

**LICENSE AGREEMENT
AMENDMENT ONE**

THIS LICENSE AGREEMENT AMENDMENT NUMBER ONE (“**Agreement Amendment**”), 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 License Agreement for the Bailey Road Middle School on November 2, 2021 (“**Agreement**”); and

WHEREAS, after the negotiations concluded on the Agreement, the Parties received a Pipeline Encroachment and Crossing Agreement from Union Pacific Railroad Company, which is a necessary agreement to be executed to complete the contemplated Sewer Improvements; and

WHEREAS, the Parties desire to enter into this Agreement Amendment to incorporate and clarify the Parties' responsibilities under the Pipeline Encroachment and Crossing Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Amendments:

a. Section 6, General Indemnity, is amended to read as follows:

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 including any work performed under the Railroad Agreement; 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.

b. Section 7, Insurance, is modified to read as follows:

7. INSURANCE.

- A. GENERAL PROVISIONS. In addition to the insurance requirements in Section 16, 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.

c. A new Section 16 is added to read as follows:

16. UNION PACIFIC RAILROAD ENCROACHMENT AND CROSSING.

In order to complete the Sewer Improvements, Union Pacific Railroad Company is requiring the City to enter into a Pipeline Encroachment and Crossing Agreement, **Exhibit B to this Agreement** including all attachments, exhibits, and drawings to the Pipeline Encroachment and Crossing Agreement attached hereto and incorporated herein by reference ("Railroad Agreement"). Under the terms of the Railroad Agreement, District shall be considered the Contractor for the purposes of the Railroad Agreement and is not being assigned, in whole or in part, the Railroad Agreement. District acknowledges and agrees:

- A. It has been provided with a complete copy of the Railroad Agreement including all attachments, exhibits, and drawings.
- B. It has reviewed and agrees to comply with all the terms and conditions of the Railroad Agreement
- C. Any costs and fees for the Railroad License, including but not limited to the permit fee, insurance costs, all construction, abandonment, restoration, cleanup, construction observation, safety measures shall be paid by the District or its subcontractor or representative to either the City, Union Pacific Railroad Company, or the appropriate company who provided the goods or services. Upon request, the District shall provide to City within 10 calendar days a copy of the invoice(s) and the appropriate documentation showing the costs and/or fees that have been paid.
- D. Should District subcontract or allow others on their behalf to perform any work required under the Railroad Agreement (Collectively "Subcontractors"), District agrees to provide a complete copy of the Railroad Agreement to all Subcontractors and require all Subcontractors to comply with all terms and conditions of the Railroad Agreement, including the indemnification requirements set forth in the "INDEMNITY" Section of Exhibit B of the Railroad Agreement. District agrees to release, defend, and indemnify Union Pacific Railroad Company to the same extent and under the same terms and conditions as City is required to release, defend, and indemnify Union Pacific Railroad Company as contained in the Railroad Agreement. District shall further require the indemnification provision to be added to all agreements with any Subcontractor for work to be performed under the Railroad Agreement and shall require the Subcontractor to agree to the same indemnification terms.
- E. District shall procure and maintain, at their sole cost and expense and fully comply or cause their Subcontractor to procure and maintain, at their sole cost and expense and fully comply with the insurance requirements described in the Railroad Agreement including Exhibit C

to the Railroad Agreement. The City shall be listed as an additional insured and include an endorsed waiver of subrogation in favor of the City.

2. No Other Modification: Except as specifically modified by this Agreement Amendment under Paragraph 1, Amendments, each and every other term and condition of the Agreement shall remain unchanged and in full force and effect without modification.
3. Counterparts: The Parties agree that this Agreement Amendment may be signed in two or more counterparts, and all such counterparts together shall constitute one and the same agreement; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.
4. Headings: The headings in this Agreement Amendment are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.
5. Whereas Clauses: The “Whereas” clauses stated above are incorporated herein by reference.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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