

**MERRIAM CITY COUNCIL AGENDA  
CITY HALL  
9001 WEST 62<sup>ND</sup> STREET  
February 22, 2021  
7:00 P.M.**

**This is a virtual meeting.  
The public may participate by joining the meeting at:**

<https://us02web.zoom.us/j/87121805375?pwd=czJGZ1QrT3JyK0xUOHZhTmxFSWVsUT09>

Passcode: 861705

1-346-248-7799

Webinar ID: 871 2180 5375

Passcode: 861705

**If you require any accommodation (i.e. qualified interpreter, large print, reader, hearing assistance) in order to attend this meeting, please notify the Administrative Office at 913-322-5500 no later than 24 hours prior to the beginning of the meeting.**

**I. CALL TO ORDER - PLEDGE OF ALLEGIANCE**

**II. ROLL CALL**

**III. PUBLIC ITEMS**

In response to COVID-19 and remote City Council meetings, the public comment process that normally occurs during the City Council meeting has temporarily changed. Members of the public are still encouraged to share comments about matters that may or may not appear on the agenda by the following process below:

Submit public comment to the City Clerk at [jpinnick@merriam.org](mailto:jpinnick@merriam.org) by 6 p.m. on the date of the meeting; comments are limited to 500 words; must include "Public Comment" in the subject line; commenters must include their name and their address. Late submissions, submissions without "Public Comment" in the subject line; and comments without name and address will not be read into the public record. In accordance with the *Governing Body Rules of Procedure*, the City reserves the right to refuse Public Comments that are personal, impertinent or slanderous.

**IV. CONSENT AGENDA**

All items listed under the heading are considered to be routine by the City Council and may be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which case that item will be removed from the Consent Agenda and considered separate.

1. Consider approval of the minutes of the City Council meeting held February 8, 2021.
2. Consider approval of an interlocal agreement with Mid-America Regional Council (MARC) for Planning Sustainable Places grant.
3. Consider approval of the purchase of two (2) police cars.

**V. MAYOR'S REPORT**

**VI. COUNCIL ITEMS**

1. Consider approval a small cell facility agreement with AT&T.
2. Monthly Finance Report.
3. Community Development Update.

**VII. STAFF ITEMS**

**VIII. EXECUTIVE SESSION**

**IX. ADJOURNMENT**

Respectfully submitted,

*Juliana Pinnick*

City Clerk

**MERRIAM CITY COUNCIL MINUTES  
CITY HALL  
9001 WEST 62<sup>ND</sup> STREET  
February 8, 2021  
7:00 P.M.**

**This was a virtual meeting held via Zoom.**

**I. CALL TO ORDER - PLEDGE OF ALLEGIANCE**

Mayor Sissom called the meeting to order at 7:00 pm. Council and staff said the Pledge of Allegiance.

**II. ROLL CALL**

The following Councilmembers were present via Zoom meeting:

Scott Diebold  
Chris Evans Hands  
Bruce Kaldahl  
Brian Knaff  
David Neal  
Bob Pape  
Jason Silvers  
Whitney Yadrich

Staff present via Zoom meeting: Chris Engel, City Administrator; Ryan Denk, City Attorney; Meredith Hauck, Assistant City Administrator; Jim MacDonald, Public Works Director; Jenna Gant, Communication and Public Engagement Manager; Darren McLaughlin, Police Chief; Anna Slocum, Parks and Recreation Director; Bryan Dyer, Community Development Director; Donna Oliver, Finance Director; and Juli Pinnick, City Clerk.

**III. PUBLIC ITEMS**

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Submit public comment to the City Clerk at [jpinnick@merriam.org](mailto:jpinnick@merriam.org) by 6 p.m. on the date of the meeting; comments are limited to 500 words; must include "Public Comment" in the subject line; commenters must include their name and their

address. Late submissions, submissions without "Public Comment" in the subject line; and comments without name and address will not be read into the public record. In accordance with the *Governing Body Rules of Procedure*, the City reserves the right to refuse Public Comments that are personal, impertinent or slanderous.

Michael Kelley, Policy Director, BikeWalkKC commented, On behalf of BikeWalkKC, I wanted to submit testimony to express our organization's strong opposition to the proposed panhandling ordinance. While there are several issues with this piece of legislation, I will limit my focus to the pedestrian safety portion.

In the information form submitted by Chief McLaughlin for this ordinance, he notes that in Merriam, "over 50% of all crashes are caused by some form of distracted driving." If the issue for the community is *driver* behavior, it doesn't make sense to further restrict the movement of *pedestrians*.

Simply put, the proposed ordinance does not address the problem at hand. Better policies for protecting pedestrians and other vulnerable road users include Complete Streets and Vision Zero, which can more effectively support initiatives like the effective sidewalk program Merriam already has in place. BikeWalkKC opposes this ordinance and asks each of you to do the same.

Staci Chivetta, 5541 Goodman St., commented, This has been weighing on me for a few weeks since I started seeing public comments about it in the council meeting notes, but I am just so disheartened by the language and "reasoning" to amend Chapter 68. Instead of pushing homeless and jobless people out of our community, we need to be finding ways to help them and get them back on their feet. Shawnee recently amended their city code to allow homeless shelters and warming stations to operate in churches, etc, what can we do to create a neighborly space like that?

We are a small community and that's what I love about Merriam, but it's not a very small town like idea in my book to push people out because it makes us uncomfortable. I know that most are arguing that this is a public safety issue and that these intersections are deemed places where accidents with pedestrians are more likely to happen, I vehemently disagree with that. It feels very much like this reasoning is being used to cover up the fact that this issue is making people uncomfortable and they don't want to believe that our pristine city would have an issue with homeless people.

## **CONSENT AGENDA**

All items listed under the heading are considered to be routine by the City Council and may be enacted by one motion. There will be no separate discussion of these

items unless a Councilmember so requests, in which case that item will be removed from the Consent Agenda and considered separate.

1. Consider approval of the minutes of the City Council meeting held January 25, 2021.
2. Consider approval of a request for city support for the 2021 Flags 4 Freedom event.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE CONSENT AGENDA ITEMS 1-2. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

#### **IV. MAYOR'S REPORT**

#### **V. COUNCIL ITEMS**

1. Consider approval of an ordinance amending Chapter 68 of the Merriam Code of Ordinances regarding prohibition of pedestrians upon medians and roadways at certain intersections.

Councilmember Yadrich commented that since the first reading of this ordinance from the last meeting, she has requested addition data from the Police Department. She is interested in obtaining additional data regarding crash data caused by distracted driving. Because she would like to review that data, she suggested tabling this item until the next meeting.

Councilmember Silvers agreed with Councilmembers Yadrich' s suggestion to table this item and voiced concern over the verbiage in the ordinance that states the ordinance is to "protect the health, safety and welfare of the citizens of Merriam". He suggested changing the verbiage to reflect all pedestrians and motorists as the majority of people traveling through these intersections are not Merriam residents.

There was some discussion regarding enforcement of the ordinance. Enforcement will be educational for anyone violating the ordinance. The Police Department is also able to provide a list of resources for anyone desiring help. The ordinance is designed for safety and is not attempting to target any group of people.

Councilmember Silvers expressed concern over people with no vehicles being able to cross I-35 on Shawnee Mission Parkway by walking down the median, as the bridge has no sidewalk. He feels that this ordinance would put them in violation of the ordinance and is a problem for people trying to get around without a vehicle. He feels this is unfair to low income people who cannot afford a vehicle.

Chief McLaughlin commented that the ordinance states that a person would only be in violation if while on the median they approach a vehicle stopped on the roadway or attempt to attract the attention of the driver or occupant of a motor vehicle at the intersection. In addition, no person shall activate a pedestrian crosswalk signal for any purpose other than to stop traffic to allow such person to lawfully cross the roadway. Simply walking across the median to get to the other side of the bridge or roadway would be a violation of the ordinance.

Councilmember Diebold commented that it appears that some people are trying to make this ordinance out to be something that it is not. This is about safety only. Safety for drives and safety for pedestrians.

Mayor Sissom described the process for tabling this item, if that is the desire of the council.

**COUNCILMEMBER YADRICH MOVED TO TABLE AN ORDINANCE AMENDING CHAPTER 68 OF THE MERRIAM CODE OF ORDINANCES PROHIBITING PEDESTRIANS UPON MEDIANS AND ROADWAYS IN CERTAIN INTERSECTIONS UNTIL THE NEXT CITY COUNCIL MEETING. COUNCILMEMBER SILVERS SECONDED. MOTION FAILED. COUNCILMEMBERS KNAFF, SILVERS, AND YADRICH VOTED AYE.**

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE AN ORDINANCE AMENDING CHAPTER 68 OF THE MERRIAM CODE OF ORDINANCES PROHIBITING PEDESTRIANS UPON MEDIANS AND ROADWAYS IN CERTAIN INTERSECTIONS STRIKING THE VERBIAGE “CITIZENS OF MERRIAM” AND REPLACING WITH “PEDESTRIANS AND MOTORISTS”. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS APPROVED. COUNCILMEMBERS SILVERS AND YADRICH VOTED NAY.**

2. Consider approval of a resolution establishing pole attachment and other fees for the location of small-cell facilities in City rights-of-way or attachment to City property.

City Administrator Chris Engel provided the background for this item.

The City possesses a duty to its citizens to manage the public rights-of-way, to balance the needs of all users of the public rights-of-way, and to preserve and promote the public health, safety, and welfare. While the City is not required to allow the use of its light poles to other entities, the City is willing to do so for an annual rental fee for the following reasons: 1) when the use by such other entities does not interfere with the City’s intended use of the facilities, 2) the use will minimize additional incursions into to the public right-

of-way, and 3) the use will not create any other public health, safety or welfare concern.

The City has received requests from external entities to attach or collocate small cell facilities and related equipment to the City's street light poles or other property and the City plans to enter into agreements with providers to allow the deployment of small cell facilities in the City's right-of-way. Per K.S.A. 12-2001(t), the City can assess a fixed right-of-way access fee for each small cell facility that a 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).

In a 2018 FCC Ruling, a "safe harbor" maximum annual fee of \$270/site was established but has since been challenged in court. The fees established in the attached Resolution reflect the FCC Ruling and allow small cell providers to pay the amount set by the FCC's "safe harbor" regulations while acknowledging that if the FCC changes those amounts the City can charge more than those amounts.

This Resolution only establishes fees; it does not provide approval of any small-cell deployment which requires separate agreements with providers.

**COUNCILMEMBER PAPE MOVED THAT THE COUNCIL APPROVE A RESOLUTION ESTABLISHING POLE ATTACHMENT AND OTHER FEES FOR SMALL-CELL FACILITIES IN CITY RIGHT-OF-WAY OR ATTACHMENT TO CITY PROPERTY AND AMEND THE SCHEDULE OF FEES TO ADD THE ASSOCIATED FEES. COUNCILMEMBER NEAL SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

3. Merriam Community Center Final Financial Report.

Assistant City Administrator Meredith Hauck presented the final financial report for construction of the new Merriam Community Center.

The Merriam Community Center Project had an overall budget of \$36.6 million, \$6.6 million was restricted TIF funding and \$30 million was available for overall project costs. The anticipated overall cost of the project was \$36,393,372.18 and was \$86,996.47 under budget. Of that, \$6,593,988.55 was for TIF-related expenditures and the remaining \$29,919,314.98 was for overall project-related expenditures. A detailed budget report was included in the City Council Agenda Packet.

Councilmember Knaff asked if the amounts spent in 2017, 2018 and 2019 were audited as part of the regular audit process and if the 2020 expenses would be included in that regular independent audit process.

Ms. Hauck responded yes.

Councilmember Neal asked about the difference in the original design build cost and the final design build cost.

Ms. Hauck explained that the owner contingency of \$1 million was used for the design-build portion of the project. Initially, when the project went out for bid, the building was at a very basic level to ensure the project would be within budget. Once the project got started, there were opportunities to expand the building, including changes like pushing out the lobby area into the courtyard and enhancing the aquatic space. There were some impacts to the project due to the COVID pandemic, such as aquatic tiles that were delayed and additional design build costs.

Councilmember Hands asked if the expenses associated with the current issues with the moisture barrier and the art work lighting were included in the numbers presented.

Ms. Hack explained that the moisture barrier issue is a warranty item, so that repair is being done at no cost to the city. The art work lighting is an issue with the connection to the buildings lighting system, which is our responsibility and not with the artwork itself. So all fees to get that up and running are included in the final budget number.

#### 4. Mill Presentation.

City Administrator Chris Engel presented information regarding the City of Merriam's mill levy. The presentation included a comparison of Merriam's mill levy to other surrounding cities. Additional information included commercial real estate rates compared to residential real estate rates and a depiction of the portion of the city budget that comes from real estate taxes.

#### 5. CIP Update.

Public Works Director Jim MacDonald provided the following CIP Updates:

The 2021 Street Improvement Program will include East Frontage Rd. from 67<sup>th</sup> to 75<sup>th</sup> St. (CARS Project); 2021 Mill and Overlay Program and 2021 Sidewalk Maintenance and Repair Program. These projects are bundled together and will have a bid opening for the projects on February 17<sup>th</sup>. There will be a public



meeting in March after, the contractor has been selected and the bid is approved by City Council.

**VI. STAFF ITEMS**

Assistant City Administrator Meredith Hauck announced she will be leaving her employment with the city and moving to Detroit. Her last day will be February 23, 2021. She commented that she has fully enjoyed working for the City of Merriam for the past four years.

**VII. EXECUTIVE SESSION**

**VIII. ADJOURNMENT**

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COUNCIL, COUNCILMEMBER PAPE MOVED TO ADJOURN AT 8:58 PM. COUNCILMEMBER HANDS SECONDED AND THE MOTION WAS UNANIMOUSLY APPROVED.**

Respectfully submitted,

*Juliana Pinnick*

City Clerk



## AGENDA ITEM INFORMATION FORM

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**AGENDA ITEM:** Consider approval of Mid-America Regional Council's (MARC) Planning Sustainable Places (PSP) program Sponsor Agreement for the Downtown Merriam planning project

**SUBMITTED BY:** Chris Engel, City Administrator  
Bryan P. Dyer, Community Development Director

**MEETING DATE:** February 22, 2021

### PROJECT BACKGROUND/DESCRIPTION:

In Fall 2020, the city submitted a Planning Sustainable Places (PSP) grant application to Mid-America Regional Council (MARC) requesting funding to perform a detail analysis of downtown Merriam's redevelopment potential, building design, land uses, economic development potential, and transportation network. The project will use the analysis to create recommendations for land uses, redevelopment, and most importantly, the Merriam Drive street design. The street design recommendations will utilize a "complete street" approach to provide for multi-modal travel on and along Merriam Drive.

This PSP grant corresponds with a number of Merriam Drive planning efforts; including the Merriam Comprehensive Plan 2040, the PSP study of the extended Merriam Drive corridor, and the Merriam Drive project in the city's five-year Capital Improvement Program (CIP). This PSP will have a significant impact on the city's CIP Merriam Drive project. An important aspect of the Downtown Merriam PSP project will be recommendations for the lane design and layout of Merriam Drive. Those design recommendations will be used to create the construction plans for the Merriam Drive CIP project.

MARC utilizes federal transportation dollars that are administered by the Kansas Department of Transportation (KDOT) to fund the PSP program. Utilizing these fund requires that the PSP projects meet state and federal funding standards and requirements. To ensure this, MARC is the project manager and liaison to KDOT. The attached Sponsor agreement details the responsibilities of the city and MARC.

The total project budget is \$120,000 with MARC providing \$59,500 and the city \$60,500. The city will utilize CIP funds budgeted for downtown planning and improvements associated with the 5701 Merriam Drive Project. MARC has issued a request for proposal (RFP) for this project. MARC and the city are currently reviewing responses to the RFP with the anticipation of awarding a contract in late March and the project beginning in mid-April.

The city attorney has reviewed the Sponsor Agreement.

**CITY COUNCIL GOALS AND OBJECTIVES**

- Objective 3.4 – Improve safety for all modes of travel throughout the community
- Objective 4.2 – Expand the commercial tax base
- Objective 4.3 – Facilitate a public discussion about future development possibilities in downtown Merriam

**FINANCIAL IMPACT**

<b>Amount of Request/Contract:</b>	<u>\$60,500</u>
<b>Amount Budgeted:</b>	<u>\$100,000</u>
<b>Funding Source/Account #:</b>	<u>GM1902 – Capital Improvement Fund – 301-0000-519-45-10</u>

**SUPPORTING DOCUMENTS**

MARC PSP Sponsor Agreement for the Downtown Merriam planning project.

**ACTION NEEDED/STAFF RECOMMENDATION**

Approve Mid-America Regional Council’s (MARC) Planning Sustainable Places (PSP) program Sponsor Agreement for the Downtown Merriam planning project and authorize the Mayor to sign the agreement.

MID-AMERICA REGIONAL COUNCIL'S  
PLANNING SUSTAINABLE PLACES PROGRAM

AGREEMENT

**PARTIES:** City of Merriam, Kansas, hereinafter referred to as the "Sponsor"  
Mid-America Regional Council, hereinafter referred to as "MARC"

**PURPOSE:** The Planning Sustainable Places (here in after known as "PSP") program provides local governments with financial support to advance detailed planning and project development activities in support of *Connected KC 2050's* activity centers and corridors framework. Funds received will be used to advance detailed local planning in support of the Downtown Merriam Corridor as detailed in Exhibit A.

The program looks to facilitate the following objectives:

- Support the development and implementation of local activity center plans consistent with the Creating Sustainable Places principles, identified regional activity centers, and the land use policy direction outlined in *Connected KC 2050*.
- Support localized public engagement and community consensus building.
- Support the identification and conceptualization of transportation projects, land use strategies, and related sustainable development initiatives that help to realize and advance the objectives identified in the Creating Sustainable Places initiative, *Connected KC 2050*, and the MARC Board's adopted policy statement on regional land use direction.

**EFFECTIVE** The parties mutually agree to Articles I, II, and III in accordance with this Agreement from the first day of January, 2021 until the 31<sup>st</sup> day of December, 2021.

ARTICLE I

**SPONSOR AGREES:**

1. To fund their portion of the PSP program's required local match of \$60,500.00 with a one-time payment upon receipt of invoice for the local match;
2. That any change order or request for additional services must be submitted through MARC to the contracted consultant. If the resulting change order or request for additional services requires additional funding, payment shall be the responsibility of the Sponsor;
3. To provide a project manager and coordinate the consultant team;
4. To participate in the PSP program management and provide MARC all required technical assistance, data and any other necessary information needed to successfully manage and comply with federal requirements regarding the PSP project;

5. Agree to include designated MARC project liaison in study advisory committee;
6. To provide a selection committee to review consultant vendor proposals, interview prospective consultant vendors, and make final selection of vendor; and
7. To provide final approval of project deliverables.

## **ARTICLE II**

### **MARC AGREES:**

1. To provide project liaison and project management;
2. To administer awarded Planning Sustainable Places federal funding of \$59,500.00, unless state or federal funding sources withdraw funding.
3. To coordinate and conduct consultant selection process to meet state and federal procurement requirements in the use of federal funds that includes but is not limited to debarment and Disadvantaged Business Enterprise (DBE) requirements;
4. To provide oversight of federal requirements that governs the use of federal funds in connection with the PSP program;
5. To administer consultant invoicing and reimbursement process per state and federal guidelines; and
6. To accept consultant deliverables only with Sponsor approval.

## **ARTICLE III**

### **BOTH PARTIES MUTUALLY AGREE:**

1. That this Agreement and all contracts entered into under provisions of this Agreement shall be binding upon **the City of Merriam, Kansas** and MARC; and
2. That no third party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

[Balance of page left blank]

**IN WITNESS WHEREOF:** the parties hereto have caused this Agreement to be signed by their authorized officers on the day and year first above written.

**Mid-America Regional Council**

**City of Merriam, Kansas**

David Warm  
Executive Director

Ken Sissom  
Mayor

DocuSigned by:  
*David A Warm*  
552058DA79A04BC...

\_\_\_\_\_

Date: 2/8/2021

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

## Exhibit A



# MARC Transportation Department

## 2021 Planning Sustainable Places

### Call for Projects

## Summary of Downtown Merriam Corridor

### City of Merriam

#### Contact Information

Organization: City of Merriam  
 Contact person: Bryan Dyer  
 Title: Community Development Director  
 Phone: 9133225527  
 E-mail: bdyer@merriam.org  
 Organization address: 9001 W. 62nd Street  
 Merriam, KS 66202

#### General Information

Project name: Downtown Merriam Corridor

Project description: This project will build upon recent discussions raised during the City Comprehensive Plan update and further refine the best and most sustainable options for the future of the Merriam Drive corridor in the vicinity of Downtown Merriam. The corridor generally parallels I-35 and plays an important role in the transportation choices in the area and historic character of the community. This is also a potential candidate for future service by light or heavy rail transit service. The outcome of the project will be to identify specific investments in the street for a "complete street" approach to serve multiple modes, adjacent trails, and adjoining private property by the City and developers that are enhancing the character of Downtown Merriam in a market-sustainable way. Redevelopment candidates would be identified to bring mixed-use properties back to Downtown Merriam. City staff, the City Council and Planning Commission, residents, and property and business owners in the study area would be the primary users of these recommendations.

Project Type: Sustainable Places Plan

Project Contact: Bryan Dyer

Project Location: The BNSF rail line to the east; the north boundary of Waterfall Park; properties on Merriam Drive to the west; properties on the south of Johnson Drive between Merriam Drive and BNSF RR.

Project Scope: This project will address the current and anticipated future alternatives and sustainable options for making Downtown Merriam more vibrant, dynamic, and a greater catalyst for building community vitality, image, and quality of life. Specific tasks and deliverables will include: - Conduct an updated audit of Existing Conditions, Challenges, and Assets within the project area to assess existing infrastructure, traffic patterns and volumes, commercial activity, land uses, flood zones, known obstacles, relevant stakeholder attitudes, relation to adjacent transportation networks, and prior work done in planning (along) Merriam Drive. - Review recent visioning and decisions by City and community leaders to identify any consensus of direction/theme/redevelopment type, including information from the current Comprehensive Plan update. - Conduct a market assessment to identify the anticipated economic trends for business and services in this part of Johnson County. The market assessment will identify economically viable activities that would be compatible within the study area and how well they match existing and desired land uses. - Prepare illustrations of potential transportation improvements and configurations that will support the identified redevelopment scenarios and evaluate how to create a more "complete street" that will meet the travel demands of pedestrians, bicyclists, and motor vehicles. This would also consider potential service by some form of commuter rail and how transit-oriented redevelopment might best occur in this area. - Create illustrations of potential reconfiguration of City-owned (and potentially City-acquired) property that could better serve the community's stated goals. - Present illustrations and redevelopment scenarios to key stakeholders and then the general public for information sharing and feedback as to their preferences. -



Generate refined graphics that reflect the preferences received from stakeholders and the public and anticipated overall implementation costs. - If necessary, perform any micro-level analysis of people movement and anticipated traffic level-of-service at key locations within the project area to gauge impacts of the refined redevelopment preferences on traffic congestion. - Prepare a recommended implementation plan to put the preferred redevelopment and transportation enhancements in place in the near future.

Consistent with relevant local plan(s)?	Yes This will further implement the discussions that come out of the Comprehensive Plan update. This project will create a more detailed area plan to supplement the Comprehensive Plan.
Core elements included in previous plans?	No N/A
Relationship to transportation issues:	The project will evaluate the current functionality of Merriam Drive and the adjoining street network support of the transportation needs and commercial/industrial activity in the area. It will also consider how future commuter rail service to the area would create TOD-relevant redevelopment possibilities. The deliverables will include recommendations as to reconfiguration and/or realignment of the street(s), sidewalk, bike facilities, trail, and public spaces along the Merriam Drive corridor, implementing a "road diet", etc., to improve people movement, safety, quality of life, and redevelopment viability.
Robust citizen engagement component description:	The City will implement lessons learned from the current Comprehensive Plan update to effectively utilize communications tools that take relevant information and ideas to the locations and in the media where the public is already involved, rather than the classic approach of trying to bring the public to where the information is being presented. The project would utilize a mix of social media, City media posts, short videos, in-person engagement at local events (Farmers market, Turkey Creek festival, etc.) that may be available and timely, and hosted events. Additional online surveys and mapping tools may also be deployed to enhance input and preference identification.
Future vibrancy description:	This project is aimed at identifying community enhancement options that cover the entire range of sustainable principles. The project will identify opportunities for Reinvestment in the project area. These opportunities will include increasing Transportation Choices and Housing Choices for all residents. The project will identify how to improve the vibrancy of the Merriam Downtown Corridor and Activity Center. The project will include direction on how to increase the Corridors Design for Healthier Lifestyles through active transportation, walkable centers, green infrastructure, integrated trail system with the existing Turkey Creek trail, and green infrastructure. Lastly the project will work to recognize Downtown Merriams Unique Community Characteristics that include its history, cultural and natural assets and discuss Resource Conservation & Energy Efficiency that could occur by increasing the opportunities for infill-rehab housing, walkability, and transit-ready corridor. This project will identify a market-appropriate range of reinvestment along the corridor that would improve peoples choices for services, transportation and access, connections to existing nearby amenities, in ways that are more integral with the entire communitys needs and abilities.
Implementation timeline:	N/A
Actionable budget documentation:	N/A
Improved travel choices promotion :	The project corridor already provides certain travel choices. The study will evaluate other strategies that could be added in the area to better serve multiple modes of travel (i.e. on-street bike lanes). Potential TOD activity will also be evaluated as to its impact on service and expanding travel choices. The study will also address enhancements to traffic monitoring and active management of the transportation network to address re-routing of traffic due to nearby incidents (i.e. an accident on I-35) and/or peak-hour demands.
Sustainable land-use patterns promotion:	This project is focused on identifying what land use patterns are both market-compatible and consistent with Merriam having both diversified residential choices and a robust economic engine. Future redevelopment options that support denser, transit-oriented, and/or more effective mixed-uses will be evaluated within that context.
Environmental stewardship:	This project will consider Turkey Creek as an integral characteristic of this study. Redevelopment alternatives that relocate structures out of the flood-prone areas will be evaluated. Removal of permanent structures outside the floodplain will create a long-term possibility of continued activity without the need for man-made flood control installation or continuing the cycle of repeated damage and rebuilding. This project will also engage the Merriam Drainage District (who has maintenance responsibility for this section of Turkey Creek) to consider opportunities to better integrate stream maintenance, habitat preservation and restoration, and enhancements to appeal of the Merriam Drive corridor. The study will access how stormwater Best Management Practices (BMP) can be improved in the project area though the utilization of green streets and updated BMP standards.
Housing choice:	Housing adjacent to the project corridor is generally some of the most-affordable in the Johnson County. This location and the potential expansion of travel choices in the area would make this a natural location for expanded housing choices. Redevelopment scenarios and market research can identify what residential demand is currently unmet and how that demand could be best addressed in the project area.
Public Health improvement:	This location is very close to Merriams services centers, already on a trail system, and is a prime opportunity to reinforce and improve active transportation/living by making the project area a more walkable/bikeable place that promotes a healthier, longer-lived community.
Support for investment in	The study area is already fully served by infrastructure. This study will center on continuing to use these

Economic growth:	A noticeable portion of the project area has lower-vitality economic activity. This study will recognize the existing worthwhile economic contributors along Merriam Drive and strategize how to keep them successful while identifying ways to revitalize the underperforming locations with more dynamic generators of jobs, amenities, and revenue.
Use of planning resource(s):	Merriams recent experiences with urban planning efforts will be built upon to use several likely measures to improve the efficacy of the project: - Use scenario planning tools to evaluate development alternatives - Establish a baseline to measure increases in daily bike/ped trips as redevelopment occurs - Track number of businesses operating within the project area over time and estimate the net municipal revenue generated by those businesses to assess changes in economic benefits - Incorporate targets for an increase in green space within the project area as redevelopment initiatives are implemented
Resiliency Promotion:	Downtown Merriam has encountered economic and natural challenges in the past. This project will evaluate methods to encourage appropriate and desirable uses along Merriam Drive while reducing the possibility and magnitude of damage to the area from future floods. Currently the uses and business types in the project area are fairly homogeneous. These methods will also encourage a diversity in use and business types to increase the areas physical and economic resiliency. The potential effects of adding commuter rail access will also be evaluated in its ability to strengthen the areas economic viability. An indirect benefit of this effort will be engaging the local businesses to consider ways to improve the area and prompt them to take their own steps to revitalize the corridor.
Innovation use:	New tools will be used to quickly visualize alternative development scenarios. Recent embracing of online meetings and virtual participation will allow for more convenient and far-reaching presentations and methods for the public to provide their input. On-site augmented reality tools are available to allow stakeholders and interested citizens to grasp the scale of potential redevelopment alternatives and how changes to the transportation facilities may improve the character of the area.
Serves MARC defined redevelopment area?	Yes The project limits are within the earlier development era in NE Johnson County.
Serves a MARC listed activity center?	Yes It is located within a Moderate activity center that generally follows Merriam Drive/Turkey Creek/I-35
Serves a future transit corridor?	Yes Johnson Drive (at southern end of project corridor) has mobility hubs shown a few miles to the east and west, suggesting that Merriam Drive will be able to serve as a transit node between these two hubs.
Serves environmental justice tract(s)?	Yes The project area falls entirely within an identified environmental justice tract.
Partnerships description:	This project would engage a number of partners and strengthen the dialogue about an aligned approach to bettering the area (Downtown Merriam Partnership, BikeWalk KC, RideKC, BNSF, NE Johnson County Chamber, KDOT, MARC (OGL), Merriam Drainage District, etc.).
Partnerships financial commitment:	N/A
Equity and/or typically underrepresented stakeholders partnership:	The project area is within and Environmental Justice area and touches a historically significant African-American neighborhood. This project will investigate alternative transportation modes that may be more readily accessible to underrepresented populations. The project area is within a CDBG eligible Census Block Group. This project will look at increasing the areas housing options beyond the typical large lot, single-family home. Increasing transportation and housing options will increase the long-term economic opportunities for social equity and underrepresented stakeholders.
Local activities supporting the project:	The City previously studied individual parts of Downtown Merriam, as well as some initial visioning as part of the current Comprehensive Plan update. The City went thru a considerable effort to receive USACE approval for flood control measures to support the long-term viability of Downtown. Recently, a citizen lead committee studied the city-owned property at 5701 Merriam Drive and how to utilize the property to support future downtown development. As part of the current efforts to revise and update the Merriam Comprehensive Plan, a resident survey was completed that indicates overwhelming support for future growth opportunities in Downtown Merriam. 70% of residents supported providing downtown with the opportunity to attract a wider variety of businesses and customers. The City has identified the success of Downtown Merriam as a key priority for the community and continues to commit resources and funds to improve the area.
Commitment from developer(s) and/or land owner(s):	N/A

**Project Financial Information**

Total Cost:	\$110000
Federal amount	\$77000

Minimum Funding amount \$70000  
DocuSign Envelope ID: 1CAFC0AE-1184-4E25-96A2-10ECDE9563C9  
Non-federal Cash Match \$33000  
amount:

Source of Local Match: General Funds

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### Supporting Documents

- File 1: [30\\_ProjID-Downtown\\_Merriam\\_PSP.pdf](#)
  - File 2: [30\\_ProjID-Downtown\\_Merriam\\_PSP\\_support\\_letter.pdf](#)
  - File 3:
  - File 4:
  - File 5:
- 

**No comments submitted.**

[Return to the List of Projects](#)

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**600 Broadway, Suite 200  
Kansas City, MO 64105  
816/474-4240  
Fax 816/421-7758**

MARC programs that receive federal funding may not discriminate against anyone on the basis of race, color or national origin, according to Title VI of the Civil Rights Act of 1964.  
[Title VI policy](#) | [Americans with Disabilities Act resources](#)



## AGENDA ITEM INFORMATION FORM

**AGENDA ITEM:** Approve purchase of two new vehicles for police department

**SUBMITTED BY:** Darren McLaughlin

**MEETING DATE:** February 22, 2021

### PROJECT BACKGROUND/DESCRIPTION:

The 2021 budget includes funding for three new police vehicles. At this time staff is only requesting the purchase of two vehicles. The two current vehicles that need replacement have over 95,000 miles and are at least 6 years old. The Dodge Durango Pursuit SUVs are all-wheel drive utility vehicles and are black with “Merriam Police” decals.

The City of Merriam purchases vehicles in cooperation with the Mid-America Council of Public Purchasing (MACPP). Municipalities save money on vehicles purchased through MACPP due to large volume purchasing. The MACPP is an established chapter of the National Institute of Governmental Purchasing Inc. They encourage ethical standards in buying and selling and promote uniform public purchasing laws and simplified standards of specifications.

We are purchasing the vehicles from Reed Jeep Chrysler Dodge Ram in Merriam, KS.

### CITY COUNCIL GOALS AND OBJECTIVES

2.1 Improve the utilization of technology to increase efficiency.

### FINANCIAL IMPACT

**Amount of Request/Contract:** \$63,430

**Amount Budgeted:** \$94,860

**Funding Source/Account #:** 222-2110-421-74-20 Law Enforcement Equipment Reserve Fund

### SUPPORTING DOCUMENTS

- Reed JCDR order

### ACTION NEEDED/STAFF RECOMMENDATION

Approve purchase of two vehicles

REED JEEP CHRYSLER DODGE RAM  
 7020 W FRONTAGE RD  
 MERRIAM, KS 662034656

Configuration Preview

Date Printed: 2021-01-06 4:33 PM  
 Estimated Ship Date:

VIN:  
 VON:

Quantity: 1  
 Status: BA - Pending order  
 FAN 1: 00KDQ Johnson County Kansas  
 FAN 2:  
 Client Code:  
 Bid Number: TB1065  
 PO Number:

Sold to:  
 REED JEEP CHRYSLER DODGE RAM (27066)  
 7020 W FRONTAGE RD  
 MERRIAM, KS 662034656

Ship to:  
 REED JEEP CHRYSLER DODGE RAM (27066)  
 7020 W FRONTAGE RD  
 MERRIAM, KS 662034656

Vehicle: 2021 DURANGO PURSUIT VEHICLE AWD (WDEE75)

	Sales Code	Description	MSRP(USD)
Model:	WDEE75	DURANGO PURSUIT VEHICLE AWD	36,000
Package:	2BZ	Customer Preferred Package 2BZ	0
	ERC	3.6L V6 24V VVT Engine Upg I w/ESS	0
	DFT	8-Spd Auto 850RE Trans (Make)	0
Paint/Seat/Trim:	PXJ	DB Black Clear Coat	0
	APA	Monotone Paint	0
	*C5	Cloth Bucket Seats w/ Shift Insert	0
	-X9	Black	0
Options:	4ES	Delivery Allowance Credit	0
	MAF	Fleet Purchase Incentive	0
	AHX	Trailer Tow Group IV	845
	LNX	LED Spot Lamps	0
	LNF	Black Left LED Spot Lamp	545
	GXF	Entire Fleet Alike Key (FREQ 1)	140
	4DH	Prepaid Holdback	0
	5N6	Easy Order	0
	4FM	Fleet Option Editor	0
	4FT	Fleet Sales Order	0
	174	Zone 74-Denver	0
	4EA	Sold Vehicle	0
Non Equipment:	4FA	Special Bid-Ineligible For Incentive	0
Bid Number:	TB1065	Government Incentives	0
Discounts:	YG1	7.5 Additional Gallons of Gas	0
Destination Fees:			1,495

Total Price: 39,025 .

Order Type: Fleet  
 Scheduling Priority: 1-Sold Order  
 Salesperson:  
 Customer Name:  
 Customer Address:

PSP Month/Week:  
 Build Priority: 99

USA

Instructions:

*bid @  
 31715. =*

Note: This is not an invoice. The prices and equipment shown on this priced order confirmation are tentative and subject to change or correction without prior notice. No claims against the content listed or prices quoted will be accepted. Refer to the vehicle invoice for final vehicle content and pricing. Orders are accepted only when the vehicle is shipped by the factory.



## AGENDA ITEM INFORMATION FORM

**AGENDA ITEM:** Consider Approval of a Small Cell Facility Deployment and Master Right-of-Way License Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility

**SUBMITTED BY:** Chris Engel, City Administrator

**MEETING DATE:** February 22, 2021

### PROJECT BACKGROUND/DESCRIPTION:

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 (ROW) to provide 5G service.

The City has previously entered into franchise agreements with telecommunications providers to spell out the shared obligations and allowable processes for operating in the ROW. 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, this Master License Agreement was crafted through group negotiation by several City Attorneys in Johnson County, spearheaded by Overland Park, with input from AT&T.

This Agreement sets out the rights of the City and AT&T for the placement and construction of small cell facilities in the City's right-of-way. The Agreement has a 10-year term and automatically renews twice with 5-year terms, unless either party chooses to terminate. The City has final approval of placement sites, and does not have to allow attachment of a small-cell facility to a city facility (such as specific light poles). If attachment to a utility pole or city facility is not possible, AT&T would place a monopole instead. Staff has shared with AT&T its desire to make any new monopoles in the ROW as inconspicuous as possible. Individual placement details are included in a separate application process.

Overland Park and Lenexa have already approved this agreement. Staff expects Leawood, Olathe, Prairie Village, and Shawnee will approve the same or similar agreements in the coming months.

The City Attorney has reviewed this Agreement.

### CITY COUNCIL GOALS AND OBJECTIVES

2.0 – Provide Exceptional Service Delivery; 4.0 – Maintain Economic Vitality

### FINANCIAL IMPACT

**Amount of Request/Contract:** n/a

**Amount Budgeted:** n/a

**Funding Source/Account #:** n/a

### SUPPORTING DOCUMENTS

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

### ACTION NEEDED/STAFF RECOMMENDATION

Recommend approval of a Small Cell Facility Deployment and Master Right-of-Way License Agreement with New Cingular Wireless PCS, LLC d/b/a AT&T Mobility

# Small cells help bring customers faster download speeds, improved call quality and an overall better wireless experience.

Consumers and businesses are using their mobile devices more than ever before to connect to everyone and everything around them. Data traffic on AT&T's mobile network has grown more than 580,000% since 2007. And, as streaming video continues to become more prominent and new apps and services are introduced, this growth in data use will continue to rise. With this increased demand and pressure on the mobile network, **a key solution is the deployment of small cells.**

## Small Cells Help Manage Increasing Data Demand

- Small cells are flexible network solutions that can be readily deployed to specific locations, including those where customers are prone to experience connectivity issues or in areas that can't effectively be served by a traditional cell tower. Small cells provide enhanced voice and data services by helping to bolster network capacity to allow faster downloads and improved call quality within its coverage area.
- Small cells are low profile, compact, scalable and unobtrusive. Small cells can be attached to existing utility poles, light poles, traffic lights or exterior walls of buildings.

## Small Cells Are Beneficial and Flexible

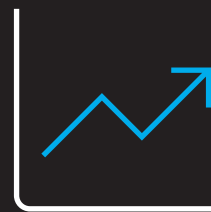
- Small cells are often used in densely populated environments where network capacity is an issue or in places with particularly difficult geographical challenges where coverage is an issue.
- The size and flexibility of small cells helps AT&T target areas needing additional network capacity and to address localized coverage issues. Where traditional macro towers are the best solution, we will seek to deploy macro towers. Where small cells are the best solution, we'll use small cells.
- Installations and use of wireless spectrum strictly follow FCC guidelines.

## Cities Continue to Manage the Public Right of Way (ROW)

- A small cell facility deployment ordinance or agreement can provide a standard set of rules to facilitate investment in and deployment of small cells in a community. The ordinance or agreement must conform with state and federal laws and preserves a city's ability to manage its public rights of way and, where applicable, zoning authority.
- AT&T's goal is to attach small cell equipment to existing infrastructure in the right of way – an existing AT&T pole, an existing city-owned light or traffic pole, or a power pole. In the case where a new pole is required, the company will work closely with the city on appropriate placement.
- Seven Johnson County cities jointly worked with AT&T on a uniform small cell facility deployment agreement.

Small cells provide additional network capacity allowing us to better keep up with customer demand for better, faster and smarter technologies and services.

Data traffic per smartphone is projected to **GROW 5X BY 2022**



## 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 MERRIAM, 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, community center property, pool property, other city office property or city 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 59, Article 3, Right of Way Use and Excavations, and amendments thereto), the City's Manual of Infrastructure Standards 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, parkland, city hall property, community center property, pool property, other city office property or city public works facility property 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

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<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 may perform a field inspection and structural analysis as part of the Make-Ready Survey. The City shall provide reasonable advance notice of such a field inspection and a representative of Grantee may be present for the inspection.

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

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

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<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 schedule of fees specifies the City's Supplement Application Fee and the City's current Annual ROW Access Fee, Annual Attachment Fee<sup>4</sup> and Non-Recurring Fees for small cell facilities.

21.3.2 After specifying the City's current Annual ROW Access Fee and Annual Attachment Fee amounts, the City's schedule of fees acknowledges the FCC's 2018 Declaratory Ruling regarding fee amounts, but disputes the FCC's authority to establish such fee limitations.<sup>5</sup> This said, the schedule of fees 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 the small cell fees included in the City's schedule of fees, (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.

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<sup>4</sup> Referred to therein as "Annual ROW Access and Streetlight Attachment Fee."

<sup>5</sup> The schedule of fees 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 Merriam 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:

<p><b>The City:</b>          City of Merriam          9001 West 62<sup>nd</sup> Street          Merriam, Kansas 66202          Attn: City Clerk          (913) 322-5500</p>	<p><b>Grantee:</b>          New Cingular Wireless PCS, LLC          Attn: Tower Asset Group – Lease Administration          Re: Wireless Installation on Public Structures          City of Overland Park, Kansas          FA No.: _____          1025 Lenox Park Blvd NE, 3<sup>rd</sup> Floor          Atlanta, GA 30319          Day to day operations - contact 1-800-638-2822</p>
<p><b>With a copy to:</b>          Ryan B. Denk          MVP Law          10 E. Cambridge Cir. Dr.          Kansas City, KS 66103          (913) 573-3310          E-mail: rdenk@mvplaw.com</p>	<p><b>With a copy to:</b>          New Cingular Wireless PCS, LLC          Attn: AT&amp;T Legal Dept. – Network Operations          Re: Wireless Installation on Public Structures          (City of Overland Park, Kansas)          FA No.: _____          208 S. Akard Street          Dallas, TX 75202-4206</p>

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

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

28.3 **Entire Agreement.** This Agreement supersedes all previous agreements, whether written or oral, between the City and Grantee with respect to the subject matter of this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both Parties.

28.4 **Conflict of Agreement and Supplements.** In the event of any conflict between this Agreement and any Supplement or exhibit hereto, the terms and conditions of this Agreement, as amended from time to time, shall control.

28.5 **Not Exclusive.** The City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use the Right-of-way or City Facilities. Such rights shall not interfere with the rights granted to Grantee by the specific Supplements issued pursuant to this Agreement.

28.6 **Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding the Right-of-way or City Facilities into which the City has previously entered, or may enter in the future, with others not party

to this Agreement, provided that any future attachments on City Facilities shall not interfere with Grantee's Attachments.

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

28.17 **Execution in Counterparts.** This Agreement may be executed in multiple counterparts, including scanned email counterpart signature, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.

28.18 **Waiver of Jury Trial.** Each Party waives its right to a trial by jury on disputes arising from this Agreement.

*(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 MERRIAM, KANSAS**

**NEW CINGULAR WIRELESS PCS, LLC**

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

By: \_\_\_\_\_  
Ken Sissom, Mayor

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

ATTEST:

\_\_\_\_\_  
Juli Pinnick, City Clerk

APPROVED AS TO FORM:

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

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

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

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.

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

My Appointment Expires:  
\_\_\_\_\_

**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 MERRIAM, 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 MERRIAM, KANSAS**

**NEW CINGULAR WIRELESS PCS, LLC**

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

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

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

ATTEST:

\_\_\_\_\_



\_\_\_\_\_, 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)*

CITY OF MERRIAM, KANSAS

# MONTHLY FINANCIAL REPORT

Finance Department



**City of Merriam, KS**  
**Monthly Financial Report - Executive Summary**  
**January 2021**

**Revenues**

	Current Month Actual	YTD Actual	YTD Budget	Over/(Under) YTD Budget
Various Funds:				
1% City Sales Tax	\$ 627,498	\$ 6,596,240	\$ 6,463,794	\$ 132,445
1/4% City Sales Tax-Storm/Street	175,214	1,555,407	1,529,229	26,178
1/4% City Sales Tax-Rec. Facilities	175,214	1,555,407	1,529,229	26,178
City Use Tax	71,264	820,553	594,000	226,553
County Sales Taxes - All	180,092	1,866,678	1,895,667	(28,988)
Real Property Taxes - Gen Fund	\$ 2,461,941	\$ 2,461,941	\$ 2,317,480	\$ 144,461
Transient Guest Tax	-	208,367	306,124	(97,757)
Franchise Fees	98,460	98,460	109,538	(11,078)
Court Fines	86,187	86,187	75,000	11,187

**Expenditures**

<i>General Fund - only:</i>	Current Mo. Actual	Monthly Budget	Over/(Under) Budget	Year to Date Actual	Year to Date Budget	Over/(Under) YTD Budget
Salaries and Benefits	\$ 769,693	\$ 803,650	\$ (33,957)	\$ 769,693	\$ 803,650	\$ (33,957)
Contractual Services:						
OP Fire Services	-	237,558	(237,558)	-	237,558	(237,558)
Utilities	224	53,758	(53,534)	224	53,758	(53,534)
Legal	-	5,500	(5,500)	-	5,500	(5,500)
Property Maint	70,285	77,798	(7,513)	70,285	77,798	(7,513)
Specific Contractual*	13,848	37,554	(23,706)	13,848	37,554	(23,706)
Other Contractual	33,800	90,549	(56,748)	33,800	90,549	(56,748)
Commodities:						
Gasoline/Diesel Fuel	1,702	12,954	(11,253)	1,702	12,954	(11,253)
Other Commodities	20,070	54,544	(34,474)	20,070	54,544	(34,474)

\*Specific Contractual includes: specific ongoing outside contractors (Judge, Prosecutor, Auditor, prisoner care, Information Services, legislative monitor, payroll processing, and animal care). The City Attorney is included under the Legal line item.

Comments:

- November 2020 1% and ¼% City sales tax receipts are 1.15% (\$12,283) less than the prior year.
  - Auto sales are 7.50% less than prior year actual.
  - Merriam Town Center/Johnson Drive sales are 1.78% more than prior year actual
  - Other categories are 11.23% more than prior year actual.
- Year-to-date 1% and ¼% City sales taxes are 3.20% (\$359,811) less than prior year actual.
  - Auto sales are 6.05% less than prior year actual.
  - Merriam Town Center/Johnson Drive sales are 8.86% less than prior year actual.
  - Other categories are 7.07% more than prior year actual.
- Additional 2020 sales taxes will be received in February 2021.

**City of Merriam, KS**  
**Monthly Financial Report - Executive Summary**  
**January 2021**

**Equipment Purchases >\$5,000**

Month	Description	Amount
January	Police – trailer	\$7,595

**Cash and Investment Balances**

FHLB = Federal Home Loan Bank	\$ 6,835,000	20%
FHLMC = Federal Home Loan Mortgage Corp.	4,150,000	13%
FNMA = Federal National Mortgage Assn.	4,500,000	14%
FFCB = Federal Farm Credit Bank	2,000,000	6%
US Treasury Bills	4,277,000	13%
Municipal Bonds	485,000	2%
TD Ameritrade MMA	5,874,481	19%
Total Investments	<u>28,121,481</u>	87%
US Bank Cash Account	4,027,766	13%
Total Cash plus Investments	<u><u>\$ 32,149,247</u></u>	100%

**City of Merriam, KS**  
**Monthly Financial Report - Executive Summary**  
**January 2021**

**FAQ's**

*Question:* What is the City Sales Tax rate effective January 1, 2021?

*Answer:* **9.475%** (6.500% to the State of Kansas; 1.475% to Johnson County; 1.50% to Merriam)

*Question:* How much does the City owe for general obligation bonds?

*Answer:* **\$1,685,000** is the current balance for the Series 2012 and **\$15,390,000** for Series 2018.

*Question:* What is the City's bond rating?

*Answer:* S & P Global Ratings rates the City's debt as "**AAA (Stable)**"

*Question:* What is the City's current mill levy?

*Answer:* **27.558 mills** (2020 levy supporting 2021 budgets)

*Question:* What is the City's assessed property valuation?

*Answer:* **\$214 million** per Johnson County Clerk as of June 1, 2020

*Question:* How much of the City's assessed property valuation is for Residential, Commercial, and Other?

*Answer:* **\$91 million** or 43% for Residential (including apartments);

**\$116 million** or 55% for Commercial;

**\$7 million** or 2% for Other (including vacant land, personal property, utilities)

*Question:* How many households are in the City?

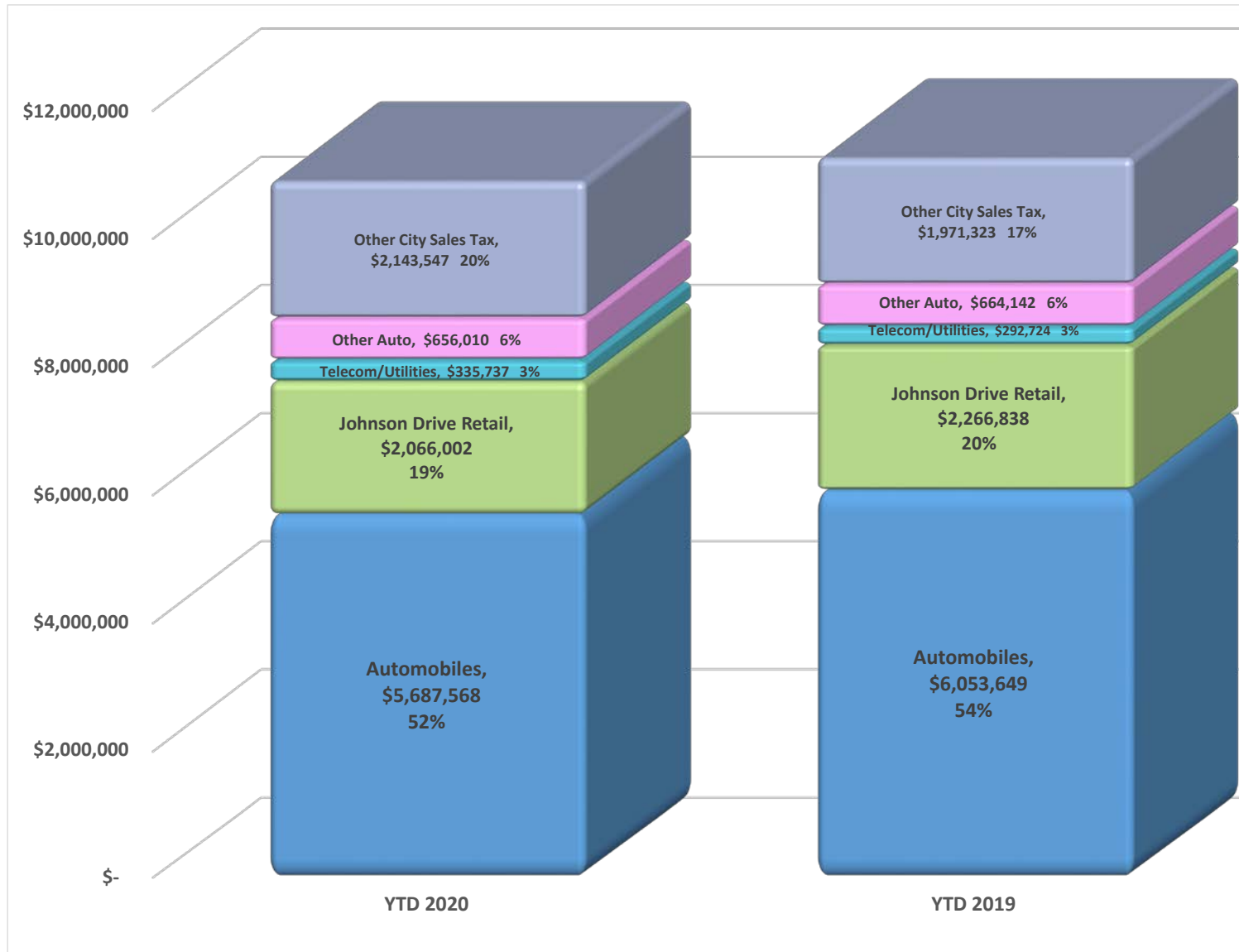
*Answer:* **5,224 households** (homes and apartments) per the 2010 U.S. Census Bureau

*Question:* What is the City's "pull factor" and what does this mean?

*Answer:* **4.49** is the City's pull factor per the Kansas Department of Revenue (December 2020 report). The term refers to how many non-residents a community "pulls" for shopping purposes. A pull factor greater than 1.00 indicates the community attracts more retail sales than it loses when residents shop outside the city. Merriam's is currently the highest in the State of Kansas.

# City of Merriam Sales Tax Comparison - 1.50%

YTD 2020 vs 2019



**CITY SALES & USE TAXES \***  
**(Regular 1.50% effective Jan. 1, 2018, 1.25% prior years)**

**Through: January 2021**

Month							Comparison	Average
Collected/Received	2015	2016	2017	2018	2019	2020	2019 and 2020	2015-2019
Jan/Mar	765,910	831,320	786,301	849,645	852,037	929,937	77,900	817,043
Feb/Apr	729,500	773,150	738,462	984,697	815,595	994,443	178,848	808,281
Mar/May	870,039	858,854	868,780	997,674	1,014,294	803,256	(211,038)	921,928
Apr/Jun	797,873	796,692	750,690	1,079,168	979,825	654,772	(325,053)	880,849
May/Jul	883,727	931,163	858,245	1,025,175	1,127,238	914,993	(212,245)	965,110
Jun/Aug	851,691	865,511	895,143	1,088,415	981,803	1,246,100	264,298	936,512
Jul/Sep	969,616	927,803	911,673	1,028,566	1,156,685	1,066,462	(90,224)	998,869
Aug/Oct	882,690	923,896	909,599	1,093,553	1,156,528	1,143,388	(13,140)	993,253
Sep/Nov	824,964	863,243	829,752	898,941	1,092,707	1,013,232	(79,474)	901,921
Oct/Dec	843,995	819,791	887,153	978,915	1,030,482	1,095,142	64,660	912,067
Nov/Jan	772,120	844,545	815,416	947,857	1,041,482	1,027,139	(14,343)	884,284
Dec/Feb	752,128	943,732	868,102	966,502	1,043,210			914,735
<b>Total</b>	<b>9,944,253</b>	<b>10,379,700</b>	<b>10,119,316</b>	<b>11,939,108</b>	<b>12,291,885</b>	<b>10,888,864</b>	<b>(359,811)</b>	<b>10,934,852</b>
<b>YTD</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>		
January 2021	9,192,125	9,435,968	9,251,215	10,972,606	11,248,675	10,888,864		

Average Collections Between 2015-2019	\$ 10,934,852
Budgeted 2020	11,369,562
Estimate Based on Current Collection Rate	11,878,761
Over/(Under) at Current Collection Rate	\$ 509,199

\* Kansas imposes a use tax on items purchased outside of Kansas for use in Kansas. The rate is identical to the sales tax rate in effect where the customer takes delivery.



# 1.50% City Sales & Use Tax Year to Date Comparison 2015-2020

(1.50% effective Jan. 1, 2018, 1.25% prior years)

\$11,500,000  
\$11,000,000  
\$10,500,000  
\$10,000,000  
\$9,500,000  
\$9,000,000  
\$8,500,000  
\$8,000,000  
\$7,500,000  
\$7,000,000  
\$6,500,000  
\$6,000,000  
\$5,500,000  
\$5,000,000  
\$4,500,000  
\$4,000,000

2015

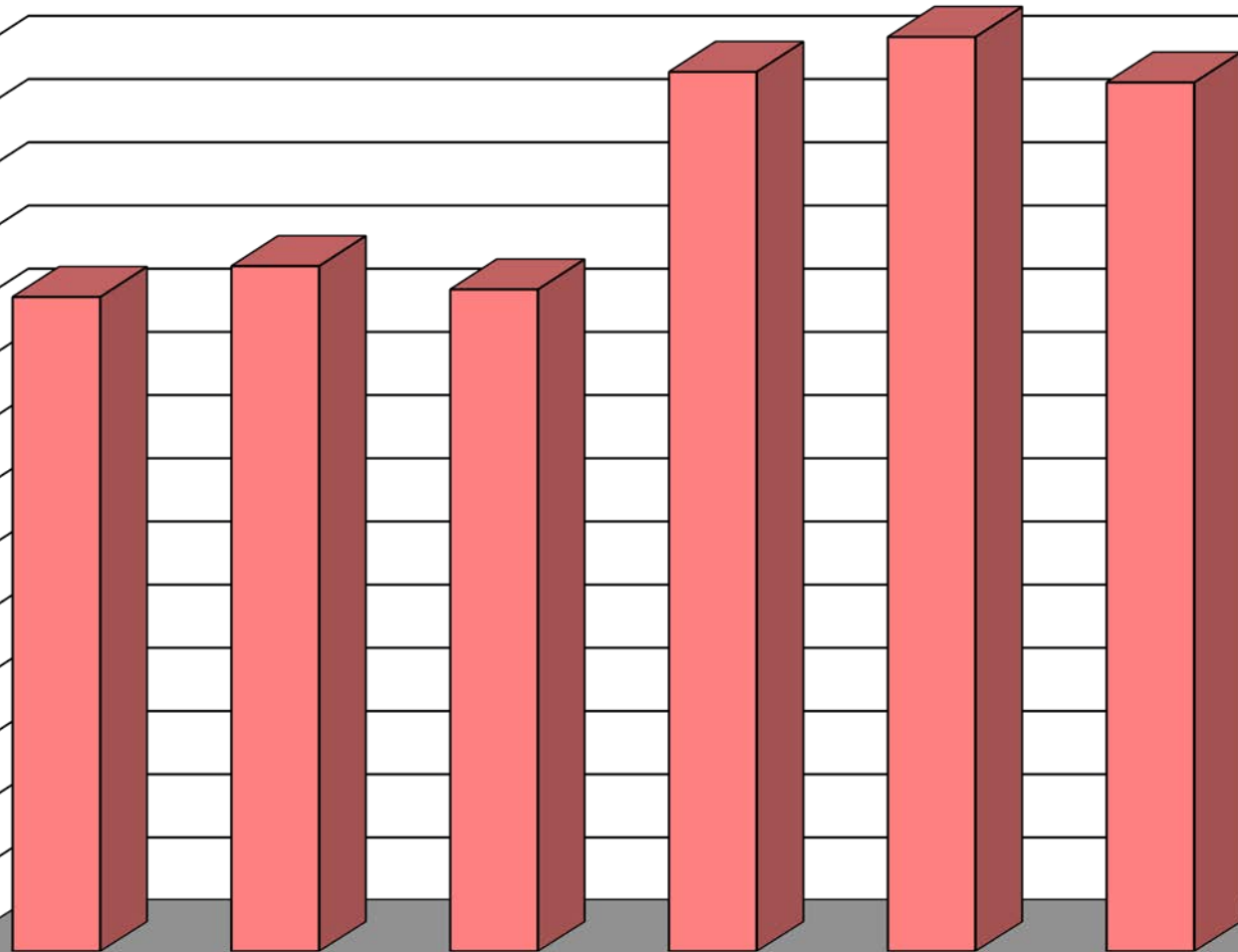
2016

2017

2018

2019

2020



**JOHNSON COUNTY SALES/USE TAX AND PUBLIC SAFETY TAXES \***  
**(Total City Share is 1.25%)**

**Through: January 2021**

Month Collected/Received	2015	2016	2017	2018	2019	2020	Comparison 2019 and 2020	Average 2015-2019
Jan/Mar	133,617	130,730	132,558	164,426	147,949	152,833	4,885	141,856
Feb/Apr	125,764	129,905	136,333	149,591	148,168	156,265	8,097	137,952
Mar/May	138,507	145,445	148,999	178,476	167,514	150,945	(16,570)	155,788
Apr/Jun	140,620	141,130	157,071	171,127	165,807	153,599	(12,208)	155,151
May/Jul	142,876	136,074	168,652	179,056	182,514	164,589	(17,925)	161,835
Jun/Aug	151,260	150,786	181,983	185,132	176,338	192,327	15,989	169,100
Jul/Sep	148,744	150,089	172,667	166,088	181,055	168,081	(12,974)	163,729
Aug/Oct	145,684	148,762	176,915	175,932	178,013	187,229	9,216	165,061
Sep/Nov	146,413	152,714	180,671	164,596	178,770	177,905	(864)	164,633
Oct/Dec	145,100	140,607	165,159	163,132	176,796	182,813	6,017	158,159
Nov/Jan	145,355	142,131	171,494	183,409	177,798	180,092	2,294	164,037
Dec/Feb	155,653	172,005	196,607	189,838	194,792			181,779
<b>Total</b>	<b>1,719,594</b>	<b>1,740,379</b>	<b>1,989,108</b>	<b>2,070,804</b>	<b>2,075,514</b>	<b>1,866,678</b>	<b>(14,043)</b>	<b>1,919,080</b>
<b>YTD</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>		
January 2021	1,563,942	1,568,374	1,792,501	1,880,966	1,880,722	1,866,678		

Average Collections Between 2015-2019	\$ 1,919,080
Budgeted 2020	2,068,000
Estimate Based on Current Collection Rate	2,036,376
Over/(Under) at Current Collection Rate	\$ (31,624)

\* The County special "courthouse" 0.25% tax, effective April 1, 2017, will expire March 31, 2027. All other County taxes have no sunset date.

**January 2021  
REVENUE SUMMARY BY FUND**

<b>Fund Number</b>	<b>Revenues</b>	<b>Budget/Est.</b>	<b>YTD Actual</b>	<b>Monthly Collections</b>	<b>Balance</b>	<b>YTD % Budget/Est.</b>
<b>001</b>	General Fund	\$ 19,577,129	\$ 3,715,505	\$ 3,715,505	\$ 15,861,624	18.98%
<b>201</b>	Special Highway Fund	253,420	72,796	72,796	180,624	28.73%
<b>202</b>	Special Alcohol Fund	27,283	-	-	27,283	0.00%
<b>203</b>	Special Park & Rec	27,283	-	-	27,283	0.00%
<b>204</b>	Transient Guest Tax	502,750	5,700	5,700	497,050	1.13%
<b>221</b>	Risk Management Reserve	19,985	2,800	2,800	17,185	14.01%
<b>222</b>	Equipment Reserve Fund	640,000	50,201	50,201	589,799	7.84%
<b>301</b>	Capital Improvement Fund		557,192	557,192		
<b>303</b>	I-35 District CIP Fund		0	0		
<b>401</b>	Bond and Interest Fund	3,229,038	264,849	264,849	2,964,189	8.20%
<b>403</b>	TIFB-I35 District		2,485,111	2,485,111		
<b>702</b>	Special Law Enforcement-State/Local		24	24		
<b>704</b>	Grant Fund		-	-		
<b>TOTAL</b>		<b>\$ 24,276,888</b>	<b>\$ 7,154,179</b>	<b>\$ 7,154,179</b>	<b>\$ 20,165,037</b>	

<b>Average Rate of Sales Tax Collections Should Be:</b>	<b>8.33%</b>
<b>Average Rate of Other Collections Should Be:</b>	<b>8.33%</b>

**January 2021  
EXPENDITURE SUMMARY BY FUND**

<b>Fund Number</b>	<b>Expenditures</b>	<b>Budget/Est. *</b>	<b>YTD Actual</b>	<b>Monthly Expenditures</b>	<b>Encumbrances</b>	<b>Balance</b>	<b>YTD % Budget/Est.</b>
001	General Fund	\$ 19,390,930	\$ 1,359,154	\$ 1,359,154	\$ 903,983	\$ 17,127,793	11.67%
201	Special Highway Fund	330,000	(306)	(306)	6,000	324,306	1.73%
202	Special Alcohol Fund	27,000	3,294	3,294	-	23,706	12.20%
203	Special Park & Rec	60,000	2,040	2,040	-	57,960	3.40%
204	Transient Guest Tax	537,913	36,297	36,297	13,059	488,557	9.18%
221	Risk Management Reserve	30,000	352	352	-	29,648	1.17%
222	Equipment Reserve Fund	691,093	7,595	7,595	31,000	652,498	5.58%
301	Capital Improvement Fund		16,862	16,862	84,726		
303	I-35 District CIP Fund		-	-	2,090		
401	Bond and Interest Fund	3,220,475	-	-	-	3,220,475	0.00%
403	TIFB-I35 District		-	-	-		
702	Special Law Enforcement-State/Local		-	-	-		
704	Grant Fund		-	-	-		
<b>TOTAL</b>		<b>\$ 24,287,411</b>	<b>\$ 1,425,289</b>	<b>\$ 1,425,289</b>	<b>\$ 1,040,858</b>	<b>\$ 21,924,943</b>	

<b>Average Expenditure Rate Should Be:</b>	<b>8.33%</b>
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\* Excludes budgeted reserves and contingencies

**January 2021**  
**EXPENDITURE SUMMARY BY DEPARTMENT**  
**GENERAL FUND - YEAR-TO-DATE**

<u>Department</u>	<u>2021</u>			<u>2020</u>	<u>Actual 2021</u>
	<u>Annual Budget/Est.</u>	<u>Year-to-date Actual</u>	<u>% of Budget Used</u>	<u>Year-to-date Actual</u>	<u>Over/(Under) Actual 2020</u>
City Council	\$ 100,691	\$ 5,539	5.50%	\$ 6,805	\$ (1,266)
Administration	1,286,151	99,992	7.77%	122,877	(22,885)
Municipal Court	386,354	24,047	6.22%	30,994	(6,947)
Info Services	556,966	65,325	11.73%	64,786	539
General Overhead					
General	496,955	58,927	11.86%	7,505	51,422
Utilities	608,200	343	0.06%	709	(366)
Property Maintenance	549,784	24,749	4.50%	3,448	21,301
Risk Management	230,000	-	0.00%	-	-
Legal	71,900	-	0.00%	-	-
Employee Benefits	61,640	1,514	2.46%	2,370	(856)
Fleet Maintenance	296,985	4,672	1.57%	-	n/a
Interfund Transfers	2,701,544	413,231	15.30%	443,027	(29,796)
Contingency Usage *	25,000	-	0.00%	-	-
Police	4,156,162	346,751	8.34%	427,299	(80,548)
Fire	2,910,889	145	0.00%	1,860	(1,715)
Public Works	2,289,336	168,980	7.38%	198,419	(29,439)
Culture & Rec - Parks	52,003	1,914	3.68%	12,613	(10,699)
Culture & Rec - Comm Ctr	1,775,571	78,913	4.44%	96,124	(17,211)
Community Dev	800,550	64,111	8.01%	92,168	(28,057)
Total General Fund	<u>\$ 19,356,681</u>	<u>\$ 1,359,154</u>	<u>7.02%</u>	<u>\$ 1,511,006</u>	<u>\$ (156,524)</u>

<b>Average Expenditure Rate Should Be:</b>	<b>8.33%</b>
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\* Excludes budgeted reserves and contingencies

A large, stylized number '7' is the central graphic. The top and bottom strokes are light yellow. A horizontal blue bar crosses the middle, containing the text 'INVESTMENT REPORT'. Below the blue bar is a decorative horizontal band with a repeating pattern of triangles in shades of orange and yellow. The right side of the '7' tapers to a point.

# INVESTMENT REPORT

**Investment Listing by Maturity Date  
1/31/2021**

<b>Fund</b>	<b>Type</b>	<b>Location</b>	<b>Purchase Date</b>	<b>Par Amount</b>	<b>Maturity Date</b>	<b>Yield</b>	<b>Monthly Subtotal</b>
301/901	Treasury MMA	TD Ameritrade	09/01/16	1,346,007	N/A	0.010%	\$ 5,874,481
301/303	TBILL	TD Ameritrade	07/08/20	1,000,000	02/25/21	0.137%	
901	AGENCY-FHLMC	TD Ameritrade	03/14/17	500,000	02/26/21	1.356%	
301	TBILL	Country Club	01/30/20	275,000	02/28/21	1.417%	\$ 1,775,000
301	AGENCY-FHLB	TD Ameritrade	01/24/20	1,000,000	03/12/21	1.550%	\$ 1,000,000
301	AGENCY-FNMA	TD Ameritrade	05/29/20	1,500,000	04/13/21	0.154%	
222/301	TBILL	Country Club	01/20/21	1,150,000	04/20/21	0.075%	\$ 2,650,000
301	TBILL	TD Ameritrade	05/29/20	1,552,000	05/20/21	0.169%	\$ 1,552,000
301	AGENCY-FHLB	TD Ameritrade	07/08/20	1,000,000	06/11/21	0.166%	
901	AGENCY-FHLB	TD Ameritrade	03/14/18	250,000	06/14/21	2.509%	\$ 1,250,000
301	AGENCY-FHLB	TD Ameritrade	08/05/20	3,000,000	07/07/21	0.112%	\$ 3,000,000
301	AGENCY-FHLMC	TD Ameritrade	07/08/20	3,000,000	08/12/21	0.167%	
301	AGENCY-FNMA	TD Ameritrade	08/06/20	1,000,000	08/17/21	0.126%	
301	AGENCY-FNMA	Country Club	07/29/19	500,000	08/17/21	1.797%	\$ 4,500,000
301	AGENCY-FNMA	Country Club	07/29/19	500,000	09/08/21	1.862%	\$ 500,000
301	AGENCY-FNMA	TD Ameritrade	10/28/20	1,000,000	10/07/21	0.122%	
301	MUNICIPAL BOND	TD Ameritrade	11/05/20	250,000	10/15/21	0.221%	\$ 1,250,000
303	AGENCY-FHLB	TD Ameritrade	02/18/20	340,000	12/10/21	1.400%	
301	AGENCY-FHLB	TD Ameritrade	02/18/20	245,000	12/10/21	1.400%	
301	AGENCY-FHLB	TD Ameritrade	12/16/20	1,000,000	12/16/21	0.092%	
222	TBILL	Country Club	12/23/20	300,000	12/31/21	0.095%	\$ 1,885,000
301	AGENCY-FFCB	TD Ameritrade	12/22/20	1,000,000	09/22/22	0.120%	\$ 1,000,000
301	MUNICIPAL BOND	TD Ameritrade	05/07/20	235,000	12/01/22	1.050%	
222/303	AGENCY-FHLMC	Country Club	06/30/20	650,000	12/29/22	0.350%	\$ 885,000
901	AGENCY-FFCB	TD Ameritrade	01/13/21	500,000	01/13/23	0.160%	
221	AGENCY-FFCB	Country Club	01/30/20	350,000	01/23/23	1.441%	
301	AGENCY-FFCB	Country Club	01/30/20	150,000	01/23/23	1.441%	\$ 1,000,000
					Weighted Yield	0.335%	<u><u>\$ 28,121,481</u></u>

## **CITY COUNCIL SUGGESTED MOTIONS FOR YOUR CONSIDERATION**

### **CONSENT AGENDA**

- 1. Move that the council approve Consent Agenda Items 1-3.**

### **MAYOR'S REPORT**

### **COUNCIL ITEMS**

- 1. Move that the council approve a small cell deployment and master right of way license agreement with AT&T Mobility.**
- 2. No motion.**
- 3. No motion.**