

CITY OF MISSION, KANSAS
FINANCE & ADMINISTRATION COMMITTEE

WEDNESDAY, SEPTEMBER 4, 2019

7:30 P.M.

(or immediately following 6:30 p.m. Community Development Committee)

Mission City Hall

PUBLIC HEARINGS / PUBLIC COMMENTS

PUBLIC PRESENTATIONS / INFORMATIONAL ONLY

ACTION ITEMS

1. Acceptance of the August 7, 2019 Finance & Administration Committee Minutes - Martha Sumrall ([page 3](#))

Draft minutes of the August 7, 2019 Finance and Administration Committee meeting are included for review and approval.

2. Participation in County-wide Housing Inventory - Laura Smith ([page 10](#))

UCS, through grant support from the Kansas Health Foundation and REACH Healthcare Foundation has convened a multi sector collaborative called the Johnson County Health Equity Network. Through research, data analysis and focused listening sessions, they identified housing as a priority health equity issue for the Johnson County community. UCS is working with the County and the cities within the County to conduct a housing market and needs assessment to engage city and county governments in the development of a housing plan that ensures safe, suitable and attainable housing for all county residents. Johnson County has agreed to fund approximately fifty percent of the study, and is looking to the cities to fund the balance based on a pro-rata share of population. Staff recommends that Mission support this effort with a financial contribution in the amount of \$1,250.

3. Franchise Agreement with Bluebird Network - Martha Sumrall ([page 13](#))

The City was contacted by Bluebird Network regarding our requirements for a right-of-way permit to install fiber line underneath Roe Avenue, with a portion of it crossing through Mission, and our requirements for a franchise agreement. A franchise agreement, adopted by ordinance, is required prior to a right-of-way permit being issued and is consistent with other current franchise agreements. Terms of the agreement include the collection of a franchise fee of 5% of gross receipts and an expiration date of December 31, 2024 with up to eight additional two year renewal terms. The proposed franchise agreement and other documents have been drafted, reviewed and recommended by legal counsel at Payne & Jones, working with legal counsel at Bluebird Network.

DISCUSSION ITEMS

OTHER

4. Department Updates - Laura Smith

Sollie Flora, Chairperson
Kristin Inman, Vice-Chairperson
Mission City Hall, 6090 Woodson St
913-676-8350

City of Mission	Item Number:	1.
ACTION ITEM SUMMARY	Date:	September 4, 2019
Administration	From:	Martha Sumrall

Action items require a vote to recommend the item to full City Council for further action.

RE: August 7, 2019 Finance & Administration Committee minutes.

RECOMMENDATION: Review and accept the August 7, 2019 minutes of the Finance & Administration Committee.

DETAILS: Minutes of the August 7, 2019 Finance & Administration Committee meeting are presented for review and acceptance. At the committee meeting, if there are no objections or recommended corrections, the minutes will be considered accepted as presented.

Draft minutes are linked to the City Council agenda packet so that the public may review the discussion from the committee meeting in advance of the Council action on any particular item.

CFAA CONSIDERATIONS/IMPACTS: N/A

Related Statute/City Ordinance:	NA
Line Item Code/Description:	NA
Available Budget:	NA

MINUTES OF THE MISSION FINANCE & ADMINISTRATION COMMITTEE

August 7, 2019

The Mission Finance & Administration Committee met at Mission City Hall, Wednesday, August 7, 2019 at 6:30 p.m. The following committee members were present: Pat Quinn, Hillary Thomas, Arcie Rothrock, Nick Schlossmacher, Debbie Kring, Kristin Inman, Ken Davis and Sollie Flora. Mayor Appletoft was also present. Councilmember Flora called the meeting to order at 6:30 p.m.

Also present were City Administrator Laura Smith, City Clerk Martha Sumrall, Assistant to the City Administrator Emily Randel, Public Works Superintendent Brent Morton, and Capt. Dan Madden.

Public Hearings on 2019 City of Mission Budget **Public Hearing on Rock Creek drainage District No. 1 Budget** **Public Hearing on Rock Creek Drainage District No. 2 Budget**

Councilmember Flora stated this is the official public hearing on the 2020 Budget for the City of Mission, Rock Creek Drainage District No. 1 and Rock Creek Drainage District No. 2. The notice of the public hearing was published in The Legal Record on July 23, 2019.

Councilmember Flora opened the public hearing and invited Ms. Smith to give a brief presentation on the Budget. Following the presentation, the hearing will be opened to the public for comments.

Ms. Smith provided a brief overview of the 2020 Budget, including:

- City's 2020 Budget includes 16 individual funds
- \$26.89 million in estimated expenditures for 2020
- No tax or fee increases included - anticipated mill rate of approximately 17.866 - 7 to streets, 10.866 to support general fund operations

General Fund:

- Largest portion of annual budget with \$13.495 million in revenue (2% increase)
- Expenditures in the amount of \$13.59 million (1% decrease)
- Funding for the highest priority capital/technology: permitting software, public works equipment to support snow removal and street maintenance, front line patrol fleet replacement, in-car/body camera replacement
- Supplemental program funding included for: update to greenhouse gas inventory, increased tree maintenance on public property, re-establishing full-time planner position in Community Development, converting two previously authorized "over-hire" positions to full-time to create a directed patrol unit

- Our fund balance has been successfully rebuilt to 35% of General Fund revenues. Our policy is 25% so this provides excess fund balance of approximately \$1.1 million

CIP

- The CIP is a 5-year program covering streets, stormwater and parks and recreation
- Generally supported by dedicated revenue streams that increases transparency and accountability
- 2020 projects are adopted with the annual budget:
 - \$6.47 million in revenues
 - \$11.99 million in expenses (carry-over funds)
- RC Channel Project, Lamar Resurfacing, Mohawk Park Restrooms

Other funds

- MCVB (banners), Special Alcohol (mental health co-responder, DARE, DAC programs), Solid Waste Utility Fund (new contract for 2020), Development Project Tracking (TIF/CID)

She stated that we have been working on this budget since May and it has been discussed at various meetings. Council will adopt the budget at the August 21st City Council Meeting, and it will then be certified to the County by August 25th.

Councilmember Flora invited public comments. There being none, the public hearing was closed.

Acceptance of the July 10, 2019 Finance & Administration Committee Minutes

The July 10, 2019 Finance & Administration Committee Minutes were provided to the committee in the packet. There being no objections or corrections, the minutes were accepted as presented.

2020 Budget Resolution

Ms. Smith stated the 2020 Budget resolution is a part of our annual budget process and captures a high level view of the policies and priorities for 2020. This draft resolution outlines what has been discussed throughout the budget process, and is separated into two sections that highlight the policies associated with public infrastructure as part of the CIP and a section highlighting policies related to basic services and city operations. She stated all aspects of the budget have been discussed by Council over the last few months at various meetings.

Councilmember Quinn recommended that the resolution establishing budget policies for Budget Year 2020 for the City of Mission be forwarded to Council for approval. All on the committee agreed, but this will not be a consent agenda item.

2020-2024 CIP Resolution

Ms. Smith reported that in 2010 the City began putting together a Capital Improvement Program (CIP). As part of the annual budget process, a resolution is adopted that addresses the recommended five-year infrastructure plan (CIP). This resolution is helpful in capturing the history of these projects and outlines priorities for the next five years. She stated revenues and expenses programmed in the CIP for 2020 are included in the 2020 recommended budget in the appropriate funds.

Councilmember Kring recommended that the resolution adopting the 2020-2024 Capital Improvement Program (CIP) for the City of Mission be forwarded to Council for approval. All on the committee agreed, but this will not be a consent agenda item.

Adoption of 2020 Budget

Ms. Smith stated approval of the 2020 Budget will be on the City Council Agenda. She thanked Mr. Scott for all his work on this, as well as other staff. After adoption of the budget and CIP resolutions, the 2020 Budget will be adopted by three individual motions, as each is an independent taxing authority:

- City of Mission 2020 Budget
- Rock Creek Drainage District No. 1 2020 Budget
- Rock Creek Drainage District No. 2 2020 Budget

Councilmember Davis stated he greatly appreciates all of staff's hard work on this budget.

Councilmember Davis recommended that approval of the City of Mission 2020 Budget, Rock Creek Drainage District No. 1 2020 Budget, and Rock Creek Drainage District No. 2 2020 Budget be forwarded to Council for approval. All on the committee agreed, but this will not be a consent agenda item.

Charter Ordinance Changing Date for Swearing-in Newly Elected Officials

Ms. Smith stated Senate Bill 105 took effect July 1st and allows cities to set the date when newly elected officials will take office. Previously, we had transitioned to the second Monday in January as required by state statutes, but now have more discretion and can select a date between December 1 (after the November election has been certified) and the second Monday in January. If we do not select a date, then we would default to the second Monday in January. Because Charter Ordinance No. 27 specifically sets the date for newly elected officials taking office as the second Monday in January, a charter ordinance is required to change this date. This proposed charter ordinance amends Charter Ordinance No. 27 and moves the swearing-in date for newly elected officials to the December City Council Meeting. Once approved, this charter ordinance must be published once a week for two consecutive weeks, and does not

become effective until 61 days following final publication. That date would be November 3, 2019.

Councilmember Davis recommended that the charter ordinance amending the provisions of Charter Ordinance No. 27 which regulates municipal elections to provide that the terms of newly elected officials will begin on the date of the regular council meeting in December following November elections or as set by resolution be forwarded to Council for approval. All on the committee agreed, but this will not be a consent agenda item.

Selection of Voting Delegates for LKM and NLC

Ms. Sumrall stated that as a member city of both the League of Kansas Municipalities and the National League of Cities, Mission may designate voting delegates for the business meetings held at their respective conferences. At this time, Councilmember Inman, Councilmember Davis and Brian Scott plan to attend the LKM meeting. Mission is allowed three voting delegates and three alternates, and the committee agreed that those attending would be designated as our three voting delegates. Currently, Councilmember Kring and Councilmember Schlossmacher are registered to attend the NLC Conference in November where we are allowed to designate one voting delegate and one alternate. Councilmember Schlossmacher recommended Councilmember Kring be our voting delegate and he would be the alternate. All on the committee agreed.

The committee recommended that the selection of Kristin Inman, Ken Davis, and Brian Scott as voting delegates for the LKM business meeting and that the selection of Debbie Kring as the voting delegate and Nick Schlossmacher as the alternate voting delegate for the NLC business meeting be forwarded to Council for approval. All on the committee agreed. This will be a consent agenda item.

CFD2 Street Solicitation Application

Ms. Sumrall reported that Consolidated Fire District No. 2 and IAFF Local 1371 have conducted a boot block annually to solicit funds to benefit the Muscular Dystrophy Association. They are requesting approval to solicit at the intersection of Johnson Drive and Lamar over the Labor Day weekend (August 30 - September 2). Their application has been reviewed and approved by Chief Hadley and they have submitted the required certificate of insurance coverage.

Councilmember Rothrock recommended that approval of the Street Solicitation Application for CFD2 and IAFF Local 1371 to conduct a "boot block" at the intersection of Johnson Drive and Lamar, August 30 - September 2, 2019 be forwarded to Council for approval. All on the committee agreed. This will be a consent agenda item.

Refresh of City Website

Ms. Randel reported that staff is working with our website provider, Municipal CMS, on a refresh of the site. The changes will be mostly aesthetic, but the refresh will also allow our website to work better with mobile devices, be more user-friendly, and include updated photos. Additionally, staff will complete a full site review with Municipal CMS staff. She noted the website examples provided in the meeting packet and stated that our preferred “look” will look more like a smart app with icons rather than text boxes. She also discussed updating the photos on the website, that will change seasonally. She noted that the website examples included in the packet are presented in the order of staff’s preference.

Councilmember Kring suggested that more photos from events be added to the website, noting people like to see many community pictures.

Councilmember Davis stated that he trusts staff recommendation on the look of the website, and agrees the first example (MaMatthews, NC) looks good.

Councilmember Quinn asked if staff tracks and reviews traffic to our website. He is interested in a comparison of the past few years since there are so many other social media options. Ms. Randel stated we do use Google Analytics and have periodic snapshots of social media usage. She also discussed the ability to have direct dialogue with residents through social media.

Councilmember Thomas asked how long a “refresh” of a website usually lasts. Ms. Randel stated usually 3-4 years, and that our website is overdue, but not by too long as 2018 would have been their recommended year for a refresh.

Councilmember Inman asked if we can work to include the ability to attach a picture when reporting a concern through the website. Ms. Randel stated we will look into this and agreed that it would be very helpful. The committee also discussed the YourGov app and whether or not it is still being used. Mr. Morton stated that it is used, and Ms. Randel stated that the “report a concern” option on the website is also popular with residents.

This item was for discussion only and no action was taken.

Other Department Updates

Ms. Smith discussed a recent article in the KC Star regarding declining sales tax in some cities, and the dark store theory, which will be considered by the Kansas Supreme Court for a final ruling. She noted that staff monitors our sales tax revenues monthly and a year-to-date comparison shows that we continue to maintain revenue levels and are even seeing some small growth. She stated our use tax revenues are down, but that this should be taken in context as we have exceeded what was budgeted due to very conservative budgeting. We have been able

to rebuild our General Fund balance and she stated we do not overestimate, especially sales tax. Staff will continue to monitor sales tax, but we are not experiencing some the same trends that other cities are experiencing. This may be due to the size of Mission and the fact that we have a limited number of larger retailers. She also reported that information was received today from the appraiser on the potential impact the dark store theory could have in Mission, but stressed that we do have time to react to this while it moves through the legal system. She again stated that we are in a strong position financially and will continue to be conservative.

Councilmember Schlossmacher requested information on the use tax. Ms. Smith stated that most of this comes from facility and equipment upgrades by companies in Mission, and referenced a table in the annual audit that outlines where our sales taxes come from.

Councilmember Inman requested information on the recent Supreme Court decision involving Wayfair and internet sales taxes. Ms. Smith will review this and provide additional information to Council. Councilmember Flora stated that information on this was made available by the Kansas Department of Revenue this week. Discussion continued on where this sales tax is collected (state level) and how it is distributed to municipalities.

Councilmember Quinn reminded all that there will be a Harvesters Mobile Food Distribution event on Saturday, August 17th at Shawnee Mission North. Volunteers are needed and those interested should contact Suzie Gibbs or Lynn Kring. Volunteers should report to the Shawnee Mission North parking lot at 8:00 a.m. with the food distribution beginning at 8:30 a.m. He stated this is a great event and encouraged anyone interested to volunteer.

Meeting Close

There being no further business to come before the Committee, the meeting of the Finance and Administration Committee adjourned at 7:06 p.m.

Respectfully submitted,

Martha Sumrall
City Clerk

City of Mission	Item Number:	2.
ACTION ITEM SUMMARY	Date:	September 4, 2019
Administration	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

RE: Participation in the Johnson County Municipalities Community Housing Study coordinated by United Community Services (UCS)

RECOMMENDATION: Approve the expenditure of \$1,250 as Mission’s proportionate share of a county-wide housing study inventory that will be coordinated by UCS.

DETAILS: UCS, through grant support from the Kansas Health Foundation and REACH Healthcare Foundation has convened a multi sector collaborative called the Johnson County Health Equity Network. Through research, data analysis and focused listening sessions, they identified housing as a priority health equity issue for the Johnson County community.

In order to address this issue, UCS is working with the County and the cities within the County to conduct a housing market and needs assessment. The objective of the study will be to engage city and county governments in the development of a housing plan that ensures safe, suitable and attainable housing for all county residents. The County last conducted a comprehensive housing market and needs analysis in 2004. A snapshot of the key study elements is included in the packet for your information.

Johnson County has agreed to fund approximately fifty percent of the study, and is looking to the cities to fund the balance based on a pro-rata share of population. UCS anticipates releasing the RFP in mid-September and Laura has been asked to serve on the RFP Evaluation Committee.

Participation in the study will provide Mission with important data that supports our conversations surrounding affordable housing at a cost that is much more efficient than if we elected to conduct an inventory on our own. Staff is recommending that Mission support this effort with a financial contribution in the amount of \$1,250.

CFAA CONSIDERATIONS/IMPACTS: Collecting information on and developing recommendations to support housing for Mission residents helps to support our objective of providing safe and affordable options for people of all ages, income levels and abilities.

Related Statute/City Ordinance:	NA
Line Item Code/Description:	01-07-215-03
Available Budget:	\$5,000

Johnson County Municipalities Community Housing Study/Task Force

Key Study Elements

Demographic and Economic Profile

- Current Demographics
- Trends and changes in demographics
- Demographic predictions
- Migration- who is moving in/out
- Household composition
- Poverty rates and trends
- Income distribution
- Labor force and unemployment- current and trends
- Occupations and employers
- Traffic and Commuting

Housing Profile and Economic Analysis

- Defining and measuring housing affordability (cost burden= more than 30% of income) + Transportation affordability (cost burden= more than 15% of income)
- Existing housing stock, housing types, and tenure, age of housing stock
- Building permits- trends
- Ownership market trends, renters who want to buy, supply of affordable homes and geographic distribution

- Gaps in the market (difference between number of renters or buyers and the number of affordable units)
- Rental market trends
- Impact of Gentrification
- Housing needs – persons with disabilities, experiencing homelessness, seniors, students, family demographic

Community Input:

➤ **Resident survey**

- Community participation opportunities
- Current housing choice
- Housing condition
- Repair needs
- Accessibility
- Displacements and vulnerabilities
- Strategies used to afford housing— what people give up or postpone
- Future housing plans
- Current housing spectrum
- Stakeholder perspectives

➤ **Employer survey**

- How easy is it for employees to find housing?
- How to employees cope with housing challenges?

➤ **Rental property owner/manager survey**

- Market
- Anticipated rent increases
- Perspectives on occupancy

State & Local Policies

- State Housing Preemption Laws – Impact
- Development Fees and Review Process
- Zoning and land use analysis
- Local housing ordinances/building codes
- Local strategic planning on housing choice
- Local incentive strategies

Highlights

- UCS facilitates cooperative work among cities and county government partners to develop a housing plan that ensures safe, suitable, attainable housing for all county residents
 - ✓ Cities/County collaborate on housing study and task force to develop a set of recommendations/options
 - ✓ Housing Study RFP handled through UCS
 - ✓ County/Cities share costs proportionately

Johnson County Municipalities Community Housing Study/Task Force Cost Estimates

JURISDICTION	Population 2017 estimate	
	591,178	Housing Study/Taskforce Costs Combined Proportionate by Population
Mission Woods	195	\$100
Westwood Hills	395	\$100
Lake Quivira	935	\$150
Westwood	1,655	\$225
Edgerton	1,771	\$225
Mission Hills	3,573	\$425
Fairway	3,957	\$425
De Soto	6,107	\$650
Spring Hill	6,618	\$650
Roeland Park	6,772	\$650
Mission	9,409	\$1,250
Merriam	11,212	\$1,600
Gardner	21,583	\$2,750
Prairie Village	22,368	\$2,800
Leawood	34,659	\$5,000
Lenexa	53,553	\$7,000
Shawnee	65,513	\$7,500
Olathe	137,472	\$11,250
Overland Park	191,278	\$16,250
City Total	578,830	\$59,000*

*Note: This amount represents approximately 50% of the estimated costs. Johnson County Government has agreed to support up to 50% of the remaining estimated costs.

City of Mission	Item Number:	3.
ACTION ITEM SUMMARY	Date:	September 4, 2019
Administration	From:	Martha Sumrall

Action items require a vote to recommend the item to full City Council for further action.

RE: Bluebird Network LLC Franchise Agreement

RECOMMENDATION: Approve an ordinance granting Bluebird Network LLC a contract franchise to construct, operate and maintain a telecommunications system in the City of Mission, Kansas and prescribing the terms of said contract franchise.

DETAILS: The City was contacted by Bluebird Network regarding our requirements for a right-of-way permit to install fiber underneath Roe Avenue, with a portion of it crossing through Mission, and our requirements for a franchise agreement. A franchise agreement, adopted by ordinance, is required prior to a right-of-way permit being issued and is consistent with other franchise agreements the City currently has in place. This proposed franchise agreement/ordinance has been drafted, reviewed and recommended by legal counsel at Payne & Jones, working with legal counsel at Bluebird Network.

Terms of the agreement include the collection of a franchise fee of 5% of gross receipts, and an expiration date of December 31, 2024 with up to eight additional two year renewal terms unless either party notifies the other party of its intent to terminate the agreement at least 90 days before the expiration of the current term. At this time, Bluebird Network will not be providing service in Mission so no franchise fee will be collected.

If approved, Bluebird Network will be able to apply for a right-of-way permit to begin installation work. The proposed project will install fiber in the area of Johnson Drive and Roe, connecting to St. Luke's Urgent Care. When the right-of-way permit is granted, Public Works will work with the company as they complete installation.

CFAA CONSIDERATIONS/IMPACTS: N/A

Related Statute/City Ordinance:	City of Mission Code, Section 645.010
Line Item Code/Description:	NA
Available Budget:	NA

ORDINANCE NO. ____

AN ORDINANCE GRANTING TO MISSOURI NETWORK ALLIANCE LLC DBA BLUEBIRD NETWORK A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS FIBER OPTIC SYSTEM IN THE CITY OF MISSION, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

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

SECTION 1. DEFINITIONS.

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

- a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications Local exchange service provider or private line service arrangements.
- b. "Access line count" - means the number of Access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(3), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
- e. "City" - means the City of Mission, Kansas.
- f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide Telecommunications services within the City.
- g. "Facilities" - means telephone and telecommunications lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide Telecommunications services.

- h. "Grantee" - means Missouri Network Alliance LLC dba Bluebird Network, a Telecommunications carrier providing service and/or operating Facilities within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- i. "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City and which are derived from the following: (1) Recurring Local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange Access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring Local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications Local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from Gross Receipts. Gross Receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within Gross Receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- J. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term Local exchange service shall not include wireless communication services or transport of Internet or customer dedicated service.
- k. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- l. "Telecommunications services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
- m. "Telecommunications carrier" – means a corporation, company, individual, association of persons, their trustees, lessees or receivers that provides a telecommunications service, including, but not limited to, interexchange carriers and competitive access providers, but not including local exchange carriers certified before January 1, 1996.

SECTION 2. GRANT OF CONTRACT FRANCHISE.

There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of any Telecommunications services or system, including but not limited to, supplying Telecommunications services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise. The City and Grantee acknowledge and agree that the rights

granted under this Contract franchise are for the installation and operation of Grantee's fiber optic cables and related appurtenances, including laterals to wireless cell towers and that this Contract franchise does not authorize Grantee to construct, maintain or operate towers, poles, wireless antennas and related facilities in the Public right-of-way. If in the future Grantee desires authority to construct, maintain and operate towers, poles, wireless antenna and related facilities in the Public right-of-way, Grantee shall either seek a new contract franchise or an amendment to this Contract franchise.

- a. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:
 - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
 - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
 - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.
- b. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).
- c. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- d. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

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

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of such public ways by other utilities.

Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable

public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to the City's ordinance for managing the use and occupancy of the Public Right-of-way, codified in Chapter 520 of the Municipal Code of the City of Mission, and amendments thereto.

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

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed the maximum Access line fee allowed by Kansas Statute. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.
- b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or Gross Receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.
- c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City a certified statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.
- f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

- h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.
- i. Grantee shall remit an Access line (franchise) fee or a Gross Receipts (franchise) fee to the City on those Access lines that have been resold to another telecommunications Local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance. Such Access line (franchise) fee or Gross Receipts (franchise) fee shall be in the same amount or percentage as the franchise fee set forth in subsection 4 a. hereinabove.

SECTION 5. INDEMNITY AND HOLD HARMLESS.

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66- 1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND

- a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

- (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
 - (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) per occurrence and aggregate. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.
- b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.
- c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, evidencing that the above insurance is in force and will not be cancelled without first giving the City thirty (30) days prior written notice, 10 days for non-payment of premium. Grantee shall make available to the City by appointment during normal business hours at Grantees facility at 2005 W. Broadway, Building A, Suite 215, Columbia, Missouri on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of Fifty Thousand Dollars (\$50,000), payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

SECTION 7. REVOCATION AND TERMINATION.

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been completed with or a remedy plan agreeable to the City is submitted, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that

may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

SECTION 8. RESERVATION OF RIGHTS.

- a. To the extent provided by law, the City specifically reserves its right and authority as a customer of Grantee, if such is the case, and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non- franchise ordinances (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise and/or rulings.

SECTION 9. FAILURE TO ENFORCE.

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

SECTION 10. TERM AND TERMINATION DATE.

- a. This Contract franchise shall be effective for a term beginning on the effective date of this Contract franchise and ending on December 31, 2024. Thereafter, this Contract franchise will automatically renew for up to eight (8) additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least ninety (90) days before the termination of the then current term. The additional terms shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

- b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.
- d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.
- e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

SECTION 11. POINT OF CONTACT AND NOTICES

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

The City:

The City of Mission
 6090 Woodson
 Mission, Kansas 66202
 Attn: City Clerk
 (913) 722-1415 fax

Grantee:

Missouri Network Alliance LLC
 2005 W. Broadway, Building A, Suite 215
 Columbia, Missouri 65203
 Attn: President & CEO

With a Copy to:

City Attorney
 6090 Woodson
 Mission, Kansas 66202
 Attn: David K. Martin

With a copy to:

Missouri Network Alliance LLC
 800 NW Chipman road, Suite 5750
 Lee's Summit, Missouri 64063
 Attn: Director, Business Development

Uniti Leasing MW LLC
Attn: Legal
10802 Executive Center Drive
Benton Building, Suite 300
Little Rock, AR 72211

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

SECTION 12. TRANSFER AND ASSIGNMENT.

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City subject to Section 18 below or to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, or to an entity with which Grantee is under common ownership or control, upon written notice to the City. In the event of any transfer or assignment of either this Contract franchise or Grantee's business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this Contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

SECTION 13. CONFIDENTIALITY.

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

SECTION 14. ACCEPTANCE OF TERMS.

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

SECTION 15. PAYMENT OF PUBLICATION COSTS.

In accordance with Kansas Statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

SECTION 16. SEVERABILITY.

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as

a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

SECTION 17. FORCE MAJEURE.

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

SECTION 18. ASSIGNMENT

Grantee shall not assign this Agreement without the prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed, except that Grantee may assign this Agreement to Uniti Leasing MW LLC ("Uniti") upon written notice to the City. Uniti is a third party beneficiary of Grantee's rights under this Agreement but solely to the extent that the fiber optic communication system and equipment of Grantee referenced herein is, in whole or in part, owned by Uniti, which ownership is permitted but shall not relieve Grantee of any of its obligations to the City under this Agreement.

PASSED by the City Council this 18th day of September 2019.

APPROVED by the Mayor this 18th day of September 2019.

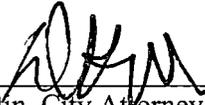
CITY OF MISSION, KANSAS

Ronald E. Appletoft, Mayor

ATTEST:

Martha Sumrall, City Clerk

APPROVED AS TO FORM:



Dave Martin, City Attorney