>
<th>TOTAL QUANTITY</th>
<th>EXTENSION</th>
<th>TOTAL THIS PERIOD</th>
<th>TOTAL COMPLETED</th>
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<tbody>
<tr>
<td>1.00</td>
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<td></td>
<td>$115,373.00</td>
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<td>0.95</td>
<td>0.95</td>
<td>1.00</td>
<td>$115,373.00</td>
<td>$115,373.00</td>
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<td>EA</td>
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<td>$5,766.65</td>
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### Change Order 1

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<th>UNIT PRICE</th>
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<td>0.00</td>
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<td>1</td>
<td>$510.00</td>
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**Total Work Completed This Period**

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**Total Work Completed to Date**

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**Original Contract Amount**

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<td>Revised Contract Amount</td>
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**Percent Complete**

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# Staff Review

## Fact Sheet

**SUBJECT:** REQUEST TO APPROVE 3RD and FINAL PAY REQUEST WITH TOTAL ELECTRIC CONTRACTORS INC. FOR THE MISSION ROAD AND LEE BOULEVARD TRAFFIC SIGNAL PROJECT  
JANUARY 22, 2019

### DISCUSSION

The Public Works Department requests approval of the 3rd and FINAL Pay Request of $6,728.65 for work on the Construction Contract with Total Electric Contractors Inc. -Mission Road and Lee Boulevard Traffic Signal Project.

The City approved the contract with Total Electric on August 20, 2018, for a bid price of $115,373.00. The project has had one change order request; revising the contract to $116,333.00.

As you will recall, the City has authorized a Traffic Signal Agreement with the Board of County Commissioners of Johnson County for the installation of traffic signals at Mission and Lee and will be sharing in the cost with the County. The County will have 60% and Leawood 40%. The project is in conjunction with the Johnson County Wastewater Project in the area.

With this 3rd and Final Pay Request, the project is 100% complete.

It is the recommendation of the Public Works Department the City Council approves the 3rd and Final Pay Request to Total Electric Contractors Inc. for the Mission Road and Lee Boulevard Traffic Signal Project in the amount of $6,728.65 and authorizes the Mayor to sign.

---

### COUNCIL ACTION TO BE TAKEN

- [x] Approve Change Order

### STAFF RECOMMENDATION

- [x] For
- [ ] Against
- [ ] No position

### COMMITTEE RECOMMENDATION

- [ ] For
- [ ] Against
- [ ] No position  
- [ ] No Assignment

### POLICY OR PROGRAM CHANGE

- [x] No
- [ ] Yes

### OPERATIONAL IMPACT


### COSTS

$6,728.65

### FUND SOURCES

Project 72081  
13020 Street Improvement
**JANUARY 7, 2019**

Project #: 72081
Contractor: Total Electric Contractors, Inc.
Pay Request No. 3 AND FINAL

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<th>UNIT PRICE</th>
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<th>TOTAL QUANTITY</th>
<th>EXTENSION THIS PERIOD</th>
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<td>$5,766.65</td>
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Sub-total $115,373.00 $5,766.65 $115,373.00

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<th>EXTENSION THIS PERIOD</th>
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<tr>
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Sub-total $960.00 $960.00 $960.00

---

Jim Leonard
Total Electric

Steven Wallace
Right-of-Way Technician

David Ley, P.E.
Director of Public Works

Jim Leonard
Date

Steven Wallace
Date

David Ley, P.E.
Date
# CONTRACTOR PERFORMANCE EVALUATION

**Project:** 2018 Mission/Lee Traffic Signal  
**Contractor:** Total Electric

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<td></td>
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</tr>
<tr>
<td>7/28/18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8/7/18</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>6/28/18</th>
<th>7/28/18</th>
<th>8/7/18</th>
<th></th>
<th>Average Final Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Completion of Construction within allotted time and budget</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>B</td>
<td>Consistency of work effort of the contractor or subs based on schedule</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>C</td>
<td>Quality of work performed by contractor or subcontractor</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>D</td>
<td>Damages and repairs of any damage to public or private property</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>E</td>
<td>Traffic control in work zone under construction by contractor</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>F</td>
<td>Ability of contractor or subcontractor to communicate and work with residents</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>G</td>
<td>Coordination with Utility Companies</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>H</td>
<td>Cooperation of the contractor or subcontractor with City Staff</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>I</td>
<td>Maintenance of Construction Site During Construction</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>J</td>
<td>Responsiveness to a direct request from the Public Works Director</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>K</td>
<td>Fairness and appropriate use of requests for change orders during construction</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>L</td>
<td>Safety on the job-site during construction</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>M</td>
<td>Final restoration and clean-up by contractor and subcontractor</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>N</td>
<td>Responsiveness to correction of &quot;punch list&quot; items</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>5.0</td>
</tr>
<tr>
<td>O</td>
<td>Misc.</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

* Each Category will be rated on a scale of 1 to 5 with 5 being the highest rating.
* A score of 0 indicates not applicable for this review period.
* The average score of all categories will be the final score.
* Scores of 3 and above will be considered acceptable while scores less than 3 will be considered unsatisfactory.

**COMPLETING THE FORM**
1. Record the number and nature of any valid complaints.
2. List any instances of failure to meet the requirements of the contract performance evaluation.
3. Identify performance goals that have not been met during the reporting period.
4. Recommend actions to be taken by contractor to improve performance or correct deficiencies.
5. If evaluation shows acceptable performance, congratulate the contractor.

**Final Project Score = 5.00**

---

Steven Wallace  
Right of Way Technician  
Leawood Public Works Department
Staff Review
Fact Sheet

SUBJECT: REQUEST TO APPROVE CHANGE ORDER NO. 2
PUBLIC WORKS MAINTENANCE FACILITY EXPANSION PROJECT
January 22, 2019

DISCUSSION

City Council approved the Design/Build Agreement with Bruner Contracting for the construction of two bays on the Public Works Maintenance Facility on May 7, 2018, in the amount of $883,264.00.

Public Works Department is requesting Change Order No. 2 to complete ADA and storm sewer improvements that were not identified as part of the original plan. Also included in the change order is undergrounding of the new downspouts and one existing downspout.

The existing building does not have underground storm sewers to the downspouts. Staff is concerned about long term foundation issues with the downspouts discharging immediately adjacent to the building and we are also concerned about staff safety as the parking lot in front of the north side bays ices during the winter due to the water from the downspouts and lack of sunlight. The proposal does not include connecting all existing downspouts on the north side as we are limited on bay space during construction of the expansion.

Change Order 1 in the amount of $43,400.00 was for completing heater replacement in the existing facility as part of the 2018 Budget.

It is the recommendation of the Public Works Department the Governing Body approve the Change Order No. 2 to Bruner Contracting in the amount of $65,522.00 and authorize the Mayor to sign.

David Ley, P.E.
Director of Public Works

COUNCIL ACTION TO BE TAKEN

Approve Change Order No. 2

STAFF RECOMMENDATION

☑ For
□ Against
□ No position

COMMITTEE RECOMMENDATION

□ For
□ Against
□ No position ☑ No Assignment

POLICY OR PROGRAM CHANGE

☑ No
□ Yes

OPERATIONAL IMPACT

COSTS
$65,522.00

FUND SOURCES
Project 76050
CITY OF LEAWOOD

CONTRACT CHANGE ORDER

Project Name: Public Works Maintenance Building - 2 Bay Addition
Contractor: Bruner Contracting
Eden Contract No.: 18.013
City Project No.: 76050
Fund No.: 
Change Order No.: 2

The following changes are hereby authorized in the subject agreement dated:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ADA Ramp, Stairs, Handrails, Curb Inlet &amp; 18&quot; Storm</td>
<td>LS</td>
<td>1</td>
<td>$29,500.00</td>
<td>29,500.00</td>
</tr>
<tr>
<td>2</td>
<td>Install 310 if 10&quot; &amp; 12&quot; Downspout Drains</td>
<td>LS</td>
<td>1</td>
<td>$36,022.00</td>
<td>36,022.00</td>
</tr>
</tbody>
</table>

TOTAL: $85,522.00

Summary of Change in Contract Price due to this Change Order:

Contract price before this change order: $926,664.00
Total Increase/Decrease of this change order: $65,522.00
Contract price after this change order: $992,186.00
CITY OF LEAWOOD

CONTRACT CHANGE ORDER

Summary of Change in Contract Time due to this Change Order:

Contract time before this change order: January 30, 2019 calendar/working-days
Total increase/decrease in time for this change order: 60 calendar/working-days
Contract time after this change order: March 31, 2019 calendar/working-days

This document shall become an amendment to the Agreement and all provisions of the Agreement and Contract Documents shall apply hereto. It is the Contractor's responsibility to notify its surety of this change order but its failure to do so will not relieve the surety of its obligations to the City of Leawood.

Indicate below the attached items, which are to be made a part of this Change Order.

This Contract Change Order is effective after sufficient originals are signed by the Contractor, reviewed by the Project Manager (if applicable), accepted by the City Engineer, and approved by the City of Leawood Governing Body. Deliver one copy to the City Engineer, Contractor, and Project Manager, if applicable.

Submitted by the Contractor:

__________________________
Bruner Contracting

Date: ______________________

Reviewed by the Project Manager:

By: _______________________

Date: 1-11-19

Accepted by the City of Leawood:

__________________________
City Engineer

Date: ______________________

Approved by the City of Leawood:

__________________________
Mayor Peggy J Dunn

Date: ______________________
MEMO

Leawood, Kansas
Police Department

To: Mayor Dunn and City Council Members
CC: Scott Lambers, City Administrator
From: Troy Rettig
Date: January 22nd, 2019
Re: Contract with Great Plains SPCA for Animal Impoundments & Other Related Services

Approximately a year ago State Line Animal Hospital informed us of a substantial rate increase. As a result we began a lengthy process of reviewing our current impound procedures as we realized a move to another facility needed to occur.

A request for proposal was completed in which no Kansas facilities expressed an interest. At that time we contacted Great Plains SPCA regarding using them knowing multiple other Johnson County agencies did and were satisfied with their services.

We are requesting your consideration of accepting this contract so we can begin using Great Plains SPCA for these services. Although not as convenient as State Line Animal Hospital, we are anticipating a significant reduction in costs for these services with this change.

Thank you for your consideration of these changes.

Please let me know if you have any questions.
RESOLUTION NO. ________

RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A SERVICE AGREEMENT BETWEEN THE CITY AND GREAT PLAINS SPCA FOR ANIMAL IMPOUNDMENT AND OTHER RELATED SERVICES

WHEREAS, the City is in need of services pertaining to animal impoundment;

WHEREAS, Great Plains SPCA provides such services; and

WHEREAS, the parties desire to execute a Service Agreement to provide such services.

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

SECTION ONE: That the Governing Body hereby authorizes the Mayor to execute a Service Agreement between the City and Great Plains SPCA, attached hereto as Exhibit “A,” and incorporated herein by reference as if fully set out.

SECTION TWO: This resolution shall become effective upon passage.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

[SEAL]

Peggy J. Dunn, Mayor

ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
City Boarding Agreement

THIS AGREEMENT (this “Agreement”) is effective as of January 23rd, 2019 by and between the City of Leawood, KS (“CITY”) and GREAT PLAINS SPCA (“GREAT PLAINS”) for and on behalf of itself and its subsidiaries.

WHEREAS, the City has enacted certain ordinances prohibiting dogs from running unsecured in the City, mandating the licensing of dogs and cats, and providing for the impoundment and disposition of animals found running at large or otherwise in violation of said ordinances; and

WHEREAS, the City deems it desirable and in the best interest of the City to contract with Great Plains to board and dispose of dogs found unsecured or otherwise impounded pursuant to City ordinance, or cats who are deemed ill or injured.

NOW, THEREFORE, the parties agree as follows:

1. Services provided by Great Plains:

   a. Great Plains will provide, at its own expense, a suitable and adequate animal shelter for the proper handling of lost, stray or otherwise impounded animals, which shelter shall be supervised by a competent person or persons. Great Plains shall be open daily at such hours as Great Plains shall determine, provided it shall be open for the public to recover animals a minimum of six hours per day during normal business hours every day. Great Plains will provide 24-hour access to Animal Control and Police Officers for the impoundment of animals.

   b. Great Plains agrees to accept all dogs picked up or delivered to Great Plains by the City or its employees, with limits on bite cases, as set forth below. Great Plains also agrees to accept cats that are ill or injured. Great Plains shall not have to accept large animals such as horses, cattle, deer, farm animals or other large, vicious or dangerous animals not customarily sheltered by Great Plains.

      i. Great Plains reserves the right to make exceptions to the temporary holding of bite cases for a period not to exceed 48 hours until such pet can be transferred to another facility. City will be billed appropriately for the associated administrative and boarding fees per Section 4.

   c. Great Plains shall first refer all persons and calls concerning strays found in the City to the City’s Animal Control division. Great Plains agrees it will not accept an animal on behalf of the City without first obtaining authorization from the City but does maintain the right to accept pets from citizens in said city for an appropriate relinquishment fee.
paid to Great Plains by the citizen should the City's Animal Control division decline impoundment of the pet under the City's contract. The City will only be billed for animals they bring in or approve for public surrender.

d. Great Plains agrees to provide proper and adequate food, shelter, water and humane care to the animals delivered to it by the City during all times the animals are in its possession and until redeemed or otherwise disposed.

e. Animals delivered to Great Plains who are in need of immediate medical care to treat an injury or illness, will be billed to said City at a fee not to exceed $250 per pet if delivered during normal business hours. Examples of such injuries or illnesses include, but are not limited to: pets who have been hit by a car, broken limbs, lacerations or other open wounds, or parvo virus, etc. Routine medical care for general/common illnesses such as upper respiratory disease, heartworms, providing vaccinations, etc. will not be billed to the City and will be provided to pets delivered by City's Animal Control division under the general contract terms. The City's Animal Control division also has the option to transfer the pet to another veterinary clinic for treatment at the City's own expense; however, pets who are obviously or suspected to be injured or seriously ill may not, under any circumstances, be delivered to Great Plains after hours. Any pet who is in the possession of the City after hours and is injured or ill must be transferred to an emergency hospital. It is not humane or acceptable for Animal Control Officers to deliver pets to Great Plains after hours who are suffering and in need of medical attention. Euthanasia will be reserved for pets who are suffering, not for pets with a treatable condition. Great Plains will not euthanize a pet, even if released by the City, who can be reasonably treated and rehabilitated. For all pets delivered to and housed at Great Plains, medical conditions will be promptly treated to prevent pain, suffering and discomfort.

f. Great Plains agrees to hold all of the animals delivered to it by the City (except those covered by subsections g and h below) for a maximum period of 5 days (the "Holding Period"); provided, however, that any animal so impounded may be reclaimed by its legal owner within the Holding Period provided the owner pays any outstanding administrative and/or veterinary fees and charges to Great Plains. At the end of the Holding Period, all animals that remain unclaimed shall become the property of Great Plains and may be listed for adoption by Great Plains, transferred to another Humane Organization or Rescue, or humanely euthanized at the shelter. Great Plains will not knowingly list for adoption any animal that is vicious or that has been deemed dangerous or vicious.

g. Great Plains SPCA will not provide holding space for animals required for rabies observation, subject to Section 1.b.i. Such animals will need to be transferred and held
2. Obligations of the City:

a. Any animal that appears to be suffering from injury or illness or appears to have a contagious disease shall be (1) released to Great Plains for medical treatment not to exceed $250 or, (2) must be taken by the City to a veterinarian of the City's choice immediately. This includes after hours impoundments. Medical conditions must be treated immediately to prevent suffering, pain and discomfort.

3. After Hours Impoundment

Great Plains prohibits inhumanely impounding an animal. Any animal impounded after normal working hours shall be provided with water and placed in a holding kennel of appropriate size. Great Plains shall provide after-hours Impounding Officers with all necessary supplies to include litter boxes, food, bedding and cleaning supplies. Animals are not to be left in traps or in outdoor pens overnight. No animal is to be left in the facility without proper paperwork being completed by the Animal Control Officer, Police Officer or City designee impounding the animal. Great Plains is responsible to ensure that there are adequate, secure and sanitary cages or runs available for all impounded animals. Impounding Officers may not place injured or ill animals in kennels after hours. Such pets must be transported by Animal Control to an after-hours
veterinary facility for care/treatment. Pets can be transferred to Great Plains the following morning during normal business hours for continued care.

4. Fees:

In consideration for the above performance, the City agrees to pay Great Plains as follows:

a. A one-time administrative fee of $76.00 per dog, puppy, cat, kitten or other small animal impounded, which includes the first day of board.

b. Each day following the first day of impoundment, boarding will be billed at $56.00 per day, or fraction of a day, for each dog, cat or other small animal.

c. $30.00 for each bite certificate

d. $50.00 per euthanasia fee, which includes disposal

e. $30.00 disposal fee for each animal delivered deceased

f. $100.00 for each non-placeable animal delivered to Great Plains. For purposes of this section, “non-placeable” shall mean an animal designated as such by the City, which due to its aggressive disposition or specific legislation cannot be adopted by a citizen of the City, including feral cats.

g. A fee of $75 for the first offense and $100 for a second and so on in increasing $25 increments, will be charged to the monthly bill if the dropping off of an animal after hours (7pm-7am) results in an Alarm Event and the dispatch of Merriam PD to clear the premises.

In the event a litter or a litter with the mother is impounded, and said litter is not “weaned,” no more than two administrative fees will be charged. For example, if a cat with four nursing kittens is impounded, the administrative charge would be $152.00, not $380.00. All boarding fees still apply.

In the event of a pregnancy that cannot be terminated, the city will be charged for all off-spring in the same fashion as a mother and litter impoundment (see above).

Any fees incurred or charges for unclaimed animals during the legal Holding Period will be paid by the City. If an animal is reclaimed by its owner, Great Plains shall collect all fees from the owner.

The fees included in this Section 4 are cumulative and the City will be charged for all fees that apply to a particular animal. For example, an animal delivered to the shelter may be the basis for an administrative fee, boarding fee, non-placeable animal fee, and any other fees that may apply.

These fees may be changed, or additional fees imposed by Great Plains, provided that Great Plains gives the City sixty (60) days prior verbal or written notice of such change or additional fees in accordance with Section 15.
5. Independent Contractor:

The parties hereto agree that the services to be provided by Great Plains are being provided strictly on a contract basis. Great Plains is not and shall not be considered a part of the City and shall not be subject of the control of the City, but shall be considered an independent contractor at all times.

6. Assignability:

This agreement shall not be assignable without prior written permission of both parties

7. Non-Discrimination:

Great Plains agrees that:

a. Great Plains shall observe the provisions of the Kansas Act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry.

b. In all solicitations or advertisements for employees, Great Plains shall include the phrase, “equal opportunity employer” or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);

c. If Great Plains fails to comply with the manner in which it reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Great Plains shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City;

d. If Great Plains is found guilty of a violation of the Kansas Act against discrimination under a decision or order of the Commission which has become final, Great Plains shall be deemed to have breached the present contract and it may be canceled, terminated, or suspended, in whole or in part, by the City; and

e. Great Plains shall include the provisions of subsections 7 (a) through (d) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

f. The provisions of this section shall not apply to a contract entered into by Great Plains if:

i. Great Plains employs fewer than four employees during the term of such contract; or

ii. Great Plains contracts with the City cumulatively total $5,000.00 or less during the fiscal year for the City.

g. Great Plains further agrees that is shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to Great Plains, and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

8. Non-Exclusivity;
This Agreement shall not preclude the City from entering into any agreement with, or from utilizing, any other impounding entity or shelter and shall not be considered exclusive.

9. Term:

This Agreement shall be effective January 23rd, 2019, and shall continue in effect until December 31, 2020. The term of this Agreement shall be automatically extended at the end of the initial term for a twelve month period, and in like manner for all succeeding years, unless and until either party terminates the Agreement pursuant to Section 10, below.

Notwithstanding the foregoing or any other language contained in this Agreement, the City is obligated to pay only such periodic payments or monthly installments thereof as may lawfully be made from funds budgeted and approved for that purpose. The City agrees to notify Great Plains at the earliest possible time of the non-availability of funds from which to make any periodic payment or monthly installment.

The right of the parties to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted in such a manner as to ensure the parties shall at all times remain in conformity with such laws. Further, the parties reserve the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of legal counsel, the Agreement may be deemed to violate the terms of any laws of the State of Kansas.

10. Termination:

Either party may terminate this agreement at any time for their convenience by giving thirty (30) days written notice to the other party.

11. Periodic Meeting:

The parties agree to meet as needed or requested by either party during the term of this Agreement to better anticipate the needs of the parties prior to renegotiation of the Agreement.

12. Insurance:

Great Plains shall maintain throughout the duration of this Agreement, insurance in, at a minimum, the amounts specified below, unless waived in writing by the City. The City will only accept coverage from an insurance carrier offering proof that the carrier is authorized to do business in Kansas; carries a Best’s Policyholder rating of A-LIII or better or is otherwise approved by the City. Great Plains is required to carry insurance while performing the services herein for the City. Great Plains will furnish a Certificate of Insurance to the City upon request.
All general and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by the City. Great Plains shall name the City as an additional insured in the amount of $500,000 for all claims determined to be subject to the Kansas Tort Claims Act. Great Plains shall name the City as an additional insured for all other claims set forth below:

1. **Commercial General Liability**
   
   (a) General Aggregate...$2,000,000.00
   (b) Products / Completed Operations Aggregate...$2,000,000.00
   (c) Personal and Advertising Injury (Each Person)...$1,000,000.00
   (d) Each Occurrence...$1,000,000.00

2. **Automobile Liability**

   Policy shall protect Great Plains against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either (a) Any Auto; or (b) All Owned Autos, Hired Autos, and Non-Owned Autos.

   (a) All autos Combined Single Limits (CSL)...$1,000,000.00
   (b) Uninsured motorists...$1,000,000.00

   Umbrella policy may be used to meet coverage limits.

3. **Workers Compensation (includes “all states” insurance)**

   (a) Workers Compensation...Statutory
   (b) Great Plains shall also be protected against claims for disease, injury, or death of employees, which, for any reason, may not fall within the provisions of a Workers Compensation Law.
   (c) Employer’s Liability:
       - Bodily Injury by Accident...$500,000 each accident
       - Bodily Injury by Disease...$500,000 policy limit
       - Bodily Injury by Disease...$500,000 each employee

4. **Subcontractor’s Insurance.**

   If any part of this Agreement is to be sublet, Great Plains shall either:
   (a) Cover all subcontractors under its insurance policies; or
   (b) Require each subcontractor not so covered to secure insurance which will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, unless waived by the City.

5. **Notice of Claim Reduction of Policy Limits**
Great Plains, upon receipt of notice of any claim in connection with the Proposal, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

Great Plains shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate in excess of $100,000.00, whether or not such impairment came about as a result of this Contract.

13. Indemnification

Great Plains shall indemnify, defend and hold harmless the City from and against all damages, expenses (including, but not limited to reasonable attorney fees), obligations, costs, liabilities, losses, claims, actions or causes of actions whatsoever sustained by the City arising from or related to Great Plains' obligations pursuant to this Agreement to the extent that such damages, expenses, obligations, costs, liabilities, losses, claims, actions or causes of action are caused by the negligence of the Great Plains, its employees or its agents.


The parties agree that all notices under this Agreement shall be in writing and shall be deemed to have been duly given upon either being delivered personally or upon receipt if mailed by certified mail, return receipt requested. Notices shall be sent to the representatives named below or to any subsequent representative for which notice is provided pursuant to this section.

Great Plains SPCA                  City of Leawood, KS
Tam Singer                      ATTN: Chief of Police
CEO                               4201 Town Center Drive
5428 Antioch Drive           Leawood, KS 66211
Merriam, Kansas 66202

15. Entire Agreement:

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral and written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to, accepted and signed by both parties.

16. No Third Party Beneficiaries:

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

17. Severability:
Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

[THE BALANCE OF THIS PAGE IS LEFT INTENTIONALLY BLANK]
IN WITNESS WHEREOF, the parties understand this Agreement and have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

CITY OF LEAWOOD, KS

By:

Name: Peggy Dunn
Title: Mayor
Date:

GREAT PLAINS SPCA

By: **Tsinger**

Name: Tam Singer
Title: CEO
Date: 1/9/2018

Attest:

______________________________
Deb Harper, CMC
City Clerk

Approved as to form:

______________________________
Marcia L. Knight
Assistant City Attorney
Staff Review
Fact Sheet

SUBJECT: RESOLUTION APPROVING CONSTRUCTION AGREEMENT FOR CONSTRUCTION OF RETAINING WALLS AT 119TH STREET AND MISSION ROAD
January 22, 2019

DISCUSSION

The Public Works Department opened Bids on December 18, 2018 for construction of a retaining wall at 119th Street and Mission Road.

There were four (4) bidders. The low bid was from Gunter Construction Company at a price of $43,636.00. This project will be funded from the burying of overhead lines along Mission Road project as the retaining wall is required for KCPL to complete their work. KCPL does not provide site improvements necessary for undergrounding of their facilities.

The retaining wall will be constructed on the southeast corner of 119th St and Mission Rd in the location of an existing natural stone retaining wall. The slope on top of the wall is too steep to place a transformer. The proposed retaining wall will be 24” taller to create a level platform for KCPL’s transformer. By placing the transformer in this location it allows for the alignment of five other KCPL cabinets to be installed at the top of the hill on the east side of Mission Road from 119th St to 1,000 feet south.

It is the recommendation of the Public Works Department the Governing Body approves the contract with Gunter Construction and authorizes the Mayor to sign same.

David Ley, P.E.
Director of Public Works

COUNCIL ACTION TO BE TAKEN

Approve Resolution & Construction Contract

STAFF RECOMMENDATION

☑ For
☐ Against
☐ No position

COMMITTEE RECOMMENDATION

☐ For
☐ Against
☐ No position ☑ No Assignment

POLICY OR PROGRAM CHANGE

☐ No
☐ Yes

OPERATIONAL IMPACT

COSTS

$43,636.00

FUND SOURCES

Project 82065
RESOLUTION NO. __________

RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A CONSTRUCTION AGREEMENT IN THE AMOUNT OF $43,636.00, BETWEEN THE CITY AND GUNTER CONSTRUCTION COMPANY, PERTAINING TO THE 119TH STREET AND MISSION ROAD RETAINING WALL PROJECT [PROJECT # 82065]

WHEREAS, the City is in need of services regarding the 119th Street and Mission Road Retaining Wall Project;

WHEREAS, Gunter Construction Company provides such services; and

WHEREAS, the parties desire to enter into Construction Agreement regarding such services.

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

SECTION ONE: That the Governing Body hereby authorizes the Mayor to execute a Construction Agreement between the City and Gunter Construction Company, in the amount of $43,636.00, attached hereto as Exhibit “A,” and incorporated herein by reference as if fully set out.

SECTION TWO: This resolution shall become effective upon passage.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

[SEAL]

Peggy J. Dunn, Mayor

ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

________________________
Patricia A. Bennett, City Attorney
### Bid Tabulation for 2018 Mission Road & 119th Retaining Wall Project

**Bid Opening Date:** December 18, 2018 at 2:00 PM  
**Held in:** Council Chambers

**CITY OF LEAWOOD KANSAS**  
**BID TABULATION**  
4800 Town Center Drive  
Leawood, Kansas 66211  
(913) 339-6700  
(913) 339-9374 fax  
(913) 339-6225 TDD

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Bid Bond Included</th>
<th>Alternates one and two</th>
<th>Total Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gunter Construction</td>
<td>X</td>
<td>alternate 1</td>
<td>$43,636.00</td>
</tr>
<tr>
<td>Gunter Construction</td>
<td>X</td>
<td>alternate 2</td>
<td>$48,960.00</td>
</tr>
<tr>
<td>Mega Industries</td>
<td>X</td>
<td>alternate 1</td>
<td>$54,723.00</td>
</tr>
<tr>
<td>Mega Industries</td>
<td>X</td>
<td>alternate 2</td>
<td>$54,833.00</td>
</tr>
<tr>
<td>Musselman &amp; Hall</td>
<td>X</td>
<td>alternate 1</td>
<td>$59,845.00</td>
</tr>
<tr>
<td>Musselman &amp; Hall</td>
<td>X</td>
<td>alternate 2</td>
<td>$60,945.00</td>
</tr>
<tr>
<td>Pyramid Excavation &amp; Construction Inc.</td>
<td>X</td>
<td>alternate 1</td>
<td>$62,850.00</td>
</tr>
<tr>
<td>Pyramid Excavation &amp; Construction Inc.</td>
<td>X</td>
<td>alternate 2</td>
<td>$69,450.00</td>
</tr>
</tbody>
</table>

**Engineer's Estimate:**  
(provided by Staff Engineer)  
**Total Bids:**  
alternate 1 $55,250.00  
alternate 2 $59,650.00

---

The City of Leawood, Kansas reserves the right to reject any and all bids.

This bid tabulation form is offered as information only on public read and received bids.

Bids received are reviewed for accuracies and review of meeting document and specifications as required with the Bid Notice. The "award" of the bid is determined by the City's purchasing policy.

Vendors awarded contracts with the City of Leawood are expected to comply with the City of Leawood Standard Contract forms and procedures and obtain all licenses and permits associated with the job.
**Staff Review**

**Fact Sheet**

**SUBJECT:**  
APPROVE GOVERNMENTAL ROLL OUT AGREEMENT  
WITH KC BOBCAT FOR THE PURCHASE OF CITY EQUIPMENT  
January 22, 2019

<table>
<thead>
<tr>
<th>DISCUSSION</th>
</tr>
</thead>
</table>
| The Public Works Department is requesting approval of the attached agreement with KC Bobcat Company of Olathe for the purchase of two (2) Skid-Steer Loaders. The cost for the 2 S770 Skid Steer Loaders is $99,828.00.  
Public Works used this agreement since 2015. The agreement allows for the purchase of these units each year and at the end of the year Bobcat will buy back the units so that the final out of pocket expense to the City is $5,000.00 dollars a unit. The buyback of the two previous units from KC Bobcat will be used to offset the cost for the purchase of the two new units.  
If the City chooses not to continue in this program, The City keeps the two most recently purchased units.  
With the type of work these units are used for after a couple of years there is considerable maintenance needed to keep them operating. Choosing to participate in this program would allow the City to have a new unit each year eliminating costly maintenance expenses associated with these units. The annual replacement cost to trade in the unit over the life of the unit equals the replacement cost with virtually no maintenance cost over that same time frame.  
It is the recommendation of the Public Works Department that the City Council approves the purchase of the equipment for a total of $99,828.00 and enroll in the Roll Out Agreement. |

<table>
<thead>
<tr>
<th>COUNCIL ACTION TO BE TAKEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approve Purchase of Equipment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STAFF RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>☑ For</td>
</tr>
<tr>
<td>☐ Against</td>
</tr>
<tr>
<td>☐ No position</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMMITTEE RECOMMENDATION</th>
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</thead>
<tbody>
<tr>
<td>☑ For</td>
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<tr>
<td>☐ Against</td>
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<tr>
<td>☐ No position</td>
</tr>
<tr>
<td>☐ No Assignment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>POLICY OR PROGRAM CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>☑ No</td>
</tr>
<tr>
<td>☐ Yes</td>
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</table>

<table>
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<tr>
<th>OPERATIONAL IMPACT</th>
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</table>

<table>
<thead>
<tr>
<th>COSTS &amp; FUND SOURCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>$99,828.00  Public Works Capital Equipment</td>
</tr>
</tbody>
</table>

David Ley, P.E.  
Director of Public Works
RESOLUTION NO. __________


WHEREAS, the City is in need of Bobcat Skid Steer Loaders;

WHEREAS, KC Bobcat supplies such equipment; and

WHEREAS, the parties desire to enter into a Non-Financed Governmental Roll-Out Agreement to provide such equipment.

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

SECTION ONE: That the Governing Body hereby authorizes the Mayor to execute the Non-Financed Roll-Out Agreement between the City and KC Bobcat for two Bobcat Skid Steer Loaders, in the amount of $99,828.00, attached hereto as Exhibit “A,” and incorporated herein by reference as if fully set out.

SECTION TWO: This resolution shall become effective upon passage.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

[SEAL]

Peggy J. Dunn, Mayor

ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
### Olathe Rental or Sales Agreement

**Subject to the terms and conditions of this Order and the Terms contained on the reverse side, the following customer (“Customer”) purchases/rents from KC Bobcat (“KC”) the following described Equipment:**

<table>
<thead>
<tr>
<th>EQUIP. NO</th>
<th>QTY.</th>
<th>MFG.</th>
<th>MODEL</th>
<th>HR. METER</th>
<th>DESCRIPTION</th>
<th>SERIAL NO.</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>5770-N</td>
<td>1</td>
<td>BOBCAT</td>
<td>5770-W/915, AR, BUC, R</td>
<td>74/P LIFT WITH EDGE</td>
<td>$49,914.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6731421-N</td>
<td>1</td>
<td>BOBCAT</td>
<td>6731421-N</td>
<td>74/P LIFT WITH EDGE</td>
<td>$49,914.00</td>
<td></td>
<td></td>
</tr>
</tbody>
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<tr>
<td>6731421-N</td>
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<td>BOBCAT</td>
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<td>74/P LIFT WITH EDGE</td>
<td>$49,914.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**THE CITY OF LEAWOOD TO PURCHASE THE MACHINES LISTED ABOVE UNDER “DESCRIPTION” FROM KC BOBCAT FOR A TOTAL $99,828.00 AS PART OF THEIR 2019 CASH ROLL OUT LEASE AGREEMENT/KC BOBCAT TO BUY BACK “TRADE IN EQUIPMENT” LISTED ABOVE FOR A TOTAL OF $99,828.00 IN JANUARY OF 2020 IF THE CITY OF LEAWOOD ELECTS TO DO SO**

<table>
<thead>
<tr>
<th>PRICE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$99,828.00</td>
<td></td>
</tr>
</tbody>
</table>

**WARRANTY**

- **NEW FACTORY WARRANTY**
- **EXT FACTORY WAR**
- **EXT EPP WARRANTY**
- **NO WARRANTY EXPRESSED OR IMPLIED**

By your initials, you accept the terms of the PDW described in paragraph 7 on the reverse side and payment of the PDW Fee set forth above.

**S-22 Clause Customer must initial:**

Customer acknowledges and agrees that:

1. Customer has received all manufacturers' operation manuals pertaining to the equipment.
2. Customer shall be solely responsible for the training of all competent operators of the equipment, and the safe and legal operation of the equipment within its specified performance capabilities.
3. Company has offered the Customer instructions in the proper use of the equipment.
4. Customer, at its sole expense, will comply with all federal, state and local laws, regulations, and ordinances, relating to the use of the Equipment, including, but not limited to, the regulations of the Occupational Safety and Health Administration.

**Enter Agreement (Customer must initial):**

This Agreement, including the terms on the reverse side, represents the entire understanding of the parties, and this Agreement supersedes any prior agreements (oral or written) regarding the matters outlined herein. No term or provision of this Agreement may be amended, altered, waived, discharged, or terminated except by written instrument signed by authorized representatives of the parties hereto, and shall not be modified or interpreted by reference to any prior course of dealing, usage of trade, or course of performance.

**Printed by:** EDDIE KEATING

**Accepted by:** EDDIE KEATING

---

**TERMS AND CONDITIONS**

As used herein, “Company” shall mean the entity selling or renting the Equipment, “Customer” shall mean the person purchasing or renting the Equipment as listed in the Order on the reverse side hereof, and “Equipment” shall mean the goods specified in the Order (as modified below). All other capitalized terms are as defined in the Order below.
Article I. Sales - The following terms shall apply if Customer is purchasing the Equipment from Company:

1. Sale of Equipment and Delivery. Subject to available inventory, Company shall sell and Customer shall purchase the Equipment F.O.B. Company's Location (as defined below) on the Delivery Date (as defined below), and all risk of loss shall pass to Customer upon Delivery (as defined below).

2. Price and Payment. Unless otherwise specified herein, payment in full of the amount indicated in the Order shall be made to Company on the date of Delivery; or if partial Delivery, the portion of such payment for the Equipment on the separate dates of Delivery.

Article II. Rentals – The following terms shall apply if Customer is renting the Equipment from Company:

3. Rental Term. Company agrees to rent and Customer agrees to hire the Equipment, which for purposes of this article of the Terms shall include all attachments, replacements, parts, substitutions, additions, repairs, extensions, and accessories incorporated therein or affixed thereto (whether present upon Delivery or added thereafter by Company or, with Company's prior written consent, Customer). The rental term (the "Term") begins at the earlier of (a) the Rental Start Date, or (b) the time of Delivery, and continues until the Equipment is returned to and properly received at Company's Location, but in no case shall the Term be less than the Minimum Rental Period, if applicable.

4. Rental Charges & Payment. Upon the proper return of the Equipment, Company shall apportion the rental payment (rounding up to the next full rental day) by the actual time of rental, less other fees and charges assessable hereunder as follows: the Term shall be separated into whole rental 28-day periods, then into partial rental 28-day periods, then into whole rental weeks, then into whole rental days, and the rent shall be calculated by multiplying such divisions by the applicable monthly, weekly, and/or daily rental rate(s). For partial rental periods (28 day periods or weeks), the rent shall be calculated using the lower of (i) the full rental rate as if the Rental Period was not a partial Rental Period or (ii) the shortest Rental Period multiplied by the number of such periods and the full rent for the Minimum Rental Period shall be charged. In calculating the actual time of rental of the Equipment, the parties agree to use either the actual time elapsed from the time the Term begins or the hours of Equipment use as recorded on the hour meter provided on the Equipment, whichever method yields the highest rental. A rental day shall be 24 hours elapsed, 8 hours use; a rental week shall be seven calendar days elapsed, 40 hours use; and a rental month shall be 28 days elapsed or 160 hours use. Company reserves the right to assess additional rental charges if in Company's reasonable determination, the Equipment was used for more use than hours is allowed for the otherwise applicable time elapsed rental rate. Company shall have the right, at its discretion, to inspect the Equipment during the Term to check the reading on an hour meter on the Equipment and for compliance with the terms of this Agreement.

5. Use of the Equipment. Customer agrees to use the Equipment only at the specified location. Customer agrees to comply with the terms of the Safety Clause set forth in the Order. Customer acknowledges that, upon request, Company will offer to the Customer a training course in the proper use of the Equipment.

6. Indemnification. CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD COMPANY, ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, OWNERS, INSURERS, AND THEIR SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, CLAIMS, PENALTIES, INJURIES (BOTH AS TO BODY AND PROPERTY), INCLUDING CLAIMS ALLEGEDLY RESULTING FROM THE NEGLIGENCE OF COMPANY, AND ALL COSTS AND EXPENSES THEREOF (INCLUDING ATTORNEYS’ FEES) IN ANY WAY RELATING TO OUR ARISING OUT OF THE EQUIPMENT, IN WHATEVER MANNER, IN CONNECTION WITH ANY EVENT OCCURRING PRIOR TO THE PROPER RETIREMENT OF THE EQUIPMENT.

7. Risk of Loss. Limited Physical Damage Waiver & Insurance. Upon Delivery, Customer shall bear the entire risk of loss, damage, theft, or destruction of the Equipment or any part thereof, from any and every cause whatsoever, which shall occur prior to the proper return of the Equipment, and no such loss, damage, theft, or destruction shall relieve Customer of its obligation to pay Rent or to comply with any other provision of this Agreement. As a condition precedent to Company's obligations, unless Customer elects to pay Company the PDW Fee described below, Customer, at its expense, shall carry and maintain and provide Company an acceptable certificate of insurance, showing coverage on the Equipment during the Term, physical damage Insurance providing "all risks" coverage for Equipment in an amount not less than the fair market value of the Equipment. Such insurance shall name Company or its successor as loss payee or an additional insured. Such insurance shall include the insurer's obligation to give Company prior written notice of any lapse, cancellation, or material change to the policy.

At Customer's election or if Customer does not provide Company with acceptable certificate(s) of insurance as outlined herein, Customer shall be charged for the limited Physical Damage Waiver ("PDW"), and the Customer will be charged the PDW Fee (which shall be a percentage indicated in the Order of the rent payable hereunder, which may vary by the applicable rental period). The Equipment is used in compliance with this Agreement and if Company receives the PDW Fee, WHICH IS NOT INSURANCE, then Company agrees to waive, to the extent permitted by law, the responsibility for loss or damage to the Equipment (but not to the Equipment's cost) including loss or damage to other property, real or personal, or to persons, which is Customer's sole responsibility (for any amount in excess of the larger of (a) $250 per item of Equipment, except for loss due to theft; or (b) for theft 25% of the fair market value of each of the Equipment, not to exceed $1,000 per line. Notwithstanding the foregoing, Company will be liable for all loss or damage to the Equipment, up to the fair market value and expense of Company, if such loss or damage results from or for damage to: (a) overloading, exceeding rated capacity, neglect, abuse, intentional misuse; (b) tires and tubes from blow out, bruises, cuts, flats or other causes; (c) use of Equipment in violation of the applicable manufacturer instruction manual; (d) Equipment not returned for any reason for theft or persons not entrusted with the Equipment by Customer; (e) breaching any provision of this Amendment or the Agreements or of any applicable law, ordinance, or regulation; or (h) Customer's negligence, including failure to protect the Equipment as a prudent person would protect his or her own equipment.

Customer acknowledges that Company does not provide any liability insurance and Customer shall be responsible for procuring liability insurance covering any loss or damages including but not limited to, accidents and negligent operation of the Equipment. Customer and its Insurers agree to waive subrogation against Company and its Insurers in all policies of Customer's insurance. CUSTOMER ASSUMES ALL LIABILITY FOR THE OPERATION, USE AND TRANSPORTATION OF THE RENTED EQUIPMENT.

8. Maintenance Repairs, Condition Upon Return. Customer, at its sole expense, agrees to take reasonable care of the Equipment, and perform and provide all labor and materials for normal operation and maintenance as specified in the operation and maintenance manual at the designated periods or when indicated for the Equipment, and rent shall not abate because of the need for such maintenance or materials. Customer shall not remove, alter, disfigure or cover up any numbering, lettering or insignia displayed upon the Equipment. Any repairs or replacements made by Customer to the Equipment (or portion thereof) must be approved by Company in advance, and in all cases Customer must use parts and accessories of the same or greater quality than those original to the Equipment. Customer agrees to return all Equipment to Customer's Location during regular business hours, in good working condition and repair as when delivered, subject only to reasonable wear and tear, and in accordance with Company's reasonable check-in procedures. An additional charge to return the Equipment to its original condition may be assessed (e.g., cleaning, charges to bring fuel tank to full, etc.). Failure to return the Equipment as specified will result in additional rental charges and/or liability for damages to or loss of the Equipment.

9. Default. Each of the following shall constitute an Event of Default hereunder: (a) Customer fails to make any payment of rent or other amount due to Company when due; (b) Customer fails to return the Equipment to Company after termination; (c) Customer fails to perform or observe any other terms, covenants, or conditions of this Agreement; (d) Any representation or warranty made by Customer herein or other document provided or executed by Customer shall be false or misleading at any time in any material respect; (e) Customer's default in the performance or obligations under any other agreement now existing or hereafter made with Company; (f) Customer ceases doing business as a going concern, transfers all or substantially all of its assets, becomes or is adjudicated insolvent or bankrupt, makes an assignment for the benefit of creditors, or Customer institutes any bankruptcy, insolvency, reorganization, dissolution, liquidation, or similar proceedings; or (g) Company deems itself insecure. Customer shall promptly notify Company of the occurrence of any Event of Default.

10. Default. Each of the following shall constitute an Event of Default hereunder: (a) Customer fails to make any payment of rent or other amount due to Company when due; (b) Customer fails to return the Equipment to Company after termination; (c) Customer fails to perform or observe any other terms, covenants, or conditions of this Agreement; (d) Any representation or warranty made by Customer herein or other document provided or executed by Customer shall be false or misleading at any time in any material respect; (e) Customer's default in the performance or obligations under any other agreement now existing or hereafter made with Company; (f)
Customer ceases doing business as a going concern, transfers all or substantially all of its assets, becomes or is adjudicated insolvent or bankrupt, makes an assignment for the benefit of creditors, or Customer institutes any bankruptcy, insolvency, reorganization, dissolution, liquidation, or similar proceedings; or (g) Company deems itself insecure. Customer shall promptly notify Company of the occurrence of any Event of Default.

11. Remedies. Upon the occurrence of any Event of Default, Company may, with or without notice to Customer, exercise any remedy provided by law or equity or any one or more of the following remedies, as Company in its sole discretion shall elect and such remedies shall be cumulative: (a) Require Customer, at Customer’s expense, to return any or all of the Equipment, or Company, at its option, may enter onto Customer’s premises and repossess and remove the Equipment, or render the Equipment unusable without removal, and Company shall not be deemed to have committed a trespass by so doing; (b) Declare immediately due and payable all Rents and other amounts due or to become due; (c) Sell by public or private sale, release, hold, retain, or otherwise dispose of the Equipment in any manner Company chooses, free and clear of any claims or rights of Customer and recover from Customer as damages as may be allowed under the Uniform Commercial Code; and (d) Immediately terminate the Agreement upon notice, provided, however, that the exercise of the foregoing remedies by Company shall not constitute a termination of this Agreement (including Customer’s obligation to pay rent) unless Company so elects.

12. Substitution of Equipment. Customer acknowledges that the Equipment is held by Company primarily for sale. At any time during the Term Company may substitute for the Equipment any other equipment that performs substantially the same function as the Equipment, and from that point through the remainder of the Term (or unless again substituted) such substitution will constitute the Equipment hereunder. Upon notice, Customer will cause the Equipment to be available for substitution at the location specified in the Order or at such location as the parties agree and otherwise comply with the terms of this Agreement regarding return of Equipment. Customer will sign such documents presented by Company evidencing such substitution, the condition of the Equipment returned, and the nature and condition of the substitute Equipment. Customer must update any insurance certificates or other documents to reflect the substitute Equipment.

13. Ownership of Equipment, Assignment & Nature of Transaction. Company retains all right and title to the Equipment. Customer shall not sublease, assign, dispose, or relinquish possession or control of all or any part of this Agreement or the Equipment or any of its rights or obligations without the prior written consent of Company. Customer may, without notice to Customer, assign or sell its interest in, grant a security interest in, or otherwise transfer, in whole or in part, this Agreement or any or all of the Equipment or any of its rights, interests, or obligations with respect thereto, to one or more persons. To the extent permitted by law, Customer shall not assert against any assignee any claim, defense, counterclaim, or set-off that Customer may at any time have against Company. Customer agrees to defend Company’s title and keep the Equipment free of all liens, claims, and encumbrances. It is the intent of Customer and Company that this Agreement is a true lease and not a sale or secured loan.

Article III. General Terms — The following terms shall apply to the relationship between Company and Customer, regardless of whether the Equipment is purchased or rented, subject to the conditions set forth:

14. Delivery, Shipping, Acceptance. Customer shall pick up the Equipment at Company’s business location specified in the Order ("Company’s Location") immediately upon notification that the Equipment is available at Company’s Location ("Delivery"). If Company agrees in the Order to cause the Equipment to be shipped to Customer and if shipment is delayed due to unavailability of Customer facilities or any other cause, Customer hereby requests and authorizes Company to store the Equipment itself or ship the Equipment to storage of Company’s choosing. Customer shall be responsible for and shall reimburse Company for all storage-related charges, including insurance and shipping costs. Company shall be authorized to make partial Delivery or shipments of the Equipment. Promptly after Delivery, Customer shall inspect the Equipment, and unless the actions of Customer otherwise indicate acceptance, the Equipment shall be deemed to be irrevocably accepted by Customer upon the earlier of (a) a reasonable time for inspection (not to exceed three (3) days after Delivery), or (b) actual use of the Equipment by Customer. Company reserves the right, at its sole discretion, to substitute the Equipment with other equipment of the same material functionality.

15. Limitation of Actions, Survival. No action shall be maintained by Customer against Company unless written notice of any claim alleged to exist is delivered to Customer by Company within thirty (30) days after the event complained of first becomes known to Customer, but in no case may any Customer maintain an action against Company unless the same by brought within one (1) year after the cause of action shall accrue. The provisions on the front of this Agreement and Sections 5, 6, 7, 8, 9, 10, 11, 12 and Article III shall survive the termination of this Agreement.

16. Binding Effect. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and each of their respective heirs, administrators, executors, personal representatives, and permitted successors and assigns. Except to the extent prohibited by law, no third party shall be the beneficiary to any of the rights or obligations hereunder (including, but not limited to, warranty obligations).

17. Force Majure. Notwithstanding anything contained herein, Company shall have no obligation or liability and shall not be considered in default hereunder for its failure due to (a) any cause not reasonably within the control of Company, including, but not limited to, fire, explosion, riot, acts of war or terror or acts of God, civil disturbances, floods, earthquakes, and casualties similar in nature to the foregoing, strikes, lock-out, and other labor disturbances, or (b) delays caused by shippers, vendors, or suppliers of Company, or destruction or significant damage to the Equipment. Should events occur which would give rise to Customer’s claim that Company is in default hereunder, Customer shall first give Company thirty (30) days written notice of claim during which time Company may cure any claimed default and incur no liability therefore.

18. Taxes. Except for amounts attributable to Company’s net income, Customer shall be solely responsible for the amount of all federal, state, and local taxes, duties, imposts, tariffs, or other similar levies arising out of or related to the performance of this Agreement. Customer indemnifies and holds Company harmless from the payment of any such taxes, plus any penalties, interest, or costs connected with the imposition of the same.

19. Additional Remedies, Further Assurance. No failure or delay by Company to exercise any right or remedy hereunder shall operate as a continuing waiver thereof. Additionally, Customer shall be liable for all damages, costs, expenses (including attorneys’ fees) incurred or to be incurred by Company by reason of the occurrence of any breach or threatened breach of this Agreement, including any Event of Default, or the exercise of Company’s remedies thereto, and all incidental and consequential remedies, should Customer fail to perform any obligations hereunder, Company, in its sole option and without obligation, may perform or have performed such obligation on Customer’s behalf, and Customer shall be liable for the costs thereof. In order to confirm Company’s interest in the Equipment, Customer agrees that this Agreement shall constitute a security agreement for the Equipment, and promptly upon request, Customer shall, at its expense, do any act and execute, acknowledge, deliver, file, register, record, and ratify all documents requested by Company to perfect Company’s interest in the Equipment, including but not limited to, any financing statements. Customer hereby irrevocably appoints Company its attorney-in-fact to do such acts and to execute and file all such documents on Customer’s behalf, which power is delegable by Company, which such appointment and power shall be coupled with an interest.

20. Notices. All notices required or permitted under this Agreement shall be in writing and personally delivered or mailed, by certified mail, return receipt requested, and addressed to Company at Company’s Location and to Customer in the following preference; the Shipping Location, the address where invoices are sent, any address of any of Customer’s places of business, or where Customer may be served by legal process.

21. Choice of Law/Forum. This Agreement shall be governed exclusively by the laws of the State of Kansas with regard to the rules governing conflicts of law. Any action arising out of or related to the Agreement shall be brought exclusively in a court sitting in Sedgwick County, Kansas; but, unless Customer is a “consumer” within the meaning of the Kansas Consumer Protection Act (KSA 50-623, et seq.) as may be in effect from time to time ("KCIPA"), the provisions of the KCIPA shall not apply to this Agreement or the parties hereto.
KC BOBCAT NON FINANCED GOVERNMENTAL ROLL OUT AGREEMENT

KC Bobcat has a program whereby CITY OF LEAWOOD, will be guaranteed an annual buyback of a new Bobcat Loader or Loaders from KC Bobcat. CITY OF LEAWOOD will purchase the initial machine or machines from KC Bobcat and at the end of a one year term, can exercise an option to return the Bobcat Loader or Loaders with a credit toward the purchase of a new Bobcat Loader or Loaders.

EQUIPMENT:
2 Bobcat S770 Skid Steer Loader, A91 AC/Heat Cab package, Hi-Flow, Two-speed, SIC controls, Air ride seat, Heavy Duty Tires, One 74” C/I tooth bucket per loader [Collectively, referred to as the “Equipment”]

BUY BACK AGREEMENT TERM:
After 12 months, the City may exchange the Equipment for new Equipment and KC Bobcat shall buy the Equipment back in the amount of $44,914.00 per machine, provided, however, the buyback amount shall be decreased. The decrease in the buyback amount shall be $20 per hour per machine in excess of the 500 hour per year allowance for each machine.

PAYMENT AND REPURCHASE TERMS:

$99,828.00  Original Purchase Price
$10,000.00  Total usage cost to CITY OF LEAWOOD for 1 yr
$89,828.00  Buyback priced from KC Bobcat if City of LEAWOOD exercises option to replace Equipment.

WARRANTY AND SERVICE: The equipment will be covered under full warranty for the first twelve (12) months. CITY OF LEAWOOD is responsible for all upkeep and scheduled maintenance of the machines during this 12 month time period. Should the equipment need to be returned to KC Bobcat for repair, loaner equipment will be provided at no charge to CITY OF LEAWOOD. LEAWOOD will be responsible for transporting equipment an loaner equipment to and from KC Bobcat.

KC BOBCAT

[Signature]
Eddie M Keating III
Print

Date: 12/6/18

City of Leawood:

By: ____________________________
Peggy J. Dunn, Mayor

ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

______________________________
Patricia A. Bennett
City Attorney
SUBJECT: REQUEST TO APPROVE RESOLUTION AND ACCEPT NEW PUBLIC INFRASTRUCTURE
January 22, 2019

DISCUSSION

The following public infrastructure was installed/constructed with a New Development Permit at the Central States Beverage location, Lot 24. The work added Storm Sewer to 1900 W 142nd Street.

1900 W 142nd Street
Storm Sewer Value: $63,305.00

The infrastructure is installed and is requested to be accepted into operation/inventory.

The total value of new infrastructure was included in the 2018 GASB-34 Inventory (End-of-Year Reporting).

In keeping with Best Management Practices and as directed by the City’s Administrator; along with GASB-34 inventory of public infrastructure requirements, Public Works Staff is requesting the above identified public infrastructure be formally accepted by the City Council.

COUNCIL ACTION TO BE TAKEN

Acceptance of Resolution/Public Infrastructure

STAFF RECOMMENDATION

☑ For
☐ Against
☐ No position

COMMITTEE RECOMMENDATION

☐ For
☐ Against
☐ No position ☑ No Assignment

POLICY OR PROGRAM CHANGE

☑ No
☐ Yes

OPERATIONAL IMPACT

New infrastructure/GASB-34 for 2018

COSTS

FUND SOURCES

David Ley, P.E.
Director of Public Works
Leawood Public Works Department
RESOLUTION NO. _________

RESOLUTION ACCEPTING NEW PUBLIC INFRASTRUCTURE [STORM SEWER] IN CONNECTION WITH THE BI-STATE CENTENNIAL PARK DEVELOPMENT, LOCATED AT 1900 W. 142ND STREET, IN ACCORDANCE WITH THE GASB-34 GUIDELINES OF REPORTING INVENTORY OF ASSETS [2018 GASB-34 INVENTORY OF ASSETS]

WHEREAS, the City wishes to accept public infrastructure improvements within the area listed above.

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

SECTION ONE: That the Governing Body hereby accepts the public infrastructure improvements as more fully described in Exhibit “A,” attached hereto and incorporated herein by reference as if fully set out.

SECTION TWO: This resolution shall become effective upon passage.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

______________________________
Peggy J. Dunn, Mayor

[SEAL]

ATTEST:

______________________________
Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

______________________________
Patricia A. Bennett, City Attorney
# Contributions Tracking Form for City Infrastructure - New Developments and City Improvement Projects

## NEW DEVELOPMENT PROJECTS

<table>
<thead>
<tr>
<th>Name of Development and Location:</th>
<th>Central States Beverage, Lot 24, 1900 W 142nd Street</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridges (Pedestrian)</td>
<td>Bridges (Vehicle)</td>
</tr>
<tr>
<td>Contractor Name</td>
<td>Construction Cost</td>
</tr>
<tr>
<td>Asset Cost</td>
<td>Street Lighting</td>
</tr>
<tr>
<td>Quantity</td>
<td>Streets</td>
</tr>
<tr>
<td></td>
<td>Traffic Signals /Controllers</td>
</tr>
<tr>
<td></td>
<td>Totals</td>
</tr>
</tbody>
</table>

1. Assign to City Council for Acceptance of New Contribution/New Asset. Agenda Date for Acceptance: **January 22, 2019**.
2. Date information entered into "Master Series Program": _____.
3. Re-check that data agrees with (vouched to) the "Master Series" Program: _____.
4. Date copied to Finance Department: _____

**Account Code Number:** listed on additional information page

## CITY IMPROVEMENT PROJECTS

<table>
<thead>
<tr>
<th>Project Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Development and Location:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contractor Name</th>
<th>Construction Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Cost (Direct)</td>
<td>Design Cost (Indirect 8%)</td>
</tr>
<tr>
<td>Inspection Cost (Direct)</td>
<td>Inspection Cost (Indirect 6%)</td>
</tr>
<tr>
<td>Finance Costs if applicable</td>
<td></td>
</tr>
<tr>
<td>Asset Cost</td>
<td>Streets</td>
</tr>
</tbody>
</table>

* NOTE VALUE HERE if project was administered by others and received Federal-State-County Aid.

*Sum of all asset costs* Total Asset: $63,305.00

*Sum of all asset costs, minus indirect costs* Total Direct: $63,305.00

1. Notice of Final Payments for City Improvement Projects: _____
2. Assign to City Council for Acceptance of New Contribution/New Asset. Agenda Date for Acceptance: _____
3. Date information entered into "Master Series Program": _____.
4. Re-check that data agrees with (vouched to) the "Master Series" Program: _____
5. Date copied to Finance Department: _____
6. Date of Final Acceptance Letter sent to Permittee and Bonding Company: _____

**Approved by:**

**FINAL 2018 GASB-34**

Director of Public Works or City Engineer

Date: 01-10-2019 Inspector D. Bergeron

Refer to process and instructions for completing this form listed on the back of this page.

TAB D- Central State Beverage Lot 24 GASB 2018/Tracking Form (front side)

02-09-2003 Version
**Additional Information for:** Central States Beverage, Lot 24

*(Name of Project or Development)*

(used to list out poles, pipe dimensions, land information etc. associated with the project)

---

**RIGHT-OF-WAY**
New Development Permit
#PW-18-00042

---

**STORM SEWER TOTALS**

<table>
<thead>
<tr>
<th>SUMMARY</th>
<th>QTY</th>
<th>COST</th>
<th>COST/LF</th>
</tr>
</thead>
<tbody>
<tr>
<td>48&quot; RCP</td>
<td>250.56</td>
<td>$63,305.00</td>
<td>$252.65</td>
</tr>
</tbody>
</table>
Leawood Public Works Department Contributions Tracking Form for City Infrastructure - New Developments and City Improvement Projects

Instructions process on completing form:

For New Development Projects:
For private developments, when the City is accepting public infrastructure improvements consisting of streets, stormsewer, streetlights, or traffic signals the City will keep track of actual construction costs associated with each type of improvement.

The Public Works Department will contact the Planning Department to obtain the area and cost of right-of-way associated with new developments.

For City Improvement Projects:
Internal Projects: Those public improvements that are designed by staff, the cost for design and inspection will be a percentage of the construction cost. The percentage for design and inspection will be established using industry standards based on the type of construction.

(Currently 8% for indirect design and 6% for indirect inspection [2003 year])

Consultant Design Projects: Those public improvements that are designed by an outside consultant, the Consultant will be required to allocate their actual cost for design and inspection for the portion of the improvement being claimed. These additional costs will be added to the cost of construction to obtain the true cost of the asset.

Right of Way area will be noted by Public Works Staff.

Asset Categories of Contributions:
- Bridges (Pedestrian)
- Bridges (Vehicle)
- Right-of-Way
- Storm Sewers: (Includes installation of pipe and structures associated with pipe system, and cross road culverts. Bank stabilization improvements are excluded).
- Street Lighting: (Includes poles and junction boxes).
- Streets: (Includes grading, curbs and paving).
- Traffic Signals / Controllers: (Includes all components for complete signal)

This "Contributions Tracking Form for City Infrastructure for New Developments and City Improvements Projects" form should be completed for all projects that add or delete assets of the above categories. Upon completion of construction and when ready for public use, all assets of these types are presented for City Acceptance.

Projects receiving Federal/State/County Aid that are administered by others, will be noted on the tracking form with amount of Leawood share described. Interlocal Agreements should be attached to the individual tracking form for the project.

After completion of the form, the form is given to Public Works Administration Services Division for approval signature and execution by the Governing Body. Information completed on these forms will be entered onto a "GASB Inventory Listing Sheet" form for the given year and kept in Public Works Files. A copy of the "END OF THE YEAR SUMMARY" along with the supporting Tracking Forms will be given to the Finance Department and the City Clerk by Public Works Administration Services.
7.0. REQUEST TO APPROVE RESOLUTION AND ACCEPT NEW PUBLIC INFRASTRUCTURE
January 22, 2019

SUBJECT: The following public infrastructure was installed/constructed with a New Development Permit at the Brookwood Elementary School.

3411 W. 103rd Street, Leawood, Kansas.
Storm Sewer Value: $9,826.00

The infrastructure is installed and is requested to be accepted into operation/inventory.

The total value of new infrastructure was included in the 2018 GASB-34 Inventory (End-of-Year Reporting).

In keeping with Best Management Practices and as directed by the City’s Administrator; along with GASB-34 inventory of public infrastructure requirements, Public Works Staff is requesting the above identified public infrastructure be formally accepted by the City Council.

David Ley, P.E.
Director of Public Works
Leawood Public Works Department

DISCUSSION

COUNCIL ACTION TO BE TAKEN
Acceptance of Resolution/Public Infrastructure

STAFF RECOMMENDATION
☑ For
☐ Against
☐ No position

COMMITTEE RECOMMENDATION
☐ For
☐ Against
☐ No position ☐ No Assignment

POLICY OR PROGRAM CHANGE
☑ No
☐ Yes

OPERATIONAL IMPACT
New infrastructure/GASB-34 for 2018

COSTS

FUND SOURCES
RESOLUTION NO. __________

RESOLUTION ACCEPTING NEW PUBLIC INFRASTRUCTURE [NEW DEVELOPMENT PERMIT/STORM SEWER] IN CONNECTION WITH BROOKWOOD ELEMENTARY SCHOOL, LOCATED AT 3411 W. 103RD STREET, IN ACCORDANCE WITH THE GASB-34 GUIDELINES OF REPORTING INVENTORY OF ASSETS [2018 GASB-34 INVENTORY OF ASSETS]

WHEREAS, the City wishes to accept public infrastructure improvements within the area listed above.

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

SECTION ONE: That the Governing Body hereby accepts the public infrastructure improvements as more fully described in Exhibit “A,” attached hereto and incorporated herein by reference as if fully set out.

SECTION TWO: This resolution shall become effective upon passage.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

Peggy J. Dunn, Mayor

[SEAL]

ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
### Contributions Tracking Form for City Infrastructure - Brookwood Elementary Storm Sewer Improvements

#### NEW DEVELOPMENT PROJECTS

<table>
<thead>
<tr>
<th>Name of Development and Location:</th>
<th>Contractor Name</th>
<th>Construction Cost</th>
<th>Asset Cost</th>
<th>Traffic Signals /Controllers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridges (Pedestrian)</td>
<td></td>
<td></td>
<td>$9,826.00</td>
<td></td>
</tr>
<tr>
<td>Bridges (Vehicle)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fiber Optics (Conduit)</td>
<td>Rodriguez Mechanical</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Quantity**

**Account Code Number:**

1. Assign to City Council for Acceptance of New Contribution/New Asset. Agenda Date for Acceptance: **January 22, 2019**.
2. Date information entered into "Master Series Program":
   - Re-check that data agrees with (vouched to) the "Master Series" Program: ________.
3. Date copied to Finance Department:
4. Date of Final Acceptance Letter sent to Permittee and Bonding Company: **January 23, 2019**.

#### CITY IMPROVEMENT PROJECTS

<table>
<thead>
<tr>
<th>Project Number:</th>
<th>Name of Development and Location:</th>
<th>Contractor Name</th>
<th>Construction Cost</th>
<th>Design Cost (Direct)</th>
<th>Design Cost (Indirect 8%)</th>
<th>Inspection Cost (Direct)</th>
<th>Inspection Cost (Indirect 6%)</th>
<th>Traffic Signals /Controllers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridges (Pedestrian)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bridges (Vehicle)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fiber Optics (Conduit)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Quantity**

*NOTE VALUE HERE if project was administered by others and received Federal-State-County Aid.*

(Sum of all asset costs) Total Asset: $9,826.00

(Sum of all asset costs, minus indirect costs) Total Direct: $9,826.00

**Account Code Number**

1. Notice of Final Payments for City Improvement Projects: ________
2. Assign to City Council for Acceptance of New Contribution/New Asset. Agenda Date for Acceptance: ________
3. Date information entered into "Master Series Program": ________
   - Re-check that data agrees with (vouched to) the "Master Series" Program: ________
4. Date copied to Finance Department:
5. Date of Final Acceptance Letter sent to Permittee and Bonding Company: ________

---

**Approved by:**

**FINAL**

**Director of Public Works or City Engineer**

**Date:**

1/9/2019

**DLB jas**

Refer to process and instructions for completing this form listed on the back of this page.

**TAB E-Brookwood Elementary School/Tracking Form (front side)**

02-06-2003 Version
Additional Information for: Brookwood Elementary Storm Sewer Improvements

Name of Project or Development

(used to list out poles, pipe dimensions, land information etc. associated with the project)

List of Streets Involved in Project

<table>
<thead>
<tr>
<th>STORM SEWER TOTALS</th>
<th>QTY</th>
<th>COST</th>
<th>COST/LF</th>
</tr>
</thead>
<tbody>
<tr>
<td>24&quot; RCP</td>
<td>71</td>
<td>$9,826.00</td>
<td>$138.39</td>
</tr>
</tbody>
</table>
Leawood Public Works Department Contributions Tracking Form for City Infrastructure - New Developments and City Improvement Projects

Instructions process on completing form:

For New Development Projects:
For private developments, when the City is accepting public infrastructure improvements consisting of streets, stormsewer, streetlights, or traffic signals the City will keep track of actual construction costs associated with each type of improvement.

The Public Works Department will contact the Planning Department to obtain the area and cost of right-of-way associated with new developments.

For City Improvement Projects:
Internal Projects: Those public improvements that are designed by staff, the cost for design and inspection will be a percentage of the construction cost. The percentage for design and inspection will be established using industry standards based on the type of construction.

(Currently 8% for indirect design and 6% for indirect inspection [2003 year])

Consultant Design Projects: Those public improvements that are designed by an outside consultant, the Consultant will be required to allocate their actual cost for design and inspection for the portion of the improvement being claimed. These additional costs will be added to the cost of construction to obtain the true cost of the asset.

Right of Way area will be noted by Public Works Staff.

Asset Categories of Contributions:
Bridges (Pedestrian)
Bridges (Vehicle)
Right-of-Way
Storm Sewers: (Includes installation of pipe and structures associated with pipe system, and cross road culverts. Bank stabilization improvements are excluded).
Street Lighting: (Includes poles and junction boxes).
Streets: (Includes grading, curbs and paving).
Traffic Signals / Controllers: (Includes all components for complete signal)

This “Contributions Tracking Form for City Infrastructure for New Developments and City Improvements Projects” form should be completed for all projects that add or delete assets of the above categories. Upon completion of construction and when ready for public use, all assets of these type are presented for City Acceptance.

Projects receiving Federal/State/County Aid that are administered by others, will be noted on the tracking form with amount of Leawood share described. Interlocal Agreements should be attached to the individual tracking form for the project.

After completion of the form, the form is given to Public Works Administration Services Division for approval signature and execution by the Governing Body. Information completed on these forms will be entered onto a “GASB Inventory Listing Sheet” form for the given year and kept in Public Works Files. A copy of the "END OF THE YEAR SUMMARY" along with the supporting Tracking Forms will be given to the Finance Department and the City Clerk by Public Works Administration Services.
**Staff Review**

**Fact Sheet**

**SUBJECT:** REQUEST TO APPROVE RESOLUTION AND ACCEPT NEW PUBLIC INFRASTRUCTURE

January 22, 2019

**DISCUSSION**

The following public infrastructure was installed/constructed with a New Development Permit at the Leawood Pines Development. The location of the development is at the North West corner of 103rd Street and Lee Boulevard.

NW Corner 103rd & Lee Boulevard  
Right of Way Value: $33,990.00  
Storm Sewer Value: $52,675.00  
TOTAL: $86,665.00

The infrastructure is installed and is requested to be accepted into operation/inventory.

The total value of new infrastructure was included in the 2018 GASB-34 Inventory (End-of-Year Reporting).

In keeping with Best Management Practices and as directed by the City’s Administrator; along with GASB-34 inventory of public infrastructure requirements, Public Works Staff is requesting the above identified public infrastructure be formally accepted by the City Council.

David Ley, P.E.  
Director of Public Works  
Leawood Public Works Department

**COUNCIL ACTION TO BE TAKEN**

Acceptance of Resolution/Public Infrastructure

**STAFF RECOMMENDATION**

- For
- Against
- No position

**COMMITTEE RECOMMENDATION**

- For
- Against
- No position  
  ✓  No Assignment

**POLICY OR PROGRAM CHANGE**

- No
- Yes

**OPERATIONAL IMPACT**

New infrastructure/GASB-34 for 2018

**COSTS**

**FUND SOURCES**
RESOLUTION NO. ____________

RESOLUTION ACCEPTING NEW PUBLIC INFRASTRUCTURE [STORM SEWER/ROW] IN CONNECTION WITH LEAWOOD PINES DEVELOPMENT, LOCATED AT NORTHWEST CORNER OF 103RD & LEE BOULEVARD, IN ACCORDANCE WITH THE GASB-34 GUIDELINES OF REPORTING INVENTORY OF ASSETS [2018 GASB-34 INVENTORY OF ASSETS]

WHEREAS, the City wishes to accept public infrastructure improvements within the area listed above.

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

SECTION ONE: That the Governing Body hereby accepts the public infrastructure improvements as more fully described in Exhibit “A,” attached hereto and incorporated herein by reference as if fully set out.

SECTION TWO: This resolution shall become effective upon passage.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

Peggy J. Dunn, Mayor

[SEAL]

ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
## Contributions Tracking Form for City Infrastructure - New Developments and City Improvement Projects

### NEW DEVELOPMENT PROJECTS

<table>
<thead>
<tr>
<th>Contractor Name</th>
<th>Bridges (Pedestrian)</th>
<th>Bridges (Vehicle)</th>
<th>Fiber Optics (Conduit)</th>
<th>Right-of-Way</th>
<th>Storm Sewers</th>
<th>Street Lighting</th>
<th>Streets</th>
<th>Traffic Signals /Controllers</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developer Donation</td>
<td></td>
<td></td>
<td></td>
<td>Cohorst Enterprises</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Construction Cost</td>
<td>$52,675.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Asset Cost</td>
<td></td>
<td></td>
<td>$33,990.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$86,665.00</td>
</tr>
<tr>
<td>Quantity</td>
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<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

**Account Code Number:** listed on additional information page

1. Assign to City Council for Acceptance of New Contribution/New Asset. Agenda Date for Acceptance: January 22, 2019. (FOR 2018 GASP)
2. Date information entered into "Master Series Program":
   - Re-check that data agrees with (vouched to) the "Master Series" Program:
3. Date copied to Finance Department:
4. Date of Final Acceptance Letter sent to Permittee and Bonding Company:

### CITY IMPROVEMENT PROJECTS

<table>
<thead>
<tr>
<th>Contractor Name</th>
<th>Bridges (Pedestrian)</th>
<th>Bridges (Vehicle)</th>
<th>Fiber Optics (Conduit)</th>
<th>Right-of-Way</th>
<th>Storm Sewers</th>
<th>Street Lighting</th>
<th>Streets</th>
<th>Traffic Signals /Controllers</th>
<th>Totals</th>
</tr>
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<tr>
<td>Design Cost (Direct)</td>
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<td></td>
</tr>
<tr>
<td>Design Cost (Indirect 8%)</td>
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<td></td>
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<tr>
<td>Inspection Cost (Direct)</td>
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<td></td>
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<tr>
<td>Inspection Cost (Indirect 6%)</td>
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<td>Finance Costs if applicable</td>
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<td>Asset Cost</td>
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<td></td>
</tr>
</tbody>
</table>

*NOTE VALUE HERE if project was administered by others and received Federal-State-County Aid.*

**Total Asset:** $86,665.00

**Total Direct:** $86,665.00

1. Notice of Final Payments for City Improvement Projects:
3. Date information entered into "Master Series Program":
   - Re-check that data agrees with (vouched to) the "Master Series" Program:
4. Date copied to Finance Department:
5. Date of Final Acceptance Letter sent to Permittee and Bonding Company: 01-23-2019.

**Approved by:**

- **Final**
  - Director of Public Works or City Engineer
  - Date: 12/31/2018

**Date:**

- Dan Bergeron Inspector

---

Refer to process and instructions for completing this form listed on the back of this page.
Additional Information for: Leawood Pines Development  NW Corner of 103 & Lee Boulevard

Name of Project or Development

(used to list out poles, pipe dimensions, land information etc. associated with the project)

List of Streets Involved in Project

3,569 square feet of right of way

RIGHT-OF-WAY
Great Plains Developments, LLC
4400 Shawnee Mission Parkway
Fairway, KS 66205
declaring Donation of $33,990.00
Randal Leimer, Co-Trustee
RIGHT OF WAY DEDICATED
4/25/2018

<table>
<thead>
<tr>
<th>STORM SEWER</th>
<th>LF</th>
<th>Cost per LF</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>15&quot; RCP</td>
<td>416</td>
<td>$126.62</td>
<td>($52,675.00)</td>
</tr>
</tbody>
</table>
DEDICATION OF REAL PROPERTY
TO THE CITY OF LEAWOOD

NAME OF PLAT: LEAWOOD PINES SUBDIVISION

DEDICATION OF RIGHT-OF-WAY

Name of legal entity dedicating right-of-way: Reed Hickok Trust U/L dated 2/4/2009
Address: 780 Great Plains Drive, Leawood, KS 66224
Phone No.: 913 354 2900

Amount of right-of-way dedicated in square feet: 3,569 square feet
Total dollar value of right-of-way dedicated: $33,990
Owner’s Signature and Title:

[Printed Name and Title]

Date: 4/25/2018

DEDICATION OF REAL PROPERTY
OTHER THAN RIGHT-OF-WAY

Name of legal entity
Dedicating real property:

Address:

Phone No.:

Amount of right-of-way dedicated in square feet:

Total dollar value of right-of-way dedicated: $

Owner’s Signature and Title:

[Printed Name and Title]

Date: ____________________________
To: Mr. David Ley PE, City Engineer,  

4-12-2018

There are no blanket easements within the proposed right-of-way for the proposed Plat of Leawood Pines, case number 125-17 per the title commitment Issued by First American Title Insurance Company with an effective date of March 28, 2018 at 8:00 am as furnished to PEI with the exception of the declarations and restrictions dated February 14, 1950 recorded in book 44 page 105 and the sewer connection consent dated June 6, 1969 recorded in misc. book 196 page 663.

Thomas D. Phelps LS 1075
Leawood Pines
Luxury homesites from $280,000

Leawood Pines is located in Johnson County, Kansas just off 103rd Street. These homesites are nestled in a quiet, serene setting, perfect for your dream home. Become a unique part of Leawood Pines. For more information, please contact Great Plains Development, Inc.
Leawood Public Works Department Contributions Tracking Form for City Infrastructure - New Developments and City Improvement Projects

**Instructions process on completing form:**

**For New Development Projects:**
For private developments, when the City is accepting public infrastructure improvements consisting of streets, stormsewer, streetlights, or traffic signals the City will keep track of actual construction costs associated with each type of improvement.

The Public Works Department will contact the Planning Department to obtain the area and cost of right-of-way associated with new developments.

**For City Improvement Projects:**
Internal Projects: Those public improvements that are designed by staff, the cost for design and inspection will be a percentage of the construction cost. The percentage for design and inspection will be established using industry standards based on the type of construction.

(Currently 8% for indirect design and 6% for indirect inspection [2003 year])

Consultant Design Projects: Those public improvements that are designed by an outside consultant, the Consultant will be required to allocate their actual cost for design and inspection for the portion of the improvement being claimed. These additional costs will be added to the cost of construction to obtain the true cost of the asset.

Right of Way area will be noted by Public Works Staff.

**Asset Categories of Contributions:**
- Bridges (Pedestrian)
- Bridges (Vehicle)
- Right-of-Way
- Storm Sewers: (Includes installation of pipe and structures associated with pipe system, and cross road culverts. Bank stabilization improvements are excluded).
- Street Lighting: (Includes poles and junction boxes).
- Streets: (Includes grading, curbs and paving).
- Traffic Signals / Controllers: (Includes all components for complete signal)

This "Contributions Tracking Form for City Infrastructure for New Developments and City Improvements Projects" form should be completed for all projects that add or delete assets of the above categories. Upon completion of construction and when ready for public use, all assets of these type are presented for City Acceptance.

Projects receiving Federal/State/County Aid that are administered by others, will be noted on the tracking form with amount of Leawood share described. Interlocal Agreements should be attached to the individual tracking form for the project.

After completion of the form, the form is given to Public Works Administration Services Division for approval signature and execution by the Governing Body. Information completed on these forms will be entered onto a "GASB Inventory Listing Sheet" form for the given year and kept in Public Works Files. A copy of the "END OF THE YEAR SUMMARY" along with the supporting Tracking Forms will be given to the Finance Department and the City Clerk by Public Works Administration Services.
Staff Review
Fact Sheet

SUBJECT: REQUEST TO APPROVE RESOLUTION AND ACCEPT NEW PUBLIC INFRASTRUCTURE
January 22, 2019

DISCUSSION

The following public infrastructure was installed/constructed with the new traffic signal project at Mission Road and Lee Boulevard and was in connection to the Johnson County Wastewater Treatment Plant expansion.

Location:
Mission Road (10700 block) and Lee Boulevard
Traffic Signal Value: $179,927.58

The infrastructure is installed and is requested to be accepted into operation/inventory.

The total value of new infrastructure was included in the 2018 GASB-34 Inventory (End-of-Year Reporting).

In keeping with Best Management Practices and as directed by the City’s Administrator; along with GASB-34 inventory of public infrastructure requirements, Public Works Staff is requesting the above identified public infrastructure be formally accepted by the City Council.

COUNCIL ACTION TO BE TAKEN
Acceptance of Resolution/Public Infrastructure

STAFF RECOMMENDATION
☑ For
□ Against
□ No position

COMMITTEE RECOMMENDATION
□ For
□ Against
□ No position ☐ No Assignment

POLICY OR PROGRAM CHANGE
☑ No
□ Yes

OPERATIONAL IMPACT
New infrastructure/GASB-34 for 2018

COSTS

FUND SOURCES

David Ley, P.E.
Director of Public Works
Leawood Public Works Department
RESOLUTION NO. __________

RESOLUTION ACCEPTING NEW PUBLIC INFRASTRUCTURE [TRAFFIC SIGNAL] IN CONNECTION WITH THE LEE BOULEVARD AND MISSION ROAD INTERSECTION IMPROVEMENT PROJECT, IN ACCORDANCE WITH THE GASB-34 GUIDELINES OF REPORTING INVENTORY OF ASSETS [2018 GASB-34 INVENTORY OF ASSETS]

WHEREAS, the City wishes to accept public infrastructure improvements within the area listed above.

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

SECTION ONE: That the Governing Body hereby accepts the public infrastructure improvements as more fully described in Exhibit “A,” attached hereto and incorporated herein by reference as if fully set out.

SECTION TWO: This resolution shall become effective upon passage.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

Peggy J. Dunn, Mayor

[SEAL]

ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
### New Development Projects

<table>
<thead>
<tr>
<th>Bridges (Pedestrian)</th>
<th>Bridges (Vehicle)</th>
<th>Fiber Optics (Conduit)</th>
<th>Right-of-Way</th>
<th>Storm Sewers</th>
<th>Street Lighting</th>
<th>Streets</th>
<th>Traffic Signals /Controllers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor Name</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction Cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Asset Cost</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Quantity</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Account Code Number:

1. Assign to City Council for Acceptance of New Contribution/New Asset. Agenda Date for Acceptance: 
2. Date information entered into "Master Series Program":

   Re-check that data agrees with (vouched to) the "Master Series" Program: 
3. Date copied to Finance Department:
4. Date of Final Acceptance Letter sent to Permittee and Bonding Company:

### City Improvement Projects

**Project Number:** 72081  
**Name of Development and Location:** LEE-MISSION TRAFFIC SIGNAL

<table>
<thead>
<tr>
<th>Bridges (Pedestrian)</th>
<th>Bridges (Vehicle)</th>
<th>Fiber Optics (Conduit)</th>
<th>Right-of-Way</th>
<th>Storm Sewers</th>
<th>Street Lighting</th>
<th>Streets</th>
<th>Traffic Signals /Controllers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor Name</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Construction Cost</td>
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<tr>
<td>Design Cost (Direct)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Design Cost (Indirect 8%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Inspection Cost (Direct)</td>
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<td></td>
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<td></td>
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<td></td>
<td></td>
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<tr>
<td>Inspection Cost (Indirect 6%)</td>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Finance Costs if applicable</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Asset Cost</strong></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Quantity</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*NOTE VALUE HERE if project was administered by others and received Federal-State-County Aid. (Sum of all asset costs) Total Asset: $179,927.58

<table>
<thead>
<tr>
<th>Bridges (Pedestrian)</th>
<th>Bridges (Vehicle)</th>
<th>Fiber Optics (Conduit)</th>
<th>Right-of-Way</th>
<th>Storm Sewers</th>
<th>Street Lighting</th>
<th>Streets</th>
<th>Traffic Signals /Controllers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTAL ELEC.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Account Code Number:

1. Notice of Final Payments for City Improvement Projects: _
2. Assign to City Council for Acceptance of New Contribution/New Asset. Agenda Date for Acceptance: _1/22/19_.
3. Date information entered into "Master Series Program":

   Re-check that data agrees with (vouched to) the "Master Series" Program: 
4. Date copied to Finance Department: _
5. Date of Final Acceptance Letter sent to Permittee and Bonding Company: _1/23/19_.

**Approved by:**  
**FINAL**  
Director of Public Works or City Engineer  
Date:  
1/7/19 SW  

---

Refer to process and instructions for completing this form listed on the back of this page.

**TAB 8 - Traffic Signal Lee & Mission Road/Tracking Form (front side)**  
02-06-2003 Version
**2018 LEE-MISSION TRAFFIC SIGNAL PROJECT #72081**

Name of Project or Development

(used to list out poles, pipe dimensions, land information etc. associated with the project)

**List of Streets Involved in Project**  MISSION AND LEE

<table>
<thead>
<tr>
<th>TRAFFIC SIGNAL TOTALS</th>
<th>QTY. EA</th>
<th>COST</th>
<th>COST/EA</th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER OF POLES</td>
<td>5</td>
<td>$129,768.00</td>
<td>$25,953.60</td>
</tr>
</tbody>
</table>

JOCO paid for engineering costs. Leawood completed the inspection.

ENGINEERING COSTS REPORTED BY JOCO WASTEWATER:

<table>
<thead>
<tr>
<th>STAFF</th>
<th>Hours</th>
<th>Rate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aaron B.</td>
<td>9</td>
<td>$215.00</td>
<td>$1,935.00</td>
</tr>
<tr>
<td>Ron H.</td>
<td>2</td>
<td>$154.00</td>
<td>$308.00</td>
</tr>
<tr>
<td>Dustin E</td>
<td>91</td>
<td>$175.00</td>
<td>$15,925.00</td>
</tr>
<tr>
<td>Daruis B.</td>
<td>17.5</td>
<td>$135.00</td>
<td>$2,362.50</td>
</tr>
<tr>
<td>Tuan N.</td>
<td>142</td>
<td>$119.00</td>
<td>$16,898.00</td>
</tr>
<tr>
<td>Brittany F.</td>
<td>43</td>
<td>$115.00</td>
<td>$4,945.00</td>
</tr>
</tbody>
</table>

$42,373.50

Johnson County 60% Construction & Design Donation of $120,234.30

Entire Value of light is City of Leawood, KS
TRAFFIC SIGNAL INVENTORY INFORMATION
(Once the signal is in place and on GASB Inventory, refer to Signal Drawer for continual update information-each signal will have it’s own folder)

EAST / WEST STREET LOCATION: LEE BLVD.
NORTH / SOUTH STREET LOCATION: MISSION
YEAR INSTALLED: 2018
ORIGINAL COST: $129,768.00
YEAR IMPROVED: 2018
IMPROVEMENT COST: $179,927.58
LEAWOOD PERCENTAGE of initial cost: 40%
LEAWOOD VALUE: $179,927.58

NOTES:
OTHER SHARED COSTS IF APPLICABLE:

OVERLAND PARK
KANSAS CITY
PRAIRIE VILLAGE
MO DOT
KDOT
JCWW 60%
Leawood Public Works Department Contributions Tracking Form for City Infrastructure - New Developments and City Improvement Projects

**Instructions process on completing form:**

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Information completed on these forms will be entered onto a "GASB Inventory Listing Sheet" form for the given year and kept in Public Works Files.

A copy of the "END OF THE YEAR SUMMARY" along with the supporting Tracking Forms will be given to the Finance Department and the City Clerk by Public Works Administration Services.

**TAB 6 - Traffic Signal Lee & Mission Road/Instruction Sheet (back side)**
Staff Review
Fact Sheet

SUBJECT: DECLARE SURPLUS PROPERTY
January 22, 2019

DISCUSSION
The Public Works Department requests the equipment listed below be declared as surplus property. The loaders are part of a Roll-Out Purchase Agreement with KC BOBCAT.

Two (2) Skid Steer Loaders
Leawood Inventory Asset No: 02243
And Asset No. 02244
Both are Model: S-770M
Serial #AT5A12717 and Serial #AT5A12659
Condition: Excellent
TRADE IN: to KC BOBCAT of Olathe, KS
Trade value: $89,828.00

It is a recommendation of the Public Works Department that the Council approve the above items as surplus and authorize the Mayor to approve same.

David Ley, P.E.
Director of Public Works

COUNCIL ACTION TO BE TAKEN
Declare Equipment as Surplus Property

STAFF RECOMMENDATION
✓ For
☐ Against
☐ No position

COMMITTEE RECOMMENDATION
☐ For
☐ Against
☐ No position  ✓ No Assignment

POLICY OR PROGRAM CHANGE
✓ No
☐ Yes

OPERATIONAL IMPACT

COSTS
n/a

FUND SOURCES
n/a
**City of Leawood**

**Fixed Asset Purchase, Transfer, & Disposal Form**

- **Purchase**
- **Transfer**
- **Disposition**

- **Effective Date:** 01/22/19
- **Asset Tag #:** O2244END

<table>
<thead>
<tr>
<th>Purchasing/Receiving Dept.:</th>
<th>Public Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dept. Number</td>
<td>022.000</td>
</tr>
<tr>
<td>Transferring Department:</td>
<td></td>
</tr>
<tr>
<td>Dept. Number</td>
<td>022.000</td>
</tr>
</tbody>
</table>

**Description of Item:** Bobcat Skid-Steer Loader

**Vendor:** KC BOB CAT INC (roll out agreement)

**Cost:** $45,172.80

**Invoice Number:** 19107326

<table>
<thead>
<tr>
<th>Purchase Order Number</th>
<th>3140.000692</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model Number</td>
<td>S770-M</td>
</tr>
<tr>
<td>Serial Number</td>
<td>AT5A12717</td>
</tr>
<tr>
<td>Manufacturer</td>
<td>BOBCAT</td>
</tr>
</tbody>
</table>

**Condition:** Excellent

- **Building:** Public Works Facility
- **Location in building:** Public Works' side of PW
- **Funding Source:** City Equipment Fund

**Unit 476**
Finance listed a gain on disposal of the trade-in equipment; which lowers the carrying value of the new.

**Reason for disposal:** Traded in with Roll Out Agreement of 01-22-2019

| How disposed of: | Traded In |

**Form Completed By:** Julie Stasi
City of Leawood

Fixed Asset Purchase, Transfer, & Disposal Form

☐ Purchase  Effective Date: 01/22/19
☐ Transfer
☐ Disposition  Asset Tag #: O2243END

Purchasing/Receiving Dept.: Public Works
Dept. Number: 022.000

Transferring Department: 
Dept. Number: 022.000

Description of Item: Bobcat Skid-Steer Loader

Vendor  KC BOB CAT INC (roll out agreement)

Cost  $49,663.00

Invoice Number  19107326  Condition  Excellent

Purchase Order Number  3140.000692  Building  Public Works Facility
Model Number  S770-M  Location in building  Public Works' side of PW
Serial Number  AT5A12659  Funding Source  City Equipment Fund
Manufacturer  BOBCAT

Unit 475

Reason for disposal: Trade in with Roll Out Agreement of Jan 22, 2019

How disposed of: Traded In

Form Completed By:  Julie Stasi

### Calls for Service

<table>
<thead>
<tr>
<th>AREA</th>
<th>CALLS</th>
<th>CODE 1</th>
<th>NON-EMERGENCY</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Zone</td>
<td>639</td>
<td>2:51</td>
<td>5:39</td>
</tr>
<tr>
<td>Center Zone</td>
<td>763</td>
<td>2:15</td>
<td>4:43</td>
</tr>
<tr>
<td>South Zone</td>
<td>690</td>
<td>3:00</td>
<td>5:17</td>
</tr>
</tbody>
</table>

### Calls for Service

- Traffic Stops: 915
- Traffic Complaint Areas investigated: 27
- Medical Calls: 156
- Alarms: 118
- Arrests (Adult/Juvenile): 93/2
- Accidents (Total/Injury): 58/7
- Open Doors: 55
- Suspicious Activity calls: 50
- Check the Welfare: 28
- 9-1-1 Calls Received: 717 (494 wireless)
- Administrative Calls Received: 4696

### Crime Report

<table>
<thead>
<tr>
<th>Crime Type</th>
<th>This month</th>
<th>Last month</th>
<th>A year ago</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burglaries</td>
<td>5</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Thefts from buildings</td>
<td>3</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Drug possession violations (municipal)</td>
<td>13</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>Thefts from vehicles</td>
<td>14</td>
<td>24</td>
<td>18</td>
</tr>
<tr>
<td>Agg. assault/batteries</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Crim. Damage to Property/Vandalism</td>
<td>2</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>DUI</td>
<td>4</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Shoplifting</td>
<td>5</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Stolen Autos</td>
<td>3</td>
<td>5</td>
<td>1</td>
</tr>
</tbody>
</table>

### HIGHLIGHTS

#### Hudson is tops

Communications Officer Katy Hudson was chosen as the employee of the quarter for the fourth quarter of 2018. Katy was nominated by her peers for the extra effort she displays in digging into calls. In particular, she questioned some information from a suicidal subject call and was able to uncover some valuable officer safety information while the officers were still responding. Over the last three months she has also served as a role player at the regional police academy while also flexing her normal hours to cover others’ vacation leave.

### Safe City Award

In early December we were notified that the city has again earned a place on the Safewise.com’s list of the safest cities in Kansas, finishing eighth on the list of the top 20 cities in Kansas.
## Frequent crash locations

<table>
<thead>
<tr>
<th>INTERSECTION</th>
<th>Dec.</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>I-435 &amp; State Line Road</td>
<td>1</td>
<td>48</td>
</tr>
<tr>
<td>103rd Street &amp; State Line</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>135th &amp; State Line Road</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>135th Street &amp; Mission Road</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td>133rd Street &amp; State Line</td>
<td>1</td>
<td>15</td>
</tr>
<tr>
<td>135th Street &amp; Roe Avenue</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>Town Center Dr. &amp; Roe Avenue</td>
<td>0</td>
<td>9</td>
</tr>
</tbody>
</table>

## Last 5 Month's Statistics for Leawood Police

### Part I Crimes specified by the KBI:

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Agg. Assault/Battery</td>
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<td>3</td>
<td>2</td>
<td>1</td>
<td>3</td>
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<tr>
<td>Arson</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>Burglary</td>
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<td>Robbery</td>
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<td>5</td>
<td>3</td>
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<tr>
<td>Theft</td>
<td>72</td>
<td>29</td>
<td>26</td>
<td>42</td>
<td>27</td>
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<table>
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<td>3</td>
<td>5</td>
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<td>1</td>
<td>0</td>
<td>0</td>
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<td>0</td>
<td>0</td>
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<td>Shoplifting</td>
<td>13</td>
<td>7</td>
<td>13</td>
<td>9</td>
<td>5</td>
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<tr>
<td>Theft from Building</td>
<td>6</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Theft from CoinOperated Machine</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Theft from Motor Vehicle</td>
<td>46</td>
<td>13</td>
<td>2</td>
<td>24</td>
<td>14</td>
</tr>
<tr>
<td>Theft of Motor Vehicle Parts/Accessories</td>
<td>2</td>
<td>0</td>
<td>4</td>
<td>0</td>
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<table>
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<th>Sub-Total</th>
<th>Aug-18</th>
<th>Sep-18</th>
<th>Oct-18</th>
<th>Nov-18</th>
<th>Dec-18</th>
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<tbody>
<tr>
<td>Adult Arrests</td>
<td>108</td>
<td>96</td>
<td>83</td>
<td>77</td>
<td>93</td>
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<tr>
<td>Juvenile Arrests</td>
<td>2</td>
<td>8</td>
<td>3</td>
<td>3</td>
<td>2</td>
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<tr>
<td>Citations/Citation Charges</td>
<td>629/826</td>
<td>771/1018</td>
<td>882/1138</td>
<td>523/689</td>
<td>541/716</td>
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<tr>
<td>Warnings/Warning Charges</td>
<td>303/516</td>
<td>376/609</td>
<td>451/710</td>
<td>378/528</td>
<td>397/594</td>
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<tr>
<td>Damage over $1,000 Accident</td>
<td>45</td>
<td>54</td>
<td>38</td>
<td>53</td>
<td>46</td>
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<tr>
<td>Damage under $1,000 Accident</td>
<td>11</td>
<td>5</td>
<td>4</td>
<td>5</td>
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<tr>
<td>Injury Accident</td>
<td>12</td>
<td>11</td>
<td>8</td>
<td>8</td>
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<tr>
<td>Field Interview Contacts</td>
<td>26</td>
<td>16</td>
<td>16</td>
<td>11</td>
<td>15</td>
</tr>
</tbody>
</table>
December 2018 Report

Fire Loss
Fire related incidents for the month in Leawood: 7
Fire Loss: $0

Monthly Activity Hours
(Non-training - can include response, public education, public services, maintenance, etc)
Staff Activity Hours: 1,221

Monthly Training Hours
Training Hours: 1,117

Monthly Calls for Service
- Fire Responses: 9
- EMS Responses: 197
- HazMat Responses: 15
- Tech Rescue Responses: 0
- Other Calls for Service: 55
- Total Calls This Month: 276
- YTD Total Calls: 3,337

Monthly Highlights
- 3 Car Seat Installations
- 11 Public Relations / Education Events
- 16 CPR / First Aid students
- 7 Residential Smoke Alarm Assists
- 1 Ride-Along
- $50,000 Cocherl Family Foundation donation

Incident Response Times
Emergency service performance standards are measured by 90-percentile performance to demonstrate credibility and reliability in service delivery. Percentile metrics demonstrate a better representation of response times than averages. Instead of displaying what the Department does half of the time, the Department observes what it does the majority of the time. Travel and total response times only include emergency responses within the City of Leawood.

Summary of Monthly LFD Baseline Performance at the 90th Percentile

<table>
<thead>
<tr>
<th>LFD - Baseline Performance 90th Percentile</th>
<th>All Calls</th>
<th>Fire</th>
<th>EMS</th>
<th>Tech Rescue</th>
<th>HazMat</th>
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</thead>
<tbody>
<tr>
<td>Alarm Handling</td>
<td>Call Pick-Up to Dispatch</td>
<td>0:57</td>
<td>1:11</td>
<td>0:56</td>
<td>N/A</td>
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<tr>
<td>Turnout Time</td>
<td>Dispatch to 1st Unit Enroute</td>
<td>1:35</td>
<td>1:44</td>
<td>1:35</td>
<td>N/A</td>
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<tr>
<td>Travel Time 1st Unit</td>
<td>Enroute to Arrival Time 1st Unit on Scene Emergency Responses Only</td>
<td>5:01</td>
<td>4:45</td>
<td>5:01</td>
<td>N/A</td>
</tr>
<tr>
<td>Total Response Time - 1st Unit</td>
<td>Enroute to Arrival 1st Unit on Scene Emergency Responses Only</td>
<td>6:39</td>
<td>6:41</td>
<td>6:33</td>
<td>N/A</td>
</tr>
<tr>
<td>Total Response Time - ERF</td>
<td>Enroute to Arrival Effective Response Force Emergency Responses Only</td>
<td>9:50</td>
<td>10:00</td>
<td>9:48</td>
<td>N/A</td>
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</table>
# Leawood Municipal Court Caseload

## CUMULATIVE

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN</td>
<td>977</td>
<td>1,430</td>
<td>1,246</td>
<td>890</td>
</tr>
<tr>
<td>FEB</td>
<td>1,918</td>
<td>2,959</td>
<td>2,201</td>
<td>1,537</td>
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<tr>
<td>MAR</td>
<td>3,013</td>
<td>3,813</td>
<td>3,253</td>
<td>2,280</td>
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<tr>
<td>APR</td>
<td>4,735</td>
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<td>4,615</td>
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<tr>
<td>MAY</td>
<td>6,383</td>
<td>6,111</td>
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<td>3,900</td>
</tr>
<tr>
<td>JUN</td>
<td>7,518</td>
<td>7,449</td>
<td>6,652</td>
<td>4,713</td>
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<tr>
<td>JUL</td>
<td>8,813</td>
<td>8,446</td>
<td>7,783</td>
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<tr>
<td>AUG</td>
<td>9,916</td>
<td>9,845</td>
<td>8,778</td>
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<td>SEP</td>
<td>10,880</td>
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<tr>
<td>OCT</td>
<td>11,854</td>
<td>12,167</td>
<td>10,792</td>
<td>8,728</td>
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<tr>
<td>NOV</td>
<td>12,817</td>
<td>13,094</td>
<td>11,812</td>
<td>9,420</td>
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<tr>
<td>DEC</td>
<td>13,789</td>
<td>14,009</td>
<td>12,523</td>
<td>10,161</td>
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</table>

## MONTHLY

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN</td>
<td>977</td>
<td>1,430</td>
<td>1,246</td>
<td>890</td>
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<tr>
<td>FEB</td>
<td>941</td>
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<td>1,648</td>
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<td>1,135</td>
<td>1,338</td>
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<td>AUG</td>
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<td>692</td>
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<tr>
<td>DEC</td>
<td>972</td>
<td>915</td>
<td>711</td>
<td>741</td>
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</tbody>
</table>

**Total Caseload:** 13,789, 14,009, 12,523, 10,161

**Yearly Caseload:** 14,400, 14,400, 14,400, 14,000
# Leawood Municipal Court Receipts Processed

## CUMULATIVE RECEIPTS

<table>
<thead>
<tr>
<th>Month</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
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<tbody>
<tr>
<td>JAN</td>
<td>$140,191.50</td>
<td>$152,402.00</td>
<td>$135,897.50</td>
<td>$124,209.00</td>
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<tr>
<td>FEB</td>
<td>$296,643.00</td>
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<tr>
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## MONTHLY RECEIPTS

<table>
<thead>
<tr>
<th>Month</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN</td>
<td>$140,191.50</td>
<td>$152,402.00</td>
<td>$135,897.50</td>
<td>$124,209.00</td>
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<td>$104,198.19</td>
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**Cumulative Totals:**

- **2015:** $1,590,496.71
- **2016:** $1,744,850.80
- **2017:** $1,518,103.44
- **2018:** $1,281,212.81

## CUMULATIVE RECEIPTS GRAPH

![Graph showing cumulative receipts processed by month from January 2015 to December 2018.]
2019 Presidential Sponsors

TOWN CENTER
PLAZA • CROSSING

HCA MIDWEST HEALTH
MENORAH MEDICAL CENTER

Country Club Bank

BURNS & MCDONNELL

Advent Health

2019 Kansas Legislative Priorities
LEAWOOD CHAMBER 2019
STATE LEGISLATIVE PRIORITIES

The Leawood Chamber encourages fiscal responsibility in a manner that will enhance the long term financial health of our State. In general, policies should help control or reduce the cost of doing business in Kansas, while maintaining an environment of legislative stability and predictability. Our members expect the governmental institutions with which they interface to be responsive to their needs.

Promote Fair Competition and Limited Government Regulation in the Marketplace
Government should at every opportunity enact legislation as needed that promotes fair competition and stimulates investment as well as create an atmosphere of limited regulation and a climate of regulatory predictability.

Competitive Business and Tax Climate in Kansas
The Chamber encourages an environment of legislative stability and predictability allowing businesses to effectively plan for future growth and expansion. We support a reasonable and balanced tax policy that acknowledges the economic realities of the unique bistate environment in which our member businesses operate, including maintaining the sales tax exclusion for professional services and other sales tax exemptions critical to maintaining business competitiveness. We support measures that support this goal, including:

- Preserving key sales tax exemptions impacting business.
- Continue monitoring the administration of the Employment Security Trust to ensure that the implementation of the revised employer rate structure provides Fund solvency and fairly assesses Kansas employers based on their utilization of the system.
- Maintaining the integrity and affordability of the workers compensation system, while reducing the administrative compliance burden of the existing system.
- Protecting market-driven employer/employee relationships and opposing mandates.
- The Chamber supports policies that do not simply transfer the tax burden from one level of government to another.

(Continuing Competitive Business and Tax Climate in Kansas)

- The Chamber supports nonpartisan and nonelection process for the selection of high quality judges.

Support Economic and Job Creation Efforts
The Chamber supports economic development incentives and programs that will help grow the Kansas economy. Those incentives and programs should not only attract and assist businesses eager to move to Kansas but also help those Kansas businesses looking to grow and expand within our State. The Leawood Chamber supports measures to strengthen the Department of Commerce and enhance the State’s ability to compete in the global economy for job growth, including the following priorities:

- Maintaining effective state and local economic development tools that can address a variety of job and investment opportunities. These tools should include metrics that can be used to measure the success of these tools.
- Assuring that currently authorized economic development programs are properly funded and marketed.
- Promoting initiatives that produce more effective workforce development.

Excellence in Public Education
The Leawood Chamber supports a quality public education system and recognizes it is an integral part of economic development in Leawood and for our member businesses located throughout the region. This includes:

- Maintaining stable and adequate K-12 education funding that:
  - Enables students to achieve post-secondary success and work-force readiness in a globally competitive economy.
  - Does not unreasonably burden Kansas businesses or adversely affect other core State services or the economic development climate.
  - Maximizes local funding flexibility and control.
- Preserving competitive investment in post-secondary education, including technology training and certifications, to preserve affordability and produce a well-trained workforce.

Support Access to Quality Healthcare
The Chamber recognizes that the healthcare industry is a major economic driver in the State of Kansas, creating substantial amounts of wages and capital investment in our State’s economy. We support healthcare initiatives that ensure sufficient funding for providers and greater access to care for community members.

Investment in Transportation Infrastructure
The Leawood Chamber supports the authorization of a new statewide multi-modal infrastructure program, including preservation of direct revenue transfers to the State Highway Fund (SHF) and opposes any further diversion of dedicated SHF monies for any use other than the funding of the eligible transportation projects for which they are intended, while maintaining flexibility, accountability, and opportunities for local input and support.

Support the Preservation of Local Control
The cornerstone of municipal government and public education is the belief that governance should be as close to the people as possible. The Chamber strongly supports local control whereby local elected officials are accountable for the funding, regulation and provision of services to meet the needs of the communities they serve.

Oppose Tax or Spending Lids on State/Local Governments
To ensure our elected representatives’ ability to govern effectively, the Council opposes the imposition of constitutional or statutory state or local tax/spending lids, “supermajority” approval requirements, or unreasonably burdensome mandates in reporting and approving tax or budget measures.

Oppose Initiative & Referendum
The Chamber opposes initiative and referendum provisions in Kansas, which would allow a relatively small number of petitioners to force costly public elections on state or local issues.

Immigration
The Chamber supports a balanced immigration policy, created and enforced at the federal level. We oppose State action that creates additional costly or time-consuming mandates for employers who have made reasonable efforts to assure that the workers they hire are eligible to work in our country.
INVEST IN TRANSPORTATION INFRASTRUCTURE

The Council supports authorization of a new statewide multi-modal transportation infrastructure program, including preservation of direct revenue transfers to the State Highway Fund, and opposes any further diversion of dedicated SHF monies for any use other than the funding of eligible transportation projects for which they are intended, while maintaining flexibility, accountability, and opportunities for local input and support.

IMMIGRATION

The Council believes immigration policy should be created and enforced at the federal level and opposes state action that creates additional costly or time-consuming mandates for employers or imposes unreasonable penalties on employers who unintentionally hire or assist undocumented workers.

JUDICIAL SELECTION

The Council supports a nonpartisan and nonelection process that facilitates the selection of high quality judges.

2019 JOHNSON COUNTY PUBLIC POLICY COUNCIL

De Soto Chamber of Commerce
(913) 583-1585

Gardner Edgerton Chamber of Commerce
(913) 856-6464

Greater Kansas City Chamber of Commerce
(816) 221-2424

Leawood Chamber of Commerce
(913) 498-1514

Lenexa Chamber of Commerce
(913) 888-1414

Northeast Johnson County Chamber of Commerce
(913) 262-2141

Olathe Chamber of Commerce
(913) 764-1050

Overland Park Chamber of Commerce
(913) 491-3600

Shawnee Chamber of Commerce
(913) 631-6545

Spring Hill Chamber of Commerce
(913) 592-3893

The Johnson County Public Policy Council was created to speak as one unified voice on behalf of ten local chambers of commerce and the more than 5,000 Johnson County businesses they collectively represent.
The following are issues of importance to the business community in Johnson County, listed in no priority order.

ENCOURAGE A STABLE BUSINESS CLIMATE
The Council encourages an environment of legislative stability and predictability allowing businesses to effectively plan for future growth and expansion.

REASONABLE AND BALANCED TAX POLICY
The Council supports a reasonable and balanced tax structure that acknowledges the economic realities of the unique bistate environment in which Johnson County businesses operate, including maintaining the sales tax exclusion for professional services and other sales tax exemptions critical to maintaining business competitiveness.

ENHANCE ECONOMIC DEVELOPMENT AND JOB CREATION EFFORTS
The Council supports measures to strengthen the Department of Commerce and enhance the state’s ability to compete in the global economy for job growth, including the following priorities:

- Maintaining effective and competitive state and local economic development tools that address a variety of job and investment opportunities.
- Assuring that currently authorized economic development programs are properly funded and marketed.
- Promoting initiatives that produce more effective workforce development.

EXCELLENCE IN PUBLIC EDUCATION
Because appropriate funding for quality public education is an important investment in economic development, the Council supports:

- Maintaining stable and adequate K-12 public education funding that:
  - Enables students to achieve post-secondary success and workforce-readiness.
  - Does not unreasonably burden Kansas businesses or adversely impact other core state services or the economic development climate.
  - Fosters a well-trained, productive, globally-competitive workforce.
- Preserving competitive investment in public post-secondary education to improve affordability and produce a well-trained workforce, including technology training and certifications.

REDUCE KEY BUSINESS COSTS
To enhance the state’s business climate and encourage economic development, the Council supports measures that would help control or reduce key business costs, including:

- Ensuring businesses and their employees have reasonable access to affordable healthcare coverage options.
- Monitoring administration of the Employment Security Trust Fund to ensure that implementation of the revised employer rate structure provides Fund solvency and fairly assesses Kansas employers based on their utilization of the system.
- Maintaining the integrity and affordability of the workers compensation system.
- Preserving market-driven employer/employee relationships and opposing mandates.
- Promoting a legal system that protects a stable pro-business climate.

PRESERVATION OF LOCAL CONTROL
The cornerstone of municipal government and public education is the belief that governance should be as close to the people as possible. The Council strongly supports the preservation of local control whereby local elected officials have authority over local elections, including determination of partisanship, and are accountable for the funding, regulation and provision of services to meet the needs of the communities they serve.

OPPOSE TAX OR SPENDING LIDS ON STATE/LOCAL GOVERNMENTS
To ensure our elected representatives’ ability to govern effectively, the Council opposes the imposition of constitutional or statutory state or local tax/spending lids, “supermajority” approval requirements, or unreasonably burdensome mandates in reporting and approving tax or budget measures, including the mandated public vote on use of increased local property tax collections. Furthermore, the Council supports additional exemptions for costs such as infrastructure and providing mental health services.

OPPOSE INITIATIVE & REFERENDUM
The Council opposes initiative and referendum provisions in Kansas, which would allow a relatively small number of petitioners to force costly public elections on state or local issues.
Date: 1/22/2019

To: All City Council

From: Julie Cain

Re: Final Banner Designs

It has been a truly wonderful and collaborative process to work on the Leawood Banner Project and the Selection Committee is very excited to present you with what we hope is the final version to be approved at our next Council Meeting. But please feel free to call me if you have any additional comments, concerns or suggestions. Thanks, Julie Cain (913) 486-8422

Based upon the feedback we provided, please see Zach Newton's notes / comments below...

- The bright pink has been removed from all banners. I tried a variety of colors as a replacement, but nothing worked for all 5. Because of that, I substituted a bright, warm red on the Celebrate and Inspire banners, and a peachy-orange on the other three. As you can see, they still hold together as a group (even if they won't be displayed that way).

- I re-drew the woman on the Thrive banner to represent an entrepreneur rather than a shopper--a young professional on her way to a business lunch, or perhaps closing a deal on a new retail space (it's open for interpretation, but that's what I had envisioned). I also enlarged the outdoor dining illustration and removed the shopping family, as the layout and perspective didn't allow enough room for them.

I hope you'll agree that these changes are in line with the requests from the Council. Please share this with the rest of the committee as you see fit and let me know what the Council has to say about the changes. Thanks!

Zach

Newton Design Company
Liberty, MO
816.261.9360
Memo

To:    Mayor Dunn and City Council Members
From:  Andrew Hall, Assistant City Attorney
Cc:    Scott Lambers, Patty Bennett, Dawn Long
Date:  December 3, 2018
Re:    Verizon Wireless, LLC ("Verizon") Franchise Ordinance

This Ordinance authorizes the Mayor to enter into a Contract Franchise Agreement ("Franchise") with Verizon. Verizon plans to deploy small cell facilities throughout the City. This Ordinance pertains to the Franchise only. Verizon also seeks to install antennas on certain equipment owned by the City via a separate agreement; which is the next agenda item. Verizon will comply with any and all applicable provisions of the Leawood Development Ordinance and the planning process pertaining to the installation of any equipment.

Verizon has agreed to pay $25 per year per small cell facility installation for a franchise fee to compensate the City. Verizon has estimated approximately 25 installations in the next 1 to 3 years. As a direct provider of cellular service, it is impossible to calculate gross receipts from the use of each individual cell phone on any specific site. The term of this Franchise is for an initial six years and renews automatically for two additional terms of two years each, for a total of ten years.

Please contact me at 913-663-9182 or ahall@leawood.org if you have any questions.
ORDINANCE NO. ___________

ORDINANCE GRANTING TO VERIZON WIRELESS (VAW) LLC, A DELAWARE LIMITED LIABILITY COMPANY D/B/A VERIZON WIRELESS, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN WIRELESS FACILITIES AS A WIRELESS SERVICE PROVIDER IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF LEAWOOD, KANSAS.

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

SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word “shall” is always mandatory, and not merely directory.

a. “Affiliate” - when used in relation to Grantee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.

b. “City” - means the City of Leawood, Kansas.

c. “Communications Service” - means the transmission or receipt of voice, video, data, broadband Internet or other forms of digital or analog signals over Communications Equipment. To the extent Licensee’s services are wireless, it shall mean “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, as described in K.S.A. 66-2019(b)(19)

d. “Contract franchise” - means this Ordinance granting the right, privilege and franchise to Grantee to use the City’s Public right-of-way to provide Wireless Services as a Wireless Service Provider.

e. “Facilities” - means Grantee’s “antennas,” “accessory equipment,” “wireless facilities,” “small cell facilities,” “transmission equipment,” “distributed antenna system,” and any “wireless support structure” (all as such terms are defined or described in K.S.A. 66-2019, as amended) comprising Grantee’s system located within the Public right-of-way, and to the extent permitted under any applicable Laws (defined in Section 3b), that are designed and constructed for the purpose of producing, receiving, amplifying or distributing Wireless Services:

f. “Grantee” - means VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company d/b/a Verizon Wireless authorized to do business in Kansas, a Wireless Services Provider providing Wireless Services within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
g. "Public 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 the airwaves above a right-of-way with regard to Wireless Services or other non-wire communications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts. The term does not include infrastructure located within the Public right-of-way owned by the City or other third-parties, such as poles, ducts or conduits, use of which shall require a separate license agreement for attachment to city facilities.

h. "Wireless Infrastructure Provider" - means any person that builds or installs transmission equipment, wireless facilities or wireless support structures, but that is not a wireless service provider. (See K.S.A. 66-2019(b)(20))

i. "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))


SECTION 2. GRANT OF CONTRACT FRANCHISE.

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public 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 Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

   (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;

   (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or

   (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the facilities owned or controlled by the City or a third-party.

c. 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 Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public or private property).

d. Grantee shall not provide any additional services for which a franchise is required by the City, including but not limited to services as a Wireless Infrastructure Provider, without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

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

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

a. Pursuant to K.S.A. 66-2019, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public 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 Public 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, policies, resolutions and ordinances (hereinafter “Laws”) adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to the City’s ordinance for managing the use and occupancy of the Public right-of-way, codified in the Code of the City of Leawood, 2000, Chapter 13, Article 3, and amendments thereto and the City’s zoning and land-use laws to specifically include the Leawood Development Ordinance and related rules and regulations and amendments thereto, to the extent such laws do not conflict with or are preempted by any Federal law or regulation.

c. Grantee shall participate in the Kansas One Call utility location program.

SECTION 4. COMPENSATION TO THE CITY.

a. In consideration of this Contract franchise, Grantee agrees to remit to the City an annual franchise fee of $25 per site in the Public right-of-way upon which Grantee has attached its
Facilities. The franchise fee shall commence upon the Effective Date of the applicable Supplement to the Master License Agreement between the City and Grantee. As to any new Facility installed at a site during any calendar year, such fee shall be prorated based on the number of days in the calendar year remaining from the Effective Date of the applicable Supplement to the Master License Agreement.

It is understood that Grantee’s Facilities are primarily wireless communications antennae and their necessary transmission and accessory equipment, and that the Facilities might be attached to a wireless support structure, utility pole, street light or similar structure.

b. Grantee shall pay the franchise fee in advance on an annual basis without requirement for invoice or reminder from the City, and within 15 days of the first day of the calendar year for which the payment applies; provided, that as to any new Facility installed during any calendar year, such fee shall be prorated and paid as to that partial year within 30 days after the Effective Date of the applicable Supplement to the Master License Agreement between the City and Grantee. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

c. Upon written request by the City, but no more than once per year, Grantee shall submit to the City a statement, executed by an authorized officer of Grantee or his or her designee, showing the manner in which the franchise fee was calculated for the period covered by the payment.

d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.

e. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

f. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1,000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 66-2019, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

SECTION 5. INDEMNITY AND HOLD HARMLESS.

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate 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. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including observing marker posts when working near Grantee’s Facilities.

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 degree that it is found by a court of competent jurisdiction to be caused by the negligence, gross negligence or wrongful act of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

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. 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.

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 Public right-of-way.

SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed, authorized or permitted to do business in the State of Kansas. Grantee shall provide the following insurance:

(1) Statutory Workers’ compensation as provided for under any worker’s compensation or similar law in the jurisdiction where any work is performed and employers’ liability with a limit of $1,000,000 each accident/disease/policy limit.

(2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of Five Million Dollars ($5,000,000) combined single limit per occurrence for bodily injury, (including death) and property damage. The City shall be included as an additional insured as their interest may appear under this Agreement with respect to liability arising from Grantee’s operations under this Contract franchise.

b. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and within fifteen (15) days of any renewal thereof, deliver to the City a certificate of insurance reasonably satisfactory in form and content to the City, evidencing that the above insurance is in force.

c. Grantee shall, as a material condition of this Contract franchise, 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 and maintenance of Facilities located in the Public right-of-way, provided the
described performance bond shall not be required if Grantee has currently posted and in
place a comparable $50,000 bond pursuant to the City’s Ordinance for Managing The Use and
Occupancy of the Public 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.

SECTION 7. REVOCATION AND TERMINATION.

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise,
or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms
of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and
all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and
this Contract franchise shall be deemed revoked or terminated, provided that said revocation or
termination, shall not take effect until the City has completed the following procedures: Before the
City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon
Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60)
days thereafter in which to comply with the conditions and requirements of this Contract franchise. If
at the end of such sixty (60) day period the City deems that the conditions have not been complied
with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote
of the City Council present at the meeting and voting, setting out the grounds upon which this Contract
franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first
be provided reasonable notice of the date, time and location of the City Council’s consideration, and
shall have the right to address the City Council regarding such matter. Nothing herein shall prevent
the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the
City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to
appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall
be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted
such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall
remain pending and subject to the court’s final judgment. Provided, however, that the failure of Grantee
to comply with any of the provisions of this Contract franchise or the doing or causing to be done by
Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a
ground for the revocation or termination thereof when such act or omission on the part of Grantee is
due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

SECTION 8. RESERVATION OF RIGHTS.

a. The City specifically reserves its right and authority as a customer of Grantee and as a public
entity with responsibilities towards its citizens, 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.

b. 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.
c. 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.

d. In entering into this Contract franchise, 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 Contract franchise, 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, non-franchise ordinances and/or rulings.

SECTION 9. FAILURE TO ENFORCE.

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

SECTION 10. TERM AND TERMINATION DATE.

a. This Contract franchise shall be effective for a term of six (6) beginning on the Effective Date of this Contract franchise. Thereafter, this Contract franchise will automatically renew for two additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least ninety (90) days before the termination of the then current term. The additional terms shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder. In the event a renegotiation is initiated pursuant to this Section, then compensation paid to the City shall also be updated as to reflect the current market rate paid for wireless infrastructure providers within the City.

c. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

d. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a
continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

SECTION 11. POINT OF CONTACT AND NOTICES

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact’s name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. “Business day” for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:
City of Leawood
Attn: City Clerk
4800 Town Center Drive
Leawood, Kansas 66211
(913)-663-9100

Grantee:
Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attn: Network Real Estate

With a copy to:
City of Leawood
Attn: City Attorney
4205 Town Center Drive
Leawood, Kansas 66212

or to replacement addresses that may be later designated in writing.

SECTION 12. TRANSFER AND ASSIGNMENT.

This Contract franchise is granted solely to the 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 (i) any Affiliate of Grantee; (ii) any successor in interest to Grantee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of Grantee’s assets used to provide Communications Services to residents and businesses located in the City of Leawood, Kansas. Following any transfer or assignment of either this Contract franchise 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. Additionally, Grantee’s obligations under this Contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee 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.
SECTION 13. CONFIDENTIALITY.

Information provided to the City under this Contract franchise 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 Contract franchise.

SECTION 14. ACCEPTANCE OF TERMS.

Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and such contract shall be deemed effective on the later of the date Grantee files acceptance with the City or publication of this Contract franchise in accordance with Statute (the “Effective Date”).

SECTION 15. PUBLICATION OF ORDINANCE

The City Clerk is hereby directed to publish a copy of this Contract franchise once in the official City newspaper.

SECTION 16. PAYMENT OF PUBLICATION COSTS.

In accordance with Kansas Statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

SECTION 17. SEVERABILITY.

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a 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, the City or Grantee may elect to declare the entire Contract franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

SECTION 18. FORCE MAJEURE.

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee’s or the City’s control.

PASSED by the City Council this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

(SEAL)
ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

Andrew K. Hall, Assistant City Attorney

Peggy J. Dunn, Mayor
Memo

To:    Mayor Dunn and City Council Members
From:  Andrew Hall, Assistant City Attorney
Cc:    Scott Lambers, Patty Bennett, Dawn Long
Date:  December, 3, 2018
Re:    Verizon Wireless, LLC ("Verizon") Master License Agreement

This resolution authorizes the Mayor to execute an agreement with Verizon. Verizon plans to attach its equipment to City-owned light poles. It will be required to pay attachment fees, fees for building permits, and otherwise maintain the equipment in accordance with the City Code and the Leawood Development Ordinance.

Effective January 14, 2019, the Federal Communications Commission has restricted attachment fees to $270.00 per attachment per year. As such, under this agreement, Verizon shall pay $270.00 per attachment per year. Verizon has estimated approximately 25 installations in the next 1 to 3 years. The agreement begins with an initial ten year term and automatically renews for two terms of one year each, for a total of twelve years.

Please contact me at 913-663-9182 or ahall@leawood.org if you have any questions.
RESOLUTION NO. ____________

RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A MASTER LICENSE AGREEMENT BETWEEN THE CITY AND VERIZON WIRELESS, LLC [VAW] FOR ATTACHMENTS TO CITY FACILITIES

WHEREAS, VAW desires to attach certain equipment to City-owned street lights;

WHEREAS, each such attachment must comply with the provisions of the Code of the City of Leawood, 2000 and the Leawood Development Ordinance; and

WHEREAS, the parties desire to enter into a Master Licensing Agreement regarding the terms of the attachment to City-owned street lights.

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

SECTION ONE: That the Governing Body hereby authorizes the Mayor to execute a Master License Agreement for Attachments to City Facilities between the City and VAW, attached hereto as Exhibit “A,” and incorporated herein by reference as if fully set out.

SECTION TWO: This resolution shall become effective upon passage.

PASSED by the Governing Body this 22nd day of January, 2019.

APPROVED by the Mayor this 22nd day of January, 2019.

[SEAL]  
Peggy J. Dunn, Mayor

ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

Andrew K. Hall, Assistant City Attorney
MASTER LICENSE AGREEMENT
FOR ATTACHMENTS TO CITY FACILITIES
VERIZON WIRELESS

This Master License Agreement for Attachments to City Facilities ("Agreement") dated 2019 (the "Effective Date") is made by and between the CITY OF LEAWOOD, KANSAS (the "City"), and VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company authorized to do business in Kansas d/b/a Verizon Wireless ("Licensee") (collectively referred to as the "Parties").

RECITALS

WHEREAS, Licensee obtained a contract franchise by the City’s adoption and Licensee’s acceptance of City Ordinance No. _____, which permits Licensee to install, maintain and operate certain facilities within the City’s right-of-way and to pay franchise fees for such privilege; and

WHEREAS, the City owns, operates and maintains certain Facilities located in the City; and

WHEREAS, Licensee proposes to install and maintain Licensee’s Attachments on or within City Facilities to provide Communications Services; and

WHEREAS, the City is willing to grant Licensee a non-exclusive, revocable license under which the Parties will enter into a license supplement ("Supplement"), in substantially the form attached hereto as Exhibit A, authorizing the placement or installation of Licensee’s Attachments on or within specified City Facilities, provided that the City may in its sole discretion, for reasons relating to insufficient capacity, safety, reliability, generally applicable engineering purposes or other governmental needs, uses, obligations and reasons, refuse to enter into a Supplement for any particular City Facility so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties; and

WHEREAS, the City’s license of Facilities is a commercial transaction involving the licensing of City 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.

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

1. DEFINITIONS

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

1.1 Affiliate: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
1.2 **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.

1.3 **Attaching Entity:** means any public or private entity, including Licensee, who, pursuant to a valid authorization with the City, places an Attachment on or within City Facilities to provide Communications Service.

1.4 **Attachment(s):** means Licensee’s Communications Equipment that is placed directly on or within City Facilities. For billing purposes an Attachment is counted for Licensee’s antenna(s) on or within each City Facility together with the associated cables and small-cell equipment.

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

1.6 **City Facilities** or **Facilities:** means City-owned Street Lights, and associated property, that are capable of accommodating Communications Equipment in accordance with Applicable Standards. Provided, however, no Attachments will be allowed on any traffic control signal (as defined in the Manual on Uniform Traffic Devices).

1.7 **Communications Equipment:** means wireline or wireless equipment including but not limited to fiber optic, copper and/or coaxial cables, wireless antennas, receivers or transceivers, mounting hardware, power supplies, grounding or bonding wires, and other equipment utilized to provide Communications Service including any and all associated equipment.

1.8 **Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet or other forms of digital or analog signals over Communications Equipment. To the extent Licensee’s services are wireless, it shall mean “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, as described in K.S.A. 66-2019(b)(19).

1.9 **Licensee:** means VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company authorized to do business in Kansas d/b/a Verizon Wireless, its authorized agents, successors, designees and assigns.

1.10 **Make-Ready Work:** means all work, as reasonably determined by the City, required to accommodate Licensee’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, cost of removal (less any salvage value), cost of a (City-approved) substitution of light poles, tree trimming (other than tree trimming performed for normal maintenance purposes), or Facility construction, but does not include routine maintenance.

1.11 **Permit:** means written or electronic authorization of the City to make or maintain Attachments to specific City Facilities pursuant to this agreement and any applicable city code or regulation.

1.12 **Permit Application:** means the application for a Permit pursuant to the applicable requirements of this Agreement and any applicable city code or regulation.

1.13 **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.
1.14 **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 Licensee’s Communications Facilities on or within a City Facility. Such work includes, but is not limited to, field inspection and administrative processing.

1.15 **Reserved Capacity**: means capacity or space on or within a Facility that the City has identified and reserved for City or other governmental requirements, including, but not limited to, Johnson County, other municipalities and any local school districts.

1.16 **Site**: means each place where City Facilities for the parties enter into a Supplement pursuant to this Agreement for purposes of installing Licensee’s Attachment.

1.17 **Street Light**: means each City-owned street light fixture and attached photocell, together with the lateral arm on which the street light fixture is mounted.

1.18 **Supplement**: means the written sublicense, substantially in the form attached hereto as Exhibit A, which will be executed by the Parties and shall document Licensee’s authorization to make and maintain specific Attachments to specific City Facilities pursuant to the requirements of this Agreement and any applicable city code or regulation.

1.19 **Supplement Application**: means the application for a Supplement pursuant to the applicable requirements of this Agreement and any applicable city code or regulation, substantially in the form attached hereto as Exhibit A.

1.20 **Tag**: means to place distinct markers on wires and cables, coded by color or other means specified by the City and/or applicable federal, State or local regulations, that will readily identify the type of Attachment and its owner.

2. **SCOPE OF AGREEMENT**

2.1 **Grant of License**: Subject to the provisions of this Agreement, the City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain permitted Attachments on or within specified City Facilities, as further detailed and authorized through individual Supplements to this Agreement. Placement of Licensee’s Attachments on or within any specific City Facility shall be at the sole discretion of the City so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties. Nothing in this Agreement shall obligate the City to allow the use of any specific Street Light pole by any entity. Each Street Light pole attachment must be approved in writing by the City’s Public Works Director (or designee), and must meet all design, installation and maintenance criteria established by the Public Works Director (or designee). Payment of the fees and charges referenced in this Agreement shall not exempt any entity from any applicable federal, state or local franchise, zoning, building code, permit or other requirements, ordinances or regulations, including, but not limited to, the City’s applicable permit application and construction requirements for attachments to City Facilities, the City’s adopted building and electrical codes, and the Leawood Development Ordinance.

2.2 **Conflicting Provisions**: In the event of any conflict between this Agreement and any Supplement hereto, the terms and conditions of this Agreement, as amended from time to time, shall control.

2.3 **Supplement Issuance and Attachment Conditions**: The City will enter into a Supplement with Licensee for an Attachment on or within 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(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Attachment(s) comply with all Applicable Standards. Notwithstanding, the City reserves the right to deny or modify Licensee access to any City Facilities, on a competitively-
neutral and non-discriminatory basis, where City determines that Licensee’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 City’s Facilities, or (c)
violate applicable zoning restrictions or other laws and regulations, or (d) exceed the capacity of
the Facilities to include taking into consideration the reserved capacity of the Facilities, or (e)
interfere with the City’s intended use of the Facilities, and (f) interfere with any other reasonable
governmental interest.

2.4 In-Kind Compensation. The Parties may by mutual agreement adjust the fees and charges
specified in Article 3 to account for in-kind contributions from Licensee in the form of service to
the City as is reasonably determined by the City to be valued as at least roughly comparable to the
Attachment fees and charges.

2.5 Reserved Capacity. Access to space on City Facilities will be made available to Licensee with the
understanding that City Facilities may be subject to Reserved Capacity for future governmental
use. In such case the City may refuse to permit attachments on such Facilities or may within its
discretion permit Attachments, subject to reclaiming its Reserved Capacity in the future. On giving
Licensee at least ninety (90) calendar days prior notice, the City may reclaim such Reserved
Capacity if required for future governmental use. The City may within its discretion give Licensee
the option to remove its Attachment(s) from the affected Facilities or to pay for the cost of any
Make-Ready Work needed to expand Capacity to accommodate the governmental needs while at
the same time maintaining Licensee’s Attachments on the affected Facilities. If Licensee is required
to remove its Attachments, the City agrees to reasonably cooperate with Licensee to locate a
replacement City Facility on which to transfer Licensee’s Attachment.

2.6 No Interest in Property. No use, however lengthy, of any City Facilities, and no payment of any
fees or charges required under this Agreement, shall create or vest in Licensee any easement or
other ownership or property right of any nature in any portion of such Facilities. Neither this
Agreement, nor any Supplement under this Agreement, shall constitute an assignment of any of
the City’s rights to City Facilities. Notwithstanding anything in this Agreement to the contrary,
Licensee shall, at all times, be and remain a licensee only.

2.7 Licensee’s Right to Attach. Nothing in this Agreement, other than a Supplement executed by the
Parties, shall be construed as granting Licensee any right to attach Licensee’s Attachment(s) to or
within any specific City Facility or portion of Facilities.

2.8 City’s Rights over Facilities. The Parties agree that this Agreement does not in any way limit the
City’s right to locate, operate, maintain or remove its Facilities in the manner that will best enable
it to fulfill any governmental requirements.

2.9 Expansion of Capacity. The City may take steps as reasonably appropriate, in a competitively
neutral manner, to expand Facilities to accommodate Licensee’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 Facility or portion of City Facilities for use when such
Facilities are not needed for the City’s or any other governmental service requirements. Likewise,
the City may agree – but is not required – to allow Licensee to provide a substitute for the City’s
Facility that can accommodate Licensee’s Attachment; provided, the Parties agree that City will
have ownership of the substitute Facility. (For example, Licensee might provide a replacement
Street Light pole that is aesthetically comparable to the City’s Street Light pole but has more
structural capacity so that it can support Licensee’s Attachment.)

2.10 Other Agreements. Nothing in this Agreement shall limit, restrict, or prohibit the City from
fulfilling any agreement or arrangement regarding Facilities into which the City has previously
entered, or may enter in the future, with others not party to this Agreement, provided that any such future attachments shall not interfere with Licensee’s Attachments.

2.11 **No Use After Termination.** Nothing in this Agreement shall be construed to require the City to allow Licensee to use Facilities after the termination of this Agreement.

2.12 **Enclosures.** Nothing in this Agreement shall authorize Licensee to place above-ground pedestals, enclosures or cabinets at the base of any City Facilities upon which Licensee has made authorized Attachments, except as may be permitted under applicable City codes, the Leawood Development Ordinance, other ordinances, or similar regulations, and Licensee’s contract franchise with the City.

3. **FEES AND CHARGES**

3.1 **Payment of Fees and Charges.** For authorized Attachments covered under this Agreement, Licensee shall pay to the City the fees and charges specified herein which are applicable for all similarly-situated providers who have Communications Equipment on or within City Facilities. Licensee’s payments shall comply with the terms and conditions specified herein. The above notwithstanding, the Parties may by mutual written agreement adjust the fees and charges specified to account for in-kind contributions from Licensee in the form of service to the City as is reasonably determined by the City to be valued as at least roughly comparable to the fees and charges.

3.1.1 Fees and charges will consist of the following:

1. **Annual Attachment Fee** – $270.00 per Attachment per year.

2. **Supplement Application Fee** – an amount equal to the fee(s) for a Right-of-Way Permit, included in the City of Leawood Fee Schedule as set forth by resolution of the Governing Body. This Supplement Application Fee is intended to reimburse the City for costs incurred for project management services, review of the Supplement Application, and Site design approval.

3. **Make-Ready Work Costs** – to reimburse the City for costs incurred by the City for any Make-Ready Work done to accommodate the Attachment on or within the City’s Facilities.

4. **Inspection Fees** – to reimburse the City for costs incurred with inspections of Licensee’s Attachments.

5. **Unauthorized Attachment Fee** – 200% of the Annual Attachment Fee, per occurrence, for Attachments made without City approval. Payment of this fee does not guarantee the Attachment may remain on the City Facility and will be in addition other required fees listed herein.

6. **Failure to Timely Transfer, Abandon or Removal Facilities Penalty Fee** – the City shall be entitled to remove Licensee’s equipment if it is abandoned or not timely removed in accordance with the terms of this Agreement, and Licensee shall reimburse the City for the actual costs incurred by the City for such removal.

3.2 **Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from the City pursuant to this Agreement within thirty (30) calendar days after the City issues the invoice.

3.3 **Payment of Annual Attachment Fees.**

3.3.1 The current Annual Attachment Fee shall be memorialized in each individual Supplement.

3.3.2 Licensee shall pay all applicable Annual Attachment Fees without requirement for invoice or reminder from the City by January 1 of each year. The initial annual license period shall
commence upon the execution of the applicable Supplement and conclude on December 31 of the same year, and each subsequent annual license period shall commence on the following January 1 and conclude on December 31 of the subsequent year. When remitting the Annual Attachment Fees, Licensee shall identify each applicable Supplement Number for which payment is being made. As to any Attachments installed during any calendar year, such license fee may be prorated based on the number of days in the calendar year in which such Attachment(s) was installed; provided in such event, Licensee shall clearly identify the same and the proration amount when Licensee's payment is made.

3.4 **Refunds.** No fees and charges shall be refunded on account of any termination of a Supplement granted hereunder. Notwithstanding the foregoing, the City shall not continue to charge any license fee going forward for any Supplement terminated in the previous calendar year, and Licensee shall be entitled to a refund upon discovery of such a billing error. Any attachment remaining after 60 days following the date a Supplement has been terminated shall be subject to the Unauthorized Attachment Fee pursuant to Section 3.1.1(5), which fee shall accrue from the date of termination until the date the Attachment is removed.

3.5 **Inventory.** Upon request from the City, but not more than once per year, Licensee shall provide an inventory listing each Facility upon which Licensee has installed an Attachment.

3.6 **Late Charge and Billing Dispute Resolution.** If the City does not receive payment for any fee, charges or other amount owed within thirty (30) calendar days after it becomes due, Licensee shall pay interest to the City, at the rate of ten percent (10%) per annum, on the amount due; 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 Section 22.1.

3.7 **Payment for Work.** Licensee will be responsible for payment to the City for all of the actual costs of all work the City or the City's contractors perform pursuant to this Agreement to accommodate Licensee's Attachments. When requested by Licensee, City agrees to provide Licensee with reasonable documentation to determine actual and estimated costs.

3.8 **Advance Payment.** The Supplement Application Fee shall be due upon submission of the Supplement Application. At the discretion of the City, Licensee may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections and Make-Ready Work Estimates, in connection with the initial installation or rearrangement of Licensee's Attachment pursuant to the procedures set forth in Articles 6 and 7 below. If the City does not exercise this option, the Make-Ready Work Estimate will be paid as set forth in Paragraph 7.2.

3.9 **True Up.** Wherever the City, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated expenses, Licensee 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 Licensee the difference in cost.

3.10 **Determination of Fees and Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by the City, 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 Licensee was required to perform work and fails to perform such work necessitating its completion by the City, the City may charge an additional ten percent (10%) to its costs. When requested by Licensee, the City agrees to provide Licensee with
reasonable documentation to determine actual and estimated costs. Payment of any fees and charges in accordance with this Agreement or any Supplement shall not exempt Licensee from any applicable federal, state or local franchise, zoning, building code, permit or other requirements, ordinances or regulations, including but not limited to the City’s applicable permit application and construction requirements for attachments to City Facilities, the City’s adopted building and electrical codes, and the Leawood Development Ordinance.

3.11 **Work Performed by City.** Wherever this Agreement requires the City to perform any work, Licensee acknowledges and agrees that the City, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work, or to permit Licensee to perform the work. When requested by Licensee, the City agrees to provide Licensee with reasonable documentation to determine actual and estimated costs.

3.12 **Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond ninety (90) days following receipt of written notice of nonpayment shall constitute a material default of this Agreement.

3.13 **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) are located, or the basis on which such taxes are calculated, increase(s) following installation of the Attachment, Licensee shall reimburse the City for the portion of such increase or change attributable to any construction, installation or improvements provided pursuant to this Agreement. Licensee 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 Licensee property located on the Site(s) that are billed directly to Licensee by the taxing authorities.

4. **SPECIFICATIONS**

4.1 **Installation/Maintenance of Attachment.** Upon execution of a Supplement pursuant to this Agreement, Licensee’s Attachment(s) shall be installed and maintained in accordance with the City’s applicable requirements and specifications and all applicable federal, State and local laws, rules and regulations. All of Licensee’s Attachments must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Attachments. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards; and Licensee shall replace, remove, reinforce or repair any defective Attachments (unless otherwise agreed to by the City in writing).
4.2 **Authorized Attachment(s) and Installation Methods.**

4.2.1 The City must approve the Attachment(s) that Licensee is authorized to place on City Facilities. Except as authorized by the City in writing, only the Attachments depicted and described in the approved Supplement Application may be attached to any City Facility; provided, however, that different internal components may be substituted as part of an upgrade of the Communications Equipment (assuming the external appearance remains the same); and further provided, that different Attachments of similar or smaller size may be substituted upon the filing of a description and design of the new devices at least fifteen (15) days in advance of such change and upon approval by the City. Provided, any said upgrade or substitution must maintain the structural integrity of the City's Facility, and Licensee will provide all necessary supporting documentation.

4.2.2 Licensee shall ensure the design, color, and aesthetics of the Attachment(s) blend with and do not contrast with the City Facility to which it is to be attached.

4.2.3 In no event may Licensee 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.

4.2.4 Nothing in this Agreement shall be construed as a guaranty of the condition of any City Facility in connection with Licensee’s Attachments or impose any obligation upon the City to repair or replace an existing City Facility in order to accommodate a request by Licensee to install an Attachment.

4.3 **Tagging.** Licensee shall Tag all of its Communications Equipment in accordance with any applicable federal, State and City regulations upon installation of such Attachment(s).

4.4 **Interference.** Licensee shall not allow its Attachment(s) to impair the ability of the City or any third party to use City Facilities, nor shall Licensee allow its Attachment(s) to interfere with the operation of any City or other governmental Facilities.

4.4.1 Licensee shall comply with all Federal Communications Commission ("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 Licensee’s Attachments.

4.4.2 In the event that the installation, operation or maintenance of the Attachment(s), whether or not such operation is in compliance with the terms of Licensee's applicable FCC licenses, creates any interference with the operation of the City’s or any other governmental entity’s communication or other equipment, Licensee shall immediately, at Licensee's sole cost and expense, take such reasonable steps as may be necessary or recommended by the City or regulatory agencies to eliminate such interference. In the event that the installation, operation or maintenance of the Attachment(s) creates any interference with the operation of the pre-existing equipment of third parties using the Site pursuant to an agreement with the City or any other pre-existing uses of electronic equipment, Licensee shall immediately, at Licensee’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. If Licensee is unable or refuses to eliminate such interference, the City may require Licensee to power down its equipment to eliminate the interference. In the event Licensee is thereafter unable to take necessary action to eliminate such interference within a period of ninety (90) days or such period as the Parties otherwise agree to in writing, the City may terminate Licensee's use of or right to use the Facility upon which such interfering Attachment is located, and Licensee shall promptly remove the Attachment from the Facility.
4.4.3 The rights of any third-parties to whom City confers Facilities access after the Licensee shall be subject to the rights of the Licensee as set forth herein. The City shall not license any Facilities occupied by Licensee, or for which an application for occupancy or attachment from Licensee has been received by City and is pending, for use by any other person or entity where it is determined that such third-party use would unreasonably interfere with Licensee’s Communication Equipment pursuant to the Applicable Standards, unless access for such other person or entity is otherwise required by applicable state or federal law. If access is granted to a third party pursuant to state or federal law, and it is determined that such third-party use would unreasonably interfere with Licensee’s Communications Equipment, then City shall give Licensee prior written notice of any such grant of third-party access and give Licensee reasonable time to remove and relocate its equipment. If equipment installed on a Facility, upon which Licensee has installed an Attachment, by any third party using the Facility pursuant to an agreement with the City subsequent to the installation of the Licensee’s Attachment on the Site causes interference, either electronically or physically, with Licensee’s previously installed Attachments, the Licensee shall immediately notify the City, who will notify such third party and ensure that the third party takes such reasonable steps as may be necessary to eliminate such interference. Alternatively, Licensee may upon thirty (30) days written notice to the City terminate the affected Supplement. This Section 4.4.3 shall not be deemed to otherwise limit the City from using any Facilities in connection with providing its own services or from licensing any Facilities to another person or entity if no application from Licensee is pending or such Facilities is not occupied by Licensee.

4.5 **Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

4.6 **Violation of Specifications.** If Licensee’s Attachment(s), or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from the City, the City at its option, may unilaterally correct such conditions. The City will attempt to notify Licensee 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 or equipment of another Attaching Entity, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, the City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and reasonable costs incurred by the City in taking action pursuant to this Paragraph, and shall indemnify the City from liability for all such work, except to the extent of the City’s gross negligence or willful misconduct in connection with such liability.

4.7 **Restoration of City Service.** The City’s service restoration requirements shall take precedence over any and all work operations of Licensee on City Facilities.

4.8 **Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement by the applicable Supplement(s) within ninety (90) calendar days of the effective date of the Supplement(s), the City may use the space scheduled for Licensee’s Attachment(s) for its own needs or other Attaching Entities. In such instances, the City shall endeavor to make other space available to Licensee, upon written Supplement Application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions, but only to the extent such a Supplement Application for the alternative site is made by Licensee.
4.9 **Facilities Owned or Maintained by City.** For any Facility located outside the boundaries for the City of Leawood, and owned or maintained by the City, Licensee shall locate any utility meter required for the Licensee’s Communications Equipment within the boundaries of the City of Leawood.

4.10 **Facilities Owned or Maintained by other Municipalities.** For facilities located within the City of Leawood but owned or maintained by another municipality, any utility meters shall be located within the boundaries of the other municipality and not within the boundaries of the City of Leawood.

5. **PRIVATE AND REGULATORY COMPLIANCE**

5.1 **Necessary Authorizations.** Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Equipment on public and/or private property before it occupies any portion of City Facilities. The City retains the right to require evidence that appropriate authorization has been obtained before any Supplement is finalized. Licensee’s obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way, including, but not limited to, a franchise, any applicable FCC or KCC authorization, any ROW Permit, or any applicable zoning or land use approval, and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse the City for all 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 Licensee does not have sufficient rights or authority to attach Licensee’s Communications Equipment on or within City Facilities or to provide particular Communications Services.

5.2 **Lawful Purpose and Use.** Licensee’s Attachments must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, State and local laws, rules and regulations, including but not limited to the City’s Use and Occupancy of the Public Right-of-Way Ordinance and amendments thereto, Codified in the Code of the City of Leawood, Kansas, 2000, Chapter 13, Article 3, and the Leawood Development Ordinance. This Agreement is not a waiver of any City regulatory power or Licensee’s obligation to meet any applicable City Code, law, rule or regulation. This Agreement does not limit any rights Licensee may have in accordance with applicable law to install its own poles in the right of way or to attach Licensee’s equipment to third party poles located in the right of way. This Agreement shall in no way limit or waive either party’s present or future rights under applicable law. If, after the date of this Agreement, the rights or obligations of either Party are materially preempted or superseded by changes in applicable law, which changes purportedly apply to existing agreements, the parties agree to amend the Agreement to reflect such change. If the Parties are unable to agree to an Amendment under this Section, the agreement shall terminate in accordance with Section 23 herein.

5.3 **No Forfeiture of City’s Rights.** No Supplement entered into pursuant to this Agreement shall extend to any Facilities or portions thereof on/in which the attachment of Licensee’s Attachment(s) would result in a forfeiture of the City’s rights. Any Supplement, which on its face would cover Attachments that would result in forfeiture of the City’s rights, is invalid. Further, if any of Licensee’s existing Attachments, whether installed pursuant to a valid Supplement or not, would cause such forfeiture, Licensee shall, at its expense, promptly remove its Attachments upon receipt of written notice from the City. If the Attachments in question are not removed within thirty (30) days receipt of the City’s written notice, the City may at its option perform such removal at Licensee’s expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated under the Agreement provided that Licensee shall indemnify the City for any actual damages that may result during Licensee’s challenge. Licensee
shall notify the City, in writing, within thirty (30) days of receipt of such notice, of Licensee’s intent to contest such termination.

5.4 **Effect of Consent to Construction/Maintenance.** Consent by the City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee’s responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

6. **SUPPLEMENT APPLICATION PROCEDURES**

6.1 **Supplement Required.** Licensee shall not install any Attachments on or within any City Facilities without first completing a Supplement Application pursuant to all applicable City requirements and entering into a Supplement for such Attachment(s) with the City pursuant to this Agreement. Attachments to or rights to occupy or utilize City property not covered by this Agreement, such as the lease and use of City-owned fiber optic capacity or any other City property (including, but not limited to, City offices, parks, swimming pools, recreational centers, or the like, as these properties are generally not available for attaching entity use) must be separately negotiated.

6.1.1 Unless otherwise agreed to in writing, Licensee shall submit a Supplement Application for every proposed above-ground Site of Attachment that shall be accompanied by: (i) photos of the subject 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(ies); (iv) structural calculations; (v) traffic control plan for any work that includes temporary lane reduction or closure; and (vi) additional information which may be required by City as necessary.

6.2 **Professional Certification.** Unless otherwise waived in writing by the City, as part of the Supplement Application process and at Licensee’s sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by the City, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee’s Attachments can be and were installed on or within the identified Facilities in compliance with the standards in Paragraph 4.1 and in accordance with the Supplement. The professional engineer’s qualifications must include experience performing such work, or substantially similar work.

6.3 **City Review of Supplement Application.** Upon receipt of a properly executed Supplement Application, which shall include the Pre-Construction Survey, certified per Paragraph 6.2 above, and detailed plans for the proposed Attachments in a form acceptable to City staff, the City will review the Supplement Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Supplement Application. The City acceptance of the submitted design documents does not relieve Licensee 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.

6.3.1 **Review Period.** The City shall use its best efforts to review and respond to properly executed and complete Supplement Applications within thirty (30) days of receipt; provided (a) a Supplement Application is subject to the City’s planning process, and therefore the review period may be extended for an additional thirty (30) days; and (b) the grant or denial of Licensee’s request may take longer than 30 days if the Parties are communicating and mutually proceeding diligently with the Supplement Application in good faith. The City’s response will either provide a written explanation as to why the Supplement Application is being denied, either in whole or in part, or provide an approval and estimate of the costs of all necessary Make-Ready Work.
6.3.2 Make-Ready Work shall be provided on a mutually agreeable, reasonable, and timely basis.

6.3.3 City may toll the time period for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters or other emergency situations.

6.4 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 and receipt of payment for such work, and the granting of any appropriate permit(s), Licensee shall be authorized to make its Attachment(s).

7. MAKE-READY WORK/INSTALLATION

7.1 Make-Ready Survey. When the City receives an attachment or placement request from Licensee, a make-ready survey (the “Make-Ready Survey”) may be necessary, at Licensee’s cost, to determine the adequacy or the capacity of the City Facilities to accommodate Licensee’s Communications Equipment without jeopardizing the safety of the City Facilities or placing the City in violation of generally applicable zoning or other restrictions. Licensee shall be responsible for performing and/or 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 Licensee has the right to be present for the inspection.

7.2 Make-Ready Work.

7.2.1 Except where the City denies the application, whenever any City Facility to which Licensee seeks attachment or occupancy requires modification or replacement to accommodate both Licensee’s Attachment and the existing attachments or equipment of the City and other Attaching Entities, the City, at Licensee’s cost, will provide Licensee with a detailed, good faith estimate of Make-Ready Work (the “Make-Ready Estimate”) the City believes to be necessary to prepare the City Facilities for Licensee’s Attachment. All actual costs for Make-Ready Work will be performed at the sole cost and expense of Licensee. The City will use its best efforts to provide Licensee with the Make-Ready Estimate within thirty (30) days of Licensee’s application. The Make-Ready Estimate shall include itemized estimates of the cost of each component of the Make-Ready Work. (See Paragraph 1.12 for defined components of Make-Ready Work.) Any reference to costs or expenses borne by Licensee within Paragraphs 7.1 and 7.2 shall include all third-party out of pocket expenses incurred by the City and may also include administrative time incurred by the City or expenses that third-party Attaching Entities are obligated to bear under pre-existing agreements.

7.2.2 After receiving the Make-Ready Estimate, if Licensee still desires to make the Attachment, Licensee may within ninety (90) days of receiving the Make-Ready Estimate elect by written notice to the City any of the following alternatives:

(i) Offer the City the option to perform such Make-Ready Work as called for in the Make-Ready Estimate (the “Option”), and if the City, in its sole and absolute discretion, agrees to perform such Make-Ready Work pursuant to the Option, Licensee will pay to the City fifty percent (50%) of the fees for Make-Ready Work specified by the Make-Ready Estimate (the “Down Payment”). Licensee shall pay an additional twenty-five percent (25%) of the Make-Ready Estimate when the City has completed one-half of the Make-Ready Work (the “Progress Payment”). Licensee shall pay the remaining twenty-five percent (25%) of the Make-Ready Estimate upon the City’s completion of the Make-Ready Work. Notwithstanding this Subparagraph, the City,
at its option, may require advanced payment of the entire Make-Ready Estimate per Paragraph 3.8.

(ii) Licensee or Licensee’s contractors may perform all the Make-Ready Work. The contractors shall be approved by the City to work on or in City Facilities. Approval shall be based upon reasonable and customary criteria employed by the City in the selection of its own contract labor.

(iii) Licensee may retain its own contractors to perform part of the Make-Ready Work and utilize the City to perform part of the Make-Ready Work, but only where the City has, in its sole and absolute discretion, agreed to such Option described in Subparagraph 7.2.2 (i). The parties shall reasonably agree what portion of the Make-Ready Work each party will perform through this joint-build option. In the event Licensee retains contractors to perform part of the Make-Ready Work and utilizes the City to perform part of the Make-Ready Work, Licensee shall adjust the payments described in Subparagraph 7.2.2 (i) to include only the costs of the itemized components of the Make-Ready Estimate to be performed by the City.

7.2.3 If the City, in its sole and absolute discretion, exercises its Option to perform any Make-Ready Work as described in Subparagraph 7.2.2 (i), the City shall use its best efforts to make sure that necessary Make-Ready Work, including the work necessary to rearrange the Attachments and equipment of other Attaching Entities, is completed within sixty (60) days from Licensee’s remittal of the Down Payment. If Make-Ready Work is not completed by the City within the sixty (60) day period, any fees payable by Licensee for Make-Ready Work shall be waived and any Down Payment or Progress Payment in connection with such Make-Ready Work shall be refunded promptly to Licensee, and Licensee may retain its own contractors perform the Make-Ready Work.

If Licensee submits an application that affects existing Attaching Entities, the City will use commercially reasonable efforts to notify the existing Attaching Entities and coordinate the rearrangements of their Attachments. To the extent third-party equipment is affected by Licensee’s application, the City will follow the procedure as described in Paragraphs 7.2.1, 7.2.2 and 7.2.3, but only to the extent such existing Attaching Entities do not elect to perform the rearrangement or are not already obligated to rearrange Attachments and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.

7.3 **Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee’s Attachment, the City will endeavor to include such work in its normal work schedule. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of the City’s normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee’s work before other scheduled work or City service restoration.

7.4 **Licensee’s Installation/Removal/Maintenance Work.**

7.4.1 All of Licensee’s installation, removal and maintenance work shall be performed at Licensee’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 Article 18.

7.4.2 All of Licensee’s installation, removal and maintenance work performed on or within City Facilities or in the vicinity of other City property, either by its employees or contractors, shall be in compliance with all applicable regulations specified in Paragraph 4.1. Licensee
shall assure that any person installing, maintaining, or removing its Attachment(s) is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Specifications required by Article 4.

8. TRANSFERS

8.1 Required Transfers of Licensee’s Attachments. If the City reasonably determines that a transfer of Licensee’s Attachments is necessary, Licensee agrees to allow such transfer or remove the affected Attachment pursuant to Paragraph 12.2, and the City agrees to reasonably cooperate with Licensee to locate a replacement City Facility on which to transfer Licensee’s Attachment. In such instances, the City shall require Licensee to perform such transfer or removal at its own expense within sixty (60) calendar days after receipt of notice from the City. If Licensee fails to transfer its Equipment within said 60-day period, the City shall have the right to transfer Licensee’s Equipment using its personnel and/or contractors. The costs of such transfers shall be apportioned as specified under Article 9. The City shall not be liable for damage to Licensee’s Equipment except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph 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 five (5) business days of the occurrence.

9. MODIFICATIONS AND/OR REPLACEMENTS

9.1 Licensee’s Action Requiring Modification/Replacement. In the event that any City Facility to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional Equipment in accordance with all Applicable Standards, the City will notify Licensee. If the City is willing to allow a modification or replacement of the City Facility to accommodate Licensee’s Attachment, the City will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Facility, including but not limited to replacement of the Facility and rearrangement or transfer of the City’s equipment, as well as the equipment of other Attaching Entities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities’ existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to the City the actual cost of any Make-Ready Work, performed by the City, per Paragraphs 3.9 and 7.2; provided, the City, at its discretion, may require advance payment of the entire cost. Licensee shall also be responsible for obtaining, and furnishing to the City before the commencement of any Make-Ready Work, agreements between Licensee and the other Attaching Entities concerning the relocation or rearrangement of their Attachments and the costs involved.

9.2 Treatment of Multiple Requests for Same Facility. If the City receives Supplement Applications for the same Facility from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodation of both requests is not possible, the City will authorize the earliest complete Supplement Application received. A “complete application” shall be considered to be an application with all required information, conformance with the Code of the City of Leawood – including the Leawood Development Ordinance – and payment of all application fees. If it is possible to accommodate more than one Attachment request through a modification the City will allocate among such licensees the applicable costs associated with such modification or replacement. This Section 9.2 shall not be deemed to otherwise limit the City from using any Facilities in connection with providing its own services or from licensing any Facilities to another person or entity if no application from Licensee is pending or such Facilities are not occupied by Licensee.
9.3 **Allocation of Costs.** The costs for any rearrangement or transfer of Licensee’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 Licensee and/or other Attaching Entity on the following basis:

9.3.1 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/ replacement of the City Facility. Licensee shall be responsible for all costs associated with any necessary modification or relocation of Licensee’s Attachment. Prior to making any such modification or replacement of the City Facility the City shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify, relocate or add to its existing Attachment. Should Licensee so elect, it must seek the City’s written permission per this Agreement. The notification requirement of this Paragraph shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Attachment, Licensee shall bear the total incremental costs incurred by the City in making the space on or within the Facilities accessible to Licensee.

9.3.2 If the modification or replacement of a Facility is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Facilities and for the costs associated with the transfer or rearrangement of any other Attaching Entity’s Communications Equipment as well as those of the City. Licensee shall submit to the City evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to transfer 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 Licensee’s responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity’s Equipment pursuant to this Paragraph. In all events, modification of a City Facility and the manner of such modification shall be first approved in writing by the City.

9.3.3 If the modification or the replacement of a 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 Licensee, 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 transferring Licensee’s Attachment. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee’s Equipment.

9.3.4 If a City Facility must be modified or replaced for other reasons unrelated to the use of the Facility by Attaching Entities (e.g., storm, accident, deterioration), the City shall pay the costs of the modification or replacement of the Facility; provided, however, that Licensee shall 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 Licensee in order to accommodate its Communications Equipment or meet structural standards attendant thereto. In the alternative, Licensee may replace the City’s Facility at Licensee’s cost or the City may replace its Facility with a similar Facility which existed prior to the provision of a substitute by Licensee. Under all such circumstances, Licensee shall be responsible for the costs of rearranging or transferring or repairing or replacing its Attachment.

9.4 **City Not Required to Relocate.** No provision of this Agreement shall be construed to require City to relocate its Attachments or modify/replace its Facilities for the benefit of Licensee, provided, however, any denial by the City for modification of the Facility is based on nondiscriminatory standards of general applicability.
10. ABANDONMENT OR REMOVAL OF CITY FACILITIES

10.1 Notice of Abandonment or Removal of City Facilities. If the City desires at any time to abandon, remove or underground any City Facilities to which Licensee’s Attachments are attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such City Facilities. Notice may be limited to thirty (30) calendar days if the City is required to remove or abandon its City Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether the City is offering Licensee an option to purchase the Facilities. If, following the expiration of the applicable notice period, Licensee has not yet removed and/or transferred all of its Attachments therefrom and has not entered into an agreement to purchase City Facilities pursuant to Paragraph 10.2, the City shall have the right, subject to any applicable laws and regulations, to have Licensee’s Attachment removed and/or transferred from the Facility at Licensee’s expense. The City shall give Licensee fifteen (15) days prior written notice of any such removal or transfer of Licensee’s Equipment.

10.2 Option to Purchase Abandoned Facilities. Should the City desire to abandon any Facility, the City, in its sole discretion, may grant Licensee the option of purchasing such Facility at a rate negotiated with the City. Licensee must notify the City in writing within thirty (30) calendar days of the date of the City’s notice of abandonment that Licensee desires to purchase the abandoned Facility. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Facility within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should the City and Licensee fail to enter into an agreement for Licensee to purchase the Facility prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. The City is under no obligation to sell Licensee the City Facilities that it intends to remove or abandon.

11. REMOVAL OF LICENSEE’S ATTACHMENTS

11.1 Removal on Expiration/Termination. At the expiration or other termination of this License Agreement or individual Supplement(s), Licensee shall remove its Attachment(s) from the affected Facilities at its own expense. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear including replacing the pole with a pole that meets the current City standard pole specifications. If Licensee fails to remove such Equipment within one hundred twenty (120) calendar days of expiration or termination or some greater period as allowed in writing by the City, the City shall have the right to have such Equipment removed at Licensee’s expense, provided that the time period for removal will be extended in the event Licensee encounters delays in obtaining a pole that meets current City standard pole specifications and notifies City in writing of such a delay.

11.2 Licensee Removal. Licensee may, at any time, remove its Attachment(s) from any City Facility, provided it gives the City at least fourteen (14) days prior written notice. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear.

11.3 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 Licensee’s Attachments. In such event, the City will contact Licensee as soon as practicable to provide notice of such removal. Such removal shall be at Licensee’s sole cost and expense, unless the removal was the result of gross negligence or willful misconduct by the City.
12. **TERMINATION OF SUPPLEMENT**

12.1 **Automatic Termination of Supplement.** Any Supplement issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Attachment on public or private property at the Site of the particular Facility covered by the Supplement.

12.1.1 **Surrender of Supplement.** Licensee may terminate a Supplement at any time upon written notice to the City, and remove its Communications Equipment from the affected Facilities, provided, however, that before commencing any such removal Licensee must obtain the City's written approval of Licensee'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 requirements of Article 18. No refund of any fees or charges will be made upon removal. However, license fees shall cease for the Attachment at the time Licensee's Communications Equipment is removed and the City Facilities are properly restored (subject to Paragraph 11.2). If Licensee terminates such Supplement pursuant to the provisions of this Article, but fails to remove its Attachments from City Facilities within one hundred twenty (120) calendar days thereafter, the City shall have the right to remove Licensee’s Attachments at Licensee’s expense.

13. **INSPECTION OF LICENSEE’S ATTACHMENTS**

13.1 **Inspections.** The City may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with Applicable Standards within thirty (30) calendar days of notification. If it is found that Licensee has made an Attachment without a Supplement, Licensee shall pay an Unauthorized Access Penalty Fee as specified in Article 3 in addition to applicable Supplement and Make-Ready Costs. If it is found that five percent (5%) or more of Licensee’s Attachments are either in non-compliance or not permitted, Licensee shall pay its pro-rata share of the costs of the inspection.

13.2 **Notice.** The City will give Licensee 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.

13.3 **No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

13.4 **Attachment Records.** Notwithstanding the above inspection provisions, upon the written request from City, Licensee is obligated to furnish the City on an annual basis an up-to-date map depicting the locations of its Attachments in an electronic format specified by the City.

14. **UNAUTHORIZED OCCUPANCY OR ACCESS**

14.1 **Penalty Fee.** If any of Licensee's Attachments are found occupying any 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 Article 3. In the event Licensee fails to pay such Fee within thirty (30) calendar days of receiving notification thereof, the City has the right to remove such Attachment at Licensee’s expense and without liability, subject to the alternative dispute provisions of Paragraph 22.1.

14.2 **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 Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

15. REPORTING REQUIREMENTS
Concurrently with Licensee’s Annual Attachment Fee payment, Licensee shall report any Attachment Licensee has removed from City Facilities during the relevant reporting period. The report shall identify the Facility from which the Attachment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is terminating a Supplement pursuant to Paragraph 12.2.

16. LIABILITY AND INDEMNIFICATION
16.1 Liability. The City reserves to itself the right to maintain and operate its Facilities in such manner as will best enable it to fulfill its governmental service requirements. Licensee agrees to use City’s Facilities at Licensee’s sole risk. Notwithstanding the foregoing, the City shall exercise reasonable precaution to avoid damaging Licensee’s Attachment(s) and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors.

16.2 Indemnification. Licensee shall defend, indemnify and hold harmless the City and its officials, officers, council members, commissioners, representatives, employees, agents, and contractors (collectively, the "City Indemnitees") against any and all claims, losses, liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by the City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of the City and all other costs and expenses of litigation) arising from any act, omission, failure, negligence or willful misconduct of Licensee, its employees, contractors, subcontractors or agents, in connection with the construction, maintenance, repair, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Attachments ("Covered Claims"), except to the extent the Covered Claims were caused by the sole gross negligence, recklessness, or willful misconduct of any City Indemnitee.

16.3 Procedure for Indemnification.
16.3.1 The City shall give prompt notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against the City, the City shall give the notice to Licensee no later than thirty (30) calendar days after the City receives written notice of the action, suit or proceeding.

16.3.2 The City’s failure to give the required notice will not relieve Licensee from its obligation to indemnify the City unless and only to the extent Licensee is materially prejudiced by such failure.

16.4 Environmental Hazards. Licensee represents and warrants that its use of City Facilities will not generate any Hazardous Substances, that it will not store or dispose on or about City Facilities or transport to City Facilities any hazardous substances and that Licensee’s Attachment(s) 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, Licensee shall be permitted to bring and keep on City Facilities equipment commonly used in the telecommunications 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. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the City and its respective officials, officers, board members, council members, commissioners, representatives, 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 and expenses of litigation) arising from or due to the release, threatened release, or storage of any Hazardous Substances on, under or adjacent to City Facilities attributable to Licensee’s use of City Facilities, except to the extent of the City’s gross negligence or willful misconduct in connection with such liability. Licensor acknowledges that Licensee shall not be responsible for any contamination at City Facilities to the extent caused in whole or in part by Licensor or a third party.

16.5 **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. No indemnification provision contained in this Agreement under which Licensee indemnifies the City shall be construed in any way to limit any other indemnification provision contained in this Agreement. Nothing herein shall be construed to waive or limit Licensor’s immunities, limitation of liability, or defenses under the Kansas Tort Claim Act or other law.

16.6 **Liens.** Licensee shall pay all taxes and assessments lawfully levied on Licensee’s Attachments and any personal, real property or other taxes, assessments, fees or charges levied on City Structures solely because of their use by Licensee. In no event shall Licensee permit any lien to be filed or to exist upon any City Facilities or other City property as a result of any claim against Licensee. In the event any lien is filed upon any City Facility as a result of any claim against Licensee, Licensee agrees, within 120 days of the filing of such lien, to cause the same to be released of record by payment or posting of a bond in a form and issued by a surety acceptable to the City; provided, however, that Licensee shall have the right to contest in good faith said mechanics’ liens, 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.

17. **DUTIES, RESPONSIBILITIES, AND EXCUSLPATION**

17.1 **Duty to Inspect.** Licensee acknowledges and agrees that the City does not warrant the condition or safety of City Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect City Facilities and/or premises surrounding the Facilities, prior to commencing any work on City Facilities or entering the premises surrounding such Facilities.

17.2 **Knowledge of Work Conditions.** By executing this Agreement, Licensee 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 Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the Facilities, difficulties and restrictions attending the execution of such work.

17.3 **DISCLAIMER.** THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE CITY’S 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.
17.4 **Duty of Competent Supervision and Performance.** Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of the City and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee 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.

18. **INSURANCE**

18.1 **Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

18.1.1 **Workers’ Compensation and Employers’ Liability Insurance.** Statutory workers’ compensation benefits in compliance with the statutory requirements of the State of Kansas and employers’ liability insurance with a limit of $1,000,000 each accident/disease/policy limit. This policy shall include a waiver of subrogation in favor of the City. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

18.1.2 **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal and advertising injury, blanket contractual coverage and independent contractor’s coverage with Limits of liability of $5,000,000 per occurrence for bodily injury and property damage and $5,000,000 general aggregate, and $5,000,000 products/completed operations aggregate.

18.1.3 **Commercial Automobile Liability Insurance.** Commercial automobile liability covering all owned, hired and non-owned vehicles in the amount of $5,000,000 combined single limit each accident for bodily injury and property damage.

18.1.4 **Umbrella Liability Insurance.** Coverage is to be in excess of the employers’ liability, commercial general liability, and automobile liability insurance required above with limits of $1,000,000 each occurrence, $1,000,000 aggregate.

18.1.5 **Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as “extended coverage” insurance or self-insure such exposures.

18.2 **Qualification; Priority; Contractors’ Coverage.** The insurer must be authorized to do business under the laws of the State of Kansas and have an “A” or better rating in Best’s Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry substantially the same coverage with substantially the same limits as required of Licensee.

18.3 **Certificate of Insurance; Other Requirements.** Upon the execution of this Agreement and within ten (10) days of each insurance policy expiration date during the term of this Agreement, Licensee will furnish the City with a certificate of insurance (“Certificate”). The Certificate shall reference this Agreement and workers’ compensation and property insurance waivers of subrogation required by this Agreement. Upon receipt of notice from its insurer, the Licensee shall provide the City thirty (30) calendar days advance written notice of cancellation of insurance during the term of this Agreement. The City, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, “Additional Insureds”) shall be
included as an Additional Insured as their respective interests may appear under this Agreement under all of the policies, except workers’ compensation and employer’s liability, which shall be so stated on the Certificate of Insurance. All policies, other than workers’ compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed $100,000 or other greater amount as allowed by the City in writing. Licensee shall defend, indemnify and hold harmless the City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the City upon request.

18.4 **Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual written consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee’s exposure to risk.

18.5 **Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with the City except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to the City’s employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Licensee’s contractors or the contractors’ employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

18.6 **Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

19. **AUTHORIZATION 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 City Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Supplements issued pursuant to this Agreement.

20. **ASSIGNMENT**

20.1 **Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. It shall be unreasonable for the City to withhold consent without cause to an assignment of all of Licensee’s interests in this Agreement to its Affiliate. Notwithstanding, Licensee may, upon written notice to the City, assign its rights and obligations under this Agreement to (i) any affiliate of Licensee; (ii) any successor in interest to Licensee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of Licensee’s assets used to provide Communications Services to residents and businesses located in the City of Leawood, Kansas. An “affiliate” means any entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and “control” shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.
20.2 **Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish the City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the express written consent to the release of Licensee by the City.

20.3 **Sub-licensing.** Without the City’s prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to allowing third parties to place Attachments on or within City Facilities. Any such action shall constitute a material breach of this Agreement. Notwithstanding the foregoing, and subject to the reasonable approval of the City, the installation and use of internal space within Licensee’s Attachments for third party wireless providers utilizing Licensee’s Communications Services is not subject to this Paragraph 20.3. Furthermore, the use of Licensee’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 Paragraph 20.3.

21. **FAILURE TO ENFORCE**

Failure of the City or Licensee 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.

22. **ISSUE RESOLUTION PROCESS**

22.1 **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 negotiating in good faith for a period of at least thirty (30) days, 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.

22.2 **Confidential Settlement.** Unless the parties otherwise agree in writing, and to the extent permitted under applicable law, communication between the parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery, and inadmissible in litigation.

22.3 **Business As Usual.** Unless an emergency condition exists, during any dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement.

23. **TERMINATION OF AGREEMENT**

23.1 Notwithstanding the City’s rights under Article 12, the City shall have the right, pursuant to the procedure set out in Paragraph 23, to terminate this entire Agreement, or any Supplement executed hereunder, whenever Licensee is in default of any material term or condition of this Agreement beyond applicable cure periods, including but not limited to the following circumstances:

23.1.1 Construction, operation or maintenance of Licensee’s Attachment(s) in violation of law or in aid of any unlawful act or undertaking; or
23.1.2 Construction, operation or maintenance of Licensee’s Attachment(s) after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority or violation of any other agreement with the City; or

23.1.3 Construction, operation or maintenance of Licensee’s Attachment(s) without the insurance coverage required under Article 18.

23.1.4 The expiration, termination or revocation of Licensee’s franchise or any other required regulatory authorization (as required by Article 5); provided, Licensee shall have a reasonable period of time to obtain the reinstatement of any such authorization.

23.2 The City will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph 23.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to the City that the cited condition(s) has (have) ceased or been corrected, or are in the process of being corrected.

23.3 If the parties are unable to resolve the dispute and Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, the City may immediately terminate this Agreement or any Supplement(s) granted hereunder. In the event of termination of this Agreement or any of Licensee’s rights, privileges or authorizations hereunder, the City may seek removal of Licensee’s Attachments pursuant to the terms of Article 11, with respect to specific Facilities or from the City’s entire system. In such instance, Licensee shall remain liable for and pay all fees and charges accrued pursuant to the terms of this Agreement to the City until Licensee’s Attachments are actually removed.

23.4 Licensee will have the right terminate this Agreement if the City is in default of any material term or condition of this Agreement. In such event, Licensee will notify the City in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any such default. The City shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to Licensee that the cited condition(s) has (have) ceased or been corrected, or are in the process of being corrected. If the parties are unable to resolve the dispute and the City fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, Licensee may immediately terminate this Agreement or any Supplement(s) granted hereunder. In the event of termination of this Agreement or any Supplement(s), Licensee may remove its Attachments pursuant to the terms of Article 11. In such instance, Licensee shall remain liable for and pay all fees and charges accrued pursuant to the terms of this Agreement to the City until Licensee’s Attachments are actually removed.

24. TERM OF AGREEMENT

24.1 This Agreement shall be effective for an initial term of ten (10) years term beginning on the Effective Date of this Agreement. Thereafter, this Agreement will automatically renew for up to two (2) additional one (1) year terms unless either party notifies the other party of its intent to terminate the Agreement at least ninety (90) days before the termination of the then current term. The additional term(s) shall be deemed a continuation of this Agreement and not as a new agreement. Notwithstanding the above-stated term of Agreement, this Agreement is conditioned upon Licensee maintaining a Contract Franchise with the City, and this Agreement shall terminate upon the termination of Licensee’s Contract Franchise. Upon expiration or termination of said Contract Franchise, Licensee shall have a reasonable time to apply for and/or reinstate its Contract Franchise with the City.
24.2 Upon written request of either party, this Agreement shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either party, including but not limited to the scope of the Agreement granted to Licensee or the compensation to be received by the City hereunder.

24.3 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.

24.4 Even after the termination of this Agreement, Licensee’s responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee’s Attachments as provided for in Article 16.

25. **AMENDING AGREEMENT**

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.

26. **NOTICES**

26.1 Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

The City:  
City of Leawood  
Attn: City Clerk  
4800 Town Center Drive  
Leawood, Kansas 66211  
(913) 663-9100

Grantee:  
Verizon Wireless (VAW) LLC  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attn: Network Real Estate

With a copy to:  
City of Leawood  
Attn: City Attorney  
4205 Town Center Drive  
Leawood, Kansas 66211

or to such other address as either party, from time to time, may give the other party in writing.

26.2 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 transfer or Facility modifications.

26.3 Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where the City can contact Licensee to report damage to Licensee’s facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the City’s concerns and requests. Failure to maintain an emergency
contact shall eliminate the City’s liability to Licensee for any actions that the City deems reasonably necessary given the specific circumstances.

27. ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, whether written or oral, between the City and Licensee for placement and maintenance of Licensee’s Attachments on or within City Facilities within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

28. SEVERABILITY

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

29. 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.

30. INCORPORATION OF RECITALS

The recitals stated above are incorporated into and constitute part of this Agreement.

31. PERFORMANCE BOND

On execution of this Agreement, Licensee shall provide to the City a performance bond or letter of credit in an amount of Fifty Thousand Dollars ($50,000.00). The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Licensee’s performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties, fees and charges due to the City which arise by reason of the construction, operation, maintenance or removal of Licensee’s Attachments on or about City Facilities.

32. FORCE MAJEURE

32.1 In the event that either the City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible.

32.2 The City shall not impose any charges on Licensee stemming solely from Licensee’s inability to perform required acts during a period of unavoidable delay as described in Paragraph 32.1, provided that Licensee present the City with a written description of such force majeure within a reasonable time after occurrence of the event or cause relied on.
33. 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.

34. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

35. SURVIVAL

Any termination of this Agreement shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

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

CITY OF LEAWOOD, KANSAS

By: __________________________
    Peggy J. Dunn, Mayor

ATTEST:

Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

________________________
Andrew K. Hall, Assistant City Attorney

VERIZON WIRELESS (VW) LLC,
d/b/a Verizon Wireless

By: __________________________
    __________________________
Name: Steve LeVar
Title: Director Network Field Engineering
Exhibit A
(Form of Supplement)

Supplement No. _____
To Master License Agreement

THIS SUPPLEMENT TO MASTER LICENSE AGREEMENT FOR ATTACHMENT TO CITY FACILITIES ("Supplement"), is made this _____ day of ______, 20__ (the "Effective Date") by and between the CITY OF LEAWOOD, KANSAS (the "City"), and VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company authorized to do business in Kansas d/b/a Verizon Wireless ("Licensee") (collectively referred to as the "Parties").

1. Master License Agreement. This Supplement is a Supplement as referenced in that certain Master License Agreement for Attachments to City Facilities between City and Licensee dated _____, 201__, (the "Master License Agreement"). All of the terms and conditions of the Master License Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Master License Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Master License Agreement and this Supplement, the terms of the Master License Agreement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Master License Agreement unless otherwise indicated herein.

2. Legal Description and Site Plan for Attachment, City hereby licenses to Licensee certain spaces on and within City’s Facilities located at the Site described below:

Verizon Site Number: ______________________

Property Address: _________________________

City Pole Address: _________________________

Electric Service Address: ___________________

Site Plan: The Attachments of Licensee’s 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 set forth in Article 24 of the Master License Agreement.

4. Consideration. As prescribed by Article 3 of the Master License Agreement, the Annual Attachment Fee for use of the City’s Facilities shall commence on the Effective Date of this Supplement in the amount of $270.

5. Franchise Fee. Pursuant to Licensee’s contract Franchise with the City, commencing on the Effective Date of this Supplement, Licensee shall pay to Licensor an annual Franchise Fee in the amount of $25.

6. Site Specific Terms. [if applicable]
IN WITNESS WHEREOF, the City and Licensee have executed this Supplement effective the
day and year first above written.

CITY OF LEAWOOD, KANSAS

By: ________________________________
Brian Scovill, City Engineer

VERIZON WIRELESS (VAW) LLC
D/B/A VERIZON WIRELESS

By: ________________________________
Name: ______________________________
Title: ______________________________
Attachment 1

(Site Plan of Facilities and Attachments)