

**EUDORA CITY COMMISSION  
MEETING AGENDA  
February 10, 2020  
Eudora City Office  
4 East 7<sup>th</sup> Street Eudora, Kansas  
7:00 P.M.**

**Mayor: Tim Reazin**

**Vice Mayor: Ruth Hughs**

**City Commissioners: Jolene Born, Roberta Lehmann & Tim Bruce**

- I. CALL TO ORDER      Roll Call      Pledge of Allegiance**
- II. CHANGES OR ADDITIONS TO AGENDA – Approve agenda**
- III. CONSENT ITEMS:**
  - A. Consider minutes of January 27, 2020 Eudora City Commission meeting**
  - B. Consider warrants against the City of Eudora**
  - C. Consider January Police Department report**
  - D. Consider January Fire Department report**
  - E. 4th Quarter Treasurer’s report**

**PUBLIC COMMENTS: Please state name and address prior to addressing the Governing Body. Public comments are limited to 5 minutes per speaker.**

- IV. BUSINESS ITEMS:**
  - A. Consider Ordinance 1105 granting to Kansas Fiber Network, LLC a franchise contract**
- V. Mayor & City Commission comments**
- VI. City Manager & staff comments**
- VII. WORK SESSION:**
  - A. None**
- VIII. EXECUTIVE SESSION:**
  - A. Non-elected personnel**
- IX. Adjournment**

*As a courtesy, please silence all cell phones while the City Commission meeting is in session.*

Eudora City Commission Meeting  
City Hall – 4 E. 7<sup>th</sup> Street  
Eudora, Kansas  
January 27, 2020  
7:00 pm

Call to Order

Mayor Tim Reazin

Vice Mayor Ruth Hughs

Commissioner Jolene Born

Commissioner Roberta Lehmann

Commissioner Tim Bruce

Quorum noted.

Pledge of Allegiance was recited.

Changes or additions to agenda

Mayor Reazin requested the Executive Session be removed from the agenda.

**Mayor Reazin moved the City Commission approve the agenda with the removal of the Executive Session,** motion seconded by Commissioner Hughs, all ayes, motion carried, 5-0.

Consent agenda items

- A. Consider minutes of January 13, 2020 Eudora City Commission meeting
- B. Consider warrants against the City of Eudora
- C. Consider animal sheltering service agreement with Lawrence Humane Society

**Mayor Reazin moved the City Commission approve the consent items,** motion seconded by Commissioner Born, all ayes, motion carried, 5-0.

Public comments

Public comments were invited and were heard by Laura Rosenberger regarding the proposed Sonic Drive In sign causing drivers to be distracted and noted a couple of near accidents have happened in the Sonic intersection and thought a stop sign might help.

GW Weld, representing the Eudora Chamber of Commerce, spoke in support of 840 Main Street becoming a restaurant in downtown and suggested deed restrictions to ensure the building is used for the right kind of business.

Business Items

- A. Consider appointing Mike Keltner to the Eudora Community Library Board

City Manager Barack Matite stated Resolution 2019-04, a joint resolution signed by the City and Eudora Township, allows the City Commission to fill any unexpired term on the Eudora Community Library Board. Library Board President Eric Magette informed Mayor Reazin that Amber Jackson had resigned from the board. The board has recruited Mike Kelso to fill that vacancy.

**Commissioner Bruce moved the City Commission appoint Mike Keltner to the Eudora Community Library District Board,** motion seconded by Commissioner Hughs, all ayes, motion carried, 5-0.

- B. Consider mayoral appointments to the Planning Commission and Board of Zoning Appeals

City Clerk Schmeck stated the Planning Commission and the Board of Zoning Appeals have 3-year terms and half of the members are up for appointment by the Mayor and the next year the other members are up for appointment. This year three BZA members and four Planning Commissioners are up for appointment. The

Mayor has contacted the current members, and all are willing to be reappointed. One BZA member, Aaron Thakker, has moved out of the city limits which excludes him from being on the board. Mayor Reazin appointed Ron Long as Mr. Thakker's replacement.

**Commissioner Bruce moved the City Commission approve Mayor Reazin's appointments to the Planning Commission and the Board of Zoning Appeals effective January 27, 2020,** motion seconded by Commissioner Hughs, all ayes, motion carried, 5-0.

C. Presentation: Kansas Fiber Network

Manager Matite introduced Kansas Fiber Network representative Bob Wallentine who addressed the Commission. Mr. Wallentine presented his company's proposal to provide fiber connection between Lenexa and Lawrence. The proposed line would go through Eudora on 10<sup>th</sup> Street. A franchise agreement could possibly come before the Commission at a future date.

D. Presentation: Biannual update from Eudora Community Museum Executive Director Ben Terwilliger  
Executive Museum Director Ben Terwilliger presented his first of two biannual reports.

E. Consider purchase offer from the Musick Group for 840 Main Street property  
Commissioner Bruce recused himself from the conversation for a conflict of interest.

Manager Matite presented an offer from the Musick Group which is currently owned by the City. The Musick group offered \$100,000 for the property. Currently, it's used as storage for different city departments, the library and the Historical Society.

Jason and Jay Musick attended the meeting. Jason Musick spoke for Musick Group. Mr. Musick explained their plans for the restaurant. They described the interior design options they have been discussing. Mayor Reazin commented the large concrete flowerpots and umbrellas in the conceptual drawing look great but they are in City right of way. Commissioner Born asked for a timeframe on completing the remodel inside and exterior. Mr. Musick replied the inside is the most critical at this time and should take three or four months to complete. The outside needs to have more conversation of what the City will be doing and what the Musick Group can do after that. They will probably open with no patio. Commissioner Hughs commented that she wanted to see a new roof on the building. She asked for a timeline that would allow the for renovations for the exterior. Commissioners Lehmann and Hughs wanted to see windows in the building as shown on the conceptual drawing. Commissioners asked for an updated rendition of the building exterior. Mr. Musick agreed to deed restrictions.

Matite summarized the conversation: Commission is comfortable with the offering price of \$100,000 for the building but will discuss with the Musick Group what the City will get in return. This conversation is where staff and the Musick Group will collaborate to get something to bring back to the Commission. It will include details on the different phases and a timeline.

F. Consider request to waive city fees associated with Nottingham Project for the City of Eudora  
City Manager Matite explained staff wanted to bring this to the Commission publicly to request the Commissioners approve waiving the fees associated with the Nottingham Project. If not, the City would pay the fees and then reimburse itself once we had issued the GO Bonds.

**Mayor Reazin moved the City Commission waive all city fees associated with the Nottingham project for the City of Eudora as it works to redevelop the Nottingham site at 1428 Elm Street,** motion seconded by Commissioner Hughs, all ayes, motion carried, 5-0.

Mayor and City Commission Comments

**Mayor Reazin** thanked Fire and Police Departments, along with Public Works, in their response to the fire in the Intech Business Park. He thanked the other communities for their assistance. The Mayor informed the other Commissioners that didn't attend Local Government Day in Topeka that those attending met with

Senator Holland and Representatives Jim Karleskint and Eileen Horne. The consensus of the Commission was to name the Nottingham property Nottingham Center.

**Commissioner Bruce** – No comment.

**Commissioner Hughs** – No comment.

**Commissioner Born** – No comment.

**Commissioner Lehmann** – No comment.

City Manager and Staff Comments

**City Manager Barack Matite** commented the town hall meeting regarding the Comprehensive Plan will be next Tuesday in the Commission Chambers at 7:00 pm. The survey has had very good feedback. Focus Groups have been scheduled for more discussion on the plan. Asst. Manager Herring, Parks & Recreation Director Sally Pennington and Asst. Parks & Recreation Director Jimmy Kegin will be going to Wichita for a Kansas Wildlife and Parks Board meeting. Staff will present the Lucy Kaegi Trail Project for consideration. Matite will schedule a date for facility tours in preparation for the Strategic Planning meeting scheduled for March 7<sup>th</sup>. He thanked the Commissioners for attending the annual Chamber dinner and Commissioner Bruce for giving the state of the City address.

**Assistant City Manager Leslie Herring** didn't attend meeting.

**Director of Public Works Branden Boyd** didn't attend meeting.

**Police Chief Wes Lovett** – No comment.

**Fire Chief Ken Keiter** – No comment.

**Parks & Recreation Director Sally Pennington** – No comment.

**City Clerk Pam Schmeck** – No comment.

**Commissioner Bruce moved to adjourn**, motion seconded by Commissioner Born, all ayes, motion carried, 5-0.

Meeting adjourned at 8:52 pm.

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Tim Reazin, Mayor

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Pam Schmeck, City Clerk



# City of Eudora Police Department

Report Date Range: 01/01/2020 to 01/31/2020

## Dispatched Calls- Priority Level= 122

INCIDENT TYPE	# INCIDENTS	% of TOTAL
Medicals	41	33.61%
Adult/Child Welfare Checks	15	12.30%
Accidents	15	12.30%
Theft/Burglary	11	9.02%
Suspicious Activity	8	6.56%
Alarms	8	6.56%
Other	24	19.67%
<b>TOTAL</b>	<b>122</b>	<b>100.00%</b>

## Dispatched Calls- Non-Priority= 154

INCIDENT TYPE	# INCIDENTS	% of TOTAL
Request Speak to Officer	53	34.42%
Investigate Vehicle	17	11.04%
Motorist Assists	16	10.39%
Pedestrian Check	14	9.09%
Animal Calls	13	8.44%
Follow-Up Investigation	10	6.49%
Other	31	20.13%
<b>TOTAL</b>	<b>154</b>	<b>100.00%</b>

## Self-Initiated Calls/Stops= 189

TYPE	#	
Traffic Stops	127	
Traffic Citations	25	also counts as a traffic stop
Criminal Citations	23	also counts as a traffic stop
Arrests	6	includes warrants served & DUI's
Warrants Served	2	
Attempted Warrants	4	
DUI's	2	
<b>TOTAL</b>	<b>189</b>	

**\*Total officer interactions for the month of January= 465**

### Investigations:

Detective Flick currently has 13 active cases: 3 burglaries, 6 sex crimes, 1 abuse case, 1 rape, 2 auto thefts. 24 cases are pending with the DA's office & court system. Detective Flick has closed 0 cases this month.

### News & Events:

Corporal Caleb Lewis was named Eudora's 2019 Citizen of the Year.

### Other:

# City of Eudora Fire Department

Eudora, KS

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## Incident Statistics

Start Date: 01/01/2020 | End Date: 01/31/2020

INCIDENT COUNT			
INCIDENT TYPE		# INCIDENTS	
EMS		38	
FIRE		18	
<b>TOTAL</b>		<b>56</b>	
TOTAL TRANSPORTS (N2 and N3)			
APPARATUS	# of APPARATUS TRANSPORTS	# of PATIENT TRANSPORTS	TOTAL # of PATIENT CONTACTS
0	0	0	0
1200	0	4	7
E1232	0	1	3
S1251	0	9	16
<b>TOTAL</b>	<b>0</b>	<b>14</b>	<b>26</b>
PRE-INCIDENT VALUE		LOSSES	
<b>\$0.00</b>		<b>\$0.00</b>	
CO CHECKS			
736 - CO detector activation due to malfunction		1	
<b>TOTAL</b>		<b>1</b>	
MUTUAL AID			
Aid Type		Total	
Aid Given		2	
Aid Received		2	
OVERLAPPING CALLS			
# OVERLAPPING		% OVERLAPPING	
2		3.57	
LIGHTS AND SIREN - AVERAGE RESPONSE TIME (Dispatch to Arrival)			
Station	EMS	FIRE	
City of Eudora Fire Department	0:05:49	0:13:31	
<b>AVERAGE FOR ALL CALLS</b>		<b>0:07:44</b>	
LIGHTS AND SIREN - AVERAGE TURNOUT TIME (Dispatch to Enroute)			
Station	EMS	FIRE	
City of Eudora Fire Department	0:02:07	0:08:00	
<b>AVERAGE FOR ALL CALLS</b>		<b>0:03:35</b>	
AGENCY		AVERAGE TIME ON SCENE (MM:SS)	
City of Eudora Fire Department		23:01	

Only Reviewed Incidents included. CO Checks only includes Incident Types: 424, 736 and 734. # Apparatus Transports = # of incidents where apparatus transported. # Patient Transports = # of PCR with disposition "Treated, Transported by EM"

Detailed Breakdown by Incident Type

INCIDENT TYPE	# INCIDENTS	% of TOTAL
111 - Building fire	1	1.79%
321 - EMS call, excluding vehicle accident with injury	37	66.07%
323 - Motor vehicle/pedestrian accident (MV Ped)	1	1.79%
412 - Gas leak (natural gas or LPG)	1	1.79%
442 - Overheated motor	1	1.79%
510 - Person in distress, other	1	1.79%
553 - Public service	4	7.14%
554 - Assist invalid	4	7.14%
611 - Dispatched & cancelled en route	1	1.79%
651 - Smoke scare, odor of smoke	1	1.79%
733 - Smoke detector activation due to malfunction	3	5.36%
736 - CO detector activation due to malfunction	1	1.79%
<b>TOTAL INCIDENTS:</b>	<b>56</b>	<b>100.00%</b>

# City of Eudora Fire Department

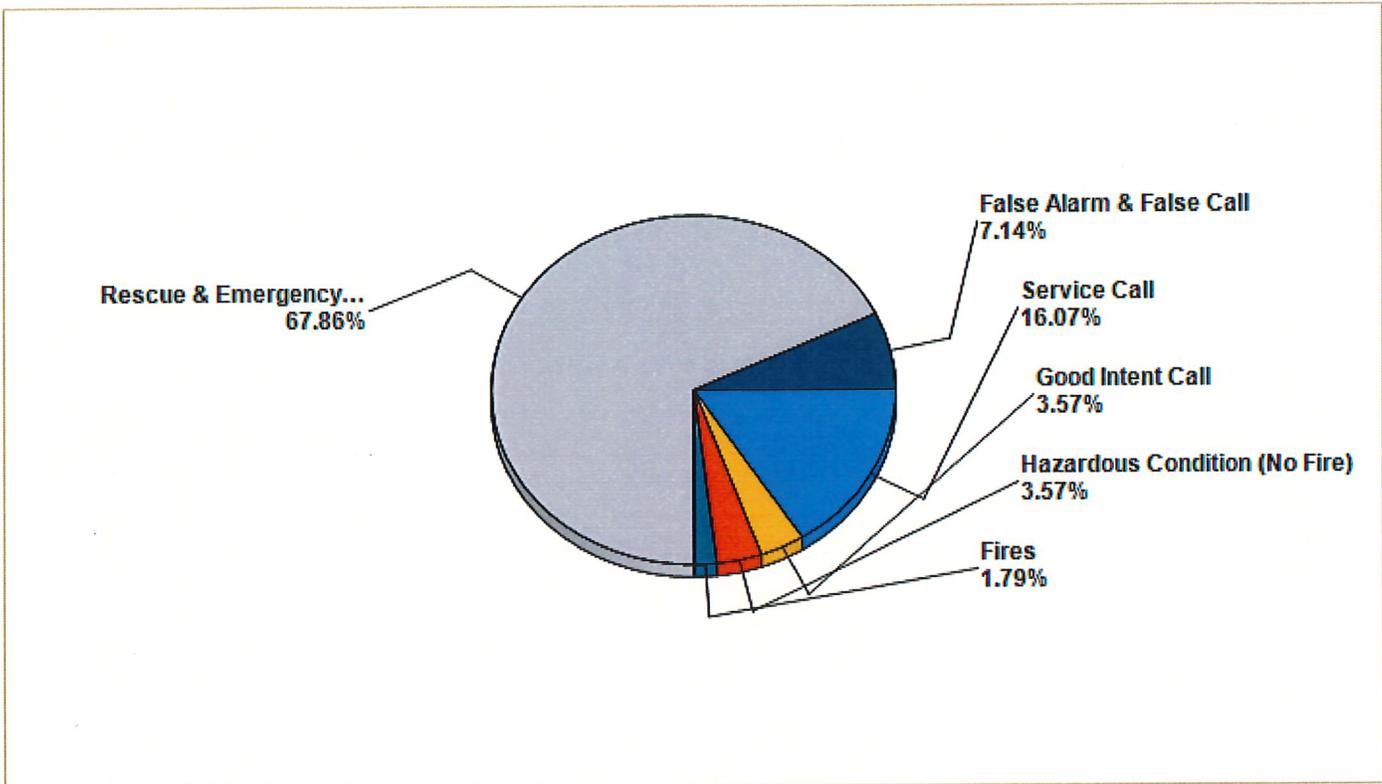
Eudora, KS

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## Breakdown by Major Incident Types for Date Range

Zone(s): All Zones | Start Date: 01/01/2020 | End Date: 01/31/2020



MAJOR INCIDENT TYPE	# INCIDENTS	% of TOTAL
Fires	1	1.79%
Rescue & Emergency Medical Service	38	67.86%
Hazardous Condition (No Fire)	2	3.57%
Service Call	9	16.07%
Good Intent Call	2	3.57%
False Alarm & False Call	4	7.14%
<b>TOTAL</b>	<b>56</b>	<b>100.00%</b>

City of Eudora, KS - Treasurer's Quarterly Report  
 Period of October 1 to December 31, 2019

Fund Name	Cash Balance 10/01/2019	Receipts	Disbursements	Cash Balance	Liabilities and Encumbrances	Cash Balance 12/31/2019
General Fund	2,285,696.00	637,184.37	1,106,025.62	1,816,854.75	(97,382.47)	1,914,237.22
Bond and Interest Fund	48,942.76	74,583.60	13,510.47	110,015.89	-	110,015.89
Refuse Fund	326,094.52	136,721.71	157,371.00	305,445.23	(39,110.50)	344,555.73
Electric Fund	2,271,641.88	1,440,435.68	1,372,207.77	2,339,869.79	(255,383.70)	2,595,253.49
Water Fund	323,984.71	315,436.89	258,713.98	380,707.62	(38,352.53)	419,060.15
Water Impact Fund	49,440.00	1,000.00	-	50,440.00	-	50,440.00
Sewer Fund	410,253.69	299,961.37	131,082.31	579,132.75	(15,557.71)	594,690.46
Sewer Impact Fund	382,175.62	92,844.87	-	475,020.49	-	475,020.49
Storm Drainage Fund	54,854.37	34,954.70	-	89,809.07	-	89,809.07
Capital Improvements Fund	904,591.61	79,013.12	303,814.02	679,790.71	(44,593.89)	724,384.60
Special Highway Fund	426,551.23	50,132.21	308,183.55	168,499.89	(4,822.50)	173,322.39
Equipment Reserve Fund	51,740.85	65,610.00	1,137.16	116,213.69	-	116,213.69
Employee Benefit Fund	3,403.52	-	(1,143.34)	4,546.86	-	4,546.86
Park Impact Fund	61,840.42	3,991.62	-	65,832.04	-	65,832.04
Public Assistance Fund	224.50	83.00	-	307.50	-	307.50
Efficiency Kansas Loan Fund	423.10	12.00	-	435.10	-	435.10
Emergency Grant Fund	207.11	-	-	207.11	-	207.11
Clearing Fund	15,175.15	-	-	15,175.15	211.86	14,963.29
<b>Grand Total</b>	<b>7,617,241.04</b>	<b>3,231,965.14</b>	<b>3,650,902.54</b>	<b>7,198,303.64</b>	<b>(494,991.44)</b>	<b>\$ 7,693,295.08</b>

Outstanding Indebtedness	Total	Bank Accounts and Investments	Total
G.O. Bond Series 2019-A	995,000.00	Kaw Valley State Bank Checking	6,174,174.09
G.O. Bond Series 2016-A	1,110,000.00	Outstanding Warrants	(121,745.38)
G.O. Bond Series 2013-A	1,625,000.00	Outstanding Deposits	23,132.51
G.O. Bond Series 2013-B	1,485,000.00	Kaw Valley State Bank Cd's	1,319,725.15
G.O. Bond Series 2012-A	1,970,000.00	Mutual Savings Cd's	188,008.71
G.O. Bond Series 2010-A	190,000.00	Central Bank of Midwest Cd's	110,000.00
KDHE Revolving Loan	1,528,919.50	<b>Grand Total</b>	<b>\$ 7,693,295.08</b>
KDHE Water Supply Loan	601,309.00		
US Bankcorp	1,253,750.82		
John Deere Financial	49,215.98		
<b>Grand Total</b>	<b>\$ 10,808,195.30</b>		

I, Renee Davis, Eudora City Treasurer, do hereby certify the statement provided is true and correct at the time of publication in the Lawrence Journal World.  
 Published quarterly in accordance with KSA 12-1608 and 12-1609.

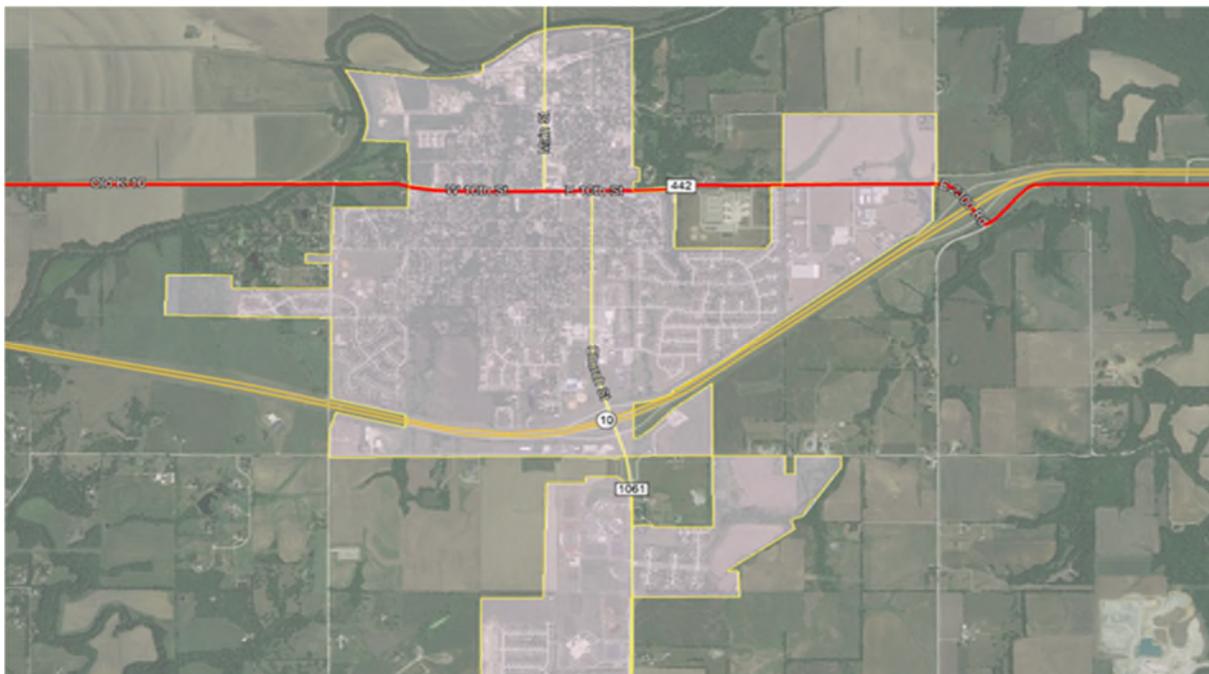
## Agenda Statement

**To:** Mayor and City Commissioners  
**From:** Barack Matite, City Manager  
**Date:** Monday, February 10, 2020  
**Re:** Consider Franchise Agreement with Kansas Fiber Network

### Background

At the last Commission meeting (1/27), the governing body received a presentation from a representative of [Kansas Fiber Network](#). As mentioned in his presentation, the company's primary products are Broadband Dedicated Internet Access (DIA) and Ethernet Transport via their statewide 100% fiber optic 100g network. Their primary customers include the largest wireless providers and other service providers as well as Enterprise customers in the Government, Education, Medical, & Banking industries. The representative, Bob Wallentine, also stated that, while they do not provide residential services such as voice or video, they enable fiber based and wireless service providers to provide those residential services.

The company is currently building a fiber optic network between Lenexa and Lawrence and part of their planned route is through Eudora thus the need to access the City's rights-of-way. Below is a map of their planned route.



As mentioned at the meeting, staff and city attorney have been negotiating the terms of the franchise agreement to be considered by the City Commission. Attached to this agenda statement is the final agreement for your consideration.

The franchise agreement will grant Kansas Fiber Network access to the city's right-of-way thus allowing them to install their fiber optic infrastructure. Per the agreement, they will compensate the City \$4,000 annually. This fee shall increase annually in accordance to the consumer price index but not to exceed two percent.

**Budget Impact** – This will be a new revenue for the City.

**City Manager** – Recommend approval.

**Recommended Commission Action:**

*Suggested motion:* I move the City Commission approve Ordinance 1105 granting Kansas Fiber Network, LLC a contract franchise to construct, operate and maintain a telecommunications system, and an internet system in the public right-of-way in the City of Eudora and authorize the Mayor to execute the franchise contract.

## ORDINANCE 1105

**AN ORDINANCE GRANTING TO KANSAS FIBER NETWORK, LLC, A KANSAS LIMITED LIABILITY COMPANY, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM AND AN INTERNET SYSTEM IN THE CITY OF EUDORA, KANSAS, AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.**

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

### **SECTION 1. DEFINITIONS.**

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

- a. "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 Eudora, Kansas.
- f. "Contract Franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to use the City's Public Right-of-Way to provide Telecommunications Services and Internet Services within the City.
- g. "Facilities" - means the Grantee's telephone and telecommunications lines, conduits, manholes, cables, switches, wires, lines, towers, wave guides, optic fiber, antennae, receivers and any associated converters, primary equipment enclosures or other equipment, comprising the Grantee's system located within the Public Right-of-Way, designed and constructed for the

purpose of producing, receiving, amplifying or distributing Telecommunications Services and/or Internet Services to or from locations within the City.

- h. "Grantee" – means Kansas Fiber Network, LLC, a Kansas limited liability company, authorized to do business in Kansas, as a provider of Telecommunications Services and as provider of Internet Services within the City. References to Grantee shall also include, as appropriate, any and all successors and assigns.
- i. "Gross Receipts" - means 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, non-regulated 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 (including Internet Services) 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. "Internet Services" - means services for accessing and using the Internet.
- k. "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.
- l. "Telecommunications Local Exchange Service Provider" means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide Local Exchange Service. The term Telecommunications Local Exchange Service Provider does not include an interexchange carrier that does not provide Local Exchange Service, competitive access provider that does not provide Local Exchange Service or any wireless telecommunications local exchange service provider.
- m. "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 infrastructure located within the Public Rights-of-Way owned by the City or other third parties, such as poles, ducts or conduits, use of which shall require a separate license agreement for attachment to city facilities.

- n. "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, as described in K.S.A. 17-1902(a)(3) and amendments thereto. For purposes of this Contract Franchise, the term Telecommunications Services shall not include the provision of Wireless Services as a Wireless Services Provider.
- o. "Wireless Services" - means "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities, as described in K.S.A. 66-2019(b)(19).
- p. "Wireless Services Provider" - means a provider of Wireless Services, as described in K.S.A. 66-2019(b)(24).

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

- a. There is hereby granted to Grantee this nonexclusive Contract Franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public Right-of-Way for the purpose of supplying Telecommunications Services and Internet Services within the corporate boundaries of the City, for the term of this Contract Franchise, subject to the terms and conditions of this Contract Franchise.
- b. The grant of this Contract Franchise by the City shall not convey title, equitable or legal, in the Public Right-of-Way, and shall give only the right to occupy the Public Right-of-Way, for the purposes and for the period stated in this Contract Franchise. This Contract Franchise does not:
  - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
  - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public Right-of-Way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
  - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public Right-of-Way or other public or private property).
- d. Grantee shall not provide any additional services for which a franchise is required by the City, including but not limited to services as a Wireless Services Provider, without first obtaining a separate franchise from the City or amending this Contract Franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or

local law. In particular, this Contract Franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

- e. 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 12-2001, and amendments thereto, and subject to the provisions of this Contract Franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public Right-of-Way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of the Public Right-of-Way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public Right-of-Way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances (hereinafter "Laws") adopted by the City, relating to the construction and use of the Public Right-of-Way, including, but not limited to Chapter XII, Article 6 (Right-of-Way Permit Requirements and Contractor Responsibility) of the City Code, and the City's zoning and land use ordinances, to the extent such laws do not conflict with or are preempted by any Federal law or regulation.
- c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

- a. In consideration of this Contract Franchise, Grantee agrees to remit to the City a franchise fee of \$4,000 annually. The fee shall increase annually in accordance with the Consumer Price Index (CPI) but not to exceed two (2%) percent. Provided, that in the event Grantee should provide any services for which it receives Gross Receipts (as defined above), then the City may require a Gross Receipts fee, the terms of which shall be established by separate ordinance.
- b. Grantee shall pay on an annual basis without requirement for invoice or reminder from the City, and by January 31st of each year. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before January 31st, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- c. 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.
- d. Unless previously paid, within sixty (60) days after the Effective Date of this Contract Franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1,000.00).

The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract Franchise.

- e. 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/or 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.
- f. 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.**

- a. It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public Right-of-Way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including observing marker posts when working near Grantee's Facilities.
- b. Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the degree that it is found by a court of competent jurisdiction to be caused by the negligence, gross negligence or wrongful act of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public Right-of-Way.
- c. 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.
- d. 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. **Policies Required.** At all times during the term of this Contract Franchise, Grantee shall keep in force and effect all insurance policies as described below:

- (1) **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits in compliance with the statutory requirements of the State of Kansas and employers' liability insurance with a limit of \$1,000,000 each accident/disease/policy limit. This policy shall include a waiver of subrogation in favor of the City. Grantee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
  - (2) **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal and advertising injury, blanket contractual coverage and independent contractor's coverage with Limits of liability of \$1,000,000 per occurrence for bodily injury and property damage and \$1,000,000 general aggregate, and \$1,000,000 products/completed operations aggregate.
  - (3) **Commercial Automobile Liability Insurance.** Commercial automobile liability covering all owned, hired and non-owned vehicles in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage.
  - (4) **Umbrella Liability Insurance.** Coverage is to be in excess of the employers' liability, commercial general liability, and automobile liability insurance required above with limits of \$1,000,000 each occurrence, \$1,000,000 aggregate.
  - (5) **Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.
- b. **Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Kansas and have an "A-" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Grantee shall carry substantially the same coverage with substantially the same limits as required of Grantee.
- c. **Certificate of Insurance; Other Requirements.** Upon the execution of this Contract Franchise and within ten (10) days of each insurance policy expiration date during the term of this Contract Franchise, Grantee will furnish the City with a certificate of insurance ("Certificate"). The Certificate shall reference this Contract Franchise and workers' compensation and property insurance waivers of subrogation required by this Contract Franchise. Upon receipt of notice from its insurer the Grantee shall provide the City thirty (30) calendar days advance written notice of cancellation of insurance during the term of this Contract Franchise. The City, its Commission members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be included as Additional Insureds as their respective interests may appear under this Contract Franchise under all of the policies, except workers' compensation and employer's liability, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. Grantee shall defend, indemnify and hold harmless the City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Grantee shall obtain Certificates from its agents,

contractors and their subcontractors and provide a copy of such Certificates to the City upon request

- d. **Limits.** The limits of liability set out in this Section 6 may be increased or decreased by mutual written consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Grantee's exposure to risk.
- e. **Prohibited Exclusions.** No policies of insurance required to be obtained by Grantee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Contract Franchise with the City except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to the City's employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Grantee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- f. **Deductible/Self-insurance Retention Amounts.** Grantee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.
- g. **Performance Bond.** On the Effective Date, Grantee shall provide to the City a performance bond or letter of credit in an amount of Thirty Thousand Dollars (\$30,000.00). The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Grantee's performance of all of its obligations under this Contract Franchise and for the payment by Grantee of any claims, liens, taxes, liquidated damages, penalties, fees and charges due to the City which arise by reason of the construction, operation, maintenance or removal of Grantee's Facilities.

## **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:

- a. 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.
- b. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract Franchise by an affirmative vote of the governing body of the City 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 governing body's consideration, and shall have the right to address the governing body regarding such matter.

- c. Upon any determination by the City Commission to revoke and terminate this Contract Franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Douglas 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.

Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.

#### **SECTION 8. RESERVATION OF RIGHTS.**

- a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications Services and Internet Services and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas (including but not limited to the City's "home rule" authority), 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 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 (defined below) of this Contract Franchise and ending on that date which is ten (10) years thereafter.
- 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. Amendments under this Section, if any, shall be made by Contract Franchise ordinance as prescribed by statute. This Contract Franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.
- d. In the event the parties are actively negotiating in good faith a new Contract Franchise ordinance or an amendment to this Contract Franchise upon the termination date of this Contract Franchise, the parties by written mutual agreement may extend the termination date of this Contract Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract Franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES.**

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

To the City:  
City of Eudora, Kansas  
4 East 7th Street  
Eudora, Kansas 66025  
Attn: City Manager

To Grantee:  
Kansas Fiber Network, LLC  
8201 E. 34<sup>th</sup> Street Cir. N. #1501  
Wichita, Kansas 67226  
Attn: President

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

**SECTION 12. TRANSFER AND ASSIGNMENT.**

This Contract Franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to 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 this Contract Franchise shall be governed by confidentiality procedures in compliance with K.S.A. 45-215, 60-432, 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 attorneys' fees, arising from the actions of Grantee, or of the City, at the request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract Franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**

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

**PASSED** by the City Commission of the City of Eudora, Kansas on February 10, 2020.

APPROVED:

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Tim Reazin, Mayor

ATTEST:

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Pam Schmeck, City Clerk