



**CITY OF WESTWOOD**  
**City Council Meeting**  
**December 10, 2020 - 7:00 PM**

Note: In an effort to mitigate the spread of COVID-19, this meeting will be held remotely via Zoom. As a result of the remote-holding of the City Council meeting, there will not be open Comment on Non-Agenda Items. Any comments for the City Council on non-agenda items must be submitted in writing to [abby.schneweis@westwoodks.org](mailto:abby.schneweis@westwoodks.org) prior to 5:00 PM on Thursday, December 10, 2020, to be shared at the meeting. Comments must be limited to five (5) minutes in length, as read.

Access Online

<https://us02web.zoom.us/j/89848079226>

or

Access by Phone

(312) 626-6799

Webinar ID: 898 4807 9226

**Agenda Items**

- I. Call to Order – Mayor David E. Waters
- II. Comment on Non-Agenda Items
- III. Approval of Meeting Minutes
  - A. [November 12, 2020 City Council Meeting](#)
- IV. [City Treasurer's Report](#)
  - A. November Treasurer's Report
  - B. November Appropriations Ordinance No. 721
- V. City Attorney Report – City Attorney Ryan Denk
  - A. [Consider Government Enforcement Services Agreement for Johnson County Local Health Officer Orders and County Board Health Orders](#)
  - B. [Consider Resolution No. 88-2020 establishing fees for the location of small cell facilities in the City's right-of-way](#)
  - C. [Consider Small Cell Facility Deployment and Master Right of Way Agreement with AT&T](#)
- VI. [Administrative Report – City Clerk Leslie Herring](#)
  - A. [Consider request for fence variance: 4942 Booth Ave.](#)
  - B. [Informational Item: League of Kansas Municipalities 2021 Statement of Municipal Policy](#)
- VII. [Police/Court Report – Chief Greg O'Halloran](#)
- VIII. [Public Works Report – Public Works Director John Sullivan](#)

- A. [Consider 2021 Johnson County CARS Funding Agreement for improvements on State Line](#)

- IX. Committee Reports

- A. Administration & Compensation Committee Report
  - B. Business & Community Affairs Committee Report
  - C. Public Safety Committee Report
  - D. Public Works Committee Report
  - E. Parks & Recreation Committee Report
  - F. Mayor's Report

- X. Adjournment

**City of Westwood, Kansas  
City Council Meeting  
4700 Rainbow Boulevard  
November 12, 2020 – 7:00 p.m.  
Held Remotely Via Zoom**

Council Present: David E. Waters, Mayor  
Jeff Harris, Council President  
Jason Hannaman, Councilmember  
Laura Steele, Councilmember  
Holly Wimer, Councilmember

Council Absent: Lisa Cummins, Councilmember

Staff Present: Leslie Herring, CAO/City Clerk  
Greg O'Halloran, Chief of Police  
John Sullivan, Director of Public Works  
Michelle Ryan, City Treasurer  
Ryan Denk, City Attorney

**Call to Order**

Mayor David E. Waters called the meeting to order at 7:00 p.m. on November 12, 2020. The City Clerk called the roll. A quorum was present.

**Planning Commission Appointment**

Westwood Planning Commissioner Cindy Carlson notified the mayor of her relocation out of Westwood in August 2020. Following an open call for candidates to fill her seat, the mayor received letters of interest from four (4) residents. Following an interview process where Mayor Waters and Planning Commission Chair Rob Junk met virtually with the interested individuals, Samantha Kaiser, 2417 W 49<sup>th</sup> Terrace, was identified as the candidate to be recommended for approval to the Governing Body pursuant to Section 1.4.2 of the Westwood zoning ordinance.

Motion by Councilmember Steele to appoint Samantha Kaiser to serve on the Westwood Planning Commission for a term of three years and for City Clerk Leslie Herring to administer the oath of office to Ms. Kaiser. Second by Councilmember Wimer. Motion carried by a 4-0 voice vote.

**Appointment of City Prosecutor**

The City Prosecutor's position was vacated through retirement on August 31, 2020 and has been filled on a pro bono basis since. The City has considered its options for filling the vacant position. After some consideration, Renee Gurney has been recommended to return to the role of City Prosecutor for the City of Westwood. This recommendation takes into consideration her more than two decades of experience as a presiding municipal court judge in a nearby jurisdiction and her previous service to the citizens of Westwood. Such appointment is recommended pursuant to Westwood City Code Section 1-316.

Motion by Councilmember Harris to appoint Renee Gurney to serve as City Prosecutor for an indefinite term and for City Clerk Leslie Herring to administer the oath of office to Ms. Gurney. Second by Councilmember Steele. Motion passed by a 4-0 voice vote.

#### **Comment on Non-Agenda Items**

Any comments for the Governing Body on non-agenda items were to be submitted to Ms. Schneweis by 5:00 pm on Thursday, November 12, 2020 to be shared during the meeting. Comments were to be limited to five minutes in length, as read.

No comments were received.

#### **Approval of October 8, 2020 City Council Meeting and October 29, 2020 City Council Work Session Minutes**

Minutes from the October 8, 2020 Council Meeting and October 29, 2020 City Council Work Session were included in the agenda packet. Motion by Councilmember Hannaman to approve minutes documents as submitted. Second by Councilmember Wimer. Motion carried by a 4-0 voice vote.

#### **Treasurer's Report**

Mrs. Ryan provided a review of the October 2020 Treasurer's report and offered to answer questions.

Motion by Councilmember Hannaman to approve Appropriations Ordinance No. 720 for October 2020 as submitted. Second by Councilmember Harris. Motion carried by a 4-0 voice vote.

#### **City Attorney Report**

Mr. Denk had nothing to report.

#### **Administrative Report**

Mrs. Herring provided a review of the October 2020 Administrative report and offered to answer questions.

#### **Consider Approval of 2021 Human Service Fund Recommendation Report – UCS of Johnson County**

The United Community Services (UCS) Board of Directors has prepared its 2021 Human Service Fund allocation recommendations. The report enclosed is submitted for Westwood's approval. UCS has expressed sincere gratitude for the funding it receives from the participating jurisdictions which resulted in total funding of approximately \$395,376. During 2021, allocations will benefit Johnson County residents who will be served through 14 programs recommended for grants. Thanks to the support of cities, in 2019, programs receiving Human Service Fund grants served approximately 60,000 Johnson County residents.

The Human Service Fund agreement gives participating jurisdictions the authority and responsibility for approving or modifying UCS' recommendations for Human Service Fund grants. UCS requests that the Governing Body approve the recommendations.

The City of Westwood has been a consistent contributor to the Human Service Fund and is requested by UCS to contribute \$1,500 in 2021, pursuant to Appendix A of the 2021 Human Service Fund Recommendations Report. This amount is consistent with the amount contributed in 2020 and is budgeted in the 2021 adopted budget.



UCS Director of Resource Allocation Christina Ashie Guidry presented this item and offered to answer any questions.

Motion by Councilmember Steele to approve the 2021 Human Service Fund Recommendations Report as presented. Second by Councilmember Wimer. Motion carried by a 4-0 voice vote.

**Consider Fence Variance Request – Joint Application of 2500, 2510, 2516 W 51<sup>st</sup> Terrace**

On November 4, 2020, City staff received four (4) separate applications for a fence permit from fence contractor Slagle Fence. The applications are for the following individual residential properties:

- a. 2500 W. 51st Terrace, Joe O'Reilly;
- b. 2510 W. 51st Terrace, Justin Bridges;
- c. 2516 W. 51st Terrace, Justin Bacon; and
- d. 2507 W. 51st Street, Cameron Mecke.

Joe O'Reilly and Justin Bridges were in attendance to answer any questions from the Governing Body.

As the fence installation is being coordinated amongst these four neighboring property owners, the applications and work are tied together. Three (3) of the four properties require a variance if they are to be installed in the way proposed by the applicants.

- a. 2500 W. 51st Ter. – Variance requested for height and location (west side of house only).
- b. 2510 W. 51st Ter. – Variance requested for height and location (both east and west side of house).
- c. 2516 W. 51st Ter. – Variance requested for height and location (east side of house only).
- d. 2507 W. 51st St. – No variance required.

The proposed 5-foot tall wooden fencing will be both replacement and new fence sections on these subject properties. And is designed to be of consistent height and material along the boundary lines of all four adjoined properties.

The Westwood fence zoning regulations allow fences only in rear yards to be greater than 4' in height (without a variance from the Governing Body). Further, the zoning regulations do not permit rear yard fences to be closer to the front property line than the rear line of the primary structure.

2500 W. 51st Ter. – The [new] west fence section – fronting W. 51st Ter. – proposed to attach to the home and to the proposed new fence along the north-south property line, is 5' in height and also is closer to the front property line than the rear corner of the primary structure, but not closer to the front property line than where the screened porch/sunroom attaches to the rear wall of the house.

2510 W. 51st Ter. – The [new] west and east fence sections – fronting W. 51st Ter. – proposed to attach to the home and to the proposed new fence on either side of the property along the north-south property line, is 5' in height and also is closer to the front property line than the rear corner of the primary structure, but not closer to the front property line than where the screened porch attaches to the rear wall of the house on the east side, and where there is an existing deck on the west side.

2516 W. 51st Ter. – The [replacement] east fence section – fronting W. 51st Ter. – proposed to attach to the home and to the proposed new fence along the north-south property line, is 5' in height and also is closer to the front property line than the rear corner of the primary structure .

“Rear yard” is defined in Section 4.3.9.B of the Westwood zoning regulations as being behind the rear corner of the primary structure; however, primary structure is not defined in the zoning regulations. Staff research concludes that, typically, a screened porch or deck is considered part of the primary structure for purposes of codes administration. Staff also supports a definition of primary structure to include screened porches, decks, sunrooms, etc.

That notwithstanding, staff does not find any grounds for denial of any of these three variance requests, as they appear to conform to the variance criteria laid out above.

In 2018 resident Justin Bridges, 2510 W. 51st Ter., worked with the City to record a stormwater easement to accurately reflect the location of underground stormwater infrastructure existing on the property. Public Works Director John Sullivan has/will work with Mr. Bridges to ensure the fence is properly placed as to not interfere with the utility.

Motion by Councilmember Harris to approve the requested fence variance at 2500 W. 51st Terrace to allow a 5' foot high wooden fence nearer to the front property line than the rear corner of the primary structure. Second by Councilmember Wimer. Motion carried by a 4-0 voice vote.

Motion by Councilmember Wimer to approve the requested fence variance at 2510 W. 51st Terrace to allow a 5' foot high wooden fence nearer to the front property line than the rear corner of the primary structure. .Second by Councilmember Hannaman. Motion carried by a 4-0 voice vote.

Motion by Councilmember Steele to approve the requested fence variance at 2516 W. 51st Terrace to allow a 5' foot high wooden fence nearer to the front property line than the rear corner of the primary structure. Second by Councilmember Harris. Motion carried by a 4-0 voice vote.

#### **Receive Report from Planning Commission reviewing certain sections of Westwood Zoning Ordinance Article 4 regarding Residential Zoning Districts**

In response to questions and concerns from residents regarding new builds within the city of Westwood, the Planning Commission Chairman convened a sub-committee comprised of Planning Commissioners, a local resident, and City Staff. The Sub-committee held two meetings to review and discuss a few of the current new builds in Westwood for compliance with the existing city zoning requirements, determine if the new builds were achieving the intended results, and propose text amendments if needed. The goal is to provide homeowners, builders, and City Staff with clear, well-defined instructions to review and achieve the desired zoning results.

Planning Commission Chair Robert Junk provided an overview of the sub committee's findings, a summary was also included in the agenda packet.

#### **Amendment to Contract for Building Official Services – Westwood Hills**

A review of the existing February 9, 2015 Contract for Building Official Services between the cities of Westwood and Westwood Hills was prompted in the absence of full-time building official Eddie McNeil, who is still currently out on leave, and the resulting retention of IBTS and the use of Roeland Park's building official for inspection and plan review services. As the services provided by Roeland Park and

IBTS are higher priced than the flat fee agreed upon by and between the cities of Westwood Hills and Westwood, City staff has worked with Westwood Hills to identify an agreeable resolution for now and to also fit future needs and circumstances.

Motion by Councilmember Harris to authorize the mayor to amend the February 9, 2015 contract for Building Official Services between the cities of Westwood and Westwood Hills to provide for increased cost of services. Second by Councilmember Wimer. Motion carried by a 4-0 voice vote.

**Amendment to Contract for Codes Enforcement Services – Rental Property Inspection – Westwood Hills**

A review of the existing March 10, 2016 Contract for Codes Enforcement Services – Rental Property Inspections between the cities of Westwood and Westwood Hills was prompted in the absence of full-time building official/Codes Administrator Eddie McNeil, who is still currently out on leave, and the resulting recommended amendment to the Contract for Building Official Services.

Motion by Councilmember Harris to authorize the mayor to amend the March 10, 2016 Contract for Codes Enforcement Services – Rental Property Inspections between the cities of Westwood and Westwood Hills to provide for increased cost of services. Second by Councilmember Steele. Motion carried by a 4-0 voice vote.

**Amendment to Contract for Building Official Services – Mission Woods**

A review of the existing November 30, 2001 Contract for building official and codes services between the cities of Westwood and Mission Woods was prompted in the absence of full-time building official Eddie McNeil, who is still currently out on leave, and the resulting retention of IBTS and the use of Roeland Park's building official for inspection and plan review services. As the services provided by Roeland Park and IBTS are higher priced than the flat fee agreed upon by and between the cities of Mission Woods and Westwood, City staff has worked with Mission Woods to identify an agreeable resolution for now and to also fit future needs and circumstances.

**Staff Comments:**

City staff has requested the contract for building official services be amended to reflect an increase in the flat rate of \$35/hour to \$40/hour when those services are provided by Westwood staff. Additionally, staff has requested the addition of language in the contract to allow the actual cost of services incurred by the City of Westwood to be passed on to Mission Woods. After conversation with Mission Woods Mayor Darrell Franklin, these adjustments to the contract have been verbally agreed to.

Motion by Councilmember Harris to authorize the mayor to amend the November 30, 2001 contract between the cities of Westwood and Mission Woods to provide for increased cost of building official and codes enforcement services with the subsequent change to add the language "at Westwood's cost". Second by Councilmember Wimer. Motion carried by a 4-0 voice vote.

**Resolution No 86-2020 Declaring Indigenous Peoples' Day**

Following a request by an interested Westwood resident, recommendation was made that the City consider declaring the second Monday in October Indigenous Peoples Day in the City of Westwood. Staff has prepared a resolution intended to take effect beginning on October 11, 2021.

Motion by Councilmember Steele to approve Resolution No. 86-2020 declaring that the second Monday in October will be known as Indigenous Peoples Day in the City of Westwood. Second by Councilmember Wimer. Motion carried by a 4-0 voice vote.

### **Public Safety Report**

Chief O'Halloran referred to the October 2020 Public Safety report and offered to answer questions.

### **Consider Resolution No. 87-2020 adopting the Kansas Homeland Security Region L Hazard Mitigation Plan**

Hazard mitigation planning is the process through which hazards that threaten communities are identified, impacts of those hazards are determined, mitigation goals and strategies are determined, and actions are prioritized and implemented. The Disaster Mitigation Act of 2000 requires all political entities in the United States to have an approved Hazard Mitigation Plan in order to be eligible to receive hazard mitigation funds following a disaster - should funding become available through FEMA or other resources.

The Multi-Jurisdictional Hazard Mitigation Plan for Johnson County documents the County's hazard mitigation planning process and identifies relevant hazards, vulnerabilities, and strategies that Johnson County and participating jurisdictions can use to decrease vulnerability and increase resiliency and sustainability. Over the course of 2018 & 2019, Johnson County worked with local partners, Wyandotte County, Leavenworth County, and Kansas Division of Emergency Management to develop the Region L Multi-Jurisdictional Hazard Mitigation Plan. The regional mitigation plan was approved by FEMA on October 3rd, 2019 and was formally adopted via Resolution No. 059-19 by the Johnson County Board of County Commissioners on November 7th, 2019.

Motion by Councilmember Hannaman to approve Resolution No. 87-2020 adopting the Kansas Homeland Security Region L Hazard Mitigation Plan. Second by Councilmember Wimer. Motion carried by a 4-0 voice vote.

### **Public Works Report**

Mr. Sullivan referred to the October 2020 Public Works report and offered to answer any questions.

### **Consider professional services agreement with Uhl Engineering for design services and bid documents for the 2021 mill & overlay program**

The City of Westwood has requested from Uhl Engineering an agreement to perform the following scope of services:

1. Provide Design Engineering and Bid Documents for W. 47<sup>th</sup> Terrace and W. 48<sup>th</sup> Street between State Line Road and Rainbow Boulevard to include the alleys. This will be a joint effort with Westwood Hills on the alley between W. 48<sup>th</sup> Street and W. 48<sup>th</sup> Terrace.
2. Provide Design Engineering, Bid Documents and Coordination for the CARS Project on State Line Road. This will be a joint project with Kansas City, MO and Johnson County.

Motion by Councilmember Steele to authorize the mayor to execute the professional services agreement for 2021 mill & overlay streets work with Uhl Engineering, Inc. in an amount not to exceed \$63,698.00. Second by Councilmember Hannaman. Motion carried by a 4-0 voice vote.

### **Committee Reports**

**a. Administration & Compensation Committee**

Councilmember Hannaman noted that staff and the team at Adams, Brown, Beran & Ball are continuing implementation of the new accounting system. The Committee is working with Mrs. Ryan to prepare for year end 2020.

**b. Business & Community Affairs Committee**

Councilmember Steele had nothing additional to report.

**c. Public Safety Committee**

Councilmember Harris noted and provided a brief review of the committee meeting on October 13th.

**d. Public Works Committee**

Councilmember Steele noted and provided a brief review of the committee meeting on October 27<sup>th</sup>.

**e. Parks & Recreation Committee**

Councilmember Wimer noted the committee met on November 11<sup>th</sup>. The committee decided to hold a parade in lieu of a Mayor's Holiday Tree Lighting Ceremony to encourage social distancing.

**Mayor's Report**

Mayor Waters noted he issued a proclamation to close City Hall to the public through Monday, November 16<sup>th</sup> due to a possible COVID-19 exposure and employee testing.

Mayor Waters noted that on October 16<sup>th</sup> he spoke to the Westwood View 3<sup>rd</sup> graders about local government and serving as mayor. Mayor Waters also spoke with Westwood View 4<sup>th</sup> graders on October 29<sup>th</sup> about voting.

Mayor Waters provided a review of the virtual Westwood business luncheon held on October 20<sup>th</sup>.

Mayor Waters noted that Johnson County had a 75.4% turnout during the November 3, 2020 General Election.

**Adjournment**

Motion by Councilmember Harris to adjourn the meeting. Second by Councilmember Hannaman. Motion carried by a 4-0 voice vote. The meeting adjourned at 9:01 pm.

APPROVED: \_\_\_\_\_  
David E. Waters, Mayor

ATTEST: \_\_\_\_\_  
Leslie Herring, City Clerk

**City of Westwood  
Treasurer's Report  
11/30/2020**

1. Balance Sheet by Fund – shows overall cash balances for the City
  - a. Debt service fund – was negative in the prior period and that has been resolved. There were additional bond costs incorrectly classified to the debt service fund instead of capital improvements fund when the GO Bond issuance was completed.
  - b. Ending unencumbered cash through 11/30/2020 is \$2,310,415.52. To compare that to prior year Unencumbered cash at 12.31.19 was at \$1,910,729. Cash remains up through 11 months from the prior year.
2. Cash Flow – shows beginning cash by fund and associated revenues and expenditures for each fund in a more summarized format.
  - a. Revenue is showing as a decrease through this month by about \$20K. The November sales tax payment was not deposited until December 1<sup>st</sup> totaling \$67K creating a timing difference in revenue received. Had this been received in November receipts would be up overall by \$47K.
3. Statement of Operations – General Fund
  - a. Overall Revenue is holding steady through November. Overall revenue reflects a decrease of \$19K through this period compared to prior year. \$2,413,242 through 10.31.20, \$2,433,100 through 10.31.19.
    - i. The November sales tax revenue was deposited on 12/1 totaling \$67K.
    - ii. City and County sales tax revenue continues to be strong through November.
    - iii. There was a large permit received in November with that revenue line up about \$68K.
  - b. Overall Expenditures are down about \$107K from prior year once taking out the prior year bond project costs of \$2.68M that were later reclassified to a different fund.
    - i. General Overhead total expenditures to date of \$429,285, Prior year at \$435,405 which is a decrease of \$6K.
    - ii. Administrative expenditures in current year are \$277,040 up from prior year of \$260,580 by about \$16K. This is solely due to an increase in computer expenses that aligns with an increase in the budget for that line item.
    - iii. Public Works expenditures in current year are \$410,555 decreased from \$490,120 in the prior year, about a \$80K decrease.
    - iv. Police expenditures in the current year are \$960,285 down from prior year of \$976,171 for a decrease of \$16K.
    - v. Parks and Rec expenditures in the current year are \$27,987 down from \$50,275 in the prior year for a \$22K decrease.
  - c. Net Receipts Over (Under) Expenditures in the General Fund with the Bond Project costs removed show current year at \$308,088.52 compared to \$220,547.05 in the prior year. Revenue is steady and expenditures have remained lower than prior year.
  - d. Still well under budget authority of \$2,939,534 for the year, total expenditures of \$2,105,153 through November with \$197,076 total expenses for this month. We will continue to monitor this as we near year end.
4. Other Funds – Current Month and Year to Date
  - a. These funds seem to have normal activity of collections and expenditures.
  - b. As part of our review of prior year transactions we identified several reclassification entries for expenditures paid out of the incorrect fund. These entries were done in November to provide a clearer picture of ending fund balance and expenditures chargeable to these funds. One entry was to correct bond costs paid out of the Debt service fund that should have been in the capital improvement fund, this corrected the negative fund balance that was shown in the prior period.
  - c. There were also expenditures reclassified from Capital Improvement fund to the Special Highway fund that were qualified expenditures originally misclassified.
5. Year End Transfers
  - a. I have included a summary of budgeted transfers for year end. We expect to make these unless the transfer has negative budget consequences.

I am happy to answer any questions and stand for any comments at the meeting or upon request.

Michelle Ryan, City of Westwood Treasurer



**City of Westwood, Kansas**  
**Balance Sheet by Fund**  
As of November 30, 2020

|   | General Fund<br>11/30/2020 | Capital<br>Improvements<br>Fund<br>11/30/2020 | Equipment<br>Reserve Fund<br>11/30/2020 | Stormwater Fund<br>11/30/2020 | Special Highway<br>Fund<br>11/30/2020 | Woodside<br>TIF/CID Fund<br>11/30/2020 | Debt Service<br>Fund<br>11/30/2020 | All Funds<br>11/30/2020 |
|---|----------------------------|---|---|-------------------------------|---------------------------------------|--|------------------------------------|-------------------------|
| <b>Assets</b>                             |                            |   |   |                               |                                       |  |                                    |                         |
| Current Assets                            |                            |   |   |                               |                                       |  |                                    |                         |
| Cash In Bank                              | 976,005.14                 | 534,986.20                                    | 71,432.03                               | 373,491.24                    | 56,119.53                             | 276,762.50                             | 20,984.85                          | 2,309,781.49            |
| Cash In Bank - Bond Fund                  | 34,937.99                  | 0.00  | 0.00                                    | 0.00                          | 0.00                                  | 0.00                                   | 0.00                               | 34,937.99               |
| Cash In Bank - Woodside Village Acct      | 9.35                       | 0.00  | 0.00                                    | 0.00                          | 0.00                                  | 0.00                                   | 0.00                               | 9.35                    |
| PayPal - City Account                     | 23.97                      | 0.00  | 0.00                                    | 0.00                          | 0.00                                  | 0.00                                   | 0.00                               | 23.97                   |
| Bill.com Money Out Clearing               | 191.90                     | 0.00  | 0.00                                    | 0.00                          | 0.00                                  | 0.00                                   | 0.00                               | 191.90                  |
| Total Current Assets                      | 1,011,168.35               | 534,986.20                                    | 71,432.03                               | 373,491.24                    | 56,119.53                             | 276,762.50                             | 20,984.85                          | 2,344,944.70            |
| <b>Total Assets</b>                       | <b>\$ 1,011,168.35</b>     | <b>\$ 534,986.20</b>                          | <b>\$ 71,432.03</b>                     | <b>\$ 373,491.24</b>          | <b>\$ 56,119.53</b>                   | <b>\$ 276,762.50</b>                   | <b>\$ 20,984.85</b>                | <b>\$ 2,344,944.70</b>  |
| <b>Liabilities and Fund Balance</b>       |                            |   |   |                               |                                       |  |                                    |                         |
| Current Liabilities                       |                            |   |   |                               |                                       |  |                                    |                         |
| Woodside Village Deposits                 | 9.19                       | 0.00  | 0.00                                    | 0.00                          | 0.00                                  | 0.00                                   | 0.00                               | 9.19                    |
| Refundable Bond Deposits                  | 34,519.99                  | 0.00  | 0.00                                    | 0.00                          | 0.00                                  | 0.00                                   | 0.00                               | 34,519.99               |
| Total Current Liabilities                 | 34,529.18                  | 0.00  | 0.00                                    | 0.00                          | 0.00                                  | 0.00                                   | 0.00                               | 34,529.18               |
| Total Liabilities                         | 34,529.18                  | 0.00  | 0.00                                    | 0.00                          | 0.00                                  | 0.00                                   | 0.00                               | 34,529.18               |
| Fund Balance                              |                            |   |   |                               |                                       |  |                                    |                         |
| Fund Balance                              | 668,550.65                 | 517,512.64                                    | 71,432.03                               | 260,053.36                    | 173,551.31                            | 173,542.76                             | 46,084.55                          | 1,910,727.30            |
| Fund Balance - Current Year               | 308,088.52                 | 17,473.56                                     | 0.00                                    | 113,437.88                    | (117,431.78)                          | 103,219.74                             | (25,099.70)                        | 399,688.22              |
| Total Fund Balance                        | 976,639.17                 | 534,986.20                                    | 71,432.03                               | 373,491.24                    | 56,119.53                             | 276,762.50                             | 20,984.85                          | 2,310,415.52            |
| <b>Total Liabilities and Fund Balance</b> | <b>\$ 1,011,168.35</b>     | <b>\$ 534,986.20</b>                          | <b>\$ 71,432.03</b>                     | <b>\$ 373,491.24</b>          | <b>\$ 56,119.53</b>                   | <b>\$ 276,762.50</b>                   | <b>\$ 20,984.85</b>                | <b>\$ 2,344,944.70</b>  |

No assurance is provided. Substantially all disclosures omitted.

# City of Westwood, Kansas

## Cash Flow

For the One Month Ended November 30, 2020

|   | General Fund<br>Month Ending<br>11/30/2020 | Capital<br>Improvements<br>Fund<br>Month Ending<br>11/30/2020 | Equipment<br>Reserve Fund<br>Month Ending<br>11/30/2020 | Stormwater<br>Fund<br>Month Ending<br>11/30/2020 | Special Highway<br>Fund<br>Month Ending<br>11/30/2020 | Woodside<br>TIF/CID Fund<br>Month Ending<br>11/30/2020 | Debt Service<br>Fund<br>Month Ending<br>11/30/2020 | All Classes<br>Month Ending<br>11/30/2020 |
|---|--|---|---|--|---|--|--|---|
| <b>Unencumbered Cash, Beginning Period</b>        | <b>1,079,312.54</b>                        | <b>454,400.24</b>   | <b>71,432.03</b>  | <b>374,614.87</b>                                | <b>231,119.53</b>                                     | <b>276,762.50</b>                                      | <b>(53,789.62)</b>                                 | <b>2,433,852.09</b>                       |
| <b>Receipts</b>                                   |  |   |   |  |   |  |  |   |
| Fees and Licenses                                 | 22,664.45                                  | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 22,664.45                                 |
| Building Permits                                  | 73,977.10                                  | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 73,977.10                                 |
| Intergovernmental                                 | 24,938.33                                  | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 24,938.33                                 |
| Bond Proceeds                                     | 0.00                                       | (116,909.97)  | 0.00  | 0.00   | 0.00  | 0.00   | 17,431.97  | (99,478.00)                               |
| Fines   | 7,120.50                                   | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 7,120.50                                  |
| Reimbursements                                    |  |   |   |  |   |  |  |   |
| Reimbursements                                    | 225.00                                     | 99,478.00   | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 99,703.00                                 |
| Total Reimbursements                              | 225.00                                     | 99,478.00   | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 99,703.00                                 |
| Miscellaneous                                     | 107.12                                     | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 107.12                                    |
| <b>Total Receipts</b>                             | <b>129,032.50</b>                          | <b>(17,431.97)</b>  | <b>0.00</b>   | <b>0.00</b>                                      | <b>0.00</b>   | <b>0.00</b>  | <b>17,431.97</b>                                   | <b>129,032.50</b>                         |
| <b>Expenditures</b>                               |  |   |   |  |   |  |  |   |
| Salary & Benefits                                 | 121,750.09                                 | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 121,750.09                                |
| Employee Expenses                                 | 2,305.98                                   | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 2,305.98                                  |
| Professional Fees                                 | 19,117.01                                  | 4,805.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 23,922.01                                 |
| General Operating Expenses                        | 5,449.69                                   | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 5,449.69                                  |
| Utilities   | 39,843.05                                  | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 39,843.05                                 |
| Equipment and Maintenance                         | 8,419.45                                   | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 8,419.45                                  |
| Street and Stormwater                             | 0.00                                       | (102,822.93)  | 0.00  | 1,123.63   | 175,000.00  | 0.00   | (57,342.50)  | 15,958.20                                 |
| Park and Events                                   | 191.42                                     | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 191.42                                    |
| Interfund Transfers                               | 0.00                                       | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 0.00                                      |
| <b>Total Expenditures</b>                         | <b>197,076.69</b>                          | <b>(98,017.93)</b>  | <b>0.00</b>   | <b>1,123.63</b>                                  | <b>175,000.00</b>                                     | <b>0.00</b>  | <b>(57,342.50)</b>                                 | <b>217,839.89</b>                         |
| Prior Year Cancelled Encumbrances                 | 0.00                                       | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 0.00                                      |
| Increase / (Decrease) in Payables                 | 0.00                                       | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | 0.00                                      |
| Increase / (Decrease) in Refundable Bond Deposits | (100.00)                                   | 0.00  | 0.00  | 0.00   | 0.00  | 0.00   | 0.00   | (100.00)                                  |
| <b>Unencumbered Cash, End of Period</b>           | <b>\$ 1,011,168.35</b>                     | <b>\$ 534,986.20</b>  | <b>\$ 71,432.03</b>                                     | <b>\$ 373,491.24</b>                             | <b>\$ 56,119.53</b>                                   | <b>\$ 276,762.50</b>                                   | <b>\$ 20,984.85</b>                                | <b>\$ 2,344,944.70</b>                    |

No assurance is provided. Substantially all disclosures omitted.



# City of Westwood, Kansas

## Statement of Operations

General Fund

For The One Period and Eleven Periods Ended November 30, 2020 and 2019

|                                     | Month Ending<br>11/30/2020<br>Actual | Year To Date<br>11/30/2020<br>Actual | Year To Date<br>11/30/2019<br>Prior Year | Year Ending<br>12/31/2020<br>Current Budget | Over/(Under) Budget |
|-------------------------------------|--------------------------------------|--------------------------------------|--|---|---------------------|
| <b>Receipts</b>                     |                                      |                                      |  |   |                     |
| Taxes                               | \$ 0.00                              | \$ 1,470,975.20                      | \$ 1,462,048.28                          | \$ 1,647,019.00                             | \$ (176,043.80)     |
| Fees and Licenses                   | 22,664.45                            | 401,900.82                           | 432,447.59                               | 485,200.00                                  | (81,623.64)         |
| Building Permits                    | 73,977.10                            | 111,570.15                           | 34,924.41                                | 169,200.00                                  | (47,788.86)         |
| Intergovernmental                   | 24,938.33                            | 292,815.09                           | 317,350.45                               | 346,500.00                                  | (53,684.91)         |
| Restricted Use                      | 0.00                                 | 0.00                                 | 11,864.12                                | 0.00  | 0.00                |
| Fines                               | 7,120.50                             | 116,925.75                           | 164,689.41                               | 140,000.00                                  | (22,828.25)         |
| Grants and Donations                | 0.00                                 | 43.75                                | 0.00                                     | 0.00  | 43.75               |
| Reimbursements                      | 225.00                               | 225.00                               | 0.00                                     | 0.00  | 225.00              |
| Miscellaneous                       | 107.12                               | 18,786.27                            | 9,776.35                                 | 3,050.00                                    | 15,736.27           |
| <b>Total Receipts</b>               | <b>129,032.50</b>                    | <b>2,413,242.03</b>                  | <b>2,433,100.61</b>                      | <b>2,790,969.00</b>                         | <b>(365,964.44)</b> |
| <b>Expenditures</b>                 |                                      |                                      |  |   |                     |
| General Overhead                    |                                      |                                      |  |   |                     |
| Salary & Benefits                   | 2,170.20                             | 44,652.67                            | 50,418.26                                | 60,652.00                                   | (15,999.33)         |
| Professional Fees                   | 9,059.67                             | 123,139.56                           | 119,880.43                               | 133,400.00                                  | (10,260.44)         |
| General Operating Expenses          | 1,139.81                             | 12,143.36                            | 12,058.20                                | 14,780.00                                   | (2,631.12)          |
| Utilities                           | 37,064.26                            | 236,197.90                           | 226,965.01                               | 244,057.00                                  | (5,816.50)          |
| Equipment and Maintenance           | 2,039.39                             | 2,039.39                             | 0.00                                     | 0.00  | 2,039.39            |
| Park and Events                     | 0.00                                 | 3,832.00                             | 8,036.44                                 | 14,750.00                                   | (10,918.00)         |
| Miscellaneous                       | 0.00                                 | 0.00                                 | 760.00                                   | 15,000.00                                   | (15,000.00)         |
| Intergovernmental                   |                                      |                                      |  |   |                     |
| Building Permit Reimbursement - WWH | 0.00                                 | 2,692.50                             | 0.00                                     | 0.00  | 2,692.50            |
| Building Permit Reimbursement - MW  | 0.00                                 | 4,588.00                             | 0.00                                     | 0.00  | 4,588.00            |
| <b>Total Intergovernmental</b>      | <b>0.00</b>                          | <b>7,280.50</b>                      | <b>0.00</b>                              | <b>0.00</b>                                 | <b>7,280.50</b>     |
| Interfund Transfers                 | 0.00                                 | 0.00                                 | 17,287.50                                | 327,040.00                                  | (327,040.00)        |
| <b>Total General Overhead</b>       | <b>51,473.33</b>                     | <b>429,285.38</b>                    | <b>435,405.84</b>                        | <b>809,679.00</b>                           | <b>(378,345.50)</b> |
| Administrative                      |                                      |                                      |  |   |                     |
| Salary & Benefits                   | 19,222.61                            | 242,483.24                           | 245,804.82                               | 279,450.00                                  | (36,966.76)         |
| Employee Expenses                   | 719.90                               | 6,091.28                             | 6,104.06                                 | 5,600.00                                    | 1,179.28            |
| Professional Fees                   | 3,585.00                             | 4,876.00                             | 0.00                                     | 0.00  | 5,326.00            |
| General Operating Expenses          | 566.72                               | 22,620.12                            | 5,926.76                                 | 21,030.00                                   | 1,590.12            |
| Utilities                           | 0.00                                 | 290.92                               | 0.00                                     | 0.00  | 290.92              |
| Park and Events                     | 191.42                               | 678.77                               | 2,745.01                                 | 2,000.00                                    | (1,321.23)          |
| Interfund Transfers                 | 0.00                                 | 0.00                                 | 0.00                                     | 3,000.00                                    | (3,000.00)          |
| <b>Total Administrative</b>         | <b>24,285.65</b>                     | <b>277,040.33</b>                    | <b>260,580.65</b>                        | <b>311,080.00</b>                           | <b>(32,901.67)</b>  |

No assurance is provided. Substantially all disclosures omitted.

# City of Westwood, Kansas

## Statement of Operations

General Fund

For The One Period and Eleven Periods Ended November 30, 2020 and 2019

|                            | Month Ending<br>11/30/2020 | Year To Date<br>11/30/2020 | Year To Date<br>11/30/2019 | Year Ending<br>12/31/2020 |                     |
|----------------------------|----------------------------|----------------------------|----------------------------|---------------------------|---------------------|
|                            | Actual                     | Actual                     | Prior Year                 | Current Budget            | Over/(Under) Budget |
| Public Works               |                            |                            |                            |                           |                     |
| Salary & Benefits          | 29,347.35                  | 345,487.79                 | 334,214.08                 | 388,402.00                | (42,914.21)         |
| Employee Expenses          | 684.05                     | 2,944.41                   | 4,456.75                   | 6,650.00                  | (3,705.59)          |
| Professional Fees          | 2,300.00                   | 5,715.00                   | 70,220.97                  | 15,000.00                 | (9,285.00)          |
| General Operating Expenses | 1,444.08                   | 17,067.30                  | 17,066.26                  | 25,550.00                 | (8,482.70)          |
| Utilities                  | 1,201.53                   | 9,317.25                   | 9,802.18                   | 16,000.00                 | (5,546.50)          |
| Equipment and Maintenance  | 2,534.39                   | 30,023.20                  | 54,359.84                  | 42,100.00                 | (12,076.80)         |
| Interfund Transfers        | 0.00                       | 0.00                       | 0.00                       | 35,000.00                 | (35,000.00)         |
| Total Public Works         | 37,511.40                  | 410,554.95                 | 490,120.08                 | 528,702.00                | (117,010.80)        |
| Police                     |                            |                            |                            |                           |                     |
| Salary & Benefits          | 71,009.93                  | 855,448.15                 | 852,238.06                 | 987,223.00                | (131,774.85)        |
| Employee Expenses          | 902.03                     | 11,261.01                  | 12,991.46                  | 27,000.00                 | (15,738.99)         |
| Professional Fees          | 4,172.34                   | 36,546.53                  | 48,538.16                  | 64,300.00                 | (27,385.91)         |
| General Operating Expenses | 2,299.08                   | 39,392.30                  | 48,634.82                  | 55,500.00                 | (15,765.70)         |
| Utilities                  | 260.11                     | 2,842.82                   | 3,101.42                   | 5,000.00                  | (2,157.18)          |
| Equipment and Maintenance  | 3,570.67                   | 14,795.04                  | 10,667.89                  | 11,000.00                 | 38,002.04           |
| Interfund Transfers        | 0.00                       | 0.00                       | 0.00                       | 66,000.00                 | (66,000.00)         |
| Total Police               | 82,214.16                  | 960,285.85                 | 976,171.81                 | 1,216,023.00              | (220,820.59)        |
| Parks & Rec                |                            |                            |                            |                           |                     |
| Professional Fees          | 0.00                       | 0.00                       | 10,000.00                  | 10,000.00                 | (10,000.00)         |
| General Operating Expenses | 0.00                       | 998.15                     | 1,069.10                   | 2,000.00                  | (1,001.85)          |
| Utilities                  | 1,317.15                   | 19,189.18                  | 26,837.45                  | 43,000.00                 | (23,308.09)         |
| Equipment and Maintenance  | 275.00                     | 7,424.93                   | 3,215.62                   | 6,000.00                  | 1,424.93            |
| Park and Events            | 0.00                       | 374.74                     | 9,153.01                   | 13,050.00                 | (12,675.26)         |
| Total Parks & Rec          | 1,592.15                   | 27,987.00                  | 50,275.18                  | 74,050.00                 | (45,560.27)         |

No assurance is provided. Substantially all disclosures omitted.

# City of Westwood, Kansas

## Statement of Operations

General Fund

For The One Period and Eleven Periods Ended November 30, 2020 and 2019

|   | Month Ending<br>11/30/2020 | Year To Date<br>11/30/2020 | Year To Date<br>11/30/2019 | Year Ending<br>12/31/2020 |                      |
|---|----------------------------|----------------------------|----------------------------|---------------------------|----------------------|
|   | Actual                     | Actual                     | Prior Year                 | Current Budget            | Over/(Under) Budget  |
| Non-Departmental                          |                            |                            |                            |                           |                      |
| Salary & Benefits                         | 0.00                       | 0.00                       | 0.00                       | 0.00                      | (28.47)              |
| Professional Fees                         | 0.00                       | 0.00                       | 89,139.17                  | 0.00                      | 0.00                 |
| Utilities                                 | 0.00                       | 0.00                       | 0.00                       | 0.00                      | 1,080.00             |
| Equipment and Maintenance                 | 0.00                       | 0.00                       | 3,500.86                   | 0.00                      | 0.00                 |
| Street and Stormwater                     | 0.00                       | 0.00                       | 2,588,019.28               | 0.00                      | 0.00                 |
| Total Non-Departmental                    | 0.00                       | 0.00                       | 2,680,659.31               | 0.00                      | 1,051.53             |
| Total Expenditures                        | 197,076.69                 | 2,105,153.51               | 4,893,212.87               | 2,939,534.00              | (793,587.30)         |
| <b>Receipts Over (Under) Expenditures</b> | <b>\$ (68,044.19)</b>      | <b>\$ 308,088.52</b>       | <b>\$ (2,460,112.26)</b>   | <b>\$ (148,565.00)</b>    | <b>\$ 427,622.86</b> |

No assurance is provided. Substantially all disclosures omitted.

City of Westwood, Kansas  
**Statement of Operations**  
Other Funds  
For The One Period Ended November 30, 2020

|   | Other Funds                     |                             |                             |                             |                             |                             |
|---|---------------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
|   | Capital<br>Improvements<br>Fund | Equipment<br>Reserve Fund   | Stormwater Fund             | Special Highway<br>Fund     | Woodside<br>TIF/CID Fund    | Debt Service<br>Fund        |
|   | Month To Date<br>11/30/2020     | Month To Date<br>11/30/2020 | Month To Date<br>11/30/2020 | Month To Date<br>11/30/2020 | Month To Date<br>11/30/2020 | Month To Date<br>11/30/2020 |
|   | Actual                          | Actual                      | Actual                      | Actual                      | Actual                      | Actual                      |
| <b>Receipts</b>                           |                                 |                             |                             |                             |                             |                             |
| Restricted Use                            |                                 |                             |                             |                             |                             |                             |
| Bond Proceeds                             | (116,909.97)                    | 0.00                        | 0.00                        | 0.00                        | 0.00                        | 17,431.97                   |
| Reimbursements                            | 99,478.00                       | 0.00                        | 0.00                        | 0.00                        | 0.00                        | 0.00                        |
| Interfund Transfers                       | 0.00                            | 0.00                        | 0.00                        | 0.00                        | 0.00                        | 0.00                        |
| Total Receipts                            | (17,431.97)                     | 0.00                        | 0.00                        | 0.00                        | 0.00                        | 17,431.97                   |
| <b>Expenditures</b>                       |                                 |                             |                             |                             |                             |                             |
| Professional Fees                         | 4,805.00                        | 0.00                        | 0.00                        | 0.00                        | 0.00                        | 0.00                        |
| Street and Stormwater                     | (102,822.93)                    | 0.00                        | 1,123.63                    | 175,000.00                  | 0.00                        | (57,342.50)                 |
| Interfund Transfers                       | 0.00                            | 0.00                        | 0.00                        | 0.00                        | 0.00                        | 0.00                        |
| Total Expenditures                        | (98,017.93)                     | 0.00                        | 1,123.63                    | 175,000.00                  | 0.00                        | (57,342.50)                 |
| <b>Receipts Over (Under) Expenditures</b> | <b>\$ 80,585.96</b>             | <b>\$ 0.00</b>              | <b>\$ (1,123.63)</b>        | <b>\$ (175,000.00)</b>      | <b>\$ 0.00</b>              | <b>\$ 74,774.47</b>         |

No assurance is provided. Substantially all disclosures omitted.

**City of Westwood, Kansas**  
**Statement of Operations**  
Other Funds  
For The Eleven Periods Ended November 30, 2020

|   | Other Funds                     |                            |                            |                            |                            |                            |
|---|---------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
|   | Capital<br>Improvements<br>Fund | Equipment<br>Reserve Fund  | Stormwater Fund            | Special Highway<br>Fund    | Woodside<br>TIF/CID Fund   | Debt Service<br>Fund       |
|   | Year To Date<br>11/30/2020      | Year To Date<br>11/30/2020 | Year To Date<br>11/30/2020 | Year To Date<br>11/30/2020 | Year To Date<br>11/30/2020 | Year To Date<br>11/30/2020 |
|   | Actual                          | Actual                     | Actual                     | Actual                     | Actual                     | Actual                     |
| <b>Receipts</b>                           |                                 |                            |                            |                            |                            |                            |
| Taxes                                     | \$ 220,179.17                   | \$ 0.00                    | \$ 0.00                    | \$ 0.00                    | \$ 0.00                    | \$ 14,059.45               |
| Restricted Use                            |                                 |                            |                            |                            |                            |                            |
| Stormwater Utility Fee                    | 0.00                            | 0.00                       | 134,829.30                 | 0.00                       | 0.00                       | 0.00                       |
| State Hwy Maintenance                     | 0.00                            | 0.00                       | 0.00                       | 14,830.20                  | 0.00                       | 0.00                       |
| Special Highway Fund Revenue              | 0.00                            | 0.00                       | 0.00                       | 42,869.27                  | 0.00                       | 0.00                       |
| WV Ad Valorem Tax                         | 0.00                            | 0.00                       | 0.00                       | 0.00                       | 279,819.84                 | 0.00                       |
| WV CID-1                                  | 0.00                            | 0.00                       | 0.00                       | 0.00                       | 98,330.81                  | 0.00                       |
| WV CID-2                                  | 0.00                            | 0.00                       | 0.00                       | 0.00                       | 54,759.95                  | 0.00                       |
| Bond Proceeds                             | 3,473,473.16                    | 0.00                       | 0.00                       | 0.00                       | 0.00                       | 17,431.97                  |
| Reimbursements                            | 99,478.00                       | 0.00                       | 0.00                       | 0.00                       | 0.00                       | 0.00                       |
| Interfund Transfers                       | 0.00                            | 0.00                       | 0.00                       | 0.00                       | 0.00                       | 0.00                       |
| <b>Total Receipts</b>                     | <b>3,793,130.33</b>             | <b>0.00</b>                | <b>134,829.30</b>          | <b>57,699.47</b>           | <b>432,910.60</b>          | <b>31,491.42</b>           |
| <b>Expenditures</b>                       |                                 |                            |                            |                            |                            |                            |
| Professional Fees                         | 4,805.00                        | 0.00                       | 0.00                       | 0.00                       | 0.00                       | 0.00                       |
| General Operating Expenses                | 0.00                            | 0.00                       | 26.94                      | 0.00                       | 11,158.70                  | 0.00                       |
| Equipment and Maintenance                 | 0.00                            | 0.00                       | 318.35                     | 0.00                       | 0.00                       | 0.00                       |
| Street and Stormwater                     |                                 |                            |                            |                            |                            |                            |
| Capital Improvement Expense               | 298,034.27                      | 0.00                       | 0.00                       | 0.00                       | 0.00                       | 0.00                       |
| Bond Project Costs                        | 3,472,817.50                    | 0.00                       | 0.00                       | 0.00                       | 0.00                       | 9,478.55                   |
| Special Highway Expense                   | 0.00                            | 0.00                       | 0.00                       | 175,131.25                 | 0.00                       | 0.00                       |
| Stormwater Expense                        | 0.00                            | 0.00                       | 19,922.50                  | 0.00                       | 0.00                       | 0.00                       |
| Leaf Pickup Expenses                      | 0.00                            | 0.00                       | 1,123.63                   | 0.00                       | 0.00                       | 0.00                       |
| Miscellaneous                             | 0.00                            | 0.00                       | 0.00                       | 0.00                       | 318,532.16                 | 51,607.47                  |
| Interfund Transfers                       | 0.00                            | 0.00                       | 0.00                       | 0.00                       | 0.00                       | 0.00                       |
| Prior Year Cancelled Encumbrances         | 0.00                            | 0.00                       | 0.00                       | 0.00                       | 0.00                       | (4,494.90)                 |
| <b>Total Expenditures</b>                 | <b>3,775,656.77</b>             | <b>0.00</b>                | <b>21,391.42</b>           | <b>175,131.25</b>          | <b>329,690.86</b>          | <b>56,591.12</b>           |
| <b>Receipts Over (Under) Expenditures</b> | <b>\$ 17,473.56</b>             | <b>\$ 0.00</b>             | <b>\$ 113,437.88</b>       | <b>\$ (117,431.78)</b>     | <b>\$ 103,219.74</b>       | <b>\$ (25,099.70)</b>      |

No assurance is provided. Substantially all disclosures omitted.

**City of Westwood, Kansas**  
Summary of Expenditures - Actual and Budget  
Regulatory Basis  
For The Year Ended November 30, 2020

|                           | <b>Certified<br/>Budget</b> | <b>Expenditures<br/>Chargeable<br/>to Current<br/>Year</b> | <b>Difference<br/>Over/(Under)</b> |
|---------------------------|-----------------------------|--|------------------------------------|
| <b>Expenditures</b>       |                             |  |                                    |
| General Fund              | 2,939,534.00                | 2,105,153.51   | (834,380.49)                       |
| Capital Improvements Fund | 393,000.00                  | 3,775,656.77   | 3,382,656.77 *                     |
| Equipment Reserve Fund    | 84,250.00                   | 0.00   | (84,250.00)                        |
| Stormwater Fund           | 241,000.00                  | 21,391.42  | (219,608.58)                       |
| Special Highway Fund      | 180,000.00                  | 175,131.25   | (4,868.75)                         |
| Woodside TIF/CID Fund     | 471,030.00                  | 329,690.86   | (141,339.14)                       |
| Debt Service Fund         | 106,000.00                  | 56,591.12  | (49,408.88)                        |
| <b>Total Expenditures</b> | <b><u>4,414,814.00</u></b>  | <b><u>6,463,614.93</u></b>                                 | <b><u>2,048,800.93</u></b>         |

\* Budget credit available for Capital Improvements Fund for Bond Issuance.

No assurance is provided. Substantially all disclosures omitted.

City of Westwood, Kansas  
Appropriation Ordinance No. 721

AN ORDINANCE APPROPRIATING CITY EXPENDITURES FOR THE PERIOD OF NOVEMBER 1, 2020 - NOVEMBER 30, 2020 AND SUMMARIZING SAID EXPENDITURE HEREIN.

|                            | General<br>Month Ending<br>11/30/2020 | Capital<br>Improvements<br>Month Ending<br>11/30/2020 | Equipment<br>Reserve<br>Month Ending<br>11/30/2020 | Stormwater<br>Month Ending<br>11/30/2020 | Special Highway<br>Month Ending<br>11/30/2020 | Woodside<br>TIF/CID<br>Month Ending<br>11/30/2020 | Debt Service<br>Month Ending<br>11/30/2020 | Total All Funds<br>Month Ending<br>11/30/2020 |
|----------------------------|---------------------------------------|---|--|--|---|---|--|---|
| <b>Expenditures</b>        |                                       |   |  |  |   |   |  |   |
| Salary & Benefits          | 121,750.09                            | 0.00  | 0.00   | 0.00                                     | 0.00  | 0.00  | 0.00                                       | 121,750.09                                    |
| Employee Expenses          | 2,305.98                              | 0.00  | 0.00   | 0.00                                     | 0.00  | 0.00  | 0.00                                       | 2,305.98                                      |
| Professional Fees          | 19,117.01                             | 4,805.00  | 0.00   | 0.00                                     | 0.00  | 0.00  | 0.00                                       | 23,922.01                                     |
| General Operating Expenses | 5,449.69                              | 0.00  | 0.00   | 0.00                                     | 0.00  | 0.00  | 0.00                                       | 5,449.69                                      |
| Utilities                  | 39,843.05                             | 0.00  | 0.00   | 0.00                                     | 0.00  | 0.00  | 0.00                                       | 39,843.05                                     |
| Equipment and Maintenance  | 8,419.45                              | 0.00  | 0.00   | 0.00                                     | 0.00  | 0.00  | 0.00                                       | 8,419.45                                      |
| Street and Stormwater      | 0.00                                  | (102,822.93)  | 0.00   | 1,123.63                                 | 175,000.00                                    | 0.00  | (57,342.50)                                | 15,958.20                                     |
| Park and Events            | 191.42                                | 0.00  | 0.00   | 0.00                                     | 0.00  | 0.00  | 0.00                                       | 191.42  |
| Interfund Transfers        | 0.00                                  | 0.00  | 0.00   | 0.00                                     | 0.00  | 0.00  | 0.00                                       | 0.00  |
| <b>Total Expenditures</b>  | <b>197,076.69</b>                     | <b>(98,017.93)</b>                                    | <b>0.00</b>  | <b>1,123.63</b>                          | <b>175,000.00</b>                             | <b>0.00</b>                                       | <b>(57,342.50)</b>                         | <b>217,839.89</b>                             |

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:

SECTION 1. The Claims included herein are hereby approved and allowed.

SECTION 2. That the payment of all claims and charges against the respective accounts and funds provided in the budget for the year 2020 are consistent with that budget and are hereby authorized, ratified and approved.

SECTION 3. This Ordinance shall take effect from and after its passage.

ADOPTED this 10th day of DECEMBER 2020.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
ATTEST: CITY CLERK

## **COUNCIL ACTION FORM**

Meeting Date: December 10, 2020

Staff Contact: Ryan Denk, City Attorney

---

Agenda Item: Consider Government Enforcement Services Agreement for Johnson County Local Health Officer Orders and County Board Health Orders

---

### **Background / Description of Item:**

On November 13, 2020, the Johnson County Board of County Commissioners, sitting as the Johnson County Board of Public Health, adopted Johnson County Board of Public Health Order No. 002-20 (the "Health Order"). Among other things, the Health Order established certain social distancing requirements and limitations on gatherings for individuals, businesses, and activities. The Health Order became effective in all of Johnson County as of 12:01 A.M. on Monday, November 16, 2020, and shall remain in effect through 11:59 P.M. on January 31, 2020, unless otherwise amended, revoked, or replaced.

The Health Order was issued by the County pursuant to certain statutory authority, namely K.S.A. 65-119. This type of order could generally be enforced by the district attorney pursuant to K.S.A. 65-127 and, depending on the situation, K.S.A. 65-129. However, there has been concern over the practical ability to enforce such rules given the backlog of cases currently pending in district court (which has seen eliminations of or, at best, severe reductions in, trials).

However, pursuant to K.S.A. 19-101d, the Board of County Commissioners has the power to enforce certain of its "resolutions" by prosecution in the Johnson County Codes Court. To help alleviate district court pressures, and presumably to better allow the County to enforce its own Health Order, on November 19, 2020, the County adopted Resolution No. 108-20 establishing noncompliance with the Health Order as a violation of the Johnson County Code.

That notwithstanding, there is some question as to whether the County can enforce its own resolutions in Johnson County Codes Court within city limits, absent an agreement by the applicable city to allow for that (as cities generally have their own home rule powers within their borders). Accordingly, the County has requested that cities within Johnson County approve an agreement with the County allowing for County enforcement of the Health Order, as incorporated into the County Code. That Agreement is presented tonight to the City Council for consideration and approval. The City Attorney has worked with other city attorneys and the County on preparing and finalizing an acceptable form of Agreement, which provides for the following:

The County, and not the City, will be responsible for enforcement of the Health Order within the City limits. The City agrees to reasonably cooperate with the County in the sharing of information related to enforcement, and to also assist in educating its citizens as to the requirements of the Health Order.

The Agreement is limited only to Johnson County Board of Public Health Order No. 002-20. No other orders would be covered by this Agreement (there are not currently any in effect, but if there should be, the County and the City could amend the Agreement appropriately).



Either party can terminate the Agreement at any time, if deemed in the best interests of the City or County.

**Staff Comments:**

As this agreement impacts Westwood's public safety contractual relationship with Westwood Hills and Mission Woods, If both or either cities/city adopt the Agreement, then assistance could be rendered as part of the provision of basic police services under our established service agreements with them, as the effect of County Resolution 108-20 and the Agreement with the County is to make the violation of the County Health Order a criminal violation. Both by the terms of 108-20 and by the terms of the Agreement with the County, the County will only enforce violations in those communities who have adopted the Agreement.

As such, if both or either Westwood Hills or Mission Woods approve the Agreement with the County, Westwood can render assistance as part of our existing service agreement to render basic police service, which would not be charged as a supplemental service, unless either community that approves the Agreement agrees that it is a supplemental service and may be charged separately<sup>1</sup>. If either or neither Westwood Hills or Mission Woods approve the Agreement, then no enforcement assistance relating to the Health Order would be provided in those communities.

*Suggested Motion:*

*I move to approve the Government Enforcement Services Agreement for Johnson County Local Health Officer Orders and County Board Health Orders.*

---

<sup>1</sup> This conversation has not yet occurred and, to date, neither Westwood Hills nor Mission Woods has approved the Agreement. It is staff's understanding that at least Westwood Hills will have this item on its December meeting agenda for review and consideration.

**GOVERNMENT ENFORCEMENT SERVICES AGREEMENT  
FOR JOHNSON COUNTY LOCAL HEALTH OFFICER ORDERS AND COUNTY  
BOARD OF HEALTH ORDERS**

**by and between:**

**JOHNSON COUNTY, KANSAS**

**and**

**THE CITY OF WESTWOOD, KANSAS**

This Agreement made and entered into this 10<sup>th</sup> day of December, 2020, by and between **Johnson County, Kansas ("County")** and the **City of Westwood, Kansas ("City")**.

WITNESSETH:

**WHEREAS**, County and City ("Parties") desire to protect the health and safety of their citizens; and

**WHEREAS**, the Local Health Officer is appointed by Johnson County pursuant to K.S.A. 65-201 and, is directed and authorized by statute to act to prevent the spread of any infectious, contagious, or communicable disease; and

**WHEREAS**, pursuant to K.S.A. 65-201, the Board of County Commissioners of Johnson County, Kansas acts as the County Board of Health for Johnson County; and

**WHEREAS**, pursuant to K.S.A. 65-119, the Local Health Officer and the County Board of Health are charged with exercising and maintaining supervision over infectious or contagious disease within Johnson County and are "empowered and authorized to prohibit public gatherings when necessary for the control of any and all infectious or contagious disease"; and

**WHEREAS**, the Johnson County Local Health Officer or the County Board of Health may issue certain health orders in furtherance of these objectives; and

**WHEREAS**, the Johnson County Board of County Commissioners, sitting as the Johnson County Board of Public Health, adopted Johnson County Board of Public Health Order No. 002-20 ("Health Order") on November 13, 2020; and

**WHEREAS**, County adopted Resolution 108-20 on November 19, 2020, establishing noncompliance with the Health Order as a violation of the Johnson County Code; and

**WHEREAS**, pursuant to K.S.A. 19-101d, the Board of County Commissioners has the power to enforce all resolutions passed pursuant to county home rule powers. Noncompliance with Health Orders may be prosecuted in Johnson County Codes Court and violations shall incur fines pursuant to Johnson County Code Part II, Chapter I, Section 1-7 and Part II, Chapter II, Article IX; and

**WHEREAS**, Resolution 108-20 is effective within all of the unincorporated areas of Johnson County, Kansas, and within any cities whose governing bodies have agreed to contract with the County for such services; and

**WHEREAS**, County and City are authorized to enter into an agreement for services pursuant to K.S.A. 12-2908; and

**WHEREAS**, County and City deem it in the interest of public health and safety to enforce the Health Order within the corporate city limits of City.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants recited herein, the parties do agree as follows:

1. The County shall provide enforcement of the Health Order within the city limits of City, pursuant to Resolution 108-20. Amendments to the Health Order or other health orders issued by the Johnson County Board of Public Health or the Johnson County Local Health Officer may be included in this Agreement if the City agrees in writing to include those specific orders. The Parties agree that the form and scope of the City's subsequent agreement to include amendments to the Health Order or other health orders within the scope of this Agreement will be as authorized by the City's governing body in its sole discretion.
2. All expenses necessary to the operation of said enforcement shall be paid and provided for by the County. Notwithstanding the foregoing, nothing in this Agreement shall be construed so as to require County to pay for any of City's expenses incurred during any investigation, prosecution, or assistance in enforcement of the Health Order.
3. The County and City shall each designate a liaison as the point of contact under this Agreement.
4. By entering into this Agreement, the governing body of the City has consented to the County exercising local legislation and administration limited to the enforcement of the Health Order within the corporate limits of the City, such that at the time of this Agreement, the Agreement does not infringe upon the City's home rule powers, pursuant to Article 12, Section 5 of the Kansas Constitution and K.S.A. 19-101a(4).
5. The City consents to the County's jurisdiction to prosecute violations of the Health Order that occur within the City's corporate boundaries in the Johnson County Court, pursuant to Johnson County Code Part II, Chapter I, Section 1-7 and Part II, Chapter II, Article IX. The City shall defer all prosecutorial decisions to the County and fines collected as a result of said prosecutorial efforts shall be retained by the County and the City shall make no claim or demand for any portion of any fines collected by the County as a result of enforcement activity within the corporate boundaries of the City.

6. The City agrees to aid County in educating and promoting awareness of the Health Order within its city limits. The City further agrees to aid County in reporting, investigating, and testifying as to the noncompliance of the Health Order. The Parties agree that the City retains the sole, discretionary authority to decide what "aid", "educating", "promoting awareness", reporting", "investigating" to provide to County. Prior to County issuing a citation within City's city limits, County will have a general expectation that City will have provided records and documentation sufficient to support a determination by County to issue a citation. In recognition of the varying circumstances that may occur on these matters, the City and County may enter into separate related agreements or memoranda of understanding. Also, the City and County may confer to arrive at other informal written or unwritten approaches to determine processes to coordinate with one another to effectuate this Agreement.
7. The following terms and conditions shall cover how the parties will handle records matters that are likely to arise within this Agreement:
  - A. City shall be responsible for responding to Kansas Open Records Act ("KORA") requests received by City. County shall be responsible for responding to KORA requests received by County.
  - B. When the County files a uniform complaint and notice to appear in County Codes Court and a defendant or a defendant's legal counsel completes a discovery request, County would ultimately be responsible for completing the discovery request response, but would rely upon assistance from City to ensure that all documents responsive to the discovery request could be provided in a timely fashion. County would gather and prepare to distribute to the defendant any documents County would possess that may be responsive to the request pursuant to state law, which may include but not be limited to records generated by City. County will also contact City to request that City provide County any and all records that may be responsive to the discovery request, which would also include any potentially exculpatory evidence. City would expeditiously locate such records and would not unreasonably withhold any such records, but would instead provide the documents as soon as practicable. County would then deliver the records responsive to the discovery request to the defendant or the defendant's legal counsel.
8. Either party to this Agreement shall have the right to terminate this Agreement upon notice to the other as set forth hereinafter. Written notice of termination issued on lawful authority of the terminating party shall be given in writing and termination shall become effective upon the non-terminating party's receipt of such notice of termination. Notice shall be sent to:

COUNTY: Director of Department of Health and  
Environment  
Health Services Building  
11875 S. Sunset Drive, Suite #300  
Olathe, KS 66061

and Johnson County Legal Department  
Attn: Chief Counsel  
111 S. Cherry Street, Suite 3200  
Olathe, Kansas 66061

CITY: City of Westwood, Kansas  
Attn: City Clerk  
4700 Rainbow Blvd.  
Westwood, Kansas 66205

9. The right of the County and the City 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 all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County and the City shall at all times stay in conformity with such laws, and as a condition of this Agreement either party reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
10. This Agreement contains the entire agreement between the parties relating to the subject matter hereto. No amendment, waiver or modification of this Agreement shall be effective unless reduced to writing and signed by the authorized officers of each of the parties hereto, except to the extent this Agreement would authorize supplemental documents in conjunction with this Agreement, as described within Section 7 of this Agreement.
11. In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.
12. This Agreement shall become effective upon signature of approval of both parties and upon compliance of City with the provisions indicated within Section 5 of this Agreement, and shall continue in force and effect until terminated by either party as provided in Section 8 or Section 9 of this Agreement.
13. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

*[Signature Page Follows Directly]*

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

**JOHNSON COUNTY, KANSAS**

By: \_\_\_\_\_  
Ed Eilert, Chairman

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: Assistant County Counselor

**ATTEST:**

By: \_\_\_\_\_  
Lynda Sader, Deputy County Clerk

**CITY OF WESTWOOD, KANSAS**

By: \_\_\_\_\_  
David E. Waters, Mayor

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Ryan Denk  
City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Leslie Herring, City Clerk

## **COUNCIL ACTION FORM**

Meeting Date: December 10, 2020

Staff Contact: Ryan Denk, City Attorney

---

Agenda Item: Consider Resolution Establishing Fees for the Location of Small Cell Facilities in the City's Right-of-Way

---

### **Background / Description of Item:**

The purpose of the attached Resolution is to establish fees specifically for the small cell facilities in the City, both for new facilities and for attachment to existing facilities. The City has received requests for the placement of small cell facilities which may come in the form of a new monopole or attachment to an existing facility such as a street light pole.

Use of City facilities and the City's Right-of-Way for small cell is heavily regulated, both by the State of Kansas and the Federal Government. This fee resolution contains alternative pricing based on the continuing existence and validity of FCC Regulations that establish safe harbors for what a municipality may charge for placement of small cell facilities. On September 27, 2018 the FCC issued a Declaratory Ruling that established safe harbor amounts for both one-time and annual small cell fees. In doing so, the FCC did not create any binding regulations on what a municipality may charge. However, the safe harbor amounts presumptively comply with Federal laws and regulations and, therefore, would not be the subject of a challenge by small cell providers. This resolution sets out fees that are in excess of the safe harbor amounts, but contains a caveat that small cell providers may choose to pay the safe harbor amount instead of the fee listed in the resolution. If the FCC's Declaratory Ruling is overturned by a court, however, the small cell provider would need to pay the City the difference between the fees it previously paid and the fees as listed in this resolution.

The City is obligated to manage the rights-of-way, balance the needs of its users, and to preserve and promote the public health, safety, and welfare. The City is also responsible to its citizens for the use and management of public facilities, to protect public finances, and to ensure appropriate compensation for the private use of public property. Allowing providers to attach communication equipment to City street light poles or place a new pole, when such secondary use will not interfere with the intended public use, properly managing such collocation, and obtaining consistent and market-based compensation for the use of the City's street lights, minimizes incursions into the right-of-way, furthers the City's regulatory and proprietary obligations, and promotes the public health, safety and welfare. Applicable state and federal law and regulations require the City to exercise its responsibilities in a reasonable, nondiscriminatory, and competitively neutral manner. Thus, the City must charge users the same fees for the same or similar uses.

City Staff and the City Attorney recommend that the City Council adopt the attached Fee Resolution to establish fees for the location of small cell facilities in the City's right-of-way. This resolution allows providers to comply with the FCC safe harbor pricing structure, while keeping the door open for increased fees if the safe harbor is changed or rescinded.

**Financial Impact:**

The Fee Resolution itself has no financial impact upon the City. Upon permitting or entering any agreements for attachment of small cell facilities to City street light poles, placement of a new monopole, and any related fees and expenses, the Resolution will result in the City's receipt of fees for allowing the use or rental of and/or collocation of such equipment in or on City facilities. Pursuant to the resolution, any costs incurred by the City to make sites ready or inspect them shall be incorporated to any one-time fees charged.

**Attachments Included:**

A Resolution Establishing Fees for the Location of Small Cell Facilities in the City's Right-of-Way.

**Staff Recommendation:**

Staff and the City Attorney recommend that the City Council adopt Resolution No. 88-2020, establishing fees for the location of small cell facilities in the City's Right-of-Way.



## **RESOLUTION NO. 88-2020**

### **A RESOLUTION OF THE CITY OF WESTWOOD, KANSAS, ESTABLISHING FEES FOR LOCATION OF SMALL CELL FACILITIES IN THE CITY'S RIGHT-OF-WAY, FOR ATTACHMENT OF SMALL CELL FACILITIES TO THE CITY'S PROPERTY, AND FOR THE USE OF EXCESS CITY CONDUIT; TO PARTIALLY REPEAL RESOLUTION 68-2018 ONLY AS FAR AS SMALL CELL FACILITIES**

WHEREAS, the City of Westwood is the chief steward of the public rights-of-way and possesses a duty to its citizens to manage the rights-of-way and incursions into the rights-of-way in recognition that the right-of-way is a limited resource, to balance the needs of all users of the public rights-of-way, and to preserve and promote the public health, safety, and welfare; and

WHEREAS, K.S.A. 12-2001(t) allows a city to assess a wireless services provider or infrastructure provider (each hereafter referred to as a "provider") a fixed right-of-way access fee for each small cell facility that the provider deploys that requires the use of the City's public right-of-way (provided such fee is not based upon the provider's gross receipts); and

WHEREAS, the City of Westwood possesses a proprietary interest in and is responsible to its citizens for the use, management, function, maintenance, and structure of public facilities owned by the City, to use such facilities to the benefit of its citizens, to ensure just and fair compensation for permitting the use of the City's facilities, and to protect public finances for the use of or collocation upon public facilities; and

WHEREAS, the City of Westwood has received requests from external entities to attach or collocate small cell facilities and related equipment to the City's street light poles and other property; and

WHEREAS, the City of Westwood plans to enter into agreements with providers to allow the deployment of small cell facilities in the City's right-of-way; and

WHEREAS, the City is not required to make available the use of its light poles and conduits to other entities; the City is willing to do so for an annual rental fee when the use by such other entities does not interfere with the City's intended use of the facilities, will minimize incursions into the public right-of-way, and will not create any other public health, safety or welfare concern.

**THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS, AS FOLLOWS:**

**Section 1.** The following small cell facility right-of-way access fees and streetlight attachment fees and charges are established based on the descriptions listed below. These fees/charges shall be administered in a competitively neutral and non-discriminatory manner. All fees/charges will be rounded to the nearest dollar.

### Small Cell Facility Right-of-Way Access and Streetlight Attachment

| Fee Category   | Type of Fee                     | Fee Amount  |
|--|---------------------------------|---|
| ROW Access for small cell facility on an existing structure (e.g. existing utility pole) | Recurring Annual ROW Access Fee | \$25 per site   |
|  | Non-Recurring One-Time Fee      | An amount equal to the fee for a ROW Permit as set by separate City Resolution.<br><br>To reimburse the City for costs incurred for review of the permit application and site design approval.  |
|  |                                 |   |
| ROW Access for small cell facility on new monopole                                       | Recurring Annual ROW Access Fee | \$565 per site*<br><br>(Includes \$25 ROW access fee and \$540 license fee for new monopole in ROW)   |
|  | Non-Recurring One-Time Fee      | An amount equal to the fee for a ROW Permit as set by separate City Resolution.<br><br>To reimburse the City for costs incurred for review of the permit application and site design approval.  |
|  |                                 |   |
| Attachment of small cell facility to city streetlight                                    | Recurring Annual ROW Access Fee | \$565 per site*<br><br>(Includes \$25 ROW access fee and \$540 license fee for new monopole in ROW)   |
|  | Non-Recurring Fees:             |   |
|  | ROW Permit Application Fee      | An amount equal to the fee for a ROW Permit as set by separate City Resolution.<br><br>To reimburse the City for costs incurred for review of the permit application and site design approval.. |
|  | Make-Ready Fee                  | The amount of the costs of all actual work done or contracted for by the City for any make-ready or other work done   |

|   |                |   |
|---|----------------|---|
|   |                | to accommodate permittee's small cell facility.<br><br>Includes reasonable material, labor, engineering and administrative and overhead costs.  |
|   | Inspection Fee | The amount of the costs of all actual work done or contracted for by the City for any necessary inspections.<br><br>Includes reasonable material, labor, engineering and administrative and overhead costs. |
| Unauthorized Attachment Penalty                                   |                | Any unauthorized attachment must be removed upon notice by City and the provider will be charge three times the annual rental fee as penalty.   |
| Failure to Timely Transfer, Abandon, or Remove Facilities Penalty |                | 1/5 Annual Attachment Fee amount per day, per site during the first 30 days<br><br>The Annual Attachment Fee amount per day, per site during second 30 days and thereafter                                  |

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

**Section 2. Limitations, Regulations, and Design Standards.** Nothing in this Resolution shall obligate the City to allow the use of any specific pole or facility by any entity. Each light pole attachment must be specifically approved by the City's Public Works Director (or his or her designee), and must meet all design, installation, and maintenance criteria established by the Public Works Director and consistent with applicable safety, engineering, and building standards. Each conduit installation must be specifically approved by the City's Public Works Director (or his or her designee), and must meet all design, installation and maintenance criteria established by the City. Payment of the above-cited fees/charges 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 Right-of-Way Ordinance, building and electrical codes, Manual of Infrastructure Standards, and Zoning Ordinance, all as amended.

**Section 3. Effective Date.** This Resolution shall take effect and be in full force immediately after its passage by the Governing Body.

**THIS RESOLUTION IS ADOPTED** by the Governing Body of the City of Westwood, Kansas, this 10<sup>th</sup> day of December, 2020.

**CITY OF WESTWOOD, KANSAS**

---

**David E. Waters, Mayor**

**ATTEST:**

---

**Leslie Herring, City Clerk**

(Seal)

**APPROVED AS TO FORM ONLY:**

---

**Ryan Denk, City Attorney**

**COUNCIL ACTION FORM**

Meeting Date: December 10, 2020

Staff Contact: Ryan Denk, City Attorney

---

Agenda Item: Consider Small Cell Facility Deployment and Master Right of Way Agreement with AT&T

---

**Background / Description of Item:**

The City has been approached by New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T), which is interested in placing small cell facilities in the City's Right-of-Way to provide 5G service. AT&T anticipates that most facilities will be attached to existing poles, but some new monopoles – dedicated small cell poles – may be necessary. The attached agreement is the result of a group negotiation of several City Attorneys in Johnson County, spearheaded by Overland Park, with AT&T.

The City has previously entered into franchise agreements with telecommunications providers, including one with Mobilitie (a different entity than AT&T Mobility despite the similar names) in 2017. However, the State of Kansas enacted a statutory change in 2019 prohibiting the use of franchise agreements for small cell facilities. Based on this change in statutory scheme, this Agreement was drafted through negotiations between AT&T and several cities in the area. Other cities have already approved this agreement, with Overland Park doing so earlier this week and Lenexa last week. Staff expects that additional cities will approve the same or similar agreement in the coming months, including Leawood, Olathe, Merriam, Prairie Village, and Shawnee.

This is a non-exclusive agreement with AT&T that will govern the construction, operation, installation, and maintenance of AT&T's small cell facilities within the City. As set out in the City's new Fee Resolution, Resolution 88-2020, passed tonight, AT&T will pay for both attachment of facilities to existing poles and placement of new poles. AT&T will also pay an annual fee for the continued placement of its facilities in the ROW.

**Financial Impact:**

Pursuant to this Agreement, AT&T will pay an annual fee of \$25 per site for ROW use, plus an annual fee of \$270 per site. AT&T will also reimburse the City for any reasonable costs incurred to inspect potential sites and make those sites ready for attachment.

**Attachments Included:**

Small Cell Facility Deployment and Master Right of Way Agreement with AT&T.

**Staff Recommendation:**

Staff recommends that the City Council authorize the Mayor to enter into the Small Cell Facility Deployment and Master Right of Way Agreement with AT&T.

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

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

This Small Cell Facility Deployment and Master Right-of-Way License Agreement (this "Agreement") dated \_\_\_\_\_, 2020 (the "Effective Date") is made by and between the CITY OF WESTWOOD, KANSAS (the "City"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company d/b/a AT&T Mobility ("Grantee") (collectively the "Parties").

## RECITALS

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

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

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

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

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

## **PART I - INTRODUCTION**

### **1. ORGANIZATION**

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

### **2. DEFINITIONS**

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

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

**Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance and operation of equipment and the performance of all work in or around City Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which

is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of the City or other federal, State or local authority with jurisdiction over City Facilities.

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

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

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

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

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

**Days:** means calendar days unless business days are specified.

**FCC:** means the Federal Communications Commission.

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

**KCC:** means the Kansas Corporation Commission.

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

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

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

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

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

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

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

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

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

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

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

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

### **3. GRANT**

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

- 3.1.1 Convey title, equitable or legal, in the Right-of-way, and shall give only the right to occupy the Right-of-way, for the purposes and for the period stated in this Agreement.
- 3.1.2 Grant the authority to construct, operate or maintain any of Grantee's Wireless Facilities on any easements dedicated to the City or on any (real) property owned or controlled by the City outside of the Right-of-way, specifically including, but not limited to, parkland, city hall property, or public works facility property.
- 3.1.3 Grant the right to use the facilities, equipment or any other (personal) property owned or controlled by the City. (Except as specifically set forth in Part III hereafter.)
- 3.1.4 Grant the right to use the facilities or other (real or personal) property owned or controlled by a third party without the consent of the third party.

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

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

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

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

### **4. REGULATORY COMPLIANCE**

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

4.2 **City Right-of-way Regulations.** Grantee's use of the Right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations or policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Right-of-way, including, but not limited to, the City's ordinance for



managing the use and occupancy of the Right-of-way (codified at Chapter 13, Article 1, Use and Occupancy of the Public Right of Way, and amendments thereto), the City's Manual of Infrastructure Standards (as adopted by Resolution 60-2017) and the City's zoning and land-use laws to specifically include the City's Zoning Ordinance and amendments thereto, to the extent such laws do not conflict with or are not preempted by any federal or state law or regulation.

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

## 5. SPECIFICATIONS

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

- 5.7.1 Grantee shall comply with all FCC and other federal, state and local laws, rules, orders and regulations and all directives of the relevant regulatory agencies that are applicable in connection with the installation and operation of Grantee's Wireless Facilities.
- 5.7.2 In the event that the installation, operation or maintenance of Grantee's Wireless Facilities on a City Facility, whether or not such operation is in compliance with the terms of Grantee's applicable FCC licenses, creates any interference with the operation of the City's or any other governmental entity's communication or other equipment, Grantee shall as soon as reasonably possible, at Grantee's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements.
- 5.7.3 In the event that the installation, operation or maintenance of one of Grantee's Attachments creates any interference with the operation of the pre-existing equipment of third parties using a designated City Facility pursuant to an agreement with the City or any other pre-existing uses of electronic equipment, Grantee shall as soon as reasonably possible, at Grantee's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements.
- 5.7.4 If Grantee is unable or refuses to eliminate such interference (set forth in Subsections 5.7.2 and 5.7.3), the City may require Grantee to power down Grantee's Wireless Facilities to eliminate the interference. In the event Grantee is thereafter unable to take necessary action to eliminate such interference within a period of 90 days or such period as the Parties otherwise agree to in writing, the City may (if applicable) terminate Grantee's use of or right to use the City Facility upon which such interfering Wireless Facilities is located, and Grantee shall promptly remove the Wireless Facilities from the City Facility. The City agrees to include a provision substantially similar to this Subsection in any future agreements with third parties seeking to install wireless facility equipment on City Facilities.
- 5.7.5 Notwithstanding the foregoing, if equipment installed on a City Facility by any third party using the City Facility pursuant to an agreement with the City subsequent to the installation of Grantee's Attachment on the Site causes interference, either electronically or physically, with Grantee's previously installed Attachments, Grantee shall immediately notify City and such third party and City shall work in good faith with the parties to develop workable solutions to resolve the interference in a mutually acceptable manner in accordance with FCC or other applicable regulatory requirements. Alternatively, Grantee may upon 30 days written notice to the City terminate the affected Supplement.

## 6. DUTIES AND RESPONSIBILITIES

- 6.1 **Kansas One Call.** Grantee shall participate in the Kansas One Call utility location program.
- 6.2 **As-Is Condition.** Grantee acknowledges and agrees that the City does not warrant the condition or safety of the Right-of-way or any City Facilities, or the premises surrounding the same.
- 6.3 **Knowledge of Work Conditions.** By executing this Agreement, Grantee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Grantee will undertake under this Agreement and that it fully understands or will acquaint itself with the Right-of-way or applicable City Facilities, and with any difficulties and restrictions attending the execution of such work.
- 6.4 **Duty of Competent Supervision and Performance.** Grantee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, City employees and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Grantee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.
- 6.5 **Protection of Grantee's Wireless Facilities.** It shall be the responsibility of Grantee to take adequate measures to protect and defend its Wireless Facilities from harm or damage. If Grantee fails to accurately or timely locate its Wireless Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs

or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence or intentional conduct.

- 6.6 **Environmental Hazards.** Grantee represents and warrants that its use of the Right-of-way or any City Facilities will not generate any Hazardous Substances, that it will not store or dispose on or about or transport to the Right-of-way or any City Facilities any hazardous substances and that Grantee's Wireless Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. Notwithstanding the foregoing, Grantee shall be permitted to bring and keep equipment commonly used in the wireless industry, including without limitation, electrical components and batteries. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Grantee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the City and its officials, officers, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs of litigation) arising from or due to the release, threatened release, or storage of any Hazardous Substances on, under or adjacent to the Right-of-way or any City Facilities attributable to Grantee's use, except to the extent of the City's negligence or willful misconduct in connection with such liability. The City acknowledges Grantee shall not be responsible for any contamination to the extent caused in whole or in part by the City or a third party.
- 6.7 **Liens.** In no event shall Grantee permit any lien to be filed or to exist upon the Right-of-way, any City Facilities, or any other City property, as a result of any claim against Grantee. In the event such lien is filed as a result of any claim against Grantee, Grantee agrees, within 60 days of the receipt of notice of such lien, to cause the lien to be released of record by payment or posting of a bond; provided, however, Grantee shall have the right to contest in good faith such lien, and in such event, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom as long as such lien is bonded over and/or released of record as set forth herein.

### **PART III – LICENSE TO USE CITY FACILITIES** *(City's Proprietary Interests)*

## **7. GRANT OF LICENSE**

- 7.1 **Grant.** Subject to the provisions of this Agreement, the City hereby grants Grantee a revocable, nonexclusive license authorizing Grantee to construct, attach, operate and maintain permitted Attachments on specified City Facilities, as further detailed and authorized through individual Supplements to this Agreement. Placement of Grantee's Attachments on any specific City Facility shall be at the sole but reasonable discretion of the City so long as Grantee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third parties.
- 7.2 **Supplement Issuance and Attachment Conditions.** The City will enter into a Supplement with Grantee for a proposed Attachment on a specific City Facility only when the City determines, in its sole judgment, exercised reasonably, that: (i) it has sufficient Capacity to accommodate the requested Attachment; (ii) Grantee meets all requirements set forth in this Agreement; and (iii) such Attachment complies with all Applicable Standards. Notwithstanding, the City reserves the right to deny or modify Grantee's access to any City Facility, on a competitively-neutral and non-discriminatory basis, where City determines that Grantee's proposed Attachment will: (a) jeopardize the public health, safety or welfare; or (b) unreasonably limit or harm the capacity, functionality, reliability, governmental interests or aesthetics of the City Facility; or (c) violate Applicable Laws or zoning restrictions; or (d) exceed the capacity of the City Facility, to include taking into consideration the Reserved Capacity of the City Facility; or (e) interfere with the City's intended use of the City Facility; or (f) interfere with any other reasonable governmental interest.

- 7.3 **No Interest in Property.** No use, however lengthy, of any City Facility, and no payment of any fees or charges required under this Agreement, shall create or vest in Grantee any easement or other ownership or property right of any nature in any portion of such City Facility. Neither this Agreement nor any Supplement shall constitute an assignment of any of the City's rights to any City Facility. Notwithstanding anything in this Agreement to the contrary, Grantee shall, at all times with respect to City Facilities, be and remain a Grantee of a license only.
- 7.4 **Grantee's Right to Attach.** Nothing in this Agreement, other than a Supplement executed by the Parties, shall be construed as granting Grantee any right to attach Grantee's Attachment to any specific City Facility.
- 7.5 **City's Rights over City Facilities.** The Parties agree that this Agreement does not in any way limit the City's right to locate, operate, maintain or remove the City Facilities in the manner that will best enable it to fulfill any governmental purposes.
- 7.6 **Expansion of Capacity.** The City may take steps as reasonably appropriate, in a competitively neutral manner, to expand City Facilities to accommodate Grantee's request for Attachment. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the City to install, retain, extend or maintain any City Facility or portion of thereof for use when such City Facility is not needed for the City's or any other governmental service requirements. Likewise, the City may agree – but is not required – to allow Grantee to provide a substitute for the City Facility that can accommodate Grantee's Attachment; provided, the Parties agree that City will have ownership of the substitute City Facility. (For example, Grantee might provide a replacement light pole that is aesthetically comparable to the City's light pole but has more structural capacity so that it can support Grantee's Attachment.)
- 7.7 **Effect of Consent to Construction/Maintenance.** Consent by the City (granted through a Supplement) to the construction, operation or maintenance of any Attachment by Grantee to a City Facility shall not be deemed consent, authorization or an acknowledgment that Grantee has the authority to construct, operate or maintain any other such Attachments. It is Grantee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.
- 7.8 **No Forfeiture of City's Rights.** In the event an Attachment creates a forfeiture of City's rights, City shall notify Grantee in writing of the reasons why City believes such a forfeiture would occur and afford Grantee a reasonable time period in which to attempt to resolve the issue. If after exhausting all of its remedies Grantee is unable to resolve the matter in a period not to exceed thirty (30) days or such reasonable time as agreed to by the parties, Grantee shall remove its Attachments from the subject City Facility within ninety (90) days. Upon such removal, City shall provide an alternate City Facility for relocation of the Attachment equivalent to Grantee's current use of the City Facility, in which case Grantee shall submit a Supplement Application for such new location and City shall waive the applicable Supplement Application Fee.
- 7.9 **No Use After Termination.** Nothing in this Agreement shall be construed to require the City to allow Grantee to use City Facilities after the termination of this Agreement.

## **8. SPECIFICATIONS**

- 8.1 **Installation and Maintenance of Attachment.** Upon execution of a Supplement pursuant to this Agreement, Grantee's Attachment shall be installed and maintained in accordance with the City's applicable requirements and specifications and all Applicable Laws. All of Grantee's Attachments must comply with all Applicable Standards Grantee shall be responsible for the installation and maintenance of its Attachments. Grantee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards; and Grantee shall replace, remove, reinforce or repair any defective Attachments (unless otherwise agreed to by the City in writing). Notwithstanding, unless required by federal or state law or regulation or due to a threat to the public health safety and welfare, Grantee shall not be required to retrofit any existing Wireless Facilities or Attachments to comply with any change in the Applicable Standards.
- 8.2 **Authorized Attachment(s) and Installation Methods.**
- 8.2.1 Prior to any installation of an Attachment, the City must approve the Attachment that Grantee is proposing to place on a City Facility. Except as authorized by the City in writing, only the

Attachments depicted and described in the approved Supplement Application may be attached to the City Facility; provided, however, subsequent to the original installation of an Attachment on a City Facility, Grantee may modify or replace all or a portion of the Attachment without City approval so long as such modification or replacement results in different internal components being substituted as part of an upgrade of Grantee's Attachment (assuming the external appearance remains the same). Provided, any said upgrade or substitution must not create a nuisance and must maintain the structural integrity of the City Facility, and Grantee will provide all necessary supporting documentation, such as a structural certification and calculations; and further provided, any excavation or any modification to or work within the City Facility itself shall require advance notice to the City. Notwithstanding the foregoing, Grantee may modify and/or replace Wireless Facilities on a Grantee or third party structure at its discretion in accordance with Applicable Laws.

- 8.2.2 Grantee shall make all reasonable effort to ensure the design, color, and aesthetics of the Attachment blend with and do not contrast with the City Facility to which it is to be attached.
  - 8.2.3 In no event may Grantee or any of its subcontractors install or construct new City Facilities or modify or repair existing City Facilities except as may be expressly authorized by this Agreement or by a Supplement, or as is otherwise authorized in writing by the City.
  - 8.2.4 Nothing in this Agreement shall be construed as a guaranty of the condition of any City Facility in connection with Grantee's Attachments or impose any obligation upon the City to repair or replace an existing City Facility in order to accommodate a request by Grantee to install an Attachment; provided, however, if City elects not to replace a City Facility, City will work with Grantee to find a new location.
- 8.3 **Other Specifications.** Grantee's Attachments shall also meet the specifications in Section 5.
- 8.4 **Violation of Specifications.** If Grantee's Attachment(s), or any part thereof, are installed, used or maintained in violation of the Specifications set forth in Section 5, and Grantee has not corrected the violation(s) within 45 days from receipt of written notice of the violation(s) from the City (or if the violation cannot be reasonably corrected in such timeframe, Grantee has not timely commenced work and diligently pursued the cure to completion), the City at its option, may unilaterally correct such conditions. Notwithstanding the foregoing, if such violation results from or is in connection with the defective or other condition of a City Facility, Grantee and/or Grantee's Attachment will not be deemed to be in violation of this Agreement until the condition of the City Facility is sufficiently repaired and, if such Attachment violation still exists, Grantee fails to correct such violation within the applicable cure periods set forth above. The City will attempt to notify Grantee in writing prior to performing such work whenever practicable. When the City reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the City's service obligations or pose an immediate threat to the physical integrity of City Facilities, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Grantee. As soon as practicable thereafter, the City will advise Grantee of the work performed or the action taken. Grantee shall be responsible for all actual and reasonable costs incurred by the City in taking action pursuant to this Subsection.
- 8.5 **Restoration of City Service.** The City's service restoration requirements shall take precedence over any and all work operations of Grantee on City Facilities.
- 8.6 **Effect of Failure to Exercise Access Rights.** If Grantee does not commence to exercise any access right granted pursuant to this Agreement by the applicable Supplement or any other written City approval (e.g., a ROW Permit) within one (1) year of the later of the approval of the applicable Supplement or other City approval, the City may terminate the Supplement or other approval and use the space scheduled for Grantee's Attachment for its own needs or for other Attaching Entities. In such instances, the City shall endeavor to make other space available to Grantee, upon written Supplement Application, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.

## **9. SUPPLEMENT APPLICATION PROCEDURES**

- 9.1 **Supplement Required.** Grantee shall not install any Attachments on any City Facilities without first completing a Supplement Application (which includes the applicable ROW Permit application) pursuant to the applicable City requirements and entering into a Supplement for such Attachment(s) with the City pursuant to this Agreement. Such application shall not be considered complete until the applicable Supplement Application Fee is submitted. Attachments to or rights to occupy or utilize City property not covered by this Agreement, such as the lease and use of City-owned conduit, fiber optic capacity or any other City property (including, but not limited to, City offices, parks, , City public works facility or the like, as these properties are generally not available for third party use) must be separately negotiated.
- 9.1.1 Unless otherwise agreeable to the Parties, Grantee shall submit a Supplement Application for every proposed above-ground Site of Attachment that shall be accompanied by: (i) photos of the subject City Facility and surrounding location; (ii) equipment specifications; (iii) a site sketch that depicts the proposed installation specifications such as attachment height, and attachment methods on the subject City Facility; (iv) structural calculations; (v) traffic control plan for any work that includes temporary lane reduction or closure; and (vi) additional information which may be reasonably required by City as necessary.
- 9.1.2 Grantee shall have a copy of the approved Supplement or ROW Permit, the approved Attachment plans, and (if required) the approved traffic control plan at the job site at all times during installation or any modification requiring permitting. Provided, a copies are not required for any routine maintenance not requiring permitting or during an emergency.
- 9.2 **Professional Certification.** Unless otherwise waived in writing by the City, as part of the Supplement Application process and at Grantee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Grantee who has been approved by the City, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Grantee's Attachment can be and was installed on the identified City Facility in compliance with all Applicable Standards and Applicable Laws, and in accordance with the Supplement.
- 9.3 **City Review of Supplement Application.** Upon receipt of a properly executed Supplement Application, which shall include the Pre-Construction Survey, and detailed plans for the proposed Attachments in a form acceptable to City staff, the City will review the Supplement Application and notify Grantee if such Supplement Application is incomplete within thirty (30) days after submission identifying the specific grounds of incompleteness. The City acceptance of the submitted design documents does not relieve Grantee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed the Supplement Application process shall be consistent with the following timeline.
- 9.3.1 **Review Period.** In accordance with K.S.A. 66-2019(g) and 66-2019(h)(1) and (3)<sup>1</sup>, the City shall review and respond to properly executed and complete Supplement Applications within 60 days of receipt for an existing City Facility or 150 days for a City Facility requiring a new or replacement City Facility. The City will either accept the Supplement or provide a written explanation why the Supplement Application is being denied, either in whole or in part.
- 9.4 **Supplement as Authorization to Attach.** The Parties shall document the Make-Ready Work required in the applicable Supplement. Upon completion of any necessary Make-Ready Work, Grantee shall be authorized to make its Attachment.

## 10. MAKE-READY WORK/INSTALLATION

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

---

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

Survey. The City shall provide reasonable advance notice of such a field inspection and a representative of Grantee may be present for the inspection.

#### 10.2 **Make-Ready Work.**

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

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

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

### **11. INSPECTION OF ATTACHMENTS**

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

- 11.4 **Attachment Records.** Notwithstanding the above inspection provisions, upon the written request from City, Grantee is obligated to furnish the City on an annual basis an up-to-date map or list depicting the locations of Grantee's Attachments in an electronic format specified by the City.

## **12. RELOCATIONS**

- 12.1 **Required Relocations of Grantee's Attachments.** If the City reasonably determines that a relocation of Grantee's Attachments is necessary in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, Grantee agrees to allow such relocation or remove the affected Attachment pursuant to Subsection 15.1, and the City agrees to reasonably cooperate with Grantee to locate a replacement City Facility on which to relocate Grantee's Attachment that provides substantially similar signal coverage as the original City Facility. In such instances, the City shall require Grantee to perform such relocation or removal at its own expense within 180 days after receipt of notice from the City. If Grantee fails to relocate Grantee's Attachment within said 180-day period, the City shall have the right to relocate Grantee's Attachment using its personnel and/or contractors. The costs of such relocations shall be apportioned as specified under Section 13. The City shall not be liable for damage to Grantee's Attachment except to the extent provided in Section 22. The written advance notification requirement of this Subsection shall not apply to emergency situations, in which case the City shall provide such advance notice as is practical given the urgency of the particular emergency situation. The City shall then provide written notice of any such actions taken within 5 business days of the occurrence.

## **13. MODIFICATIONS AND/OR REPLACEMENTS**

- 13.1 **Grantee's Action Requiring Modification/Replacement.** In the event any City Facility to which Grantee desires to make an Attachment is unable to support or accommodate the additional equipment in accordance with all Applicable Standards, the City will notify Grantee. If the City is willing to allow a modification or replacement of the City Facility to accommodate Grantee's Attachment, the City will notify Grantee and the Parties will discuss the necessary Make-Ready Work to provide an adequate City Facility, including but not limited to replacement of the City Facility and rearrangement or transfer of the City's equipment and fixtures. Before any modification or replacement of any City Facilities commences, plans for the same must first be approved in writing by the City and the timing for the same must be coordinated with City staff. If Grantee elects to go forward with the necessary changes, Grantee shall bear the actual cost of any Make-Ready Work, per Subsection 10.2. When applicable, the Make-Ready Work must also include the arrangement or transfer of any existing equipment of other Attaching Entities; and Grantee shall be responsible for separately entering into an agreement with the other Attaching Entities concerning the allocation of costs for the same. In such event, and before the commencement of any Make-Ready Work, Grantee shall provide the City the agreements between Grantee and the other Attaching Entities concerning the relocation or rearrangement of their attachments and the costs involved.
- 13.2 **Treatment of Multiple Requests for Same City Facility.** If the City receives Supplement Applications for the same City Facility from two or more prospective grantees within 60 days of the initial request, and accommodation of both requests is not possible, the City will authorize the earliest complete Supplement Application received. If it is possible to accommodate more than one Attachment request through a modification, the City will consider, but is not required to authorize, such requests. If the City approves, the prospective grantees must reach an agreement on how to allocate the applicable costs associated with such modification or replacement among such grantees.
- 13.3 **Allocation of Costs.** The costs for any rearrangement or relocation of Grantee's Attachment or the replacement of a City Facility (including any related costs for tree cutting or trimming) shall be allocated to the City and/or Grantee and/or other Attaching Entity and/or other third party on the following basis:
- 13.3.1 If the City intends to modify or replace a City Facility solely for its own requirements, it shall be responsible for the costs related to the modification or replacement of the City Facility. Grantee shall be responsible for all costs associated with any necessary modification or relocation of Grantee's Attachment. Prior to making any such modification or replacement



of the City Facility the City shall provide Grantee at least 180 days' written notification of its intent in order to allow Grantee a reasonable opportunity to elect to modify, relocate or add to its existing Attachment. Should Grantee so elect, it must seek the City's written permission per this Agreement. The notification requirement of this Subsection shall not apply in the event of routine maintenance or emergency situations, in which case the City shall provide such advance notice as is practical given the urgency of the particular emergency situation. If Grantee elects to add to or modify its Attachment, Grantee shall bear the total incremental costs incurred by the City in making the space on the City Facilities accessible to Grantee.

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

#### **14. ABANDONMENT OR REMOVAL OF CITY FACILITIES**

- 14.1 **Notice of Abandonment or Removal of City Facilities.** If the City desires at any time to abandon, or remove any City Facilities to which Grantee's Attachment is attached, the City shall give Grantee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon or remove such City Facilities. Such notice shall indicate whether the City is offering Grantee an option to acquire the City Facilities. If, following the expiration of the applicable notice period, Grantee has not yet removed and/or relocated all of its Attachments therefrom and has not elected to acquire the City Facilities pursuant to Subsection 14.2, the City shall have the right to have Grantee's

Attachment removed and/or relocated from the City Facility at Grantee's expense. The City shall give Grantee 15 days prior written notice of any such removal or relocation of Grantee's Attachment.

- 14.2 **Option to Purchase Abandoned City Facilities.** Should the City desire to abandon any City Facility, the City, in its sole discretion, may grant Grantee the option of purchasing such City Facility in "as is, where is" condition at a reasonable rate negotiated by the parties. Grantee must notify the City in writing within thirty (30) days of the date of the City's notice of abandonment that Grantee desires to purchase the abandoned City Facility. If Grantee elects to acquire title, then City shall promptly execute and deliver a bill of sale and assignment transferring the City Facility to Grantee in "as is, where is" condition, subject only to City's representation and warranty that City is the sole owner, and City owns the City Facility, as the case may be, free and clear of any liens, leases, licenses or other third party rights or encumbrances. Should Grantee not provide notice of its intent to purchase or should the parties fail to enter into an agreement for Grantee to purchase Grantee must remove its Attachments as required under Section 14.1. The City is under no obligation to sell Grantee the City Facilities that it intends to remove or abandon.

## **15. REMOVAL OF GRANTEE'S ATTACHMENTS**

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

## 16. TERMINATION OF SUPPLEMENT

- 16.1 **Automatic Termination of Supplement.** Any Supplement issued pursuant to this Agreement shall automatically terminate when Grantee ceases to have authority to construct operate and maintain its Attachment on public or private property at the Site of the particular City Facility covered by the Supplement.
- 16.2 **Surrender of Supplement.** Grantee may terminate a Supplement at any time upon written notice to the City, and remove its Attachment from the affected City Facilities, provided, however, that before commencing any such removal Grantee must, to the extent required by Applicable Laws, obtain the City's written approval of Grantee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance and bond requirements of Section 23. No refund of any fees or charges will be made upon removal. However, rental fees shall cease for the Attachment at the time Grantee's Attachment is removed and, if applicable, Grantee has provided to the City the actual costs for the City Facility to be properly restored to its condition immediately prior to the date the Attachment was made, excepting normal wear and tear and damage by other parties. If Grantee terminates such Supplement pursuant to the provisions of this Section, but fails to remove its Attachments from City Facilities within 30 days thereafter, the City shall have the right to remove Grantee's Attachments at Grantee's expense.

## 17. UNAUTHORIZED OCCUPANCY OR ACCESS

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

## 18. REPORTING REQUIREMENTS

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

## 19. RIGHT TO OPERATE CITY FACILITIES

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

## **PART IV – GENERAL PROVISIONS**

## 20. TERM

- 20.1 This Agreement shall be effective for an initial term of ten (10) years term beginning on the Effective Date and ending on December 31, 2031. Thereafter, this Agreement will automatically renew for up to two additional 5-year terms, unless either Party notifies the other Party of its intent to terminate the Agreement at least 90 days before the termination of the then current term. The additional term shall be deemed a continuation of this Agreement and not as a new agreement.
- 20.2 Upon written request of either Party, this Agreement shall be renegotiated in good faith at any time in accordance with the requirements of state law with respect to specific terms that are materially affected upon any of the following events: a final, non-appealable change in federal or state laws or

orders that materially affect any rights or obligations of either Party, including but not limited to the scope of the Agreement granted to Grantee or the compensation to be received by the City hereunder. All terms in the existing Agreement shall remain in effect while the Parties are negotiating.

- 20.3 In the event the Parties are actively negotiating in good faith a new Agreement or an amendment to this Agreement upon the termination date of this Agreement, the Parties by written mutual agreement may extend the termination date of this Agreement to allow for further negotiations. Such extension period shall be deemed a continuation of this Agreement and not as a new Agreement.
- 20.4 Even after the termination of this Agreement, Grantee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Grantee's Attachments or Wireless Facilities as provided for in Section 16.

## 21. FEES

- 21.1 **Fees for Wireless Facilities<sup>2</sup> in Right-of-way.** Prior to the installation of any of Grantee's Wireless Facilities in the Right-of-way, Grantee agrees to pay the applicable Supplement Application Fee. Thereafter, Grantee agrees to pay an Annual ROW Access Fee for each of Grantee's Wireless Facilities located on:

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

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

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

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

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

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

---

<sup>2</sup> May be referred to in the City Fee Resolution as small cell facilities.

<sup>3</sup> May be referred to in the City Fee Resolution as city streetlight.

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

21.3.1 As of the date of execution of this Agreement, the City's current Supplemental Application Fee,<sup>4</sup> and City Resolution No. 88-2020 specifies the City's current Annual ROW Access Fee, Annual Attachment Fee<sup>5</sup> and Non-Recurring Fees.

21.3.2 After specifying the City's current Annual ROW Access Fee and Annual Attachment Fee amounts, City Resolution No. 88-2020 acknowledges the FCC's 2018 Declaratory Ruling regarding fee amounts, but disputes the FCC's authority to establish such fee limitations.<sup>6</sup> This said, Resolution No. 88-2020 provides an option for a provider to only pay the FCC's "safe harbor" annual fee of \$270 in lieu of these specified fee amounts, provided it first agrees in writing to pay any outstanding balance within 60 days in the event the FCC Ruling or its fee limitations are vacated without any further appeal. Accordingly, Grantee hereby exercises this option and consents its condition with respect to the Annual ROW Access Fee and Annual Attachment Fee. Provided, both parties agree that Grantee will not be required to pay any outstanding balance for any period of time more than 18 months prior to the event of any such final, non-appealable order.

21.3.3 In the event the City ever seeks to amend or replace City Resolution No. 88-2020 (or any subsequent annual fee resolution), the City shall first provide Grantee a minimum of 30 days written notice before any such fee modification takes effect with respect to Grantee's Wireless Facilities.

#### 21.4 **Payment.**

21.4.1 **Annual Fees.** Grantee shall pay all applicable Annual ROW Access Fees and all Annual Attachment Fees without requirement for invoice or reminder from the City by January 1 each year. Said annual fee payments are due in advance and not in arrears. As to any new Grantee's Wireless Facilities installed by or for Grantee during any calendar year, such fee may be prorated based on the number of days in the calendar year in which the Wireless Facilities were installed and shall commence upon the first day of the month following the effective date of the applicable Supplement and/or ROW Permit for the Wireless Facilities. In such event, Grantee shall clearly identify the same and the proration amount when Grantee's payment is made.

21.4.2 **Non-Recurring Fees.** The Supplement Application Fee is due when an application is submitted and an application is not considered complete without payment of the fee. All other Non-Recurring Fees are due within 60 days after the City issues the invoice.

21.4.3 All invoices and other requests for payment to City under this Agreement (other than the payment of the Annual ROW Access Fee and Annual Attachment Fee) shall be timely presented in writing to Grantee and accompanied with reasonable substantiation of the costs incurred by City. Properly presented invoices shall be paid by Grantee within sixty (60) days of receipt of invoice accompanied by such substantiation.

---

<sup>4</sup> Referred to therein as the "ROW Permit Fee."

<sup>5</sup> Referred to therein as "Annual ROW Access and Streetlight Attachment Fee."

<sup>6</sup> Resolution No. 88-2020 specifically states, "The FCC issued a Declaratory Ruling on September 27, 2018, in WT Docket Nos. 17-79 and 17-84 (FCC 18-133, 33 FCC Rc'd 9088) ("FCC Ruling") in which the FCC seeks to limit attachment, franchise and/or other small cell ROW access fees to the "reasonable approximation" of a local jurisdiction's cost for processing applications and managing deployment in the right-of-way, but then also establishes a "safe harbor" annual fee of \$270/site. The City disputes the FCC's authority to establish such fee limitations and notes several jurisdictions have filed legal challenges to the FCC Ruling. Given this status, until and unless a court of competent jurisdiction issues a final, non-appealable order vacating the FCC Ruling or its fee limitations, a provider may opt to pay the City only \$270/site towards the Annual Fees (items 2 or 3 above) provided it first agrees in writing that, in the event the FCC Ruling or its fee limitations are vacated without any further appeal, the provider shall pay any outstanding balance for said Annual Fees within 60 days thereof."

- 21.4.4 All fees paid under this Agreement are compensation for the use of the Right-of-way or for the attachment to City Facilities and shall in no way be deemed a tax of any kind.
- 21.5 **Late Charge and Billing Dispute Resolution.** If the City does not receive payment for any fee or other amount owed hereunder within 60 days after it becomes due, Grantee shall pay interest to the City on the amount due at the rate of 10% simple interest per annum; provided, however, under no circumstance shall interest under this Agreement exceed the maximum interest allowable under applicable Kansas law. Billing disputes will be resolved in accordance with Subsection 28.10.
- 21.6 **Determination of Fees and Charges of City Work.** Wherever this Agreement requires Grantee to pay for work done or contracted by the City, the City may utilize its employees or contractors, or any combination of the two, to perform such work, or to permit Grantee to perform the work. Grantee will be responsible for payment to the City for all of the actual costs of all work the City or its contractors perform pursuant to this Agreement to accommodate Grantee's Attachments. The charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. The City shall bill its services based upon actual costs, and such costs will be determined in accordance with the City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Grantee was required to perform work and fails to perform such work necessitating its completion by the City, the City may charge the actual costs associated with completion of such work. When requested by Grantee, the City agrees to provide Grantee with reasonable documentation to determine actual and estimated costs.
- 21.7 **True Up.** Wherever the City, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Grantee and the actual cost of activity exceeds the advance payment of estimated expenses, Grantee shall pay the City for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, the City shall refund to Grantee the difference in cost.
- 21.8 **Refunds.** No fees or charges shall be refunded on account of any removal of any of Grantee's Wireless Facilities (including any Attachment) or any termination of a Supplement granted hereunder. Notwithstanding the forgoing, the City shall not continue to charge going forward for any Supplement terminated in the previous calendar year, and Grantee shall be entitled to a refund upon discovery of such a billing error.
- 21.9 **No Accord.** No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim of the City.
- 21.10 **Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond 90 days following receipt of written notice of nonpayment shall constitute a default of a material term of this Agreement as set forth in Subsection 27.1.
- 21.11 **Incremental Property Taxes.** If the personal property, real property or ad valorem taxes payable by the City with respect to City Facilities or lands at a Site(s) where Attachments are located or the basis on which such taxes are calculated, increase following installation of the Attachment, Grantee shall reimburse the City for the portion of such increase or change attributable to any construction, installation or improvements provided pursuant to this Agreement. Grantee shall be solely responsible for, and shall pay in a timely manner, any personal property, real property or ad valorem taxes or other taxes or fees levied upon or with respect to the Attachment and other Grantee property located on the Site(s) that are billed directly to Grantee by the taxing authorities.

## **22. INDEMNITY AND HOLD HARMLESS**

- 22.1 It shall be the responsibility of Grantee to take adequate measures to protect and defend its Wireless Facilities in the Right-of-way from harm or damage. If Grantee fails to accurately or timely locate its Wireless Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., and amendments thereto, it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized

contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Wireless Facilities.

- 22.2 Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee or subcontractor of Grantee, while installing, repairing or maintaining Wireless Facilities in the Right-of-way.
- 22.3 The indemnity provided by this Section does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. Likewise, the indemnity provided by this Section does not apply to any liability resulting from the negligence of any third party not associated with Grantee, or for any portion of any harm caused by the same. This Section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- 22.4 Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Right-of-way.

## **23. INSURANCE AND BOND**

- 23.1 **Certificate of Insurance.** Grantee shall at its sole expense maintain the insurance coverage and limits required by this Section during the Term of this Agreement. Grantee agrees to procure the required insurance from an insurance company having and maintaining an A.M. Best rating of at least A-VII and deliver to the City a Certificate of Insurance evidencing the types of insurance and policy limits required.
- 23.2 **Required Insurance.**
- 23.2.1 **Workers' Compensation and Employer's Liability Insurance.** As required by statute, with Employer's Liability limits of \$500,000 each accident, \$500,000 by disease policy limits, and \$500,000 by disease each employee. To the extent allowed by Applicable Laws, the policy must include a blanket waiver of subrogation in favor of the City.
- 23.2.2 **Commercial General Liability Insurance.** Written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, with limits of:
- |             |  |
|-------------|--|
| \$2,000,000 | General Aggregate Limit                                  |
| \$1,000,000 | Each Occurrence  |
| \$1,000,000 | Each Occurrence - Personal Injury and Advertising Injury |
| \$2,000,000 | Products/Completed Operations Aggregate Limit            |
- The required Commercial General Liability policy must include the City of Westwood as an additional insured on a primary and non-contributory basis and a waiver of subrogation in favor of the City.
- 23.2.3 **Business Automobile Liability insurance.** With limits of \$1,000,000 Combined Single Limit for each Accident for Bodily Injury and Property Damage, extending to all company owned, leased, and non-owned vehicles.
- 23.2.4 **Umbrella/Excess Liability Insurance.** Coverage is to be in excess of the employers' liability, commercial general liability, and automobile liability insurance required above with limits of \$4,000,000 each occurrence, \$4,000,000 aggregate.
- 23.3 **Notice of Cancellation.** Grantee may meet the required insurance coverage and limits with any combination of primary and umbrella/excess liability insurance. Grantee shall provide at least 30 days advance written notice of cancellation or non-renewal of any required insurance that is not replaced.

Notwithstanding the foregoing, Grantee may self-insure the required insurance under the same terms and conditions as outlined above; provided, Grantee or its parent company shall have and continuously maintain a tangible net worth of at least one hundred million dollars (\$100,000,000.00).

- 23.4 **Bond.** Grantee shall, as a material condition of this Agreement, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$50,000, payable to the City to ensure the appropriate and timely performance in the construction operation and maintenance of Grantee's Wireless Facilities located in the Right-of-way, provided the aforementioned 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 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.

## **24. ASSIGNMENT**

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

## **25. DISCLAIMER**

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

## **26. RESERVATION OF RIGHT**

- 26.1 In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- 26.2 In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.



- 26.3 In entering into this Agreement, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Agreement, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, ordinances and/or rulings.
- 26.4 The City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, and as a customer (or potential customer) of Grantee, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Wireless Services and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

## **27. TERMINATION**

- 27.1 If a Party is in default of any material term or condition of this Agreement or a Supplement, the other Party may terminate the Agreement, if such default is in relation to the Agreement as a whole, or the applicable Supplement(s) if such default is in connection with the Supplement(s). Before terminating the Supplement(s) or this Agreement, the Party will first notify the Party in default in writing of the details of such default. The Party in default shall take immediate corrective action to eliminate any such condition(s) within 60 days (or, if such default is not curable within 60 days, if the defaulting Party fails to commence that cure within 60 days or fails thereafter diligently to prosecute such cure to completion) and shall confirm in writing to other Party that the cited condition(s) has ceased or been corrected, or is in the process of being corrected. If the Parties are unable to resolve the dispute and the Party in default fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, the initial Party may immediately terminate the applicable Supplement(s) or the Agreement, as applicable. In the event of termination of the Supplement(s) or the Agreement (as applicable), Grantee shall remove its Attachment(s) or Wireless Facilities pursuant to Section 16. In such instance, Grantee shall remain liable for and pay all fees and charges accrued pursuant to the terms of this Agreement to the City until Grantee's Attachment(s) or Wireless Facilities is actually removed.
- 27.2 Default of any material term or condition includes, but is not limited to, any of the following circumstances:
- 27.2.1 Construction, operation or maintenance of Grantee's Wireless Facilities in violation of Applicable Standards or the City's regulatory provisions (per Part II).
  - 27.2.2 Construction, operation or maintenance of Grantee's Wireless Facilities in violation of law or in aid of any unlawful act or undertaking.
  - 27.2.3 Construction, operation or maintenance of Grantee's Wireless Facilities after any authorization required of Grantee has lawfully been denied or revoked by any governmental or private authority.
  - 27.2.4 The expiration, termination or revocation of any other required regulatory authorization (as required by Section 4); provided, Grantee shall have a reasonable period of time to obtain the reinstatement of any such authorization.
  - 27.2.5 Construction, operation or maintenance of Grantee's Wireless Facilities without maintaining current insurance coverage or bond as set forth in Section 23.
  - 27.2.6 Nonpayment of any amount due under this Agreement beyond 90 days of written notice as set forth in Subsection 21.10.
  - 27.2.7 Unauthorized occupancy or access to City Facilities. (See Section 17.)
  - 27.2.8 Unauthorized sub-license or lease of City Facilities as set forth in Subsection 24.2.
  - 27.2.9 Failure to eliminate interference with a City Facility as set forth in Section 5. (Termination of applicable Supplement only.)

- 27.3 Nothing herein shall prevent either Party from invoking any other remedy that may otherwise exist under this Agreement, at law or in equity.

## 28. MISCELLANEOUS PROVISIONS

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

|  |  |
|--|--|
| <b>The City:</b><br>City of Westwood<br>4700 Rainbow Boulevard<br>Westwood, Kansas 66205<br>Attn: City Clerk<br>(913) 635-1550                       | <b>Grantee:</b><br>New Cingular Wireless PCS, LLC<br>Attn: Tower Asset Group – Lease Administration<br>Re: Wireless Installation on Public Structures<br>City of Overland Park, Kansas<br>FA No.: _____<br>1025 Lenox Park Blvd NE, 3 <sup>rd</sup> Floor<br>Atlanta, GA 30319<br>Day to day operations - contact 1-800-638-2822 |
| <b>With a copy to:</b><br>Ryan B. Denk<br>MVP Law<br>10 E. Cambridge Cir. Dr.<br>Kansas City, KS 66103<br>(913) 573-3310<br>E-mail: rdenk@mvplaw.com | <b>With a copy to:</b><br>New Cingular Wireless PCS, LLC<br>Attn: AT&T Legal Dept. – Network Operations<br>Re: Wireless Installation on Public Structures<br>(City of Overland Park, Kansas)<br>FA No.: _____<br>208 S. Akard Street<br>Dallas, TX 75202-4206  |

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

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

- 28.3 **Entire Agreement.** This Agreement supersedes all previous agreements, whether written or oral, between the City and Grantee with respect to the subject matter of this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and ORD with approval by authorized representatives of both Parties.
- 28.4 **Conflict of Agreement and Supplements.** In the event of any conflict between this Agreement and any Supplement or exhibit hereto, the terms and conditions of this Agreement, as amended from time to time, shall control.
- 28.5 **Not Exclusive.** The City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use the Right-of-way or City Facilities. Such rights shall not interfere with the rights granted to Grantee by the specific Supplements issued pursuant to this Agreement.
- 28.6 **Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding the Right-of-way or City

Facilities into which the City has previously entered, or may enter in the future, with others not party to this Agreement, provided that any future attachments on City Facilities shall not interfere with Grantee's Attachments.

- 28.7 **Relationship of Parties.** Nothing in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.
- 28.8 **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to confer rights on any third party, as a third-party beneficiary or otherwise.
- 28.9 **Failure to Enforce.** Failure of either Party to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement. No waiver or relinquishment shall be deemed to have been made by either Party unless said waiver or relinquishment is in writing and signed by both the City and Grantee.
- 28.10 **Dispute Resolution.** Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after pursuing good faith negotiations, the Parties are unable to resolve the dispute, then all disputes relating to this Agreement, or the breach thereof, the Parties shall be entitled to pursue all available remedies at law or equity. Each Party will bear its own costs for dispute resolution activity. Unless otherwise agreed in writing, and to the extent permitted under Applicable Laws, communication between the Parties under this Subsection will be treated as confidential information developed for settlement purposes, exempt from discovery, and inadmissible in litigation.
- 28.11 **Confidentiality.** Information provided to the City under this Agreement shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City, at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Agreement.
- 28.12 **Force Majeure.** Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, earthquake, acts of terrorism, war and other disasters beyond either Party's control.
- 28.13 **Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable State limits on municipal liability or governmental immunity. Nothing herein shall be construed to waive or limit the City's immunities, limitation of liability, or defenses under the Kansas Tort Claim Act or other law.
- 28.14 **Survival.** Any termination of this Agreement shall not release Grantee from any liability, amount due, or other obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.
- 28.15 **Severability.** If any provision or portion thereof of this Agreement is held to be invalid by any Applicable Laws or court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, either Party may elect to declare the entire Agreement invalidated if the portion declared invalid is, in the judgment of the Party, an essential part of the Agreement; provided further, before any such termination the Parties shall begin negotiate in good faith for a replacement of the invalid or unenforceable portion.
- 28.16 **Governing Law.** The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Kansas.

- 28.17 **Execution in Counterparts.** This Agreement may be executed in multiple counterparts, including scanned email counterpart signature, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.
- 28.18 **Waiver of Jury Trial.** Each Party waives its right to a trial by jury on disputes arising from this Agreement.

*(The remainder of this page is intentionally blank)*

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

**CITY OF WESTWOOD, KANSAS**

**NEW CINGULAR WIRELESS PCS, LLC**

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

By: \_\_\_\_\_  
David E. Waters, Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Leslie Herring, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ryan Denk, City Attorney

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, \_\_\_\_\_ of AT&T MOBILITY CORPORATION, the Manager of NEW CINGULAR WIRELESS PCS, LLC, a limited liability company duly organized and existing under and by virtue of the laws of Delaware; who is personally known to me to be the \_\_\_\_\_ and who is personally known to me to be the same person who executed as such officer the within instrument on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

My Appointment Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

**Exhibit A**

(Form of Supplement)

**Supplement No. \_\_\_\_  
To Master License Agreement**

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

1. **Supplement to the Agreement.** This Supplement is a Supplement as referenced in the Small Cell Facility Deployment and Master Right-of-Way License Agreement between the City and Grantee dated \_\_\_\_\_, 202\_\_, (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of the Agreement shall govern. Terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
  
2. **Site Description and Site Plan for Attachment.** City hereby licenses to Grantee certain spaces on the City Facility located at the Site described below:  
  
Grantee Site Number: \_\_\_\_\_  
  
Property Address: \_\_\_\_\_  
  
City Pole Address: \_\_\_\_\_  
  
Electric Service Address: \_\_\_\_\_  
  
**Site Plan:** The Attachments of Grantee's Wireless Facilities are as shown on Attachment 1, attached hereto and made a part hereof.
  
3. **Term.** The Effective Date of this Supplement is set forth above; and the Term of this Supplement shall coincide with the Term of the Agreement.
  
5. **Fee.** As prescribed by Section 21 of the Agreement and commencing on the Effective Date of this Supplement, Grantee shall pay to the City the Annual Attachment Fee for use of the above-cited City Facility in the amount of: \_\_\_\_\_.
  
5. **Site Specific Terms.** *(Include any site-specific terms, e.g., replace lighting with LEDs)*

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

**CITY OF WESTWOOD, KANSAS**

**NEW CINGULAR WIRELESS PCS, LLC**

By: \_\_\_\_\_  
\_\_\_\_\_, City Engineer

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

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_, City Clerk

(The form of this Supplement as set forth as Exhibit A to the Small Cell Facility Deployment and Master Right-of-Way License Agreement between the City and Grantee was approved to form by the City's Law Department. **Any deviation therefrom requires the approval of the Law Department**)

**Attachment 1**

*(Site Plan of Facilities and Attachments)*





## **Chief Administrative Officer/City Clerk Report**

**December 2020**

To: Westwood Mayor and City Council

From: Leslie Herring, Chief Administrative Officer/City Clerk

Date: December 10, 2020

RE: Update on some of the key areas of focus of the Administration Department

### **Building Services**

Building Official Eddie McNeil is scheduled to return to work on December 10<sup>th</sup>. We are all very excited to have him return.

### **Planning Commission Report**

The Planning Commission discussed the status of amendments to both the comprehensive plan and the zoning regulations at its December meeting earlier this week. Sub-committees formed and solidified around the following topics:

- Residential driveways and fences
- Lot coverage, massing, and setbacks
- Eave height, height and length of uninterrupted wall surfaces, and attached garage setbacks, and flat roofs

The sub-committees plan to meet independently and report back to the full Planning Commission at the February regular meeting.

### **CARES Act Funding**

The County is wrapping up its distribution of funding to cities. City staff is winding down its purchases to enhance City facilities, sanitation protocols, and technology to aid in flexible work/telecommuting. The County has announced that it will distribute any unused funds to cities to cover public safety payroll expenses.

### **Accounting Software Transition**

City staff continues to work with Adams Brown to complete the transition to Intacct and Bill.com. The team is focused on completing the transition to our new automated accounts payable system. We are

continuing to improve upon the new processes and procedures for month end, A/P approvals, and reporting.

*4<sup>th</sup> Quarter 2020 and 1<sup>st</sup> Quarter 2021*

- *Adopt 2018 building codes*
- *Finalize the update to the employee handbook/personnel policy*
- *Create a financial/purchasing policy – **Currently being worked by the Administration & Compensation Committee***
- *Create a manual for City Council roles, expectations, processes, and procedures*
- *Conduct the annual review of the Comprehensive Plan and consider adopting the drafted Strategic Plan – **Comprehensive Plan currently being worked by the Planning Commission***
- *Create a business inventory of contacts, expressed desires and needs, and opportunities for development*

## COUNCIL ACTION FORM

Administration

Meeting Date: December 10, 2020

Staff Contact: Leslie Herring, Chief Administrative Officer / City Clerk

---

Agenda Item: Fence Variance Request – 4942 Booth St.; variance requested for material, height, and placement.

---

### Background / Description of Item

On December 4, 2020, City staff received an application for a fence variance for 4942 Booth St. Homeowner Karl Phares is proposing to install a new 5' steel fence in his backyard. This application requires a variance for:

- A. Material – fences exceeding 4' in height are to be made of wood or live material (Westwood Zoning Ord. Section 4.3.9.A.2);
- B. Height – a 5' fence would only be allowed in the rear yard of the property (Westwood Zoning Ord. Section 4.3.9.B.2); and
- C. Placement – the 5' rear yard fence is proposed to come nearer to the front property line than the rear line of the primary structure (Westwood Zoning Ord. Section 4.3.9.C.3).

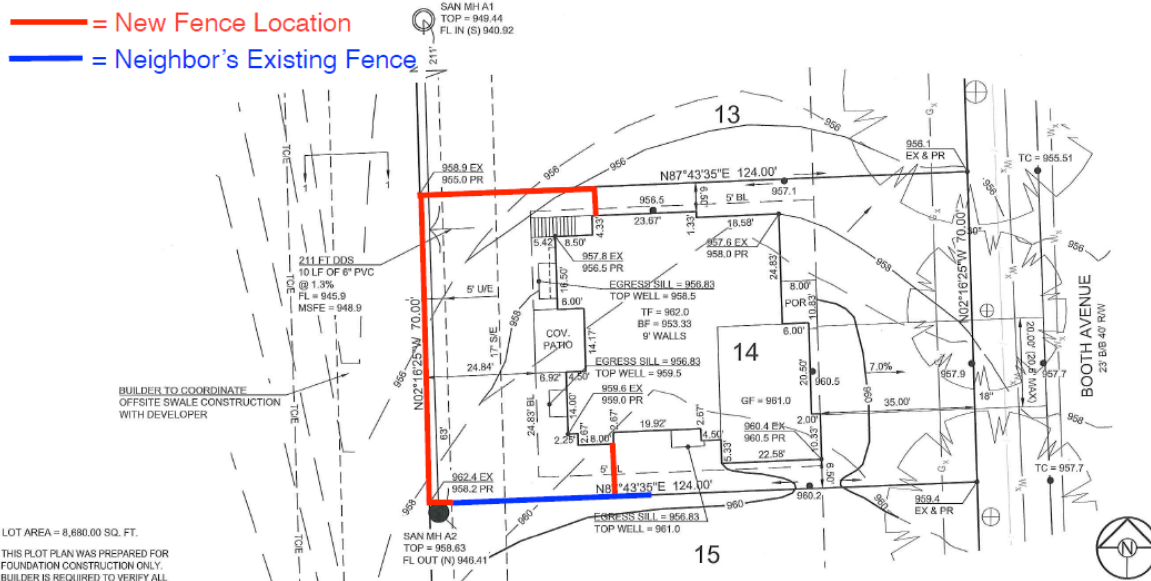
The City Council may approve fence variances pursuant to Westwood Zoning Ord. Section 4.3.9.F, and as set forth below.

#### 4.3.9 Fence and Wall Standards

- F. *Fences or walls which would fail to comply with any other requirement of this Ordinance may be constructed and maintained, contingent upon the following:*
  - 1. *Application shall be made to the Governing Body, which shall study said application to determine the following:*
    - a. *the fence or wall will not adversely affect the general welfare of the immediate neighborhood in which the fence or wall is to be erected, taking into consideration factors including, but not limited to, the value of the property and the safety of residences in said neighborhood;*
    - b. *the appearance, location, and purpose of the proposed fence or wall;*
    - c. *the effect on adjoining properties;*
    - d. *the size of the area to be enclosed; and*
    - e. *the desirability of open views with regard to beauty, value and safety of the neighborhood; and*
    - f. *with respect to any fence on a lot adjacent to a street, a variance shall not be granted if the proposed fence would interfere with a safe view of the street for vehicular traffic, or would impair the view from any nearby driveway, or would extend closer to the street than the adjacent front yard setbacks.*
  - 2. *Said application must be approved by at least four of the five members of the Governing Body.*

## Proposed Fence

An illustration of the existing and proposed fence is provided below.



An image of the proposed fence style is shown here.



The application, including photos of the site and consent from the adjoining residential property owners, is included in your meeting packet for reference.

## Staff Comments/Recommendation

Pursuant to previous City Council direction, City staff has evaluated the following factors:

- Neighbor acknowledgement/consent – received from the two adjoining residential neighbors;
- ROW impediment – No;

- c. Established tree impact/removal – No; and
- d. Resulting sight lines issues - No.

As such, for the benefit of City Council's review and consideration of this variance application, staff does not find any grounds for denial based on these factors.

*Suggested Motion:*

*I move to approve the requested fence variance at 4942 Booth to allow a 5' foot high steel fence nearer to the front property line than the rear corner of the primary structure.*



## Application for a Fence Variance

**City of Westwood**  
4700 Rainbow Blvd  
Westwood, Kansas 66205  
Phone: (913) 362-1550  
www.westwoodks.org

### TO THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:

*The undersigned hereby affirms:*

- That he/she is the owner/duly authorized agent of the owner of the following described real property located at  
4942 Booth St, Westwood, KS 66205 in the City of Westwood, with  
the Legal Description Lot 14, Block 3, Swatzell View
- That said premises are now located in a Residential District, and zoned accordingly under the Zoning Ordinances of the City of Westwood.
- That said premises are now being used as follows: Single Family Residence
- That the petitioner desires to erect a fence on said premises, as follows (also give reasons which, in the opinion of the petitioner, justify issuance of a fence variance): We are requesting a variance to install a five-foot high steel fence in our backyard, which is one foot higher than the current fence code allows. The reasons for the requested variance is additional security while maintaining open sight lines. Our back lot line abuts a large open space where people and pets often walk, run, play, etc. We also have an athletic dog that requires a higher fence, especially in consideration of the downhill grade of our backyard making the proposed fence line the low point for clearance. Please see attached photos and emails from both of our neighbors in support of the requested fence.

Wherefore, petitioner hereby applies for a variance to allow erection of a fence as follows: A five-foot high steel fence in our backyard, to be installed by Tom Burge Fence & Iron, Inc. \_\_\_\_\_

|   |
|---|
| Date Filed _____                              |
| Accepted by _____<br>City Clerk               |
| Date of Hearing _____                         |
| Decision _____<br><b>CITY OF WESTWOOD USE</b> |

|       |                          |
|-------|--------------------------|
| _____ | Karl R Phares            |
| _____ | Owner-Agent Printed Name |
| _____ | DocuSigned by:           |
| _____ | <i>Karl R Phares</i>     |
| _____ | Owner-Agent Signature    |
| _____ | ACDCF967FFAA497...       |
| _____ | 913-951-9202             |
| _____ | Phone Number             |



## PHOTOS

Looking Southwest



Looking Northwest





**Panoramic Looking West**



**Looking South to 50<sup>th</sup> Street Along Back Lot Line**





Looking North to 49<sup>th</sup> Terrace Along Back Lot Line



Looking West into Uphill Grade from Back Lot Line



Photo of fence style from <https://www.burgefence.com/>



**From:** [David Waters](#)  
**To:** [Leslie Herring](#)  
**Subject:** Fwd: Fence variance  
**Date:** Friday, December 4, 2020 2:36:47 PM

---

-David E. Waters

Begin forwarded message:

**From:** Christopher Wilkins <wilkins5@gmail.com>  
**Date:** December 4, 2020 at 2:30:24 PM CST  
**To:** david.waters@westwoodks.org, lisa.cummins@westwoodks.org,  
jeff.harris@westwoodks.org, jason.hannaman@westwoodks.org,  
laura.steele@westwoodks.org, holly.wimer@westwoodks.org  
**Subject:** Fence variance

Dear Mayor and Westwood City Council,

We are next door neighbors with Karl and Anna Phares and we write to confirm our full support for their requested fence variance for a 5-foot high steel fence. We are happy with the height and style of the fence Karl and Anna have selected, and we think it will fit in nicely with our backyards and the large open space behind our homes. If we can answer any additional questions in support of this requested variance, please feel free to contact us at 785-691-5161. Thank you.

Best,  
Christopher Wilkins and Vedrana Balta (4936 Booth St.)



**From:** [Karl Phares](#)  
**To:** [Leslie Herring](#)  
**Subject:** Fwd: Fence at 4942 Booth St.  
**Date:** Sunday, December 6, 2020 12:47:25 PM  
**Attachments:** [Phares Fence Location Depiction.PDF](#)

---

Hi Leslie, below is the email from our other neighbors, Kate Vaiknoras and Mike Johnson. Also, attached is the depiction of the proposed fence location. Please let me know if you need anything further. Thanks again!

Karl

----- Forwarded message -----

**From:** **Kate Vaiknoras** <[kvaiknor@gmail.com](mailto:kvaiknor@gmail.com)>  
**Date:** Sun, Dec 6, 2020 at 12:35 PM  
**Subject:** Fence at 4942 Booth St.  
**To:** <[david.waters@westwoodks.org](mailto:david.waters@westwoodks.org)>, <[lisa.cummins@westwoodks.org](mailto:lisa.cummins@westwoodks.org)>, <[jeff.harris@westwoodks.org](mailto:jeff.harris@westwoodks.org)>, <[jason.hannaman@westwoodks.org](mailto:jason.hannaman@westwoodks.org)>, <[laura.steele@westwoodks.org](mailto:laura.steele@westwoodks.org)>, <[holly.wimer@westwood.org](mailto:holly.wimer@westwood.org)>  
**Cc:** Karl Phares <[karl.phares@gmail.com](mailto:karl.phares@gmail.com)>, Mike Johnson <[brantleybentz@gmail.com](mailto:brantleybentz@gmail.com)>

Dear Mayor and Westwood City Council,

We live at 4948 Booth St in Westwood and are next door neighbors with Karl and Anna Phares. We are writing to confirm our full support for their requested fence variance for a 5-foot high steel fence. We are happy with the height and style of the fence Karl and Anna have selected, and we think it will fit in nicely with our backyards and the large open space behind our homes.

Sincerely,  
Kate Vaiknoras and Mike Johnson

**COUNCIL ACTION FORM**

Meeting Date: December 10, 2020

Staff Contact: Leslie Herring, Chief Administrative Officer/City Clerk

---

Informational Item: League of Kansas Municipalities 2021 Statement of Municipal Policy

---

**Background / Description of Item:**

Each year, before the legislative session begins, the League of Kansas Municipalities (LKM) updates and publishes its Statement of Municipal Policy (the "Statement"). This document is intended for use by LKM when working with legislators on behalf of Kansas cities and counties and our interests.

**Staff Comments:**

This past summer, LKM invited officials from cities all around the state to review and workshop the Statement of Municipal Policy. I personally sat in on committees to review and update policy positions pertaining to public officers & employees and utilities and, as such was able to learn about other updates and changes discussed.

Notable updates to the Statement include:

- Police Reform. New section added to voice support for local police departments and to state that federal or state reform should be focused on providing resources, incentivizing transparency, encouraging good police practices, and promoting racial equity and justice.
- Emergency Management. Sentence added to promote cities' role in responding to disasters.
- Transportation Safety. Sentence added to be inclusive of all users of the transportation system.
- Electric Charging Station Infrastructure. New section added to support expansion of same.
- Stormwater Management. Sentence added to endorse state measures to incentivize and enable investment in green infrastructure.

The 2021 Statement of Municipal Policy is included in your meeting packet for your review and reference.

*Suggested Motion:*

*No motion necessary.*

# 2021 Statement of Municipal Policy



# TABLE OF CONTENTS

|  |    |
|--|----|
| Governing Body.....                    | 3  |
| About The League .....                 | 4  |
| Legislative Priorities .....           | 5  |
| Finance & Taxation .....               | 6  |
| Public Safety .....                    | 8  |
| Infrastructure.....                    | 10 |
| Human Resources .....                  | 14 |
| Government Policies & Procedures ..... | 15 |
| Federal Issues .....                   | 19 |
| City Facts .....                       | 21 |
| League Legislative Staff .....         | 22 |
| Policy Development .....               | 22 |

## Mission Statement

*The mission of the League shall be to strengthen and advocate for the interests of the cities of Kansas to advance the general welfare and promote the quality of life of the people who live within our cities.*

## GOVERNING BODY



**President**  
Sara Caylor  
Mayor Pro Tem, Ottawa



**Vice President**  
Jason Jones  
Councilmember, Hesston

**Immediate Past President**  
John McTaggart, Mayor, Edwardsville

**Past Presidents**  
Mike Boehm, Mayor, Lenexa  
Daron Hall, City Manager, Pittsburg  
Carl Gerlach, Mayor, Overland Park  
Terry Somers, Mayor, Mount Hope

**Directors**  
Gary Adrian, Mayor, Colby  
David Alvey, Mayor, Unified Government of  
Wyandotte County/Kansas City  
Becky Berger, City Manager, Atchison  
Thomas Brown, Mayor, McPherson  
Brenda Davis, City Clerk, Scott City  
Michelle De La Isla, Mayor, Topeka  
John Dudte, City Administrator, Chapman  
Mark Govea, Mayor, Osawatomie  
Julie Lyon, Mayor, Stafford  
Troy Tabor, Council President, Andover  
Joyce Warshaw, Commissioner, Dodge City  
Toni Wheeler, City Attorney, Lawrence  
Brandon Whipple, Mayor, Wichita  
J. Michael Wilkes, City Manager, Olathe

**Executive Director**  
Erik Sartorius



# ABOUT THE LEAGUE



## Supporting Kansas Cities

The League of Kansas Municipalities is a membership association that advocates on behalf of cities, offers training and guidance to city appointed and elected officials, and has a clear purpose of strengthening Kansas communities. Since 1910, the League has been a resource for cities across Kansas and has acted as a body to share ideas, facilitate communication between members and provide information on best practices in city operations.



# LEGISLATIVE PRIORITIES



**T**he prosperity of the State of Kansas is absolutely dependent upon the prosperity of our cities. Over 83% of Kansans live in an incorporated city. In an effort to promote healthy and sustainable communities, the elected and appointed city officials of Kansas hereby establish the following as our legislative priorities for 2021:

**HOME RULE.** Consistent with the Home Rule Amendment of the Kansas Constitution approved by voters in 1960, we support local elected officials making decisions for their communities, particularly local tax and revenue decisions.

**PROPERTY TAXES.** We recognize in areas of the state there is a large reliance on property taxes to fund local and state government. All property taxing authorities, including cities, counties, the state, school districts, special districts, and community colleges should be equally transparent, and have to abide by the same limitations, restrictions and requirements. Any additional transparency measures should not be burdensome or costly. We encourage the state and local governments to work on making government more efficient and recognize the need to work together on innovative approaches to reduce reliance on property taxes. In addition, we call on the state to authorize alternative revenue options for local governments.

**TAX LID REPEAL.** We support repeal of the property tax lid.

**INTERNET SALES TAX COLLECTIONS.** The inability of governments to collect local option sales or compensating use tax on remote sales continues to erode a viable and fair revenue source. The League supports state legislation establishing a program to help the state collect state and local sales and compensating use taxes due from in-state purchasers. Remitted taxes should be distributed using existing methods/formulas for the state and local governments.

**PROPERTY VALUATION.** We support appraisals based on fair-market value as historically used in Kansas. We oppose caps in property valuations as unconstitutional and inequitable.

**BUDGET TIMELINE.** The current statutory framework for the adoption of municipal budgets makes it difficult for cities to plan for budgets that must be presented to governing bodies five months before the start of the fiscal year. We support legislation to allow the adoption of City budgets by November 30 but keep the August 25 deadline for certification of the amount of ad valorem tax revenue needed.

**EMS/HOSPITAL FUNDING.** Municipal hospitals and emergency medical services (EMS) are challenged in meeting their communities' needs. We support the expansion of Medicaid in Kansas to allow such entities access to federal funding, helping cities maintain and provide critical services for their citizens. If the Legislature fails to approve Medicaid Expansion, additional state funding needs to be made available to rural hospitals in order to retain businesses and their employees and sustain the health and lives of Kansans.

**MENTAL HEALTH.** We support allocating additional resources for mental health programs. Funds should be allocated for community mental health centers and additional bed space for patients with mental health issues.

**POLICE REFORM.** We support the work of our local police departments to make our communities safer for all. Any federal or state proposals for police reform should be focused on providing resources for local law enforcement, incentivizing transparency, and encouraging good police practices, including equity and justice.

**SPECIAL DISTRICT CONSOLIDATION.** The current statutory framework requires separate legislation every time a special district of government consolidates into a city. We support statutory changes creating a uniform process for smaller units of government to consolidate into cities when it is in the best interest of the city.



# FINANCE & TAXATION



**A**n adequate source of revenue is necessary to fund the essential services of city government. Each city is unique in both services provided and the ability to pay for such services; maximum flexibility should be granted to local governing bodies to determine the amount and source of funding for city services.

**INTERNET SALES TAX COLLECTIONS.** The inability of governments to collect local option sales or compensating use tax on remote sales continues to erode a viable and fair revenue source. The League supports state legislation establishing a program to help the state collect state and local sales and compensating use taxes due from in-state purchasers. Remitted taxes should be distributed using existing methods/formulas for the state and local governments. The League further supports the adoption of the safe harbor provisions as used by South Dakota to ensure constitutional compliance with the recent U.S. Supreme Court decision in *South Dakota v. Wayfair, Inc et al.*, 138 S. Ct. 2080 (2018) in order to bring tax fairness to Kansas brick-and-mortar businesses.

**TAX/SPENDING LID.** Local spending and taxing decisions are best left to the local officials representing the citizens that elected them. We strongly oppose any state-imposed limits on the taxing and spending authority of cities and support repeal of the property tax lid.

**TAX LID.** We support repeal of the tax lid. If repeal of the tax lid does not occur, the cost of elections and timing of the budget approval process, in coordination with such an election, make the tax lid unfeasible. We support removing the election process under the tax lid and replacing with a protest petition. We support additional exemptions to make the law more workable.

**PROPERTY VALUATION.** We support appraisals based on fair-market value as historically used in Kansas. We oppose caps in property valuations as unconstitutional and inequitable.

**MANDATORY SPENDING.** We oppose any law that requires a city spend a certain threshold to receive and maintain state dollars. All spending decisions should remain at the local level.

**LAVTR.** The State Legislature, as required by Kansas statutes, should help to relieve the burden on property taxpayers by funding the Local Ad Valorem Tax Reduction (LAVTR) program. This should include keeping the promises made with reference to the machinery and equipment mitigation legislation, future gaming revenues and the existing statutory formula.

**EMS/HOSPITAL FUNDING.** Municipal hospitals and emergency medical services (EMS) are challenged in meeting their communities' needs. We support the expansion of Medicaid in Kansas to allow such entities access to federal funding, helping cities maintain and provide critical services for their citizens. If the Legislature fails to approve Medicaid Expansion, additional state funding needs to be made available to rural hospitals in order to retain businesses and their employees and sustain the health and lives of Kansans.

**TAX POLICY.** The League supports the long-established philosophy of balancing revenue from income, sales, and property taxes to assure the fiscal ability of the state and local governments to provide the services citizens want and need. Changes to tax policies should not be undertaken without a full understanding of the overall impact upon all taxpayers, taxing entities, and the sources and amounts of tax revenues to be generated or eliminated by such policy changes.

**BUDGET TIMELINE.** The current statutory framework for the adoption of municipal budgets makes it difficult for cities to plan for budgets that must be presented to governing bodies five months before the start of the fiscal year. We support legislation to allow the adoption of City budgets by November 30 but keep the August 25 deadline for certification of the amount of ad valorem tax revenue needed.



**FINANCE POLICIES.** Cities should be allowed to set financial policies in-line with bond rating requirements and other generally accepted best practices for municipal management.

**PROPERTY TAXES.** We recognize in areas of the state there is a large reliance on property taxes to fund local and state government. All property taxing authorities, including cities, counties, the state, school districts, special districts, and community colleges should be equally transparent, and have to abide by the same limitations, restrictions and requirements. Any additional transparency measures should not be burdensome or costly. We encourage the state and local governments to work on making government more efficient and recognize the need to work together on innovative approaches to reduce reliance on property taxes. In addition, we call on the state to authorize alternative revenue options for local governments.

**PROPERTY TAX EXEMPTIONS.** We support a broad tax base and believe the existing property tax base should be protected. We encourage the Legislature to resist any proposal to further exempt any specific property classification from taxation, including industry-specific exemptions. We support the current statutory definition of machinery and equipment and the exemption should not be expanded. The Legislature should actively review existing exemptions to determine if they should continue or be repealed.



**SALES TAX.** Kansas should have a broad sales tax on all goods and services. Cities should be able to impose voter-approved local sales taxes. Sales tax exemptions should be limited to those for which the benefit outweighs the tax dollars lost.

**UNFUNDED MANDATES.** We oppose unfunded mandates. If the state or federal governments seek to promote particular policy objectives, such mandates should be accompanied by an appropriate level of funding.

**CITY AND COUNTY REVENUE SHARING.** The State Legislature should fund existing city and county revenue sharing programs as required by Kansas statutes.

**ALTERNATIVE REVENUE SOURCES.** Cities should be authorized to approve alternative revenue sources in order to maintain appropriate levels of funding for the health, safety and welfare of our citizens.

**TELECOMMUNICATIONS TAXES.** We support cities' continued ability to impose and collect taxes and fees on telecommunications providers.

#### **BANKING AND INVESTMENT RESTRICTIONS.**

We support maximum banking and investment choices for local government. At a minimum, all cities, counties and school districts should have the same banking and investment authority the state has granted to itself.

**FEDERAL LOAN PROGRAMS.** We support changes to allow local governments to participate directly in federal loan programs.

**TAX CREDITS.** We support the continued availability of tax credits as a tool for economic development.

#### **SUMMARY PUBLICATION OF RESOLUTIONS.**

We support legislation allowing cities to publish a summary of a resolution, with the full text of any resolution posted on the city's official website, in lieu of publication of the full resolution.

**TAXES PAID UNDER PROTEST.** Due to the effect that taxes paid under protest can have on cities, the state and the county where the city is located should be required to notify cities when taxes, including compensating use and ad valorem taxes, are paid under protest so that cities have accurate data when making budgetary decisions.

**EXPANDED GAMING.** If the State Legislature authorizes expanded gaming, cities should receive funds to offset the impact, similar to agreements for other gaming that occurs in Kansas.



# PUBLIC SAFETY



**C**ities play a critical role in the protection of the health and safety of the citizens of Kansas. Because mandated programs are costlier and less efficient, government at all levels should cooperate in the development of health and safety programs.

**ASSET FORFEITURE.** We support the use of asset forfeiture as an important component in reducing financial gains from criminal acts while providing civil due process. All assets forfeited, or the proceeds of the sale of the same, should remain with the local government that seizes the property.

**MUNICIPAL COURT.** Municipal courts serve a vital role protecting an individual's right to equal protection under the law following arrest or detainment. We support the local control of, and judicial authority of, municipal courts. All assessed court funds under a municipal court order, other than restitution collected and payable to a third party and state assessments paid under K.S.A. 12-4117, shall be retained by the local municipality. We support municipalities' ability to set appropriate fines and fees. We support increased use of audio-visual technology to allow greater flexibility and access to the judicial system.

**LAW ENFORCEMENT AND PUBLIC SAFETY.** We believe cooperative efforts, rather than state and federal mandated requirements, are vital to the efficient and effective development of local law enforcement and public safety programs.

**EMERGENCY 911 SERVICES.** Cities and counties should maintain local control of the 911 system and the 911 tax should continue to include both wireline and wireless communications. We support legislation providing flexibility for local governments to utilize these funds to provide emergency services. 911 funds should not be diverted by the legislature for other uses.

**EMERGENCY MANAGEMENT.** Because cities play a crucial role in effective emergency management, implementation strategies must promote cooperative efforts between federal, state and local governments. Changes to the Emergency Management Act should consider the role of the city in responding to disasters.

**MEDICAL CHARGES.** The cost of health care services for prisoners and individuals in custody is a growing concern for cities. We strongly believe the first person responsible for the payment of medical costs should be the individuals in custody. Another needed change, to begin addressing these costs, is to clarify that the entity charging for a crime is responsible in the event those costs cannot be recovered. We support the pooling of resources between all state and local law enforcement agencies.

**LAW ENFORCEMENT DISCRETION.** We support local governments' discretion in establishing law enforcement vehicle pursuit policies and the ability of law enforcement officers to use discretion in determining when to make an arrest.

**SERVICE ANIMAL FRAUD.** We recognize the important role service animals play for the disabled community. The use of such animals is being tainted, by service animal fraud. We support strengthening and redefining the crime of service animal fraud to disincentivize individuals from asserting their animal is a service animal in order avoid vicious animal, exotic, livestock, or breed-specific ordinances.

**ALCOHOL & CMB REGULATION.** We support the authority of cities to license and regulate alcoholic liquor and cereal malt beverage retailers and establishments.

**MEDICAL MARIJUANA.** The Legislature should carefully weigh the impact of medical marijuana on law enforcement and human resources. In addition, medical marijuana should be subject to existing state and local sales tax and cities should be able to levy their own excise fees and receive a portion of any state funds to offset the impact of medical marijuana. Also, cities should have the ability to opt-in to allowing dispensaries in their city. Kansas should only allow the cultivation and processing of medical marijuana and THC in licensed facilities and should not allow residential grow operations of any sort. In addition, Kansas should delay implementation to give time to study any issues that might result from the passage of medical marijuana legislation.



**FIREARMS AND WEAPONS.** We support the local regulation of firearms and weapons.

**HOMELAND SECURITY.** First responders at the local level serve as the front-line defense in the prevention and response to terrorism and other security risks. Local governments should be granted maximum flexibility and discretion over implementation of monies and strategies regarding homeland security.

**REGULATION.** Any regulation should balance the costs to the benefit of the regulation. Existing regulations that no longer pass this balancing test should be repealed.

**CYBERSECURITY.** Organizations of every size constantly face cyber-related incidents. We encourage the State to provide collaborative discussions, training programs, and feasibility studies for the impact of cyber-attacks on cities. Cities will use information provided by the state government to determine best practices and policies for municipal implementation.

**SCRAP METAL.** Cities are currently preempted from regulating scrap metal. We support a narrowing of this preemption so that cities can address issues at the local level.

**MENTAL HEALTH.** We support allocating additional resources for mental health programs. Funds should be allocated for community mental health centers and additional bed space for patients with mental health issues.





# INFRASTRUCTURE



**C**ities construct, manage, operate and maintain numerous infrastructure components that provide a high quality of life. Infrastructure involving transportation, municipal utilities, energy services, and water and environmental structures are all dependent on the ability of local officials to self-determine what's appropriate for their own communities. This self-governance relies on the expectation of cooperation from the state government and full funding as required by law under current statutory programs from both the state and federal government.

## TRANSPORTATION

**CONNECTING LINKS.** The State should maintain KDOT's funding for connecting link programs at the FY 2020 level for cities to provide for the maintenance of state highways within city limits. We support full funding of the City Connecting Link Improvement Program (CCLIP).

**CITY-COUNTY HIGHWAY FUND.** The City-County Highway Fund is essential to maintaining local roads and bridges and should be fully funded and not be diverted for other purposes. Such funding should include the transfer of fees from the registration of out-of-state commercial vehicles, as directed by K.S.A. 9-3425i. The proceeds from any increases to the motor fuel tax rates should be allocated in accordance with current statutory provisions.

**COMPREHENSIVE TRANSPORTATION PROGRAM.** We support full funding of the Eisenhower Legacy Transportation Program. We oppose any use of these funds to balance the state's General Fund budget. Any reduction in funding jeopardizes existing programs.

**TRANSPORTATION SAFETY.** The State should work in cooperation with local governments to continue to provide safe roads and bridges within Kansas. The State should focus on all users of the transportation systems and recognize that a system that is designed for use by pedestrians, bicycles, and vehicles is safer and more economically prosperous for all Kansans.

**TRANSPORTATION MAINTENANCE.** Because transportation infrastructure is critical to state and local development activities, we support the continued maintenance of the transportation infrastructure in Kansas. We further support continued funding to support multimodal transportation networks, including for mass transit, biking, and walking infrastructure.

### **ELECTRIC CHARGING STATION INFRASTRUCTURE.**

We support the expansion of electric charging station infrastructure throughout the state in order to increase the pace of electric vehicle adoption and positively impact local communities. We support a change to allow sales of electricity at EV charging stations and for EV charging stations to not be classified as regulated utilities.

**AIRPORT FUNDING.** We support the continued use of state economic development dollars (EDIF funds) to enhance airport facilities and services.

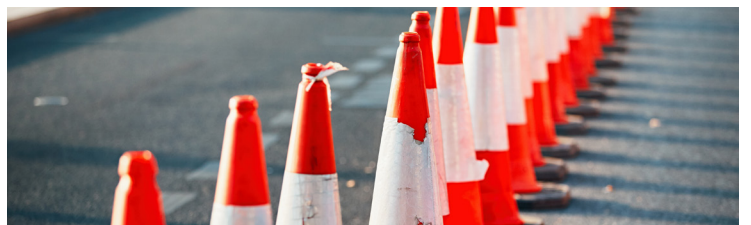
### **TRANSPORTATION DEVELOPMENT DISTRICTS.**

We support the continued ability of cities to establish transportation development districts to meet the economic development and transportation infrastructure needs in the community.

**RECREATIONAL TRAILS.** We support the development of recreational trails, including rails to trails, aquatic trails, and hike-and-bike on levee trails projects, and oppose any legislation that would make such development more burdensome or costly.

**RAIL SERVICE.** We support existing and enhanced passenger and freight rail service in Kansas and seek a strong partnership with the state and federal government to achieve meaningful improvements.

**UNIFORM TRAFFIC CODE.** We support a comprehensive review and recodification of the Uniform Traffic Code.



## UTILITIES

**BROADBAND.** Access to reliable broadband service is increasingly important to the economic health of Kansas cities. We support the establishment of the Broadband Deployment Grant Fund to facilitate broadband expansion in Kansas. Guidance for the grant program and broadband-related statutes must recognize the important role local governments play in such expansion and not remove important planning and right of way authority from local governments.

**SERVICE TERRITORY.** Municipalities must retain the authority to purchase, construct, or extend the infrastructure necessary to supply the cities and their inhabitants with public utilities, including electric services. We believe in the current statutory framework which allows cities' jurisdictional limits to change over time, due to the annexation of land, including land located within the service territory of another utility provider.

**MUNICIPAL OPERATION.** We support the ability of cities to operate municipal gas, water, electric, sewer, telecommunications, broadband, solid waste, stormwater or other utility services. We further support the ability of cities to set and control the rates for locally owned and operated utilities, and support the current defined service territory statutes.

**RIGHT OF FIRST REFUSAL.** We support municipal utilities having the ability to invest in new electric/transmission projects in order to provide reliable, affordable service to local customers. We oppose efforts prohibiting competition for transmission projects in Kansas.

**FRANCHISE AUTHORITY.** We oppose any legislation restricting the current franchise authority for cities, including limits on franchise fees.

**MANDATES.** We oppose unfunded federal and state mandates regulating the operation of municipal gas, water, electric, sewer, telecommunications, solid waste, stormwater utilities or other utility services. Any mandates passed down to cities should not be imposed without a cost-benefit analysis and should be accompanied by appropriate funding. In addition, regulations should provide for a reasonable implementation schedule.

**PUBLIC WATER SUPPLY SUPERVISION PROGRAM.** We support changes to the statutory language increasing the funding stability for the Kansas Department of Health and Environment's Public Water Supply Supervision program. These changes must balance municipal cost concerns and recognize the state has a responsibility to contribute to these important public health matters. In addition, we recognize a need to update standards to meet federal clean drinking water standards.

**RIGHT-OF-WAY.** Cities must maintain their ability to regulate the public right-of-way and recover reasonable compensation for use of the right-of-way. Kansas policy should not be dictated by overreaching federal mandates. We oppose efforts to codify at the state level federal directives limiting cities' powers.





## ENERGY

**ELECTRIC UTILITY DEREGULATION.** Community-owned and operated municipal electric utilities make long-term power supply decisions and investments with the goal of benefiting their overall community. We support continued local control over power supply decisions.

**STATEWIDE ENERGY POLICY.** We support the development of a coordinated and comprehensive Energy Plan. Further, we support creative and cooperative implementation of renewable energy and energy efficient technologies that are environmentally sustainable and economically successful.

**ENERGY EFFICIENCY.** Energy efficiency saves money, drives investment across all sectors of the economy, creates jobs, and reduces the environmental impact of energy use. Accordingly, we support public and private incentives to encourage energy efficiency and renewable energy.

**BUILDING CODES.** We oppose any measures to preempt local building energy codes with respect to prohibiting the incentivization or requirement of net zero or net-zero ready building requirements.

## WATER AND ENVIRONMENT

**WATER QUALITY.** We support a clean and safe public water supply and the protection of public health and aquatic life. We endorse regional and cooperative solutions to water quality challenges that address point and non-point source pollution while balancing municipal cost concerns.

**WATER QUANTITY.** Government at all levels should aggressively pursue the conservation, protection and development of current and future municipal water supplies. We support cost-effective efforts to extend the life of reservoirs and to expand reservoir storage for use by municipal water suppliers. We support immediate state action, in consultation with municipal providers, to address over-appropriated surface and groundwater resources while respecting priority of water rights. The water rights management tools that have been developed in recent years should be modified or expanded so that they provide the same type of flexibility and authority to any water rights holder regardless of class.

**WATER PLANNING.** We support increased municipal representation on the Kansas Water Authority; broad-based revenue sources and distribution for the state Water Plan Fund; and a re-evaluation of the process for adopting the annual state Water Plan Fund budget.



**INFRASTRUCTURE FUNDING.** We support increased federal and state funding to assist local communities with their water, wastewater, stormwater, levee and dam infrastructure and associated security needs.

**STORMWATER MANAGEMENT.** We endorse regional and cooperative solutions to stormwater quality and quantity challenges that address point and non-point source pollution. We further endorse state measures to incentivize and enable investment in green infrastructure (e.g., street trees, use of native plants, etc.) to support sustainable communities.

**SOLID WASTE.** The home rule powers of cities to dispose of and manage municipal solid waste should not be restricted. This includes local control and decision-making surrounding recycling and composting programs.

**HAZARDOUS WASTE.** We support a comprehensive state-local approach to provide assistance in identifying hazardous wastes and to develop programs to monitor and dispose of such wastes. We encourage state agencies to work cooperatively with local governments

in the development and approval of programs to identify, monitor and dispose of hazardous waste. Further, appropriate education and training should be provided prior to the implementation of such programs.

**CLEAN AIR.** We support air quality controls and a state-developed air quality plan that protects the health and safety of Kansans while balancing municipal cost concerns.

**WATER AND WASTEWATER CERTIFICATION.** We support improved certification programs that better align the necessary skillsets for real world water and wastewater system operation with the content of the corresponding exams. We support review of water and wastewater certification to ensure validity and reliability. These certifications need to continue to be protective of the public health and environment. We encourage contracting and collaboration to help utilities acquire the knowledge, skills, abilities, and certifications needed to effectively and efficiently serve Kansas rate payers.





# HUMAN RESOURCES



**C**ity employees are the foundation of effective city government. City governing bodies must have the authority to develop local personnel policies to attract and maintain a high-quality public workforce.

**WORKERS' COMPENSATION.** We support reasonable and just benefits for employees injured within the course and scope of their public employment, and effective enforcement of the Workers' Compensation Act.

**KPERS & KP&F.** We support the full funding of the Kansas Public Employees Retirement System (KPERS) and Kansas Police & Fire (KP&F) retirement systems and honoring all commitments that have been made by KPERS and KP&F. The local KPERS system should remain separate from the state and school retirement system. Changes to the KPERS system should not impact a city's ability to hire and retain qualified public employees, including any undue burden on hiring KPERS retirees, or reduce benefits promised to employees.

**PUBLIC EMPLOYER-EMPLOYEE RELATIONS ACT (PEERA)/COLLECTIVE BARGAINING.** We oppose any federal or state mandate requiring collective bargaining at the local level.

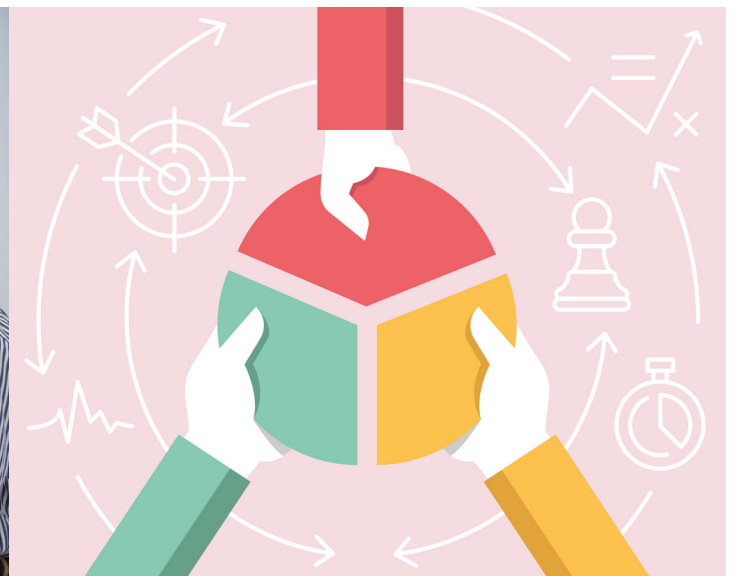
**PERSONNEL MANDATES.** We oppose state and federal mandates involving public personnel.

**WEAPONS AND FIREARMS.** We support the ability of local governments to set policies regarding the carrying of weapons and firearms by municipal employees while they are engaged in their work.

**PREVAILING WAGE.** We oppose federal and state mandates requiring or prohibiting the payment of prevailing wage.

**HEALTH CARE & OTHER BENEFITS.** We support cooperation and active study of ways to relieve the financial burden of securing employee health care coverage, including the continued option for cities to participate in the state health care program.

**UNEMPLOYMENT.** We support reasonable and just benefits for employees who are qualified individuals under the Kansas Employment Security Law. We oppose the finding that volunteers, who are paid a nominal stipend, are considered a qualified individual. We support legislation to define "volunteer" in Kansas employment law such that it is consistent with federal law.



# GOVERNMENT POLICIES & PROCEDURES



**A**biding by the longstanding constitutional Home Rule authority of Kansas cities, there is a need to ensure local governments maintain autonomy and the authority of self-governance to create a safe and sustainable quality of life for residents. In an effort to construct appropriate policies for their community, such as economic and community development initiatives, cities should be committed to implementing procedures which ensure ethical and transparent governance from their officials.

**HOME RULE.** Consistent with the Home Rule Amendment of the Kansas Constitution approved by voters in 1960, we support local elected city officials making decisions for their communities, particularly local tax and revenue decisions.

**PROTECTION OF THE FIRST AMENDMENT.** The right of the people through their democratically elected and appointed officials to petition and speak to their government officials shall not be abridged. We support cities' First Amendment right of freedom of association to work together to accomplish common goals.

**CITY ELECTIONS.** City elections should remain non-partisan and separate from state and national elections.

**FILING FOR OFFICE.** In order to encourage a higher number of candidates to file for office, the filing location for city elections should return to the city clerk's office.

**FILLING OF VACANCIES.** The current statutes for filling vacancies have served the state well for over fifty years. Vacancy filling should remain the responsibility of local governing bodies made up of duly elected officials.

**ANNEXATION.** The ability of cities to grow is inherent in the economic growth and development of the state. Therefore, we support local jurisdictions' ability to make their own decisions regarding orderly growth through annexation.

**NON-DISCRIMINATION.** We oppose any discrimination against persons, by reason of their race, religion, color, sex, disability, national origin, ancestry, sexual orientation, or gender identity.

**SIGN REGULATION.** We support the authority of local government to regulate signs in compliance with federal law.

**PUBLIC PROPERTY & RIGHTS-OF-WAY.** We support the ability of cities to control and manage public property and rights-of-way and to impose franchise or use fees on those entities that utilize the rights-of-way.

**EMINENT DOMAIN.** Eminent domain is a fundamental municipal power. The authority to acquire property through condemnation proceedings is critical for public improvement projects. We support increased flexibility for local governments to use eminent domain for economic development purposes, including blight remediation, without seeking legislative approval.

**INTERLOCAL COOPERATION.** We support the principle of voluntary cooperation among all levels of government.

**GOVERNMENTAL IMMUNITY.** We support continued immunity for cities from tort liability and legislation strengthening the Kansas Torts Claims Act.

**POLICE POWERS.** We support the authority of cities to regulate in order to protect the health, safety, and welfare of the public.

**CITY/COUNTY CONSOLIDATION.** We support processes for local consolidation without undue statutory barriers. We further believe the issue of consolidation is an inherently local one and the voters should be allowed to determine whether consolidation with another unit of government occurs.

**SPECIAL DISTRICT CONSOLIDATION.** The current statutory framework requires separate legislation every time a special district of government consolidates into a city. We support statutory changes creating a uniform process for smaller units of government to consolidate into cities when it is in the best interest of the city.

## COMMUNITY DEVELOPMENT

**ABANDONED AND BLIGHTED HOUSING.** We support legislation that streamlines and expedites the process for local governments, neighborhood organizations and private businesses to deal with the blight of abandoned, nuisance, foreclosed housing, and commercial structures to protect the rights and property values of surrounding property owners.

**ECONOMIC DEVELOPMENT PARTNERSHIPS.** State and regional partnerships are vital to the sustained growth of the state and should be supported by policy and with adequate funding.

**TAX ABATEMENTS.** We support the authority of cities to offer tax abatements to encourage business investment in their communities.

**TAX INCREMENT FINANCING (TIF).** We support the continued use of TIF to promote economic development. TIF laws should allow maximum flexibility and allow for efficient use by communities.

**REVITALIZATION TOOLS.** We support the continued use of the Neighborhood Revitalization Act, the Downtown Redevelopment Act, the Transportation Development District Act and the Community Improvement District Act to promote local neighborhood development.

**TOURISM.** We support cooperative ventures between the state and local government in Kansas to promote tourism as an industry that is vital to growth and development all across the state.

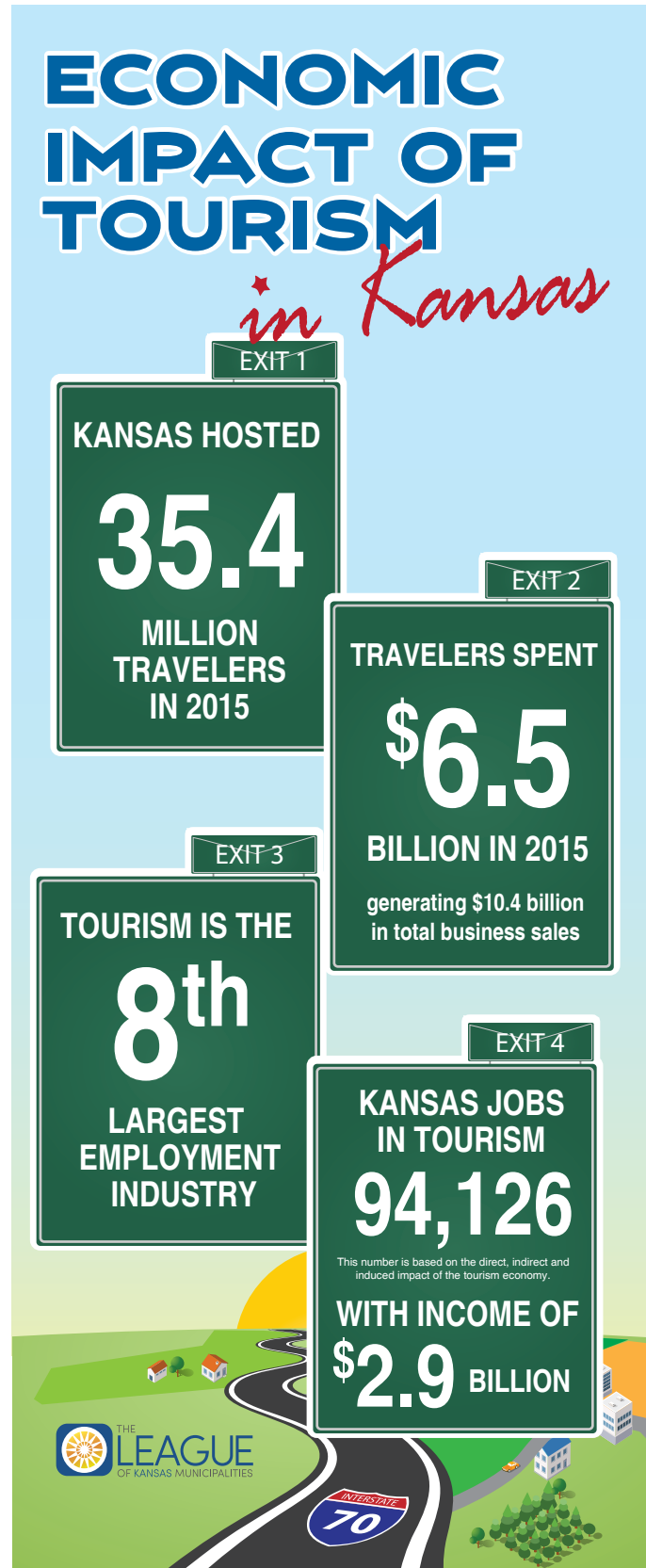
**STAR BONDS.** We support the ability of cities to utilize STAR bonds to promote economic development in their communities.

**LAND USE AND ZONING.** We support the ability of local officials to make land use and zoning decisions within their community, including decisions about the location, placement, size, appearance and siting of transmission and receiving facilities and any other communications facilities.

**HOUSING.** The lack of quality housing across the state creates an impediment to growth and economic development. The Legislature should support programs that encourage access to quality housing, such as the Moderate Income Housing Program.

**EXPORTS.** We support the Kansas Department of Commerce providing assistance to Kansas businesses who may become Kansas exporters, whether by direct provision of services or through outsourcing.

**HOUSING-RENTAL INSPECTIONS.** We support giving cities the authority to require inspections of rental housing for the safety of tenants and to protect the rights and property values of surrounding property owners.



# The Effects of BLIGHTED PROPERTY



Abandoned and blighted property is not just a big-city issue. It is a statewide issue. This issue impacts public safety, the values of adjoining properties, and discourages improvements to adjoining property.



**4+**  
**years**



The median length of time a property was reported as abandoned was **four years**. One-third of responding cities noted some of the properties had been **abandoned for 10 or more years**.\*

**89%**

of member cities identify abandoned or blighted property as a significant or very significant concern in their communities.\*

Abandoned property affects the health, safety, and welfare of the entire community - taxpayers, property owners, and residents. Other concerns associated with abandoned property include **increased police calls** for theft, prowlers, drug issues, and squatting. Additionally, cities reported an **increase in fire calls** responding to accidental fires and arson.\*



Code enforcement issues related to abandoned property include **overgrown vegetation, dilapidated structures, wildlife, illegal dumping, and additional demand for sanitation services**.\* Abandoned properties have a strong potential to become dangerous structures as they continue to deteriorate.



**Unpaid property taxes** on abandoned properties **creates a higher tax burden** on others to provide necessary city services. As these properties fall further into disrepair, the neglect can cause a blighting effect and result in **loss of property values of surrounding properties**.\*



Abandoned property and blight is a welcoming **environment for pests and vermin** as well as a potentially **dangerous nuisance** for a neighborhood.

\* The League completed several member surveys about the impact of blighted and abandoned property. The median population of responding cities was 2,500.



## TRANSPARENCY IN GOVERNMENT

**OPEN MEETINGS.** All levels of government should be subject to the same open meetings requirements. These laws should not be unduly burdensome.

**OPEN RECORDS.** All levels of government should be subject to the same open records requirements. State laws governing open records should balance the public's right of access, with the necessity of protecting the privacy of individual citizens, and the ability of public agencies to conduct their essential business functions. We support a city's ability to recoup reasonable costs associated with open records requests.

**INTERGOVERNMENTAL DIALOGUE.** Communication between all levels of government is critical to the successful delivery of public services to the citizens of Kansas. Representatives from cities provide facts and information crucial to intergovernmental relations, and as such, should have the same rights and responsibilities as private interest lobbyists. We support current law regarding the use of state and local public moneys to provide information and advocate on behalf of our cities and citizens. Any reporting system should not increase the administrative burden on local governments.

**BODY CAMERAS.** We support the ability of local governments to determine when and how body cameras will be used by law enforcement officers. We support the establishment of reasonable regulations concerning public access to recordings, balancing the needs of law enforcement and the individuals whose images are captured in the recordings.



# FEDERAL ISSUES



**L**ocal officials welcome the opportunity to work together with federal and state officials on policies impacting local communities. Federal agencies should research and understand the fiscal impact on local units of government when implementing new guidelines or laws. Cities manage their finances, infrastructure and personnel more effectively without unfunded federal mandates.

**LOCAL CONTROL.** We support local elected officials making decisions for their communities. Though the Home Rule powers granted cities in the Kansas Constitution do not affect federal powers, we call on our representatives and federal agencies to look at federal legislation and regulations with local control in mind.

**FEDERAL RECOVERY MONEY FOR CITIES.** The Federal Government should recognize that the events of 2020 have caused negatively impacted revenues to cities, and that direct federal aid for revenue replacement is essential to prevent a further economic collapse.

**ADVANCED REFUNDING OF BONDS.** In order to allow cities to quickly recover from this current recession, we urge Congress to allow cities to issue tax exempt advance refunding municipal bonds. Cities refinancing bonds will be able to free much needed cash flow to reduce taxes or create capital investments.

**POLICE REFORM.** We support the work of our local police departments to make our communities safer for all. Any federal or state proposals for police reform should be focused on providing resources for local law enforcement, incentivizing transparency, and encouraging good police practices, including equity and justice.

**COMMUNITY DEVELOPMENT BLOCK GRANTS (CDBG).** We support continued funding for Community Development Block Grants, Community Service Block Grants and HOME Grants. These programs' funding is an essential component of cities' strategies to fund critical community services and infrastructure needs.

**MUNICIPAL BONDS.** We support the removal or modification of overly burdensome and costly restrictions affecting the issuance of municipal bonds. Further, we support the continued tax-exempt status for municipal bonds.

## **BROADBAND DEPLOYMENT & MUNICIPAL OVERSIGHT.**

Access to reliable broadband service is increasingly important to the economic health of Kansas cities. However, federal action via legislation or

orders from federal agencies must recognize the key role local governments play in such expansion, and it must not remove important planning and right of way authority from local governments. Cities must be afforded the continued right to address safety, health and welfare for both their citizens and other entities with valuable infrastructure in the right of way. In addition, the right of way serves as an important resource for citizens, and the right to offset costs of management and levy taxes should not be limited.

**IMMIGRATION REFORM.** We support a federal solution to immigration reform. Any immigration policy should not negatively impact local governments with additional law enforcement or administrative burdens. We support Congress continuing assistance to under-served areas with large immigrant populations, who are attempting to remain in compliance with the United States Citizenship and Immigration Services.

**TRANSPORTATION.** We support consistent federal funding and timely renewal of the Fixing America's Surface Transportation Act (FAST ACT) by Congress with increased support to critical regional infrastructure priorities.

**STORMWATER.** We support simple and flexible federal regulations of municipal stormwater run-off that allows for orderly and cost-effective development. The federal government should appropriate funds for research and for the development of pilot projects on stormwater management.

**WATER QUALITY.** We support a clean and safe public water supply and the protection of public health and aquatic life. We endorse federal investments and cooperative solutions that address water quality challenges and take into account municipal cost concerns.



**HAZARDOUS WASTE.** We urge federal agencies to work cooperatively with state and local governments in the development and approval of programs to identify, monitor and dispose of hazardous waste. Appropriate education and training should be provided prior to the implementation of such programs.

**TELECOMMUNICATIONS DATA.** We support the continued ability of public safety officials to access data from telecommunications companies in times of emergencies to assist investigations.

**RAIL SERVICE.** We support existing and enhanced passenger and freight rail service in Kansas. In many cases, this service is the only affordable alternative to highway transportation in communities. Changes to Amtrak service should not sacrifice this alternative nor the investments in the service by cities.

**RAILROAD QUIET ZONES.** We urge Congress to reexamine the Train Horn Rule with the Federal Railroad Administration. Rules for implementing quiet zones should be less burdensome and allow for differences in community circumstances while continuing to protect public safety. We also request Congress provide federal funds for the purpose of establishing quiet zones and consider new technology which may enhance the safety of quiet zones while minimizing or eliminating train horn noise.

**MEDICARE REIMBURSEMENT RATES.** We encourage the federal government to establish reasonable reimbursement rates.

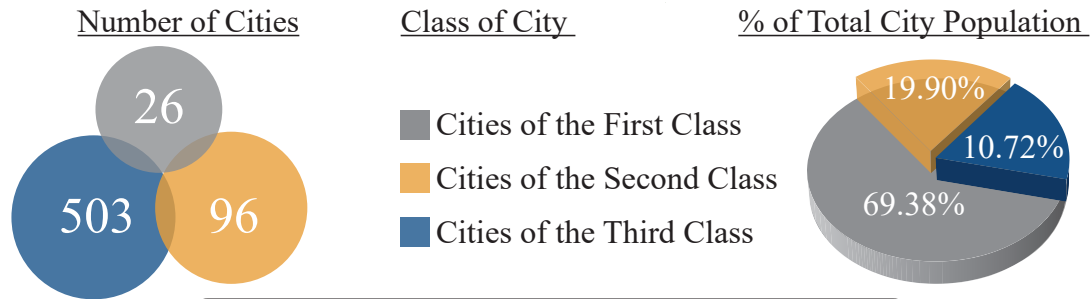


# CITY FACTS

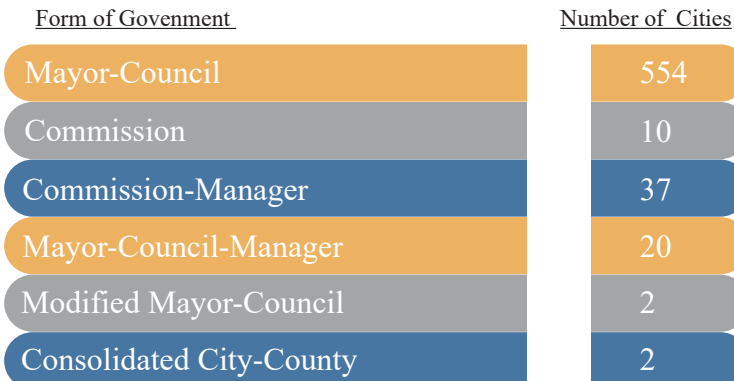
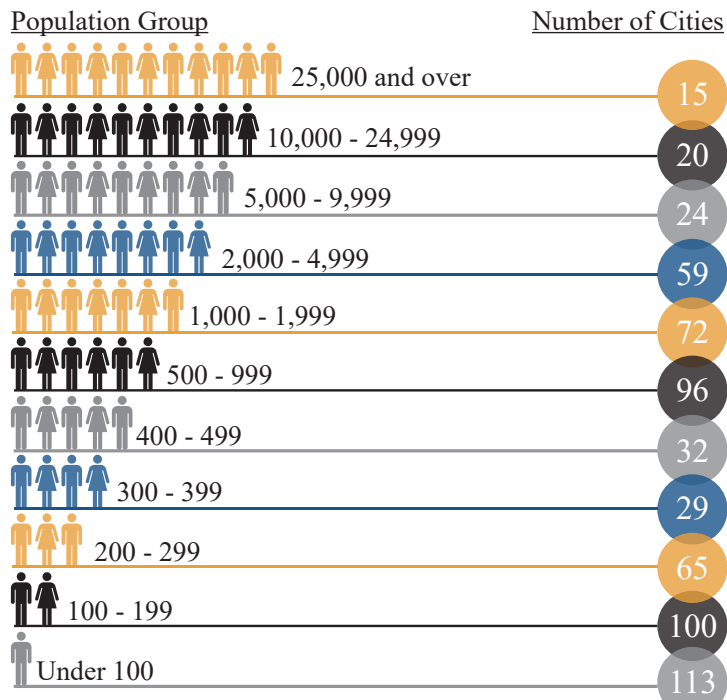
Total Number of Incorporated Cities = 625

Total Population of the State = 2,913,314

Total City Population = 2,418,311



Over 83.01% of the state's population resides in an incorporated city.



# LEAGUE LEGISLATIVE STAFF



**Erik Sartorius**  
Executive Director  
[esartorius@lkm.org](mailto:esartorius@lkm.org)  
(21<sup>st</sup> Session)



**Trey Cocking**  
Deputy Director  
[tcocking@lkm.org](mailto:tcocking@lkm.org)  
(6<sup>th</sup> Session)



**Amanda Stanley**  
General Counsel  
[astanley@lkm.org](mailto:astanley@lkm.org)  
(6<sup>th</sup> Session)



**Deborah Barnes**  
Staff Attorney  
[dbarnes@lkm.org](mailto:dbarnes@lkm.org)  
(3<sup>rd</sup> Session)



**John Goodyear**  
Staff Attorney  
[jgoodyear@lkm.org](mailto:jgoodyear@lkm.org)  
(3<sup>rd</sup> Session)

## POLICY DEVELOPMENT

This *Statement of Municipal Policy* defines the core principles of the organization. It was developed by city officials through the League's policy committees. There are three policy committees that are focused in specific areas: Finance & Taxation, Public Officers & Employees, and Utilities & Environment. The fourth committee, the Legislative Policy Committee, reviews the entire *Statement* and the recommendations of the three specific committees. The *Statement* is then submitted to the Governing Body and is ultimately adopted by the Convention of Voting Delegates at the League's Annual Conference. For more information about the League policy committees or process, check out the League website at [www.lkm.org](http://www.lkm.org) or contact us at (785) 354-9565.



## THE LEAGUE ADVOCATES FOR CITIES

The League advocates on our members' behalf to sponsor and encourage beneficial legislation for cities and oppose legislation that would be detrimental to our members' interest.



## THE LEAGUE OFFERS GUIDANCE

Member cities can contact the League with a legal inquiry or question. Additionally, we provide sample ordinances and guidance on legislation and rulemaking from both the state and federal level.

## COMMUNICATIONS & OUTREACH

Since 1914, the League has published the *Kansas Government Journal*, a publication for city, county and state government officials that is printed ten times a year. The League publishes a weekly e-newsletter, researches municipal issues affecting Kansas communities and develops programs for cities to use to engage their residents and reinforce the importance of civic engagement.



## MUNICIPAL TRAINING & EDUCATION

The League offers members a variety of education and training opportunities throughout the year. Our annual conference brings together leaders in municipal government to offer innovative ideas for cities. Throughout the year, the League works with professionals in the field to train, inspire and solve problems facing municipal leaders at all levels. The League offers over 30 manuals and publications on municipal issues ranging from finance and budgeting, personnel, planning, economic development, open meetings and open records to traffic ordinances.

## CONTRACT SERVICES

The League offers members a competitive rate to have the League engage in contract services, which include codification services, executive personnel search program (LEAPS) and personnel policies.





THE  
**LEAGUE**  
OF KANSAS MUNICIPALITIES

300 SW 8th Avenue, Suite 100  
Topeka, KS 66603  
(785)354.9565  
[www.lkm.org](http://www.lkm.org)

A Publication of The League of Kansas Municipalities  
*November, 2020*

|                      |  |  |  |  |  |
|----------------------|--|--|--|--|--|
| <b>WESTWOOD</b>      |  |  |  |  |  |
| <b>NOVEMBER 2020</b> |  |  |  |  |  |

| ACTIVITIES / OFFENSE | THIS MONTH | 20-YTD | 19-YTD | 20-Avg      | CHANGE    |
|----------------------|------------|--------|--------|-------------|-----------|
| <i>PART I CRIMES</i> |            |        |        |             |           |
| MURDER               |            |        |        |             | No Change |
| RAPE                 |            | 1      |        | 0.09        | 1         |
| ROBBERY              |            |        | 1      |             | -1        |
| <b>BURGLARY</b>      |            |        |        |             |           |
| BUSINESS             |            |        |        |             | No Change |
| RESIDENTIAL          | 1          | 2      | 1      | 0.09        | 1         |
| VEHICLE              |            | 23     | 29     | 2.64        | -6        |
| MOTOR VEH THEFT      |            | 6      | 3      | 0.55        | 3         |
| LARCENY / THEFT      |            | 21     | 27     | 1.91        | -6        |
| ASSAULT / BATTERY    |            | 4      | 2      | 0.36        | 2         |
| <b>ARRESTS</b>       |            |        |        |             |           |
| FELONY               |            | 3      | 4      | 0.27        | -1        |
| MISDEMEANOR          | 1          | 2      | 9      | 0.18        | -7        |
| TRAFFIC              |            | 2      | 2      | 0.18        | No Change |
| DRUG                 |            | 14     | 6      | 1.27        | 8         |
| DUI                  | 1          | 2      |        | 0.18        | 2         |
| WARRANTS             | 2          | 24     | 54     | 2.18        | -30       |
| CONFINED             |            |        | 16     |             | -16       |
| <b>SUMMONS</b>       |            |        |        |             |           |
| HAZARD               | 15         | 451    | 633    | 41.00       | -182      |
| NON-HAZARD           | 38         | 982    | 1629   | 89.27       | -647      |
| DUI                  | 1          | 2      |        | 0.18        | 2         |
| ORD. VIOLATION       | 1          | 44     | 7      | 4.00        | 37        |
| <b>ACCIDENTS</b>     |            |        |        |             |           |
| NON-INJURY           | 6          | 16     | 17     | 1.45        | -1        |
| INJURY               |            | 4      | 2      | 0.36        | 2         |
| PRIVATE PROPERTY     |            | 1      |        | 0.09        | 1         |
| ADMIN.DUTIES-PD      | 14         | 338    | 264    | 30.73       | 74        |
| ADMIN.DUTIES - CITY  | 2          | 45     | 3      | 4.09        | 42        |
| ALARM                | 16         | 50     | 21     | 4.55        | 29        |
| ANIMAL               | 1          | 13     | 6      | 1.18        | 7         |
| ASSIST - POLICE      | 6          | 59     | 61     | 5.36        | -2        |
| ASSIST - PUB MOTOR   | 17         | 116    | 64     | 10.55       | 52        |
| BLD. CHECK-SHAKE     | 1          | 69     | 43     | 6.27        | 26        |
| BLD. CHECK-PATROL    | 1245       | 12841  | 13080  | 1167.36     | -239      |
| BUSINESS CHECK       | 280        | 1040   | 193    | 94.55       | 847       |
| CIVIL MATTER         |            | 3      | 7      | 0.27        | -4        |
| EXTRA PATROL HAZARD  |            |        |        |             | No Change |
| EXTRA PATROL NON HAZ |            | 3      |        | 0.272727273 | 3         |
| EXTRA PATROL DUI     |            |        |        |             | No Change |
| EXTRA PATROL ORD.    |            |        |        |             | No Change |

# WESTWOOD

NOVEMBER 2020

| ACTIVITIES / OFFENSE    | THIS MONTH | 20-YTD | 19-YTD | 20-Avg      | CHANGE    |
|-------------------------|------------|--------|--------|-------------|-----------|
| CRIMINAL DAMAGE         | 1          | 7      | 1      | 0.64        | 6         |
| DISTURBANCE             | 3          | 33     | 20     | 3.00        | 13        |
| DISORDERLY CONDUCT      |            |        |        |             | No Change |
| FIELD INTERVIEW FORM    |            | 1      |        | 0.09        | 1         |
| FIRE                    | 3          | 7      | 8      | 0.64        | -1        |
| FOLLOW UP               | 3          | 25     |        | 2.27        | 25        |
| INFO / INVEST           | 4          | 41     | 46     | 3.73        | -5        |
| JUVENILE                |            | 4      | 4      | 0.36        | No Change |
| <b>MENTAL HEALTH</b>    |            |        |        |             |           |
| SUICIDE                 |            | 1      |        | 0.090909091 | 1         |
| ATT SUICIDE             |            | 2      |        | 0.18        | 2         |
| INVOLUNTARY COMMITMENT  |            | 2      |        | 0.181818182 | 2         |
| ALL OTHER MENTAL HEALTH |            | 6      |        | 0.545454545 | 6         |
| MEDICAL CALLS           | 6          | 77     | 42     | 7.00        | 35        |
| NATURE UNKNOWN          |            | 3      | 6      | 0.27        | -3        |
| NOISE COMPLAINT         | 1          | 10     | 17     | 0.91        | -7        |
| OPEN DOOR               | 1          | 23     | 11     | 2.09        | 12        |
| ORD. COMPLAINT          |            | 5      |        | 0.45        | 5         |
| ORD. VIOL WARNING       |            | 1      | 3      | 0.09        | -2        |
| ORD. VIOL LETTER        |            | 1      |        | 0.09        | 1         |
| OTHER                   |            | 4      | 1      | 0.36        | 3         |
| PED. CHECK              |            | 5      |        | 0.45        | 5         |
| PUBLIC SERVICE          | 13         | 145    | 123    | 13.18       | 22        |
| RECOVERED PROP          | 1          | 12     | 8      | 1.09        | 4         |
| RESIDENCE CHECK         | 16         | 318    | 463    |             | -145      |
| SUSPICIOUS SUBJECT      | 8          | 46     | 37     | 4.18        | 9         |
| VEH CHECK OCCUPIED      |            | 20     | 16     | 1.82        | 4         |
| VEH CHECK UNOCCUPIED    | 2          | 32     | 35     | 2.91        | -3        |
| TELE. CALL HARASS       |            | 1      |        | 0.09        | 1         |
| TELE. CALL THREAT       |            |        | 1      |             | -1        |
| TRAFFIC COMPLAINT       | 4          | 23     | 31     | 2.09        | -8        |
| TRAFFIC WARNING         | 25         | 134    | 318    | 12.18       | -184      |
| UNATTENDED DEATH        |            |        |        |             | No Change |

Total Activity

1655

Last Year - YTD Activity

14696

Year to Date Activity

15502

Difference in Activity

806

Total Monthly Summons

55

Hazardous Summons Percentage

27%

**WESTWOOD  
INCIDENT SUMMARY**

|                             |
|-----------------------------|
| <b>RESIDENTIAL BURGLARY</b> |
|-----------------------------|

|                         |                                 |
|-------------------------|---------------------------------|
| <b>CASE NO:</b> 20-0320 | <b>LOCATION:</b> 2900 W 49th St |
|-------------------------|---------------------------------|

|                          |
|--------------------------|
| <b>DATE :</b> 11/21/2020 |
|--------------------------|

|  |
|--|
| <b>ACTIVITY:</b> Unknown suspect(s) removed the victim's wallet that contained a drivers license and a few credit cards from the victim's vehicle which was unlocked in the open garage. |
|--|

---



WESTWOOD  
COURT SUMMARY  
NOVEMBER, 2020

| COURT DATE                    | ARRAIGNMENTS | TRIALS | FINES       | LETTERS | WARRANTS           |
|-------------------------------|--------------|--------|-------------|---------|--------------------|
| November 06, 2020             | 32           | 03     | \$5,067.00  | 19      | 11                 |
| November 13, 2020             | 27           | 05     | \$1,935.50  | 60      | 00                 |
| November 20, 2020             | 28           | 06     | \$ 245.00   | 72      | 00                 |
| <b>TOTALS</b>                 |              |        |             |         |                    |
| November, 2020                | 87           | 14     | \$ 7,247.50 | 151     | 11                 |
| November, 2019                | 164          | 23     | \$19,859.50 | 98      | 33                 |
| <b>TOTAL ( 7,247.50) less</b> |              |        |             |         |                    |
| * Kansas DL fees:             |              |        |             |         | \$325.00           |
| * Judges Training Fund:       |              |        |             |         | \$ 25.00           |
| * LET Training Fund:          |              |        |             |         | \$ 562.50          |
| * Comm Corrections:           |              |        |             |         | \$ 0.00            |
| * Seat Belt Safety Fund:      |              |        |             |         | \$ 20.00           |
| <b>November, 2020 TOTAL:</b>  |              |        |             |         | <b>\$ 6,315.50</b> |

| Y.T.D. TOTALS 2020    |              | Y.T.D. TOTALS 2019    |              |
|-----------------------|--------------|-----------------------|--------------|
| ARRAIGNMENTS:         | 16654        | ARRAIGNMENTS:         | 1640         |
| TRIALS                | 225          | TRIALS:               | 179          |
| LETTERS:              | 1772         | LETTERS:              | 749          |
| WARRANTS:             | 250          | WARRANTS:             | 324          |
| FINES:                | \$129,179.40 | FINES:                | \$195,880.68 |
| KS DL FEES:           | \$2007.00    | KS DL FEES:           | \$1990.00    |
| JUDGES FUND:          | \$473.00     | JUDGES FUND:          | \$851.00     |
| L.E.T.FUND:           | \$9,136.50   | L.E.T FUND:           | \$12,420.00  |
| COMM CORRECT FUND:    | \$0.00       | COMM CORRECT FUND:    | \$250.00     |
| SEATBELT SAFETY FUND: | \$280.00     | SEATBELT SAFETY FUND: | \$820.00     |

## **Westwood Public Works Monthly Report**

**TO: GOVERNING BODY**  
**FROM: JOHN SULLIVAN, DIRECTOR OF PUBLIC WORKS**  
**RE: MONTHLY REPORT, NOVEMBER 2020**  
**DATE: DECEMBER 8, 2020**

Some of the activities for Public Works in November include:

1. Daily collection of trash from City Hall and City Parks.
2. Perform a weekly inspection of the playground equipment and park facilities.
3. Perform a weekly inspection of the traffic control signs throughout the City; replace poles and signs as required.
4. I prepared the Purchase Orders and documentation for those purchases.
5. Performed routine maintenance at the City Hall to include the servicing of the air handling equipment, re-lamping fixtures and repairing or installing appurtenances including plumbing fixtures.
6. I represented the City at various meetings to include: None
7. Received, via email, Kansas One-Call Locate Requests, advised callers of their status with the City of Westwood with regard to utilities and advised, when appropriate, the need to either get an excavation permit, building permit or fence permit. I provided the building official with a copy of the locate requests for follow-up for any building permits that may be required and answered any questions when asked.
8. We performed routine maintenance on the Public Works vehicles and equipment to include fluid services, cleaning, and general repairs.
9. Routine maintenance of the Public Works Facility to include the air handling equipment, plumbing, electrical, and cleaning.
10. Performed various clerical duties for the Public Works Department's daily functions.
11. I attended Public Works, City Council and Staff and Committee meetings as required.
12. Observed activities associated with ROW Permits.
13. We marked streetlight utilities when requested by the One-Call System.
14. We patched potholes in various locations.
15. I attended briefings related to COVID 19 pandemic via Zoom.
16. We are performing COVID 19 related sanitation at City Hall related to court.
17. We performed monthly safety checks at all City properties as well as monthly fire extinguisher inspections.
18. Mitch is attending monthly Safety Committee Meetings.
19. We performed the leaf pickup program.

This concludes my activities report for some of the activities for Public Works in November.

To: Governing Body  
From: John Sullivan, Director of Public Works  
Date: December 8, 2020  
Re: Monthly Status Report

---

- 2019 (formerly 2018) Street and Storm water Improvement Projects: I will be meeting with the General Contractor on the Punchlist Items in the spring in preparation of the final inspection on the bond.
- W. 47<sup>th</sup> Street Project: We have met with the consultant and KDOT. We are working on an agreement and refining the scope to fit the budget. I believe we will have it ready this week.
- Belinder CARS Project, UBAS with additional streets: The Project is complete. I am processing the paperwork for reimbursement from the CARS Program.
- Annex Street Preliminary Design: The Engineer is working on the plans. We have met with KCMO and will be working on an interlocal agreement.
- 5050 Rainbow Demolition Plan: The fence has been installed. The only item left is the concrete driveway removals.
- City Hall Touchless Water Fixture Replacement: This project will be paid for by the CARES Funding. This should be completed in the next two weeks.

## Council Action Form

Meeting Date: December 10, 2020

Staff Contact: John Sullivan, Public Works Director

---

Agenda Item: Johnson County CARS 2021 Funding Agreement – State Line Road

---

### **Background / Description of Item:**

State Line Road is slated to be resurfaced in 2021 with a two-inch mill and overlay. The project is a joint project with Kansas City, Missouri. The engineering estimate of this work is \$191,000.00.

As a designated County Assistance Road System (“CARS”) Program road, this work on State Line Road qualifies for up to 50% financial assistance from Johnson County. Since the roadway is located within two jurisdictions, Westwood will be reimbursed by Kansas City, MO for the work performed within its jurisdiction and Westwood will be reimbursed up to \$55,000.00 for the work within its jurisdiction by Johnson County. Enclosed is the agreement for Johnson County CARS funding for the State Line Road work.

### **Staff Recommendation:**

Authorize the Mayor to execute the Agreement between Johnson County, Kansas, and the City of Westwood, Kansas, for the Public Improvement of State Line Road from its North City Limits to its South City Limits. (320001348)

### ***Suggested Motion:***

*I move to authorize the Mayor to execute the Agreement between Johnson County, Kansas, and the City of Westwood, Kansas, for the Public Improvement of State Line Road from its North City Limits to its South City Limits.*

**Agreement between Johnson County, Kansas,  
and the City of Westwood, Kansas, for the Public Improvement of  
State Line Road from North City Limits to South City Limits  
(320001348)**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020  
by and between the Board of County Commissioners of Johnson County, Kansas ("Board") and the  
City of Westwood, Kansas, ("City").

**WITNESSETH:**

WHEREAS, the parties have determined that it is in the best interests of the general public in  
making certain public improvements to State Line Road from North City Limits to South City Limits  
(the "Project"); and

WHEREAS, the laws of the State of Kansas authorize the parties to this Agreement to  
cooperate in undertaking the Project; and

WHEREAS, the governing bodies of each of the parties have determined to enter into this  
Agreement for the purpose of undertaking the Project, pursuant to K.S.A. 12-2908 and K.S.A. 68-169,  
and amendments thereto; and

WHEREAS, the Project has been approved, authorized, and budgeted by the Board as an  
eligible project under the County Assistance Road System ("CARS") Program; and

WHEREAS, the Board has, by County Resolution No. 106-90, authorized its Chairman to  
execute any and all Agreements for County participation in any CARS Program project which has  
been approved and authorized pursuant to the Policies and Guidelines adopted by the Board and for  
which funding has been authorized and budgeted therefore; and

WHEREAS, the governing body of the City did approve and authorize its Mayor to execute  
this Agreement by official vote on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the parties agree as follows:

1. **Purpose of Agreement.** The parties enter into this Agreement for the purpose of undertaking the Project to assure a more adequate, safe and integrated roadway network in the developing and incorporated areas of Johnson County, Kansas.
2. **Estimated Cost and Funding of Project**
  - a. The estimated cost of the Project (“Project Costs”), a portion of which is reimbursable under this Agreement, is One Hundred Ninety One Thousand Dollars (\$191,000).
  - b. Project Costs include necessary costs and expenses of labor and material used in the construction of the Project and construction inspection and staking for the Project.
  - c. The Project Costs shall be allocated between the parties as follows:
    - i. The Board shall provide financial assistance for the Project in an amount up to but not exceeding Fifty Percent (50%) of the Project Costs. However, the Board's financial obligation under this Agreement shall be limited to an amount not to exceed Fifty Five Thousand Dollars (\$55,000). For purposes of this Agreement, Project Costs shall not include any portion of costs which are to be paid by or on behalf of any state or federal governmental entity or for which the City may be reimbursed through any source other than the general residents or taxpayers of the City. Further, it is understood and agreed by the parties hereto that the Board shall not participate in, nor pay any portion of, the Costs incurred for or related to the following:
      1. Land acquisition, right-of-way acquisition, or utility relocation;
      2. Legal fees and expenses, design engineering services, Project administration, or financing costs;

3. Taxes, licensing or permit fees, title reports, insurance premiums, exactions, recording fees, or similar charges;
4. Project overruns;
5. Project scope modifications or major change orders which are not separately and specifically approved and authorized by the Board; and;
6. Minor change orders which are not separately and specifically approved and authorized by the Director of Public Works & Infrastructure of Johnson County, Kansas ("Public Works Director"). Minor change orders are those which do not significantly alter the scope of the Project and which are consistent with the CARS Program Policies and Guidelines and administrative procedures thereto adopted by the Board.

It is further understood and agreed that notwithstanding the designated amount of any expenditure authorization or fund appropriation, the Board shall only be obligated to pay for the authorized percentage of actual construction costs incurred or expended for the Project under appropriate, publicly bid, construction contracts. The Board will not be assessed for any improvement district created pursuant to K.S.A. 12-6a01 et seq., and amendments thereto, or any other improvement district created under the laws of the State of Kansas.

- ii. The City shall pay One Hundred Percent (100%) of all Project Costs not expressly the Board's obligation to pay as provided in this Agreement.

3. **Financing**

- a. The Board shall provide financial assistance, as provided in Paragraph 2.c. above, towards the cost of the Project with funds budgeted, authorized, and appropriated by the Board and which are unencumbered revenues that are on-hand in deposits of Johnson County, Kansas. This paragraph shall not be construed as limiting the ability of the Board to finance its portion of the costs and expenses of the Project through the issuance of bonds or any other legally authorized method.
- b. The City shall pay its portion of the Project Costs with funds budgeted, authorized, and appropriated by the governing body of the City.

4. **Administration of Project.** The Project shall be administered by the City, acting by and through its designated representative who shall be the City public official designated as Project Administrator. The Project Administrator shall assume and perform the following duties:

- a. Cause the making of all contracts, duly authorized and approved, for retaining consulting engineers to design and estimate the Project Costs.
- b. Submit a copy of the plans and specifications for the Project to the Johnson County Public Works Director for review, prior to any advertisement for construction bidding, together with a statement of estimated Project Costs which reflects the Board's financial obligation under the terms of this Agreement. The Public Works Director or his designee shall review the copy of the plans and specifications for the Project and may, but shall not be obligated to, suggest changes or revisions to the plans and specifications.
- c. If required by applicable state or federal statutes, solicit bids for the construction of the Project by publication in the official newspaper of the City. In the solicitation of bids, the appropriate combination of best bids shall be determined by the City.
- d. Cause the making of all contracts and appropriate change orders, duly authorized and approved, for the construction of the Project.
- e. Submit to the Public Works Director a statement of actual costs and expenses in the form of a payment request, with attached copies of all invoices and supporting materials, on or before the tenth day of each month following the



month in which costs and expenses have been paid. The Public Works Director shall review the statement or payment request to determine whether the statement or payment request is properly submitted and documented and, upon concurrence with the Finance Director of Johnson County, Kansas, ("Finance Director") cause payment to be made to the City of the Board's portion of the Project Costs within thirty (30) days after receipt of such payment request. In the event federal or state agencies require, as a condition to state or federal participation in the Project, that the Board make payment prior to construction or at times other than set forth in this subsection, the Public Works Director and the Finance Director may authorize such payment.

- f. Except when doing so would violate a state or federal rule or regulation, cause a sign to be erected in the immediate vicinity of the Project upon commencement of construction identifying the Project as part of the CARS Program. The form and location of the sign shall be subject to the review and approval of the Public Works Director.

Upon completion of the construction of the Project, the Project Administrator shall submit to each of the parties a final accounting of all Project Costs incurred in the Project for the purpose of apportioning the same among the parties as provided in this Agreement. It is expressly understood and agreed that in no event shall the final accounting obligate the parties for a greater proportion of financial participation than that set out in Paragraph 2.c. of this Agreement. The final accounting of Project Costs shall be submitted by the Project Administrator no later than sixty (60) days following the completion of the Project construction.

It is further understood and agreed by the City that to the extent permitted by law and subject to the provisions of the Kansas Tort Claims Act including but not limited to maximum liability and immunity provisions, the City agrees to indemnify and hold the County, its officials, and agents harmless from any cost, expense, or liability not expressly agreed to by the County which result from the negligent acts or omissions of the City or its employees or which result from the City's compliance with the Policy and Procedures.

This agreement to indemnify shall not run in favor of or benefit any liability insurer or third party.

In addition, the City of Westwood shall, and hereby agree to, insert as a special provision of its contract with the general contractor ("Project Contractor") chosen to undertake the Project construction as contemplated by this Agreement the following paragraphs:

The Project Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas and the City of Westwood harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the negligence or other actionable fault of the Project Contractor, his or her sub-contractors, agents or employees in the performance of this contract.

The Board of County Commissioners of Johnson County, Kansas shall be named as an additional insured on all policies of insurance issued to the Project Contractor and required by the terms of his/her agreement with the City.

**5. Acquisition of Real Property for the Project**

- a. The Board shall not pay any costs for acquisition of real property in connection with the Project.
- b. The City shall be responsible for the acquisition of any real property, together with improvements thereon, located within the City's corporate boundaries, which is required in connection with the Project; such real property acquisition may occur by gift, purchase, or by condemnation as authorized and provided by the Eminent Domain Procedure Act, K.S.A. 26-201 et seq. and K.S.A. 26-501 et seq., and any such acquisition shall comply with all federal and state law requirements.

6. **Duration and Termination of Agreement**

- a. The parties agree that this Agreement shall remain in full force and effect until the completion of the Project, unless otherwise terminated as provided for in Paragraph 6.b. herein below. The Project shall be deemed completed and this Agreement shall be deemed terminated upon written certification to each of the parties by the Project Administrator that the Project has been accepted as constructed. The City shall provide a copy of the Project Administrator's certification to both the Public Works Director and the Finance Director within thirty (30) days of the Project Administrator's determination that the Project is complete.
- b. It is understood and agreed that the Public Works Director shall review the status of the Project annually on the first day of March following the execution of this Agreement to determine whether satisfactory progress is being made on the Project by the City. In the event that the Public Works Director determines that satisfactory progress is not being made on the Project due to the City's breach of this Agreement by not meeting the agreed upon project deadlines or otherwise not complying with the terms of this Agreement, the Public Works Director is authorized to notify the City that it shall have thirty (30) days from receipt of such notification to take steps to cure the breach (the "Cure Period"). It is further understood and agreed that the Board shall have the option and right to revoke funding approval for the Project and terminate this Agreement should the Board find, based upon the determination of the Public Works Director, that satisfactory progress is not being made on the Project and that the City has not taken sufficient steps to cure the breach during the Cure Period. Should the Board exercise its option as provided herein, it shall send written notice of the same to the City and the Board shall have no further liability or obligation under this Agreement.

7. **Placing Agreement in Force.** The attorney for the City shall cause sufficient copies of this Agreement to be executed to provide each party with a duly executed copy of this Agreement for its official records.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by each of the parties hereto and made effective on the day and year first above written.

**Board of County Commissioners of  
Johnson County, Kansas**

**City of Westwood, Kansas**

---

Ed Eilert, Chairman

---

David E. Waters, Mayor

Attest:

Attest:

---

Lynda Sader  
Deputy County Clerk

---

City Clerk

Approved as to form:

Approved as to form:

---

Robert A. Ford  
Assistant County Counselor

---

City Attorney