

Exhibit 1 to Ordinance

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“**Agreement**”), made this ____ day of _____, 2021, by and between the City of Lee’s Summit, Missouri, a Missouri constitutional charter city (“**City**”), and the Lee’s Summit R-7 School District, a Missouri school district (“**District**”). City and District are sometimes referred to herein individually as the “**Party**” or collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, the Parties previously entered into a Development Agreement for the Bailey Road Middle School (“**Middle School**”) on November 11, 2020 (“**Development Agreement**”); and

WHEREAS, among other items, the Development Agreement set forth the expanding and upsizing of a public sanitary sewer main to serve the Middle School; and

WHEREAS, in order for the District to expand and upsize the public sanitary sewer main contemplated in the Development Agreement, the District will need a license to access real property owned by the City and current sewer easements granted to the City as described in Paragraph 1 below (“**Licensed Premises**”); and

WHEREAS, the City desires to license to District and District desires to license from City the Licensed Premises for the purpose of expanding and upsizing a public sanitary sewer main running within the City’s property and within current sewer easements granted to the City; and

WHEREAS, the City is granting this license based upon the District’s agreements made in this Agreement and in the Development Agreement.

NOW, THEREFORE, City, in consideration of the obligations hereby assumed by District, hereby licenses and authorizes District, its officers, members, contractors, agents, and guests, to enter and go upon the Licensed Premises, at all times during the continuance of this Agreement, and there to use and enjoy the Licensed Premises for the expanding and upsizing of a public sanitary sewer main, subject to the following terms and conditions about the license and such usage:

1. **LICENSED PREMISES.** The “Licensed Premises” as referenced in this Agreement are depicted on Sheet C3 of the Development Agreement and further described in the Development Agreement on Exhibit C, Sanitary Sewer Improvements and updated as:

The Licensed Premises shall only be used the following improvements: Approximately 1,900 LF of 15” public sanitary sewer extension will be installed extending from existing manhole 47-019 to a Termination Point #3, approximately 70 feet onto the new middle school site. Approximately 7,480 LF of interceptor sewer will be upsized to ultimate build out conditions of the watershed from manhole 47-019 to manhole 54-002. Upsizing will be approximately 1,340 linear feet of 18-inch to 24-inch, 4,020 linear feet of 15-inch to 24-inch, and 2,140 linear feet of 15-inch to 30-inch (“**Sewer Improvements**”).

On the portions of real property owned by the City where no easement exists, the Licensed Premises shall be limited to 50 feet from the centerline on one side and 120 feet from the centerline on the other side of either the current sanitary sewer or if no sewer line currently exists, the centerline of the new sanitary sewer.

On the portions of the sanitary sewer line where a sewer easement has been granted to the City, the Licensed Premises shall be limited to the sewer easement granted to the City. The District shall be required to obtain any temporary construction easements necessary beyond the current sewer easements granted to the City.

City further grants, as part of the Licensed Premises, the right for District to access through the City's property as shown in the color red and labeled "Access Road" on **Exhibit A**, attached hereto and incorporated herein by reference, and to store equipment and materials directly required for the subject of the Development Agreement in the two (2) areas shown in the color blue and labeled "Laydown Area" on **Exhibit A**.

The District acknowledges that the City does not have an ownership interest in, nor sewer easements over, all places where the Sewer Improvements will be installed, and as such, the City cannot provide permission for the District to access and install Sewer Improvements in those locations. This includes, but is not limited to Parcel No: 61-700-01-06-00-0-00-000. District agrees it is responsible for obtaining the necessary ownership or easements in those portions of land in order to construct or improve the public sanitary sewer contemplated in this Agreement. District further acknowledges it is responsible for all permits necessary for the Sewer Improvements including, but not limited to, permit(s) from the appropriate railroad.

2. **USE OF LICENSED PREMISES.** District, its officers, members, contractors, agents, and guests shall have the right to use the Licensed Premises solely for the expansion and upsizing of the Sewer Improvements. The Sewer Improvements on the Licensed Premises are subject to approval by the City, and shall comply with all existing and future federal, state, and local laws and regulations, including the ordinances and regulations of the City. Nothing in this Agreement shall bar, or in any respect prevent, the City from imposing lawful conditions related to other activities by District, or prevent the City from requiring additional reasonable authorizations in connection with the use and occupancy of the Licensed Premises for purposes other than those expressly authorized herein.

3. **RESTRICTION ON MODIFICATIONS AND IMPROVEMENTS.** Except as specifically allowed by paragraph 2, District, its officers, members, contractors, agents, and guests are prohibited from making any addition, modification, or improvement to any part of the Licensed Premises, and are prohibited from placing, affixing or constructing any structure, utility, signage, or markings on the Licensed Premises. All requirements of the City Code pertaining to the use, operation, and maintenance of sewerage lines shall apply to the Sewer Improvements.

4. CONDITIONS OF LICENSE. Without limiting the City's authority to regulate the use of the rights of way and public or private property pursuant to its police powers, District shall comply with the following:

- A. The expanding and upsizing of the Sewer Improvements shall be performed in accordance with best industry practices, and other applicable federal, state, or local laws and regulations that may apply to the construction, installation, and maintenance of facilities like Sewer Improvements.
- B. District shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the Licensed Premises.
- C. The District shall provide plans for the Sewer Improvements to the City before commencing the Sewer Improvements on the Licensed Premises. The City shall have 30 calendar days to either approve, reject, or return to the District for comments on the plans. In no case, shall District access the Licensed Premises or begin the Sewer Improvements until the plans are approved by the City.
- D. The District shall take the steps required to incorporate the Sewer Improvements into the Missouri One-Call program so that the location of the Sewer Improvements will be known upon inquiry of underground facilities. The District shall provide proof to the City that this requirement has been satisfied prior to the Sewer Improvements being placed in service.
- E. Placement of the Sewer Improvements shall not impede or interfere with the flow of water in any water mains that may be placed in the Licensed Premises in the future, and the placement of the Sewer Improvements shall also be in a location that does not pose a health hazard to the transmission of water in the Licensed Premises.
- F. The District shall at all times provide for the flow of wastewater along the Sewer Improvements.
- G. Until the approval and acceptance of the Sewer Improvements by the City, the District shall promptly fix all breaks or leaks in the Sewer Improvements upon the receipt of notice from the City that conditions exist which, in the City's judgment, warrants repairs, or as soon as the need for repairs shall become known to the District from any other party.
- H. Access to the "Access Roads" are secured by locked gates. Further, the "Access Road" for the current Resource Recovery Park is currently being utilized by a private company, KC Dumpster. As such, the following conditions apply to access to the "Access Roads."

- i. District shall access and perform work on the Licensed Premises only between the hours of 7:30 am to 4:00 pm, Monday through Friday, unless written permission has been given by the City to District.
- ii. District shall be required to estimate the amount and type of traffic on the “Access Road” located at the Resource Recovery Park and provide the information to the City at minimum 15 calendar days prior to the start of work on the Licensed Premises. Further, District shall not interfere with the current business operations of KC Dumpster located along the “Access Road.”

I. Any and all easements, rights of way, public property, or private property that are disturbed or damaged during the construction, installation, or maintenance of the Sewer Improvements shall be promptly restored by the District to at least its prior conditions, and as may otherwise be reasonably required by City law, ordinance, resolution, or regulation, unless the City and the District mutually agree otherwise. If the District fails to restore the affected property to City's reasonable satisfaction, within ten (10) calendar days of receipt of written notice to District, City may restore the property and charge the cost thereof to District. Provided that, where any work presents an immediate hazard to public health or safety, the City may, without notice, remove the hazard, and all costs incurred by City shall be paid by District. Any trees removed on the Licensed Premises shall be strictly limited to the removal necessary to complete the Sewer Improvements and only after written agreement from the City to ensure the best possible use of the Licensed Premises is maintained. Only best management practices shall be allowed for the removal and processing of trees and brush on the Licensed Premises. Incineration or burning of trees or brush shall not be allowed on the Licensed Premises. If grinding of the trees or brush is utilized on the Licensed Premises, all mulch created by the grinding must be removed from the Licensed Premises unless the mulch is being used in accordance with an approved erosion and sediment control plan.

J. The District agrees the Sewer Improvements involve work on the Licensed Premises that involve portions of the Resource Recovery Park. As such, there are special rules and regulations set forth by the Missouri Department of Natural Resources and the Environmental Protection Agency. The District agrees to abide by all rules and regulations of the appropriate agency while performing the Sewer Improvements.

5. **RESTRICTION AS TO WASTE.** District shall not, except so far as may be reasonably necessary for the expanding and upsizing of the Sewer Improvements on the Licensed Premises, commit or permit any waste thereon. District shall be liable for any damage done to the Licensed Premises, except as is permitted by this Agreement, by any persons entering upon the Licensed Premises on behalf of District pursuant to the terms of this Agreement.

6. GENERAL INDEMNITY.

- A. GENERAL. To the extent permitted by law, District shall indemnify, release, defend, become responsible for, and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, subject to the provisions set forth in the Missouri Sovereign Immunity Statute, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property, or fines or clean-up actions imposed by any local, state, or federal government, to the extent arising out of or resulting from any negligent act, error or omission of District or its agents, employees, or subcontractors, arising out of or in any way connected with the operations expressly authorized herein; provided, however, that District need not save harmless the City from claims, demands, losses and expenses (A) to the extent arising out of the sole negligence or misconduct of the City, its employees, agents, or contractors or (B) to the extent the claim, demand, loss, or expense is actually paid by insurance proceeds received by or for the City from its insurance coverages, which coverages shall match the coverages required of District herein. Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall be construed to prohibit one Party from seeking and receiving contribution from the other Party to the extent that one Party must pay damages that are partially the fault of the other Party.
- B. NO LIMITATIONS OR WAIVER. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for District under workers' compensation, disability, or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by District. The City does not, and shall not, waive any rights against District which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by District, of any of the insurance policies described in this Agreement. Except as otherwise provided in this Agreement, this indemnification by District shall apply regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- C. NOTIFICATION OF CLAIMS. With respect to any claims which are subject to indemnity hereunder, each Party shall immediately notify the other of any and all claims filed against District, the City, or District and the City jointly, and shall provide the other Party with a copy of the same.
- D. USE OF INDEPENDENT CONTRACTORS. The fact that District carries out any activities under this Agreement through independent contractors shall not constitute

an avoidance of, or defense to, District's duty of defense and indemnification under this section.

7. INSURANCE.

A. GENERAL PROVISIONS. District shall file with the City evidence of liability insurance with an insurance company licensed to do business in Missouri. At all times while this Agreement remains in effect, and in recognition and subject to the indemnification provisions set forth in this Agreement, District shall, at its own cost and expense, maintain a program of commercial general liability insurance and/or self-insurance in the amounts specified below to protect District and the City, its officers, agents, employees, and elected officials, each in their official and individual capacities, from any liability for bodily injury, death, and property damage occasioned by the activities of District, or any person acting on their behalf, under this Agreement, including, but not limited to, District's operations, products, services, or use of automobiles or construction equipment. As proof of this compliance, District shall, during the term of this Agreement, keep on file with the Clerk of the City a certificate of insurance with an insurance company licensed to do business in the State of Missouri and/or affidavit of self-insurance which shall show the types and amounts of coverage. Any affidavit of self-insurance shall be signed by District, or an employee or officer of District who has knowledge of District's self-insurance program and is authorized to make representations as to the scope of said program, and shall contain a statement making such representations.

B. LIMITS AND COVERAGE. Bodily Injury and Property Damage, Commercial General Liability Coverage – Occurrence Form unless otherwise agreed by the City:

Combined Single Limit –

General Aggregate:	\$3,000,000
Products-Completed Operations Aggregate:	\$3,000,000
Personal & Advertising Injury:	\$3,000,000
Each Occurrence:	\$3,000,000

Automobile Liability: \$3,000,000 for Each Accident for All Owned, Non-Owned & Hired Vehicles

The following coverages should be included:

- (1) The policy shall cover personal injury as well as bodily injury.

- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad form property damage liability shall be afforded.
- (4) The City shall be listed as an additional insured and include an endorsed waiver of subrogation in favor of the City.
- (5) Standard form of cross-liability shall be afforded.
- (6) The policy shall not be canceled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2021 is \$ 2,940,868 for all claims arising out of a single accident or occurrence.

- C. **USE OF CONTRACTORS AND SUBCONTRACTORS.** District shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Paragraph. Said insurance shall be maintained in full force and effect until the completion of the work performed, and approval thereof by the City.
- D. **WORKERS' COMPENSATION.** District shall ensure that all contractors or subcontractors performing work for District obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, District shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, and to fully protect the City from any and all claims of such employees arising out of occurrences during work performed hereunder. District hereby indemnifies the City for any damage resulting to it from failure of either District or any contractor or subcontractor to obtain and maintain such insurance. District further waives its rights to subrogation with respect to any claim against the City for injury arising out of performance under this Agreement. District shall provide the City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Sewer Improvements on the Licensed Premises.
- E. Notwithstanding the foregoing or any other contrary provision in this Agreement, the District does not have – and nothing in this Agreement shall be interpreted to require – coverage for claims to which the District would otherwise be immune under state or federal statutory or case law, including but not limited to, claims that are barred by sovereign immunity, official immunity, or any other immunity available to the District under state or federal law. Accordingly, nothing in this

Agreement shall be interpreted to waive sovereign immunity, official immunity, or any other immunity available to the District.

8. **REVOCAION.** Notwithstanding any provision of this Agreement to the contrary, City may cancel this Agreement and revoke the license hereby granted as to all or any part of the Licensed Premises after following the procedures in this Paragraph. If the City encounters a condition that constitutes a material breach of this Agreement, the City shall provide written notice of such condition to the District. The District shall thereafter have seven (7) calendar days to commence corrective action and remedy such condition. If the District fails to act within such time period, or if the District otherwise fails to correct such condition, then the City may cancel this Agreement and revoke the license. District may cancel this Agreement at any time upon sixty (60) calendar days advance notice in writing. No such termination by District shall negate any rights or obligations of the parties accrued through the date of such termination.

9. **TERMINATION.** This Agreement shall terminate in one of the following ways, whichever occurs first:

- A. 300 calendar days after the effective date of this Agreement, unless the City and the District mutually agree otherwise;
- B. Upon final approval and acceptance by the City of the Sewer Improvements;
- C. Pursuant to Section 8 (Revocation).

10. **CONSTRUCTION OF AGREEMENT.**

- A. **SIMPLE LICENSE.** The license created by this Agreement shall be construed as a simple license (sometimes referred to as a “bare,” “mere” or “naked” license).
- B. **HEADINGS.** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.
- C. **NON-WAIVER.** No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
- D. **JOINTLY DRAFTED.** This Agreement shall be deemed to have been jointly drafted by the parties and shall not be construed more strongly against any party hereto.
- E. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Missouri, and a suit pertaining to this Agreement may be brought only in courts in eastern Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

11. UNASSIGNABLE. The license created by this Agreement is solely for District, its officers, members, servants, agents, and guests and no others. Neither the license nor this Agreement, in whole or part, is assignable.

12. SEVERABILITY. If any term or provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such term or provision shall be severed and shall be inoperative, and provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, and that the essential purposes of this Agreement can still be effectuated, the remainder of this Agreement shall remain operative and binding on the parties.

13. NOTICE. Whenever any notice is required by this Agreement to be made, given, or transmitted to the City, it shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, addressed to:

City of Lee's Summit
ATTN: City Manager
220 SE Green Street
Lee's Summit, Missouri 64063

and notices to District shall be addressed to:

Lee's Summit R-7 School District
Attn: Superintendent
301 NE Tudor Road
Lee's Summit, Missouri 64086

or such place as either party shall designate by written notice to the other. Said notices may also be personally hand-delivered by each party to the other, at the respective addresses listed above. If hand-delivered, the date of actual completion of delivery shall be considered the date of receipt. If mailed, the item shall be considered received the third day after the date of mailing.

14. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties with respect to this Agreement and all other representations of statements heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto. The Development Agreement remains a separate valid agreement between the Parties and nothing contained in this Agreement expands, deletes, or modifies the Development Agreement.

15. COUNTERPARTS. The Parties agree that this Agreement may be signed in two or more counterparts, and all such counterparts together shall constitute one and the same contract; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above mentioned at Lee's Summit, Missouri.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Mayor William A. Baird

ATTEST:

Trisha Fowler Arcuri, City Clerk

APPROVED AS TO FORM:

Scott Ison, Chief Counsel of Infrastructure and Recreation

LEE'S SUMMIT R-7 SCHOOL DISTRICT

By: _____
Dr. David Buck, Superintendent