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**CITY OF PITTSBURG, KANSAS**  
**COMMISSION AGENDA**  
**Tuesday, July 28, 2015**  
**5:30 PM**

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**CALL TO ORDER BY THE MAYOR:**

- a. Invocation
- b. Flag Salute Led by the Mayor
- c. Public Input
  - a. Presentation to the Everybody Plays Committee by the Marvin A. Armstrong Lodge #187 of Pittsburg.

**CONSENT AGENDA:**

- a. Approval of the July 14, 2015, City Commission Meeting minutes.
- b. Approval of Resolution No. 1173, expressing the property taxation policy of the City of Pittsburg with respect to financing the annual budget for 2016, and authorize the Mayor to sign the Resolution on behalf of the City.
- c. Approval of Ordinance No. G-1227, amending Section 58-173 of the Pittsburg City Code to permit the use and consumption of cereal malt beverages and alcohol in certain designated areas on the north lawn of, and inside, the Memorial Auditorium upon certain terms and conditions and also repealing Section 58-174 and authorize the Mayor to sign the Ordinance on behalf of the City.
- d. Approval of Ordinance No. S-1026, granting to Kansas Fiber Network, a Kansas Limited Liability Company (KSFiberNet), its successors and assigns, a telecommunications franchise and prescribing the terms of said grant and relating thereto and authorize the Mayor to sign the Ordinance on behalf of the City.
- e. Approval of Ordinance No. S-1027, granting to Fiber Communications of Columbus, a Kansas Limited Liability Company dba Optic Communications ("Optic"), its successors and assigns, a telecommunications franchise and prescribing the terms of said grant and relating thereto and authorize the Mayor to sign the Ordinance on behalf of the City.
- f. Approval of Ordinance No. S-1028, granting to Craw-Kan Telephone (CKT), its successors and assigns, a telecommunications franchise and prescribing the terms of said grant and relating thereto and authorize the Mayor to sign the Ordinance on behalf of the City.

**CITY OF PITTSBURG, KANSAS**  
**COMMISSION AGENDA**  
**Tuesday, July 28, 2015**  
**5:30 PM**

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- g. Approval of a Master Network Services Agreement between the City and Fiber Communications of Columbus, LLC, dba Optic Communications ("Optic") and authorization for the Mayor to sign the agreement on behalf of the City.
- h. Approval of a Master Network Services Agreement between the City and Craw-Kan Telephone Cooperative (Craw-Kan) and authorization for the Mayor to sign the agreement on behalf of the City.
- i. Approval of the application submitted by the Pittsburg Noon Kiwanis Club for a Cereal Malt Beverage License in the 600 block of North Broadway during the Little Balkans Day Festival from 11:00 a.m. until 11:59 p.m. on Saturday, September 5th, 2015, and from Noon until 6:00 p.m. on Sunday, September 6th, 2015, and authorize the City Clerk to issue the license.
- j. Approval of staff request to purchase the following 2015 budgeted vehicles under the Kansas State Purchasing Contract currently held with Shawnee Mission Ford, Shawnee, Kansas, utilizing STCO funds: One (1) New 2015/2016 Ford F-150 Regular Cab 4x2 (F1C) Truck for Parks and Recreation in the amount of \$19,975.00 and One (1) New 2015/2016 Ford F-150 Super Cab 4x2 Short Bed (X1C/145) Truck for Engineering in the amount of \$20,517.00 for a total amount of \$40,492.00 and, if approved, authorize the issuance of the necessary purchase orders.
- k. Approval of staff recommendation to award the bid for the KLINK 1R Resurfacing Project on K-126 (W 4th Street) from the City Limits East of US-69 Bypass to Pine Street, KDOT Project No. 126-19 U-0335-01, to Heckert Construction Co., Inc., of Pittsburg, based on their low bid of \$311,685.12 and, if approved, authorize the Mayor and City Clerk to execute the contract documents once prepared.
- l. Approval of staff request to declare a certain vehicle as surplus and authorize staff to dispose of the vehicle through the online auctioning services of Purple Wave, Inc.
- m. Approval of the Appropriation Ordinance for the period ending July 28, 2015, subject to the release of HUD expenditures when funds are received.  
**ROLL CALL VOTE.**

**CITY OF PITTSBURG, KANSAS**  
**COMMISSION AGENDA**  
**Tuesday, July 28, 2015**  
**5:30 PM**

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**CONSIDER THE FOLLOWING:**

- a. RESOLUTION NO. 1174 - Consideration of Resolution No. 1174, authorizing the redemption of the City General Obligation Bonds, Series 2007B, maturing on and after September 1, 2018. **Approve or disapprove Resolution No. 1174 and, if approved, authorize the Mayor to sign the Resolution on behalf of the City.**
  
- b. 2016 BUDGET - Consider the 2016 City budget for adoption. A Public Hearing is scheduled for August 11th, 2015, as prescribed by law, to be held in the City Commission Room, located in the Law Enforcement Center at 201 North Pine, at 5:30 p.m., for the purpose of hearing and answering questions relating to the 2016 budget. **Take that action deemed appropriate.**

**NON-AGENDA REPORTS & REQUESTS:**

**ADJOURNMENT**

OFFICIAL MINUTES  
OF THE MEETING OF THE  
GOVERNING BODY OF THE  
CITY OF PITTSBURG, KANSAS  
JULY 14th, 2015

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A Regular Session of the Board of Commissioners was held at 5:30 p.m. on Tuesday, July 14<sup>th</sup>, 2015, in the City Commission Room, located in the Law Enforcement Center, 201 North Pine, with Mayor Chuck Munsell presiding and the following members present: Michael Gray, John Ketterman, Jeremy Johnson and Monica Murnan.

Pete Mayo of Via Christi provided the invocation.

Mayor Munsell led the flag salute.

PROCLAMATION – AMERICANS WITH DISABILITIES ACT - Mayor Munsell read a proclamation recognizing the 25<sup>th</sup> anniversary of the passage of the Americans with Disabilities Act.

PROCLAMATION – KANSAS ALL-STAR FOOTBALL SHRINE BOWL DAY – Mayor Munsell proclaimed July 25<sup>th</sup>, 2015, as Kansas All-Star Football Shrine Bowl Day in Pittsburg and congratulated Sage Mahnken of Pittsburg High School for being selected to participate in the football game.

PUBLIC INPUT – PAWPRINTS ON THE HEARTLAND - Erica Wilson and Elizabeth Kutz provided information regarding the Trap, Neuter and Return Program offered through the Pawprints on the Heartland. Ms. Kutz indicated that a grant that previously funded this program was not renewed. Ms. Kutz explained that the cost to spay or neuter a cat is \$40. She requested the City participate by paying \$20 per spay/neuter per cat with a maximum of 300 cats per year. Ms. Kutz asked that this funding continue until other funding for this program can be secured. Mayor Munsell stated that the City Commission will take the funding request under advisement. Frank Smardo spoke in support of the Trap, Neuter and Return Program.

APPROVAL OF MINUTES – JUNE 23<sup>rd</sup>, 2015 - On motion of Gray, seconded by Johnson, the Governing Body approved the June 23<sup>rd</sup>, 2015, City Commission Meeting minutes as submitted. Motion carried.

ORDINANCE NO. S-1025 – On motion of Gray, seconded by Johnson, the Governing Body adopted Ordinance No. S-1025 levying a special assessment against the lots or parcels of land on which existed weeds or obnoxious vegetable growth to pay the costs of cutting or removing said growth. Motion carried.

2014 CONCRETE REPAIR PROJECT - CHANGE ORDER NO. 1 AND FINAL PAYMENT – On motion of Gray, seconded by Johnson, the Governing Body approved Change Order No. 1, reflecting an increase of \$49,241.17 making a new contract construction amount of \$285,245.61, and final payment in the amount of \$87,074.70 to Mission Construction Company, Inc., of St. Paul, Kansas, for the 2014 Concrete Repair (Joplin, Centennial, Rouse) Project. Motion carried.

OFFICIAL MINUTES  
OF THE MEETING OF THE  
GOVERNING BODY OF THE  
CITY OF PITTSBURG, KANSAS  
JULY 14th, 2015

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KLINK PROJECT – STREET RESURFACING - On motion of Gray, seconded by Johnson, the Governing Body approved a Resolution authorizing the Mayor and City Clerk to execute Agreement No. 195-15 between the City of Pittsburg and the Secretary of Transportation to participate in funding of a KLINK street resurfacing project on K-126 (W 4th Street) from City Limits East of US-69 Bypass to Walnut Street, KDOT Project No. 126-19 U-0335-01, based on a 50% State/50% Local grant with the State's share not to exceed \$200,000 and authorized the Mayor and City Clerk to execute the agreement on behalf of the City of Pittsburg. Motion carried.

ATKINSON MUNICIPAL AIRPORT TREE GRUBBING PROJECT – FINAL PAYMENT – On motion of Gray, seconded by Johnson, the Governing Body approved final payment in the amount of \$11,634.25 to Home Center Construction, Inc., of Pittsburg, for the Clearing and Grubbing of Trees within Runway 16 Approach Area at the Atkinson Municipal Airport (KDOT Project No. AV-2015-19). Motion carried.

WATER TREATMENT PLANT PROJECT – EMERGENCY GENERATOR – SECOND AMENDMENT - On motion of Gray, seconded by Johnson, the Governing Body approved the Second Amendment to the Loan Agreement for the Kansas Public Water Supply Loan Fund (KPWSLF) loan to the City of Pittsburg for the emergency generator at the Water Treatment Plant (Project No. 2794) to decrease the amount of the loan from \$1,000,000 to \$554,592.15, and authorized the Mayor to execute the amendment on behalf of the City of Pittsburg. Motion carried.

WASTEWATER SYSTEM IMPROVEMENTS PROJECT – THIRD AMENDMENT – On motion of Gray, seconded by Johnson, the Governing Body approved the Third Amendment to the Loan Agreement for the Kansas Water Pollution Control Revolving Fund (KWPCRF) loan to the City of Pittsburg for the wastewater system improvements project (Project No. C20 1527 01) adjusting the repayment schedule in Exhibit B to reflect the prepayment of the loan in full by the City for \$1,900,566.96 on June 22nd, 2015 and authorized the Mayor to execute the amendment on behalf of the City of Pittsburg. Motion carried.

SURPLUS VEHICLE DECLARATION – On motion of Gray, seconded by Johnson, the Governing Body approved staff request to declare certain vehicles as surplus and authorized staff to dispose of the vehicles through the online auctioning services of Purple Wave, Inc. Motion carried.

APPROPRIATION ORDINANCE – On motion of Gray, seconded by Johnson, the Governing Body approved the Appropriation Ordinance for the period ending July 14<sup>th</sup>, 2015, subject to the release of HUD expenditures when funds are received, with the following roll call vote: Yea: Gray, Johnson, Ketterman, Munsell, and Murnan. Motion carried.

OFFICIAL MINUTES  
OF THE MEETING OF THE  
GOVERNING BODY OF THE  
CITY OF PITTSBURG, KANSAS  
JULY 14th, 2015

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ORDINANCE NO. S-1024 - On motion of Murnan, seconded by Gray, the Governing Body adopted Ordinance No. S-1024 levying a special assessment against the lots or parcels of land on which refuse matter was located to pay the cost of making the premises safe and hygienic. Motion carried.

PRESENTATION OF CITY MANAGER'S SUBMITTED BUDGET - City Manager Daron presented the City Manager's Submitted Budget for 2016. Commissioner Murnan spoke in favor of the proposed budget.

MEMORANDUM OF UNDERSTANDING - PITTSBURG STATE UNIVERSITY – On motion of Ketterman, seconded by Gray, the Governing Body approved a Memorandum of Understanding between the City of Pittsburg and Pittsburg State University regarding law enforcement services within the city limits of Pittsburg and authorized the Mayor and Police Chief to execute the Memorandum of Understanding on behalf of the City. Motion carried.

FAA GRANT AGREEMENT – On motion of Gray, seconded by Johnson, the Governing Body approved staff request to accept the Grant Offer from the FAA for Airport Improvement Program (AIP) Project No. 3-20-0069-015-2015 at the Atkinson Municipal Airport and authorized the City Manager to sign the Grant Agreement on behalf of the City. Motion carried.

AIRPORT ADVISORY COMMITTEE APPOINTMENT – The Governing Body appointed Robert Downing to fill an unexpired term as a member of the Airport Advisory Committee effective immediately and to expire on December 31<sup>st</sup>, 2016.

NON-AGENDA REPORTS AND REQUESTS - BI-MONTHLY BUDGET REPORT – Director of Finance Jamie Clarkson presented the June 2015 bi-monthly budget report.

EXECUTIVE SESSION - On motion of Gray, seconded by Ketterman, the Governing Body recessed into Executive Session not to exceed 30 minutes for discussion deemed privileged in the attorney-client relationship. Motion carried.

The Governing Body recessed into Executive Session at 6:08 p.m.

The Governing Body reconvened into Regular Session at 6:38 p.m.

Mayor Munsell announced that no decisions were made and no votes were taken during the Executive Session.

OFFICIAL MINUTES  
OF THE MEETING OF THE  
GOVERNING BODY OF THE  
CITY OF PITTSBURG, KANSAS  
JULY 14th, 2015

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EXECUTIVE SESSION - On motion of Ketterman, seconded by Johnson, the Governing Body recessed into Executive Session not to exceed 30 minutes for discussion deemed privileged in the attorney-client relationship. Motion carried.

The Governing Body recessed into Executive Session at 6:38 p.m.

The Governing Body reconvened into Regular Session at 7:05 p.m.

Mayor Munsell announced that no decisions were made and no votes were taken during the Executive Session.

ADJOURNMENT: On motion of Gray, seconded by Ketterman, the Governing Body adjourned the meeting at 7:05 p.m. Motion carried.

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Chuck Munsell, Mayor

ATTEST:

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Tammy Nagel, City Clerk

RESOLUTION NO. 1173

*A resolution expressing the property taxation policy of the City of Pittsburg with respect to financing the annual budget for 2016*

Whereas, K.S.A. 79-2925b, as amended, provides that a levy of property taxes to finance the 2016 budget of the City of Pittsburg exceeding the amount levied to finance the 2015 budget of the City of Pittsburg, as adjusted to reflect changes in the Consumer Price Index for All Urban Consumers for calendar year 2014, be authorized by a resolution adopted in advance of the adoption of a budget supported by such levy; and

Whereas, K.S.A. 79-2925b, as amended, also provides that current year revenue that is produced and attributable to the taxation of (1) new improvements, (2) increased personal property valuation other than increased valuation of oil and gas leaseholds and mobile homes, (3) property located within added jurisdictional territory, and (4) property which has changed in use shall not be considered when determining whether revenue produced from property tax has increased from the preceding year; and

Whereas, the City of Pittsburg provides essential services to protect the citizens of the City of Pittsburg; and

Whereas, the cost of providing these services continues to increase.

NOW, THEREFORE, BE IT RESOLVED by the City of Pittsburg that a levy of property taxes in support of the 2016 budget exceeding the amount levied in 2015, as adjusted pursuant to K.S.A. 79-2925b, as amended, is hereby approved.

**ADOPTED** by the governing body of the City of Pittsburg, Kansas on July 28, 2015.

[SEAL]

\_\_\_\_\_  
Mayor – Chuck Munsell

Attest:

\_\_\_\_\_  
Deputy City Clerk – Joye VanGorden

## INTEROFFICE MEMORANDUM

To: Daron Hall, City Manager

From: Kim Vogel, Director of Parks and Recreation

CC: Tammy Nagel, City Clerk

Date: July 8, 2015

Subject: Agenda Item for July 28, 2015

Amendment to Section 58-173 and Repealing Section 58-174

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Staff is requesting to amend section 58-173 and repeal section 58-174 of the Pittsburg City Code. The change to Section 58-173 is to permit cereal malt beverages and alcoholic beverages inside all areas of Memorial Auditorium and in specifically designated areas on the north lawn. The current code includes all areas of Memorial Auditorium except the theatre and does not include the lawn. Section 58-174 is a repeat of section 58-173 stating where alcoholic beverages are allowed on the premises and the rules and regulations regarding its use.

Allowing cereal malt beverages and alcoholic beverages inside the theatre will allow Pittsburg Community Theatre to host a fall dinner theatre that, if approved, would include wine and beer with the dinner. The change in the ordinance will allow us to host such dinner theatres annually at Memorial Auditorium.

We have had several requests for outdoor wedding space and are working on a plan for renovations to the north lawn. Permitting cereal malt beverages and alcoholic beverages on the north lawn will allow us to host downtown events, as well lease the outdoor area to potential customers for receptions or gatherings, where they may want to include such beverages.

These changes have been reviewed by Henry Menghini, City Attorney, and Chief Hulvey.

If you have any questions please do not hesitate to contact me.

**ORDINANCE NO. G-1227**

AN ORDINANCE amending Section 58-173 of the Pittsburg City Code to permit the use and consumption of cereal malt beverages and alcohol in certain designated areas on the north lawn of, and inside, the Memorial Auditorium upon certain terms and conditions and also repealing Section 58-174.

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

Section 1. Section 58-173 of the Pittsburg City Code is hereby amended to read as follows:

**Sec. 58-173. - Consumption and use of cereal malt beverages and alcoholic beverages.**

The consumption and use of cereal malt beverages and alcoholic beverages is permitted inside the Memorial Auditorium and in specifically designated areas on the north lawn in conformance with City ordinances and state laws, as well as in accordance with the following special rules and regulations:

- (1) No lessee shall possess or transport any cereal malt beverage or alcoholic beverage in the Memorial Auditorium without having first received the express written approval of the manager. Such approval shall be given upon a showing that there will be compliance with all applicable laws and ordinances, and a further showing that such activity will not interfere with any other event being staged at the facility and will not interfere with the right of the public to use the facilities.
- (2) No lessee shall possess or transport any cereal malt beverage or alcoholic beverage on the north lawn of Memorial Auditorium without having first received the express written approval of both the manager and the chief of police, or his or her designee. Such approval shall be given upon a showing that there will be compliance with all laws and ordinances, and a further showing that such activity will not interfere with any other event being stages at the facility and will not interfere with the right of the public to use the facilities.
- (3) The lessee shall be responsible for any person whose conduct is objectionable, disorderly or disruptive and shall further be financially responsible for any loss, damage or injury to persons or property during the term of the lease.

- (4) The lessee is prohibited from selling or requiring consideration in exchange for any guest receiving a cereal malt beverage or alcoholic beverage. If cereal malt beverages or alcoholic beverages are to be provided to guests of the lessee, the same must be provided at no cost to the guest.
- (5) Memorial Auditorium reserves the right to sell cereal malt beverages and alcoholic beverages in conformance with City ordinances and state laws.

Section 2. Section 58-174 of the Pittsburg City Code is hereby repealed.

Section 3. This ordinance shall take effect and be in force from and after its passage and publication in the official city paper.

PASSED AND APPROVED BY THE GOVERNING BODY OF PITTSBURG,  
KANSAS, this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Chuck Munsell, Mayor

ATTEST:

\_\_\_\_\_  
Joye VanGorden, Deputy City Clerk

(SEAL)

(Published in The Morning Sun on July 31<sup>st</sup>, 2015)

ORDINANCE NO. S-1026

AN ORDINANCE OF THE CITY OF PITTSBURG, KANSAS, GRANTING TO KANSAS FIBER NETWORK, A KANSAS LIMITED LIABILITY COMPANY (KSFIBERNET), ITS SUCCESSORS AND ASSIGNS, A TELECOMMUNICATIONS FRANCHISE AND PRESCRIBING THE TERMS OF SAID GRANT AND RELATING THERETO.

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

This Franchise Agreement (“Agreement”) is entered into as of July 28<sup>th</sup>, 2015, (“Effective Date”) by and between the City of Pittsburg, a municipal corporation (the “City”), and KSFiberNet.

**RECITALS**

A. KSFiberNet owns, maintains, operates and/or controls, in accordance with regulations promulgated by the Federal Communications Commission and the Kansas Corporation Commission (hereinafter “KCC”), telecommunications networks serving KSFiberNet’s wireline customers through advanced fiber optic facilities and other wireless carrier customers through fiber-fed facilities. Such facilities are in public rights-of-way (hereinafter “ROW”), among other locations, in the State of Kansas.

B. KSFiberNet seeks to enter the City of Pittsburg’s (the “City”) ROW, and other real property of the City, to install, maintain and operate a fiber network (the “Network”), so that KSFiberNet and/or its customers (the “Customers”) may provide data and telecommunications services to the enterprises, residents and visitors of the City and others (the “Services”).

C. Some features of the Network include, without limitation, antenna nodes, poles, equipment cabinets, underground and above ground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process (“Facility” or “Facilities”).

D. Certain systems of KSFiberNet which are specific parts or types of the Facilities may be located on streetlights, stand-alone poles, thirty party utility poles, and other structures located on or within the Public ROW or City owned property as permitted under this Agreement.

E. KSFiberNet desires to obtain from City as permitted by law, and City is willing to grant KSFiberNet as required by law, the right to access the Public ROW to

locate, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities in a manner consistent this Agreement.

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

## **SECTION 1 INSTALLATION OF THE NETWORK**

**1.1 Permitted Installation.** KSFiberNet may at KSFiberNet's sole cost and expense and during the term of this Agreement, locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities subject to the terms and conditions of this Agreement. KSFiberNet shall undertake and perform any work authorized by this Agreement in a skillful and workmanlike manner.

**1.1.1 Installation Specifications.** The installation of the Facilities shall be made in accordance with plans and specifications as may be approved by the city and after obtaining all necessary permits for all work in the ROW and/or on City property. Such approval review shall be made no later than forty-five (45) days from application date, and under exceptional circumstances the time may be extended an additional forty-five (45) days upon agreement of the Parties. The Parties understand and agree that Facilities outside of the Public ROW may require additional easements for underground fiber to connect to Network within Public ROW. Such additional easements shall be located so as not to interfere with the city's use of its property. For each installation of Facilities, KSFiberNet shall provide to the City plans, specifications, a construction work breakdown, and anticipated construction timeframes for the installation of Facilities no later than forty-five (45) days prior to the planned start of the installation. KSFiberNet shall, at the written request of the city, attend a planning session regarding any installation proposed by KSFiberNet. The location, depth of the fiber underground, and any other requirements shall be approved in writing by the City prior to construction of the Facilities at that specific location, approval of which shall not be unreasonably withheld, conditioned or delayed. Approval of plans and specifications and the issuance of any permits by the city shall not release KSFiberNet from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. KSFiberNet shall be responsible for notifying the city and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected City-approved permits as may be necessary. KSFiberNet shall be responsible for all costs associated with the permitting process, including, but not limited to, repairs and replacement of City ROW. Such permits and approval requirements detailed in this section shall not be unreasonably withheld, conditions or delayed by the

City and any conditioned or requirements shall be in accordance with federal, state, and local laws.

**1.1.2 Temporary Construction.** The installation of the Facilities shall be performed in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed.

**1.1.3 Construction Schedule.** If requested by the City, at least ten (10) days prior to the installation of the Facilities, KSFiberNet shall deliver to the City a schedule for the proposed work related to the construction of the Facilities, as well as a list of the names of all agents and contractors of KSFiberNet's authorized by KSFiberNet to access the City ROW and City owned property on KSFiberNet's behalf.

**1.1.4 Coordination of Work.** KSFiberNet shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations within the City's ROW. KSFiberNet shall be the City's point of contract and all communications shall be through KSFiberNet. KSFiberNet shall be solely responsible for communicating with Kansas One-Call.

**1.1.5 Inspection by City.** The City shall have commercially reasonable access to inspect any work conducted by KSFiberNet during the installation, maintenance and/or repairs of the Facilities.

**1.1.6 Other Utility Providers.** When necessary, KSFiberNet shall coordinate with other utility providers for other needed utility services. KSFiberNet and the city will reasonably cooperate with the other utilities providers regarding the location of any meter, pole, and other apparatuses required for each Site.

**1.1.7 Existing Utility Poles.** KSFiberNet may attach its Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner, provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the city's police powers, and in no instance shall KSFiberNet erect a new pole within an existing aerial pole line absent the City's prior authorization.

**1.2 Compliance with Laws.** This Agreement is subject to the terms and conditions of all applicable federal, state and local Laws and the Parties shall comply with any such Laws in the exercise of their rights and performance of their obligations under this Agreement. "Laws" or "Law" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the city or other governmental entity or agency having joint or several jurisdiction over the Parties' activities under this

Agreement or having jurisdiction that is applicable to any aspect of this Agreement that are in force on the Effective Date and as they may be enacted, issued or amended during the term of this Agreement.

1.2.1 **Zoning Regulations.** Zoning regulations shall not apply to installations within the City ROW.

1.2.3 **Permits.** KSFiberNet shall obtain any necessary encroachment permits from the City for the installation of the Network and for any other work within the City's ROW or other real property of the City, as required by the Code or State Law at K.S.A. 17-1902(N), as amended.

1.3 **Compliance with Permits.** All work within the City's ROW or other real property of the city shall be performed in strict compliance with all applicable Permits and all applicable regulatory requirements.

1.3.1 **Fee Increases.** If prior to the second anniversary of the date hereof, the city increases the permitting fees described in the Sections above, and if with respect to all similarly situated franchisee license agreements executed by the City in such 2-year period the franchisee or licensee is subject to a similar fee provision, then KSFiberNet will pay to the City the increased fees as if the increased fee schedule had been in effect as of the date hereof upon being billed therefor by the City.

1.4 **Placement of KSFiberNet Facilities.** KSFiberNet shall coordinate the placement of its Facilities in the Public ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City Engineer.

1.4.1 **Placement of City Facilities.** Should the City decide that it is in its interest to include capacity in addition to the Facilities planned by KSFiberNet during the installation, it will communicate this decision to KSFiberNet in writing prior to the start of any construction and KSFiberNet shall, if technically feasible, include this additional capacity in its installation. The additional capacity will be defined during the planning process outlined in 1.1.1 and may include, but is not limited to, conduit, handholes, enclosures, and cable lines. The additional capacity shall be determined no later than thirty (30) days prior to the planned start of the installation. The City shall reimburse KSFiberNet for the cost of the additional capacity. The City's cost will be limited to the actual material and direct labor of the additional facilities only. The additional facilities shall be inspected by the City along with the KSFiberNet Facilities and shall not interfere with the operation and maintenance of KSFiberNet Facilities. The additional facilities shall remain the exclusive property of the City. City may not resell the additional facilities to any third party.

**1.5 New Streetlight Poles and Existing Streetlight Poles.** It is understood that KSFiberNet may build new streetlight poles or other such facilities required for the installation of the Facilities which would comply with all encroachment and building permits, applicable City, state and federal specifications, and Laws (“New Poles”). The Parties agree that in areas where there are existing poles, KSFiberNet will work with the owner of that existing pole to collocate the DAS Facility, but only when the pole owner is willing to allow such attachment and where such attachment is feasible from a safety, technical, and engineering (structural and radio frequency coverage) perspective.

**1.5.1 City Use of New Poles.** The Parties understand and agree that the city may use any New Poles for City purposes, including but not limited to streetlights and other lighting so long as such use does not interfere KSFiberNet’s use of its Network or Facilities. KSFiberNet shall reasonably cooperate with the City when using the New Poles.

**1.5.2 City-Owned Lights.** Except for the installation of the lights and ancillary equipment on or in the New Poles and/or as set forth in section 1.5.3 below, KSFiberNet shall not be responsible for maintenance, repair, or replacement of City-owned lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles.

**1.5.3 Damage to New Poles.** If a new Pole falls or is damaged such that there is an imminent threat of harm to persons or property, then the city may cause the New Pole to be removed to the side of the street or a location that City believes reasonably eliminates the right of such imminent threat or harm to persons or property. KSFiberNet shall, after written notice from the City that any New Pole has been damaged or removed, cause the New Pole to be repaired or replaced within thirty (30) days after the City’s written notice. The cost to repair and/or replace any New Pole, including the replacement City streetlight, bulb and ancillary equipment shall be paid by KSFiberNet; provided, however, that if the new Pole is damaged or destroyed by the City or a third party user that the City has given the right to use the New Pole, then the City and/or its third party user shall pay the cost to repair and/or replace the New Pole. To the extent that KSFiberNet seeks reimbursement from a third party either directly or through applicable insurance, the City shall assign KSFiberNet any rights the City may have against such third party for such claims.

**1.6 Franchise and Permit Fees.** KSFiberNet is solely responsible for the payment of all lawful franchise and permit fees in connection with KSFiberNet’s performance under this Agreement.

**1.6.1 5% Franchise Fees for all Gross Revenues.** In consideration of this Franchise Agreement, KSFiberNet agrees to remit to the City a franchise fee of five

percent (5%) of Gross Revenues (“Franchise Fee”). “Gross Revenues” means revenues derived from services provided within the corporate boundaries of the City which include: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; and (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (G) RF telecommunications service revenue or any other operating revenue derived from leasing KSFiberNet’s dark fiber and indefeasible rights of use “IRU”) fees. Gross revenues shall be reduced by bad debt expenses that are attributable to Sections (A) through (G) as referenced within this Section 1.6.1. Uncollectable and late charges shall not be included within gross revenues. KSFiberNet shall pay its Franchise Fee on the 15<sup>th</sup> day of the second month following the month in which the Gross Revenue is received. Notwithstanding the above, to the extent the definition of Gross Revenues is inconsistent with the definition of Gross Receipt set forth in KSA 12-2001, the definition of Gross Receipts shall control.

**1.6.2 DAS Facility Permit Fee.** A one-time permit and license fee of \$1,000.00 for each DAS Facility installed within the Public Right of Way of the City shall be paid to the City by KSFiberNet. KSFiberNet shall pay the Das Facility Permit Fee the 15<sup>th</sup> day following the month after each DAS Facility is installed within the public ROW.

**1.6.3 Ministerial Application Fees.** Upon execution and approval of this Agreement, KSFiberNet shall pay to the City a one-time application fee in the sum of \$2,500.00 to recover the City’s costs associated with the review and approval of this Agreement. The City certifies that such application fee reimburses the City for its reasonable, actual and verifiable cost of reviewing and approving this Agreement.

**1.6.4 Accounting Matters.** KSFiberNet shall keep accurate books of account at its principal office in Wichita, Kansas , or such other location of its choosing for the purpose of determining the amounts due to the City under §1.6.1 above. No more than once per year, the City may inspect KSFiberNet’s books of account relative to the application of the franchise fees required under subsection 1.6.1 of this Agreement any time during regular business hours on thirty (30) days’ prior written notice and may audit the books from time to time at the City’s sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 1.6 – 1.6.3 above. The City agrees to hold in confidence any non-public information it learns from KSFiberNet to the fullest extent permitted by Law.

**1.7 Access to the Facilities.**

**1.7.1 KSFiberNet Access to Facilities for Repair.** KSFiberNet will be given reasonable access to each of the Facilities in the City ROW or City owned property for the purposes of routine installation, repair, maintenance or removal of Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Facility, KSFiberNet shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services.

**1.7.2 City Observation.** KSFiberNet shall allow a representative of the City to observe any repair, maintenance or removal work performed at the Facilities.

**SECTION 2  
TERM AND TERMINATION**

**2.1 Term.** This Franchise Agreement shall be effective for an initial term of two (2) years from the effective date of this ordinance. Thereafter, this franchise will automatically renew for additional one (1) year terms, unless either party notifies the other part of its intent to terminate or renegotiate the franchise at least ninety (90) days prior to the termination of the then current term. The additional (term(s) shall be deemed a continuation of this franchise ordinance and not as a new franchise ordinance or amendment. Under no circumstances shall this franchise ordinance exceed twenty (20) years from the effective date of the franchise ordinance. At the conclusion of the twenty (20) year period the parties hereto agree to negotiate a new franchise in good faith in the event KSFiberNet is still providing services hereunder.

**2.1.1 90 Day Remedy Period.** If the Agreement is breached by KSFiberNet, then-the provisions of Section 8 (Default) shall govern the parties hereto.

**2.2 Termination of Use.** Notwithstanding Section 2.1 above, KSFiberNet may terminate its use of any or all of the Network by providing the City with ninety (90) days prior written notice. In the event of any such termination, KSFiberNet payment obligations to the City shall terminate simultaneously with the termination of use; provided KSFiberNet removes its equipment and restores the Facilities, as set forth in Section 3, below, prior to the termination date.

## **SECTION 3 REMOVAL AND RELOCATION**

**3.1 Removal due to Public Project.** Upon receipt of a written demand from the City pursuant to this Section 3, KSFiberNet, at its sole cost and expense, shall remove and relocate any part of the Network, constructed, installed, used and/or maintained by KSFiberNet under this Agreement, whenever the City reasonably determines that the removal and/or relocation of any part of the Network is needed for any of the following purposes: (a) due to any work proposed to be done by or on behalf of the City or any other governmental agency, including, but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities used as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines and tracks; (b) because any part of the Network is interfering with or adversely affecting the proper operation of City-owned light poles, traffic signals, or other City facilities or operations; or (c) to protect or preserve the public health and safety. The City shall cooperate with KSFiberNet in relocating any portion of the Network removed pursuant to this Section 3.1 in a manner that allows KSFiberNet to continue providing service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of that portion of the Network relocated under this Section 3.1. No permitting or other fees may be charged by the City for a removal occurring under this Section.

**3.2 Removal Due to Termination.** No later than 160 days after termination of this Agreement pursuant to the provisions of this Agreement, KSFiberNet shall, at its sole cost and expense, remove the Network or the terminated portion thereof and, if such removal disturbs the locations or adjacent property (including City ROW, City facilities added under Section 1.4.1, or City real property), restore each Facility and its adjacent property to its original conditions, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by KSFiberNet to the Facility or adjacent property, or as otherwise required by the City. For New Poles, KSFiberNet shall install a new streetlight or facility as directed by City's Public Works Director, or his or her designee. Alternatively, KSFiberNet shall abandon the Network, or any part thereof, in place and convey it to the City if either the City or KSFiberNet elects to do so.

**3.3 Abandonment.** In the event KSFiberNet ceases to operate and abandons the Network, or any part thereof, for a period of ninety (90) days or more, KSFiberNet shall, at its sole cost and expense and within the time period specified in Section 3.2, vacate and remove the Network or the abandoned part thereof. If such removal disturbs the Facility or adjacent property (including City ROW, City facilities

added under Section 1.4.1 or City real property), KSFiberNet shall also, at its sole cost and expense, restore the Facility or adjacent property to its original conditions, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by KSFiberNet to the Facility or adjacent property. Alternatively, the City may allow KSFiberNet, in the City's sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

**3.4 No Relocation Compensation.** The parties understand and agree that neither the City nor KSFiberNet are entitled to compensation for any relocation of its Network that may be required under Section 3.1 KSFiberNet is not entitled to relocation assistance or any other compensation or benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this Agreement.

#### **SECTION 4 MAINTENANCE AND REPAIR**

**4.1 Electricity Use.** KSFiberNet shall pay for the electricity and other utilities services it consumes in its operations at the rate charged by the servicing utility company.

**4.2 Maintenance and Repair.** KSFiberNet shall, at KSFiberNet's sole cost and expense, perform all maintenance and repairs reasonable needed to maintain the Network in good condition and neat and orderly appearance, and in compliance with all applicable Laws. In the event any part of the Network requires replacement because such part cannot be repaired, KSFiberNet shall, at KSFiberNet's sole cost and expense, replace the irreparable part of the Network. KSFiberNet shall not cause rubbish, garbage or debris on or around its Network or the Facilities and shall not permit rubbish, garage or debris to accumulate on or around in any enclosed areas around the Facilities. If the City gives KSFiberNet written notice of a failure by KSFiberNet to maintain the Facilities, KSFiberNet shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

**4.3 Appearance.** KSFiberNet shall cooperate with the City on all issues of aesthetics and appearance. KSFiberNet shall follow all legally binding City policies, state and local ordinances with respect to aesthetics. This includes, but is not limited to, historic site and/or locations of significant importance. All locations of DAS systems must be aesthetically approved by the City Engineering Department, in a manner consistent with other approvals within these Restrictions.

**4.4 Repair of ROW.** KSFiberNet shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities,

curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by KSFiberNet's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the Network in the City's ROW. KSFiberNet shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. KSFiberNet's obligations under this Section 4.4 shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the City's ROW by KSFiberNet to the City.

4.5 **Bond.** KSFiberNet shall provide a bond in an amount reasonably determined by the City during the construction of the Network to represent the estimated cost of KSFiberNet's construction obligations under Sections 3 and 4 of this Agreement, which the City may require KSFiberNet to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of KSFiberNet's obligations under Sections 3 and 4, not to exceed \$100,000.00.

## **SECTION 5 TAXES**

5.1 **Taxes.** KSFiberNet agrees that it will be solely responsible for the payment of any and all taxes, fees and assessments levied on its ownership, use and maintenance of the Network and this Agreement. Pursuant to Section 79-5a01 *et seq.* of the Kansas Revenue and Taxation Code, the City hereby advises, and KSFiberNet recognizes and understands, that KSFiberNet's use of the City's ROW, the New Poles, and/or other non-ROW city property and facilities may create a possessory interest subject to real property taxation and that KSFiberNet may be subject to, and responsible for, the payment of real property taxes levied on such interest. KSFiberNet will cooperate with the Crawford County Assessor in providing any information necessary for the Assessor to make a property tax determination. KSFiberNet reserves the right to challenge any such assessment, and the City agrees to cooperate with KSFiberNet in connection with any such challenge.

## **SECTION 6 INDEMNIFICATION**

6.1 **Indemnity.** KSFiberNet shall indemnify, defend, and hold harmless the City, its councilmembers, officers and employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by KSFiberNet

pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the city, its councilmembers, officers, employees, agents or contractors. The City shall promptly notify KSFiberNet of any claim, action or proceeding covered by this Section 6.1.

**6.2 Waiver of Claims.** KSFiberNet waives all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from any event or occurrence except for any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from the gross negligence or willful misconduct of the City.

**6.3 Limitation of City's Liability.** The City will be liable, if at all, only for the cost of repair to damaged portions of the Facilities arising from the negligence or willful misconduct of City, its employees, agents, or contractors. The City, its agents, officers, employees, or contractors, shall not be liable for any damage from any cause whatsoever to the Facilities, specifically including, without limitation, damage, if any, resulting from the City's maintenance operations adjacent to the Facilities or from vandalism or unauthorized use of the Facilities, except to the extent such damage is caused by the negligence or willful misconduct of City, its agents, officers, employees or contractors. The City will in no event be liable for indirect or consequential damages.

**6.4 Limitation of KSFiberNet's Liability.** In no event shall KSFiberNet be liable for indirect or consequential damages in connection with or arising from this Agreement, or its use of the Network, New Poles, and ROW or other City real property.

## **SECTION 7 INSURANCE**

**7.1 Minimum Insurance Requirements.** KSFiberNet shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Section.

(a) **Minimum Insurance.** KSFiberNet shall at all times during the term of this Agreement, carry, maintain, and keep in full force and effect, insurance as follows:

(i) **General Liability:** A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 combined single-limit per-occurrence for bodily injury, personal injury, death, loss and property damage resulting from wrongful or negligent acts by KSFiberNet. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(ii) **Automobile Liability:** A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 combined single-limit per accident for bodily injury and property damage covering any vehicle utilized by KSFiberNet in performing the work covered by this Agreement.

(iii) **Workers' compensation and Employer's Liability:** Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of \$1,000,000 per accident.

(b) **Deductible and Self-Insured Retentions.** Any deductibles or self-insured retentions shall not exceed \$25,000; provided, however, if KSFiberNet's insurance policy expressly provides (i) that the insurer is required to pay covered claims with no deduction for all or any part of the KSFiberNet's deductible, and (ii) insurer's obligation to pay covered claims is triggered irrespective of whether or not the insured pays the deductible, the KSFiberNet's deductible shall not exceed \$100,000 for Comprehensive General Liability Insurance, \$100,000 Comprehensive Vehicle Liability Insurance and \$250,000 for Workers' Compensation and Employer's Liability coverage.

(c) **Other Insurance Provisions.** The policies shall contain, or be endorsed to contain, the following provisions:

(i) **General Liability and Automobile Liability Coverage.**

(1) The City, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be named as additional insureds on all required insurance policies, except for Workers' Compensation and Employer's Liability policies.

(2) KSFiberNet's insurance coverage shall be primary insurance as respects the Insureds with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of KSFiberNet's insurance and shall not contribute with it.

(3) Any failure of KSFiberNet to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds.

(4) KSFiberNet's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.

(ii) **Workers' Compensation and Employer's Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by KSFiberNet in the City's ROW.

(iii) **All Coverages.** Except for non-payment of premium, each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled or reduced in coverage or limits by the insurer except after thirty (30) days' prior written notice has been given to the City. If for any reason insurance coverage is canceled or reduced in coverage or in limits, KSFiberNet shall within two (2) business days of notice from the Insurer, notify the City by phone or fax of the changes to or cancellation of the policy and shall confirm such notice via certified mail, return receipt requested.

(d) **Acceptance of Insurers.** Insurance shall be placed with insurers with an A.M. Best rating of no less than A-: VII.

(e) **Verification of Coverage.** KSFiberNet shall furnish the City with certificates of insurance required by this Section 7. The certificates for each insurance policy are to be signed by a person, either manually or electronically, authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences.

(f) **Secondary Parties.** In the event KSFiberNet hires any subcontractors, independent contractors or agents ("Secondary Parties") to locate, place, attach, install, operate, use, control, replace, repair or maintain the Network, KSFiberNet shall require the Secondary Parties to obtain and maintain insurance commensurate to the work such Secondary Parties perform.

## **SECTION 8 DEFAULT**

### **8.1 Default.**

8.1.1 **Defined.** A "Default" shall be deemed to have occurred under this Agreement if a party fails to cure a breach of this Agreement within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

8.1.2 **Remedies.** Upon the failure of a party to timely cure any breach after notice thereof from the other party and expiration of the above cure periods, then the

non-defaulting party may, subject to the terms of Section 6.3 (Limitation of Liability), terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

**8.2 City Termination Right.** In addition to the remedies set forth in Section 8.1.2, the City shall have the right to terminate this Agreement if (i) the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the public right of way: or (ii) if KSFiberNet's licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights shall be subject to KSFiberNet's rights to just compensation, if any, for any taking of a protected property right.

**8.3 No waiver.** A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matters subsequently occurring.

**8.4 Interest.** If KSFiberNet fails to make any payment under this Agreement when due, such amounts shall accrue interest from the date such payment is due until paid, including accrued interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

## **SECTION 9 INTERFERENCE**

**9.1 Non-Interference with Non-Public Safety Communications Systems.** KSFiberNet shall operate the Network in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the Network or that are in operation prior to any modifications KSFiberNet may make to the Network.

**9.2 Non-Interference with Public Safety Communications Systems.** KSFiberNet's Network and Facilities shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems or any Facilities cause interference with the City's use of the New Poles for their intended purpose as streetlights, traffic lights, and/or stand-alone light poles.

**9.3 Correction of Interference.** If such interference with the Facilities described in Sections 9.1 and 9.2 occur, KSFiberNet shall, upon receipt of written notice thereof from City, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by KSFiberNet to the reasonable satisfaction of City within the cure period set forth for in the City's notice, which notice shall not be less than 90 days, such interference shall be deemed a material breach under this Agreement and City may terminate this Agreement. Interference caused by actions of KSFiberNet's Customer(s) remains the responsibility of KSFiberNet. If the interference is an emergency or a danger to public

health and safety, the City shall be entitled to require correction in a time period necessary to avoid the emergency or public health and safety issue.

## **SECTION 10 MISCELLANEOUS PROVISIONS**

10.1 **Nonexclusive Use.** KSFiberNet acknowledges that this Agreement does not provide KSFiberNet with exclusive use of the City's ROW or any municipal facility and that City retains the right to permit other providers of communications services to install equipment or devices in the City's ROW and on municipal facilities. The parties hereto specifically agree that all such franchises issued to telecommunications providers shall be competitively neutral and not unreasonable or discriminatory in nature.

10.2 **Most Favored Nation.** All of the benefits and terms granted by the City herein are at least as favorable as the benefits and terms granted by the City to any future franchisee of the public ROW engaged in the same or similar business described in this Franchise Agreement. Should the City enter into any subsequent agreement of any kind no matter what nomenclature is attached thereto with any other franchisee during the term of this Franchise Agreement, which Agreement provides for benefits or terms more favorable than those contained in this Franchise Agreement, then this Franchise Agreement shall be deemed to be modified effective as of the date of such more favorable agreement to provide KSFiberNet with those more favorable benefit and terms. The City shall notify KSFiberNet promptly of the existence of such more favorable benefits and terms and KSFiberNet shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by KSFiberNet, the City shall amend this Franchise Agreement to contain the more favorable terms and conditions.

10.2.1 **Most-Favored Municipality.** Should KSFiberNet after the Parties' execution and delivery of this Agreement enter into a Franchise Agreement with another municipality of the same size or smaller than the City in this State, which Agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such Agreement, are in the City's opinion substantially superior to those in this Franchise Agreement, the City shall have the right to require that KSFiberNet modify this Franchise Agreement to incorporate the same or substantially similar superior benefits.

10.3 **Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and served by (1) electronic mail; and (2) personally served or transmitted through first class United States mail, or by express mail providing for overnight delivery, postage prepaid, to the following address or such other address of which a party may give written notice:

City: City of Pittsburg  
201 W. 4<sup>th</sup> Street  
Pittsburg, KS 66762  
Attention: City Manager

KSFiberNet: Kansas Fiber Network, LLC  
8201 E. 34<sup>th</sup> St. North  
#1501  
Wichita, KS 67226  
Attention: Steven Dorf, President and CEO

Such notice shall be deemed made when personally delivered; or mailed via first class U.S. Mail, such notice shall be deemed made three (3) calendar days after the date of deposit in the U.S. Mail, if mailed via express/overnight mail, such notice shall be deemed made two (2) calendar days after the date of deposit in a designated overnight delivery mailbox or other like facility. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**10.4 Sublease/Assignment.** If KSFiberNet assigns, sublets, enters into a franchise license or concession agreement, changes ownership of the Network or voting control of KSFiberNet, mortgage, encumber, pledge, hypothecate or other transfer (including any transfer by operation of law this Agreement or any interest therein) KSFiberNet will provide notice of a transfer within a reasonable time.

**10.5 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successor, assigns and transferees.

**10.6 Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any provisions, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

**10.7 Severability.** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

10.8 **Governing Law.** This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by, the domestic law of the State of Kansas or applicable federal law, without regard to laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement shall occur in the state courts located in Crawford County, Kansas.

10.9 **Survival of Terms.** All of the terms and conditions in this Agreement related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this agreement.

10.10 **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

10.11 **Drafting.** The parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party.

10.12 **Execution in Counterparts.** This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

10.13 **Authority to Execute This Agreement.** Each person or persons executing this Agreement on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

10.14 **No Warranty by the City.** The City makes no representations or warranties regarding the suitability, condition or fitness of the locations for the installation, maintenance or use of the New Poles or the Facilities.

10.15 **Agreement Applicable Only to the Facilities.** This Agreement shall not be construed to permit construction, installation, maintenance or use of Facilities on any property other than the Facilities.

10.16 **No Abrogation of Legal Responsibilities.** The City's execution of this Agreement shall not abrogate, in any way, KSFiberNet's responsibility to comply with all permitting requirements or to comply with all Laws with respect to its performance of the activities permitted under this Agreement.

**10.17 Contractual Interpretation.** In the interpretation and application of its rights under this Franchise Agreement, the City will act in a reasonable, non-discriminatory, and competitively neutral manner in compliance with all applicable federal, state, and local laws and regulations.

**10.18 Effective Date of Ordinance.** This Ordinance shall be effective upon its final passage and publication as required by law.

ADOPTED AND PASSED by the Governing body of the city of Pittsburg, Kansas, this \_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF PITTSBURG, KANSAS**

By: \_\_\_\_\_  
Chuck Munsell, Mayor

ATTEST:

\_\_\_\_\_  
~~Tammy Nagel, City Clerk~~  
Joye VanGorden, Deputy City Clerk

**KANSAS FIBER NETWORK, LLC**

By:  \_\_\_\_\_  
Steven Dorf, President and CEO

(Published in The Morning Sun on July 31<sup>st</sup>, 2015)

ORDINANCE NO. S-1027

AN ORDINANCE OF THE CITY OF PITTSBURG, KANSAS, GRANTING TO FIBER COMMUNICATIONS OF COLUMBUS, A KANSAS LIMITED LIABILITY COMPANY DBA OPTIC COMMUNICATIONS (“OPTIC”), ITS SUCCESSORS AND ASSIGNS, A TELECOMMUNICATIONS FRANCHISE AND PRESCRIBING THE TERMS OF SAID GRANT AND RELATING THERETO.

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

This Franchise Agreement (“Agreement”) is entered into as of July 28<sup>th</sup>, 2015 (“Effective Date”) by and between the City of Pittsburg, a municipal corporation (the “City”), and OPTIC.

**RECITALS**

A. OPTIC owns, maintains, operates and/or controls, in accordance with regulations promulgated by the Federal Communications Commission and the Kansas Corporation Commission (hereinafter “KCC”), telecommunications networks serving OPTIC’s wireline customers through advanced fiber optic facilities and other wireless carrier customers through fiber-fed facilities. Such facilities are in public rights-of-way (hereinafter “ROW”), among other locations, in the State of Kansas.

B. OPTIC seeks to enter the City of Pittsburg’s (the “City”) ROW, and other real property of the City, to install, maintain and operate a fiber network (the “Network”), so that OPTIC and/or its customers (the “Customers”) may provide data and telecommunications services to the enterprises, residents and visitors of the City and others (the “Services”).

C. Some features of the Network include, without limitation, antenna nodes, poles, equipment cabinets, underground and above ground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process (“Facility” or “Facilities”).

D. Certain systems of OPTIC which are specific parts or types of the Facilities may be located on streetlights, stand-alone poles, thirty party utility poles, and other structures located on or within the Public ROW or City owned property as permitted under this Agreement.

E. OPTIC desires to obtain from City as permitted by law, and City is willing to grant OPTIC as required by law, the right to access the Public ROW to locate, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities in a manner consistent this Agreement.

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

## **SECTION 1 INSTALLATION OF THE NETWORK**

1.1 **Permitted Installation.** OPTIC may at OPTIC's sole cost and expense and during the term of this Agreement, locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities subject to the terms and conditions of this Agreement. OPTIC shall undertake and perform any work authorized by this Agreement in a skillful and workmanlike manner.

1.1.1 **Installation Specifications.** The installation of the Facilities shall be made in accordance with plans and specifications as may be approved by the city and after obtaining all necessary permits for all work in the ROW and/or on City property. Such approval review shall be made no later than forty-five (45) days from application date, and under exceptional circumstances the time may be extended an additional forty-five (45) days upon agreement of the Parties. The Parties understand and agree that Facilities outside of the Public ROW may require additional easements for underground fiber to connect to Network within Public ROW. Such additional easements shall be located so as not to interfere with the city's use of its property. For each installation of Facilities, OPTIC shall provide to the City plans, specifications, a construction work breakdown, and anticipated construction timeframes for the installation of Facilities no later than forty-five (45) days prior to the planned start of the installation. OPTIC shall, at the written request of the city, attend a planning session regarding any installation proposed by OPTIC. The location, depth of the fiber underground, and any other requirements shall be approved in writing by the City prior to construction of the Facilities at that specific location, approval of which shall not be unreasonably withheld, conditioned or delayed. Approval of plans and specifications and the issuance of any permits by the city shall not release OPTIC from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. OPTIC shall be responsible for notifying the city and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected City-approved permits as may be necessary. OPTIC shall be responsible for all costs associated with the permitting process, including, but not limited to, repairs and

replacement of City ROW. Such permits and approval requirements detailed in this section shall not be unreasonably withheld, conditions or delayed by the City and any conditioned or requirements shall be in accordance with federal, state, and local laws.

**1.1.2 Temporary Construction.** The installation of the Facilities shall be performed in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed.

**1.1.3 Construction Schedule.** If requested by the City, at least ten (10) days prior to the installation of the Facilities, OPTIC shall deliver to the City a schedule for the proposed work related to the construction of the Facilities, as well as a list of the names of all agents and contractors of OPTIC's authorized by OPTIC to access the City ROW and City owned property on OPTIC's behalf.

**1.1.4 Coordination of Work.** OPTIC shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations within the City's ROW. OPTIC shall be the City's point of contract and all communications shall be through OPTIC. OPTIC shall be solely responsible for communicating with Kansas One-Call.

**1.1.5 Inspection by City.** The City shall have commercially reasonable access to inspect any work conducted by OPTIC during the installation, maintenance and/or repairs of the Facilities.

**1.1.6 Other Utility Providers.** When necessary, OPTIC shall coordinate with other utility providers for other needed utility services. OPTIC and the city will reasonably cooperate with the other utilities providers regarding the location of any meter, pole, and other apparatuses required for each Site.

**1.1.7 Existing Utility Poles.** OPTIC may attach its Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner, provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the city's police powers, and in no instance shall OPTIC erect a new pole within an existing aerial pole line absent the City's prior authorization.

**1.2 Compliance with Laws.** This Agreement is subject to the terms and conditions of all applicable federal, state and local Laws and the Parties shall comply with any such Laws in the exercise of their rights and performance of their obligations under this Agreement. "Laws" or "Law" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the city or other governmental

entity or agency having joint or several jurisdiction over the Parties' activities under this Agreement or having jurisdiction that is applicable to any aspect of this Agreement that are in force on the Effective Date and as they may be enacted, issued or amended during the term of this Agreement.

1.2.1 **Zoning Regulations.** Zoning regulations shall not apply to installations within the City ROW.

1.2.3 **Permits.** OPTIC shall obtain any necessary encroachment permits from the City for the installation of the Network and for any other work within the City's ROW or other real property of the City, as required by the Code or State Law at K.S.A. 17-1902(N), as amended.

1.3 **Compliance with Permits.** All work within the City's ROW or other real property of the city shall be performed in strict compliance with all applicable Permits and all applicable regulatory requirements.

1.3.1 **Fee Increases.** If prior to the second anniversary of the date hereof, the city increases the permitting fees described in the Sections above, and if with respect to all similarly situated franchisee license agreements executed by the City in such 2-year period the franchisee or licensee is subject to a similar fee provision, then OPTIC will pay to the City the increased fees as if the increased fee schedule had been in effect as of the date hereof upon being billed therefor by the City.

1.4 **Placement of OPTIC Facilities.** OPTIC shall coordinate the placement of its Facilities in the Public ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City Engineer.

1.4.1 **Placement of City Facilities.** Should the City decide that it is in its interest to include capacity in addition to the Facilities planned by OPTIC during the installation, it will communicate this decision to OPTIC in writing prior to the start of any construction and OPTIC shall, if technically feasible, include this additional capacity in its installation. The additional capacity will be defined during the planning process outlined in 1.1.1 and may include, but is not limited to, conduit, handholes, enclosures, and cable lines. The additional capacity shall be determined no later than thirty (30) days prior to the planned start of the installation. The City shall reimburse OPTIC for the cost of the additional capacity. The City's cost will be limited to the actual material and direct labor of the additional facilities only. The additional facilities shall be inspected by the City along with the OPTIC Facilities and shall not interfere with the operation and maintenance of OPTIC Facilities. The additional facilities shall remain the exclusive property of the City. City may not resell the additional facilities to any third party.

**1.5 New Streetlight Poles and Existing Streetlight Poles.** It is understood that OPTIC may build new streetlight poles or other such facilities required for the installation of the Facilities which would comply with all encroachment and building permits, applicable City, state and federal specifications, and Laws (“New Poles”). The Parties agree that in areas where there are existing poles, OPTIC will work with the owner of that existing pole to collocate the DAS Facility, but only when the pole owner is willing to allow such attachment and where such attachment is feasible from a safety, technical, and engineering (structural and radio frequency coverage) perspective.

**1.5.1 City Use of New Poles.** The Parties understand and agree that the city may use any New Poles for City purposes, including but not limited to streetlights and other lighting so long as such use does not interfere OPTIC’s use of its Network or Facilities. OPTIC shall reasonably cooperate with the City when using the New Poles.

**1.5.2 City-Owned Lights.** Except for the installation of the lights and ancillary equipment on or in the New Poles and/or as set forth in section 1.5.3 below, OPTIC shall not be responsible for maintenance, repair, or replacement of City-owned lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles.

**1.5.3 Damage to New Poles.** If a new Pole falls or is damaged such that there is an imminent threat of harm to persons or property, then the city may cause the New Pole to be removed to the side of the street or a location that City believes reasonably eliminates the right of such imminent threat or harm to persons or property. OPTIC shall, after written notice from the City that any New Pole has been damaged or removed, cause the New Pole to be repaired or replaced within thirty (30) days after the City’s written notice. The cost to repair and/or replace any New Pole, including the replacement City streetlight, bulb and ancillary equipment shall be paid by OPTIC; provided, however, that if the new Pole is damaged or destroyed by the City or a third party user that the City has given the right to use the New Pole, then the City and/or its third party user shall pay the cost to repair and/or replace the New Pole. To the extent that OPTIC seeks reimbursement from a third party either directly or through applicable insurance, the City shall assign OPTIC any rights the City may have against such third party for such claims.

**1.6 Franchise and Permit Fees.** OPTIC is solely responsible for the payment of all lawful franchise and permit fees in connection with OPTIC’s performance under this Agreement.

**1.6.1 5% Franchise Fees for all Gross Revenues.** In consideration of this Franchise Agreement, OPTIC agrees to remit to the City a franchise fee of five percent (5%) of Gross Revenues (“Franchise Fee”). “Gross Revenues” means revenues

derived from services provided within the corporate boundaries of the City which include: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; and (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (G) RF telecommunications service revenue or any other operating revenue derived from leasing OPTIC's dark fiber and infeasible rights of use "IRU") fees. Gross revenues shall be reduced by bad debt expenses that are attributable to Sections (A) through (G) as referenced within this Section 1.6.1. Uncollectable and late charges shall not be included within gross revenues. OPTIC shall pay its Franchise Fee on the 15<sup>th</sup> day of the second month following the month in which the Gross Revenue is received. Notwithstanding the above, to the extent the definition of Gross Revenues is inconsistent with the definition of Gross Receipt set forth in KSA 12-2001, the definition of Gross Receipts shall control.

**1.6.2 DAS Facility Permit Fee.** A one-time permit and license fee of \$1,000.00 for each DAS Facility installed within the Public Right of Way of the City shall be paid to the City by OPTIC. OPTIC shall pay the Das Facility Permit Fee the 15<sup>th</sup> day following the month after each DAS Facility is installed within the public ROW.

**1.6.3 Ministerial Application Fees.** Upon execution and approval of this Agreement, OPTIC shall pay to the City a one-time application fee in the sum of \$2,500.00 to recover the City's costs associated with the review and approval of this Agreement. The City certifies that such application fee reimburses the City for its reasonable, actual and verifiable cost of reviewing and approving this Agreement.

**1.6.4 Accounting Matters.** OPTIC shall keep accurate books of account at its principal office in Wichita, Kansas , or such other location of its choosing for the purpose of determining the amounts due to the City under §1.6.1 above. No more than once per year, the City may inspect OPTIC's books of account relative to the application of the franchise fees required under subsection 1.6.1 of this Agreement any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 1.6 – 1.6.3 above. The City agrees to hold in confidence any non-public information it learns from OPTIC to the fullest extent permitted by Law.

## **1.7 Access to the Facilities.**

1.7.1 **OPTIC Access to Facilities for Repair.** OPTIC will be given reasonable access to each of the Facilities in the City ROW or City owned property for the purposes of routine installation, repair, maintenance or removal of Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Facility, OPTIC shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services.

1.7.2 **City Observation.** OPTIC shall allow a representative of the City to observe any repair, maintenance or removal work performed at the Facilities.

## **SECTION 2 TERM AND TERMINATION**

2.1 **Term.** This Franchise Agreement shall be effective for an initial term of two (2) years from the effective date of this ordinance. Thereafter, this franchise will automatically renew for additional one (1) year terms, unless either party notifies the other part of its intent to terminate or renegotiate the franchise at least ninety (90) days prior to the termination of the then current term. The additional (term(s) shall be deemed a continuation of this franchise ordinance and not as a new franchise ordinance or amendment. Under no circumstances shall this franchise ordinance exceed twenty (20) years from the effective date of the franchise ordinance. At the conclusion of the twenty (20) year period the parties hereto agree to negotiate a new franchise in good faith in the event OPTIC is still providing services hereunder.

2.1.1 **90 Day Remedy Period.** If the Agreement is breached by OPTIC, then the provisions of Section 8 (Default) shall govern the parties hereto.

2.2 **Termination of Use.** Notwithstanding Section 2.1 above, OPTIC may terminate its use of any or all of the Network by providing the City with ninety (90) days prior written notice. In the event of any such termination, OPTIC payment obligations to the City shall terminate simultaneously with the termination of use; provided OPTIC removes its equipment and restores the Facilities, as set forth in Section 3, below, prior to the termination date.

### **SECTION 3 REMOVAL AND RELOCATION**

**3.1 Removal due to Public Project.** Upon receipt of a written demand from the City pursuant to this Section 3, OPTIC, at its sole cost and expense, shall remove and relocate any part of the Network, constructed, installed, used and/or maintained by OPTIC under this Agreement, whenever the City reasonably determines that the removal and/or relocation of any part of the Network is needed for any of the following purposes: (a) due to any work proposed to be done by or on behalf of the City or any other governmental agency, including, but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities used as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines and tracks; (b) because any part of the Network is interfering with or adversely affecting the proper operation of City-owned light poles, traffic signals, or other City facilities or operations; or (c) to protect or preserve the public health and safety. The City shall cooperate with OPTIC in relocating any portion of the Network removed pursuant to this Section 3.1 in a manner that allows OPTIC to continue providing service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of that portion of the Network relocated under this Section 3.1. No permitting or other fees may be charged by the City for a removal occurring under this Section.

**3.2 Removal Due to Termination.** No later than 160 days after termination of this Agreement pursuant to the provisions of this Agreement, OPTIC shall, at its sole cost and expense, remove the Network or the terminated portion thereof and, if such removal disturbs the locations or adjacent property (including City ROW, City facilities added under Section 1.4.1, or City real property), restore each Facility and its adjacent property to its original conditions, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by OPTIC to the Facility or adjacent property, or as otherwise required by the City. For New Poles, OPTIC shall install a new streetlight or facility as directed by City's Public Works Director, or his or her designee. Alternatively, OPTIC shall abandon the Network, or any part thereof, in place and convey it to the City if either the City or OPTIC elects to do so.

**3.3 Abandonment.** In the event OPTIC ceases to operate and abandons the Network, or any part thereof, for a period of ninety (90) days or more, OPTIC shall, at its sole cost and expense and within the time period specified in Section 3.2, vacate and remove the Network or the abandoned part thereof. If such removal disturbs the Facility or adjacent property (including City ROW, City facilities added under Section 1.4.1 or

City real property), OPTIC shall also, at its sole cost and expense, restore the Facility or adjacent property to its original conditions, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by OPTIC to the Facility or adjacent property. Alternatively, the City may allow OPTIC, in the City's sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

**3.4 No Relocation Compensation.** The parties understand and agree that neither the City nor OPTIC are entitled to compensation for any relocation of its Network that may be required under Section 3.1. OPTIC is not entitled to relocation assistance or any other compensation or benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this Agreement.

## **SECTION 4 MAINTENANCE AND REPAIR**

**4.1 Electricity Use.** OPTIC shall pay for the electricity and other utilities services it consumes in its operations at the rate charged by the servicing utility company.

**4.2 Maintenance and Repair.** OPTIC shall, at OPTIC's sole cost and expense, perform all maintenance and repairs reasonable needed to maintain the Network in good condition and neat and orderly appearance, and in compliance with all applicable Laws. In the event any part of the Network requires replacement because such part cannot be repaired, OPTIC shall, at OPTIC's sole cost and expense, replace the irreparable part of the Network. OPTIC shall not cause rubbish, garbage or debris on or around its Network or the Facilities and shall not permit rubbish, garbage or debris to accumulate on or around in any enclosed areas around the Facilities. If the City gives OPTIC written notice of a failure by OPTIC to maintain the Facilities, OPTIC shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

**4.3 Appearance.** OPTIC shall cooperate with the City on all issues of aesthetics and appearance. OPTIC shall follow all legally binding City policies, state and local ordinances with respect to aesthetics. This includes, but is not limited to, historic site and/or locations of significant importance. All locations of DAS systems must be aesthetically approved by the City Engineering Department, in a manner consistent with other approvals within these Restrictions.

**4.4 Repair of ROW.** OPTIC shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by OPTIC's construction, installation, maintenance, access, use, repair,

replacement, relocation, or removal of the Network in the City's ROW. OPTIC shall promptly repair such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. OPTIC's obligations under this Section 4.4 shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the City's ROW by OPTIC to the City.

4.5 **Bond.** OPTIC shall provide a bond in an amount reasonably determined by the City during the construction of the Network to represent the estimated cost of OPTIC's construction obligations under Sections 3 and 4 of this Agreement, which the City may require OPTIC to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of OPTIC's obligations under Sections 3 and 4, not to exceed \$100,000.00.

## **SECTION 5 TAXES**

5.1 **Taxes.** OPTIC agrees that it will be solely responsible for the payment of any and all taxes, fees and assessments levied on its ownership, use and maintenance of the Network and this Agreement. Pursuant to Section 79-5a01 *et seq.* of the Kansas Revenue and Taxation Code, the City hereby advises, and OPTIC recognizes and understands, that OPTIC's use of the City's ROW, the New Poles, and/or other non-ROW city property and facilities may create a possessory interest subject to real property taxation and that OPTIC may be subject to, and responsible for, the payment of real property taxes levied on such interest. OPTIC will cooperate with the Crawford County Assessor in providing any information necessary for the Assessor to make a property tax determination. OPTIC reserves the right to challenge any such assessment, and the City agrees to cooperate with OPTIC in connection with any such challenge.

## **SECTION 6 INDEMNIFICATION**

6.1 **Indemnity.** OPTIC shall indemnify, defend, and hold harmless the City, its councilmembers, officers and employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by OPTIC pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the city, its councilmembers, officers, employees, agents or contractors. The City shall promptly notify OPTIC of any claim, action or proceeding covered by this Section 6.1.

6.2 **Waiver of Claims.** OPTIC waives all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from any event or occurrence except for any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from the gross negligence or willful misconduct of the City.

6.3 **Limitation of City's Liability.** The City will be liable, if at all, only for the cost of repair to damaged portions of the Facilities arising from the negligence or willful misconduct of City, its employees, agents, or contractors. The City, its agents, officers, employees, or contractors, shall not be liable for any damage from any cause whatsoever to the Facilities, specifically including, without limitation, damage, if any, resulting from the City's maintenance operations adjacent to the Facilities or from vandalism or unauthorized use of the Facilities, except to the extent such damage is caused by the negligence or willful misconduct of City, its agents, officers, employees or contractors. The City will in no event be liable for indirect or consequential damages.

6.4 **Limitation of OPTIC's Liability.** In no event shall OPTIC be liable for indirect or consequential damages in connection with or arising from this Agreement, or its use of the Network, New Poles, and ROW or other City real property.

## **SECTION 7 INSURANCE**

7.1 **Minimum Insurance Requirements.** OPTIC shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Section.

(a) **Minimum Insurance.** OPTIC shall at all times during the term of this Agreement, carry, maintain, and keep in full force and effect, insurance as follows:

(i) **General Liability:** A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 combined single-limit per-occurrence for bodily injury, personal injury, death, loss and property damage resulting from wrongful or negligent acts by OPTIC. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(ii) **Automobile Liability:** A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 combined single-limit per accident for bodily injury and property damage

covering any vehicle utilized by OPTIC in performing the work covered by this Agreement.

(iii) **Workers' compensation and Employer's Liability:** Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of \$1,000,000 per accident.

(b) **Deductible and Self-Insured Retentions.** Any deductibles or self-insured retentions shall not exceed \$25,000; provided, however, if OPTIC's insurance policy expressly provides (i) that the insurer is required to pay covered claims with no deduction for all or any part of the OPTIC's deductible, and (ii) insurer's obligation to pay covered claims is triggered irrespective of whether or not the insured pays the deductible, the OPTIC's deductible shall not exceed \$100,000 for Comprehensive General Liability Insurance, \$100,000 Comprehensive Vehicle Liability Insurance and \$250,000 for Workers' Compensation and Employer's Liability coverage.

(c) **Other Insurance Provisions.** The policies shall contain, or be endorsed to contain, the following provisions:

(i) **General Liability and Automobile Liability Coverage.**

(1) The City, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be named as additional insureds on all required insurance policies, except for Workers' Compensation and Employer's Liability policies.

(2) OPTIC's insurance coverage shall be primary insurance as respects the Insureds with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of OPTIC's insurance and shall not contribute with it.

(3) Any failure of OPTIC to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds.

(4) OPTIC's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.

(ii) **Workers' Compensation and Employer's Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by OPTIC in the City's ROW.

(iii) **All Coverages.** Except for non-payment of premium, each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled or reduced in coverage or limits by the insurer except after thirty (30) days' prior written notice has been given to the City. If for any reason insurance coverage is canceled or reduced in coverage or in limits, OPTIC shall within two (2) business days of notice from the Insurer, notify the City by phone or fax of the changes to or cancellation of the policy and shall confirm such notice via certified mail, return receipt requested.

(d) **Acceptance of Insurers.** Insurance shall be placed with insurers with an A.M. Best rating of no less than A-: VII.

(e) **Verification of Coverage.** OPTIC shall furnish the City with certificates of insurance required by this Section 7. The certificates for each insurance policy are to be signed by a person, either manually or electronically, authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences.

(f) **Secondary Parties.** In the event OPTIC hires any subcontractors, independent contractors or agents ("Secondary Parties") to locate, place, attach, install, operate, use, control, replace, repair or maintain the Network, OPTIC shall require the Secondary Parties to obtain and maintain insurance commensurate to the work such Secondary Parties perform.

## **SECTION 8 DEFAULT**

### **8.1 Default.**

8.1.1 **Defined.** A "Default" shall be deemed to have occurred under this Agreement if a party fails to cure a breach of this Agreement within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

8.1.2 **Remedies.** Upon the failure of a party to timely cure any breach after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of Section 6.3 (Limitation of Liability), terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

**8.2 City Termination Right.** In addition to the remedies set forth in Section 8.1.2, the City shall have the right to terminate this Agreement if (i) the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the public right of way: or (ii) if OPTIC's licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights shall be subject to OPTIC's rights to just compensation, if any, for any taking of a protected property right.

**8.3 No waiver.** A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matters subsequently occurring.

**8.4 Interest.** If OPTIC fails to make any payment under this Agreement when due, such amounts shall accrue interest from the date such payment is due until paid, including accrued interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

## **SECTION 9 INTERFERENCE**

**9.1 Non-Interference with Non-Public Safety Communications Systems.** OPTIC shall operate the Network in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the Network or that are in operation prior to any modifications OPTIC may make to the Network.

**9.2 Non-Interference with Public Safety Communications Systems.** OPTIC's Network and Facilities shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems or any Facilities cause interference with the City's use of the New Poles for their intended purpose as streetlights, traffic lights, and/or stand-alone light poles.

**9.3 Correction of Interference.** If such interference with the Facilities described in Sections 9.1 and 9.2 occur, OPTIC shall, upon receipt of written notice thereof from City, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by OPTIC to the reasonable satisfaction of City within the cure period set forth for in the City's notice, which notice shall not be less than 90 days, such interference shall be deemed a material breach under this Agreement and City may terminate this Agreement. Interference caused by actions of OPTIC's Customer(s) remains the responsibility of OPTIC. If the interference is an emergency or a danger to public health and safety, the City shall be entitled to require correction in a time period necessary to avoid the emergency or public health and safety issue.

## **SECTION 10 MISCELLANEOUS PROVISIONS**

**10.1 Nonexclusive Use.** OPTIC acknowledges that this Agreement does not provide OPTIC with exclusive use of the City's ROW or any municipal facility and that City retains the right to permit other providers of communications services to install equipment or devices in the City's ROW and on municipal facilities. The parties hereto specifically agree that all such franchises issued to telecommunications providers shall be competitively neutral and not unreasonable or discriminatory in nature.

**10.2 Most Favored Nation.** All of the benefits and terms granted by the City herein are at least as favorable as the benefits and terms granted by the City to any future franchisee of the public ROW engaged in the same or similar business described in this Franchise Agreement. Should the City enter into any subsequent agreement of any kind no matter what nomenclature is attached thereto with any other franchisee during the term of this Franchise Agreement, which Agreement provides for benefits or terms more favorable than those contained in this Franchise Agreement, then this Franchise Agreement shall be deemed to be modified effective as of the date of such more favorable agreement to provide OPTIC with those more favorable benefit and terms. The City shall notify OPTIC promptly of the existence of such more favorable benefits and terms and OPTIC shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by OPTIC, the City shall amend this Franchise Agreement to contain the more favorable terms and conditions.

**10.2.1 Most-Favored Municipality.** Should OPTIC after the Parties' execution and delivery of this Agreement enter into a Franchise Agreement with another municipality of the same size or smaller than the City in this State, which Agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such Agreement, are in the City's opinion substantially superior to those in this Franchise Agreement, the City shall have the right to require that OPTIC modify this Franchise Agreement to incorporate the same or substantially similar superior benefits.

**10.3 Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and served by (1) electronic mail; and (2) personally served or transmitted through first class United States mail, or by express mail providing for overnight delivery, postage prepaid, to the following address or such other address of which a party may give written notice:

City: City of Pittsburg  
201 W. 4<sup>th</sup> Street  
Pittsburg, KS 66762  
Attention: City Manager

OPTIC: Fiber Communications of Columbus, LLC  
224 S. Kansas Ave.  
Columbus, KS 66725  
Attention: Trish Carroll, General Manager

Such notice shall be deemed made when personally delivered; of mailed via first class U.S. Mail, such notice shall be deemed made three (3) calendar days after the date of deposit in the U.S. Mail, if mailed via express/overnight mail, such notice shall be deemed made two (2) calendar days after the date of deposit in a designated overnight delivery mailbox or other like facility. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**10.4 Sublease/Assignment.** If OPTIC assigns, sublets, enters into a franchise license or concession agreement, changes ownership of the Network or voting control of OPTIC, mortgage, encumber, pledge, hypothecate or other transfer (including any transfer by operation of law this Agreement or any interest therein) OPTIC will provide notice of a transfer within a reasonable time.

**10.5 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successor, assigns and transferees.

**10.6 Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any provisions, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

**10.7 Severability.** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

10.8 **Governing Law.** This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by, the domestic law of the State of Kansas or applicable federal law, without regard to laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement shall occur in the state courts located in Crawford County, Kansas.

10.9 **Survival of Terms.** All of the terms and conditions in this Agreement related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this agreement.

10.10 **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

10.11 **Drafting.** The parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party.

10.12 **Execution in Counterparts.** This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

10.13 **Authority to Execute This Agreement.** Each person or persons executing this Agreement on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

10.14 **No Warranty by the City.** The City makes no representations or warranties regarding the suitability, condition or fitness of the locations for the installation, maintenance or use of the New Poles or the Facilities.

10.15 **Agreement Applicable Only to the Facilities.** This Agreement shall not be construed to permit construction, installation, maintenance or use of Facilities on any property other than the Facilities.

10.16 **No Abrogation of Legal Responsibilities.** The City's execution of this Agreement shall not abrogate, in any way, OPTIC's responsibility to comply with all permitting requirements or to comply with all Laws with respect to its performance of the activities permitted under this Agreement.

10.17 **Contractual Interpretation.** In the interpretation and application of its rights under this Franchise Agreement, the City will act in a reasonable, non-discriminatory, and competitively neutral manner in compliance with all applicable federal, state, and local laws and regulations.

10.18 **Effective Date of Ordinance.** This Ordinance shall be effective upon its final passage and publication as required by law.

ADOPTED AND PASSED by the Governing body of the city of Pittsburg, Kansas, this 28<sup>th</sup> day of July, 2015.

**CITY OF PITTSBURG, KANSAS**

By: \_\_\_\_\_  
Chuck Munsell, Mayor

ATTEST:

\_\_\_\_\_  
Joye VanGorden, Deputy City Clerk

**FIBER COMMUNICATIONS OF COLUMBUS, LLC**

By: \_\_\_\_\_  
Trish Carroll, General Manager

(Published in The Morning Sun on July 31<sup>st</sup>, 2015)

ORDINANCE NO. S-1028

AN ORDINANCE OF THE CITY OF PITTSBURG, KANSAS, GRANTING TO CRAW-KAN TELEPHONE (CKT), ITS SUCCESSORS AND ASSIGNS, A TELECOMMUNICATIONS FRANCHISE AND PRESCRIBING THE TERMS OF SAID GRANT AND RELATING THERETO.

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

This Franchise Agreement (“Agreement”) is entered into as of July 28<sup>th</sup>, 2015 (“Effective Date”) by and between the City of Pittsburg, a municipal corporation (the “City”), and CKT.

**RECITALS**

A. CKT owns, maintains, operates and/or controls, in accordance with regulations promulgated by the Federal Communications Commission and the Kansas Corporation Commission (hereinafter “KCC”), telecommunications networks serving CKT’s wireline customers through advanced fiber optic facilities and other wireless carrier customers through fiber-fed facilities. Such facilities are in public rights-of-way (hereinafter “ROW”), among other locations, in the State of Kansas.

B. CKT seeks to enter the City of Pittsburg’s (the “City”) ROW, and other real property of the City, to install, maintain and operate a fiber network (the “Network”), so that CKT and/or its customers (the “Customers”) may provide data and telecommunications services to the enterprises, residents and visitors of the City and others (the “Services”).

C. Some features of the Network include, without limitation, antenna nodes, poles, equipment cabinets, underground and above ground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment, and will include other equipment as technology evolves, in a configuration and at locations to be filed and identified through the City permit process (“Facility” or “Facilities”).

D. Certain systems of CKT which are specific parts or types of the Facilities may be located on streetlights, stand-alone poles, thirty party utility poles, and other structures located on or within the Public ROW or City owned property as permitted under this Agreement.

E. CKT desires to obtain from City as permitted by law, and City is willing to grant CKT as required by law, the right to access the Public ROW to locate, place,

attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities in a manner consistent this Agreement.

In consideration of the Recitals set forth above, the terms and conditions of this Agreement and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

## **SECTION 1 INSTALLATION OF THE NETWORK**

**1.1 Permitted Installation.** CKT may at CKT's sole cost and expense and during the term of this Agreement, locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain the Facilities subject to the terms and conditions of this Agreement. CKT shall undertake and perform any work authorized by this Agreement in a skillful and workmanlike manner.

**1.1.1 Installation Specifications.** The installation of the Facilities shall be made in accordance with plans and specifications as may be approved by the city and after obtaining all necessary permits for all work in the ROW and/or on City property. Such approval review shall be made no later than forty-five (45) days from application date, and under exceptional circumstances the time may be extended an additional forty-five (45) days upon agreement of the Parties. The Parties understand and agree that Facilities outside of the Public ROW may require additional easements for underground fiber to connect to Network within Public ROW. Such additional easements shall be located so as not to interfere with the city's use of its property. For each installation of Facilities, CKT shall provide to the City plans, specifications, a construction work breakdown, and anticipated construction timeframes for the installation of Facilities no later than forty-five (45) days prior to the planned start of the installation. CKT shall, at the written request of the city, attend a planning session regarding any installation proposed by CKT. The location, depth of the fiber underground, and any other requirements shall be approved in writing by the City prior to construction of the Facilities at that specific location, approval of which shall not be unreasonably withheld, conditioned or delayed. Approval of plans and specifications and the issuance of any permits by the city shall not release CKT from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. CKT shall be responsible for notifying the city and all other relevant parties immediately upon discovery of such omissions and/or errors and with obtaining any amendments for corrected City-approved permits as may be necessary. CKT shall be responsible for all costs associated with the permitting process, including, but not limited to, repairs and replacement of City ROW. Such permits and approval requirements detailed in this section shall not be unreasonably

withheld, conditions or delayed by the City and any conditioned or requirements shall be in accordance with federal, state, and local laws.

**1.1.2 Temporary Construction.** The installation of the Facilities shall be performed in accordance with traffic control plans for temporary construction work that are approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed.

**1.1.3 Construction Schedule.** If requested by the City, at least ten (10) days prior to the installation of the Facilities, CKT shall deliver to the City a schedule for the proposed work related to the construction of the Facilities, as well as a list of the names of all agents and contractors of CKT's authorized by CKT to access the City ROW and City owned property on CKT's behalf.

**1.1.4 Coordination of Work.** CKT shall be responsible for coordination of work to avoid any interference with existing utilities, substructures, facilities and/or operations within the City's ROW. CKT shall be the City's point of contract and all communications shall be through CKT. CKT shall be solely responsible for communicating with Kansas One-Call.

**1.1.5 Inspection by City.** The City shall have commercially reasonable access to inspect any work conducted by CKT during the installation, maintenance and/or repairs of the Facilities.

**1.1.6 Other Utility Providers.** When necessary, CKT shall coordinate with other utility providers for other needed utility services. CKT and the city will reasonably cooperate with the other utilities providers regarding the location of any meter, pole, and other apparatuses required for each Site.

**1.1.7 Existing Utility Poles.** CKT may attach its Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner, provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the city's police powers, and in no instance shall CKT erect a new pole within an existing aerial pole line absent the City's prior authorization.

**1.2 Compliance with Laws.** This Agreement is subject to the terms and conditions of all applicable federal, state and local Laws and the Parties shall comply with any such Laws in the exercise of their rights and performance of their obligations under this Agreement. "Laws" or "Law" as used in this Agreement means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the city or other governmental entity or agency having joint or several jurisdiction over the Parties' activities under this

Agreement or having jurisdiction that is applicable to any aspect of this Agreement that are in force on the Effective Date and as they may be enacted, issued or amended during the term of this Agreement.

1.2.1 **Zoning Regulations.** Zoning regulations shall not apply to installations within the City ROW.

1.2.3 **Permits.** CKT shall obtain any necessary encroachment permits from the City for the installation of the Network and for any other work within the City's ROW or other real property of the City, as required by the Code or State Law at K.S.A. 17-1902(N), as amended.

1.3 **Compliance with Permits.** All work within the City's ROW or other real property of the city shall be performed in strict compliance with all applicable Permits and all applicable regulatory requirements.

1.3.1 **Fee Increases.** If prior to the second anniversary of the date hereof, the city increases the permitting fees described in the Sections above, and if with respect to all similarly situated franchisee license agreements executed by the City in such 2-year period the franchisee or licensee is subject to a similar fee provision, then CKT will pay to the City the increased fees as if the increased fee schedule had been in effect as of the date hereof upon being billed therefor by the City.

1.4 **Placement of CKT Facilities.** CKT shall coordinate the placement of its Facilities in the Public ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City Engineer.

1.4.1 **Placement of City Facilities.** Should the City decide that it is in its interest to include capacity in addition to the Facilities planned by CKT during the installation, it will communicate this decision to CKT in writing prior to the start of any construction and CKT shall, if technically feasible, include this additional capacity in its installation. The additional capacity will be defined during the planning process outlined in 1.1.1 and may include, but is not limited to, conduit, handholes, enclosures, and cable lines. The additional capacity shall be determined no later than thirty (30) days prior to the planned start of the installation. The City shall reimburse CKT for the cost of the additional capacity. The City's cost will be limited to the actual material and direct labor of the additional facilities only. The additional facilities shall be inspected by the City along with the CKT Facilities and shall not interfere with the operation and maintenance of CKT Facilities. The additional facilities shall remain the exclusive property of the City. City may not resell the additional facilities to any third party.

1.5 **New Streetlight Poles and Existing Streetlight Poles.** It is understood that CKT may build new streetlight poles or other such facilities required for the

installation of the Facilities which would comply with all encroachment and building permits, applicable City, state and federal specifications, and Laws (“New Poles”). The Parties agree that in areas where there are existing poles, CKT will work with the owner of that existing pole to collocate the DAS Facility, but only when the pole owner is willing to allow such attachment and where such attachment is feasible from a safety, technical, and engineering (structural and radio frequency coverage) perspective.

**1.5.1 City Use of New Poles.** The Parties understand and agree that the city may use any New Poles for City purposes, including but not limited to streetlights and other lighting so long as such use does not interfere CKT’s use of its Network or Facilities. CKT shall reasonably cooperate with the City when using the New Poles.

**1.5.2 City-Owned Lights.** Except for the installation of the lights and ancillary equipment on or in the New Poles and/or as set forth in section 1.5.3 below, CKT shall not be responsible for maintenance, repair, or replacement of City-owned lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles.

**1.5.3 Damage to New Poles.** If a new Pole falls or is damaged such that there is an imminent threat of harm to persons or property, then the city may cause the New Pole to be removed to the side of the street or a location that City believes reasonably eliminates the threat of such imminent harm to persons or property. CKT shall, after written notice from the City that any New Pole has been damaged or removed, cause the New Pole to be repaired or replaced within thirty (30) days after the City’s written notice. The cost to repair and/or replace any New Pole, including the replacement City streetlight, bulb and ancillary equipment shall be paid by CKT; provided, however, that if the new Pole is damaged or destroyed by the City or a third party user that the City has given the right to use the New Pole, then the City and/or its third party user shall pay the cost to repair and/or replace the New Pole. To the extent that CKT seeks reimbursement from a third party either directly or through applicable insurance, the City shall assign CKT any rights the City may have against such third party for such claims.

**1.6 Franchise and Permit Fees.** CKT is solely responsible for the payment of all lawful franchise and permit fees in connection with CKT’s performance under this Agreement.

**1.6.1 5% Franchise Fees for all Gross Revenues.** In consideration of this Franchise Agreement, CKT agrees to remit to the City a franchise fee of five percent (5%) of Gross Revenues (“Franchise Fee”). “Gross Revenues” means revenues derived from services provided within the corporate boundaries of the City which include: (A) Recurring local exchange service for business and residence which

includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; and (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (G) RF telecommunications service revenue or any other operating revenue derived from leasing CKT's dark fiber and infeasible rights of use "IRU") fees. Gross revenues shall be reduced by bad debt expenses that are attributable to Sections (A) through (G) as referenced within this Section 1.6.1. Uncollectable and late charges shall not be included within gross revenues. CKT shall pay its Franchise Fee on the 15<sup>th</sup> day of the second month following the month in which the Gross Revenue is received. Notwithstanding the above, to the extent the definition of Gross Revenues is inconsistent with the definition of Gross Receipt set forth in KSA 12-2001, the definition of Gross Receipts shall control.

**1.6.2 DAS Facility Permit Fee.** A one-time permit and license fee of \$1,000.00 for each DAS Facility installed within the Public Right of Way of the City shall be paid to the City by CKT. CKT shall pay the Das Facility Permit Fee the 15<sup>th</sup> day following the month after each DAS Facility is installed within the public ROW.

**1.6.3 Ministerial Application Fees.** Upon execution and approval of this Agreement, CKT shall pay to the City a one-time application fee in the sum of \$2,500.00 to recover the City's costs associated with the review and approval of this Agreement. The City certifies that such application fee reimburses the City for its reasonable, actual and verifiable cost of reviewing and approving this Agreement.

**1.6.4 Accounting Matters.** CKT shall keep accurate books of account at its principal office in Wichita, Kansas , or such other location of its choosing for the purpose of determining the amounts due to the City under §1.6.1 above. No more than once per year, the City may inspect CKT's books of account relative to the application of the franchise fees required under subsection 1.6.1 of this Agreement any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 1.6 – 1.6.3 above. The City agrees to hold in confidence any non-public information it learns from CKT to the fullest extent permitted by Law.

## **1.7 Access to the Facilities.**

**1.7.1 CKT Access to Facilities for Repair.** CKT will be given reasonable access to each of the Facilities in the City ROW or City owned property for the purposes of routine installation, repair, maintenance or removal of Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Facility, CKT shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services.

**1.7.2 City Observation.** CKT shall allow a representative of the City to observe any repair, maintenance or removal work performed at the Facilities.

## **SECTION 2 TERM AND TERMINATION**

**2.1 Term.** This Franchise Agreement shall be effective for an initial term of two (2) years from the effective date of this ordinance. Thereafter, this franchise will automatically renew for additional one (1) year terms, unless either party notifies the other part of its intent to terminate or renegotiate the franchise at least ninety (90) days prior to the termination of the then current term. The additional (term(s) shall be deemed a continuation of this franchise ordinance and not as a new franchise ordinance or amendment. Under no circumstances shall this franchise ordinance exceed twenty (20) years from the effective date of the franchise ordinance. At the conclusion of the twenty (20) year period the parties hereto agree to negotiate a new franchise in good faith in the event CKT is still providing services hereunder.

**2.1.1 90 Day Remedy Period.** If the Agreement is breached by CKT, then-the provisions of Section 8 (Default) shall govern the parties hereto.

**2.2 Termination of Use.** Notwithstanding Section 2.1 above, CKT may terminate its use of any or all of the Network by providing the City with ninety (90) days prior written notice. In the event of any such termination, CKT payment obligations to the City shall terminate simultaneously with the termination of use; provided CKT removes its equipment and restores the Facilities, as set forth in Section 3, below, prior to the termination date.

## **SECTION 3 REMOVAL AND RELOCATION**

**3.1 Removal due to Public Project.** Upon receipt of a written demand from the City pursuant to this Section 3, CKT, at its sole cost and expense, shall remove and relocate any part of the Network, constructed, installed, used and/or maintained by CKT under this Agreement, whenever the City reasonably determines that the removal and/or relocation of any part of the Network is needed for any of the following purposes: (a) due to any work proposed to be done by or on behalf of the City or any other governmental agency, including, but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility, installation of curbs, gutters or landscaping and installation, construction, maintenance or operation of any underground or aboveground facilities used as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines and tracks; (b) because any part of the Network is interfering with or adversely affecting the proper operation of City-owned light poles, traffic signals, or other City facilities or operations; or (c) to protect or preserve the public health and safety. The City shall cooperate with CKT in relocating any portion of the Network removed pursuant to this Section 3.1 in a manner that allows CKT to continue providing service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of that portion of the Network relocated under this Section 3.1. No permitting or other fees may be charged by the City for a removal occurring under this Section.

**3.2 Removal Due to Termination.** No later than 160 days after termination of this Agreement pursuant to the provisions of this Agreement, CKT shall, at its sole cost and expense, remove the Network or the terminated portion thereof and, if such removal disturbs the locations or adjacent property (including City ROW, City facilities added under Section 1.4.1, or City real property), restore each Facility and its adjacent property to its original conditions, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by CKT to the Facility or adjacent property, or as otherwise required by the City. For New Poles, CKT shall install a new streetlight or facility as directed by City's Public Works Director, or his or her designee. Alternatively, CKT shall abandon the Network, or any part thereof, in place and convey it to the City if either the City or CKT elects to do so.

**3.3 Abandonment.** In the event CKT ceases to operate and abandons the Network, or any part thereof, for a period of ninety (90) days or more, CKT shall, at its sole cost and expense and within the time period specified in Section 3.2, vacate and remove the Network or the abandoned part thereof. If such removal disturbs the Facility or adjacent property (including City ROW, City facilities added under Section 1.4.1 or

City real property), CKT shall also, at its sole cost and expense, restore the Facility or adjacent property to its original conditions, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by CKT to the Facility or adjacent property. Alternatively, the City may allow CKT, in the City's sole and absolute discretion, to abandon the Network, or any part thereof, in place and convey it to the City.

**3.4 No Relocation Compensation.** The parties understand and agree that neither the City nor CKT are entitled to compensation for any relocation of its Network that may be required under Section 3.1 CKT is not entitled to relocation assistance or any other compensation or benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this Agreement.

## **SECTION 4 MAINTENANCE AND REPAIR**

**4.1 Electricity Use.** CKT shall pay for the electricity and other utilities services it consumes in its operations at the rate charged by the servicing utility company.

**4.2 Maintenance and Repair.** CKT shall, at CKT's sole cost and expense, perform all maintenance and repairs reasonable needed to maintain the Network in good condition and neat and orderly appearance, and in compliance with all applicable Laws. In the event any part of the Network requires replacement because such part cannot be repaired, CKT shall, at CKT's sole cost and expense, replace the irreparable part of the Network. CKT shall not cause rubbish, garbage or debris on or around its Network or the Facilities and shall not permit rubbish, garage or debris to accumulate on or around in any enclosed areas around the Facilities. If the City gives CKT written notice of a failure by CKT to maintain the Facilities, CKT shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

**4.3 Appearance.** CKT shall cooperate with the City on all issues of aesthetics and appearance. CKT shall follow all legally binding City policies, state and local ordinances with respect to aesthetics. This includes, but is not limited to, historic site and/or locations of significant importance. All locations of DAS systems must be aesthetically approved by the City Engineering Department, in a manner consistent with other approvals within these Restrictions.

**4.4 Repair of ROW.** CKT shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by CKT's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of the Network in the City's ROW. CKT shall promptly repair

such damage and return the City's ROW and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. CKT's obligations under this Section 4.4 shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the City's ROW by CKT to the City.

4.5 **Bond.** CKT shall provide a bond in an amount reasonably determined by the City during the construction of the Network to represent the estimated cost of CKT's construction obligations under Sections 3 and 4 of this Agreement, which the City may require CKT to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of CKT's obligations under Sections 3 and 4, not to exceed \$100,000.00.

## **SECTION 5 TAXES**

5.1 **Taxes.** CKT agrees that it will be solely responsible for the payment of any and all taxes, fees and assessments levied on its ownership, use and maintenance of the Network and this Agreement. Pursuant to Section 79-5a01 *et seq.* of the Kansas Revenue and Taxation Code, the City hereby advises, and CKT recognizes and understands, that CKT's use of the City's ROW, the New Poles, and/or other non-ROW city property and facilities may create a possessory interest subject to real property taxation and that CKT may be subject to, and responsible for, the payment of real property taxes levied on such interest. CKT will cooperate with the Crawford County Assessor in providing any information necessary for the Assessor to make a property tax determination. CKT reserves the right to challenge any such assessment, and the City agrees to cooperate with CKT in connection with any such challenge.

## **SECTION 6 INDEMNIFICATION**

6.1 **Indemnity.** CKT shall indemnify, defend, and hold harmless the City, its councilmembers, officers and employees, agents, and contractors, from and against liability, claims, demands, losses, damages, fines, charges, penalties administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by CKT pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the city, its councilmembers, officers, employees, agents or contractors. The City shall promptly notify CKT of any claim, action or proceeding covered by this Section 6.1.

6.2 **Waiver of Claims.** CKT waives all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to

any portion of the Network, or any loss or degradation of the services provided by the Network resulting from any event or occurrence except for any loss, damage, or injury to any portion of the Network, or any loss or degradation of the services provided by the Network resulting from the gross negligence or willful misconduct of the City.

**6.3 Limitation of City's Liability.** The City will be liable, if at all, only for the cost of repair to damaged portions of the Facilities arising from the negligence or willful misconduct of City, its employees, agents, or contractors. The City, its agents, officers, employees, or contractors, shall not be liable for any damage from any cause whatsoever to the Facilities, specifically including, without limitation, damage, if any, resulting from the City's maintenance operations adjacent to the Facilities or from vandalism or unauthorized use of the Facilities, except to the extent such damage is caused by the negligence or willful misconduct of City, its agents, officers, employees or contractors. The City will in no event be liable for indirect or consequential damages.

**6.4 Limitation of CKT's Liability.** In no event shall CKT be liable for indirect or consequential damages in connection with or arising from this Agreement, or its use of the Network, New Poles, and ROW or other City real property.

## **SECTION 7 INSURANCE**

**7.1 Minimum Insurance Requirements.** CKT shall obtain and maintain at its sole cost and expense for the duration of this Agreement insurance pursuant to the terms and conditions described in this Section.

(a) **Minimum Insurance.** CKT shall at all times during the term of this Agreement, carry, maintain, and keep in full force and effect, insurance as follows:

(i) **General Liability:** A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 combined single-limit per-occurrence for bodily injury, personal injury, death, loss and property damage resulting from wrongful or negligent acts by CKT. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(ii) **Automobile Liability:** A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 combined single-limit per accident for bodily injury and property damage covering any vehicle utilized by CKT in performing the work covered by this Agreement.

(iii) **Workers' compensation and Employer's Liability:** Workers' compensation limits as required by the Labor Code, and Employer's Liability limits of \$1,000,000 per accident.

(b) **Deductible and Self-Insured Retentions.** Any deductibles or self-insured retentions shall not exceed \$25,000; provided, however, if CKT's insurance policy expressly provides (i) that the insurer is required to pay covered claims with no deduction for all or any part of the CKT's deductible, and (ii) insurer's obligation to pay covered claims is triggered irrespective of whether or not the insured pays the deductible, the CKT's deductible shall not exceed \$100,000 for Comprehensive General Liability Insurance, \$100,000 Comprehensive Vehicle Liability Insurance and \$250,000 for Workers' Compensation and Employer's Liability coverage.

(c) **Other Insurance Provisions.** The policies shall contain, or be endorsed to contain, the following provisions:

(i) **General Liability and Automobile Liability Coverage.**

(1) The City, and its elected and appointed council members, board members, commissioners, officers and officials (the "Insureds") shall be named as additional insureds on all required insurance policies, except for Workers' Compensation and Employer's Liability policies.

(2) CKT's insurance coverage shall be primary insurance as respects the Insureds with respect to the matters covered by this Agreement. Any insurance or self-insurance maintained by the Insureds shall be in excess of CKT's insurance and shall not contribute with it.

(3) Any failure of CKT to comply with reporting provisions of the policies shall not affect coverage provided to the Insureds.

(4) CKT's insurance shall apply separately to each of the Insureds against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Each of the Insureds is subject to all policy terms and conditions and has an obligation, as an Insured, to report claims made against them to the insurance carrier.

(ii) **Workers' Compensation and Employer's Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the Insureds for losses arising from work performed by CKT in the City's ROW.

(iii) **All Coverages.** Except for non-payment of premium, each insurance policy required by this clause shall be endorsed to state that

coverage shall not be cancelled or reduced in coverage or limits by the insurer except after thirty (30) days' prior written notice has been given to the City. If for any reason insurance coverage is canceled or reduced in coverage or in limits, CKT shall within two (2) business days of notice from the Insurer, notify the City by phone or fax of the changes to or cancellation of the policy and shall confirm such notice via certified mail, return receipt requested.

(d) **Acceptance of Insurers.** Insurance shall be placed with insurers with an A.M. Best rating of no less than A-: VII.

(e) **Verification of Coverage.** CKT shall furnish the City with certificates of insurance required by this Section 7. The certificates for each insurance policy are to be signed by a person, either manually or electronically, authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences.

(f) **Secondary Parties.** In the event CKT hires any subcontractors, independent contractors or agents ("Secondary Parties") to locate, place, attach, install, operate, use, control, replace, repair or maintain the Network, CKT shall require the Secondary Parties to obtain and maintain insurance commensurate to the work such Secondary Parties perform.

## **SECTION 8 DEFAULT**

### **8.1 Default.**

8.1.1 **Defined.** A "Default" shall be deemed to have occurred under this Agreement if a party fails to cure a breach of this Agreement within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

8.1.2 **Remedies.** Upon the failure of a party to timely cure any breach after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of Section 6.3 (Limitation of Liability), terminate this Agreement and pursue all remedies provided for in this Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

8.2 **City Termination Right.** In addition to the remedies set forth in Section 8.1.2, the City shall have the right to terminate this Agreement if (i) the City is mandated by law, a court order or decision, or the federal or state government to take certain

actions that will cause or require the removal of the Facilities from the public right of way: or (ii) if CKT's licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights shall be subject to CKT's rights to just compensation, if any, for any taking of a protected property right.

8.3 **No waiver.** A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matters subsequently occurring.

8.4 **Interest.** If CKT fails to make any payment under this Agreement when due, such amounts shall accrue interest from the date such payment is due until paid, including accrued interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

## **SECTION 9 INTERFERENCE**

9.1 **Non-Interference with Non-Public Safety Communications Systems.** CKT shall operate the Network in a manner that will not cause interference with City non-public safety communications systems and to the services and facilities of other licensees or lessees of City property located at or near the Facilities that were in operation prior to the installation of the Network or that are in operation prior to any modifications CKT may make to the Network.

9.2 **Non-Interference with Public Safety Communications Systems.** CKT's Network and Facilities shall not cause interference with public safety communications systems operated by City or any other public agency, regardless of the date such systems or any Facilities cause interference with the City's use of the New Poles for their intended purpose as streetlights, traffic lights, and/or stand-alone light poles.

9.3 **Correction of Interference.** If such interference with the Facilities described in Sections 9.1 and 9.2 occur, CKT shall, upon receipt of written notice thereof from City, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by CKT to the reasonable satisfaction of City within the cure period set forth for in the City's notice, which notice shall not be less than 90 days, such interference shall be deemed a material breach under this Agreement and City may terminate this Agreement. Interference caused by actions of CKT's Customer(s) remains the responsibility of CKT. If the interference is an emergency or a danger to public health and safety, the City shall be entitled to require correction in a time period necessary to avoid the emergency or public health and safety issue.

## **SECTION 10 MISCELLANEOUS PROVISIONS**

10.1 **Nonexclusive Use.** CKT acknowledges that this Agreement does not provide CKT with exclusive use of the City's ROW or any municipal facility and that City retains the right to permit other providers of communications services to install

equipment or devices in the City's ROW and on municipal facilities. The parties hereto specifically agree that all such franchises issued to telecommunications providers shall be competitively neutral and not unreasonable or discriminatory in nature.

**10.2 Most Favored Nation.** All of the benefits and terms granted by the City herein are at least as favorable as the benefits and terms granted by the City to any future franchisee of the public ROW engaged in the same or similar business described in this Franchise Agreement. Should the City enter into any subsequent agreement of any kind no matter what nomenclature is attached thereto with any other franchisee during the term of this Franchise Agreement, which Agreement provides for benefits or terms more favorable than those contained in this Franchise Agreement, then this Franchise Agreement shall be deemed to be modified effective as of the date of such more favorable agreement to provide CKT with those more favorable benefit and terms. The City shall notify CKT promptly of the existence of such more favorable benefits and terms and CKT shall have the right to receive the more favorable benefits and terms immediately. If requested in writing by CKT, the City shall amend this Franchise Agreement to contain the more favorable terms and conditions.

**10.2.1 Most-Favored Municipality.** Should CKT after the Parties' execution and delivery of this Agreement enter into a Franchise Agreement with another municipality of the same size or smaller than the City in this State, which Agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such Agreement, are in the City's opinion substantially superior to those in this Franchise Agreement, the City shall have the right to require that CKT modify this Franchise Agreement to incorporate the same or substantially similar superior benefits.

**10.3 Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and served by (1) electronic mail; and (2) personally served or transmitted through first class United States mail, or by express mail providing for overnight delivery, postage prepaid, to the following address or such other address of which a party may give written notice:

City: City of Pittsburg  
201 W. 4<sup>th</sup> Street  
Pittsburg, KS 66762  
Attention: City Manager

CKT: Craw-Kan Telephone  
200 N. Ozark  
Girard, KS 66743  
Attention: Craig Wilbert, General Manager

Such notice shall be deemed made when personally delivered; of mailed via first class U.S. Mail, such notice shall be deemed made three (3) calendar days after the date of deposit in the U.S. Mail, if mailed via express/overnight mail, such notice shall be deemed made two (2) calendar days after the date of deposit in a designated overnight delivery mailbox or other like facility. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**10.4 Sublease/Assignment.** If CKT assigns, sublets, enters into a franchise license or concession agreement, changes ownership of the Network or voting control of CKT, mortgage, encumber, pledge, hypothecate or other transfer (including any transfer by operation of law this Agreement or any interest therein) CKT will provide notice of a transfer within a reasonable time.

**10.5 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successor, assigns and transferees.

**10.6 Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any provisions, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

**10.7 Severability.** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

10.8 **Governing Law.** This Agreement shall be interpreted and enforced according to, and the parties' rights and obligations governed by, the domestic law of the State of Kansas or applicable federal law, without regard to laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement, or otherwise directly related to this Agreement shall occur in the state courts located in Crawford County, Kansas.

10.9 **Survival of Terms.** All of the terms and conditions in this Agreement related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this agreement.

10.10 **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

10.11 **Drafting.** The parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party.

10.12 **Execution in Counterparts.** This Agreement may be executed in one or more identical counterparts and all such counterparts together shall constitute a single instrument for the purpose of the effectiveness of this Agreement.

10.13 **Authority to Execute This Agreement.** Each person or persons executing this Agreement on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

10.14 **No Warranty by the City.** The City makes no representations or warranties regarding the suitability, condition or fitness of the locations for the installation, maintenance or use of the New Poles or the Facilities.

10.15 **Agreement Applicable Only to the Facilities.** This Agreement shall not be construed to permit construction, installation, maintenance or use of Facilities on any property other than the Facilities.

10.16 **No Abrogation of Legal Responsibilities.** The City's execution of this Agreement shall not abrogate, in any way, CKT's responsibility to comply with all permitting requirements or to comply with all Laws with respect to its performance of the activities permitted under this Agreement.

10.17 **Contractual Interpretation.** In the interpretation and application of its rights under this Franchise Agreement, the City will act in a reasonable, non-discriminatory, and competitively neutral manner in compliance with all applicable federal, state, and local laws and regulations.

10.18 **Effective Date of Ordinance.** This Ordinance shall be effective upon its final passage and publication as required by law.

ADOPTED AND PASSED by the Governing body of the city of Pittsburg, Kansas, this 28<sup>th</sup> day of July, 2015.

**CITY OF PITTSBURG, KANSAS**

By: \_\_\_\_\_  
Chuck Munsell, Mayor

ATTEST:

\_\_\_\_\_  
Joye VanGorden, Deputy City Clerk

**Craw-Kan Telephone**

By: \_\_\_\_\_  
Craig Wilbert, General Manager

**NETWORK SERVICES AGREEMENT BETWEEN  
THE CITY OF PITTSBURG AND  
COLUMBUS TELEPHONE COMPANY**

**Dated July 28<sup>th</sup>, 2015**

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## NETWORK SERVICES AGREEMENT

THIS MASTER NETWORK SERVICES AGREEMENT (“Agreement”) is made and entered into this 28<sup>th</sup> day of July, by and between the City of Pittsburg, a municipal corporation operating under the laws of the State of Kansas (hereinafter “City”) and Fiber Communications of Columbus LLC, dba Optic Communications (hereinafter “OPTIC”). As used herein, the terms “Party” or “Parties” shall refer to City and OPTIC individually or jointly as indicated by the context in which used.

### WITNESSETH:

**WHEREAS**, OPTIC owns, operates, and maintains a communications network, as defined herein (“Network”) and has entered into a franchise agreement (“Franchise”) with the City, pertaining to that communications network; and

**WHEREAS**, OPTIC has constructed and currently maintains and/or repairs as part of its communications network an institutional network connecting communities in the region and is comprised of (i) a fiber optical digital network (“Lit Fiber”) providing telecommunication and network services and (ii) dark fiber connections (“Dark Fiber”) where requested; and

**WHEREAS**, this Agreement is intended to specify the rights and obligations of the City and OPTIC with regard to the provision of network services, including future construction, operation and maintenance, standards of reliability and response time for repair, technical network management, and status monitoring requirements.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties hereby mutually agree to the terms of this Master Network Services Agreement as follows:

## **ARTICLE 1. DEFINITIONS**

1.1 The terms used in this Agreement shall have their normal or common meaning, unless otherwise specifically defined herein and except that the following terms shall have the following meanings for the purpose of this Agreement:

A. Acceptance or Accepted. As applied to the Network, City will be deemed to have given its "Acceptance" or to have "Accepted" a Circuit on the earliest date of: (i) when testing pursuant to Article 3.0 of Exhibit 1 has been successfully completed; (ii) when City puts the Circuit into production service; (iii) twenty (20) days past the scheduled due date for City to notify OPTIC of its Acceptance, if no such notice has been provided; (iv) or, in the event of an expedited order, the scheduled due date for City to notify OPTIC of its Acceptance if no such notice has been provided.

B. Agreement. "Agreement" shall mean this Network Services Agreement, which covers the Lit Fiber and Dark Fiber Connections and includes all referenced and attached exhibits.

C. Circuit. "Circuit" shall mean the individual telecommunications facility included as part of the Network Service.

D. Communication Network. "Communication Network" shall mean that network owned, operated, and maintained by OPTIC, consisting of redundant fiber optical backbones, redundant fiber optical service loops and other distribution cables on which numerous applications are provided, which network includes, but is not limited to, two-way communications services, commercial retail cable television, wholesale Internet services, wholesale data transport services, and Network Services.

E. Community Anchor Institutions. "Community Anchor Institutions" shall mean schools, libraries, hospitals and other medical providers, public safety entities, institutions of higher education, and community support organizations and agencies that provide outreach, access, equipment and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, the unemployed and the aged.

F. Connection. "Connection" shall mean the individual point-to-point connection included as part of the Network Service.

G. Dark Fiber Connection. "Dark Fiber Connection" shall mean an unlit fiber connection with no equipment attached or provisioning of services provided by OPTIC. Said Dark Fiber Connection may be lit by City or its designated Qualified Network Users.

- H. Day. “Day” shall mean a calendar day.
- I. Demarcation Point. “Demarcation point” shall mean the patch panel, termination block or other termination device located within each Network site, at the point on that equipment closest to the service loops.
- J. Demarcation Site. For the Network, the “Demarcation Site” shall mean the Demarcation Point or equivalent premise side of a Network location at the Network User’s facility main point of entry.
- K. Digital Network. “Digital Network” shall mean the fiber optic digital network as defined in Section 2.2.A herein.
- L. Direct Costs. “Direct Costs” shall be defined as set forth in Section 5.1.D herein.
- M. Emergency Maintenance. “Emergency Maintenance” shall mean Maintenance that cannot be accomplished during scheduled maintenance windows. Emergency Maintenance may be required by OPTIC to avoid damage to the Communications Network or serious degradation or loss of service.
- N. Ethernet Service. “Ethernet Service” shall mean a dedicated packet transport service, conforming to the physical and data transport layers of the international communications model. Ethernet Service may be provided in point-to-point or point-to-multi-point configuration. The available bandwidth is set and tested per the requirements of the user.
- O. Ground Block. For purposes of the Network, “Ground Block” shall mean and refer to the equipment device located inside the Network User communications closet or outside User premises to bond plant/electronics to a Power neutral conductor, offering protection of User premises from outside interference and providing a test point to determine service quality on either side.
- P. Network. “Network” shall mean the institutional network infrastructure, consisting of the Lit Fiber and Dark Fiber Connections, as contemplated under this Agreement.
- Q. Network User. “Network User” shall mean a qualified and designated user to whom City allows video, voice and/or data services to be connected and provisioned via the Network and maintained under this Agreement. (See also Section 2.7.B regarding “Qualified Users.”)
- R. Indefeasible Right of Use or IRU. “Indefeasible Right of Use” or “IRU” is the exclusive, irrevocable and perpetual right to use the Network subject to the

terms and conditions of this Agreement.

S. Interface Equipment. "Interface Equipment" means any device or system capable of transmitting video, voice and/or data traffic to the Network or capable of receiving information from the Network.

T. Maintenance. "Maintenance" shall mean and refer to routine and ordinary testing and repair of the Network and appurtenances.

U. Manage. "Manage" is defined as monitoring, administering, and/or controlling traffic on a network to enhance capabilities and efficiencies.

V. Master Control Center. "Master Control Center" is the OPTIC central location for processing Network traffic and programming, which will be located in Pittsburg, Kansas. No other facility shall be considered a Master Control Center.

W. SA. "SA" means the Columbus Telephone Company Service Assurance representative or system.

X. Network Interface. "Network Interface" shall mean the point within a Network User's premise at which Network services are delivered to the Network User.

Y. PEG Channel. "PEG Channel" shall mean a television channel dedicated to public, education or government access programming.

Z. Planned Service Outage. "Planned Service Outage" shall mean any Service Outage caused by scheduled Maintenance or planned enhancements or upgrades to the Network. For the Network, such scheduled Maintenance, planned enhancements or upgrades are described in Exhibit 3.

AA. Premises. "Premises" shall mean the address to which Service is provided to the Demarcation Point at which OPTIC's responsibility to provide equipment and Service ends and where City's or Network User responsibilities begin.

BB. Provision. "Provision" shall mean the act of establishing a Circuit on the Network, including testing, software configuring, setting options, and establishing interfaces.

CC Qualified Network User. "Qualified Network User" shall mean: (i) the City Municipal facilities; the Pittsburg Law Enforcement Center and regional law enforcement entities; Pittsburg Unified School District 250 and affiliated schools; Pittsburg State University; hospitals, clinics, and all other medical facilities; and regional anchor institutions and (ii); entities that OPTIC and the City mutually agree may use the Network.

DD. Service. "Service" shall mean OPTIC-provided consultation, design, construction, provisioning, testing and activation, monitoring, maintenance and repair relative to the Network, as agreed to by City and OPTIC.

EE. Service Outage. "Service Outage" shall mean a disruption or degradation of Service.

FF. Franchise Agreement. "Franchise Agreement" shall mean the agreement, adopted as a City Ordinance, allowing OPTIC to operate a telecommunications franchise as a company within the corporate limits of the City.

## **ARTICLE 2. OVERVIEW AND GENERAL OBLIGATIONS**

### **2.1 INSTITUTIONAL NETWORK (NETWORK) OVERVIEW**

OPTIC has designed and constructed a Communications Network that includes, *inter alia*, a fiber optic network, and may include a cable television system ("Cable System"), and a telephone system in the future. The Communications Network consists of a backbone to hubs, service loops to nodes, and distribution networks (including drops) beyond the nodes (referred to below as the OPTIC rings, loops and distribution networks, as applicable). The Network is capable of low- and high-speed data communications, and may become capable of full bi-directional video, and voice in the future (including, by way of example and not limitation, closed circuit applications).

OPTIC is responsible for the Maintenance of the infrastructure of the Network, except Dark Fiber Connections, as more specifically provided herein. The City shall pay the Direct Cost of the construction, equipment installation, and the Maintenance of the Network components designed and installed for its use, as more fully described herein.

### **2.2 NETWORK COMPONENTS**

The term Network or Institutional Network refers to all parts of the Network, collectively, and includes the following components:

A. Digital Network. The Digital Network, shall consist of:

(i) Fiber Backbone. The backbone consists of separate tubes of optical fibers terminated or spliced as currently installed or as requested by the City.

(ii) Service Loops. Service loops consist of: (1) Fiber; (2) service loops, terminated or spliced, consisting of interface via a hub to the backbone; (3) service loops to Network nodes; and (4) Network fiber splice and termination equipment at the nodes or other appropriate splice points approved by OPTIC.

(iii) Distribution System and Drop Fibers. Distribution and drop fibers from the nodes to all designated Network user sites (currently installed or as directed by the City) along with such fiber node terminations, electronics, and user location terminations, as may be identified by the City.

(iv) Equipment. Electronic devices on the Network required to provide the activated capacity that the City may request from time to time and devices that are co-located with residential cable nodes consistent with design(s) previously approved by the City. For future installations, Network electronics will be co-located with residential cable nodes if the design approved by the City so designates or where it is physically impossible to co-locate, the Network electronics would be located nearby. For future Optical Network installations and upon City's request, user equipment selected by the City will be installed by OPTIC, at designated Network user sites. City shall not be obligated for any installations not for its exclusive use. Any other equipment that is useful for the operation of the Digital Network will be selected and purchased by OPTIC and installed at appropriate points on the Digital Network, as provided in Section 4.1 herein.

B. Dark Fiber Connections. Unlit fiber connections from the Communications Network to sites designated by the City for City's provisioning of video, voice and data services.

### 2.3 CAPACITY PROVISION

Usage of the OPTIC backbone shall be provided by OPTIC to the City for a reasonable fee, and shall include a minimum use of OC-12 capacity throughout the term of this Agreement, for purpose of connecting to community anchor institutions. Additional OPTIC backbone usage connecting community anchor institutions, up to a total of OC-24 capacity, shall be provided to the City by OPTIC during the term of this Agreement upon request by the City for a reasonable fee; provided, however, that during any period when OPTIC has increased its own business to the point where OPTIC has a bona fide need for the capacity being used by the City, OPTIC may, upon one hundred twenty (120) days' notice, reduce the City's capacity as needed, but such capacity may not be reduced below the OC-12 capacity. The City shall have the option to purchase capacity beyond what is provided for in this section, at standard market rates. OPTIC shall ensure that the City, other cities and community anchor institutions that are entitled to interconnect to the backbone capacity are able to connect optical fibers from the Digital Network at appropriate splice points and hubs to utilize the capacity specified under this section. OPTIC's

obligations under this subsection consist of providing capacity, alone, shall not enlarge or create new duties to community anchor institutions beyond the existing duties created by law, and shall not affect OPTIC's ability to coordinate with the Universal Service Administrative Company and its Lifeline program as it sees fit.

## 2.4 NETWORK INTERCONNECTION

OPTIC will continue to provide all Digital Network connections installed as of the effective date of this Agreement and will provide Digital Network connections at any additional site(s) designated by the City, which will allow for Interconnection with the City's existing fiber infrastructure. The City shall pay for the direct costs associated with connections provided for its use.

## 2.5 NETWORK CO-LOCATION

During the term of this Agreement, upon OPTIC's written consent, which shall not be unreasonably withheld, when installed to benefit the City's use of the Network, the City will be permitted to place, or OPTIC will place at the City's request and expense, necessary transmission electronics associated with Network operations at appropriate locations on or adjacent to the Communication Network and at the headend and hub facilities; PROVIDED THAT, the City must provide detailed plans and schematics of the installation to OPTIC at least ten (10) days in advance and the City will make every reasonable effort to ensure that the proposed transmission electronics will not interfere with the Network or any part thereof, and will not create any interference with existing equipment. In the event of interference, the City will restore the transmission electronics to a previous, non-interfered state within ten (10) days. Additionally, the Parties agree there will be appropriate limitations on this right, based on OPTIC's commercial needs, including pole attachment considerations, safety considerations, and operational considerations; however, such limitations must be designed only to facilitate reasonable non-interference with OPTIC's operations, not to prevent the City's intended use of the Network. Commercially reasonable efforts will be made to provide space within the existing plant which may include a relay bay identified for the sole purpose to be identified as that of the City and the City shall pay the Direct Costs of such accommodations.

## 2.6 GENERAL SERVICE AND TECHNICAL MANAGEMENT

### OBLIGATIONS

A. General Responsibilities. During the term of this Agreement, and except as otherwise specified in Article 4 herein:

(i) OPTIC will be responsible for maintaining the Digital Network to the Demarcation Points at Network locations so that the Network has a high level of reliability, comparable to the reliability of well-maintained

telecommunications systems used for functions similar to those for which the Network is currently used.

(ii) OPTIC will provide repairs on Dark Fiber Connections, upon notification of such requirement by the City within thirty (30) days, as OPTIC monitoring of that portion of the Network may not be possible. In such event, the City shall pay the Direct Costs of such repairs.

(iii) OPTIC will continue to maintain and repair the Network in a manner consistent with good engineering practices, using qualified personnel. The City shall pay the Direct Costs of such maintenance and repairs to the Network beyond the demarcation point.

B. Technical Management. During the term of this Agreement, and except as otherwise specified in Article 4 herein, technical management, status monitoring and repair will be provided for the Digital Network by OPTIC, unless the City specifies in writing that such assistance is not required. The City shall be solely responsible for technical management, status monitoring, and maintenance of equipment connected to City's Dark Fiber Connections on the Network and OPTIC will be responsible for repairs of Dark Fiber Connections per Section 4.2 unless the City specifies in writing that such repairs are not required.

## 2.7 NETWORK USE, GROWTH AND EXPANSION

A. Continued Use of Network. The City has an Indefeasible Right of Use of the Network described in this Agreement. Thus, in the event OPTIC ceases to operate or maintain the Network, the City shall have the right to operate and maintain the Network and shall have an absolute right to obtain access to and utilize any OPTIC facilities or equipment on the Network required to do so. In the event OPTIC were to voluntarily or involuntarily sell, lease, assign, transfer, abandon or otherwise seek to dispose of all or a portion of the Communications Network (the "Assignment"), the City shall have the Indefeasible Right of Use set forth in the Agreement allowing City to operate and maintain the Network as required and permitted under this Agreement. OPTIC hereby agrees that any Assignment of the Communications Network or this Agreement shall specifically include City's Indefeasible Right of Use of the Network. Expiration or termination of this Agreement shall not affect rights or obligations accruing prior to termination with respect to the Indefeasible Right of Use granted by OPTIC to City. Temporary lapses in maintenance or operation of a duration up to one month by OPTIC or its successors in title shall not trigger the Indefeasible Right of Use.

### B. Qualified Users.

(i) The Network may be used by the City and any Qualified Network User to provide any voice, video and data services other than for commercial business purposes in competition with OPTIC and/or its

business partners. This limitation shall not, however, be deemed to prohibit City or Qualified Network User use of the Network within OPTIC's service territory for: (a) any bona fide municipal, public safety, educational or public purpose; (b) provision of internet services and/or access to the public for such municipal, public safety, educational and public purposes. The City agrees to require all Qualified Network Users to stipulate and agree to the foregoing limitation.

(ii) Fees may be charged to Network Users by the City for use of the Network or for the information transmitted via the Network in order to recover Network-related costs. However, the City will not charge OPTIC any transportation, Maintenance, or operation fees (as set forth in a user agreement) for mutually agreed upon uses by OPTIC of the City's Network, defined as that part of the Network designed and installed for the City's use.

C. Network Description. The City and OPTIC will maintain and continually update the existing working documents describing the Network, which includes, but is not limited to, Network addresses, infrastructure, and equipment information.

D. Growth and Expansion Options. The Parties recognize that changes in technology or user needs may present the opportunity to extend or enhance the capacity of the Network. OPTIC and the City shall cooperate in investigating, considering, and negotiating payment for such enhancements.

E. Future Network Design and Construction. The City may request OPTIC to upgrade the Network, construct additional Network plant, or add, remove or replace Network equipment at any time. After receiving a request for additional Network work, OPTIC will provide the City an estimate of the Direct Costs associated with the additional work within thirty (30) days. If the City then directs OPTIC to perform the work, OPTIC will perform it. Any such work shall be performed and completed within one hundred and twenty (120) Days after the City directs that the work be performed, unless the Parties agree to a different completion date. If OPTIC decides to install additional plant to areas or sites not included in its existing plant as of the date of this Agreement or in the node maps previously approved by the City, OPTIC will give the City reasonable notice of such decision together with routing information and Direct Cost estimates sufficiently far in advance so that the City may establish requirements for Network construction or upgrade to such areas or sites, and have those requirements implemented as part of OPTIC's additional plant construction. If OPTIC fails to provide the required notice, it will, upon request, design and construct such improvements as are necessary to accommodate the City's Network requirements at a cost which does not exceed the Direct Costs the City would have incurred had OPTIC provided the required notice to the City.

F. Relation to Other Networks. If the City and/or OPTIC has a

relationship with another cable system or communications network, the Network may be linked to such other system or network so long as the Network use complies with Section 2.7.B(i) herein. OPTIC shall, at the direction of the City, allow any municipal jurisdiction into which the Communications Network is extended to connect to the Network on OPTIC's ring, at a convenient hub or splice point within such jurisdiction, so that the jurisdiction can utilize the capacity for bi-directional video, voice or data transmissions to and from the Network and any institutional network or similar network in that jurisdiction. OPTIC shall be responsible for all costs associated with providing the ring activated capacity up to OC-12 capacity. The jurisdiction which is connecting to the Network on the ring is responsible for the cost associated with providing a connection from the jurisdiction to the hub or splice point. OPTIC shall not be responsible for any costs for any Network end-user equipment required to utilize the connection between the jurisdiction and said hub or splice point and/or any Network end-user equipment required to utilize that connection.

### **ARTICLE 3. SERVICE**

#### **3.1 DIGITAL NETWORK SERVICE**

The following provisions of this Section 3.1 shall apply to Digital Network Services.

A. OPTIC shall be responsible for Digital Network design and construction, and shall see that the Digital Network is maintained, repaired and operated in a manner that fully complies with industry standards as described in Exhibits 1, 2, 3, 4 and 5.

B. City, assisted by OPTIC, shall develop and maintain complete documentation of Network related equipment. Documentation shall include available plans, sketches, equipment inventory, operating parameters, wiring diagrams and accessibility information. Each Network User must provide the City with all information reasonably requested by OPTIC regarding the Network User's site, which information will be made available to OPTIC. Unless agreed upon by the Parties, all communications with the Network user shall be made by, or with the express permission of, the City.

C. Working closely with the City, OPTIC shall establish a sufficient inventory of parts to accommodate ongoing Maintenance and repair of the Digital Network.

D. City shall be responsible for or reimburse OPTIC for the Network "extraordinary maintenance" costs associated with the portion of the Digital Network

directly benefitting the City. These expenses include, but are not limited to, shipping and repair charges for failed circuit packs, replacement of stolen or damaged electronic shelves and their constituent components (when such theft or damage is not due to the negligence of OPTIC), expenses associated with Network relocations/conversions for street related projects, and vacating rights-of-way and easements.

E. Service to Network Locations. City shall order Service from OPTIC by following the “Ordering Procedures for Network Services” set forth in Exhibits 4. The applicable Maintenance charges shall be as set forth in Exhibit 6. Service to Digital locations shall include normal maintenance, inspection, repair and testing as provided in Article 4 herein.

F. Special Equipment Requirements.

(i) The City, with OPTIC, will develop and maintain a recommended equipment list in order to maximize Digital Network standardization, minimize procurement difficulties and simplify on-going operations and Maintenance. Equipment selected by OPTIC, at the City’s written request, will be installed at designated Network User sites. The City will be given the opportunity to purchase this equipment at the current prices available to OPTIC.

(ii) Upon the City’s written request and at the City’s sole expense, OPTIC will install network user equipment selected by the City at designated Network user sites.

(iii) The payment for the cost of any special Interface Equipment or facilities necessary to achieve compatibility, if required because of Digital Network User equipment, between telecommunications equipment of OPTIC and facilities of the Network User shall be at Network User’s expense unless otherwise agreed.

(iv) Interface Equipment used on the Communications Network are described in Exhibit 1, and follow common industry standards. The City, in conjunction with OPTIC, shall establish and maintain standards specifying Digital Network site Interface Equipment requirements. The City, with OPTIC, will develop and maintain a recommended equipment list in order to maximize Digital Network standardization, minimize procurement difficulties and simplify on-going operations and Maintenance.

G. Equipment and Installation for Digital Network Services.

(i) OPTIC shall specify, design, purchase, install, operate, provision, maintain, and repair, the telecommunications equipment necessary to allow Digital Network Services in support of identified City applications.

Except as provided in Section 3.1.F herein, City shall pay the cost of purchasing and installing all telecommunications equipment necessary for Service to the City.

(ii) OPTIC will provide telecommunications equipment and Service to the Demarcation Site. Within the corporate City limits, the City shall be responsible for the procurement and maintenance of all rights-of-way and any necessary private or public easements or licenses required for the installation of OPTIC's equipment. Outside the corporate City limits, the City will make arrangements with other jurisdictions for the procurement of rights-of-way and private or public easements or licenses required. The City's agreement with Network Users will permit City, OPTIC and their respective personnel and contractors sufficient access rights to install and locate Digital Network facilities and equipment on such user's property.

(iii) Notwithstanding any provision of this Agreement to the contrary, if City provides its own telecommunications equipment, OPTIC shall have no obligation to install, maintain or repair such City equipment.

(iv) The City shall not modify, repair, adjust, replace or add to Network related wiring, cabling, connections or equipment without prior consultation with OPTIC, providing detailed plans and schematics to OPTIC, and approval by OPTIC. The City may add new Network sites pursuant to Section 2.7.D and E, and/or Section 5.1.B(v). New site development may require OPTIC participation. Payment of all Direct Costs for expansion of OPTIC facilities for the City's direct use, including Network fiber optic equipment, other site equipment, Network Hub and/or node changes is the responsibility of the City.

(v) After OPTIC has installed Digital Network related telecommunications equipment for the City's use, ownership of the equipment shall remain the sole and exclusive property of the City or Network User, and nothing contained herein shall give or convey ownership to OPTIC. When City's equipment is installed along with OPTIC's equipment, then both shall prominently affix identifying plates, tags or labels on such telecommunications equipment showing City's and OPTIC's respective ownership thereof. Neither Party shall tamper with, remove or conceal such identifying plates, tags or labels, nor knowingly allow third parties to do so.

#### H. Test and Performance Standards for Digital Network Services.

OPTIC shall at all times comply with the test and performance standards set forth in Exhibits 1 and 2.

### 3.3 DARK FIBER CONNECTIONS

OPTIC shall be responsible for constructing Dark Fiber Connections upon request by City, pursuant to provisions in Section 2.7.D and E, including the payment of costs provided for therein, and as otherwise provided in the Agreement.

### 3.4 WARRANTIES/ACCEPTANCE

The Acceptance of the Network system or any component thereof, or payment therefore, shall not waive any defect in the work or constitute Acceptance of work or equipment not in compliance with the applicable design and specification requirements. OPTIC shall provide in its contracts for warranties of the work and equipment satisfactory to the City and will provide for the enforcement of such warranties and for the correction of work or equipment not provided in accordance with applicable design and specification requirements or which is otherwise defective.

#### A. Warranties and Network Standards.

(i) The Parties agree that if OPTIC determines, or at the request of the City, that an emergency action is necessary to protect either the Communications Network or the Network, OPTIC may block any transmission path over the Network. The Parties further agree that none of their respective obligations to one another under this Agreement shall be affected by any such blockage, and that no Party shall have any obligation to the other Party for any claim, judgment or liability resulting from such blockage. If City objects to the blockage, the Parties shall immediately meet to review the matter and, if the Parties are unable to agree upon a mutually acceptable course of action, the matter will be referred to the City's City Manager and OPTIC's General Manager to issue a final decision.

(ii) OPTIC represents and warrants to City that except for Dark Fiber Connections: (i) the Service provided over the Network shall meet the standards set forth in Exhibits 1 and 2, other than for reasons of Planned Service Outages, or reasons set forth in Article 11 hereof; and (ii) the Circuits connecting two locations shall have a physically diverse path (except with respect to laterals off the backbone and building entrances).

## ARTICLE 4. MAINTENANCE AND REPAIR OF NETWORK

### 4.1 MAINTENANCE AND REPAIR OF NETWORK

Maintenance and repair of the Network serving the City and Network Users shall be performed by OPTIC in accordance with the provisions of Exhibit 3. Except as otherwise specifically provided for in this Section 4.1, any Maintenance and repair required on OPTIC's Communication Network shall be performed by OPTIC.

A. OPTIC shall perform all Maintenance and repair from the Network User Premises to and from the Master Control Center twenty-four (24) hours per Day, seven (7) Days per week, as necessary.

B. OPTIC is responsible for inventorying spare components of the Network, delivering the parts to the repair site and for shipping the failed component back to the manufacturer for repair or replacement. The City is responsible for the cost to repair the portion of the Network directly benefiting the City. Repair costs will be provided to and approved by the City prior to work being done on its portion of the Network.

C. Response and Repair Times. Except as otherwise provided in this Agreement, in the event OPTIC identifies a Service Outage, OPTIC shall have repair personnel, when site access is granted, on site within three (3) hours after identifying the outage. If receiving notification of the outage from the City, OPTIC shall have repair personnel on site within three (3) hours after receiving the notification. OPTIC shall restore the Service as follows:

(i) The City will contact the OPTIC technician on stand-by within thirty (30) minutes after identification of a Service Outage. City is responsible for Network User notification.

(ii) Electronic Restoration: In the event of an electronic failure, OPTIC shall use commercially reasonable efforts to restore service within four (4) hours of arrival of Maintenance personnel on site.

(iii) Fiber Cable Restoration: In the event of a cable failure, OPTIC shall begin cable restoration within three (3) hours after the faulty cable is identified. OPTIC shall use its best efforts to restore the cable no later than six (6) hours after failure. If a safety problem exists, the restoration will not take place until the safety problem has been satisfied.

D. Scheduled Maintenance.

(i) Maintenance which may require system down time will normally be performed during the "Maintenance Window" of 12:00 midnight and 6:00 a.m., or a time mutually agreed to by City and OPTIC.

(ii) OPTIC Maintenance personnel will notify City forty eight (48) hours prior to beginning scheduled Maintenance work and must receive concurrence, which shall not be unreasonably withheld, to proceed. OPTIC personnel will notify City upon completion of scheduled Maintenance work and receive concurrence that all Service is fully operational.

F. Access to Equipment and Facilities.

(i) Employees or agents of OPTIC may require escorted access to any Network equipment or facilities at a City or Network User Premises, subject to City's, or such Network User's access and security regulations. These shall include, but not be limited to:

- Proper picture identification
- OPTIC authorized personnel list
- Restricted Area Access Provisions
- Escort by Network User/City personnel
- OPTIC employees or agents, while on City or Network User Premises, shall comply with the Network User and/or City rules and regulations.

(ii) Upon request, employees or agents of City shall be given escorted access to areas at OPTIC locations containing facilities and/or equipment associated with City's service, subject to OPTIC's access and security regulations. These shall include, but not be limited to:

- Proper picture identification
- City authorized personnel list
- Restricted Area Access Provisions
- Escort by OPTIC personnel
- City employees (non-OPTIC) or agents, while on OPTIC premises, shall comply with OPTIC's plan rules and regulations.

(iii) Upon request from City, OPTIC will inform City of scheduled and non-scheduled Maintenance and repair activity. City shall have the right, upon twenty-four (24) hours advance notice to OPTIC, to be present during OPTIC equipment testing, and during scheduled and non-scheduled Maintenance and repair activity.

4.2 REPAIR OF DARK FIBER CONNECTIONS.

A. The City shall be responsible for notifying OPTIC of Dark Fiber Connection failures and the need for repairs.

B. OPTIC shall be provided access to the Dark Fiber three hundred sixty-five (365) Days per year, twenty-four (24) hours per Day. In the event the City notifies OPTIC of a Dark Fiber Connection failure, OPTIC shall begin restoration within four (4) hours after the faulty connection is identified. OPTIC shall use commercially reasonable efforts to restore the connection no later than eight (8) hours after failure. If a safety problem exists, the restoration will not take place until the safety problem has been satisfied. City shall pay the Direct Costs of all such restorations set forth in this Section 4.2.

## ARTICLE 5. BILLING AND PAYMENT

### 5.1 GENERAL NETWORK PAYMENT ARRANGEMENTS

A. Obligation to Pay. OPTIC will not charge for the Network or for the use of the Network by the City or Qualified Users, except as provided in this Article 5. The City will be obligated to make payments to OPTIC for Direct Costs for the Network only from Available Funds (as hereinafter designated).

(i) Available Funds. Available Funds shall mean any legally available funds. Nothing herein shall be construed to create general indebtedness of the City.

(ii) Cash Basis Law. The payments to be paid by the City to OPTIC can only be made from funds budgeted and appropriated for that purpose during the City's current budget year or from funds made available from any lawfully operated revenue source. The City shall make reasonable effort to budget funds as needed on an annual basis. In the event sufficient funds are not available and City is in default, this Agreement may be terminated with City having no further liability therein.

B. Manner of Payment.

(i) Maximum Amount. The Direct Costs payable herein shall not exceed the maximum amounts, as may from time-to-time be approved by the Pittsburg City Commission by resolution or ordinance.

(ii) Payments for Maintenance. Maintenance rates are specified in Exhibit 6 and shall be due and payable in accordance with Subsection 5.1.D below and Sections 5.2 and 5.3 below.

(iii) CPI Adjustment of Maintenance Costs. Beginning January 2017, and every subsequent two-year period thereafter, OPTIC will notify the City of the adjusted Network service rates to be effective the following January, which will begin a new budget cycle. Network rates will be adjusted using the Pittsburg, KS region Producer Price Index (PPI) for final demand from the prior year end.

(iv) Payments for Network Additions and Upgrades. Invoices for Network additions and upgrades may be submitted after the work requested has been completed, fully inspected and tested, passed all tests and found to be in conformity with the City's requirements for the addition or upgrade; and (to the extent that activation is requested by the City) activated.

(v) Payments for Service and Maintenance of New Technologies. As new services and technologies are introduced and implemented the Parties will negotiate in good faith associated rates and will otherwise amend this Agreement to address the relative obligations of each Party depending upon technologies involved.

C. Timing and Documentation of Costs. Upon submission by OPTIC in such form as may be required by the City of a proper invoice accompanied by a breakdown of Direct Costs, together with such evidence in support thereof as may be reasonably required by the City, the City agrees to make payments to OPTIC for Direct Costs incurred and paid by OPTIC for construction costs associated with completion of a node as work on the Network associated with that node is completed. Provided, however, all invoices and payments shall be subject to adjustment or withholding for any amounts found upon audit or otherwise to have been improperly invoiced or for failure to perform in a timely manner or in conformity with this Agreement. Work on a node area will be deemed completed when OPTIC has constructed the Network to all locations to which the improvement was designed and the work has been fully inspected and tested, passed all tests and been found to be completed in conformity with this Agreement and (to the extent requested by the City) has been activated. Work on the Network Backbone and Service Loops may be billed when work on the same (or a discrete and useable portion thereof) has been completed, that portion of the Network has been fully inspected and tested passed all tests and been found to be completed in conformity with this Agreement and (to the extent requested by the City) has been activated. OPTIC shall prepare and submit with each request for payment: (i) an itemization of the amount of work performed or items purchased and the amount of Direct Costs paid therefor; and (ii) a certificate that the work, materials and equipment for which payment is requested has been incorporated into the work and provided or completed, tested and inspected and the Network activated in accordance with the applicable design and specifications under which the same were to be provided.

(i) Terms of Payment. Payments for Direct Costs that are not subject to dispute or withholding will, from and after ninety (90) Days of receipt of a proper invoice and certificate for payment, accrue interest until paid at the rate equal to 1% per month; except that, the final payment of unpaid Direct Costs associated with construction of the Network shall be due within ninety (90) Days after completion of final testing and inspection of the

Network, and activation of those portions that the City directs OPTIC to activate, and after: (1) OPTIC has provided a certificate or other evidence satisfactory to the City that the node or other component for which final payment is sought has been completed in accordance with the applicable design and specification requirements and (2) OPTIC has provided a copy of the final construction certification acceptance tests demonstrating compliance with applicable design and specification requirements and FCC standards and (3) the City has Accepted such work and equipment.

D. Direct Costs. Direct Costs shall mean those costs which the City has agreed to pay under this Agreement and which OPTIC has properly documented as being incurred by OPTIC for the purposes for which OPTIC is entitled to payment hereunder. Direct Costs include:

- (i) Costs of necessary materials, equipment and hardware to add to or to upgrade the Network;
- (ii) Documented and required payments made by OPTIC to contractors for performing work on the Network;
- (iii) Costs of necessary licenses and permit fees, including rights-of-way construction permit fees and inspection fees, if any, related to the Network;
- (iv) Reasonable rental costs for the use of any necessary temporary facilities, or special machinery, equipment and hand tools used in the work on the Network;
- (v) Costs of removal of debris on the Network;
- (vi) Other costs incurred on the Network in the performance of the work if and to the extent approved in advance in writing by City.

E. Direct Costs do not include:

- (i) Salaries and other compensation of OPTIC 's employees;
- (ii) Overhead and general expenses, except as may be expressly included in Section 5.1.D above;
- (iii) OPTIC's capital expenses, including interest on OPTIC's capital, employed for the work;
- (iv) Costs due to the fault or negligence of OPTIC, contractors or subcontractors, anyone directly or indirectly employed by any of

them, or for those whose acts any of them may be liable, including, but not limited to, costs for the correction of damage, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, in making good damage to property not forming a part of the work.

(v) Pole attachment and conduit rental fees for poles and conduit owned or controlled by OPTIC.

## 5.2 SPECIFIC BILLING AND PAYMENT APPLICABLE TO DIGITAL NETWORK

A. As compensation for the Digital Network Services provided by OPTIC hereunder, City shall pay charges set forth in Exhibit 6. The Parties shall provide one another with reasonably requested information for bill documentation, including, but not limited to, the number of fibers, number of Network User sites, and number of active fiber miles with active transport Service. The Parties will cooperate to enable OPTIC to provide its billing information in an electronic file (i.e., in an Excel for Windows format). OPTIC shall bill for all Services rendered within forty-five (45) Days of circuit testing and acceptance as specified under the terms of this Agreement.

B. In the event City disputes any billing by OPTIC, City shall notify OPTIC in writing, providing the billing identification, and an explanation for the dispute, and shall nevertheless pay all charges not disputed in this manner within the period specified above. The Parties will cooperate in good faith to resolve any such disputes within a sixty-Day (60-Day) period after the dispute is submitted to OPTIC. If the dispute is not resolved during this period, then either Party may seek alternative dispute resolution, in accordance with Section 5.4.B herein.

C. The City may add new Network sites, pursuant Section 2.7.D and E herein. Network site development costs associated with the City or Network User's side of the Demarcation Site shall be borne by the City or Network User, respectively.

D. Monthly Digital Network Maintenance Costs are shown in Exhibit 6.

## 5.3 MISCELLANEOUS BILLING AND PAYMENT

### PROVISIONS A. Intent of Parties; Exceptions

(i) It is the intent of OPTIC and the City that where OPTIC (a) is constructing its plant to a particular location,(b) or installs excess facilities for

use other than Network use (such as additional interduct or cable) when it installs the Network, or (c) can be required to provide a free drop, the cost to the City of the Network which is provided to the same location will not include such costs as the cost of undergrounding, conduit, or other work, materials equipment or costs which OPTIC would have provided for or incurred had it constructed said plant, facilities or drop even if the Network was not provided to such location.

(ii) The City may request that, during the installation of facilities by OPTIC, additional capacity be included for the City's use. The City shall pay for the Direct Cost of adding the additional capacity.

B. Costs/Disputes

(i) If the administrative staff of the City and OPTIC disagree as to the amount to be paid by City to OPTIC for Network installation, Maintenance, repair or Service, under the terms of the Agreement, the matter shall be referred to the City's City Manager and Columbus Telephone Company's Executive Director for resolution.

## **ARTICLE 6. INDEMNIFICATION**

6.1 Except for liability specified in Section 6.1.E below, the City shall indemnify, defend and hold harmless OPTIC and its employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorney's fees) incurred as a result of:

A. Claims for damage to property and/or personal injuries (including death) arising out of the negligence or willful act or omission of City and/or Network User, and/or their respective officers, employees, agents or contractors; and

B. Except as otherwise provided herein, OPTIC shall be liable for any loss or damage to City's and/or Network User's telecommunications equipment arising from OPTIC's negligence, intentional act, or unauthorized Maintenance to the extent the avoidance of same is within the reasonable control of OPTIC, its employees or agents. Except as otherwise provided herein, City shall be liable for any loss or damage to OPTIC's telecommunications equipment arising from City's negligence, intentional act, or unauthorized maintenance to the extent the avoidance of same is within the reasonable control of City, its employees or agents. In the event of any loss or damage to the telecommunications equipment for which either Party is liable, the liable Party shall reimburse the other Party for the reasonable cost of repair or replacement thereof within sixty (60) days after receipt of a written request for such reimbursement.

## **ARTICLE 7. DEFAULT**

7.1 A Party shall be deemed in default of this Agreement if it fails to perform any of its material obligations under this Agreement and such nonperformance is not remedied within sixty (60) Days after written notice thereof.

7.2 A material breach of this Agreement by OPTIC shall be considered a material violation of the Franchise Agreement. The procedure for notification, cure and implementation of remedies for any such breach shall be handled consistent with the procedures set forth in the Franchise Agreement and the City shall have the right to implement any of the remedies set forth in the Franchise Agreement following the notice and opportunity to cure.

7.3 A material breach of this Agreement by City shall entitle OPTIC to all remedies available at law or in equity and OPTIC shall have the right to terminate this Agreement, without forfeiting any of its rights under the Franchise Agreement, subject to the notice and cure period stated in Section 7.1 above.

7.4 If either Party should invoke a claim of *force majeure* as a defense to a material violation, Article 11 of this Agreement shall govern.

7.5 If the Franchise Agreement has been terminated or abandoned or OPTIC is operating in the City under an alternative form of authorization permitted under state or federal law, the Parties agree to amend this Agreement to incorporate enforcement procedures into this Agreement that parallel the procedures and remedies available under the Franchise Agreement.

## **ARTICLE 8. LIMITATION OF LIABILITY**

8.1 Neither Party shall be liable to the other Party for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature whatsoever (including, but not limited to, for any lost profits, lost revenues, lost savings, or harm to business), regardless of the foreseeability thereof. For purposes of this Agreement, a Party's out-of-pocket costs for damages of the kinds specified in the preceding sentence which are recovered from such Party by a third party shall be deemed to be indirect damages to such Party, except to the extent such damages are part of claims for which indemnification is due under Sections 8.1. Each Party hereby releases the other Party, its subsidiaries and affiliates, and their respective officers, directors, managers, employees, and agents from any such claim.

## **ARTICLE 9. CONFIDENTIAL INFORMATION**

9.1 In the course of performance hereunder, the Parties may have access to certain information, the ownership and confidential status of which is highly important to the other Party, including, but not limited to, information about products, services, business plans, trade secrets, discoveries, ideas, designs, drawings, specifications, techniques, models, data, programs, documentation, processes, know-how, customer lists, marketing plans, and financial and technical information and other information treated or designated by one of the Parties as confidential (herein referred to as "Confidential Information").

9.2 Neither Party shall disclose the other Party's Confidential Information, directly or indirectly, under any circumstances or by any means, to any third person without the express written consent of the other Party, and neither Party shall copy, transmit, reproduce, summarize, quote, or make commercial or other use whatsoever of the other Party's Confidential Information, except as may be necessary to perform its duties hereunder. Each Party shall exercise the highest degree of care in safeguarding the other Party's Confidential Information against loss, theft, or other inadvertent disclosure and take all steps necessary to maintain such confidentiality; provided, however, City and OPTIC are subject to the Kansas Open Records Act (K.S.A. 45-215 through 45-223). Therefore, in the event City or OPTIC believe that any writing or communication received pursuant to this Agreement is subject to said Act's disclosure requirement, then the Parties, with the advice of the City Attorney, will by mutual agreement, make any appropriate disclosures and/or take any other necessary action.

## **ARTICLE 10. TERM AND RENEWAL OPTIONS**

10.1 This Agreement shall run concurrently with the Franchise Agreement and will commence on the effective date of the Franchise Agreement. This Agreement (as it may be modified or amended) shall continue for any extensions or renewals of the Franchise Agreement, unless the Parties mutually agree to extend or renew this Agreement on a different basis.

10.2 In the event the Franchise Agreement has been terminated or abandoned or OPTIC is operating in the City under an alternative form of authorization permitted under state or federal law, the Parties agree to amend this Agreement to extend the term of this Agreement for an additional two (2) years; provided, that immediately upon the commencement of said two year extension, the Parties shall enter into good faith negotiations to further extend or renew the term taking into consideration the then current status of (1) City and OPTIC's operations, (2) costs and industry practices for institutional network rates, (3) the City's capital investment in the Network, including the City's payment of annual maintenance and repair of the Network, and (4) technology and network elements. In no event shall the termination or abandonment of the Franchise Agreement or this Agreement in

any way modify or negate the City's Indefeasible Right of Use set forth in Section 2.7 herein.

10.3 Upon written request of City or OPTIC to review exhibits hereto, to be made not more frequently than annually, the Parties shall review such exhibit or exhibits identified in the request and engage in good faith negotiations to modify or adjust the terms thereof.

10.4 This Agreement will be reviewed in the same manner as the Franchise Agreement. The City and OPTIC may conduct a review of the document to ensure that the Agreement continues to effectively serve the Parties in the light of new developments in the management and Maintenance of the Network. If, after completion of such review, the City and OPTIC agree that the public interest would be served by modifying certain obligations of the Agreement, such modification may be made as mutually agreed.

#### **ARTICLE 11. FORCE MAJEURE**

11.1 In no event shall a Party have any claim or right against the other Party for any failure of performance due to causes beyond its control, including, but not limited to, acts of nature; fire; explosion; vandalism; criminal acts of third parties; storm; flood or other similar occurrences; any law, order regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over OPTIC, or of any department, agency, commission, bureau, corporation, or other instrumentality of any federal, state, or local government, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; riots, wars; strikes, lock-outs, work stoppages, or other labor difficulties; or supplier failures, shortages, breaches or delays.

#### **ARTICLE 12. REGULATIONS**

12.1 Each Party represents that it is not aware of any facts that would justify a complaint to the FCC or any state regulatory authority concerning the prices, terms or conditions of the transactions contemplated by this Agreement. The Parties also agree that in the event of a decision by a telecommunications regulatory authority at the federal, state or local level necessitates modifications in this Agreement, the Parties will negotiate in good faith to modify this Agreement in light of such decision.

**ARTICLE 13.  
ASSIGNABILITY**

13.1 Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, that no consent shall be required for assignment by a Party to an entity that either controls or is controlled by that Party. Notwithstanding the foregoing, in the event this Agreement is assigned by City to any third party, by assignment, operation of law or otherwise, which third party, prior to the assignment, has an agreement (the "Prior Agreement") with OPTIC or any of its affiliates for the provision of services, the services being provided shall continue to be governed by the Prior Agreement, and the Service provided hereunder shall continue to be governed by this Agreement, each without reference to the other.

**ARTICLE 14.  
MISCELLANEOUS**

14.1 This Agreement does not render either Party the agent or legal representative of the other Party and does not create a partnership or joint venture between City and OPTIC. Neither Party shall have any authority to agree for or bind the other Party in any manner whatsoever. This Agreement confers no rights of any kind upon any third party.

14.2 The failure of either Party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not be considered the waiver of any other term or condition of this Agreement.

14.3 No subsequent agreement among the Parties concerning the Service shall be effective or binding unless it is made in writing by authorized representatives of the Parties.

14.4 If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement.

14.5 This agreement shall be governed by and construed pursuant to the laws of the State of Kansas applicable to contracts made and to be performed in the State of Kansas without giving effect to the principles of conflict of laws of the State of Kansas. All parties to this agreement do hereby agree and submit to exclusive personal jurisdiction in Crawford County, Kansas, for the purpose of any judicial proceeding and do hereby waive any and all rights to contest jurisdiction and venue in Crawford County, Kansas, and any claim that such jurisdiction or venue is invalid.



## **Exhibit 1**

### **Description of Technical Standards and Testing**

#### **1.0 INTERFACE REQUIREMENTS**

##### **1.1 DS-3 Interface Requirements**

The Network Interface will be at a DSX-3 cross connect located in the I-Net User's DSX-3 environment.

##### **1.2 DS-1 Interface Requirements**

The Network Interface between OPTIC and City will be at an RJ-48 jack. The signal format shall be B8ZS. AMI shall be provided as an option. The frame format shall be that of the Extended Superframe (ESF). Super Frame (SF) frame format shall be provided as an option.

##### **1.3 OC-3 Interface Requirements**

The Network Interface will be at a SC/UPC single mode optical connector in the I-Net User environment.

##### **1.4 OC-12 Interface Requirements**

The Network Interface will be at a SC/UPC single mode optical connector in the I-Net User environment.

##### **1.5 OC-48 Interface Requirements**

The Network Interface will be at a SC/UPC single mode optical connector in the I-Net user environment.

##### **1.6 Ethernet Interface Requirements**

The Network Interface will be at an RJ-45 unshielded twisted pair connector in the I-Net user environment. The signal format shall be IEEE 802.3 10BaseT standard.

##### **1.7 OPTIC Splicing Standards**

After the initial splicing of the Fiber Termination Panel (FTP), each fiber

termination shall be tested using a 500 meter launch box and an Optical Time Domain Reflectometer (OTDR). This test shall verify that the connector loss meets or exceeds OPTIC standards.

After the fiber link is completed, it shall be bi-directionally tested with an OTDR from both ends. Where appropriate, the circuit shall be opened and tested from both sides of the FTP.

The fiber test results shall be downloaded onto a computer and analyzed with specialized software to verify OPTIC standards are met or exceeded. This test data shall be made available to the City for review.

OPTIC shall meet or exceed the following standards:

Fusion Splice = **0.1 dB**

Fiber Connector = **0.25 dB**

Fiber Attenuation = **0.35 dB/km @ 1310 nm - 0.25 dB/km @ 1550 nm.**

Fiber connectors and splices that do not meet OPTIC standards shall be repaired and retested in a commercially reasonable time period.

Each and every fiber connector shall be cleaned using the highest quality cleaning agent to insure that the fiber connector face is clear of any contaminants.

## 2.0 **TRANSMISSION PERFORMANCE SPECIFICATION**

2.1 Performance for connections shall meet the standards set forth in Exhibit 2.

## 3.0 **SYSTEM ACCEPTANCE CRITERIA**

3.1 End-to-end system performance.

The following acceptance tests will be conducted and copies provided to the City:

DS-1: DS-1 testing shall run for a 15-minute period. City shall accept a DS-1 circuit when it operates error-free over the 24-hour evaluation period and the overall availability is 99%.

DS-3: DS3 testing shall be end to end testing. Testing shall run a 1-hour period. City shall accept DS-3 circuit when it operates error-free over any 24-hour period and the overall availability, as measured over the 24-hour period, is 99%.

OC-3: OC-3 testing shall be end to end testing. Testing shall run a 1-hour period. City shall accept OC-3 circuit when it operates error-free over any 24-hour period and the overall availability, as measured over the 24-hour period, is 99%.

OC-12: OC-12 testing shall be end to end testing. Testing shall run a 1-hour period. City shall accept OC-12 circuit when it operates error-free over any 24-hour period and the overall availability, as measured over the 24-hour period, is 99%.

OC-48: OC-48 testing shall be end to end testing. Testing shall run a 1-hour period. City shall accept OC-48 circuit when it operates error-free over any 24-hour period and the overall availability, as measured over the 24-hour period, is 99%.

Ethernet: Ethernet testing shall be end to end testing. Testing shall run a 1-hour period. City shall accept Ethernet facility when it operates error-free over any 24 hour period and the overall availability, as measured over the 24-hour period, is 99%.

### 3.2 Equipment Alarm and Status Indication Functionality

All equipment alarm functions and status indicators provided by the equipment vendor will function properly under all simulated (non-destructive) alarm conditions.

## Exhibit 2

### Digital Network Circuit Availability Standards

- 1.0 Availability Objective per month: DS-1 - 99%  
DS-3 - 99%  
OC-3 - 99%  
OC-12 - 99%  
OC-48 - 99%  
Ethernet - 99%
- 2.0 Bit Error Ratio (BER): OC-3 - runs at  $10^{-9}$   
Alarm sounds at  $10^{-6}$   
  
OC-12 - runs at  $10^{-9}$   
Alarm sounds at  $10^{-6}$   
  
OC-48 - runs at  $10^{-9}$   
Alarm sounds at  $10^{-6}$
- 3.0 Maximum Consecutive Zeros (DS-1): 15
- 4.0 Error Bursts (BES): DS-3 - 1 per Day
- 5.0 Error Free Seconds (EFS): DS-1 - 99% in a 24 hour test period
- 6.0 Bi-Polar Violations: No more than 1 in a 24-hour test period
- 7.0 Clocking: Stratum 2 level clocking
- 8.0 Customer evaluation periods:  
Evaluation period for DS-1: 24 hours  
Evaluation periods for DS-3: 24 hours  
Evaluation periods for OC-3: 24 hours  
Evaluation periods for OC-12: 24 hours  
Evaluation periods for OC-48: 24 hours  
Evaluation periods for Ethernet: 24 hours
- 9.0 All circuits DS-1, DS-3, OC-3, OC-12 and OC-48 must meet applicable specifications contained in Bellcore FR-NWT-000440
- All Ethernet circuits shall meet applicable specifications contained in IEEE 802.2 and 80203 for Ethernet transparent bridges

## Exhibit 3

### Network Maintenance, Repair and Reporting

#### 1.0 PERFORMANCE MONITORING AND REPORTING

- 1.1 OPTIC shall be responsible for performing surveillance on the Network, excluding Dark Fiber Connections.

#### 2.0 MAINTENANCE AND REPAIR OF NETWORK SERVICES

- 2.1 Except as provided in Article 4 of the Agreement, any Maintenance and repair required on the Network shall be performed by OPTIC.
- 2.2 OPTIC shall perform all Maintenance and repair functions on the Network, up to the Demarcation Point, twenty-four (24) hours per Day, seven (7) Days per week. This includes only trouble Maintenance (Service restoration) functions. OPTIC's scheduled Maintenance will be performed during specified City Maintenance windows, except in the case of emergencies, in which case as much notice as is practicable will be given.
- 2.2.1 For Dark Fiber Connections, the City shall be responsible for notifying OPTIC of Dark Fiber Connection failures and the need for repair.
- 2.2.2 In the event the City notifies OPTIC of a Dark Fiber Connection failure, OPTIC shall, provided that OPTIC is given access to the Dark Fiber: (i) begin restoration within four hours after the faulty connection is identified; and (ii) use commercially reasonable efforts to restore the connection no later than eight hours after failure.
- 2.2.3 If a safety problem exists, the restoration of the Dark Fiber Connection will not take place until the safety problem has been satisfied.
- 2.3 Specifications. Maintenance and repair of the Network will be performed so as to meet the manufacturer's specifications.
- 2.4 Any Maintenance or repair function performed by OPTIC on the Network which will or could affect Service provided to Network Users will be coordinated and scheduled with City surveillance system operations as practical and feasible for OPTIC. City shall provide and update a list of City contacts for Maintenance and escalation purposes. All communication regarding the provision, installation, operation, Maintenance, and repair of the Network will be coordinated and conducted between the City and OPTIC.

Network Users must make all requests for Service, Maintenance and repair through the City and not directly with OPTIC

2.5 Response & Repair Times. Except as provided in this Agreement, in the event of a Service Outage, OPTIC is to have repair personnel, when site access is granted, on site within three (3) hours after receiving notification of the Service Outage from City, or autonomous monitoring from a Columbus Telephone Company Services Assurance (SA) individual or system or its future equivalent. OPTIC shall restore the Service as follows:

- (i) OPTIC's SA will notify City's designated personnel within thirty (30) minutes of a Network outage alarm (excludes Dark Fiber). City is responsible for Network User notification.
- (ii) Electronic Restoration: In the event of an electronic failure, OPTIC shall use its best efforts to restore service within 1 hour of arrival of maintenance personnel on site.
- (iii) Fiber Cable Restoration: In the event of a cable failure, OPTIC shall begin cable restoral within three (3) hours after the faulty cable is identified. OPTIC shall use its best efforts to restore the cable no later than six (6) hours after failure.

2.6 OPTIC shall maintain a twenty-four (24) hour a Day, seven (7) Day a week point-of-contact for City to report Network troubles.

2.7 Equipment Spares. Except for Dark Fiber Connection Service, OPTIC will provide all Maintenance equipment spares plus repair and return of defected parts. In general, City and Network Users are not required to provide equipment storage space in City or Network User facilities over and above storage space available in Network User equipment racks.

2.8 Scheduled Maintenance.

2.8.1 Scheduled routine Maintenance will be performed during specified City maintenance windows and will be coordinated between OPTIC and City.

2.8.2 Maintenance of the Network which may jeopardize or require downtime of the Communications Network will normally be performed during the "Maintenance Window" of 12:00 midnight and 6:00 a.m. or a time mutually agreed to by City and OPTIC. City's Maintenance requests must be made at least 72 hours in advance unless otherwise agreed to by the Parties.

2.8.3 OPTIC maintenance personnel will notify City prior to beginning scheduled Maintenance work and must receive concurrence, which shall not be unreasonably withheld, to proceed. OPTIC personnel will notify City upon completion of scheduled Maintenance work and receive concurrence that all Service is fully operational.

2.9 Access to Equipment and Facilities.

2.9.1 Employees or agents of OPTIC shall have escorted access to any Network equipment or facilities at a City or Network User Premises, subject to Network User's or City's access and security regulations. These shall include, but not be limited to:

Proper Picture Identification  
OPTIC Authorized Personnel List  
Restricted Area Access Provisions  
Accompaniment by Network User/City personnel  
OPTIC employees or agents, while on City or Network User Premises, shall comply with the Network User and/or City rules and regulations.

2.9.2 Upon request, employees or agents of City shall be given escorted access to areas at OPTIC locations containing facilities and/or equipment associated with the Network , subject to OPTIC's access and security regulations. These shall include, but not be limited to:

Proper Picture Identification City  
Authorized Personnel List Restricted  
Area Access Provisions  
Accompaniment by OPTIC  
personnel

City employees or agents, while on OPTIC premises, shall comply with OPTIC's plan rules and regulations.

2.9.3 City shall have the right to be present during OPTIC equipment testing, and during scheduled and non-scheduled Maintenance and repair activity. City will notify OPTIC in advance of such requests.

## **Exhibit 4**

### **Ordering Procedures for Network Services**

1. The City receives a service inquiry and issues a Network Service Application to the approved requesting agency.
2. The requesting agency completes application with desired date for activation and returns it to the City.
3. The City contacts OPTIC to review the application.
4. OPTIC shares inquiry with Broadband Services engineering to evaluate application, check for available network capacity, and contacts construction engineering for outside plant expansion estimation, if an extension of the network is required.
5. If the requesting agency is currently operating on the City's digital Network, and is requesting additional capacity, the existing equipment would need to be upgraded. If the network capacity can handle the upgrade request then OPTIC's Broadband Services can complete the estimate and move to Step # 8.
6. If the request is not possible, OPTIC will discuss the inquiry results with the City.
7. OPTIC will contact construction engineering and Broadband Services to schedule a field visit with the City. Together they determine the best route for entering the Institution, and decide on the type and location of the equipment.
8. After the application is evaluated, the Broadband Service personnel will complete a network design and establish cost estimate for Broadband Services equipment, including the installation, testing and provisioning.
9. Construction engineering and Broadband Services completes the cost estimates, design and tentative construction schedule. The Network coordinator then compiles the cost estimates. After reviewing the information the estimate is totaled, summarized and provided to the City to distribute back to the requesting agency.
10. If at any time, there are questions about the estimate, design, or construction plans, the requesting agency has the opportunity to contact the City and coordinate a meeting to resolve any issues.
11. When the requesting agency approves the invoice and wishes for the work to begin, a network service agreement is signed with a service activation date by the City and OPTIC with the requesting agency.

12. OPTIC assigns the project a Job Order Number under the billable Network work order.
13. OPTIC Broadband Services group will coordinate the ordering and the delivery of the Broadband Services equipment and its installation.
14. OPTIC Construction Engineering to provide the fiber installation. Construction will also coordinate the installation between the outside of the institution to the demarcation point.
15. Some coordination may be needed to have the agency's maintenance department or contractor install a 2 inch conduit from the outside where the fiber optic meets the building to the inside where the demarcation location has been determined.
16. The construction department will then have a Job Order to provide the installation of the fiber optics and the splicing. This will include working with OPTIC's fiber optic specialist to tie into the network and the splicing of the pigtailed at the customer termination shelf.
17. OPTIC will track the construction cost and see that the fiber documentation is completed and on file for the network technicians and the City.
18. With completion of the fiber optic construction the OPTIC Broadband Services group will handle the installation of the broadband Service Equipment and turn up the system.
19. After OPTIC's Broadband technicians have had enough time to finalizes the circuit, provisioning and testing, they will notify OPTIC and inform him that the circuit is available for service.
20. Start of Service Date. For the Digital Network, "Start of Service Date" for Service shall be the later of (i) the date requested by City for Service to commence, or (ii) the date after Circuit testing and Acceptance has been completed per this Agreement.
21. As the Service provisioning is complete, the final bill will be compiled by OPTIC and sent to the City for payment. When the payment is received, it will be deposited in the account of the billable Network work order.

## **Exhibit 5**

### **Dedicated Transport Services and Service Descriptions for On-Net Services**

#### **1.0 Dedicated**

Each Transport Service is dedicated to the City and Network User. Usable bandwidth for each Service is available to City for its use, twenty-four hours a Day, seven Days a week.

#### **2.0 DS1 Service**

DS1 Service is a dedicated, high capacity, full duplex channel with a line speed of 1.544 Mbps isochronous serial data having a line signal format of either Alternate Mark Inversion (AMI) or Binary 8 Zero Substitution (B8ZS) and either Superframe (D4) or Extended Superframe formats.

#### **3.0 DS3 Service**

DS3 Service is a dedicated, high capacity, full duplex channel with a line speed of 44,736 Mbps isochronous serial data having a line code of bipolar with three zero substitution (B3ZS). DS3 Service has the equivalent capacity of 28 DS1 Services at 1.544 Mbps.

#### **4.0 OC3 Service**

OC3 Service is a dedicated, point to point, high capacity, full duplex channel with a line speed of 155.52 Mbps synchronous serial data. OC3 Service has the equivalent capacity of 3 DS3 Services, 84 DS1 Services, or 2,016 DSO services.

#### **5.0 OC12 Service**

OC12 Service is a dedicated, point to point high capacity, full duplex channel with a line speed of 622.08 Mbps synchronous serial data. OC12 Service has the equivalent capacity of 4 OC3 Services, 12 DS3 Services, 336 DS1 Services.

#### **6.0 OC48 Service**

OC48 Service is a dedicated, point to point, high capacity, full duplex channel with a line speed of 2,488 Mbps synchronous serial data. OC48 Service has the equivalent capacity of 4 OC 12 Services, 16 OC3 Services, 48 DS3 Services, and 1,344 DS1 Services.

#### **7.0 Ethernet Service**

Ethernet Service is a dedicated packet transport service, conforming to the physical and data transport layers of the international communications model. The service may be

provided in point-to-point or point-to-multi-point configuration. The service bundles the transmission capacity of one to eight DS-1 services. The available bandwidth is set and tested per the requirements of the user.

## **Exhibit 6**

### **Network Maintenance Costs**

#### **1. Digital Network Maintenance**

The Digital Network is supported by a SONET (synchronous optical network) platform which is reliable and protocol-neutral for accommodating multiple transport methods. SONET is an industry standard that provides interoperability between different vendors' products, can carry higher level protocols including IP and has built-in support for ease of management and maintenance.

Each shelf and circuit installed, tested and documented by OPTIC shall receive the following:

- A. Site visits (battery and power supply tests, inspection and verifying environment) at a rate of one hour every three months.
- B. Upgrades of shelf operating system software twice per year at one hour each occurrence. These upgrades are required to add new features and capabilities, and remain consistent with all OPTIC Communications Network devices.
- C. Upgrades of surveillance system software, once in the first year and as needed thereafter. These upgrades provide centralized monitoring features and capabilities consistent with all OPTIC Communications Network devices.
- D. Network Service Assurance (SA) provides 24 hours per Day/7 Days a week surveillance and monitoring equivalent to one half hour per month. Dispatch to address service and Network issues as needed.
- E. Emergency response which includes replacing one common electronics card at a rate of once every three years and replacing one circuit interface card at a rate of once every three years for each circuit. This response also includes maintaining emergency replacement inventory.
- F. Emergency readiness which includes technicians, vehicles, test equipment, tools and administration of same.
- G. Telecordia Common Language licensing (CLLI / CLFI / CLCI / Clones) of circuits is included in the monthly fees.

**2. Network Fiber Maintenance:**

OPTIC offers the City the benefit of incremental costs for technical services and maintenance on the Network, which increases with the addition of institutions benefitting from Network services. The Network fiber maintenance costs are related to fiber constructed in easements and along rights-of-way and the ongoing maintenance involved with fiber relocations, pole maintenance, fiber management and documentation, and the necessary resources available to resolve fiber issues 24-hours a Day/ 7-Days a week.

**4. Network Fixed Annual Costs:**

City shall remit to OPTIC \$1,325.00 annually for each network user, beyond direct costs as outlined in Article 5, as payment for maintenance of the system. Third party consultation and consultation beyond the normal course of business as requested by City will be billed as Direct Costs per Section 5.1.D of the Agreement. City shall remit to OPTIC \$10,500 annually or an agreeable exchange of city owned fiber duct for use by OPTIC for the benefit of linking Pittsburg with the surrounding municipalities, including the local law enforcement apparatuses.

**5. Emergency Maintenance activities to be billed time and materials by OPTIC to the City, include:**

- A. Repairs and/or facilities replaced due to storms, natural disasters, car/pole accidents, vandalism or other required repair due to conditions out of OPTIC's control.
- B. Overhead to underground conversions.
- C. Fiber relocations.

**NETWORK SERVICES AGREEMENT BETWEEN  
THE CITY OF PITTSBURG AND  
CRAW-KAN TELEPHONE**

**Dated July 28<sup>th</sup>, 2015**

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## NETWORK SERVICES AGREEMENT

THIS MASTER NETWORK SERVICES AGREEMENT (“Agreement”) is made and entered into this 28<sup>th</sup> day of July, 2015, by and between the City of Pittsburg, a municipal corporation operating under the laws of the State of Kansas (hereinafter “City”) and Craw-Kan Telephone (hereinafter “CKT”). As used herein, the terms “Party” or “Parties” shall refer to City and CKT individually or jointly as indicated by the context in which used.

### WITNESSETH:

**WHEREAS**, CKT owns, operates, and maintains a communications network, as defined herein (“Network”) and has entered into a franchise agreement (“Franchise”) with the City, pertaining to that communications network; and

**WHEREAS**, CKT has constructed and currently maintains and/or repairs as part of its communications network an institutional network connecting communities in the region and is comprised of (i) a fiber optic digital network (“Lit Fiber”) providing telecommunication and network services and (ii) dark fiber connections (“Dark Fiber”) where requested; and

**WHEREAS**, this Agreement is intended to specify the rights and obligations of the City and CKT with regard to the provision of network services, including future construction, operation and maintenance, standards of reliability and response time for repair, technical network management, and status monitoring requirements.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties hereby mutually agree to the terms of this Master Network Services Agreement as follows:

## **ARTICLE 1. DEFINITIONS**

1.1 The terms used in this Agreement shall have their normal or common meaning, unless otherwise specifically defined herein and except that the following terms shall have the following meanings for the purpose of this Agreement:

A. Acceptance or Accepted. As applied to the Network, City will be deemed to have given its "Acceptance" or to have "Accepted" a Circuit on the earliest date of: (i) when testing pursuant to Article 3.0 of Exhibit 1 has been successfully completed; (ii) when City puts the Circuit into production service; (iii) twenty (20) days past the scheduled due date for City to notify CKT of its Acceptance, if no such notice has been provided; (iv) or, in the event of an expedited order, the scheduled due date for City to notify CKT of its Acceptance if no such notice has been provided.

B. Agreement. "Agreement" shall mean this Network Services Agreement, which covers the Lit Fiber and Dark Fiber Connections and includes all referenced and attached exhibits.

C. Circuit. "Circuit" shall mean the individual telecommunications facility included as part of the Network Service.

D. Communication Network. "Communication Network" shall mean that network owned, operated, and maintained by CKT, consisting of redundant fiber optic backbones, redundant fiber optic service loops and other distribution cables on which numerous applications are provided, which network includes, but is not limited to, two-way communications services, commercial retail cable television, wholesale Internet services, wholesale data transport services, and Network Services.

E. Community Anchor Institutions. "Community Anchor Institutions" shall mean schools, libraries, hospitals and other medical providers, public safety entities, institutions of higher education, and community support organizations and agencies that provide outreach, access, equipment and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, the unemployed and the aged.

F. Connection. "Connection" shall mean the individual point-to-point connection included as part of the Network Service.

G. Dark Fiber Connection. "Dark Fiber Connection" shall mean an unlit fiber connection with no equipment attached or provisioning of services provided by CKT. Said Dark Fiber Connection may be lit by City or its designated Qualified Network Users.

- H. Day. "Day" shall mean a calendar day.
- I. Demarcation Point. "Demarcation point" shall mean the patch panel, termination block or other termination device located within each Network site, at the point on that equipment closest to the service loops.
- J. Demarcation Site. For the Network, the "Demarcation Site" shall mean the Demarcation Point or equivalent premise side of a Network location at the Network User's facility main point of entry.
- K. Digital Network. "Digital Network" shall mean the fiber optic digital network as defined in Section 2.2.A herein.
- L. Direct Costs. "Direct Costs" shall be defined as set forth in Section 5.1.D herein.
- M. Emergency Maintenance. "Emergency Maintenance" shall mean Maintenance that cannot be accomplished during scheduled maintenance windows. Emergency Maintenance may be required by CKT to avoid damage to the Communications Network or serious degradation or loss of service.
- N. Ethernet Service. "Ethernet Service" shall mean a dedicated packet transport service, conforming to the physical and data transport layers of the international communications model. Ethernet Service may be provided in point-to-point or point-to-multi-point configuration. The available bandwidth is set and tested per the requirements of the user.
- O. Ground Block. For purposes of the Network, "Ground Block" shall mean and refer to the equipment device located inside the Network User communications closet or outside User premises to bond plant/electronics to a Power neutral conductor, offering protection of User premises from outside interference and providing a test point to determine service quality on either side.
- P. Network. "Network" shall mean the institutional network infrastructure, consisting of the Lit Fiber and Dark Fiber Connections, as contemplated under this Agreement.
- Q. Network User. "Network User" shall mean a qualified and designated user to whom City allows video, voice and/or data services to be connected and provisioned via the Network and maintained under this Agreement. (See also Section 2.7.B regarding "Qualified Users.")
- R. Indefeasible Right of Use or IRU. "Indefeasible Right of Use" or "IRU" is the exclusive, irrevocable and perpetual right to use the Network subject to the terms and conditions of this Agreement.

S. Interface Equipment. "Interface Equipment" means any device or system capable of transmitting video, voice and/or data traffic to the Network or capable of receiving information from the Network.

T. Maintenance. "Maintenance" shall mean and refer to routine and ordinary testing and repair of the Network and appurtenances.

U. Manage. "Manage" is defined as monitoring, administering, and/or controlling traffic on a network to enhance capabilities and efficiencies.

V. Master Control Center. "Master Control Center" is the CKT central location for processing Network traffic and programming, which will be located in Pittsburg, Kansas. No other facility shall be considered a Master Control Center.

W. SA. "SA" means the Craw-Kan Telephone Service Assurance representative or system.

X. Network Interface. "Network Interface" shall mean the point within a Network User's premise at which Network services are delivered to the Network User.

Y. PEG Channel. "PEG Channel" shall mean a television channel dedicated to public, education or government access programming.

Z. Planned Service Outage. "Planned Service Outage" shall mean any Service Outage caused by scheduled Maintenance or planned enhancements or upgrades to the Network. For the Network, such scheduled Maintenance, planned enhancements or upgrades are described in Exhibit 3.

AA. Premises. "Premises" shall mean the address to which Service is provided to the Demarcation Point at which CKT's responsibility to provide equipment and Service ends and where City's or Network User responsibilities begin.

BB. Provision. "Provision" shall mean the act of establishing a Circuit on the Network, including testing, software configuring, setting options, and establishing interfaces.

CC Qualified Network User. "Qualified Network User" shall mean: (i) the City Municipal facilities; the Pittsburg Law Enforcement Center and regional law enforcement entities; Pittsburg Unified School District 250 and affiliated schools; Pittsburg State University; hospitals, clinics, and all other medical facilities; and regional anchor institutions and (ii); entities that CKT and the City mutually agree may use the Network.

DD. Service. "Service" shall mean CKT-provided consultation, design, construction, provisioning, testing and activation, monitoring, maintenance and repair relative to the Network, as agreed to by City and CKT.

EE. Service Outage. "Service Outage" shall mean a disruption or degradation of Service.

FF. Franchise Agreement. "Franchise Agreement" shall mean the agreement, adopted as a City Ordinance, allowing CKT to operate a telecommunications franchise as a company within the corporate limits of the City.

## **ARTICLE 2. OVERVIEW AND GENERAL OBLIGATIONS**

### **2.1 INSTITUTIONAL NETWORK (NETWORK) OVERVIEW**

CKT has designed and constructed a Communications Network that includes, *inter alia*, a fiber optic network, and may include a cable television system ("Cable System"), and a telephone system in the future. The Communications Network consists of a backbone to hubs, service loops to nodes, and distribution networks (including drops) beyond the nodes (referred to below as the optic rings, loops and distribution networks, as applicable). The Network is capable of low- and high-speed data communications, and may become capable of full bi-directional video, and voice in the future (including, by way of example and not limitation, closed circuit applications).

CKT is responsible for the Maintenance of the infrastructure of the Network, except Dark Fiber Connections, as more specifically provided herein. The City shall pay the Direct Cost of the construction, equipment installation, and the Maintenance of the Network components designed and installed for its use, as more fully described herein.

### **2.2 NETWORK COMPONENTS**

The term Network or Institutional Network refers to all parts of the Network, collectively, and includes the following components:

A. Digital Network. The Digital Network, shall consist of:

(i) **Fiber Backbone**. The backbone consists of separate tubes of optic fibers terminated or spliced as currently installed or as requested by the City.

(ii) **Service Loops**. Service loops consist of: (1) Fiber; (2) service

loops, terminated or spliced, consisting of interface via a hub to the backbone; (3) service loops to Network nodes; and (4) Network fiber splice and termination equipment at the nodes or other appropriate splice points approved by CKT.

(iii) **Distribution System and Drop Fibers.** Distribution and drop fibers from the nodes to all designated Network user sites (currently installed or as directed by the City) along with such fiber node terminations, electronics, and user location terminations, as may be identified by the City.

(iv) **Equipment.** Electronic devices on the Network required to provide the activated capacity that the City may request from time to time and devices that are co-located with residential cable nodes consistent with design(s) previously approved by the City. For future installations, Network electronics will be co-located with residential cable nodes if the design approved by the City so designates or where it is physically impossible to co-locate, the Network electronics would be located nearby. For future Optic Network installations and upon City's request, user equipment selected by the City will be installed by CKT, at designated Network user sites. City shall not be obligated for any installations not for its exclusive use. Any other equipment that is useful for the operation of the Digital Network will be selected and purchased by CKT and installed at appropriate points on the Digital Network, as provided in Section 4.1 herein.

B. **Dark Fiber Connections.** Unlit fiber connections from the Communications Network to sites designated by the City for City's provisioning of video, voice and data services.

### 2.3 CAPACITY PROVISION

Usage of the CKT backbone shall be provided by CKT to the City for a reasonable fee, and shall include a minimum use of OC-12 capacity throughout the term of this Agreement, for purpose of connecting to community anchor institutions. Additional fiber optic backbone usage connecting community anchor institutions, up to a total of OC-24 capacity, shall be provided to the City by CKT during the term of this Agreement upon request by the City for a reasonable fee; provided, however, that during any period when CKT has increased its own business to the point where CKT has a bona fide need for the capacity being used by the City, CKT may, upon one hundred twenty (120) days' notice, reduce the City's capacity as needed, but such capacity may not be reduced below the OC-12 capacity. The City shall have the option to purchase capacity beyond what is provided for in this section, at standard market rates. CKT shall ensure that the City, other cities and community anchor institutions that are entitled to interconnect to the backbone capacity are able to connect optic fibers from the Digital Network at appropriate splice points and hubs to utilize the capacity specified under this section. CKT's obligations under this subsection consist of providing capacity, alone, shall not enlarge or create new

duties to community anchor institutions beyond the existing duties created by law, and shall not affect CKT's ability to coordinate with the Universal Service Administrative Company and its Lifeline program as it sees fit.

## 2.4 NETWORK INTERCONNECTION

CKT will continue to provide all Digital Network connections installed as of the effective date of this Agreement and will provide Digital Network connections at any additional site(s) designated by the City, which will allow for Interconnection with the City's existing fiber infrastructure. The City shall pay for the direct costs associated with connections provided for its use.

## 2.5 NETWORK CO-LOCATION

During the term of this Agreement, upon CKT's written consent, which shall not be unreasonably withheld, when installed to benefit the City's use of the Network, the City will be permitted to place, or CKT will place at the City's request and expense, necessary transmission electronics associated with Network operations at appropriate locations on or adjacent to the Communication Network and at the headend and hub facilities; PROVIDED THAT, the City must provide detailed plans and schematics of the installation to CKT at least ten (10) days in advance and the City will make every reasonable effort to ensure that the proposed transmission electronics will not interfere with the Network or any part thereof, and will not create any interference with existing equipment. In the event of interference, the City will restore the transmission electronics to a previous, non-interfered state within ten (10) days. Additionally, the Parties agree there will be appropriate limitations on this right, based on CKT's commercial needs, including pole attachment considerations, safety considerations, and operational considerations; however, such limitations must be designed only to facilitate reasonable non-interference with CKT's operations, not to prevent the City's intended use of the Network. Commercially reasonable efforts will be made to provide space within the existing plant which may include a relay bay identified for the sole purpose to be identified as that of the City and the City shall pay the Direct Costs of such accommodations.

## 2.6 GENERAL SERVICE AND TECHNICAL MANAGEMENT

### OBLIGATIONS

A. General Responsibilities. During the term of this Agreement, and except as otherwise specified in Article 4 herein:

(i) CKT will be responsible for maintaining the Digital Network to the Demarcation Points at Network locations so that the Network has a high level of reliability, comparable to the reliability of well-maintained telecommunications systems used for functions similar to those for which

the Network is currently used.

(ii) CKT will provide repairs on Dark Fiber Connections, upon notification of such requirement by the City within thirty (30) days, as CKT monitoring of that portion of the Network may not be possible. In such event, the City shall pay the Direct Costs of such repairs.

(iii) CKT will continue to maintain and repair the Network in a manner consistent with good engineering practices, using qualified personnel. The City shall pay the Direct Costs of such maintenance and repairs to the Network beyond the demarcation point.

B. Technical Management. During the term of this Agreement, and except as otherwise specified in Article 4 herein, technical management, status monitoring and repair will be provided for the Digital Network by CKT, unless the City specifies in writing that such assistance is not required. The City shall be solely responsible for technical management, status monitoring, and maintenance of equipment connected to City's Dark Fiber Connections on the Network and CKT will be responsible for repairs of Dark Fiber Connections per Section 4.2 unless the City specifies in writing that such repairs are not required.

## 2.7 NETWORK USE, GROWTH AND EXPANSION

A. Continued Use of Network. The City has an Indefeasible Right of Use of the Network described in this Agreement. Thus, in the event CKT ceases to operate or maintain the Network, the City shall have the right to operate and maintain the Network and shall have an absolute right to obtain access to and utilize any CKT facilities or equipment on the Network required to do so. In the event CKT were to voluntarily or involuntarily sell, lease, assign, transfer, abandon or otherwise seek to dispose of all or a portion of the Communications Network (the "Assignment"), the City shall have the Indefeasible Right of Use set forth in the Agreement allowing City to operate and maintain the Network as required and permitted under this Agreement. CKT hereby agrees that any Assignment of the Communications Network or this Agreement shall specifically include City's Indefeasible Right of Use of the Network. Expiration or termination of this Agreement shall not affect rights or obligations accruing prior to termination with respect to the Indefeasible Right of Use granted by CKT to City. Temporary lapses in maintenance or operation of a duration up to one month by CKT or its successors in title shall not trigger the Indefeasible Right of Use.

### B. Qualified Users.

(i) The Network may be used by the City and any Qualified Network User to provide any voice, video and data services other than for commercial business purposes in competition with CKT and/or its business

partners. This limitation shall not, however, be deemed to prohibit City or Qualified Network User use of the Network within CKT's service territory for: (a) any bona fide municipal, public safety, educational or public purpose; (b) provision of internet services and/or access to the public for such municipal, public safety, educational and public purposes. The City agrees to require all Qualified Network Users to stipulate and agree to the foregoing limitation.

(ii) Fees may be charged to Network Users by the City for use of the Network or for the information transmitted via the Network in order to recover Network-related costs. However, the City will not charge CKT any transportation, Maintenance, or operation fees (as set forth in a user agreement) for mutually agreed upon uses by CKT of the City's Network, defined as that part of the Network designed and installed for the City's use.

C. Network Description. The City and CKT will maintain and continually update the existing working documents describing the Network, which includes, but is not limited to, Network addresses, infrastructure, and equipment information.

D. Growth and Expansion Options. The Parties recognize that changes in technology or user needs may present the opportunity to extend or enhance the capacity of the Network. CKT and the City shall cooperate in investigating, considering, and negotiating payment for such enhancements.

E. Future Network Design and Construction. The City may request CKT to upgrade the Network, construct additional Network plant, or add, remove or replace Network equipment at any time. After receiving a request for additional Network work, CKT will provide the City an estimate of the Direct Costs associated with the additional work within thirty (30) days. If the City then directs CKT to perform the work, CKT will perform it. Any such work shall be performed and completed within one hundred and twenty (120) Days after the City directs that the work be performed, unless the Parties agree to a different completion date. If CKT decides to install additional plant to areas or sites not included in its existing plant as of the date of this Agreement or in the node maps previously approved by the City, CKT will give the City reasonable notice of such decision together with routing information and Direct Cost estimates sufficiently far in advance so that the City may establish requirements for Network construction or upgrade to such areas or sites, and have those requirements implemented as part of CKT's additional plant construction. If CKT fails to provide the required notice, it will, upon request, design and construct such improvements as are necessary to accommodate the City's Network requirements at a cost which does not exceed the Direct Costs the City would have incurred had CKT provided the required notice to the City.

F. Relation to Other Networks. If the City and/or CKT has a relationship with another cable system or communications network, the Network may be linked to such other system or network so long as the Network use complies with Section 2.7.B(i) herein. CKT shall, at the direction of the City, allow any municipal

jurisdiction into which the Communications Network is extended to connect to the Network on CKT's ring, at a convenient hub or splice point within such jurisdiction, so that the jurisdiction can utilize the capacity for bi-directional video, voice or data transmissions to and from the Network and any institutional network or similar network in that jurisdiction. CKT shall be responsible for all costs associated with providing the ring activated capacity up to OC-12 capacity. The jurisdiction which is connecting to the Network on the ring is responsible for the cost associated with providing a connection from the jurisdiction to the hub or splice point. CKT shall not be responsible for any costs for any Network end-user equipment required to utilize the connection between the jurisdiction and said hub or splice point and/or any Network end-user equipment required to utilize that connection.

### **ARTICLE 3. SERVICE**

#### **3.1 DIGITAL NETWORK SERVICE**

The following provisions of this Section 3.1 shall apply to Digital Network Services.

A. CKT shall be responsible for Digital Network design and construction, and shall see that the Digital Network is maintained, repaired and operated in a manner that fully complies with industry standards as described in Exhibits 1, 2, 3, 4 and 5.

B. City, assisted by CKT, shall develop and maintain complete documentation of Network related equipment. Documentation shall include available plans, sketches, equipment inventory, operating parameters, wiring diagrams and accessibility information. Each Network User must provide the City with all information reasonably requested by CKT regarding the Network User's site, which information will be made available to CKT. Unless agreed upon by the Parties, all communications with the Network user shall be made by, or with the express permission of, the City.

C. Working closely with the City, CKT shall establish a sufficient inventory of parts to accommodate ongoing Maintenance and repair of the Digital Network.

D. City shall be responsible for or reimburse CKT for the Network "extraordinary maintenance" costs associated with the portion of the Digital Network directly benefitting the City. These expenses include, but are not limited to, shipping and repair charges for failed circuit packs, replacement of stolen or damaged electronic shelves and their constituent components (when such theft or damage is not due to the negligence of CKT), expenses associated with Network relocations/conversions for street related projects, and vacating rights-of-way and

easements.

E. Service to Network Locations. City shall order Service from CKT by following the “Ordering Procedures for Network Services” set forth in Exhibits 4. The applicable Maintenance charges shall be as set forth in Exhibit 6. Service to Digital locations shall include normal maintenance, inspection, repair and testing as provided in Article 4 herein.

F. Special Equipment Requirements.

(i) The City, with CKT, will develop and maintain a recommended equipment list in order to maximize Digital Network standardization, minimize procurement difficulties and simplify on-going operations and Maintenance. Equipment selected by CKT, at the City’s written request, will be installed at designated Network User sites. The City will be given the opportunity to purchase this equipment at the current prices available to CKT.

(ii) Upon the City’s written request and at the City’s sole expense, CKT will install network user equipment selected by the City at designated Network user sites.

(iii) The payment for the cost of any special Interface Equipment or facilities necessary to achieve compatibility, if required because of Digital Network User equipment, between telecommunications equipment of CKT and facilities of the Network User shall be at Network User’s expense unless otherwise agreed.

(iv) Interface Equipment used on the Communications Network are described in Exhibit 1, and follow common industry standards. The City, in conjunction with CKT, shall establish and maintain standards specifying Digital Network site Interface Equipment requirements. The City, with CKT, will develop and maintain a recommended equipment list in order to maximize Digital Network standardization, minimize procurement difficulties and simplify on-going operations and Maintenance.

G. Equipment and Installation for Digital Network Services.

(i) CKT shall specify, design, purchase, install, operate, provision, maintain, and repair, the telecommunications equipment necessary to allow Digital Network Services in support of identified City applications. Except as provided in Section 3.1.F herein, City shall pay the cost of purchasing and installing all telecommunications equipment necessary for Service to the City.

(ii) CKT will provide telecommunications equipment and Service to the Demarcation Site. Within the corporate City limits, the City shall be responsible

for the procurement and maintenance of all rights-of-way and any necessary private or public easements or licenses required for the installation of CKT's equipment. Outside the corporate City limits, the City will make arrangements with other jurisdictions for the procurement of rights-of-way and private or public easements or licenses required. The City's agreement with Network Users will permit City, CKT and their respective personnel and contractors sufficient access rights to install and locate Digital Network facilities and equipment on such user's property.

(iii) Notwithstanding any provision of this Agreement to the contrary, if City provides its own telecommunications equipment, CKT shall have no obligation to install, maintain or repair such City equipment.

(iv) The City shall not modify, repair, adjust, replace or add to Network related wiring, cabling, connections or equipment without prior consultation with CKT, providing detailed plans and schematics to CKT, and approval by CKT. The City may add new Network sites pursuant to Section 2.7.D and E, and/or Section 5.1.B(v). New site development may require CKT participation. Payment of all Direct Costs for expansion of CKT facilities for the City's direct use, including Network fiber optic equipment, other site equipment, Network Hub and/or node changes is the responsibility of the City.

(v) After CKT has installed Digital Network related telecommunications equipment for the City's use, ownership of the equipment shall remain the sole and exclusive property of the City or Network User, and nothing contained herein shall give or convey ownership to CKT. When City's equipment is installed along with CKT's equipment, then both shall prominently affix identifying plates, tags or labels on such telecommunications equipment showing City's and CKT's respective ownership thereof. Neither Party shall tamper with, remove or conceal such identifying plates, tags or labels, nor knowingly allow third parties to do so.

#### H. Test and Performance Standards for Digital Network Services.

CKT shall at all times comply with the test and performance standards set forth in Exhibits 1 and 2.

### 3.3 DARK FIBER CONNECTIONS

CKT shall be responsible for constructing Dark Fiber Connections upon request by City, pursuant to provisions in Section 2.7.D and E, including the payment of costs provided for therein, and as otherwise provided in the Agreement.

### 3.4 WARRANTIES/ACCEPTANCE

The Acceptance of the Network system or any component thereof, or payment therefore, shall not waive any defect in the work or constitute Acceptance of work or equipment not in compliance with the applicable design and specification requirements. CKT shall provide in its contracts for warranties of the work and equipment satisfactory to the City and will provide for the enforcement of such warranties and for the correction of work or equipment not provided in accordance with applicable design and specification requirements or which is otherwise defective.

#### A. Warranties and Network Standards.

(i) The Parties agree that if CKT determines, or at the request of the City, that an emergency action is necessary to protect either the Communications Network or the Network, CKT may block any transmission path over the Network. The Parties further agree that none of their respective obligations to one another under this Agreement shall be affected by any such blockage, and that no Party shall have any obligation to the other Party for any claim, judgment or liability resulting from such blockage. If City objects to the blockage, the Parties shall immediately meet to review the matter and, if the Parties are unable to agree upon a mutually acceptable course of action, the matter will be referred to the City's City Manager and CKT's General Manager to issue a final decision.

(ii) CKT represents and warrants to City that except for Dark Fiber Connections: (i) the Service provided over the Network shall meet the standards set forth in Exhibits 1 and 2, other than for reasons of Planned Service Outages, or reasons set forth in Article 11 hereof; and (ii) the Circuits connecting two locations shall have a physically diverse path (except with respect to laterals off the backbone and building entrances).

## ARTICLE 4. MAINTENANCE AND REPAIR OF NETWORK

### 4.1 MAINTENANCE AND REPAIR OF NETWORK

Maintenance and repair of the Network serving the City and Network Users shall be performed by CKT in accordance with the provisions of Exhibit 3. Except as otherwise specifically provided for in this Section 4.1, any Maintenance and repair required on CKT's Communication Network shall be performed by CKT.

A. CKT shall perform all Maintenance and repair from the Network User Premises to and from the Master Control Center twenty-four (24) hours per Day, seven (7) Days per week, as necessary.

B. CKT is responsible for inventorying spare components of the Network, delivering the parts to the repair site and for shipping the failed component back to the manufacturer for repair or replacement. The City is responsible for the cost to repair the portion of the Network directly benefiting the City. Repair costs will be provided to and approved by the City prior to work being done on its portion of the Network.

C. Response and Repair Times. Except as otherwise provided in this Agreement, in the event CKT identifies a Service Outage, CKT shall have repair personnel, when site access is granted, on site within three (3) hours after identifying the outage. If receiving notification of the outage from the City, CKT shall have repair personnel on site within three (3) hours after receiving the notification. CKT shall restore the Service as follows:

(i) The City will contact the CKT technician on stand-by within thirty (30) minutes after identification of a Service Outage. City is responsible for Network User notification.

(ii) Electronic Restoration: In the event of an electronic failure, CKT shall use commercially reasonable efforts to restore service within four (4) hours of arrival of Maintenance personnel on site.

(iii) Fiber Cable Restoration: In the event of a cable failure, CKT shall begin cable restoration within three (3) hours after the faulty cable is identified. CKT shall use its best efforts to restore the cable no later than six (6) hours after failure. If a safety problem exists, the restoration will not take place until the safety problem has been satisfied.

D. Scheduled Maintenance.

(i) Maintenance which may require system down time will normally be performed during the "Maintenance Window" of 12:00 midnight and 6:00 a.m., or a time mutually agreed to by City and CKT.

(ii) CKT Maintenance personnel will notify City forty eight (48) hours prior to beginning scheduled Maintenance work and must receive concurrence, which shall not be unreasonably withheld, to proceed. CKT personnel will notify City upon completion of scheduled Maintenance work and receive concurrence that all Service is fully operational.

F. Access to Equipment and Facilities.

(i) Employees or agents of CKT may require escorted access to any Network equipment or facilities at a City or Network User Premises, subject to City's, or such Network User's access and security regulations. These shall include, but not be limited to:

- Proper picture identification
- CKT authorized personnel list
- Restricted Area Access Provisions
- Escort by Network User/City personnel
- CKT employees or agents, while on City or Network User Premises, shall comply with the Network User and/or City rules and regulations.

(ii) Upon request, employees or agents of City shall be given escorted access to areas at CKT locations containing facilities and/or equipment associated with City's service, subject to CKT's access and security regulations. These shall include, but not be limited to:

- Proper picture identification
- City authorized personnel list
- Restricted Area Access Provisions
- Escort by CKT personnel
- City employees (non-CKT) or agents, while on CKT premises, shall comply with CKT's plan rules and regulations.

(iii) Upon request from City, CKT will inform City of scheduled and non-scheduled Maintenance and repair activity. City shall have the right, upon twenty-four (24) hours advance notice to CKT, to be present during CKT equipment testing, and during scheduled and non-scheduled Maintenance and repair activity.

4.2 REPAIR OF DARK FIBER CONNECTIONS.

A. The City shall be responsible for notifying CKT of Dark Fiber Connection failures and the need for repairs.

B. CKT shall be provided access to the Dark Fiber three hundred sixty-five (365) Days per year, twenty-four (24) hours per Day. In the event the City notifies CKT of a Dark Fiber Connection failure, CKT shall begin restoration within four (4) hours after the faulty connection is identified. CKT shall use commercially reasonable efforts to restore the connection no later than eight (8) hours after failure. If a safety problem exists, the restoration will not take place until the safety problem has been satisfied. City shall pay the Direct Costs of all such restorations set forth in this Section 4.2.

## **ARTICLE 5. BILLING AND PAYMENT**

### **5.1 GENERAL NETWORK PAYMENT ARRANGEMENTS**

A. Obligation to Pay. CKT will not charge for the Network or for the use of the Network by the City or Qualified Users, except as provided in this Article 5. The City will be obligated to make payments to CKT for Direct Costs for the Network only from Available Funds (as hereinafter designated).

(i) Available Funds. Available Funds shall mean any legally available funds. Nothing herein shall be construed to create general indebtedness of the City.

(ii) Cash Basis Law. The payments to be paid by the City to CKT can only be made from funds budgeted and appropriated for that purpose during the City's current budget year or from funds made available from any lawfully operated revenue source. The City shall make reasonable effort to budget funds as needed on an annual basis. In the event sufficient funds are not available and City is in default, this Agreement may be terminated with City having no further liability therein.

B. Manner of Payment.

(i) Maximum Amount. The Direct Costs payable herein shall not exceed the maximum amounts, as may from time-to-time be approved by the Pittsburg City Commission by resolution or ordinance.

(ii) Payments for Maintenance. Maintenance rates are specified in Exhibit 6 and shall be due and payable in accordance with Subsection 5.1.D below and Sections 5.2 and 5.3 below.

(iii) CPI Adjustment of Maintenance Costs. Beginning January 2017, and every subsequent two-year period thereafter, CKT will notify the City of the adjusted Network service rates to be effective the following January, which will begin a new budget cycle. Network rates will be adjusted using the Pittsburg, KS region Producer Price Index (PPI) for final demand from the prior year end.

(iv) Payments for Network Additions and Upgrades. Invoices for Network additions and upgrades may be submitted after the work requested has been completed, fully inspected and tested, passed all tests and found to be in conformity with the City's requirements for the addition or upgrade; and (to the extent that activation is requested by the City) activated.

(v) Payments for Service and Maintenance of New Technologies. As new services and technologies are introduced and implemented the Parties will negotiate in good faith associated rates and will otherwise amend this Agreement to address the relative obligations of each Party depending upon technologies involved.

C. Timing and Documentation of Costs. Upon submission by CKT in such form as may be required by the City of a proper invoice accompanied by a breakdown of Direct Costs, together with such evidence in support thereof as may be reasonably required by the City, the City agrees to make payments to CKT for Direct Costs incurred and paid by CKT for construction costs associated with completion of a node as work on the Network associated with that node is completed. Provided, however, all invoices and payments shall be subject to adjustment or withholding for any amounts found upon audit or otherwise to have been improperly invoiced or for failure to perform in a timely manner or in conformity with this Agreement. Work on a node area will be deemed completed when CKT has constructed the Network to all locations to which the improvement was designed and the work has been fully inspected and tested, passed all tests and been found to be completed in conformity with this Agreement and (to the extent requested by the City) has been activated. Work on the Network Backbone and Service Loops may be billed when work on the same (or a discrete and useable portion thereof) has been completed, that portion of the Network has been fully inspected and tested passed all tests and been found to be completed in conformity with this Agreement and (to the extent requested by the City) has been activated. CKT shall prepare and submit with each request for payment: (i) an itemization of the amount of work performed or items purchased and the amount of Direct Costs paid therefor; and (ii) a certificate that the work, materials and equipment for which payment is requested has been incorporated into the work and provided or completed, tested and inspected and the Network activated in accordance with the applicable design and specifications under which the same were to be provided.

(i) Terms of Payment. Payments for Direct Costs that are not subject to dispute or withholding will, from and after ninety (90) Days of receipt of a proper invoice and certificate for payment, accrue interest until paid at the rate equal to 1% per month; except that, the final payment of unpaid Direct Costs associated with construction of the Network shall be due within ninety (90) Days after completion of final testing and inspection of the Network, and activation of those portions that the City directs CKT to activate,

and after: (1) CKT has provided a certificate or other evidence satisfactory to the City that the node or other component for which final payment is sought has been completed in accordance with the applicable design and specification requirements and (2) CKT has provided a copy of the final construction certification acceptance tests demonstrating compliance with applicable design and specification requirements and FCC standards and (3) the City has Accepted such work and equipment.

D. Direct Costs. Direct Costs shall mean those costs which the City has agreed to pay under this Agreement and which CKT has properly documented as being incurred by CKT for the purposes for which CKT is entitled to payment hereunder. Direct Costs include:

- (i) Costs of necessary materials, equipment and hardware to add to or to upgrade the Network;
- (ii) Documented and required payments made by CKT to contractors for performing work on the Network;
- (iii) Costs of necessary licenses and permit fees, including rights-of-way construction permit fees and inspection fees, if any, related to the Network;
- (iv) Reasonable rental costs for the use of any necessary temporary facilities, or special machinery, equipment and hand tools used in the work on the Network;
- (v) Costs of removal of debris on the Network;
- (vi) Other costs incurred on the Network in the performance of the work if and to the extent approved in advance in writing by City.

E. Direct Costs do not include:

- (i) Salaries and other compensation of CKT 's employees;
- (ii) Overhead and general expenses, except as may be expressly included in Section 5.1.D above;
- (iii) CKT's capital expenses, including interest on CKT's capital, employed for the work;
- (iv) Costs due to the fault or negligence of CKT, contractors or subcontractors, anyone directly or indirectly employed by any of them, or for those whose acts any of them may be liable, including,

but not limited to, costs for the correction of damage, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, in making good damage to property not forming a part of the work.

(v) Pole attachment and conduit rental fees for poles and conduit owned or controlled by CKT.

## 5.2 SPECIFIC BILLING AND PAYMENT APPLICABLE TO DIGITAL NETWORK

A. As compensation for the Digital Network Services provided by CKT hereunder, City shall pay charges set forth in Exhibit 6. The Parties shall provide one another with reasonably requested information for bill documentation, including, but not limited to, the number of fibers, number of Network User sites, and number of active fiber miles with active transport Service. The Parties will cooperate to enable CKT to provide its billing information in an electronic file (i.e., in an Excel for Windows format). CKT shall bill for all Services rendered within forty-five (45) Days of circuit testing and acceptance as specified under the terms of this Agreement.

B. In the event City disputes any billing by CKT, City shall notify CKT in writing, providing the billing identification, and an explanation for the dispute, and shall nevertheless pay all charges not disputed in this manner within the period specified above. The Parties will cooperate in good faith to resolve any such disputes within a sixty-Day (60-Day) period after the dispute is submitted to CKT. If the dispute is not resolved during this period, then either Party may seek alternative dispute resolution, in accordance with Section 5.4.B herein.

C. The City may add new Network sites, pursuant Section 2.7.D and E herein. Network site development costs associated with the City or Network User's side of the Demarcation Site shall be borne by the City or Network User, respectively.

D. Monthly Digital Network Maintenance Costs are shown in Exhibit 6.

## 5.3 MISCELLANEOUS BILLING AND PAYMENT

### PROVISIONS A. Intent of Parties; Exceptions

(i) It is the intent of CKT and the City that where CKT (a) is constructing its plant to a particular location, (b) or installs excess facilities for use other than Network use (such as additional interduct or cable) when it

installs the Network, or (c) can be required to provide a free drop, the cost to the City of the Network which is provided to the same location will not include such costs as the cost of undergrounding, conduit, or other work, materials equipment or costs which CKT would have provided for or incurred had it constructed said plant, facilities or drop even if the Network was not provided to such location.

(ii) The City may request that, during the installation of facilities by CKT, additional capacity be included for the City's use. The City shall pay for the Direct Cost of adding the additional capacity.

B. Costs/Disputes

(i) If the administrative staff of the City and CKT disagree as to the amount to be paid by City to CKT for Network installation, Maintenance, repair or Service, under the terms of the Agreement, the matter shall be referred to the City's City Manager and Craw-Kan Telephone's General Manager for resolution.

## ARTICLE 6. INDEMNIFICATION

6.1 Except for liability specified in Section 6.1.E below, the City shall indemnify, defend and hold harmless CKT and its employees, directors, officers, and agents from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorney's fees) incurred as a result of:

A. Claims for damage to property and/or personal injuries (including death) arising out of the negligence or willful act or omission of City and/or Network User, and/or their respective officers, employees, agents or contractors; and

B. Except as otherwise provided herein, CKT shall be liable for any loss or damage to City's and/or Network User's telecommunications equipment arising from CKT's negligence, intentional act, or unauthorized Maintenance to the extent the avoidance of same is within the reasonable control of CKT, its employees or agents. Except as otherwise provided herein, City shall be liable for any loss or damage to CKT's telecommunications equipment arising from City's negligence, intentional act, or unauthorized maintenance to the extent the avoidance of same is within the reasonable control of City, its employees or agents. In the event of any loss or damage to the telecommunications equipment for which either Party is liable, the liable Party shall reimburse the other Party for the reasonable cost of repair or replacement thereof within sixty (60) days after receipt of a written request for such reimbursement.

## **ARTICLE 7. DEFAULT**

7.1 A Party shall be deemed in default of this Agreement if it fails to perform any of its material obligations under this Agreement and such nonperformance is not remedied within sixty (60) Days after written notice thereof.

7.2 A material breach of this Agreement by CKT shall be considered a material violation of the Franchise Agreement. The procedure for notification, cure and implementation of remedies for any such breach shall be handled consistent with the procedures set forth in the Franchise Agreement and the City shall have the right to implement any of the remedies set forth in the Franchise Agreement following the notice and opportunity to cure.

7.3 A material breach of this Agreement by City shall entitle CKT to all remedies available at law or in equity and CKT shall have the right to terminate this Agreement, without forfeiting any of its rights under the Franchise Agreement, subject to the notice and cure period stated in Section 7.1 above.

7.4 If either Party should invoke a claim of *force majeure* as a defense to a material violation, Article 11 of this Agreement shall govern.

7.5 If the Franchise Agreement has been terminated or abandoned or CKT is operating in the City under an alternative form of authorization permitted under state or federal law, the Parties agree to amend this Agreement to incorporate enforcement procedures into this Agreement that parallel the procedures and remedies available under the Franchise Agreement.

## **ARTICLE 8. LIMITATION OF LIABILITY**

8.1 Neither Party shall be liable to the other Party for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature whatsoever (including, but not limited to, for any lost profits, lost revenues, lost savings, or harm to business), regardless of the foreseeability thereof. For purposes of this Agreement, a Party's out-of-pocket costs for damages of the kinds specified in the preceding sentence which are recovered from such Party by a third party shall be deemed to be indirect damages to such Party, except to the extent such damages are part of claims for which indemnification is due under Sections 8.1. Each Party hereby releases the other Party, its subsidiaries and affiliates, and their respective officers, directors, managers, employees, and agents from any such claim.

## **ARTICLE 9. CONFIDENTIAL INFORMATION**

9.1 In the course of performance hereunder, the Parties may have access to certain information, the ownership and confidential status of which is highly important to the other Party, including, but not limited to, information about products, services, business plans, trade secrets, discoveries, ideas, designs, drawings, specifications, techniques, models, data, programs, documentation, processes, know-how, customer lists, marketing plans, and financial and technical information and other information treated or designated by one of the Parties as confidential (herein referred to as "Confidential Information").

9.2 Neither Party shall disclose the other Party's Confidential Information, directly or indirectly, under any circumstances or by any means, to any third person without the express written consent of the other Party, and neither Party shall copy, transmit, reproduce, summarize, quote, or make commercial or other use whatsoever of the other Party's Confidential Information, except as may be necessary to perform its duties hereunder. Each Party shall exercise the highest degree of care in safeguarding the other Party's Confidential Information against loss, theft, or other inadvertent disclosure and take all steps necessary to maintain such confidentiality; provided, however, City and CKT are subject to the Kansas Open Records Act (K.S.A. 45-215 through 45-223). Therefore, in the event City or CKT believe that any writing or communication received pursuant to this Agreement is subject to said Act's disclosure requirement, then the Parties, with the advice of the City Attorney, will by mutual agreement, make any appropriate disclosures and/or take any other necessary action.

## **ARTICLE 10. TERM AND RENEWAL OPTIONS**

10.1 This Agreement shall run concurrently with the Franchise Agreement and will commence on the effective date of the Franchise Agreement. This Agreement (as it may be modified or amended) shall continue for any extensions or renewals of the Franchise Agreement, unless the Parties mutually agree to extend or renew this Agreement on a different basis.

10.2 In the event the Franchise Agreement has been terminated or abandoned or CKT is operating in the City under an alternative form of authorization permitted under state or federal law, the Parties agree to amend this Agreement to extend the term of this Agreement for an additional two (2) years; provided, that immediately upon the commencement of said two year extension, the Parties shall enter into good faith negotiations to further extend or renew the term taking into consideration the then current status of (1) City and CKT's operations, (2) costs and industry practices for institutional network rates, (3) the City's capital investment in the Network, including the City's payment of annual maintenance and repair of the Network, and (4) technology and network elements. In no event shall the termination or abandonment of the Franchise Agreement or this Agreement in any

way modify or negate the City's Indefeasible Right of Use set forth in Section 2.7 herein.

10.3 Upon written request of City or CKT to review exhibits hereto, to be made not more frequently than annually, the Parties shall review such exhibit or exhibits identified in the request and engage in good faith negotiations to modify or adjust the terms thereof.

10.4 This Agreement will be reviewed in the same manner as the Franchise Agreement. The City and CKT may conduct a review of the document to ensure that the Agreement continues to effectively serve the Parties in the light of new developments in the management and Maintenance of the Network. If, after completion of such review, the City and CKT agree that the public interest would be served by modifying certain obligations of the Agreement, such modification may be made as mutually agreed.

#### **ARTICLE 11. FORCE MAJEURE**

11.1 In no event shall a Party have any claim or right against the other Party for any failure of performance due to causes beyond its control, including, but not limited to, acts of nature; fire; explosion; vandalism; criminal acts of third parties; storm; flood or other similar occurrences; any law, order regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over CKT, or of any department, agency, commission, bureau, corporation, or other instrumentality of any federal, state, or local government, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; riots, wars; strikes, lock-outs, work stoppages, or other labor difficulties; or supplier failures, shortages, breaches or delays.

#### **ARTICLE 12. REGULATIONS**

12.1 Each Party represents that it is not aware of any facts that would justify a complaint to the FCC or any state regulatory authority concerning the prices, terms or conditions of the transactions contemplated by this Agreement. The Parties also agree that in the event of a decision by a telecommunications regulatory authority at the federal, state or local level necessitates modifications in this Agreement, the Parties will negotiate in good faith to modify this Agreement in light of such decision.

**ARTICLE 13.  
ASSIGNABILITY**

13.1 Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, that no consent shall be required for assignment by a Party to an entity that either controls or is controlled by that Party. Notwithstanding the foregoing, in the event this Agreement is assigned by City to any third party, by assignment, operation of law or otherwise, which third party, prior to the assignment, has an agreement (the "Prior Agreement") with CKT or any of its affiliates for the provision of services, the services being provided shall continue to be governed by the Prior Agreement, and the Service provided hereunder shall continue to be governed by this Agreement, each without reference to the other.

**ARTICLE 14.  
MISCELLANEOUS**

14.1 This Agreement does not render either Party the agent or legal representative of the other Party and does not create a partnership or joint venture between City and CKT. Neither Party shall have any authority to agree for or bind the other Party in any manner whatsoever. This Agreement confers no rights of any kind upon any third party.

14.2 The failure of either Party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not be considered the waiver of any other term or condition of this Agreement.

14.3 No subsequent agreement among the Parties concerning the Service shall be effective or binding unless it is made in writing by authorized representatives of the Parties.

14.4 If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement.

14.5 This agreement shall be governed by and construed pursuant to the laws of the State of Kansas applicable to contracts made and to be performed in the State of Kansas without giving effect to the principles of conflict of laws of the State of Kansas. All parties to this agreement do hereby agree and submit to exclusive personal jurisdiction in Crawford County, Kansas, for the purpose of any judicial proceeding and do hereby waive any and all rights to contest jurisdiction and venue in Crawford County, Kansas, and any claim that such jurisdiction or venue is invalid.



## **Exhibit 1**

### **Description of Technical Standards and Testing**

#### **1.0 INTERFACE REQUIREMENTS**

##### **1.1 DS-3 Interface Requirements**

The Network Interface will be at a DSX-3 cross connect located in the I-Net User's DSX-3 environment.

##### **1.2 DS-1 Interface Requirements**

The Network Interface between CKT and City will be at an RJ-48 jack. The signal format shall be B8ZS. AMI shall be provided as an option. The frame format shall be that of the Extended Superframe (ESF). Super Frame (SF) frame format shall be provided as an option.

##### **1.3 OC-3 Interface Requirements**

The Network Interface will be at a SC/UPC single mode optic connector in the I-Net User environment.

##### **1.4 OC-12 Interface Requirements**

The Network Interface will be at a SC/UPC single mode optic connector in the I-Net User environment.

##### **1.5 OC-48 Interface Requirements**

The Network Interface will be at a SC/UPC single mode optic connector in the I-Net user environment.

##### **1.6 Ethernet Interface Requirements**

The Network Interface will be at an RJ-45 unshielded twisted pair connector in the I-Net user environment. The signal format shall be IEEE 802.3 10BaseT standard.

##### **1.7 CKT Splicing Standards**

After the initial splicing of the Fiber Termination Panel (FTP), each fiber

termination shall be tested using a 500 meter launch box and an optic Time Domain Reflectometer (OTDR). This test shall verify that the connector loss meets or exceeds CKT standards.

After the fiber link is completed, it shall be bi-directionally tested with an OTDR from both ends. Where appropriate, the circuit shall be opened and tested from both sides of the FTP.

The fiber test results shall be downloaded onto a computer and analyzed with specialized software to verify CKT standards are met or exceeded. This test data shall be made available to the City for review.

CKT shall meet or exceed the following standards:

Fusion Splice = **0.1 dB**

Fiber Connector = **0.25 dB**

Fiber Attenuation = **0.35 dB/km @ 1310 nm - 0.25 dB/km @ 1550 nm.**

Fiber connectors and splices that do not meet CKT standards shall be repaired and retested in a commercially reasonable time period.

Each and every fiber connector shall be cleaned using the highest quality cleaning agent to insure that the fiber connector face is clear of any contaminants.

## 2.0 **TRANSMISSION PERFORMANCE SPECIFICATION**

2.1 Performance for connections shall meet the standards set forth in Exhibit 2.

## 3.0 **SYSTEM ACCEPTANCE CRITERIA**

3.1 End-to-end system performance.

The following acceptance tests will be conducted and copies provided to the City:

DS-1: DS-1 testing shall run for a 15-minute period. City shall accept a DS-1 circuit when it operates error-free over the 24-hour evaluation period and the overall availability is 99%.

DS-3: DS3 testing shall be end to end testing. Testing shall run a 1-hour period. City shall accept DS-3 circuit when it operates error-free over any 24-hour period and the overall availability, as measured over the 24-hour period, is 99%.

OC-3: OC-3 testing shall be end to end testing. Testing shall run a 1-hour period. City shall accept OC-3 circuit when it operates error-free over any 24-hour period and the overall availability, as measured over the 24-hour period, is 99%.

OC-12: OC-12 testing shall be end to end testing. Testing shall run a 1-hour period. City shall accept OC-12 circuit when it operates error-free over any 24-hour period and the overall availability, as measured over the 24-hour period, is 99%.

OC-48: OC-48 testing shall be end to end testing. Testing shall run a 1-hour period. City shall accept OC-48 circuit when it operates error-free over any 24-hour period and the overall availability, as measured over the 24-hour period, is 99%.

Ethernet: Ethernet testing shall be end to end testing. Testing shall run a 1-hour period. City shall accept Ethernet facility when it operates error-free over any 24 hour period and the overall availability, as measured over the 24-hour period, is 99%.

### 3.2 Equipment Alarm and Status Indication Functionality

All equipment alarm functions and status indicators provided by the equipment vendor will function properly under all simulated (non-destructive) alarm conditions.

## Exhibit 2

### Digital Network Circuit Availability Standards

- 1.0 Availability Objective per month: DS-1 - 99%  
DS-3 - 99%  
OC-3 - 99%  
OC-12 - 99%  
OC-48 - 99%  
Ethernet - 99%
- 2.0 Bit Error Ratio (BER): OC-3 - runs at  $10^{-9}$   
Alarm sounds at  $10^{-6}$   
  
OC-12 - runs at  $10^{-9}$   
Alarm sounds at  $10^{-6}$   
  
OC-48 - runs at  $10^{-9}$   
Alarm sounds at  $10^{-6}$
- 3.0 Maximum Consecutive Zeros (DS-1): 15
- 4.0 Error Bursts (BES): DS-3 - 1 per Day
- 5.0 Error Free Seconds (EFS): DS-1 - 99% in a 24 hour test period
- 6.0 Bi-Polar Violations: No more than 1 in a 24-hour test period
- 7.0 Clocking: Stratum 2 level clocking
- 8.0 Customer evaluation periods:  
Evaluation period for DS-1: 24 hours  
Evaluation periods for DS-3: 24 hours  
Evaluation periods for OC-3: 24 hours  
Evaluation periods for OC-12: 24 hours  
Evaluation periods for OC-48: 24 hours  
Evaluation periods for Ethernet: 24 hours
- 9.0 All circuits DS-1, DS-3, OC-3, OC-12 and OC-48 must meet applicable specifications contained in Bellcore FR-NWT-000440  
  
All Ethernet circuits shall meet applicable specifications contained in IEEE 802.2 and 80203 for Ethernet transparent bridges

## Exhibit 3

### Network Maintenance, Repair and Reporting

#### 1.0 **PERFORMANCE MONITORING AND REPORTING**

- 1.1 CKT shall be responsible for performing surveillance on the Network, excluding Dark Fiber Connections.

#### 2.0 **MAINTENANCE AND REPAIR OF NETWORK SERVICES**

- 2.1 Except as provided in Article 4 of the Agreement, any Maintenance and repair required on the Network shall be performed by CKT.

- 2.2 CKT shall perform all Maintenance and repair functions on the Network, up to the Demarcation Point, twenty-four (24) hours per Day, seven (7) Days per week. This includes only trouble Maintenance (Service restoration) functions. CKT's scheduled Maintenance will be performed during specified City Maintenance windows, except in the case of emergencies, in which case as much notice as is practicable will be given.

- 2.2.1 For Dark Fiber Connections, the City shall be responsible for notifying CKT of Dark Fiber Connection failures and the need for repair.

- 2.2.2 In the event the City notifies CKT of a Dark Fiber Connection failure, CKT shall, provided that CKT is given access to the Dark Fiber: (i) begin restoration within four hours after the faulty connection is identified; and (ii) use commercially reasonable efforts to restore the connection no later than eight hours after failure.

- 2.2.3 If a safety problem exists, the restoration of the Dark Fiber Connection will not take place until the safety problem has been satisfied.

- 2.3 Specifications. Maintenance and repair of the Network will be performed so as to meet the manufacturer's specifications.

- 2.4 Any Maintenance or repair function performed by CKT on the Network which will or could affect Service provided to Network Users will be coordinated and scheduled with City surveillance system operations as practical and feasible for CKT. City shall provide and update a list of City contacts for Maintenance and escalation purposes. All communication regarding the provision, installation, operation, Maintenance, and repair of the Network will be coordinated and conducted between the City and

CKT.

Network Users must make all requests for Service, Maintenance and repair through the City and not directly with CKT

- 2.5 Response & Repair Times. Except as provided in this Agreement, in the event of a Service Outage, CKT is to have repair personnel, when site access is granted, on site within three (3) hours after receiving notification of the Service Outage from City, or autonomous monitoring from a Craw-Kan Telephone Services Assurance (SA) individual or system or its future equivalent. CKT shall restore the Service as follows:
- (i) CKT's SA will notify City's designated personnel within thirty (30) minutes of a Network outage alarm (excludes Dark Fiber). City is responsible for Network User notification.
  - (ii) Electronic Restoration: In the event of an electronic failure, CKT shall use its best efforts to restore service within 1 hour of arrival of maintenance personnel on site.
  - (iii) Fiber Cable Restoration: In the event of a cable failure, CKT shall begin cable restoral within three (3) hours after the faulty cable is identified. CKT shall use its best efforts to restore the cable no later than six (6) hours after failure.
- 2.6 CKT shall maintain a twenty-four (24) hour a Day, seven (7) Day a week point-of-contact for City to report Network troubles.
- 2.7 Equipment Spares. Except for Dark Fiber Connection Service, CKT will provide all Maintenance equipment spares plus repair and return of defected parts. In general, City and Network Users are not required to provide equipment storage space in City or Network User facilities over and above storage space available in Network User equipment racks.
- 2.8 Scheduled Maintenance.
- 2.8.1 Scheduled routine Maintenance will be performed during specified City maintenance windows and will be coordinated between CKT and City.
  - 2.8.2 Maintenance of the Network which may jeopardize or require downtime of the Communications Network will normally be performed during the "Maintenance Window" of 12:00 midnight and 6:00 a.m. or a time mutually agreed to by City and CKT. City's Maintenance requests must be made at least 72 hours in advance unless otherwise agreed to by the Parties.

2.8.3 CKT maintenance personnel will notify City prior to beginning scheduled Maintenance work and must receive concurrence, which shall not be unreasonably withheld, to proceed. CKT personnel will notify City upon completion of scheduled Maintenance work and receive concurrence that all Service is fully operational.

2.9 Access to Equipment and Facilities.

2.9.1 Employees or agents of CKT shall have escorted access to any Network equipment or facilities at a City or Network User Premises, subject to Network User's or City's access and security regulations. These shall include, but not be limited to:

Proper Picture Identification CKT  
Authorized Personnel List  
Restricted Area Access Provisions  
Accompaniment by Network User/City personnel  
CKT employees or agents, while on City or Network User Premises, shall comply with the Network User and/or City rules and regulations.

2.9.2 Upon request, employees or agents of City shall be given escorted access to areas at CKT locations containing facilities and/or equipment associated with the Network , subject to CKT's access and security regulations. These shall include, but not be limited to:

Proper Picture Identification City  
Authorized Personnel List Restricted  
Area Access Provisions  
Accompaniment by CKT personnel

City employees or agents, while on CKT premises, shall comply with CKT's plan rules and regulations.

2.9.3 City shall have the right to be present during CKT equipment testing, and during scheduled and non-scheduled Maintenance and repair activity. City will notify CKT in advance of such requests.

## **Exhibit 4**

### **Ordering Procedures for Network Services**

1. The City receives a service inquiry and issues a Network Service Application to the approved requesting agency.
2. The requesting agency completes application with desired date for activation and returns it to the City.
3. The City contacts CKT to review the application.
4. CKT shares inquiry with Broadband Services engineering to evaluate application, check for available network capacity, and contacts construction engineering for outside plant expansion estimation, if an extension of the network is required.
5. If the requesting agency is currently operating on the City's digital Network, and is requesting additional capacity, the existing equipment would need to be upgraded. If the network capacity can handle the upgrade request then CKT's Broadband Services can complete the estimate and move to Step # 8.
6. If the request is not possible, CKT will discuss the inquiry results with the City.
7. CKT will contact construction engineering and Broadband Services to schedule a field visit with the City. Together they determine the best route for entering the Institution, and decide on the type and location of the equipment.
8. After the application is evaluated, the Broadband Service personnel will complete a network design and establish cost estimate for Broadband Services equipment, including the installation, testing and provisioning.
9. Construction engineering and Broadband Services completes the cost estimates, design and tentative construction schedule. The Network coordinator then compiles the cost estimates. After reviewing the information the estimate is totaled, summarized and provided to the City to distribute back to the requesting agency.
10. If at any time, there are questions about the estimate, design, or construction plans, the requesting agency has the opportunity to contact the City and coordinate a meeting to resolve any issues.
11. When the requesting agency approves the invoice and wishes for the work to begin, a network service agreement is signed with a service activation date by the City and CKT with the requesting agency.

12. CKT assigns the project a Job Order Number under the billable Network work order.
13. CKT Broadband Services group will coordinate the ordering and the delivery of the Broadband Services equipment and its installation.
14. CKT Construction Engineering to provide the fiber installation. Construction will also coordinate the installation between the outside of the institution to the demarcation point.
15. Some coordination may be needed to have the agency's maintenance department or contractor install a 2 inch conduit from the outside where the fiber optic meets the building to the inside where the demarcation location has been determined.
16. The construction department will then have a Job Order to provide the installation of the fiber optics and the splicing. This will include working with CKT's fiber optic specialist to tie into the network and the splicing of the pigtailed at the customer termination shelf.
17. CKT will track the construction cost and see that the fiber documentation is completed and on file for the network technicians and the City.
18. With completion of the fiber optic construction the CKT Broadband Services group will handle the installation of the broadband Service Equipment and turn up the system.
19. After CKT's Broadband technicians have had enough time to finalizes the circuit, provisioning and testing, they will notify CKT and inform him that the circuit is available for service.
20. Start of Service Date. For the Digital Network, "Start of Service Date" for Service shall be the later of (i) the date requested by City for Service to commence, or (ii) the date after Circuit testing and Acceptance has been completed per this Agreement.
21. As the Service provisioning is complete, the final bill will be compiled by CKT and sent to the City for payment. When the payment is received, it will be deposited in the account of the billable Network work order.

## **Exhibit 5**

### **Dedicated Transport Services and Service Descriptions for On-Net Services**

#### **1.0 Dedicated**

Each Transport Service is dedicated to the City and Network User. Usable bandwidth for each Service is available to City for its use, twenty-four hours a Day, seven Days a week.

#### **2.0 DS1 Service**

DS1 Service is a dedicated, high capacity, full duplex channel with a line speed of 1.544 Mbps isochronous serial data having a line signal format of either Alternate Mark Inversion (AMI) or Binary 8 Zero Substitution (B8ZS) and either Superframe (D4) or Extended Superframe formats.

#### **3.0 DS3 Service**

DS3 Service is a dedicated, high capacity, full duplex channel with a line speed of 44,736 Mbps isochronous serial data having a line code of bipolar with three zero substitution (B3ZS). DS3 Service has the equivalent capacity of 28 DS1 Services at 1.544 Mbps.

#### **4.0 OC3 Service**

OC3 Service is a dedicated, point to point, high capacity, full duplex channel with a line speed of 155.52 Mbps synchronous serial data. OC3 Service has the equivalent capacity of 3 DS3 Services, 84 DS1 Services, or 2,016 DSO services.

#### **5.0 OC12 Service**

OC12 Service is a dedicated, point to point high capacity, full duplex channel with a line speed of 622.08 Mbps synchronous serial data. OC12 Service has the equivalent capacity of 4 OC3 Services, 12 DS3 Services, 336 DS1 Services.

#### **6.0 OC48 Service**

OC48 Service is a dedicated, point to point, high capacity, full duplex channel with a line speed of 2,488 Mbps synchronous serial data. OC48 Service has the equivalent capacity of 4 OC 12 Services, 16 OC3 Services, 48 DS3 Services, and 1,344 DS1 Services.

#### **7.0 Ethernet Service**

Ethernet Service is a dedicated packet transport service, conforming to the physical and data transport layers of the international communications model. The service may be

provided in point-to-point or point-to-multi-point configuration. The service bundles the transmission capacity of one to eight DS-1 services. The available bandwidth is set and tested per the requirements of the user.

## **Exhibit 6**

### **Network Maintenance Costs**

#### **1. Digital Network Maintenance**

The Digital Network is supported by a SONET (synchronous optic network) platform which is reliable and protocol-neutral for accommodating multiple transport methods. SONET is an industry standard that provides interoperability between different vendors' products, can carry higher level protocols including IP and has built-in support for ease of management and maintenance.

Each shelf and circuit installed, tested and documented by CKT shall receive the following:

- A. Site visits (battery and power supply tests, inspection and verifying environment) at a rate of one hour every three months.
- B. Upgrades of shelf operating system software twice per year at one hour each occurrence. These upgrades are required to add new features and capabilities, and remain consistent with all CKT Communications Network devices.
- C. Upgrades of surveillance system software, once in the first year and as needed thereafter. These upgrades provide centralized monitoring features and capabilities consistent with all CKT Communications Network devices.
- D. Network Service Assurance (SA) provides 24 hours per Day/7 Days a week surveillance and monitoring equivalent to one half hour per month. Dispatch to address service and Network issues as needed.
- E. Emergency response which includes replacing one common electronics card at a rate of once every three years and replacing one circuit interface card at a rate of once every three years for each circuit. This response also includes maintaining emergency replacement inventory.
- F. Emergency readiness which includes technicians, vehicles, test equipment, tools and administration of same.
- G. Telecordia Common Language licensing (CLLI / CLFI / CLCI / Clones) of circuits is included in the monthly fees.

#### **2. Network Fiber Maintenance:**

CKT offers the City the benefit of incremental costs for technical services and maintenance on the

Network, which increases with the addition of institutions benefitting from Network services. The Network fiber maintenance costs are related to fiber constructed in easements and along rights-of-way and the ongoing maintenance involved with fiber relocations, pole maintenance, fiber management and documentation, and the necessary resources available to resolve fiber issues 24-hours a Day/ 7-Days a week.

**4. Network Fixed Annual Costs:**

City shall remit to CKT \$1,325.00 annually for each network user, beyond direct costs as outlined in Article 5, as payment for maintenance of the system. Third party consultation and consultation beyond the normal course of business as requested by City will be billed as Direct Costs per Section 5.1.D of the Agreement. City shall remit to CKT \$10,500 annually or an agreeable exchange of city owned fiber duct for use by CKT for the benefit of linking Pittsburg with the surrounding municipalities, including the local law enforcement apparatuses.

**5. Emergency Maintenance activities to be billed time and materials by CKT to the City, include:**

- A. Repairs and/or facilities replaced due to storms, natural disasters, car/pole accidents, vandalism or other required repair due to conditions out of CKT's control.
- B. Overhead to underground conversions.
- C. Fiber relocations.



## Interoffice Memorandum

**TO:** DARON HALL  
City Manager

**FROM:** MATT BACON  
Assistant Director of Public Utilities

**DATE:** July 21, 2015

**SUBJECT:** Agenda Item – July 28, 2015  
Purchase of Vehicles

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Staff is requesting Governing Body approval to purchase the following 2015 budgeted vehicles under the Kansas State Purchasing Contract currently held with Shawnee Mission Ford, Shawnee, Kansas, utilizing STCO funds:

Parks and Recreation

One (1) New 2015/2016 Ford F150, Regular Cab, 4x2 (F1C) - \$19,975.00

Engineering

One (1) New 2015/2016 Ford F-150, Super Cab, 4x2 Short Bed (X1C/145) - \$20,517.00

Total purchase amount: \$40,492.00.

Would you please place this item on the agenda for the City Commission meeting scheduled for Tuesday, July 28<sup>th</sup>, 2015. Action necessary will be approval or disapproval of staff's recommendation to award the bids to Shawnee Mission Ford per State Contract No. 0000000000000000000039706 and, if approved, authorize the issuance of the necessary purchase requisitions.

If you have any questions concerning this matter, please do not hesitate to contact me.

# Shawnee Mission Ford, Inc.

11501 SHAWNEE MISSION PARKWAY • P.O. BOX 3179  
SHAWNEE, KANSAS 66203-0179 • 913/631-0000 • FAX 913/631-7325

July 15, 2015

Matt Bacon  
City of Pittsburg

RE: State of Kansas

Contract good until 8-31-2015

Parks

2015 / 2016 Ford F-150 Regular Cab 4x2 (F1C)

Exterior Color: White (YZ)

Interior: Vinyl 40/20/40 (AG)

Base Price: \$18,414

Options:

- Cruise Control (50S) \$192
- Power Group (85A) \$827
- Trailer Tow (53A) \$422
- Delivery \$120

Total \$19,975

Engineering

2015 / 2016 Ford F-150 Super Cab 4x2 Short Bed (X1C / 145)

Exterior Color: White (YZ)

Interior: Vinyl 40/20/40 (AG)

Base Price: \$18,414

Options:

- Cruise Control (50S) \$192
- Power Group (85A) \$998
- Super Cab Short Bed (X1C / 145) \$793
- Delivery \$120

Total \$20,517

Thank you for your time and interest.

Sincerely,

Jay Cooper

Government Fleet Sales



## CONTRACT AWARD

Date of Award: September 15, 2014  
Contract ID: 0000000000000000000039706  
Event ID: 3264  
Replace Contract: EVT 2530

Procurement Officer: John T Lowe  
Telephone: 785/296-3126  
E-Mail Address: [john.lowe@da.ks.gov](mailto:john.lowe@da.ks.gov)  
Web Address: <http://admin.ks.gov/offices/procurement-and-contracts>

Item: **Vehicles**  
Agency/Business Unit: Statewide  
Period of Contract: **September 15, 2014 through August 31, 2015**  
(With the option to renew for 5 additional 12 month periods)

Contractor: **SHAWNEE MISSION FORD INC**  
11501 SHAWNEE MISSION PARKWAY  
SHAWNEE, KS 66203-3359  
Vendor ID: 0000046626  
FEIN: 480582387  
Contact Person: Jay Cooper  
E-Mail: [jay.cooper@shawneemissionford.com](mailto:jay.cooper@shawneemissionford.com)  
Toll Free Telephone: 888-865-2915  
Local Telephone: 913-248-2287  
Cell Phone Number: NA  
Fax: 913-631-7325

Special Provisions, Specifications, Contractor Listing and Pricing located at the following link:

<http://admin.ks.gov/offices/procurement-and-contracts/additional-files-for-procurement-contracts/>

**Amendment 1      09/29/14      Vehicles have been re-awarded to Shawnee Mission Ford.**

Payment Terms: NET 30 DAYS

Political Subdivisions: Pricing is available to the political subdivisions of the State of Kansas.  
Procurement Cards: Agencies may not use a P-Card for purchases from this contract.  
Administrative Fee: Administrative Fees have been incorporated into the unit prices of this contract.

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The above referenced contract award was recently posted to Procurement and Contracts website. The document can be downloaded by going to the following website: <http://www.da.ks.gov/purch/Contracts/>

## 1. Terms and Conditions

### 1.1. Contract Documents

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- Form DA 146a;
- written modifications to the executed contract;
- written contract signed by the parties;
- the Bid Event documents, including any and all amendments; and
- Contractor's written offer submitted in response to the Bid Event as finalized.

### 1.2. Captions

The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

### 1.3. Definitions

A glossary of common procurement terms is available at <http://admin.ks.gov/offices/procurement-and-contracts>, under the "Procurement Forms" link.

### 1.4. Contract Formation

No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the contractor.

### 1.5. Notices

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Kansas Procurement and Contracts  
900 SW Jackson, Suite 451-South  
Topeka, Kansas 66612-1286  
RE: Contract Number 39706/EVT0003264

or to any other persons or addresses as may be designated by notice from one party to the other.

### 1.6. Statutes

Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

### 1.7. Governing Law

This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Topeka, Shawnee County, Kansas.

### 1.8. Jurisdiction

The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment

### 1.9. Mandatory Provisions

The provisions found in Contractual Provisions Attachment (DA 146a) are incorporated by reference and made a part of this contract.



**1.16. Breach**

Waiver or any breach of any contract term or condition shall not be deemed a waiver of any prior or subsequent breach. No contract term or condition shall be held to be waived, modified, or deleted except by a written instrument signed by the parties thereto.

If any contract term or condition or application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition or application. To this end the contract terms and conditions are severable.

**1.17. Assignment**

The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State. State may reasonably withhold consent for any reason.

This contract may terminate for cause in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.

**1.18. Third Party Beneficiaries**

This contract shall not be construed as providing an enforceable right to any third party.

**1.19. Waiver**

Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.

**1.20. Injunctions**

Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

**1.21. Staff Qualifications**

The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the contract specifications may result in termination of this contract or damages.

**1.22. Subcontractors**

The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

**1.23. Independent Contractor**

Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

**1.24. Worker Misclassification**

The Contractor and all lower tiered subcontractors under the Contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

**1.25. Immigration and Reform Control Act of 1986 (IRCA)**

All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the Contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.

The Contractor hereby certifies without exception that such Contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination for cause and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.

**1.26. Proof of Insurance**

Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to Procurement and Contracts.

**1.27. Conflict of Interest**

The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

**1.28. Nondiscrimination and Workplace Safety**

The Contractor agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.

**1.29. Confidentiality**

The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 et seq.) in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor agrees to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by State, shall destroy or render it unreadable.

**1.30. Environmental Protection**

The Contractor shall abide by all federal, state and local laws, and rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws or rule or regulations may result in termination of this contract for cause.

**1.31. Care of State Property**

The Contractor shall be responsible for the proper care and custody of any state owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract. The Contractor shall reimburse the State for such property's loss or damage caused by the Contractor, except for normal wear and tear.

**1.32. Prohibition of Gratuities**

Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.

### **1.33. Retention of Records**

Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post contract period. Delivery of and access to the records shall be within five (5) business days at no cost to the state.

### **1.34. On-Site Inspection**

Failure to adequately inspect the premises shall not relieve the Contractor from furnishing without additional cost to the State any materials, equipment, supplies or labor that may be required to carry out the intent of this Contract.

### **1.35. Indefinite Quantity Contract**

This is an open-ended contract between the Contractor and the State to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.

### **1.36. Prices**

Prices shall remain firm for the entire contract period and subsequent renewals. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract for cause.

### **1.37. Contract Price**

Statewide contracts are awarded by the Procurement and Contracts to take advantage of volume discount pricing for goods and services that have a recurring demand from one or more agencies. However, if a state agency locates a vendor that can provide the identical item at a lower price, a waiver to "buy off state contract" may be granted by the Procurement and Contracts.

### **1.38. Payment**

Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the Contractor and the state agency. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in this contract.

Payment schedule shall be on a frequency mutually agreed upon by both the agency and the Contractor.

### **1.39. Invoices**

Each purchase order must be individually invoiced. Invoices shall be forwarded to the using agency in duplicate and shall state the following:

- date of invoice.
- date of shipment (or completion of work);
- purchase order number and contract number;
- itemization of all applicable charges; and
- net amount due.

#### **1.40. Accounts Receivable Set-Off Program**

If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the Contractor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq, Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

#### **1.41. Federal, State and Local Taxes**

Unless otherwise specified, the contracted price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the contracted price. Upon request, the State shall provide to the Contractor a certificate of tax exemption.

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

#### **1.42. Quarterly Reports**

The Contractor shall be required to file a quarterly report by each state agency or political subdivision making purchases under this contract. Reports are due no later than 30 days after the end of each calendar quarter and shall correlate with figures submitted as Administrative Fees (see below). Above referenced reports are to be filed with Procurement and Contracts Open Records Officer or his/her designee located at 900 SW Jackson, Ste. 451-South, Topeka, KS 66612-1286. Reports may also be required to be submitted to the specific using agency.

Electronic files shall be e-mailed to the following e-mail address: [reports@da.ks.gov](mailto:reports@da.ks.gov), in Microsoft® Excel or Microsoft® Access Database format.

The required reporting format may be found on Procurement and Contracts website at <http://admin.ks.gov/offices/procurement-and-contracts>, under the "Procurement Forms" link.

Report Types - Reports shall be available reflecting the following information. Agencies and Procurement and Contracts reserve the right to request additional information.

- Sales Summary -- Report shall include a list of agencies and political subdivisions who have used the contract, a subtotal of sales to each agency or political subdivision, as well as a grand total of all sales.
- Items Sold -- Report shall include a list of items sold to agencies and political subdivisions, indicating the contract price and using agency, a subtotal of sales to each agency or political subdivision, as well as a grand total of all sales.
- Items Sold, by Agency - Same as above, except sorted by agency.

#### **1.43. Administrative Fee**

Contractor(s) must pay a .5% Administrative Fee on all purchases (including political subdivisions) made against this contract. The fee is to be included in the cost of the goods or services. The Administrative Fee is to be based upon the total dollars invoiced under the contract. The Administrative Fee shall be made in check form, payable to the "State of Kansas - Procurement and Contracts" and must be paid within 30 days following the end of each quarter. Fees paid under this mandate shall correlate with figures submitted on the quarterly reports.

#### **1.44. Shipping and F.O.B. Point**

Unless otherwise specified, prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to a state agency's receiving dock or other designated point as specified in this contract or subsequent purchase orders without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.

**1.45. Deliveries**

All orders shall be shipped within 90 days ARO, clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall immediately notify the ordering agency of the revised delivery date or partial delivery date. The order may be canceled if delivery time is unsatisfactory. The Contractor shall inform Procurement and Contracts of any supply or delivery problems. Continued delivery problems may result in termination of the contract for cause.

**1.46. Charge Back Clause**

If the Contractor fails to deliver the product within the delivery time established by the contract, the State reserves the right to purchase the product from the open market and charge back the difference between contract price and open market price to the Contractor.

**1.47. Debarment of State Contractors**

Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in the termination of the contract.

**1.48. Materials and Workmanship**

The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this Contract, within the time specified, in accordance with the provisions as specified.

The Contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the Contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Procurement and Contracts said issue is due to imperfection in material, design, workmanship or Contractor fault.

**1.49. Industry Standards**

If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

**1.50. Implied Requirements**

All products and services not specifically mentioned in this contract, but which are necessary to provide the functional capabilities described by the specifications, shall be included.

**1.51. New Materials, Supplies or Equipment**

Unless otherwise specified, all materials, supplies or equipment offered by the Contractor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery

**1.52. Inspection**

The State reserves the right to reject, on arrival at destination, any items which do not conform with specification of the Contract.

**1.53. Acceptance**

No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.

**1.54. Ownership**

All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.

**1.55. Information/Data**

Any and all information/data required to be provided at any time during the contract term shall be made available in a format as requested and/or approved by the State.

**1.56. Certification of Materials Submitted**

The Bid document, together with the specifications set forth herein and all data submitted by the Contractor to support their response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of the contract between the Contractor and the State of Kansas. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.

**1.57. Transition Assistance**

In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

**1.58. Integration**

This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either party.

**1.59. Modification**

This contract shall be modified only by the written agreement and approval of the parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

**1.60. Severability**

If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.

## 2. Contractual Provisions Attachment

DA-146a Rev. 06/12

### 2.1. Terms Herein Controlling Provisions

It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

### 2.2. Kansas Law and Venue

This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

### 2.3. Termination Due To Lack Of Funding Appropriation

If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

### 2.4. Disclaimer Of Liability

No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

### 2.5. Anti-Discrimination Clause

The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase ""equal opportunity employer""; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

### 2.6. Acceptance Of Contract

This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

**2.7. Arbitration, Damages, Warranties**

Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

**2.8. Representative's Authority To Contract**

By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

**2.9. Responsibility For Taxes**

The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

**2.10. Insurance**

The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

**2.11. Information**

No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

**2.12. The Eleventh Amendment**

"The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

**2.13. Campaign Contributions / Lobbying**

Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.



DEPARTMENT OF PUBLIC WORKS

201 West 4<sup>th</sup> Street · Pittsburg KS 66762

(620) 231-4170

www.pittks.org

## Interoffice Memorandum

**TO:** DARON HALL  
City Manager

**FROM:** WILLIAM A. BEASLEY  
Director of Public Works

**DATE:** July 21, 2015

**SUBJECT:** Agenda Item – July 28, 2015  
DISPOSITION OF BIDS  
KLINK Resurfacing Project  
K-126 (W 4<sup>th</sup> Street), City Limits East of US-69 Bypass to Pine Street  
KDOT Project No. 126-19 U-0335-01

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The City received bids on Tuesday, July 21<sup>st</sup>, 2015 for the KLINK 1R R Resurfacing Project on K-126 (W 4<sup>th</sup> Street) from the City Limits East of US-69 Bypass to Pine Street. Three bids were received (see attached bid tab sheet). After reviewing the bids received, City staff is recommending that the bid be awarded to the low bidder meeting specs, Heckert Construction Co., Inc., of Pittsburg, based on their low bid of \$311,685.12.

This project is a KDOT FY 2016 project and is based on a 50% State/50% Local KDOT grant with the State's share not to exceed \$200,000.

Would you please place this item on the agenda for the City Commission meeting scheduled for Tuesday, July 28<sup>th</sup>, 2015. Action necessary will be approval or disapproval of staff's recommendation to award the bid to the low bidder as stipulated above and, if approved, authorize the Mayor and City Clerk to execute the contract documents once prepared.

If you have any questions concerning this matter, please do not hesitate to contact me.

Attachment: Bid Tabulations



**BID TABULATION**

**KLINK 1R RESURFACING PROJECT - K-126 (W. 4TH STREET) FROM US-69 BYPASS TO PINE STREET**

**KDOT PROJECT NO. K-26 19 U-0335-01**

**Bid Opening: July 21st, 2015 - 2:00 PM**

ITEM NO.	DESCRIPTION	UNIT	NO. OF UNITS	Engineer's Estimate		APAC-Missouri, Inc. 4580 W. Calhoun Springfield, MO 65802		Heckert Construction Co., Inc. 746 E. 520th Ave. Pittsburg, KS 66762		Swift Const. Co., Inc. 225 E. Main Neosho, MO 64850	
				UNIT COST	EXTENSION	UNIT COST	EXTENSION	UNIT COST	EXTENSION	UNIT COST	EXTENSION
1	Mobilization	L.S.	1	\$ 30,000.06	\$ 30,000.06	\$ 7,000.00	\$ 7,000.00	\$21,900.00	\$ 21,900.00	\$ 8,915.00	\$ 8,915.00
2	Traffic Control	L.S.	1	\$ 10,000.00	\$ 10,000.00	\$14,300.00	\$ 14,300.00	\$ 4,600.00	\$ 4,600.00	\$21,633.00	\$ 21,633.00
3	Site Restoration	L.S.	1	\$ 4,000.00	\$ 4,000.00	\$11,000.00	\$ 11,000.00	\$ 7,500.00	\$ 7,500.00	\$ 2,310.00	\$ 2,310.00
4	Pavement Removal	S.Y.	136	\$ 45.20	\$ 6,147.20	\$ 19.65	\$ 2,672.40	\$ 10.00	\$ 1,360.00	\$ 57.75	\$ 7,854.00
5	8" Concrete Valley Gutter	S.Y.	30	\$ 125.00	\$ 3,750.00	\$ 72.75	\$ 2,182.50	\$ 70.00	\$ 2,100.00	\$ 173.00	\$ 5,190.00
6	6" Aggregate Base	S.Y.	124	\$ 9.00	\$ 1,116.00	\$ 10.75	\$ 1,333.00	\$ 15.00	\$ 1,860.00	\$ 46.25	\$ 5,735.00
7	Common Excavation	C.Y.	107	\$ 5.00	\$ 535.00	\$ 26.20	\$ 2,803.40	\$ 25.00	\$ 2,675.00	\$ 23.00	\$ 2,461.00
8	4" Concrete Sidewalk	S.Y.	31	\$ 50.00	\$ 1,550.00	\$ 141.50	\$ 4,386.50	\$ 45.00	\$ 1,395.00	\$ 116.00	\$ 3,596.00
9	6" Concrete ADA Ramp	S.Y.	64	\$ 112.00	\$ 7,168.00	\$ 131.75	\$ 8,432.00	\$ 250.00	\$ 16,000.00	\$ 289.00	\$ 18,496.00
10	Concrete Curb & Gutter (30") Type I & II	L.F.	215	\$ 55.00	\$ 11,825.00	\$ 33.30	\$ 7,159.50	\$ 35.00	\$ 7,525.00	\$ 63.50	\$ 13,652.50
11	Milling	S.Y.	23,259	\$ 3.00	\$ 69,777.00	\$ 0.95	\$ 22,096.05	\$ 2.88	\$ 66,985.92	\$ 1.05	\$ 24,421.95
12	HMA Commercial Grade (Class A)	Tons	2,813	\$ 80.00	\$ 225,040.00	\$ 73.65	\$207,177.45	\$ 54.40	\$ 153,027.20	\$ 68.25	\$191,987.25
13	Transporting Salvageable Material	L.S.	1	\$ 10,000.00	\$ 10,000.00	\$17,800.00	\$ 17,800.00	\$ 1.00	\$ 1.00	\$ 19,400.00	\$ 19,400.00
14	Pavement Marking (Thermoplastic)(Yellow)(4")	L.F.	8,051	\$ 2.00	\$ 16,102.00	\$ 0.75	\$ 6,038.25	\$ 0.50	\$ 4,025.50	\$ 0.80	\$ 6,440.80
15	Pavement Marking (Thermoplastic)(Yellow)(12")	L.F.	75	\$ 6.00	\$ 450.00	\$ 7.35	\$ 551.25	\$ 4.00	\$ 300.00	\$ 8.00	\$ 600.00
16	Pavement Marking (Thermoplastic)(White)(4")	L.F.	6,949	\$ 2.00	\$ 13,898.00	\$ 0.75	\$ 5,211.75	\$ 0.50	\$ 3,474.50	\$ 0.80	\$ 5,559.20
17	Pavement Marking (Thermoplastic)(White)(6")	L.F.	310	\$ 3.00	\$ 930.00	\$ 1.75	\$ 542.50	\$ 2.00	\$ 620.00	\$ 1.90	\$ 589.00
18	Pavement Marking (Thermoplastic)(White)(24")	L.F.	392	\$ 12.00	\$ 4,704.00	\$ 14.90	\$ 5,840.80	\$ 8.00	\$ 3,136.00	\$ 16.00	\$ 6,272.00
19	Pavement Marking (Patterned Cold Plastic)(White)(Bike Lane)	Each	19	\$ 125.00	\$ 2,375.00	\$ 680.00	\$ 12,920.00	\$ 400.00	\$ 7,600.00	\$ 740.00	\$ 14,060.00
20	Pavement Marking (Patterned Cold Plastic)(White)(Left Turn Arrow)	Each	6	\$ 225.00	\$ 1,350.00	\$ 410.00	\$ 2,460.00	\$ 350.00	\$ 2,100.00	\$ 445.00	\$ 2,670.00
21	Water Valve Concrete Pads	Each	8	\$ 750.00	\$ 6,000.00	\$ 400.00	\$ 3,200.00	\$ 250.00	\$ 2,000.00	\$ 924.00	\$ 7,392.00
22	Manhole Concrete Pads	Each	6	\$ 750.00	\$ 4,500.00	\$ 450.00	\$ 2,700.00	\$ 250.00	\$ 1,500.00	\$ 924.00	\$ 5,544.00
				<b>Total</b>	\$ 431,217.26	<b>Total</b>	\$347,807.35	<b>Total</b>	\$ 311,685.12	<b>Total</b>	\$374,778.70



DEPARTMENT OF PUBLIC UTILITIES

303 Memorial Drive · Pittsburg KS 66762

(620) 240-5126

www.pittks.org

## Interoffice Memorandum

**TO:** DARON HALL  
City Manager

**FROM:** MATT BACON  
Assistant Director of Public Utilities

**DATE:** July 21, 2015

**SUBJECT:** Agenda Item – July 28, 2015  
Surplus Property

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The City staff is requesting Governing Body action to declare the following vehicles as surplus:

ID NUMBER	DESCRIPTION	VIN/SERIAL NUMBER
317-011, 42-13 K9	2005 Ford Explorer	1FMZU73W95ZA58286

Would you please place this item on the agenda for the City Commission meeting scheduled for Tuesday, July 28<sup>th</sup>, 2015. Action being requested is for the Governing Body to declare the above vehicles as surplus and give permission to City staff to dispose of the vehicles through the online auctioning services of Purple Wave, Inc.

If you have any questions concerning this matter, please do not hesitate to contact me.

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
	C-CHECK		VOID CHECK			175492		
	C-CHECK		VOID CHECK			175493		
	C-CHECK		VOID CHECK			175496		
6894	R.M.I. GOLF CARTS							
6894	R.M.I. GOLF CARTS							
	C-CHECK	VOIDED	R.M.I. GOLF CARTS			175504		125.00CR
	C-CHECK		VOID CHECK			175507		
	C-CHECK		VOID CHECK			175508		
	C-CHECK		VOID CHECK			175509		
	C-CHECK		VOID CHECK			175510		
	C-CHECK		VOID CHECK			175514		
	C-CHECK		VOID CHECK			175515		
	C-CHECK		VOID CHECK			175516		

* * T O T A L S * *	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	0	0.00	0.00	0.00
HAND CHECKS:	0	0.00	0.00	0.00
DRAFTS:	0	0.00	0.00	0.00
EFT:	0	0.00	0.00	0.00
NON CHECKS:	0	0.00	0.00	0.00
VOID CHECKS:	11	VOID DEBITS 0.00		
		VOID CREDITS 125.00CR		
		125.00CR	0.00	

TOTAL ERRORS: 0

VENDOR SET: 99 BANK: *	TOTALS:	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
		11	125.00CR	0.00	0.00
BANK: *	TOTALS:	11	125.00CR	0.00	0.00

VENDOR SET: 99 City of Pittsburg, KS  
 BANK: 80144 BMO HARRIS BANK  
 DATE RANGE: 7/08/2015 THRU 7/21/2015

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
6154	4 STATE MAINTENANCE SUPPLY INC	R	7/10/2015			175490		247.72
0523	AT&T	R	7/10/2015			175491		4,052.57
1	COULTER, THOMAS	R	7/10/2015			175494		70.00
4263	COX COMMUNICATIONS KANSAS LLC	R	7/10/2015			175495		2,196.19
1	DERFELT, DEBRA	R	7/10/2015			175497		250.00
7375	DOUG ELROD	R	7/10/2015			175498		460.41
7151	TOTALFUNDS BY HASLER	R	7/10/2015			175499		2,000.00
6511	KANSAS JUVENILE OFFICERS ASSOC	R	7/10/2015			175500		950.00
2877	KDHE - BUREAU OF WATER	R	7/10/2015			175501		25.00
2877	KDHE - BUREAU OF WATER	R	7/10/2015			175502		25.00
0225	KDOR	R	7/10/2015			175503		8,445.47
6894	R.M.I. GOLF CARTS	V	7/10/2015			175504		125.00
6894	R.M.I. GOLF CARTS							
6894	R.M.I. GOLF CARTS							
	M-CHECK R.M.I. GOLF CARTS	VOIDED	V 7/10/2015			175504		125.00CR
6957	U.S. BANK	R	7/10/2015			175505		315.03
5589	VERIZON WIRELESS SERVICES, LLC	R	7/10/2015			175506		7,260.45
2350	WASTE CORPORATION OF MISSOURI	R	7/10/2015			175511		589.15
1108	WESTAR ENERGY	R	7/10/2015			175512		79.70
0205	SAM'S CLUB	R	7/16/2015			175543		699.06
7018	CEDAR CREEK LANDSCAPE MANAGEME	R	7/17/2015			175544		1,800.00
4263	COX COMMUNICATIONS KANSAS LLC	R	7/17/2015			175545		67.35
1	HARBIN FISH FARM	R	7/17/2015			175546		500.00

VENDOR SET: 99 City of Pittsburg, KS  
 BANK: 80144 BMO HARRIS BANK  
 DATE RANGE: 7/08/2015 THRU 7/21/2015

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
1	HUTCHINS RENTAL TRUST	R	7/17/2015			175547		150.00
1	KNWA	R	7/17/2015			175548		104.00
7190	LEXISNEXIS RISK DATA MANAGEMEN	R	7/17/2015			175549		370.80
6817	LYNN JENKINS OFFICE SUPPLY ACC	R	7/17/2015			175550		81.00
1	NATIONWIDE CONSTRUCTION	R	7/17/2015			175551		750.99
0175	REGISTER OF DEEDS	R	7/17/2015			175552		20.00
0175	REGISTER OF DEEDS	R	7/17/2015			175553		40.00
0188	SECRETARY OF STATE	R	7/17/2015			175554		85.00
1	SHOW ME COMMUNICATIONS	R	7/17/2015			175555		199.00
7241	MIGUEL R. SMITH	R	7/17/2015			175556		108.70
1	SOUTHEAST KANSAS LIVING	R	7/17/2015			175557		132.00
7304	ALEXANDER STEWART	R	7/17/2015			175558		70.00
1	THE VILLAGE AT MISSION FARMS	R	7/17/2015			175559		237.00
0349	UNITED WAY OF CRAWFORD COUNTY	R	7/17/2015			175560		105.89
7309	MICHAEL F. WALKER	R	7/17/2015			175561		43.48
1108	WESTAR ENERGY	R	7/17/2015			175562		157.51
5371	PITTSBURG FAMILY YMCA	R	7/17/2015			175563		92.06
6154	4 STATE MAINTENANCE SUPPLY INC	R	7/21/2015			175564		411.56
2876	A-PLUS CLEANERS & LAUNDRY	R	7/21/2015			175565		934.00
5283	CLASS LTD	R	7/21/2015			175566		26.20
0375	WICHITA WATER CONDITIONING, IN	R	7/21/2015			175567		56.80
6088	EMERGENCY RESPONSE SOLUTIONS,	R	7/21/2015			175568		259.00

VENDOR SET: 99 City of Pittsburg, KS  
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 DATE RANGE: 7/08/2015 THRU 7/21/2015

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
0118	FED EX	R	7/21/2015			175569		121.45
6857	PLAYCORE WISCONSIN, INC	R	7/21/2015			175570		55.80
6923	HUGO'S INDUSTRIAL SUPPLY INC	R	7/21/2015			175571		142.33
1900	ICMA	R	7/21/2015			175572		1,080.00
1208	KANSAS CITY SOUTHERN RAILWAY C	R	7/21/2015			175573		1.00
6656	KNIPP EQUIPMENT INC	R	7/21/2015			175574		643.00
7167	MAILFINANCE, INC	R	7/21/2015			175575		747.63
7078	PARADISE MALL	R	7/21/2015			175576		8.74
3434	PITTSBURG SUNRISE ROTARY	R	7/21/2015			175577		200.00
6536	POLYDYNE INC	R	7/21/2015			175578		4,500.00
7030	PRAETORIAN GROUP, INC	R	7/21/2015			175579		1,995.00
6894	R.M.I. GOLF CARTS	R	7/21/2015			175580		51.63
6806	RED MUNICIPAL & INDUSTRIAL EQU	R	7/21/2015			175581		2,407.72
6716	SID BOEDEKER SAFETY SHOE SERVI	R	7/21/2015			175582		120.00
1264	UNIVERSITY OF KANSAS	R	7/21/2015			175583		120.00
7053	U.S. PEROXIDE, LLC	R	7/21/2015			175584		950.00
3069	VIA CHRISTI PROFESSIONAL SERVI	R	7/21/2015			175585		595.00
0046	ETTINGERS OFFICE SUPPLY	E	7/15/2015			999999		559.89
0062	LINDSEY SOFTWARE SYSTEMS, INC.	E	7/15/2015			999999		1,425.00
0065	KONE INC.	E	7/15/2015			999999		206.27
0084	INTERSTATE EXTERMINATOR, INC.	E	7/15/2015			999999		510.00
0101	BUG-A-WAY INC	E	7/15/2015			999999		60.00

VENDOR SET: 99 City of Pittsburg, KS

BANK: 80144 BMO HARRIS BANK

DATE RANGE: 7/08/2015 THRU 7/21/2015

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
0105	PITTSBURG AUTOMOTIVE INC	E	7/15/2015			999999		1,818.41
0112	MARRONES INC	E	7/15/2015			999999		163.00
0117	THE MORNING SUN	E	7/15/2015			999999		376.69
0129	PROFESSIONAL ENGINEERING CONSU	E	7/15/2015			999999		16,171.62
0154	BLUE CROSS & BLUE SHIELD	D	7/10/2015			999999		122.23
0154	BLUE CROSS & BLUE SHIELD	D	7/17/2015			999999		469.37
0183	PRO-PRINT INC	E	7/15/2015			999999		50.00
0194	KANSAS STATE TREASURER	E	7/15/2015			999999		6,224.00
0199	KIRKLAND WELDING SUPPLIES	E	7/15/2015			999999		15.00
0207	PEPSI-COLA BOTTLING CO OF PITT	E	7/15/2015			999999		72.65
0224	KDOR	D	7/08/2015			999999		2,935.59
0224	KDOR	D	7/10/2015			999999		4,834.40
0272	BO'S 1 STOP INC	E	7/15/2015			999999		335.92
0276	JOE SMITH COMPANY, INC.	E	7/15/2015			999999		1,721.99
0292	UNIFIRST CORPORATION	E	7/15/2015			999999		63.60
0294	COPY PRODUCTS, INC.	E	7/15/2015			999999		1,380.00
0300	PITTSBURG FORD-MERCURY, INC.	E	7/15/2015			999999		138.28
0306	CASTAGNO OIL CO INC	E	7/15/2015			999999		177.84
0317	KUNSHEK CHAT & COAL CO, INC.	E	7/15/2015			999999		8,393.77
0321	KP&F	D	7/17/2015			999999		48,594.66
0329	O'MALLEY IMPLEMENT CO INC	E	7/15/2015			999999		198.68
0345	VICTOR L PHILLIPS CO	E	7/15/2015			999999		4,108.26

VENDOR SET: 99 City of Pittsburg, KS  
 BANK: 80144 BMO HARRIS BANK  
 DATE RANGE: 7/08/2015 THRU 7/21/2015

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
0375	WICHITA WATER CONDITIONING, IN	E	7/15/2015			999999		128.48
0409	WISEMAN'S DISCOUNT TIRE INC	E	7/15/2015			999999		265.65
0444	ROBERT BRENT LINDER	E	7/15/2015			999999		472.29
0534	TYLER TECHNOLOGIES INC	E	7/15/2015			999999		390.00
0551	DATA FLOW	E	7/15/2015			999999		140.28
0631	TRI-STATE BUILDING & SUPPLY CO	E	7/15/2015			999999		200.00
0728	ICMA	D	7/17/2015			999999		928.93
0746	CDL ELECTRIC COMPANY INC	E	7/15/2015			999999		7,434.11
0805	BROADWAY ANIMAL HOSPITAL PA	E	7/15/2015			999999		665.58
0829	CROWN PRODUCTS INC	E	7/15/2015			999999		806.65
0844	HY-FLO EQUIPMENT CO	E	7/15/2015			999999		195.02
0961	KANSAS JUDICIAL COUNCIL	E	7/15/2015			999999		170.00
1050	KPERS	D	7/17/2015			999999		39,051.16
1089	LABETTE COMMUNITY COLLEGE	E	7/15/2015			999999		240.00
1109	QA BALANCE SERVICES INC	E	7/15/2015			999999		1,163.00
1238	SEWARD ELECTRIC, INC.	E	7/15/2015			999999		303.39
1478	KANSASLAND TIRE OF PITTSBURG	E	7/15/2015			999999		664.91
1490	ESTHERMAE TALENT	E	7/15/2015			999999		75.00
2025	SOUTHERN UNIFORM & EQUIPMENT L	E	7/15/2015			999999		1,727.94
2126	BUILDING CONTROLS & SERVICE IN	E	7/15/2015			999999		210.00
2137	VAN WALL GROUP	E	7/15/2015			999999		323.25
2825	KANSAS DEPT OF ADMINISTRATION	E	7/15/2015			999999		638.37

VENDOR SET: 99 City of Pittsburg, KS  
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 DATE RANGE: 7/08/2015 THRU 7/21/2015

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
3192	MUNICIPAL CODE CORP	E	7/15/2015			999999		13.60
3802	BRENNTAG MID-SOUTH INC	E	7/15/2015			999999		1,725.00
4307	HENRY KRAFT, INC.	E	7/15/2015			999999		384.72
4390	SPRINGFIELD JANITOR SUPPLY, IN	E	7/15/2015			999999		339.72
4452	RYAN INSURANCE	E	7/15/2015			999999		593.00
4766	ACCURATE ENVIRONMENTAL	E	7/15/2015			999999		1,804.72
4791	SPRINGSTED INCORPORATED	E	7/15/2015			999999		25,532.25
5049	CRH COFFEE INC	E	7/15/2015			999999		39.90
5185	FERGUSON ENTERPRISES INC	E	7/15/2015			999999		6,363.96
5275	US LIME COMPANY-ST CLAIR	E	7/15/2015			999999		4,205.77
5295	SPRINGFIELD BLUEPRINT	E	7/15/2015			999999		541.77
5552	NATIONAL SIGN CO INC	E	7/15/2015			999999		1,161.25
5590	HD SUPPLY WATERWORKS, LTD.	E	7/15/2015			999999		948.18
5640	CORRECT CARE SOLUTIONS LLC	E	7/15/2015			999999		36.00
5904	TASC	D	7/17/2015			999999		6,960.73
6415	GREAT WEST TANDEM KPERS 457	D	7/17/2015			999999		3,320.00
6666	NEWARK CORPORATION	E	7/15/2015			999999		68.36
6711	TRI-STATE ASPHALT INC	E	7/15/2015			999999		2,493.02
6952	ADP INC	D	7/10/2015			999999		799.64
6952	ADP INC	D	7/17/2015			999999		2,418.88
7163	GRANT K. DAHMER	E	7/15/2015			999999		320.00
7237	J & R ENGINEERING / MARKETING	E	7/15/2015			999999		600.00

VENDOR SET: 99 City of Pittsburg, KS  
BANK: 80144 BMO HARRIS BANK  
DATE RANGE: 7/08/2015 THRU 7/21/2015

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
7240	JAY HATFIELD CERTIFIED USED CA	E	7/15/2015			999999		729.32
7266	CECO ENVIRONMENTAL CORP	E	7/15/2015			999999		114.37
7275	MIZE HOUSER & COMPANY	E	7/15/2015			999999		9,500.00
7283	CORESOURCE, INC	D	7/09/2015			999999		21,065.26
7283	CORESOURCE, INC	D	7/16/2015			999999		26,981.13
7290	DELTA DENTAL OF KANSAS INC	D	7/10/2015			999999		1,400.00
7290	DELTA DENTAL OF KANSAS INC	D	7/17/2015			999999		1,684.75
7361	3SI SECURITY SYSTEMS, INC	E	7/15/2015			999999		2,232.00

* * T O T A L S * *	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	58	48,332.39	0.00	48,207.39
HAND CHECKS:	0	0.00	0.00	0.00
DRAFTS:	15	161,566.73	0.00	161,566.73
EFT:	64	120,131.70	0.00	120,131.70
NON CHECKS:	0	0.00	0.00	0.00
VOID CHECKS:	1 VOID DEBITS	0.00		
	VOID CREDITS	125.00CR	125.00CR	0.00

TOTAL ERRORS: 0

VENDOR SET: 99 BANK: 80144	TOTALS:	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
		138	329,905.82	0.00	329,905.82
BANK: 80144	TOTALS:	138	329,905.82	0.00	329,905.82

VENDOR SET: 99 City of Pittsburg, KS  
 BANK: EFT MANUAL EFTS  
 DATE RANGE: 7/08/2015 THRU 7/21/2015

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
1108	WESTAR ENERGY	R	7/10/2015			175513		103,504.20
0046	ETTINGERS OFFICE SUPPLY	E	7/13/2015			999999		568.64
0065	KONE INC.	E	7/13/2015			999999		290.46
0068	BROOKS PLUMBING LLC	E	7/13/2015			999999		313.77
0087	FORMS ONE, LLC	E	7/20/2015			999999		341.50
0201	SPICER-ADAMS WELDING, INC.	E	7/20/2015			999999		206.53
0294	COPY PRODUCTS, INC.	E	7/13/2015			999999		103.00
0335	CUSTOM AWARDS PLUS INC	E	7/20/2015			999999		2,256.00
0422	HIGHSMITH, LLC	E	7/13/2015			999999		35.91
0455	LARRY BARRETT BODY * FRAME * T	E	7/20/2015			999999		75.00
0478	VIETTI AUTO BODY INC	E	7/13/2015			999999		2,274.01
0571	WILBERT MFG. & SUPPLY	E	7/20/2015			999999		204.20
0577	KANSAS GAS SERVICE	E	7/13/2015			999999		2,910.81
0650	HOME CENTER CONSTRUCTION	E	7/20/2015			999999		11,634.25
0700	NAMES AND NUMBERS	E	7/20/2015			999999		2,844.30
0746	CDL ELECTRIC COMPANY INC	E	7/20/2015			999999		262.70
0786	RICHARD RHEEMS	E	7/13/2015			999999		145.50
0806	JOHN L CUSSIMANIO	E	7/13/2015			999999		260.00
0866	AVFUEL CORPORATION	E	7/13/2015			999999		17,823.05
1609	PHILLIP H O'MALLEY	E	7/20/2015			999999		400.00
1619	MIDWEST TAPE, LLC	E	7/13/2015			999999		72.72
1629	PITTSBURG BEAUTIFUL	E	7/20/2015			999999		3,945.00

VENDOR SET: 99 City of Pittsburg, KS  
 BANK: EFT MANUAL EFTS  
 DATE RANGE: 7/08/2015 THRU 7/21/2015

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
1631	EVERYTHING SEW SEW	E	7/20/2015			999999		203.00
1792	B&L WATERWORKS SUPPLY, LLC	E	7/20/2015			999999		880.64
2025	SOUTHERN UNIFORM & EQUIPMENT L	E	7/20/2015			999999		1,214.88
2161	RECORDED BOOKS, LLC	E	7/13/2015			999999		31.50
2186	PRODUCERS COOPERATIVE ASSOCIAT	E	7/13/2015			999999		4,282.30
2186	PRODUCERS COOPERATIVE ASSOCIAT	E	7/20/2015			999999		17,926.07
2433	THE MORNING SUN	E	7/13/2015			999999		1,127.85
3272	DUNCAN HOUSING LLC	E	7/20/2015			999999		1,300.00
3668	MID AMERICA PROPERTIES OF PITT	E	7/20/2015			999999		350.00
4013	KNIGHTS OF COLUMBUS TOWERS	E	7/20/2015			999999		496.00
4307	HENRY KRAFT, INC.	E	7/13/2015			999999		57.42
4452	RYAN INSURANCE	E	7/20/2015			999999		790.00
4500	ANDREW HUYETT	E	7/13/2015			999999		250.00
4711	PENGUIN RANDOM HOUSE, LLC	E	7/13/2015			999999		67.50
4956	YAMAHA MOTOR CORPORATION, U.S.	E	7/13/2015			999999		16,950.00
4970	ERIC VANCE	E	7/20/2015			999999		1,119.00
5014	MID-AMERICA SANITATION	E	7/13/2015			999999		300.00
5482	JUSTIN HART	E	7/13/2015			999999		60.00
5534	SYCAMORE VILLAGE APARTMENTS	E	7/20/2015			999999		469.00
5855	SHRED-IT USA INC	E	7/20/2015			999999		216.32
6175	HENRY C MENGHINI	E	7/13/2015			999999		317.57
6298	KEVAN L SCHUPBACH	E	7/20/2015			999999		700.00

VENDOR SET: 99 City of Pittsburg, KS  
BANK: EFT MANUAL EFTS  
DATE RANGE: 7/08/2015 THRU 7/21/2015

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
6394	KEVIN HALL	E	7/20/2015			999999		545.00
6485	MISSION CONSTRUCTION CO INC	E	7/20/2015			999999		87,074.70
6508	JOHN H BAILEY	E	7/13/2015			999999		308.00
6528	GALE GROUP/CENGAGE	E	7/13/2015			999999		46.38
6945	JAMES M KUKOVICH	E	7/20/2015			999999		600.00
7028	MATTHEW L. FRYE	E	7/13/2015			999999		400.00
7038	SIGNET COFFEE ROASTERS	E	7/20/2015			999999		92.75
7118	SP DESIGN & MFG, INC	E	7/20/2015			999999		371.65
7127	UNIQUE MANAGEMENT SERVICES, IN	E	7/13/2015			999999		528.05
7384	THE DANCE PITT, LLC	E	7/13/2015			999999		1,296.52

\* \* T O T A L S \* \*

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	1	103,504.20	0.00	103,504.20
HAND CHECKS:	0	0.00	0.00	0.00
DRAFTS:	0	0.00	0.00	0.00
EFT:	53	187,339.45	0.00	187,339.45
NON CHECKS:	0	0.00	0.00	0.00
VOID CHECKS:	0	VOID DEBITS 0.00		
		VOID CREDITS 0.00	0.00	0.00

TOTAL ERRORS: 0

VENDOR SET: 99	BANK: EFT	TOTALS:	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
			54	290,843.65	0.00	290,843.65
BANK: EFT	TOTALS:		54	290,843.65	0.00	290,843.65
REPORT TOTALS:			203	620,624.47	0.00	620,749.47

Passed and approved this 28<sup>th</sup> day of July, 2015.

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Chuck Munsell, Mayor

ATTEST:

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Joye VanGorden, Deputy City Clerk

RESOLUTION NO. 1174

**WHEREAS**, the City of Pittsburg, Crawford County, Kansas, (the "Issuer") pursuant to the authority of Charter Ordinance No. 25 of the Issuer (the "Act") passed and approved (1) Ordinance No. S-950, on the 22<sup>nd</sup> day of May, 2007, and published as required by law, (the "2007B Ordinance") which Ordinance authorized the Issuer to issue its General Obligation Bonds, Series 2007B in the principal amount of Thirteen Million Dollars (\$13,000,000) (the "Bonds") to finance the cost of constructing, furnishing and equipping of a new fire station and a new public safety center, including a new police station and municipal court facilities (the "Project") and (2) Resolution No. 1049, on the 22<sup>nd</sup> day of May 2007 (the "2007B Resolution") which Resolution set forth the terms and conditions of the Bonds; and

**WHEREAS**, pursuant to Section 203 of the 2007B Resolution, the State Treasurer of the State of Kansas, Topeka, Kansas, was designated as the Issuer's Paying Agent and Bond Registrar for the payment of the principal of and interest on the Bonds; and

**WHEREAS**, pursuant to Section 301 of the 2007B Resolution, such Bonds maturing on September 1, 2016, and thereafter are subject to redemption and payment at the option of the Issuer on September 1, 2015, and thereafter as a whole or in part at any time at the redemption price of 100% of the principal amount redeemed, plus accrued interest to the date of redemption; and

**WHEREAS**, pursuant to Section 301 of the 2007B Resolution, the Issuer deems it necessary and advisable to call a portion of the Bonds maturing on September 1, 2018, (i.e., \$1,200,000) for redemption and payment on September 15, 2015 (the "Redemption Date").

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PITTSBURG, CRAWFORD COUNTY, KANSAS:**

**Section 1.** That pursuant to the Section 301 of the 2007B Resolution, the Issuer hereby calls a portion of the Bonds maturing on September 1, 2018, in the principal amount of \$1,200,000 for redemption and payment on September 15, 2015, the Redemption Date. The

Bonds are being called at the principal amount thereof plus accrued interest thereon, without premium.

**Section 2.** Subject to the specific requirements of the 2007B Resolution, notice of redemption shall be given in accordance with applicable law by the City giving written notice of its intention to redeem such bonds by mailing by certified mail a copy of the City's order of redemption (the "Redemption Notice") to the State Treasurer of the State of Kansas, 900 SW Jackson, Suite 201, Topeka, Kansas 66612 at least 45 days prior to the Redemption Date, who upon receipt of the Redemption Notice shall give notice of such call by mailing, not less than 30 days prior to the date fixed for redemption, a copy of the Redemption Notice by first class mail, postage prepaid, to the registered owner of each bond to be redeemed at the address shown on the registration books maintained by the Bond Registrar.

**Section 3.** That all acts, conditions and things required by the Constitution and the laws of the State of Kansas, relating to the passage of this Resolution, or to the execution of any related document to happen, exist and be performed pursuant to and in the enactment of this Resolution, have happened, exist and have been performed as required by law.

**PASSED AND APPROVED** this 28th day of July, 2015.

CITY OF PITTSBURG, KANSAS

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Chuck Munsell, Mayor

ATTEST:

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Joye VanGorden, Deputy City Clerk

(SEAL)