

**CITY COMMISSION MEETING
Winfield, Kansas**

DATE: Thursday, June 17, 2021
TIME: 5:30 p.m.
PLACE: City Commission – Community Council Room – First Floor – City Building

AGENDA

CALL TO ORDER.....Mayor Gregory N. Thompson
ROLL CALL.....City Clerk, Brenda Peters
MINUTES OF PRECEDING MEETING.....Monday, June 07, 2021

PROCLAMATION

-Month of July 2021 as Public Health Month.

BUSINESS FROM THE FLOOR

- Citizens to be heard

NEW BUSINESS

Ordinances & Resolutions

Bill No. 2164 – An Ordinance – Authorizing the City of Winfield, Kansas, to enter into a Lease Purchase Transaction, the proceeds of which will be used to pay the costs of acquiring refuse utility equipment for use in the City; and to approve the execution of certain documents in connection therewith.

Bill No. 2165 – A Resolution – Authorizing William Newton Memorial Hospital to enter into a Third Supplemental Lease Purchase Agreement, which amends and supplements a Lease Purchase Agreement and Supplemental Lease Purchase Agreement, both dated as of July 26, 2018, and a Second Supplemental Lease Purchase Agreement, dated as of June 27, 2019; authorizing and approving certain actions in connection therewith; and repealing Resolution No. 4421.

Bill No. 2166 – A Resolution – Authorizing and directing the City Manager of the City of Winfield, Kansas to execute a Fairgrounds Special Event Agreement between the City of Winfield and the K & O Steam & Gas Engine Association, Winfield, Kansas.

Bill No. 2167 – A Resolution – Determining the existence of certain nuisances at 318 Indiana in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

Bill No. 2168 – A Resolution – Determining the existence of certain nuisances at 312 Minnesota in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

Bill No. 2169 – A Resolution – Determining the existence of certain nuisances at 1517 Fuller in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

Bill No. 2170 – A Resolution – Determining the existence of certain nuisances at 1007 E 12th in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

Bill No. 2171 – A Resolution – Determining the existence of certain nuisances at 415 E 12th in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

Bill No. 2172 – A Resolution – Determining the existence of certain nuisances at 319 N College in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

Bill No. 2173 – A Resolution – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute certain agreements and documents related to and Advanced Metering Infrastructure Project for the electric, natural gas and water systems owned by the City of Winfield, Kansas.

Bill No. 2174 – A Resolution – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for Project No. 21-TI909 for concrete curb and gutter street improvements between the City of Winfield, Kansas and Bryant and Bryant Construction, Inc., Halstead, Kansas.

OTHER BUSINESS

-Consider Hospital Board Appointment

-Consider purchase agreement with Osage Ambulances, Jefferson City, MO for the purchase of a 2022 Type II Ambulance.

ADJOURNMENT

-Next Commission work session 4:00 p.m. Thursday, July 01, 2021.

-Next regular meeting 5:30 p.m. Tuesday, July 06, 2021.

CITY COMMISSION MEETING MINUTES
Winfield, Kansas
June 7, 2021

The Board of City Commissioners met in regular session, Monday, June 07, 2021 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Gregory N. Thompson presiding. Commissioners Phillip R. Jarvis and Ronald E. Hutto were also present. Also in attendance were Taggart Wall, City Manager; Brenda Peters, City Clerk; and William E. Muret, City. Other staff members present were Patrick Steward, Director of Community Development; and Gus Collins, Director of Utilities.

Commissioner Jarvis moved that the minutes of the May 17, 2021 meeting be approved. Commissioner Hutto seconded the motion. With all Commissioners voting aye, motion carried.

BUSINESS FROM THE FLOOR

April Cahill, 1306 E 6th Ave, appeared before the Commission asking for an Ordinance change to allow for keeping chickens in town.

NEW BUSINESS

Bill No. 2162 – A Resolution – Authorizing the granting and filing of a certain permanent easement necessary to provide right-of-way for installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances therefore, in, over, under, and across real estate in the Southwest Quarter of Section 32, Township 32 South, Range 4 East of the 6th P.M., City of Winfield, Cowley County, Kansas. Director of Community Development Steward explains this will widen the existing easement at Country Club Estates, for stormwater drainage. Upon motion by Commissioner Hutto, seconded by Commissioner Jarvis, all Commissioners voting aye, Bill No. 2162 was adopted and numbered Resolution No. 5521.

OTHER BUSINESS

-Consider canceling the June 21, 2021 regular meeting.

-Consider calling a Special Meeting for June 17, 2021 at 5:30 p.m.

Commissioner Jarvis moved to cancel the June 21, 2021 regular meeting, and call a Special Meeting for June 17, 2021 at 5:30 p.m. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, motion carried.

-Consider KMGa Board Appointments. Commissioner Hutto moved to appoint Gus Collins as Director #1 to the KMGa Board. Motion was seconded by Commissioner Jarvis. With all Commissioners voting aye, motion carried.

-Consider Meyer Hall Roof Improvements. Director of Community Development Steward presented the low bid from Thomson Construction and Roofing at a cost of \$118,138.86 to the Commission. Commissioner Jarvis moved to award the contract to Thomson Construction and Roofing in the amount of \$118,138.86. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, motion carried.

-Consider Meyer Hall Mechanical Improvements. Director of Community Development Steward presented a bid from Winfield Plumbing and Heating for \$422,680. Commissioner Hutto moved to award the contract to Winfield Plumbing and Heating in the amount of \$422,680. Motion was seconded by Commissioner Jarvis. With all Commissioners voting aye, motion carried.

-Consider Sanitary Sewer Improvements. Director of Utilities Collins presented the low bid from Tri-Star Utilities at a cost of \$129,520. Commissioner Jarvis moved to award the contract to Tri-Star Utilities in the amount of \$129,520. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, motion carried.

ADJOURNMENT

Upon motion by Commissioner Hutto, seconded by Commissioner Thompson, all Commissioners voting aye, the meeting adjourned at 5:42 p.m.

Signed and sealed this 17th day of June 2021.

Signed and approved this 17th day of June 2021.

Brenda Peters, City Clerk

Gregory N. Thompson, Mayor

WHEREAS,

During June in the year 1947, the elected governing bodies of the City of Arkansas City, City of Winfield and the County of Cowley in Kansas deemed it necessary that the public health and of the population would be best served and promoted by the creation of a Joint Board of Health.

WHEREAS,

During July 1947 the Health Status of Cowley County in Kansas was appraised by E.G. McGavran, MD, Professor of Public Health and Preventative Medicine at the Kansas University Medical in conjunction with the American Public Health Association and recommendations made to the newly formed Joint Board of Health.

WHEREAS,

Official functions of the newly founded Health Department were then detailed to include: Health Education, Vital Statistics, Communicable Disease Control, Sexually Transmitted Disease Control, Tuberculosis Control, Maternal Health, Infant and Preschool Health, School Health, Adult Health and Hygiene and General Sanitation.

WHEREAS,

The City-Cowley County Health Department has held true to the mission of Public Health in Cowley County and has worked to Prevent Disease, Promote Health in all stages of life, and Protect Health through the adoption and enforcement of required safe sanitation practices for seventy-five (75) years.

BE IT NOW PROCLAIMED:

That the Month of July 2021 shall be celebrated as Public Health Month in the Cities of Arkansas City Kansas, Winfield Kansas, and Cowley County in Kansas in honor of the seventy-five years of continuous public health service from the City-Cowley County Health Department.

Prevent – Promote – Protect

Scott Rogers, DDS
Mayor of Arkansas City, Kansas

Gregory N. Thompson
Mayor of Winfield, Kansas

Alan Groom
Chairman, Cowley County Board of Commissioners

July 6, 2021

Attest: _____
Karen Madison – Cowley County Clerk

ORDINANCE NO. 4158

AN ORDINANCE AUTHORIZING THE CITY OF WINFIELD, KANSAS, TO ENTER INTO A LEASE PURCHASE TRANSACTION, THE PROCEEDS OF WHICH WILL BE USED TO PAY THE COSTS OF ACQUIRING REFUSE UTILITY EQUIPMENT FOR USE IN THE CITY; AND TO APPROVE THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, under the constitution and statutes of the State of Kansas, particularly Article 12, § 5 of the Kansas Constitution and K.S.A. 12-101 *et seq.*, the City of Winfield, Kansas (the “City”) is empowered to enter into certain leases, lease purchase agreements and installment purchase agreements for the lease and/or acquisition of property; and

WHEREAS, K.S.A. 10-1116b provides in pertinent part that nothing in the provisions of K.S.A. 10-1101 *et seq.* shall prohibit a municipality from entering into a lease agreement, with or without an option to buy, or an installment-purchase agreement, if any of such agreements specifically state that the municipality is obligated only to pay periodic payments or monthly installments under the agreement as may lawfully be made from: (a) funds budgeted and appropriated for that purpose during such municipality's current budget year, or (b) funds made available from any lawfully operated revenue producing source; and

WHEREAS, the City has a need to acquire certain refuse utility equipment, specifically including a Crane Carrier LET2-40/New Way Cobra Magnum equipped 2020 Refuse Truck in the amount of \$230,943 (the “Equipment”) to be used in the City to further its governmental and public purpose as contemplated by law, but does not have sufficient moneys on hand legally available to purchase the Equipment for its use; and

WHEREAS, in order to facilitate the foregoing and to pay the cost thereof, it is necessary and desirable for the City to take the following actions:

1. Enter into an annually renewable lease purchase agreement (the “Agreement”) with the lessor named therein (the “Lessor”), pursuant to which the City will lease the Equipment on a year-to-year basis from the Lessor with an option to purchase the Lessor’s interest in the Equipment, a form of which has been submitted to the governing body for review.

2. Enter into an Escrow Agreement, if necessary (the “Escrow Agreement,” and collectively with the Agreement, the “City Documents”), between the Lessor, the City and the escrow agent named therein (the “Escrow Agent”), pursuant to which the proceeds of the Agreement will be deposited with the Escrow Agent and disbursed to pay the costs of acquiring the Equipment and related costs thereto.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, AS FOLLOWS:

Section 1. Authorization and Approval of the City Documents.

(a) The City Documents are hereby approved in substantially the form submitted to and reviewed by the governing body on the date hereof, with such changes therein as shall be approved by the

Mayor and City Attorney, the Mayor's execution of the City Documents to be conclusive evidence of such approval.

(b) The obligation of the City to pay lease payments under the Agreement and as set forth therein is subject to annual appropriation and shall constitute a current expense of the City and shall not in any way be construed to be an indebtedness or liability of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness or liability by the City, nor shall anything contained in the Agreement constitute a pledge of the general tax revenues, funds or moneys of the City, and all provisions of the Agreement shall be construed so as to give effect to such intent.

(c) The Mayor is hereby authorized and directed to execute and deliver the City Documents on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to affix the City's seal to the Agreement and attest said seal.

Section 2. Further Authority. The City shall, and the officials and agents of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the City Documents, the other documents authorized or approved hereby, and the Equipment.

Section 3. Reimbursement. Pursuant to Treasury Regulation § 1.150-2, the proceeds of the Agreement may be used to reimburse expenditures made on or after the date which is 60 days before July 6, 2020, which is the date the City initially approved the acquisition of the Equipment.

Section 4. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication of the Ordinance or a summary thereof in the official City newspaper.

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PASSED by the governing body of the City on June 17, 2021 and signed by the Mayor.

(SEAL)

Mayor

ATTEST:

Clerk

APPROVED AS TO FORM ONLY.

City Attorney

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**CITY COMMISSION MEETING
Winfield, Kansas**

DATE: Monday, July 06, 2020
TIME: 5:30 p.m.
PLACE: City Commission – Community Council Room – First Floor – City Building

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Due to Coronavirus Pandemic concerns, this meeting is being held online. As per instruction by the Kansas Attorney General, you may listen to the meeting from your computer, tablet or smartphone by copying the link or dialing the phone number and access code below.

<https://www.gotomeet.me/WinfieldKansas>

You can also dial in using your phone.

United States (Toll Free): [1 866 899 4679](tel:18668994679)

United States: [+1 \(786\) 535-3119](tel:+17865353119)

Access Code: 969-810-229

Phones Muted: To enable all parties to hear, phones will be muted. Phones will be unmuted for public comment at the beginning of the meeting and at the end of each topic as described below.

Public Comment: All commenters shall state their name and address before commenting. Public comment at the meeting on any item not on the agenda will be received at the beginning of the meeting. The phones will be unmuted at the end of each topic to receive any additional comment.

Presenters: Presenters must state their name and title each time as they begin speaking.

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AGENDA

CALL TO ORDER.....Mayor Phillip R. Jarvis
ROLL CALL.....City Clerk, Brenda Peters
MINUTES OF PRECEDING MEETING.....Monday, June 15, 2020

PUBLIC HEARING

-Hear appeal of nuisance violation at 1020 E 12th Ave

BUSINESS FROM THE FLOOR

-Citizens to be heard

NEW BUSINESS

Ordinances & Resolutions

Bill No. 2037 – A Resolution – Accepting and authorizing the filing of a certain permanent easement necessary to provide right-of-way for installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances therefore, in, over, under, and across real estate in Lot 14, Block 40, College Hill Addition to the City of Winfield, Cowley County, Kansas.

Bill No. 2038 – A Resolution – Authorizing an Outdoor Community Event and Temporary Entertainment District Application (Young Professionals of Cowley County)

Bill No. 2039 – A Resolution – Authorizing an Outdoor Community Event and Temporary Entertainment District Application (Jayhawk Advisory Council)

OTHER BUSINESS

-Consider Possible Action Related to Facial Coverings/Masks Inside the Corporate Limits
-Consider Board Appointments
-Consider a 25 Yard Rear Load Refuse Packer Body and Low Entry Cab/Chassis Quote.
-Consider retaining a contractor to directional bore sanitary sewer and water line under the highway (E 9th Ave.)

ADJOURNMENT

-Next Commission work session 4:00 p.m. Thursday, July 16, 2020.
-Budget Workshop 1:00 p.m. Monday, July 20, 2020 Location TBD
-Next regular meeting 5:30 p.m. Monday, July 20, 2020.



May 27, 2021

Brenda Peters
Director of Finance
City of Winfield
PO Box 646
Winfield, KS 67156

RE: Refuse Truck Lease Purchase

Per the attached term sheet and amortization schedule, RCB Bank submits for consideration a rate of 1.89% for the \$160,000 Lease Purchase of new Refuse Truck with ten semi-annual payments of \$16,841.03 commencing October 1, 2021. There is no penalty for early repayment of the lease.

Thank you for the opportunity to provide you with this proposal.
If you have any questions, please contact me at 620.221.8203

Respectfully,

Jon C. Baker
Vice President
NMLS #1174570

1610 Main Street
Winfield, KS 67156
Phone: 620.221.8203
Fax: 620.229.8777
Email: cbaker@bankrcb.net

Encl.

RCB Bank – Municipal Lease Term Sheet

The following Lessee is requesting **RCB Bank** to serve as Lessor with respect to obtaining lease-purchase financing for the specified equipment acquisitions of the Lessee, as set out below. Please provide the information requested for this lease-purchase transaction to **RCB Bank**.

Name of Lessee:	City of Winfield	Date:	5/27/2021
Contact Name:	Brenda Peters, Director of Finance/City Clerk	TIN:	48-6004918
Email:		Phone:	620.221.5500
Physical Address:	200 E. 9 th Ave., Winfield, KS 67156	Fax:	
Mailing Address:	P.O. Box 646, Winfield, KS 67156		

Equip/Property Description:	Crane Carrier LET2-40/New Way Cobra Magnum equipped 2020 Refuse Truck
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Vendor:	
Vendor Contact:	
Phone:	

Amt. of Lease:	\$160,000		
Est Delivery Date:	6/15/2021		

Interest Commences: Date set out in Amortization Schedule or as Otherwise Agreed Upon.

Nature of Lease: The lease-purchase will be between the Lessee and the successful financier. A form of the lease is available from RCB Bank.

Other Matters: RCB Bank will use our lease-purchase agreement and exhibits. In addition, the following fees will be included in the lease amount: \$175 attorney review, \$295 documentation, \$100 lien filing. No penalty for early repayment.


RCB – LEASE BID / FINANCING TERMS

Equipment Lease Options

	Term	Rate	Estimated Payment Amount	Payment Structure
<input checked="" type="checkbox"/>	60	1.89% on an Actual/360 basis	\$16,841.03	<input checked="" type="checkbox"/> Semi-Annual
<input type="checkbox"/>		on an Actual/360 basis		<input type="checkbox"/> Monthly <input type="checkbox"/> Annual

Name of Lessor: RCB Bank
Address of Lessor: 1610 Main St., Winfield, KS 67156
Kansas Division

Name: Jon C Baker
Email Address: cbaker@bankrcb.net
Phone Number: (620) 221-8203

Signature: 
Fax Number: (620) 229-8777

City of Winfield, Kansas

Compound Period : Monthly

Nominal Annual Rate : 1.890 %

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Lease	06/15/2021	160,000.00	1		
2 Attorney Fee	06/15/2021	175.00	1		
3 Title and Doc Fee	06/15/2021	395.00	1		
4 Lease Payment	10/01/2021	16,841.03	10	Semiannual	04/01/2026

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Lease	Attorney Fee	Title and Doc Fee	Lease Payment	Interest	Principal	Balance
Lease	06/15/2021	160,000.00						160,000.00
Attorney Fee	06/15/2021		175.00			0.00	0.00	160,175.00
Title and Doc Fee	06/15/2021			395.00		0.00	0.00	160,570.00
1	10/01/2021				16,841.03	893.55	15,947.48	144,622.52
2021 Totals		160,000.00	175.00	395.00	16,841.03	893.55	15,947.48	
	2 04/01/2022				16,841.03	1,372.08	15,468.95	129,153.57
	3 10/01/2022				16,841.03	1,225.32	15,615.71	113,537.86
2022 Totals		0.00	0.00	0.00	33,682.06	2,597.40	31,084.66	
	4 04/01/2023				16,841.03	1,077.17	15,763.86	97,774.00
	5 10/01/2023				16,841.03	927.61	15,913.42	81,860.58
2023 Totals		0.00	0.00	0.00	33,682.06	2,004.78	31,677.28	
	6 04/01/2024				16,841.03	776.63	16,064.40	65,796.18
	7 10/01/2024				16,841.03	624.23	16,216.80	49,579.38
2024 Totals		0.00	0.00	0.00	33,682.06	1,400.86	32,281.20	
	8 04/01/2025				16,841.03	470.37	16,370.66	33,208.72
	9 10/01/2025				16,841.03	315.06	16,525.97	16,682.75
2025 Totals		0.00	0.00	0.00	33,682.06	785.43	32,896.63	
	10 04/01/2026				16,841.03	158.28	16,682.75	0.00
2026 Totals		0.00	0.00	0.00	16,841.03	158.28	16,682.75	
Grand Totals		160,000.00	175.00	395.00	168,410.30	7,840.30	160,570.00	



May 28, 2021

City of Winfield, Kansas
Taggart Wall, City Manager
200 E 9th St
Winfield, KS 67156

RE: Lease Purchase of a new Refuse Truck

Dear Mr. Wall:

Union State Bank is pleased to offer the following commitment to provide lease purchase financing for the acquisition of a new Refuse Truck for the City of Winfield, Kansas under the following arrangement. Please feel free to call me at (620) 705-0210 if you have any questions.

LEASE PROPOSAL:

Lessee:	The City of Winfield, Kansas
Lessor:	Union State Bank
Purpose:	Acquire a Crane Carrier LET2-40/ New Way Cobra Magnum equipped 2020 Refuse Truck
Lease Amount:	\$160,000 (subject to final amount TBD)
Interest Rate:	1.97% Fixed
Term:	60 months
Payment Structure:	10 Semi-Annual payments beginning October 2021 and ending April 2026. The City's obligation under the lease may be prepaid on April 1, 2023 and thereafter at any time, in whole, for an amount equal to the remaining principal balance plus accrued interest without penalty.



823 Main, Winfield, KS 67156
(620) 221-3040 • www.MyUnionState.com



Arkansas City • Bartlesville • Edmond • Newton • Udall • Wichita • Winfield

Collateral: Crane Carrier LET2-40/ New Way Cobra Magnum equipped 2020
Refuse Truck with title vested to the City of Winfield, Kansas

Fees: Origination: \$100.00

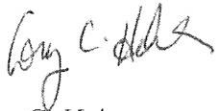
All other fees in association with the preparation of Lease Purchase
Documentation to be borne by the Lessee.

Other Conditions: 1) Comprehensive Annual Financial Report to be provided to
Union State Bank annually.

Union State Bank reserves the right to reasonable modifications of this proposal.

Thank you again for the opportunity to provide this lease commitment proposal. Please let me
know should you require any additional information.

Sincerely,



Cory C. Helmer
SVP- Winfield President



June 16, 2021

REQUEST FOR TERMS

RE: City of Winfield, Kansas Proposed Equipment Lease Purchase Agmt for the Acquisition of a fully equipped Low-Entry Cab/Chassis w/25yd Rear Load Refuse Packer Body Truck, hereafter "Refuse Truck".

Local Financial Institutions:

Please find the enclosed term sheet requesting terms for the financing through lease purchase of a new Refuse Truck. The purchase price of the Refuse Truck is \$252,443.00 and the City will receive a trade-in option of \$21,500 making the total purchase price \$230,943. The City anticipates putting approximately \$81,000 down on the purchase and seeks \$160,000.00 in principal financing. We have included some additional legal and origination fees that we expect to be much lower than included herein.

If interested in proposing, please return your proposed rate and fees via email to the City Finance Director at bpeters@winfieldks.org with "Refuse Truck Lease Purchase" in the Subject Line no later than June 3, 2021 at 12:00p.m.

The City reserves the right to choose the most responsive proposal and to reject all proposals.

We appreciate your attention and response.

Should you have any questions, please let me or one of our finance staff know.

Sincerely,

A handwritten signature in black ink, appearing to read "Taggart Wall", written over a horizontal line.

Taggart Wall
City Manager

CITY OF WINFIELD, KANSAS
PROPOSED EQUIPMENT LEASE PURCHASE AGREEMENT
for the acquisition of an
REFUSE TRUCK

FINANCING OVERVIEW

<i>Principal Amount</i>	\$160,000 (Subject to Change)
<i>Anticipated Closing Date</i>	June 2021
<i>Term</i>	5 years
<i>Payment Structure</i>	Semiannual payments beginning October 2021 and ending April 2026.
<i>Optional Prepayment</i>	The City's obligations under the Lease may be prepaid on April 1, 2023 and thereafter at any time, in whole, for an amount equal to the remaining principal balance, plus accrued interest without penalty
<i>Plan of Finance</i>	<p>The City of Winfield, Kansas (the "City") is seeking equipment lease purchase financing (the "Lease") from a selected local or regional financial institution (the "Selected Firm") for the acquisition of a Crane Carrier LET2-40/New Way Cobra Magnum equipped 2020 Refuse Truck. The Refuse Truck is referred to herein as the "Equipment".</p> <p>The Lease will provide that the City make semiannual payments to the Selected Firm to amortize the Lease principal of \$160,000 (subject to change). Under the Lease, title to the Equipment will be vested with the City, subject to the Selected Firm's rights under the Lease for as long as no Event of Default has occurred under the Lease. The Lease will provide that upon an Event of Default or a termination of the Lease due to non-appropriation of funds by the City as described in the following section, possession and title to the Equipment will transfer to the Selected Firm. Subject to the conditions described in the following paragraph, upon payment by the City of all amounts owed under the Lease, at maturity or upon earlier prepayment, the Lease will terminate and all rights and interest in the Equipment will remain in the City.</p>
<i>Obligation of the City</i>	<u>The payments due under the Lease are subject to annual appropriation by the City's governing body.</u> If the City's governing body fails to appropriate and budget funds for payments due under the Lease in any particular fiscal year, the Lease will terminate as of the last day of the fiscal period for which funds were appropriated. The City's obligation to make payments under the Lease is not a general obligation or an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction.
<i>Origination Costs</i>	It is anticipated that the City will incur approximately \$10,000 of costs related to the origination and legal of the Lease and has included this amount in the principal amount of the Lease shown above.
<i>Lease Purchase Documentation</i>	To be provided by the Selected Firm and subject to review and approval of Gilmore and Bell, Wichita, Kansas ("Special Tax Counsel").
<i>Interest Calculation Method</i>	Simple fixed interest, payable in arrears, 30/360 day count basis.
<i>Tax Status</i>	In the opinion of Special Tax Counsel, the interest portion of payments made by the City under the Lease will be excludable from gross income for federal income tax purposes and excluded from computation of Kansas adjusted gross income, subject to City compliance with requirements of applicable provision of the Internal Revenue Code that must be satisfied subsequent to delivery of the Lease. The Lease will be considered Bank Qualified.



Request for Commission Action

Date: June 17, 2021

Requestor: Taggart Wall

Action Requested: Approval of a resolution that authorizes William Newton Memorial hospital to enter into a third supplemental lease purchase agreement which amends two previous lease agreements from 2018 and 2019.

Analysis: The City of Winfield has worked with William Newton Hospital for some time in the analysis of an opportunity that would allow for the refinancing of a lease purchase agreement that the hospital holds from non-qualified to "bank qualified". By making this change to the hospitals agreement, the hospital can receive a lower interest rate and save the organization approximately \$100,000 dollars annually through 2024 then could adjust down depending on varied interest rate changes.

Fiscal Impact: The authorization of these bank qualified notes will limit the City's ability to issue it's own bank qualified notes in 2021. There is a \$10 million limit and this refinance would use the City's status to absorb approximately \$6 million of that. This does not preclude the City of issuing debt in general or bank qualified debt for certain emergencies.

Staff does not foresee an issue for this in 2021.

Attachments: Authorizing Resolution

**RESOLUTION OF THE CITY OF WINFIELD, KANSAS
AUTHORIZING WILLIAM NEWTON MEMORIAL HOSPITAL
TO ENTER INTO A THIRD SUPPLEMENTAL LEASE PURCHASE
AGREEMENT, WHICH AMENDS AND SUPPLEMENTS A LEASE
PURCHASE AGREEMENT AND SUPPLEMENTAL LEASE
PURCHASE AGREEMENT, BOTH DATED AS OF JULY 26, 2018,
AND A SECOND SUPPLEMENTAL LEASE PURCHASE
AGREEMENT, DATED AS OF JUNE 27, 2019; AUTHORIZING
AND APPROVING CERTAIN ACTIONS IN CONNECTION
THEREWITH; AND REPEALING RESOLUTION NO. 4421.**

WHEREAS, the City of Winfield, Kansas (the “City”) is a municipal corporation duly organized and existing under the laws of the State of Kansas with full and lawful power and authority under Article 12, Section 5 of the Kansas Constitution, K.S.A. 12-101 *et seq.* and K.S.A. 10-1101 *et seq.*, as amended, to enter into leases or lease-purchase agreements with any person, firm or corporation for hospital facilities; and

WHEREAS, the William Newton Memorial Hospital (the “Hospital”) is a legally constituted public hospital organized and existing under the laws of the State of Kansas, including K.S.A. 12-1615, and the laws and ordinances of the City (jointly, the “Act”); and

WHEREAS, pursuant to the Act, the Hospital may enter into lease and lease-purchase agreements with any person, firm or corporation for such hospital facilities; and

WHEREAS, the Hospital and RCB Bank, Winfield, Kansas (the “Lessor”), have heretofore entered into transactions, including a Lease Purchase Agreement, dated and executed as of July 26, 2018 (the “Lease Purchase Agreement”), Supplemental Lease Purchase Agreement, dated and executed as of July 26, 2018 (the “Supplemental Lease Purchase Agreement”) and Second Supplemental Lease Purchase Agreement, dated and executed as of June 27, 2019 (the “Second Supplemental Lease Purchase Agreement”), under which the Lessor has made available funds to pay costs of acquiring, constructing and installing building and related improvements, fixtures, equipment and furnishings and support facilities for use as a public hospital (the “Improvements”), and the Lessor is leasing such Improvements to the Hospital for the rentals and upon the terms and conditions set forth in the Lease Purchase Agreement, Supplemental Lease Purchase Agreement, and Second Supplemental Lease Purchase Agreement (collectively, the “Original Lease Purchase Agreement”); and

WHEREAS, as a result of current market and interest rate conditions, the City and the Hospital desire the Hospital to enter into a Third Supplemental Lease Purchase Agreement (the “Third Supplemental Lease Purchase Agreement”), which amends and supplements the Original Lease Purchase Agreement to provide for a change and reduction in the “Initial Tax-Exempt Rate” and “Tax-Exempt Adjustable Rate” defined therein, and to provide for the amortization of amounts due under the Original Lease Purchase Agreement at such changed and reduced rates; and

WHEREAS, the City finds and determines that in connection with entering into the Third Supplemental Lease Purchase Agreement it is necessary and desirable that the City execute and deliver certain additional documents and that the City take certain other actions as herein provided;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS AS FOLLOWS:

Section 1. Authorization of Third Supplemental Lease. The City authorizes the Hospital to enter into the Third Supplemental Lease Purchase Agreement, the interest component of which is to be excludable from gross income for federal income tax purposes, in order to provide for a change and reduction in the “Initial Tax-Exempt Rate” and “Tax-Exempt Adjustable Rate” under the Original Lease Purchase Agreement, and to provide for the amortization of amounts due under the Original Lease Purchase Agreement at such changed and reduced rates; and

Section 2. Designation of the Lease as Qualified Tax-Exempt. The City hereby designates the obligations under the Third Supplemental Lease Purchase Agreement, when delivered, as “qualified tax-exempt obligations” under section 265(b)(3) of the Code. The amount of tax-exempt obligations (other than governmental bonds and private activity bonds which are not “qualified 501(c)(3) bonds”), issued or to be issued, by the City or on behalf of the City (including by the Hospital) during calendar year 2021, is not reasonably expected to exceed \$10,000,000.

Section 3. Further Authority. In connection with the Original Lease Purchase Agreement and the Third Supplemental Lease Purchase Agreement, and thereafter during the time the same remain outstanding, the City shall, and the officials, agents and employees of the City are hereby authorized and directed to, take such further action, and execute such other documents, certificates and instruments, including, without limitation, any purchase contract, security agreement, arbitrage certificate, notices, including any closing certificates and tax forms, certificates and other documents evidencing approval of the Original Lease Purchase Agreement and Third Supplemental Lease Purchase Agreement, and for purposes of any other federal tax law requirements, each as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 5. Effective Date; Repealer. This Resolution shall take effect and be in full force immediately after its adoption by the Governing Body of the City. Resolution No. 4421 is hereby repealed.

[Remainder of page intentionally blank]

ADOPTED by the Governing Body of the City of Winfield, Kansas this 17th day of June, 2021.

(Seal)

Mayor – Gregory N. Thompson

Attest:

City Clerk – Brenda Peters



Request for Commission Action

Date: June 17, 2021

Requestor: Taggart Wall

Action Requested: Approval of a resolution and agreement between the Kansas and Oklahoma Steam and Gas Association for the use of the Winfield Fairgrounds for an annual tractor/steam and gas demonstration show.

Analysis: The City of Winfield and K&O have a long history of working together to provide facilities and show operations for the Kansas and Oklahoma Steam and Gas Engine Show. No changes have been made to the updated agreement and the agreement shall be for a term of five years expiring in 2026.

Fiscal Impact: K&O agrees to pay the City 5% of gate receipts and the City also gets to keep it's share of all camping fees.

Attachments: Fairgrounds Special Event Agreement

A RESOLUTION

AUTHORIZING and directing the City Manager of the City of Winfield, Kansas to execute a Fairgrounds Special Event Agreement between the City of Winfield and the K & O Steam & Gas Engine Association, Winfield, Kansas.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The City Manager of the City of Winfield, Kansas, is hereby authorized and directed to execute a Fairgrounds Special Event Agreement between the City of Winfield, Kansas, and the K & O Steam & Gas Engine Association, Winfield, Kansas; a copy of which is attached hereto and made a part hereof.

Section 2. This resolution shall be in full force and effect from and after its adoption.

ADOPTED this 17th day of June 2021.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form:

William E. Muret, City Attorney

Approved for Commission action:

Taggart Wall, City Manager

FAIRGROUNDS SPECIAL EVENT AGREEMENT

This Fairgrounds Special Event Agreement made and entered into this 7th day of June, 2021, by and between the City of Winfield, Kansas, hereinafter referred to as "CITY," and K & O Steam and Gas Engine Association, hereinafter referred to as "K & O".

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments set forth herein, the parties agree as follows:

1. CITY hereby leases to K & O, for the purpose of Steam and Gas Engine Shows, the following described premises:

That portion of the Winfield Fairgrounds bound on the west by the Walnut River, on the south by the Walnut River, on the east by the levee, and the north by US Highway 160.

It is understood and agreed that this lease is specifically limited to the above-described premises. It is understood and agreed that this lease **DOES NOT** include the West 14th Street Power Plant, Horse barn, and 4-H Building. CITY shall have ingress and egress at all times to the Power Plant and other buildings where materials and equipment may be stored. It is further agreed, for spectator and participant safety, signage and barricades, as approved by the City Manager or his designee shall be erected on all roadways intersecting the above-described premises.

2. It is understood and agreed that the term of this lease shall cover five (5) separate K & O events with the date and time of each event as follows:
 - a. **2022**, 8:00 a.m. August 16 to 5:00 p.m. August 24
 - b. **2023**, 8:00 a.m. August 15 to 5:00 p.m. August 23
 - c. **2024**, 8:00 a.m. August 13 to 5:00 p.m. August 21
 - d. **2025**, 8:00 a.m. August 12 to 5:00 p.m. August 20
 - e. **2026**, 8:00 a.m. August 18 to 5:00 p.m. August 26
3. K & O agrees to pay to CITY, as rental, five percent (5%) of the gate receipts (admission fees) which includes advance sales, daily sales and weekend sales, less applicable Kansas sales taxes. K & O shall provide CITY with an accurate accounting of all receipts from each event and shall pay to CITY the monies owing to it as set forth herein not later than thirty (30) days following the last day of each event.
4. If, within the term of this agreement, K & O determines it **will not** produce a Steam and Gas Engine Show during any of the contracted dates identified in Paragraph 2, K & O will notify CITY at least 120 days prior to contracted date. Should such notification be received by CITY less than 120 days prior to contracted date, K & O shall pay to CITY a fee of \$500.
5. CITY shall assume responsibility for the payment of any City utilities consumed during the events outlined in Section 2. K & O agrees that any alteration or temporary extensions to City utilities be coordinated through CITY. K & O shall assume responsibility for portable restrooms, all restroom supplies and cleanliness during terms of this agreement. K & O

shall be responsible for any damage or litter. Any decorations, garbage and trash shall be deposited in outside trash barrels. K & O shall dispose of any excess trash. K & O shall be responsible for any damage or litter. Any decorations, garbage and trash shall be deposited in outside trash barrels. Any excess trash shall be disposed of by K & O. If said premises are not so cleaned, CITY shall cause the premises to be cleaned. K & O shall pay all reasonable and standard costs thereof.

6. **No open burning** is permitted except for grills or campfires, within metal fire rings no larger than 3 feet in diameter, as approved by CITY.
7. It is anticipated that a portion of the leased premises will be utilized for camping purposes. It is understood and agreed that any such use shall be under the control of K & O, and that K & O agrees to charge and collect from users of any camping area with electrical hookups and primitive camping a fee as established by City Ordinance on January 15 of each year of this agreement. Camping fees paid to CITY are not to be included in rental calculation, per paragraph 3.
8. K & O agrees that all facilities are cleaned and returned in a manner satisfactory to CITY. K & O agrees to place on deposit with CITY, at least fifteen (15) days prior to any first day of occupancy, the sum of five hundred dollars (\$500) as a cleanup deposit. Said deposit shall be returned upon satisfactory clean of the rental premises. If not so returned, CITY may cause the premises to be cleaned and use the \$500 deposit to pay therefore.
9. CITY, its officers and agents shall have free access to the premises for the purposes that they may deem necessary. K & O shall have the right to close the premises at any time they may deem necessary and to further establish rules of conduct and discipline necessary to maintain a well ordered event. Those individuals or groups not wishing to follow those rules set by K & O for proper conduct may be, at K & O direction, removed from the premises or dealt with as K & O deems necessary.
10. It is understood and agreed that the Winfield City Police Department will not be restricted in patrol operations of the Fairgrounds area during the lease period. If any additional private police or night watch services are desired by K & O, K & O will be responsible for all additional costs associated with the provision of such services, and K & O further agrees that the company and/or individuals providing the additional police or night watch service will be approved by the Winfield Police Department. It is specifically understood and agreed that said approval will not render CITY liable in any way for the actions of said persons nor make them employees of CITY. K & O shall indemnify and hold CITY harmless from any loss or damages to CITY occurring as the result of the acts of said private police or night watch services.
11. Winfield Fire Department will not be restricted in patrol operations of the Fairground area during the term of this agreement. When it is essential for public safety, in the opinion of the Winfield Fire Chief, firefighters of the Winfield Fire Department will be assigned to duty on-site at any time during this agreement and remain on duty subject to the Chief's orders. Duty orders will include, but not be limited to, maintenance of fire lanes, campfire inspection, fire extinguisher location and workability, and extinguishment of

fires that may occur. K & O is responsible for all costs associated with such call to duty.

12. K & O shall not sublet nor assign this agreement without the written consent of CITY. K & O therein is an independent contractor and not the agent, partner, joint venturer, or employee of CITY.
13. It is expressly understood and agreed that K & O shall save and hold CITY harmless from any and all loss sustained by K & O on account of any suit, judgment, execution, claim or damage of any kind whatsoever, resulting from the use of said premises as provided herein, and K & O shall cause to be defended at its own expense all actions that may be commenced against the CITY by reason of said event. K & O shall also save and hold CITY harmless and indemnify CITY from any and all losses sustained by CITY by reason of said event. A Certificate of Insurance shall be filed by K & O with the City Manager's Office not less than seven (7) calendar days in advance of event. K & O shall procure and maintain during the term of this agreement, Commercial General Liability Insurance in an amount not less than \$500,000 each occurrence extending to and including, and not be limited to (if applicable), spectators, carnivals, mechanical amusement devices, animals and cereal malt beverage/liquor liability, \$500,000 personal and/or advertising injury limit, \$1,000,000 products completed operations aggregate and \$1,000,000 general aggregate, with CITY named as additional insured; said insurance to be carried with an insurance company with a recognized national rating acceptable to CITY, licensed to do business in the state of Kansas. All policies of insurance shall provide at least thirty (30) days prior written notice of cancellation or any changes of insurers to CITY.
14. If all or part of the above-described premises are destroyed or rendered uninhabitable, or if the events are cancelled due to weather or other conditions beyond the control of the parties hereto, CITY shall have no obligation to provide alternate space for the holding of said event, and K & O shall have no obligation to pay any rentals to CITY.
15. CITY agrees that advertising or other material may be placed, posted, or distributed in or about said premises or announced or publicized over any loud speaker system or other media without having obtained advanced permission of CITY. K & O agrees that all advertising identify the event site as "the Winfield Fairgrounds". K & O may not use the City of Winfield name to suggest co-sponsorship or endorsement of the activity without advanced written approval.
16. All concessions catering and concession or catering rights are reserved to K & O. Its concessionaires will have the privilege of canvassing, selling, delivering, servicing, and otherwise hawking wares, novelties, merchandise, foodstuff and beverages. The Revised Ordinances of the City of Winfield shall govern the sale or consumption of Cereal Malt Beverage or Alcoholic Liquor on CITY property.
17. CITY agrees to permit the use of motorized golf carts and/or utility carts on Winfield Fairgrounds property during the term of this agreement. Standard Traffic Ordinances and Winfield City Code will be enforced and proper operation of said carts shall be the responsibility of the operator. K & O shall place signage throughout Fairgrounds property alerting the driving public of slow moving vehicles. Such signage and placement shall be

approved by the Winfield Police Department.

18. K & O shall at all times comply with and be subject to all ordinances, laws, rules and regulations of the City of Winfield, State of Kansas, and the United States government.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

THE CITY OF WINFIELD, KANSAS

K & O Steam and Gas Engine Assoc.

Taggart Wall
Taggart Wall, City Manager

_____, President

John H Benda
Michael Smyke
Emmanuel DeWitt
Cameron Bailey
Connie Curran 6-7-2021
Irvin Parsons



Request for Commission Action

Date: June 21, 2021

Requestor: Josh Wallace, Environmental Inspector

Action Requested: Seeking consideration for the approval of Nuisance Resolutions determining the existence of a nuisance at:

319 N College: Wood, debris, misc. materials and tires in the alley driveway and porch.

318 Indiana: Tree branches, tires, furniture and debris in the side and back yards.

312 Minnesota: Tree branches, tires, furniture, construction materials in back yard and driveway.

1517 Fuller: Furniture, boxes, debris and clothes on the front porch.

1007 E 12th: Debris, appliances and trash in the driveway.

415 E 12th: furniture tires and limbs in the back yard.

Analysis: The owners of all properties listed have received a door hanger warning, were sent a certified letter and a notice of upcoming commission action warning.

Fiscal Impact: Unknown fiscal impact at this time. Once approved, a contractor will be assigned to remove the nuisances and the owners will be billed for the cost of the removal as well as an administrative fee of \$100.

Attachments:

Nuisance Resolution 319 N College - 2 Photos

Nuisance Resolution 318 Indiana - 2 Photos

Nuisance Resolution 312 Minnesota - 2 Photos

Nuisance Resolution 1517 Fuller - 2 Photos

Nuisance Resolution 1007 E 12th - 2 Photos

Nuisance Resolution 415 E 12th - 2 Photos

Request for Commission Action

319 N College #1-2



Request for Commission Action



Request for Commission Action

312 Minnesota #1-2



Request for Commission Action



Request for Commission Action



Request for Commission Action



A RESOLUTION

DETERMINING the existence of certain nuisances at **318 Indiana** in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

WHEREAS, under the provisions of Section 54-3 and 70-2 of the Winfield City Code, Winfield, Kansas, adopted pursuant to K.S.A. 12-1617e, the Governing Body has the power to remove or abate from any lot or parcel of ground within the City any nuisance thereon, upon a finding and determination thereof by said Governing Body; and,

WHEREAS, the City's inspector, on or about the 9th day of March 2021 and on prior and subsequent times, inspected the premises described below and observed the following conditions as set forth below;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The conditions hereinafter described are hereby found to be nuisances, and determined to be a menace and dangerous to the health of the inhabitants of the city or of any neighborhood, family or resident of the city, to wit:

Owner: ANDES, CONNIE J
16590 121ST RD
Winfield, KS 67156

Occupant: ANDES, CONNIE J
Property Address: 318 Indiana
Legal Description: HIGHLAND PARK, BLOCK 15, S25 LT 8 & LTS 9-10

Nature of Nuisance: A nuisance consisting of a large accumulation of tree branches, tires, furniture and debris in side and back yards creating an unsightly appearance and/or harborage for vermin.

Disposition of Items: Property items determined by the City to be of value will be impounded and stored at the City impound lot. Such items may be retrieved after appropriate impound fees and other incurred expenses have been paid by the owners.

Section 2. The Clerk of the City of Winfield, Kansas is hereby authorized to issue notice for the removal and abatement of said nuisances and take any remedial action as authorized under Section 54-2 of the Winfield City Code, Winfield, Kansas.

Section 3. This resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this 17th day of June, 2021.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Taggart Wall, City Manager/jw

A RESOLUTION

DETERMINING the existence of certain nuisances at **312 Minnesota** in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

WHEREAS, under the provisions of Section 54-3 and 70-2 of the Winfield City Code, Winfield, Kansas, adopted pursuant to K.S.A. 12-1617e, the Governing Body has the power to remove or abate from any lot or parcel of ground within the City any nuisance thereon, upon a finding and determination thereof by said Governing Body; and,

WHEREAS, the City's inspector, on or about the 27th day of April 2021 and on prior and subsequent times, inspected the premises described below and observed the following conditions as set forth below;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The conditions hereinafter described are hereby found to be nuisances, and determined to be a menace and dangerous to the health of the inhabitants of the city or of any neighborhood, family or resident of the city, to wit:

Owner: COON,KEVIN L & CAROL D
PO BOX 24
Winfield, KS 67156

Occupant: COON,KEVIN L & CAROL D
Property Address: 312 Minnesota
Legal Description: HIGHLAND PARK, BLOCK 14, Lot 3 - 4

Nature of Nuisance: A nuisance consisting of a large accumulation of tree branches, tires, furniture construction material and debris in back yard and driveway creating an unsightly appearance and/or harborage for vermin.

Disposition of Items: Property items determined by the City to be of value will be impounded and stored at the City impound lot. Such items may be retrieved after appropriate impound fees and other incurred expenses have been paid by the owners.

Section 2. The Clerk of the City of Winfield, Kansas is hereby authorized to issue notice for the removal and abatement of said nuisances and take any remedial action as authorized under Section 54-2 of the Winfield City Code, Winfield, Kansas.

Section 3. This resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this 17th day of June, 2021.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Taggart Wall, City Manager/jw

A RESOLUTION

DETERMINING the existence of certain nuisances at **1517 Fuller** in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

WHEREAS, under the provisions of Section 54-3 and 70-2 of the Winfield City Code, Winfield, Kansas, adopted pursuant to K.S.A. 12-1617e, the Governing Body has the power to remove or abate from any lot or parcel of ground within the City any nuisance thereon, upon a finding and determination thereof by said Governing Body; and,

WHEREAS, the City's inspector, on or about the 12th day of April 2021 and on prior and subsequent times, inspected the premises described below and observed the following conditions as set forth below;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The conditions hereinafter described are hereby found to be nuisances, and determined to be a menace and dangerous to the health of the inhabitants of the city or of any neighborhood, family or resident of the city, to wit:

Owner: WALKER,SHIRLEY A
1517 FULLER
Winfield, KS 67156

Occupant: WALKER,SHIRLEY A
Property Address: 1517 Fuller
Legal Description: LOOMIS ADD, BLOCK 175, Lot 3 - 4

Nature of Nuisance: A nuisance consisting of a large accumulation of furniture, boxes, debris and clothes in front porch creating an unsightly appearance and/or harborage for vermin.

Disposition of Items: Property items determined by the City to be of value will be impounded and stored at the City impound lot. Such items may be retrieved after appropriate impound fees and other incurred expenses have been paid by the owners.

Section 2. The Clerk of the City of Winfield, Kansas is hereby authorized to issue notice for the removal and abatement of said nuisances and take any remedial action as authorized under Section 54-2 of the Winfield City Code, Winfield, Kansas.

Section 3. This resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this 17th day of June, 2021.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Taggart Wall, City Manager/jw

A RESOLUTION

DETERMINING the existence of certain nuisances at **1007 E 12th** in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

WHEREAS, under the provisions of Section 54-3 and 70-2 of the Winfield City Code, Winfield, Kansas, adopted pursuant to K.S.A. 12-1617e, the Governing Body has the power to remove or abate from any lot or parcel of ground within the City any nuisance thereon, upon a finding and determination thereof by said Governing Body; and,

WHEREAS, the City's inspector, on or about the 3rd day of March 2021 and on prior and subsequent times, inspected the premises described below and observed the following conditions as set forth below;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The conditions hereinafter described are hereby found to be nuisances, and determined to be a menace and dangerous to the health of the inhabitants of the city or of any neighborhood, family or resident of the city, to wit:

Owner: NUSZ,ADAM & NUSZ,CHAMPAYNE
1007 E 12th
Winfield, KS 67156

Occupant: NUSZ,ADAM & NUSZ,CHAMPAYNE
Property Address: 1007 E 12th
Legal Description: PERRINE'S ADD, Lot 2

Nature of Nuisance: A nuisance consisting of a large accumulation of debris, appliances and trash in the driveway creating an unsightly appearance and/or harborage for vermin.

Disposition of Items: Property items determined by the City to be of value will be impounded and stored at the City impound lot. Such items may be retrieved after appropriate impound fees and other incurred expenses have been paid by the owners.

Section 2. The Clerk of the City of Winfield, Kansas is hereby authorized to issue notice for the removal and abatement of said nuisances and take any remedial action as authorized under Section 54-2 of the Winfield City Code, Winfield, Kansas.

Section 3. This resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this 17th day of June, 2021.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Taggart Wall, City Manager/jw

A RESOLUTION

DETERMINING the existence of certain nuisances at **415 E 12th** in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

WHEREAS, under the provisions of Section 54-3 and 70-2 of the Winfield City Code, Winfield, Kansas, adopted pursuant to K.S.A. 12-1617e, the Governing Body has the power to remove or abate from any lot or parcel of ground within the City any nuisance thereon, upon a finding and determination thereof by said Governing Body; and,

WHEREAS, the City's inspector, on or about the 10th day of May 2021 and on prior and subsequent times, inspected the premises described below and observed the following conditions as set forth below;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The conditions hereinafter described are hereby found to be nuisances, and determined to be a menace and dangerous to the health of the inhabitants of the city or of any neighborhood, family or resident of the city, to wit:

Owner: KC & LA RENTALS, LLC
519 E 33rd
Winfield, KS 67156

Occupant: KC & LA RENTALS, LLC
Property Address: 415 E 12th
Legal Description: LOOMIS ADD, BLOCK 192, W75 LTS 1-3

Nature of Nuisance: A nuisance consisting of a large accumulation of furniture, tires and limbs in the back yard creating an unsightly appearance and/or harborage for vermin.

Disposition of Items: Property items determined by the City to be of value will be impounded and stored at the City impound lot. Such items may be retrieved after appropriate impound fees and other incurred expenses have been paid by the owners.

Section 2. The Clerk of the City of Winfield, Kansas is hereby authorized to issue notice for the removal and abatement of said nuisances and take any remedial action as authorized under Section 54-2 of the Winfield City Code, Winfield, Kansas.

Section 3. This resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this 17th day of June 2021.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Taggart Wall, City Manager/jw

A RESOLUTION

DETERMINING the existence of certain nuisances at **319 N College** in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City.

WHEREAS, under the provisions of Section 54-3 and 70-2 of the Winfield City Code, Winfield, Kansas, adopted pursuant to K.S.A. 12-1617e, the Governing Body has the power to remove or abate from any lot or parcel of ground within the City any nuisance thereon, upon a finding and determination thereof by said Governing Body; and,

WHEREAS, the City's inspector, on or about the 29th day of July 2020 and on prior and subsequent times, inspected the premises described below and observed the following conditions as set forth below;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The conditions hereinafter described are hereby found to be nuisances, and determined to be a menace and dangerous to the health of the inhabitants of the city or of any neighborhood, family or resident of the city, to wit:

Owner: BIRKLE,BYRON JOSEPH
4149 US HWY 160
Winfield, KS 67156

Occupant: BIRKLE,BYRON JOSEPH
Property Address: 319 N College
Legal Description: MUSGROVE'S ADD, BLOCK 40, S68 OF N78 LT 6

Nature of Nuisance: A nuisance consisting of a large accumulation of wood, debris, misc. materials and tires in alley, driveway and on the porch creating an unsightly appearance and/or harborage for vermin.

Disposition of Items: Property items determined by the City to be of value will be impounded and stored at the City impound lot. Such items may be retrieved after appropriate impound fees and other incurred expenses have been paid by the owners.

Section 2. The Clerk of the City of Winfield, Kansas is hereby authorized to issue notice for the removal and abatement of said nuisances and take any remedial action as authorized under Section 54-2 of the Winfield City Code, Winfield, Kansas.

Section 3. This resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this 17th day of June, 2021.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Taggart Wall, City Manager/jw



Request for Commission Action

Date: June 17, 2021

Requestor: Taggart Wall

Action Requested: Approval of agreements related to Advanced Metering Infrastructure Project.

Analysis: For some time, the City has discussed improvements to the metering infrastructure of the electric, natural gas and water systems. In late 2020, KPP began the process of initiating a financing tool for cities to use to complete these projects on the electric side. Earlier this year, the City agreed to participate in the project with the Kansas Power Pool.

These agreements allow the City to move forward with the purchase of equipment for the projects.

The equipment will include a two-way, fixed communications network that offers remote monitoring and control functions, including electric meters and communication collectors, internet installation, billing software integration and customer interfaces.

The project is aimed at improving operational efficiencies and customer service. As part of the improvements, customers will have an online portal they can visit to see their usage.

As customers continue to move toward 'smart technology,' this improvement will give them the data they need to make decisions about their energy. This technology will become more and more important as other industry impacts such as electric vehicles are more commonplace.

The new system will collect, measure, and analyze utility usage through an automated system that will be connected to city offices. The new system will be able to provide analytical data, such as voltage and power quality, that will optimize network performance and prevent potential outages.

Work will begin this year on the meter installation side of the project, with the network portion coming in mid 2022.



Request for Commission Action

Fiscal Impact: See attached financial impact spreadsheet. The electric portion of this project will be financed by the Kansas Power Pool and the water and natural gas portion will be financed through the City over a period of ten years beginning with a temporary-note in 2021.

The user based revenue support per month per utility is also included and will need action separately to be in effect for January 1, 2021.

Over the long term, combined with the efficiency of the Munis system, labor savings will occur with reduced need for manual meter reading and certain subsequent billing functions.

From a depreciation standpoint, annual allocation will be made toward system upgrade/replacement over the next ten years.

Attachments: Authorizing Resolution

A RESOLUTION

AUTHORIZING and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute certain agreements and documents related to and Advanced Metering Infrastructure Project for the electric, natural gas and water systems owned by the City of Winfield, Kansas.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The Mayor and Clerk of the City of Winfield, Kansas are hereby authorized and directed to execute certain agreements and documents related to and Advanced Metering Infrastructure Project for the electric, natural gas and water systems owned by the City of Winfield, Kansas. Copies of said agreements and documents are attached hereto and made a part hereof.

Section 2. This resolution shall be in full force and effect from and after its adoption.

ADOPTED this 17th day of June 2021.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form:

William E. Muret, City Attorney

Approved for Commission action:

Taggart Wall, City Manager

MASTER PURCHASE, LICENSE AND SERVICES AGREEMENT

THIS MASTER PURCHASE, LICENSE AND SERVICES AGREEMENT (“Agreement”) is effective as of the last signature date below (“**Effective Date**”) and is between (i) City of Winfield, Kansas (“**City**”) located at 2701 East 9th Avenue, Winfield, Kansas 67156, and (ii) The Kansas Power Pool (KPP), a Municipal Energy Agency (“**KPP**”) located at 100 N. Broadway, Suite L110, Wichita, Kansas 67202, and (iii) Landis+Gyr Technology, Inc., a Delaware corporation (“**Landis+Gyr**”) with principal place of business at 30000 Mill Creek Avenue, Suite 100, Alpharetta, GA 30022, and the City, KPP and Landis+Gyr shall be a “Party” to this Agreement, and collectively referred to as the “Parties.”

WHEREAS, KPP and City desire to engage Landis+Gyr to provide Products to City, and City desires to engage Landis+Gyr to perform Services, as referenced in this Agreement for City’s deployment and implementation of the Advanced Metering Infrastructure (“**AMI**”) system.

WHEREAS, Landis+Gyr will supply to City the Products and perform the Services as set forth herein and as described in the attached Exhibit(s) to this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. Definitions

The terms listed below are defined as follows:

- 1.1 “**Agreement**” means this Master Purchase, License and Services Agreement, including all exhibits and Statements of Work, which is by and between the Parties. In the event there are any conflicting provisions or requirements among the Agreement documents, the provision and requirements of the Agreement document shall be enforced in the following order of descending priority: (i) any amendment to this Agreement; (ii) the body of this Agreement; and (iii) any other document included as an Agreement document.
- 1.2 “**Collector**” means the Landis+Gyr two-way radio base station that transmits data between the Meters, Routers and the data center.
- 1.3 “**Customer Data**” means (i) any and all information related to the City’s customers, end user or consumers relating to electricity, natural gas and/or water consumption, load profile, billing history, or credit history that is or has been obtained or compiled by City in connection with supplying such services to that customer or group of customers (“**Personal Information**”) (regardless of the media in which it is contained) that may be disclosed to or accessed by Landis+Gyr at any time or to the Field Tools by City or KPP or their employees, agents, consultants, contractors, suppliers or customers in connection with Landis+Gyr’s performance of the Services; (ii) any and all Personal Information created, obtained, used or accessed by Landis+Gyr (or the Field Tools) in its performance of the Services, or derived from such information or materials; and (iii) all data and information of City, their employees or customers.
- 1.4 “**Deployed**” means Equipment, as applicable, that has been commissioned in the field and properly installed by the installation contractor, or City, and signed off by City as ready for use.
- 1.5 “**Documentation**” means any and all manuals, instructions, specifications and other documents and materials that Landis+Gyr provides or makes available to City or KPP in any medium and

which describe the functionality, components, features or requirements of the Software, including any one or more of installation, configuration, integration, operation, use, support or maintenance thereof.

- 1.6 **“Endpoint”** means a sensory-type device (e.g., electric meter, water meter, gas meter, DA device, load control switch, etc.) that is equipped with an AMI communication module.
- 1.7 **“Equipment”** means Network Equipment, Endpoints, Load Control Equipment, and/or hardware that KPP or City purchases from Landis+Gyr.
- 1.8 **“Event of Bankruptcy”** means any of the following events or circumstances with respect to a Party:
 - (a) That Party makes a general assignment for the benefit of creditors;
 - (b) That Party institutes proceedings to be adjudicated a voluntary bankrupt, or consent to the filing of a petition of bankruptcy against it;
 - (c) That Party is adjudicated by a court of competent jurisdiction as being bankrupt or insolvent;
 - (d) That Party seeks reorganization under any bankruptcy act, or consent to the filing of a petition seeking such reorganization; or
 - (e) That Party has a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such Party’s property or providing for the liquidation of such Party’s property or business affairs.
- 1.9 **“Field Tools”** means the Landis+Gyr proprietary field tools provided by Landis+Gyr hereunder, or which are obtained by City under this Agreement including Field Tools, RadioShop, Endpoint Test Manager and/or TechStudio for RF or their successors or replacements.
- 1.10 **“Firmware”** means software embedded in and provided with the Equipment.
- 1.11 **“Load Control Equipment”** means hardware that KPP or City purchases from Landis+Gyr hereunder, and obtained by City under this Agreement in connection with the Load Control Solution, including, but not limited to “Load Control Switches”.
- 1.12 **“Load Control Software”** means the “Gridstream Power Center Load Control Software” or its successor or replacement.
- 1.13 **“Load Control Solution”** means the Gridstream Advanced Load Management Solution, a real-time, intelligent load management system communicating over the Landis+Gyr Gridstream RF mesh AMI network. The solution enables City to manage peak demand during high energy use to improve utility operations.
- 1.14 **“Network Equipment”** means the Collectors, Routers, and radios substation network equipment (Collectors and TCUS) that are or will be under this Master Agreement physically deployed in the City’s service territory. The term does not include the system backhaul, the network operations center, any system equipment that is not located in the City’s service territory, Meters, or any aspect or component of the system components that is not used by City.
- 1.15 **“Meter”** means a device that measures the supply of electricity, gas, or water provided by City to City’s consumer.

- 1.16 **“Products”** means Equipment, Firmware, Software, and/or any other items purchased or licensed from Landis+Gyr under this Agreement.
- 1.17 **“Purchase Order”** means an order, including, without limitation, a purchase order offered by KPP or City to purchase Products, or a purchase order offered by City to purchase Services, from Landis+Gyr that Landis+Gyr accepts. Each Purchase Order will be deemed to include the terms and conditions of this Agreement even if not referenced in a Purchase Order.
- 1.18 **“Router”** means Landis+Gyr furnished Network Equipment that provides intermediate communication and data processing between Endpoints and Collectors. Routers may also communicate with other Routers.
- 1.19 **“Services”** means project management services, training, project delivery services, commissioning services, load control services, and/or other services described in Exhibit A.
- 1.20 **“Software”** means computer application and programs, including Field Tools, Load Control Software, in any form that City licenses from Landis+Gyr, referenced in Exhibit A.
- 1.21 **“System”** means Equipment, Firmware, Field Tools and Software purchased hereunder and used by the City to monitor and manage its consumer’s usage of City offerings.
- 1.22 **“Third Party Products”** means, if any, goods and software that City or KPP purchases or sub-licenses from Landis+Gyr that are not manufactured or provided by Landis+Gyr that display the logo or copyright of another manufacturer, or that are not proprietary to Landis+Gyr.

2. Orders; Cancellations and Modifications

- 2.1 Equipment Forecasts. Within thirty (30) days after the Effective Date of this Agreement, City shall supply to Landis+Gyr a written forecast of total anticipated Landis+Gyr Equipment needs by month. Any changes to the Equipment forecast should also be furnished to Landis+Gyr. Failure to provide an accurate forecast, within reason, may negate the stated Landis+Gyr equipment lead times and may adversely impact delivery of product to City.
- 2.2 KPP Written Orders. KPP may issue Purchase Orders for electricity related Products to Landis+Gyr by mail, facsimile communication or electronic mail. Landis+Gyr may accept Purchase Orders by signing it, acknowledging it using facsimile or electronic mail, or by delivering the Products ordered. KPP’s Purchase Order will be accepted solely for purposes of establishing the items and quantities ordered and the desired shipment dates and shipment method. KPP’s desired shipment dates shall take into account Landis+Gyr’s current lead times at the time of the Purchase Order. Lead times will be provided by a Landis+Gyr representative to the Parties and are defined as the cycle time from acknowledgement of Order to fulfillment of Order, assuming the Equipment was initially forecasted in accordance with Section 2.1. It is acknowledged by KPP that all instrument and documents issued or delivered by a Party pursuant to this Agreement, including all Purchase Orders, order acceptance, order acknowledgements, invoices and other instruments (**“Order Documents”**) shall incorporate the terms and conditions of this Agreement, irrespective of whether any such Order Document expressly references this Agreement, and shall be subject to the terms and conditions contained in this Agreement. Any terms and conditions contained in an Order Document now or hereafter delivered by a Party pursuant to this Agreement other than quantities, service description and other required details and shipping instructions, will not apply and KPP hereby waives and rejects all such terms and conditions.
- 2.3 City Written Orders. City may issue Purchase Orders for Products and Services to Landis+Gyr by mail, facsimile communication or electronic mail. Landis+Gyr may accept Purchase Orders by

signing it, acknowledging it using facsimile or electronic mail, or by delivering the Products ordered. City's Purchase Order will be accepted solely for purposes of establishing the items and quantities ordered and the desired shipment dates and shipment method. City's desired shipment dates shall take into account Landis+Gyr's current lead times at the time of the Purchase Order. Lead times will be provided by a Landis+Gyr representative to City and are defined as the cycle time from acknowledgement of Order to fulfillment of Order, assuming the Equipment was initially forecasted in accordance with Section 2.1. It is acknowledged by City that all instrument and documents issued or delivered by a Party pursuant to this Agreement, including all Purchase Orders, order acceptance, order acknowledgements, invoices and other instruments ("**Order Documents**") shall incorporate the terms and conditions of this Agreement, irrespective of whether any such Order Document expressly references this Agreement, and shall be subject to the terms and conditions contained in this Agreement. Any terms and conditions contained in an Order Document now or hereafter delivered by a Party pursuant to this Agreement other than quantities, service description and other required details and shipping instructions, will not apply and City hereby waives and rejects all such terms and conditions.

- 2.4 Cancellation and Modifications. KPP and City may not cancel or modify an Equipment Order within sixteen (16) weeks prior to the scheduled delivery. Notwithstanding the foregoing, cancellation charges do not apply to Software or Services Orders.
- 2.5 Equipment Intellectual Property. Landis+Gyr retains ownership of all intellectual property rights in the Equipment. City and KPP agrees that they shall not, and that they shall not allow any third party, to attempt to reverse engineer, de-compile, or disassemble the Equipment or the Firmware or otherwise discover the trade secrets in the Firmware for any reason.

3. **Shipment**

- 3.1 Shipments. Landis+Gyr will ship or deliver Equipment to City's warehouse or other location designated by City. All Equipment will be shipped to City DAP (Delivery At Place) in full truckload shipments in accordance with INCOTERMS 2020; additional charges may apply if actual shipment is less than a truckload to the extent applicable. City agrees to inspect Equipment within one (1) week of receipt and to promptly notify Landis+Gyr of any defects. City will be deemed to have accepted the Equipment unless City notifies Landis+Gyr within one week after receipt of the Equipment that the Equipment is rejected. The acceptance of any Equipment by City shall not preclude the subsequent removal thereof if such Equipment shall be found to be defective after installation; in such event, the Agreement's warranty terms shall apply.

4. **Prices and Taxes**

4.1 Prices.

- 4.1.1 KPP Product Prices. KPP may order electricity related Products only. KPP's Purchase Order will state Product prices and, if the ordered Product is a Product described on Exhibit A hereto, if any, the Purchase Order will state the applicable price set forth thereon. If the Purchase Order does not state a Product price or is for a Product not set forth on Exhibit A, the price will be Landis+Gyr's then-current price. Landis+Gyr may increase KPP's price for items ordered by KPP but not included in Exhibit A if it increases its price after it accepts the Purchase Order, and the Purchase Order specifies delivery more than one hundred twenty (120) days after the price increase becomes effective. Landis+Gyr shall notify KPP of the price increase, and KPP shall have the option of cancelling or otherwise modifying its order, without penalty. The above notwithstanding, set forth in Exhibit A are unit prices for Products contemplated in the

event City expands its system. Price increases for Software licensed for a periodic fee will apply to subsequent billing periods. City shall be solely responsible for ordering and purchasing gas or water related Products and all Services.

- 4.1.2 **City Product Prices.** City may order Products. City's Purchase Order will state Product prices and, if the ordered Product is a Product described on Exhibit A hereto, if any, the Purchase Order will state the applicable price set forth thereon. If the Purchase Order does not state a Product price or is for a Product not set forth on Exhibit A, the price will be Landis+Gyr's then-current price. Landis+Gyr may increase City's price for items ordered but not included in Exhibit A if it increases its price after it accepts the Purchase Order, and the Purchase Order specifies delivery more than one hundred twenty (120) days after the price increase becomes effective. Landis+Gyr shall notify City of the price increase, and City shall have the option of cancelling or otherwise modifying its order, without penalty. The above notwithstanding, set forth in Exhibit A are unit prices for Products contemplated in the event City expands its system. Price increases for Software licensed for a periodic fee will apply to subsequent billing periods.
- 4.1.3 **Services Prices.** City may order Services. City's Purchase Order will state Service prices and, if the ordered Services are Services described on Exhibit A hereto, if any, the Purchase Order will state the applicable price set forth thereon. If the Purchase Order does not state a Service price or is for a Service not set forth on Exhibit A, the price will be Landis+Gyr's then-current price. Price increases for Services for a periodic fee will apply to subsequent billing periods.
- 4.2 **Price Adjustment for Pricing in Exhibit A.** Pricing by Landis+Gyr set forth in Exhibit A will remain firm for two (2) years from the Effective Date. Following year two (2), pricing set forth in the pricing table in Exhibit A shall be subject to an annual increase equal to the percentage annual adjustment in the Consumer Price Index ("CPI"). The CPI will be obtained from U.S. Bureau of Labor Statistics (www.bls.gov/cpi) and is designated as of the June-to-June twelve-month percentage change to the Consumer Price Index – Urban Wage Earners and Clerical Workers, not seasonally adjusted.
- 4.3 **Taxes and Other Charges.** Unless otherwise stated, Product and Services prices include shipment but does not include installation charges, charges associated with preparing the City's site; and all taxes that relate to KPP and City acquisition or use of Products and Services, including sales, use, VAT and property (ad valorem) taxes, other governmental charges and taxes, and assessments after audit. KPP and/or City, as applicable, agree to pay those charges and taxes, except for taxes based on Landis+Gyr's net income. If KPP and/or City qualify for tax exemptions, KPP and/or City must provide Landis+Gyr with appropriate exemption documentation. Without limiting the foregoing, City shall have the right to receive any Software or Documentation to be provided hereunder solely in electronic form.
- 5. Invoice and Payment**
- 5.1 **Invoice and Payment.** Landis+Gyr will issue invoices to KPP for all amounts owed to Landis+Gyr for electricity related Products ordered by the KPP, and issue invoices to City for all amounts owed for Products and for Services ordered by City hereunder in accordance with the Agreement.
- 5.1.1 **KPP Invoices.** Invoices for electricity related Products ordered by KPP will be issued to KPP as follows: (i) for Equipment, upon shipment of the Equipment; and (ii) for Software license fees, in advance of delivery. Payment is due within thirty (30) days

of the invoice date. Late payments will be subject to interest from the due date at the lesser of one percent (1%) per month or the maximum rate allowed by law.

- 5.1.2 City Invoices. Invoices for Products ordered by City will be issued to City as follows: (i) for Equipment, upon shipment of the Equipment; and (ii) for Software license fees, in advance of delivery. Invoices will be issued to City as follows for Services: 50% upon contract execution and the remaining 50% upon completion of the Services. Payment is due within thirty (30) days of the invoice date. Late payments will be subject to interest from the due date at the lesser of one percent (1%) per month or the maximum rate allowed by law. Notwithstanding the foregoing provision 5.1.1, City shall remain liable to Landis+Gyr for all payments due by City or KPP under this Agreement, in the event of any default by KPP. KPP shall not be responsible for any invoices from Landis+Gyr for Products or Services ordered by City.

6. Software

- 6.1 Firmware License. The Firmware is licensed to City, not sold. City is granted a perpetual, non-transferable, non-exclusive license to use the Firmware solely in connection with City's use of the Equipment for use solely with Gridstream communication network. City understands and agrees that it is not permitted to distribute the Firmware in any form, or to use the Firmware except as it is embedded in the Equipment.
- 6.2 License to Software. Landis+Gyr hereby grants to City a non-exclusive, non-sublicensable, non-transferable, limited license to install, execute and otherwise use the Software in object code form only in the City's service territory on the terms of this license. Landis+Gyr hereby licenses the use of Software solely for use in conjunction with the System. City agrees that City shall not, and shall not allow any third party to (i) attempt to reverse engineer, de-compile, or disassemble the Software or otherwise discover the trade secrets in the Software for any reason, (ii) make alterations to, or modifications of the Software, in whole or part, or (iii) combine the Software, or any part of it with, or incorporate it in, any other programs without express permission from Landis+Gyr. City agrees not to copy Software without express written authorization from Landis+Gyr, except that City may copy the Software as required for backup, archival, testing, training and/or other similar purposes. City must reproduce and include the copyright notices on any such copies. City's employees, consultants and contractors (if any) shall be deemed authorized users of the Software provided that each such employee, consultant and/or contractor has agreed to comply with the terms hereof, and further provided that City remains liable for any breach of the terms of the license by such employee(s), consultant(s) or contractor(s).
- 6.3 Intellectual Property Rights. All proprietary and intellectual property rights in and to the Firmware and Software provided hereunder are owned by Landis+Gyr (or its third party licensors) and Landis+Gyr (and/or its third party licensors) retains title to the original Firmware and Software provided to City and any copies made from it. For the avoidance of doubt, no Firmware or Software is provided to or licensed to KPP under this Agreement.
- 6.4 Software Support and Maintenance Support. Upon the City's payment of the applicable fees, Landis+Gyr will provide the Software support and maintenance services set forth in the separate Software Support and Maintenance Agreement (the "**Support Agreement**").
- 6.5 System Security. City acknowledges that Software may be accessible from the Internet if configured to do so by City. City is responsible for establishing system security that will allow only authorized users to access the Software.

- 6.6 City Responsibilities relating to Software. Except to the extent that City purchases Support and/or Maintenance services, City is responsible for, including but not limited to: (i) performing all system administration activities, reports and APIs utilizing the functionality built into the Software (if licensed) and loading it into City's systems, (ii) performing any exception processing that is associated with endpoints that do not have billing data available for a particular billing cycle window; (iii) purchasing, installing and physically maintaining all software System network communications infrastructure; (iv) purchasing, installing, configuring and maintaining all IT hardware needed to operate Software (if licensed) and related applications, (v) administering all Software logins and passwords for its personnel; (vi) handling all support for its own end-use consumers, including, without limitation, any matters relating to end-use consumer billing and utility usage; (vii) performing database administration such that database tables are archived/truncated to store no more than 90 days of data on-line at all times, (viii) installing and maintaining all Third Party Products and third party services, (ix) granting secure remote access to Software to authorized Landis+Gyr personnel if City hosts the Software, (x) allowing Landis+Gyr to run a read-only script on City's Software to collect key performance metrics to help monitor and troubleshoot issues, (xi) providing help desk support to City's own employees as well as assessing skill deficiencies and readdressing training with City's own employees, (xii) reporting incidents to Landis+Gyr promptly upon City being aware of such incidents, (xiii) assigning appropriate priority to incidents, action items, and service requests, and (xiv) notifying Landis+Gyr prior to any scheduled downtime (performed by City) on any City systems that could impact services provided by Landis+Gyr.

7. Services

- 7.1 Services. Landis+Gyr will provide the Services to City as set forth in Exhibit A or in a separate Statement of Work. Exhibit A sets forth the description of the Services, pricing, duration and any other terms specific to the Services described therein. To the extent City purchases software maintenance support, Landis+Gyr will provide the Maintenance Services set forth in the separate Maintenance Agreement. To the extent City purchases Software support, Landis+Gyr will provide the Support Services set forth in the separate Support Agreement.

8. Limited Warranties

- 8.1 Equipment Limited Warranty. Landis+Gyr represents and warrants that the Equipment, including Firmware will, during its applicable warranty period, (a) be new, (b) conform in all material respects with its specifications, (c) be free from all liens, claims and encumbrances and (d) not fail when Deployed in the field as a result of a material defect, provided that such Equipment is returned based upon the Return Materials Authorization ("RMA") process. Units returned under warranty via an RMA to the designated Landis+Gyr facility will be repaired or replaced by Landis+Gyr and then returned to City as set forth in Section 8.2 below. The warranty period shall be calculated from date of shipment as follows: (i) for Tech Studio Communication Adapter, six (6) months, (ii) for RF Thermostats, 12 months and (iii) Electric meters, 60 months (iv) for all other Equipment, 18 months.

8.2 RMA Process.

- 8.2.1 Upon the occurrence of a breach of warranty, City shall contact Landis+Gyr's customer support and request a return materials authorization form ("**RMA Form**"). After an RMA Form is issued, Landis+Gyr will provide City with shipping instructions, via email, for the warranted Equipment. City will remove and ship to Landis+Gyr, at City's expense, any such defective Equipment. Landis+Gyr shall repair or replace, at Landis+Gyr's option and expense, (and as City's sole and exclusive

remedy for breach of any equipment warranty) the defective Equipment within ninety (90) days of receipt of such returned Equipment. Landis+Gyr shall ship the repaired or replaced warranted Equipment back to City, at Landis+Gyr's expense. City will reinstall the repaired or replaced warranted Equipment, at City's expense.

- 8.2.2 For Equipment that is found to be not under warranty, Landis+Gyr will at City's direction and City's expense, (i) attempt repairs, upon City's written request, based on Landis+Gyr current prevailing rates or (ii) ship the non-warranted Equipment back to the City, or (iii) dispose of the Equipment.
- 8.2.3 Any repaired or replaced Equipment shall be warranted as set forth in this Section for a period equal to the greater of (i) the balance of the applicable warranty period relating to such Equipment or (ii) six (6) months from the shipment date to City.
- 8.2.4 If more than three percent (3%) of Meters returned by City for the prior twelve (12) month period have no defect ("**Non-Defective Equipment**"), then City will pay twenty-five dollars (\$25.00) per Meter (subject to a CPI increase) above that three percent (3%) threshold to cover Landis+Gyr's costs of handling and testing the Non-Defective Equipment.
- 8.2.5 ALL CLAIMS FOR BREACH OF WARRANTY MUST BE RECEIVED BY LANDIS+GYR NO LATER THAN THIRTY (30) DAYS AFTER THE EXPIRATION OF THE WARRANTY PERIOD.
- 8.3 Software Limited Warranty and Software Remedy. Landis+Gyr warrants that all Software will materially comply with its specifications, Documentation and functional requirements for a period of thirty (30) days from delivery. As sole remedy for defective Software, Landis+Gyr will use commercially reasonable efforts to remedy the performance associated with the Software within forty-five (45) days after written notice from City, unless such notice period is otherwise mutually extended. The limited warranties set forth in this Section 8.3 apply only if City: (a) notifies Landis+Gyr in writing of the warranty breach before the expiration of the Software Warranty Period; (b) has promptly installed all maintenance releases to the Software that Landis+Gyr previously made available to City at no cost; and (c) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all license fees then due and owing).
- 8.4 Services Warranty and Services Remedy. Landis+Gyr warrants that it will provide Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with the prevailing standards of its industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. The Services warranty period shall be ninety (90) days after performing a service except in the cases of installation services when applicable which shall be twelve (12) months from the date of installation. In the event of a breach of this warranty, Landis+Gyr shall re-perform the Services in a manner consistent with this warranty and cure such breach within thirty (30) days after written notice.
- 8.5 Warranty Limitations and Exclusions. Landis+Gyr's warranty obligations with respect to the Equipment and Software comprising the System do not apply to the extent a failure or warranty non-conformity is caused by: City's, KPP's or a third party's infrastructure or data; City's, KPP's or a third party's misuse of the equipment or software comprising the System; installation by City, KPP or a third party not in compliance with training or manuals provided by Landis+Gyr; operation, maintenance or use by City, KPP or third parties not in compliance with applicable

training, manuals or specifications provided by Landis+Gyr; City's, KPP's or a third party's neglect, modification, accident, vandalism or other intentional damage; exposure to adverse conditions exceeding performance levels required by applicable specifications; or any other limitation or exclusion described herein; data provided by City or KPP.

8.6 DISCLAIMER. OTHER THAN THE EXPRESS WARRANTIES SET FORTH HEREIN, LANDIS+GYR MAKES NO REPRESENTATIONS OR IMPLIED WARRANTIES TO CITY OR KPP WITH RESPECT TO ANY EQUIPMENT, NETWORK EQUIPMENT, FIELD TOOLS, SOFTWARE, FIRMWARE AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT OR WARRANTIES THAT MAY BE IMPLIED BY TRADE USAGE OR CUSTOM.

8.7 Third Party Products. The warranties provided by Landis+Gyr do not extend to third party products that are manufactured by a third party. For avoidance of doubt, Landis+Gyr makes no representations or warranties with respect to any third party product. Landis+Gyr will use commercially reasonable efforts to assign to City the warranties provided by such third party.

8.8 Exclusive Remedies. Each Party's rights and remedies set forth in this Section are exclusive and in lieu of all other rights and remedies with respect to breaches of warranties.

9. **General Indemnity; Infringement Indemnity**

9.1 General Indemnity. Landis+Gyr (the "**Indemnifying Party**") will indemnify and defend the other Parties and its officers, directors, shareholders, agents, employees, and representatives (collectively, the "**Indemnified Party**") from all third party claims, and related liabilities, fines, interest, costs, expenses and damages (including reasonable attorneys' fees) incurred by the Indemnified Party (collectively, the "**Indemnified Losses**"), for any property damage, injury, death, loss or destruction of any kind to persons or property, to the extent the damage, injury, death, loss or destruction arises out of or is related to the gross negligence, willful misconduct or misrepresentation on the part of the Indemnifying Party or any of its servants, representatives, agents, employees or contractors.

9.2 Infringement Indemnity by Landis+Gyr. Landis+Gyr agrees to indemnify and defend City and KPP, and their officers, directors, shareholders, agents, employees, and representatives from and against any Indemnified Losses resulting from a third party claim alleging that any Products or any resulting use of the Products constitutes an infringement of any United States patent or copyright or misappropriation of any trademark or trade secret, or constitutes a breach of any intellectual property right of any third party (an "**Infringement Claim**").

9.3 Remedies for an Infringement Claim. If the sale or use of any of the Products is enjoined in connection with any such Infringement Claim, Landis+Gyr agrees to, at its option, without cost or expense to City:

- (a) procure for City and its end users the right to use such Products and Services at no cost to City and its end users;
- (b) replace such Products with equivalent non-infringing products that perform the same or materially same function as the Products being replaced; or
- (c) modify such Products so they become non-infringing provided that such modification does not render such Products unacceptable to City.

Notwithstanding the foregoing, Landis+Gyr will have no liability pursuant to this Section or otherwise for any Infringement Claim to the extent such a claim is caused by (i) the misuse or unapproved modification of the Products or Services by or at the direction of City (ii) the failure of City to use corrections or enhancements made available to City at no cost to City, where such corrections or enhancements would have remedied such Infringement Claim or (iii) use of the Products in combination with other equipment or software not provided by Landis+Gyr but only to the extent such claim is attributable to the combination or other equipment or software and if such claim would have been avoided but for such combined use. City will consult with Landis+Gyr, as the subject matter expert in this space, before making any unilateral change(s) to the operating environment (such as Microsoft). If Landis+Gyr advises City that making the proposed change(s) would likely lead to an Infringement Claim and City moves forward with those changes despite Landis+Gyr's advisement, then Landis+Gyr will have no liability pursuant to this Section or otherwise for any resulting Infringement Claim. Excluding the indemnity obligation owed by Landis+Gyr as set forth in Section 9.2, this Section 9.3 sets forth the entire liability of Landis+Gyr with respect to an Infringement Claim.

- 9.4 Indemnification Procedures. The Party seeking indemnification will promptly notify the Indemnifying Party in writing of any claims for which such Party seeks indemnification pursuant to this Section 9 and cooperate with the Indemnifying Party at the Indemnifying Party's sole cost and expense. The Indemnifying Party will immediately take control of the defense and investigation of such claim and will employ counsel reasonably acceptable to the other Party to handle and defend the same, at the Indemnifying Party's sole cost and expense. The Indemnifying Party will not settle any claim on any terms or in any manner that affects the rights of the other Party or any Indemnatee without the other Party's prior written consent, which will not be unreasonably withheld or delayed. The other Party and any Indemnatee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. A Party's failure to perform any obligations under this Section 9.4 will not relieve the Indemnifying Party of its obligations herein.
- 9.5 Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, the Indemnifying Party is not obligated to indemnify or defend an Indemnified Party against any claim (whether direct or indirect) if such claim or corresponding Indemnified Losses arise out of or result from an Indemnified Party's:
- (a) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or
 - (b) use of the Products in any manner that does not materially conform with the usage guidelines or specifications provided by Landis+Gyr.

10. Term; Termination

- 10.1 Term. This Agreement shall become effective on the Effective Date and continue in full force and effect for three (3) years unless sooner terminated in accordance with the provisions hereof. Thereafter, the term shall renew on a year to year basis unless a Party receives written notice from Landis+Gyr, KPP or the City of such Party's intent to terminate the Agreement upon the expiration of the then current one (1) year term. Such notice shall be delivered no later than sixty (60) days prior to the expiration of the then current one (1) year term.
- 10.2 Right to Terminate. Prior to the expiration of the initial three (3) year term, Landis+Gyr, KPP or the City may terminate this Agreement upon sixty (60) days prior written notice to the other Parties for failure of such Party to fulfill any of its material obligations hereunder. In the event that the breaching Party corrects the breach within the sixty (60) day period, this Agreement shall continue in full force and effect as it would have had such breach not occurred. Failure to perform due to a

force majeure shall not be considered a substantial or material default under this Agreement. Landis+Gyr or City may, at its option, terminate this Agreement upon an Event of Bankruptcy of the other Party, but not, for the avoidance of doubt, an Event of Bankruptcy of KPP.

- 10.3 Effect of Termination. The expiration or termination of this Agreement shall not release any Party from any liability to the other Parties, including any payment obligation that has already accrued hereunder. If City or KPP shall terminate this Agreement other than for reasons of a default by Landis+Gyr, City and KPP shall upon such expiration or termination, within 30 days, at Landis+Gyr's option and at City's or KPP's expense (as applicable), return to Landis+Gyr or destroy all materials containing Landis+Gyr's Confidential Information held by City or KPP (as applicable).
- 10.4 Non-Appropriation. Nothing in this Agreement is intended nor shall it be interpreted to violate, or require the City to violate K.S.A. § 10-1101 *et seq.* City's obligations under this Agreement are specifically subject to annual appropriation by the governing body of City.
- 10.5 Survival. The provisions of Section 1, 6 through 10, and 12 through Section 15 shall survive the expiration or earlier termination of this Agreement for any reason, provided that with respect to Section 12, each Party's obligations under this Section 10.5, shall survive the expiration or earlier termination of this Agreement for a period of two (2) years from the date of such expiration or termination, except for Confidential Information that constitutes a trade secret under any applicable law, in which case, such obligations shall survive for as long as such Confidential Information remains a trade secret under such law.

11. Change Management Process

- 11.1 Change Management. If changes are requested by a Party following the Effective Date, the requesting Party shall provide a request to each of the other Party's Project Manager or other designated staff in writing. The other Parties will analyze the impact and inform each of the other Party's Project Manager of any impacts to cost, schedule, and other implications to perform the change. If the Parties approve of the written change, accepted Change Requests will be deemed amendments to this Agreement and are incorporated into this Agreement by reference. Execution of the requested work cannot begin until the Parties have accepted the change order in writing.

12. Governing Law; Submission to Jurisdiction

- 12.1 Governing Law; Submission to Jurisdiction.
- (a) This Agreement and all related documents, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Kansas, without regard to Kansas' conflict of laws principles. The Uniform Computer Information Transactions Act does not have any application to this Agreement.
 - (b) Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the Cowley County District Court, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.
- 12.2 Waiver of Jury Trial. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

13. Confidentiality

- 13.1 Confidential Information. From time to time during the Term of this Agreement, any Party (as the “**Disclosing Party**”) may disclose or make available to any of the other Parties (as the “**Receiving Party**”) non-public, proprietary, confidential information about its business affairs, products, services, confidential intellectual property, trade secrets, third party confidential information and other sensitive or proprietary information in oral, written, electronic or other intangible form marked or indicated as “**Confidential**” or “**Proprietary**” at the time of disclosure (collectively, “**Confidential Information**”). Confidential Information, however, shall not include: (a) Information which is already generally available to the public; (b) Information which hereafter becomes generally available to the public, except as a result of the direct or indirect action of the Receiving Party in breach of this Agreement; (c) Information known to the Receiving Party or its Representatives on a non-confidential basis prior to receipt by the disclosing party; (d) Information that is independently developed without access to the Disclosing Party's Confidential Information; and (e) Information disclosed under legal compulsion; provided, however, that prior to a disclosure pursuant to an order or applicable law, the Receiving Party, to the extent permitted by law, promptly provides the other Party written notice of such proposed disclosure and reasonably cooperates with the other Party in its attempts to limit or prevent such disclosure. The Receiving Party shall use the Confidential Information solely for the performance of this Agreement and shall not disclose or permit access to Confidential Information other than to its Affiliates and its or their employees, officers, directors, attorneys, accountants and financial advisors (including insurers) (collectively, “**Representatives**”) who: (a) need to know such Confidential Information for the performance of this Agreement; (b) know of the existence and terms of this Agreement and (c) are bound by confidentiality obligations no less protective of the Confidential Information than the terms contained herein. These non-disclosure obligations shall survive the termination of this Agreement and shall continue for a period of five (5) years thereafter, except for Confidential Information that constitutes a trade secret under any applicable law, in which case, such obligations shall survive for as long as such Confidential Information remains a trade secret under such law. Information need not be marked “Confidential” to be considered Confidential Information. “Confidential Information” includes any Confidential Information disclosed prior to the effective date of this Agreement. This Section is subject to the Kansas Open Records Act.
- 13.2 Safeguarding Confidential Information. Subject to the Kansas Open Records Act, the Receiving Party shall safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. The Receiving Party shall promptly notify Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to cooperate with Disclosing Party to prevent further use or disclosure. The Receiving Party will be responsible for any breach of this Agreement caused by its Representatives.
- 13.3 No Rights in Confidential Information. The Parties hereby acknowledge and agree that all Confidential Information of another Party shall remain the sole and exclusive property of such other party and that the Receiving Party shall have no proprietary rights, title or interests therein except as otherwise provided in this Agreement.
- 13.4 Termination. Subject to the Kansas Open Records Act, upon termination for any reason, or at any other time that Disclosing Party demands, the Receiving Party shall promptly deliver and/or certify destruction of Confidential Information, as appropriate, to the requesting Party all Confidential Information (copies and originals) of the requesting Party as may be in the other Party’s possession or under its control.

14. Limits of Liability

- 14.1 EXCLUSION OF INDIRECT DAMAGES. EXCEPT WITH RESPECT TO A BREACH OF CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL ANY PARTY BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES THAT ARE INDIRECT, CONSEQUENTIAL OR PUNITIVE, INCLUDING, LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF BUSINESS OPPORTUNITY.
- 14.2 CAP ON DIRECT DAMAGES. EXCEPT WITH RESPECT TO (A) A BREACH OF CONFIDENTIALITY OBLIGATIONS, (B) OBLIGATIONS UNDER THIS AGREEMENT RELATED TO INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT, (C) PERSONAL INJURY OR DEATH OR DAMAGE TO ANY REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY A PARTY'S GROSS NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT, THE TOTAL LIABILITY OF ANY PARTY IN RESPECT OF ALL CLAIMS IN THE AGGREGATE, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY CITY AND/OR KPP TO LANDIS+GYR DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

15. General

- 15.1 Complete Agreement, Modification and Assignment. The Parties agree that this Agreement and any ancillary agreements, exhibits or schedules constitutes the complete and exclusive agreement between them with respect to its subject matter and supersedes all previous understandings, negotiations, proposals, acknowledgements, and representations, whether oral or written with respect thereto. No modification of this Agreement will be effective unless it is in writing and signed by authorized representatives of the Parties. City and KPP may not assign this Agreement, a Purchase Order, or its rights or obligations under them without the express written consent of Landis+Gyr which shall not be unreasonably withheld. Any exhibit attached hereto is incorporated herein by this reference.
- 15.2 Notices. Notices, other than routine communications having no legal effect, shall be in writing and shall be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed facsimile addressed to the addresses set forth below:

For City: City of Winfield, Kansas
200 E. 9th Street
Winfield, KS 67156
Attn: Taggart Wall
Facsimile No: 620-221-5593

For KPP: The Kansas Power Pool (KPP), a Municipal Energy Agency
100 N. Broadway, Suite L110
Wichita, KS 67202
Attn: Mark Chesney
Facsimile No: 888-431-4943

For Landis+Gyr: Landis+Gyr Technology, Inc.
30000 Mill Creek Avenue, Suite 100
Alpharetta, GA 30022
Attn: Legal Department
Facsimile No: 678.258.1686

Notices sent in accordance with this Section 15.2 will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile with confirmation of transmission, if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid

- 15.3 Force Majeure. Except for payment obligations, no Party is liable for failing to fulfill its obligations due to acts of God, civil or military authority, war, riots, strikes, fire, or other causes beyond its reasonable control. To the extent a Party is substantially delayed by force majeure from performing its obligations hereunder, such Party shall give notice and details of the force majeure to the other Parties as soon as practicable, then the Parties may extend the time for performance by written agreement. In the event it shall become impossible for a Party to perform its respective obligations because of force majeure, then in such event such Party so unable to perform may terminate this Agreement upon written notice to the other Parties. In no event shall an event of force majeure excuse or delay the payment of any amount owed by one Party to the other Party under this Agreement.
- 15.4 No Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no party other than Landis+Gyr, City and KPP, or their successors, shall have any legally enforceable rights under this Agreement.
- 15.5 Headings. All headings used in this Agreement are for reference purposes only and are not part of this Agreement.
- 15.6 Waiver; Severability. No delay or omission by a Party in enforcing its rights or remedies under this Agreement shall impair such right or remedy or be deemed to be a waiver thereof. Any waiver, in whole or in part of any provision of this Agreement will not affect or be considered to be a waiver of any other provision. No waiver of this Agreement shall be valid unless in writing and signed by the Parties thereto. If any term of this Agreement is found to be unenforceable or invalid for any reason, such term shall not affect the other provisions, but such unenforceable term shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of the Parties set forth in this Agreement, and all other terms will remain in full force and effect.
- 15.7 Independent Contractor. Nothing in this Agreement shall be read as appointing any Party as the agent or legal representative of another Party for any purpose whatsoever, nor shall any Party hold itself out as such. This Agreement does not create and is not intended to create any express or implied relationship of joint ventures, partners, employer and employee, associates, or principal and agent between the Parties, and the Parties are acting as independent contractors and principals for their own accounts. No Party is granted any right or responsibility for or on behalf of another or otherwise to bind the other. In providing the Services and Products, Landis+Gyr shall have sole responsibility for all persons employed by it in connection with the performance of such Services; and, except as provided in this Agreement, Landis+Gyr shall solely determine the methods, details, and means of performing the Services.
- 15.8 **EEOC and Affirmative Action.**
- (a) **Landis+Gyr is in compliance with all of the laws and Executive Orders prohibiting discrimination, including but not limited to Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991, 42 USC 2000(e), et seq., and all applicable state and local laws against discrimination.**

(b) **Landis+Gyr and subcontractor, if any, shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

- 15.9 Export Regulation. The Products, including any Software, Documentation and any related technical data included with, or contained in, such Products, and any products utilizing any such Products, Software, Documentation or technical data (collectively, “**Regulated Products**”) may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. City or KPP shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release any Regulated Products to any jurisdiction or country to which, or any Party to whom, the export, re-export or release of any Regulated Products is prohibited by applicable federal or foreign law, regulation or rule. City or KPP (as applicable) shall be responsible for any breach of this Section 15.9 by it, its successors’ and permitted assigns’, affiliates, employees, officers, directors, partners/members/shareholders, customers, agents, distributors, resellers or vendors. City and KPP shall comply with all applicable federal or foreign laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting or releasing any Regulated Products.
- 15.10 Publicity. Notwithstanding any other provision of the Agreement, Landis+Gyr shall not, without the City’s and KPP’s prior written consent, publish any information pertaining to the Agreement, whether during the term of the Agreement or thereafter. Subject to the Kansas Open Records Act, nor shall the City or KPP, without Landis+Gyr’s prior written consent, publish any information pertaining to the Agreement, whether during the term of the Agreement or thereafter. Consent from the relevant Party will not be unduly withheld. However, no Party shall be required to obtain another Party’s prior written consent to any press release required by law or by the stock exchange on which it is listed or to any disclosure of information, documents or data to a Governmental Body with regulatory jurisdiction over Landis+Gyr.
- 15.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the Parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement.

Acknowledged and agreed by the authorized representatives of the Parties.

Landis+Gyr Technology, Inc.

Signature

Printed Name

Title

Date

City of Winfield, Kansas

Signature

Printed Name

Title

Date

The Kansas Power Pool (KPP), a Municipal Energy Agency

Signature

Printed Name

Title

Date

EXHIBIT A TO MASTER AGREEMENT
PRODUCTS PRICING SCHEDULE AND DESCRIPTION OF SERVICES

A. Project Delivery Services Overview

The Parties will perform in accordance with the following summary (see Table 1) in connection with the deployment and implementation of the Gridstream RF AMI System:

Table 1 – Summary of Roles

Services	Landis+Gyr	City
Project Management Support	√	
System Design	√	
Training	√	
Installation (network)		√
Installation (endpoint)		√
Field Engineering (on-site field installation support)		√
Standard Integration Services (as described below). If custom interfaces are required, a separate SOW will be mutually agreed upon for an additional fee.		To be determined if required
System Administration/Daily Operations/Database Administration		√
WAN Backhaul Communications		√

B. Gridstream RF Solution Pricing

The following table represents Products and Services for the proposed Gridstream RF System.

Description	Quantity	Unit Price	Extended Price
Electric Meters with Communication Modules			
RF FOCUS® AXe-SD (Form 2S)	7,466	\$125.50	\$936,983.00
RF S4x (Forms 5S, 6S, 8/9S, 12S, 16S)	393	\$283.00	\$111,219.00
Water Communication Modules			
RF Mesh Interpreter Water Module	5,570	\$106.00	\$590,420.00
Gas Communication Modules			
RF M120 Residential Gas Module	5,097	\$80.00	\$407,760.00
RF M220 C&I Gas Module	268	\$195.00	\$52,260.00
Network Equipment			

Description	Quantity	Unit Price	Extended Price
Network Gateway (includes default 10-Foot Power Cable, 1 Series 5 Radio, No Cellular Modem, Utility Pole Mounting Kit (1 Radio, No Modem))	4	\$4,200.00	\$16,800.00
Network Gateway (includes default 10-Foot Power Cable, 3 Series 5 Radio, No Cellular Modem, Utility Pole Mounting Kit (3 Radios, No Modem))	2	\$5,200.00	\$10,400.00
RF Router and Kit with 20-Foot Cable	21	\$1,600.00	\$33,600.00
RF Tools			
TechStudio Software License (per user)	1	\$1,100.00	\$1,100.00
TechStudio Communications Adapter (per user)	1	\$750.00	\$750.00
Services and Training			
AMI Project Delivery Services	1	\$81,000.00	\$81,000.00
RF Training	1	\$6,400.00	\$6,400.00
Total:			\$2,248,692.00

C. Clarifications

Electric Meters with Communication Modules

1. Pricing includes a sixty (60) month warranty from date of shipment for electric meters only.
2. An RF FOCUS AXe (Form 2S) meter is also available for \$125.50 each.
3. Additional electric meter options are as follows:

FOCUS AXe/AXe-SD Residential Meter Options	Price
Battery	\$5.00
Reactive Upgrade (KVA or KVAR)	\$20.00
Reactive Upgrade (KVA or KVAR) 100% Deployment	\$10.00
ANSI C12.18 Opti-Com Magnetic Port Short Cover	\$2.25
ANSI C12.18 Opti-Com Magnetic Port + Reconnect Arming Button Short Cover (FOCUS AXe-SD Only)	\$3.00
ANSI C12.18 Opti-Com Magnetic Port + Demand Reset Tall Cover	\$5.00

Water Communication Modules

4. Landis+Gyr also offers an integrated Interpreter Water Module by Master Meter suitable for retrofitting to the following compatible vendor's water meters for \$106.00 each: Elster AMCO, Mueller/Hersey, Badger, Neptune, Sensus SR II, and Master Meter. Reference Landis+Gyr's Water Compatibility Guide for details.

Gas Communication Modules

5. Gas meter pricing is not included in this agreement. Contact your preferred gas meter distributor for purchases.
6. Pricing is based on the use of compatible Landis+Gyr American gas modules for incorporation into new meters or for retrofit of existing meters. Pricing for alternate meter manufacturers can be provided as required.
7. Additional fees may apply for factory installation of module into the gas meter.

Network Equipment

8. Network Equipment quantities are approximations of required quantities and have been developed from the 7,859 electric, 5,365 gas meter, and 5,570 water meter locations provided by City.
9. Network Equipment quantities are based on Routers being mounted at 25 feet above ground level (AGL). Alternate mounting locations, configurations and heights may require additional brackets, cables or antennas that are not included in this proposal. Actual Network Equipment quantities necessary for proper AMI System functionality may vary based on verification of final meter quantities, system analysis and requirements, approved survey locations, deployment approach, and system optimization needs.
10. Electric endpoints shall be deployed in a contiguous manner to enable adequate meshing.
11. Electric meters shall be deployed in advance of water or gas meters.
12. All water and/or gas endpoints shall be collocated with electric endpoints or located within range of an appropriate network device to enable adequate meshing. Stand-alone water or gas devices may require additional network equipment to provide coverage.
13. Any additional Routers required for water or gas endpoints outside the electric endpoint network will be deployed at the same time as the electric endpoint network equipment.
14. Water and gas endpoint deployment will not begin until electric meters are deployed and a compatible version of Command Center software is in place to support the water or gas modules.
15. City will provide WAN backhaul access to each Network Gateway.
16. City will provide new or existing poles, of an appropriate height, with 120/240V power source for installation of network equipment.
17. The need for external passive antennas, and quantities of such, will be determined during deployment.

RF Tools

18. TechStudio is a required field tool for the Landis+Gyr RF solution. Pricing includes one (1) license for each user instance of TechStudio.
19. The TechStudio Software License fee is a per-user license fee for the TechStudio software and does not include the cost of a computer or tablet on which to install the software.
20. TechStudio Annual Maintenance includes:
 - Upgrades to TechStudio throughout the year

- Maintenance upgrades to licensed TechStudio software
 - New features as they become available
 - Support for critical bug fixes
21. A fully executed Software License, and annual Support Agreement, must be in place prior to order processing for TechStudio software.
 22. Each user of TechStudio must have a unique Username and Password of authentication with Command Center to use the tool. Maintenance charges are based on the total number of users set up for authentication.
 23. TechStudio training is included in the RF Network Deployment course. A two-hour online TechStudio training course is available for \$200 per login.
 24. An enterprise license of TechStudio software is available for an unlimited number of users for a one-time fee of \$53,000.00 and requires an annual maintenance fee of \$10,600.00.
 25. A TechStudio Communications Adapter includes a radio device with Gridstream RF for communication to the end device, Bluetooth communications to the laptop or handheld used by utility personnel, and a battery charger.
 26. The TechStudio Communications Adapter has a six-month product warranty. Units returned under warranty via a Return Materials Authorization (RMA) to the designated Landis+Gyr facility will be repaired or replaced.
 27. An RF Field Tool Kit is also required to enable communications to the endpoint device.
 28. RadioShop software is available when requested under license at no additional charge.

Services and Training

29. Project Delivery Services pricing is based on services being provided by Landis+Gyr for a period of up to twelve (12) months, beginning at contract execution and receipt of purchase orders. A detailed Deployment Project Statement of Work is attached for your reference. At a high level, these Project Delivery Services include Project Management, Endpoint Configuration Support, Network Design and Site Surveys, Network Equipment Commissioning, Technical Implementation Support, and Integration Support.
30. Project Delivery Services are invoiced 50% upon contract signature, with the remaining 50% invoiced at completion of the services.
31. Network equipment (Network Gateway and Router) installation; electric, water and gas meter installation; and gas and water module installation are not within the scope of Landis+Gyr's offering. It is assumed installation is the responsibility of City or a third party contracted by City.
32. RF Training is part of Initial Deployment Services, is required prior to deployment, and includes:
 - 2 online training courses for Security
 - 1 classroom training course for RF Network Deployment
 - 1 classroom training course for Command Center Application
 - 40 online training credits for use with continuing education to be used within 24 months of the contract effective date

- 1 online training course for Implementing Two-Way Water Meters in the Gridstream Solution
- 1 online training course for Implementing Two-Way Gas Meters in the Gridstream Solution

33. Pricing for online training is per log-in/registration.

34. Training is based on two City employees attending classroom training at Landis+Gyr's Pequot Lakes, MN, or Lafayette, IN, locations. Additional seats are \$1,200.00 each.

35. City is responsible for its own travel and expenses for training.

36. As an option, in lieu of classroom training, three days of on-site training for up to 12 students can be provided at City's facility for \$12,500.00 per course. Additional seats are available for \$250.00 each.

General Clarifications

37. The following items are available for purchase, as needed:

Item	Unit Price
Remote Antenna Kit	\$730.00
Power Cable Assembly for Remote Antenna Kit	\$80.00
RF Coupling Antenna Kit (includes P/N 40-1705, 45-1221, 28-0350, 19-1742)	\$273.00
IWR 12-24 VDC Input	\$775.00

38. Standard lead time for product shipment can vary, and upon receipt and confirmation of your purchase order, an estimated shipment date will be provided.

39. Licenses sold as part of this solution are for Landis+Gyr products only. Any additional third-party licenses are the responsibility and at the expense of the City.

Project Cost by Category				
Electric Meters	Qty	Unit Price	Extended Price	
Residential/ Small				
Commercial	7466	\$ 129	\$	959,381
Other	393	\$ 283	\$	111,219
Water Meters				
Add Module	1200	\$ 106	\$	127,200
Replace Old	4370	\$ 167	\$	729,790
Gas Meters				
Residential Module	5097	\$ 80	\$	407,760
Commercial Module	268	\$ 195	\$	52,260
Backbone				
Network Gateway	4	\$ 4,200	\$	16,800
Network Gateway	2	\$ 5,200	\$	10,400
RF Router	21	\$ 1,600	\$	33,600
Sotware				
Techstudio	1	\$ 1,100	\$	1,100
Techstudio Annual Mtc	1	\$ 220	\$	220
Techstudio Adapter	1	\$ 750	\$	750
Annual Support	12	\$ 2,555	\$	30,663
Service				
Project Delivery and Training	1	\$ 81,000	\$	81,000
RF Training	1	\$ 6,400	\$	6,400
Total			\$	2,568,543

AMI Project Costs								
	Total	4% Straight	10 yr Amortization	Per Month	Mtc per Month	Per Month Customer Increase Req.		
42% KPP Backbone Finance	\$ 1,220,870	\$ 1,269,705	\$ 126,970	\$ 10,581	\$ 1,220	\$ 1.50		
15% Water Cost	\$ 856,990	\$ 891,270	\$ 89,127	\$ 7,427	\$ 432	\$ 0.71		
15% Wastewater					\$ 432	\$ 0.71		
29% Gas	\$ 460,020	\$ 478,421	\$ 47,842	\$ 3,987	\$ 833	\$ 0.90		
Annual Maintenance	35000	35000		\$ 2,917				

Software as a Service Agreement

This Software as a Service (SaaS) Agreement (referred to hereinafter as “**Agreement**” or “**SaaS Agreement**”), dated as of last signature date below (“**Effective Date**”), is by and between City of Winfield, (“**Customer**”) with offices located at 2701 East 9th Avenue, Winfield, KS 67156, and **LANDIS+GYR TECHNOLOGY, INC.** with offices located at 30000 Mill Creek Avenue, Suite 100, Alpharetta, GA 30022 (“**Landis+Gyr**”).

WHEREAS, Customer requires third-party hosted “software as a service” (the “**SaaS Services**,” as further described herein) with respect to certain of Customer’s information technology needs and related smart grid program;

WHEREAS, Landis+Gyr has agreed to provide the SaaS Services to Customer, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. **Definitions.** Capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Section.

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify a person’s identity and authorization to access and use the SaaS Services.

“**Affiliate**” means any entity (including any person, without limitation, any corporation, company, partnership, limited liability company or group) that directly through one or more intermediaries, controls, is controlled by or is under common control with Landis+Gyr or Customer for so long as such control exists. For purposes of this definition, “control” means having more than fifty percent (50%) of the shares or other equity interest with voting rights in the legal entity or organization at issue.

“**Authorized Users**” means any Customer employee, contractor or agent, or any other person authorized by Customer to access and use the SaaS Services through Customer's account under this Agreement.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Law to be closed for business.

“**Customer Data**” means any and all information, data, materials, works, or other content, relating to Customer’s end customers’ information relating to electricity, water or natural gas consumption, load profile, billing history, or credit history that is or has been obtained or compiled by Customer in connection with supplying electric services, water services or gas services to that customer or group of customers (regardless of the media in which it is contained) that may be disclosed at any time to Landis+Gyr by Customer or Customer’s employees, agents, consultants, contractors, or suppliers in anticipation of, in connection with, or incidental to Landis+Gyr’s performance of the SaaS Services for or on behalf of Customer .

“Customer Systems” means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

“Documentation” means any manuals, instructions or other documents or materials that Landis+Gyr provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the SaaS Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“Disabling Code” means any software, virus, Trojan horse, time bomb or other code that is harmful, disabling or which enables unauthorized access to the Landis+Gyr Systems or Customer Systems, or theft or damage to Customer Data, or otherwise impairs the operation of the Landis+Gyr Systems, any Customer Systems, or any Third Party system utilized by Landis+Gyr in the Landis+Gyr Systems.

“Endpoints” means each of the following types of physical devices installed for use in the delivery of any commodity:

- i. a meter measuring the quantity of a commodity delivered, at a utility customer premise or at any other point within the distribution system, with respect to which the Software stores, processes, or makes accessible data specifically identified to that premise or distribution point for use in one or more of the utility operations the Software performs or supports; and
- ii. an unmetered supply point with respect to which the Software performs calculations of quantities of a commodity delivered in lieu of metering.

For avoidance of doubt, Endpoints do not include: aggregations of data from multiple Endpoints; interfaces between the Software and other systems or applications; sub-meters or devices installed at a utility customer premises beyond the meter; or devices only used to read, retrieve, or transmit data from Endpoints.

“Intellectual Property Rights” means any and all intellectual property rights whether registered or unregistered, and all applications for and renewals or extensions of such rights, including rights comprising or relating to: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) works of authorship, designs, copyrights and copyrightable works (including computer programs) and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all similar or equivalent rights or forms of protection.

“Interfaces” means Landis+Gyr's file transfer communications interfaces and data feeds mechanisms between the Landis+Gyr Systems and the Customer's Systems which are developed, operated, owned and maintained by Landis+Gyr pursuant to this Agreement including, as applicable, any configuration and customization required to meet the requirements of this Agreement, but excluding ownership of any customization that constitutes a component or derivative of Customer's Systems.

“Landis+Gyr Materials” means all devices, documents, data, know-how, methods, processes, software and other inventions, works, technologies and materials, including any and all Service Software, Documentation, computer hardware, programs, reports and specifications, client software and deliverables provided or made available to Customer in connection with Landis+Gyr’s performance of the SaaS Services, in each case developed or acquired by Landis+Gyr independently of this Agreement.

“Landis+Gyr Personnel” means all employees and agents of Landis+Gyr, all subcontractors and all employees and agents of any subcontractor, involved in the performance of Services.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, common law, judgment, decree or other requirement or rule of any federal, state, local or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“Permitted Uses” means any use of the SaaS Services by Customer or any Authorized User for the benefit of Customer in or for Customer's internal business operations.

“Person” means an individual and any entity, including, but not limited to, any corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust or association.

“Process” means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. **“Processing”** and **“Processed”** have correlative meanings.

“Supported Release” means versions of Service Software currently supported by Landis+Gyr. Landis+Gyr will support at a minimum the current generally available release in addition to the previous release of Service Software.

“Representatives” means a party's employees, officers, directors, consultants, legal advisors and, with respect to Landis+Gyr, Landis+Gyr's subcontractors, and, with respect to Customer, solely those of Customer’s independent contractors or service providers that are Authorized Users.

“Service Software” means Landis+Gyr software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Landis+Gyr provides remote access to and use of as part of the SaaS Services made available to Customer.

“Territory” means the Customer’s service territory.

“Third Party Materials” means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Landis+Gyr.

“Upgrade” means updating the Service Software to the most current generally available version.

2. Services.

2.1 Services. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term, Landis+Gyr hereby grants to Customer and its Authorized Users a non-exclusive, worldwide, subscription license, to access via a web-based interface, execute and otherwise use certain of Landis+Gyr's hosted software and hardware products, as more fully set forth in the applicable Service Order and shall provide the following services: infrastructure and infrastructure monitoring, technical support, backup and recovery, data center access training, and Service Software upgrades for Customer's productive use of such services. Throughout the Term and at all times in connection with Landis+Gyr's actual or required performance under this Agreement, Landis+Gyr will, in accordance with all terms and conditions set forth in this Agreement and each applicable Service Order, provide to Customer and its Authorized Users the following services ("**Services**"):

- a) the hosting, management and operation of the Service Software for availability and other services for remote electronic access and use by the Customer and its Authorized Users ("**SaaS Services**") as described in one or more written, sequentially numbered service orders specifically referencing this Agreement, which, upon execution of such service orders will be attached as part of Schedule B and by this reference are incorporated in and made a part of this Agreement (each, a "**Service Order**");
- b) service maintenance and the Support Services as set forth in the applicable Service Order and the Service Level Agreement described in Schedule A; and
- c) such other services as may be specified in the applicable Service Order.

2.2 Landis+Gyr will provide the SaaS Services for 24 hours a day, 7 days a week in accordance with the Service Level Agreement in Schedule A except for Scheduled Downtime, service downtime or degradation caused by a Force Majeure Event or any other circumstances beyond Landis+Gyr's reasonable control, including Customer's or any Authorized User's use of Third Party Materials, misuse of the SaaS Services, or use of the Services other than in compliance with the express terms of this Agreement and the Documentation. For avoidance of doubt, the SaaS Services do not include managed services and Customer agrees that it shall operate Service Software and monitor its operation of Service Software.

2.3 Documentation. Landis+Gyr represents and warrants that (i) the Documentation for the Service Software will accurately and completely describe the functions and features of the Service Software, including all subsequent revisions thereto and (ii) the Documentation will be understandable by a typical end user and will provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the SaaS Services. Customer will have the right to make any number of additional copies of the Documentation for internal business purposes at no additional charge.

2.4 Service Orders. Service Orders will be effective only when signed by Customer and Landis+Gyr. The initial Service Orders are attached hereto. Any modifications or changes to the SaaS Services under any executed Service Order will be effective only if and when memorialized in a mutually agreed written change order ("**Change Order**") signed by both Parties. Where a Change Order may result in an adjustment to fees, Landis+Gyr will provide a written estimate of such adjustment to Customer within ten (10) calendar days of Landis+Gyr's receipt of a Change Order. Upon

approval of the written estimate to complete the Change Order, the parties will each ratify the Change Order indicating any adjustments to the fees, or delivery schedule.

2.5 Professional Services. During the Term of this Agreement, Landis+Gyr may also perform certain implementation, consulting, training and/or support services (“**Professional Services**”) as specified in mutually agreed upon written Statement of Work (“**SOW**”). Each SOW will contain a reference identifying it as a SOW under this Agreement and will contain the following information, as applicable:

- (a) a description of scope of the Professional Services;
- (b) any other items to be delivered (“**Deliverable**”);
- (c) the fees;
- (d) an estimated schedule;
- (e) assumptions on which the performance of the Professional Services or delivery of the Deliverables is conditioned; and
- (f) itemization, if any, of Reimbursable Expenses as identified pursuant to Section 6.3.

Any provision of a SOW that deems any Deliverable developed by Landis+Gyr to be a “work for hire” or the property of Customer will be contingent upon payment to Landis+Gyr of all amounts properly invoiced to Customer pursuant to the applicable SOW.

2.6 No Software Delivery Obligation. Landis+Gyr has no software delivery obligation and will not ship copies of any of the Service Software used to provide the SaaS Services to Customer as a part of the SaaS Services. Upon the end of the Service Order, Customer’s right to access or use the Service Software specified in the Service Order and the SaaS Services will terminate.

2.7 Use of Subcontractors. Landis+Gyr may from time to time in Landis+Gyr’s discretion engage third parties to perform Services (each, a “**Subcontractor**”).

2.8 Designation of Responsible Contacts. Customer will provide Landis+Gyr with current appropriate contact information such that Landis+Gyr may communicate maintenance notifications, outages, support items and other communications under this Agreement to Customer on an ongoing basis.

3. Customer Obligations

3.1 Customer Systems and Cooperation. Customer, at all times during the Term to the extent applicable for the specific Service Order, will: (a) set up, maintain and operate in good repair and in accordance with the Documentation all Customer Systems on or through which the Services are accessed or used; and (b) provide all cooperation and assistance as Landis+Gyr may reasonably request to enable Landis+Gyr to exercise Landis+Gyr’s rights and perform Landis+Gyr’s obligations under and in connection with this Agreement. To the extent it becomes necessary for Landis+Gyr to have access to Customer Systems in order to perform the Services in accordance with the Availability Requirements as set forth in the Service Level Agreement, Customer will provide Landis+Gyr with such access. Unless otherwise stated in a Service Order, Customer agrees that it will not send or provide Landis+Gyr access to any personally-identifiable information, whether in data or any other form. Should Customer mistakenly provide PII to Landis+Gyr,

Customer shall immediately notify Landis+Gyr in writing in accordance with the notice provisions herein, and reasonably cooperate with Landis+Gyr to take any mitigating actions deemed necessary to remove such PII from the Landis+Gyr Systems.

- 3.2 Effect of Delay. Neither party is responsible or liable for the portion of any delay or failure of performance caused in whole or in part by the other party's delay in performing, or failure to perform, any of Customer's obligations under this Agreement.
- 3.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 3.4, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within respective control of Customer and its Authorized Users that are necessary to stop the activity or threatened activity and to mitigate the effects of such activity (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Landis+Gyr Materials and permanently erasing from Authorized Users' systems and destroying any data to which any of the Authorized Users have gained unauthorized access); and (b) notify Landis+Gyr of any such actual or threatened activity.
- 3.4 Suspension or Termination of Services. In addition to any other suspension or termination rights of Landis+Gyr pursuant to the Agreement, certain extraordinary circumstances may require Landis+Gyr to temporarily suspend Customer's access to and/or use of, or otherwise modify, the SaaS Services and /or any component thereof, if: (a) Landis+Gyr receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Landis+Gyr to do so; or (b) Landis+Gyr believes, in its good faith and reasonable discretion, that: (i) Customer or any Authorized User has failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is lawfully terminated pursuant to its terms. This Section 3.4 does not limit any of either party's other rights or remedies, whether at law, in equity or under this Agreement.
4. Authorization and Restrictions.
- 4.1 Authorization. Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Landis+Gyr hereby authorizes Customer, to access and use, solely in the Territory during the Term, the Services and such Landis+Gyr Materials as Landis+Gyr may supply or make available to Customer for the Permitted Uses by and through Authorized Users in accordance with the Documentation and the conditions and limitation set forth in this Agreement or any Service Order. In addition, Customer is authorized to:
- (a) generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the SaaS Services;
 - (b) prepare, reproduce, print, download and a reasonable number of copies of Documentation as may be necessary or useful for any Permitted Uses of the SaaS Services under this Agreement;

- (c) access and use (i) the SaaS Services for production uses and (ii) any applications provided by Landis+Gyr as may be necessary or useful for the effective use of the SaaS Services for the Permitted Uses hereunder; and
- (d) perform, display, execute, and reproduce and distribute and otherwise make available to Authorized Users, any Landis+Gyr Materials solely to the extent necessary to access or use the SaaS Services in accordance with the terms and conditions of this Agreement.

4.2 Authorization Limitations and Restrictions. Customer will not and will not knowingly permit any other Person to access or use the Services or Landis+Gyr Materials except as expressly permitted by this Agreement and/or any Service Order and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement or any Service Order expressly permits:

- (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Services or Landis+Gyr Materials available to any third party that is not an Authorized User;
- (b) copy, modify or create derivative works or improvements of the Services or Landis+Gyr Materials;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Landis+Gyr Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or Landis+Gyr Materials or access or use the Services or Landis+Gyr Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;
- (e) use or authorize the use of the Services or Documentation in any manner or for any purpose that is unlawful under applicable Law.
- (f) remove, delete, alter or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Landis+Gyr Materials, including any copy thereof;
- (g) access or use the Services or Landis+Gyr Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law;
- (h) access or use the Services or Landis+Gyr Materials for purposes of competitive analysis of the Services or Landis+Gyr Materials, the development, provision or use of a competing software service or product or any other purpose that is to Landis+Gyr's detriment or commercial disadvantage; or
- (i) otherwise access or use the Services or Landis+Gyr Materials beyond the scope of the authorization provided in this Agreement or in any applicable Service Order.

4.3 Excess Use. If Customer's use of the SaaS Services exceeds the volume of use authorized in the applicable Service Order (including as to the number of Endpoints), Customer will pay Landis+Gyr the Fees attributable to the excess use in accordance with the applicable Service Order.

- 4.4 Non-Interference with Landis+Gyr's Customers. Customer agrees that its use of the SaaS Services shall not restrict, inhibit, interfere with, or degrade other Landis+Gyr customer's use of the SaaS Services (such as running custom queries against the database). If Customer's use of the SaaS Services violates such restrictions as determined by Landis+Gyr, Landis+Gyr may suspend or limit the SaaS Services of Customer that is causing the degradation of the services without penalty. In addition, Landis+Gyr shall have the right to implement controls necessary to stop or limit future occurrences of a similar nature.
5. Term and Termination
- 5.1 Term. This Agreement will begin on the Effective Date and will remain in full force and effect until three (3) years thereafter ("**Initial Term**") unless terminated by either party for cause, as described in Section 5.4, "**Termination for Cause**," in which case this Agreement and all Service Orders/SOWs will also be terminated. Except in the case of termination for breach by Landis+Gyr, within thirty (30) days of the date of termination, Customer must pay all amounts remaining unpaid for SaaS Services provided prior to the effective date of termination, plus related taxes and expenses.
- 5.2 Term of Service Orders/SOWs. Each Service Order/SOW will remain in effect until the earlier to occur of: a) termination of such Service Order/SOW by either party for cause as described in Section 5.4 below; b) termination of such Service Order/SOW upon mutual written consent of the Parties; or c) expiration of the Service Order Term or completion of all Services and the delivery of all Deliverables required under the Service Order/SOW.
- 5.3 Renewal. Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"), unless a party provides the other party with written notice of its intent not to renew this Agreement at least ninety (90) days prior to the expiration of the then current Term.
- 5.4 Termination for Cause. A party may terminate a Service Order/SOW and this Agreement if:
- (a) the other party is in default of a material obligation under the applicable Service Order/SOW or this Agreement, and such default has not been cured within thirty (30) calendar days after receipt of written notice (specifying the default) from the non-defaulting party. If the default specified in such notice is cured within the thirty (30) day period, the Service Order/SOW and Agreement will remain in effect; or
 - (b) the non-terminating party enters into liquidation (apart from a solvent liquidation for the purposes of amalgamation or reconstruction) or is dissolved or declared bankrupt or has a receiver, administrator or administrative receiver appointed over all or part of its assets or enters into an arrangement with its creditors or takes or suffers any similar action.
- 5.5 Survival. The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by either party hereunder will so survive the completion of the performance, cancellation or termination of this Agreement, including without limitation, Confidentiality, Infringement and Limited Warranties.
6. Fees and Expenses.
- 6.1 Invoices. Invoices shall be issued monthly in arrears for (i) the monthly Service fees (ii) for time and materials in a Statement of Work and (iii) Reimbursable Expenses based on expenses incurred

in the previous month. Fees for fixed bid SOW's shall be invoiced upon completion of the milestone as set forth in the applicable SOW. If Customer validly disputes any invoiced amount it shall pay the undisputed amounts and provide written notice of the basis of that dispute to Landis+Gyr within thirty (30) days following delivery of that invoice. The parties will work diligently, promptly and in good faith to resolve any such disputes.

- 6.2 Fees. Customer agrees to pay for all services ordered as set forth in the applicable Service Order or SOW (the "**Fees**"). All Fees are due thirty (30) days from the date of invoice. Any Fees not paid within thirty (30) days after the date on which Customer receive an invoice (the "**Due Date**") will accrue interest on the overdue balance from the Due Date at the rate of one percent (1%) per month, or the maximum lawful rate allowable under applicable law, whichever is lower.
- 6.3 Fees During Renewal Terms. Landis+Gyr's Fees are fixed during the Initial Term. Landis+Gyr fees for Renewal Terms shall escalate annually as of each anniversary of the Effective Date of the Service Order by the amount of the increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available as of that anniversary of the Effective Date.
- 6.4 Reimbursable Expenses. If a Service Order and/or SOW permits reimbursement of expenses by Customer ("**Reimbursable Expenses**"), Landis+Gyr will be reimbursed for those reasonable expenses, at cost. In addition, if there are any system communication fees that are incurred by Landis+Gyr (i.e. long-distance charges), Landis+Gyr will invoice Customer monthly for the communications fees, which Customer agrees to pay.
- 6.5 Taxes. Customer is exclusively responsible for the collection and remittance of all sales and use, value added, duties, tariffs or other similar charges or taxes on the SaaS Services, other than taxes based upon Landis+Gyr's income. All amounts set forth in an applicable Service Order/SOW are exclusive of taxes and taxes are not included in the Fees. Applicable taxes payable by Customer will be separately itemized of invoices sent to Customer.
7. Ownership and Restrictions.
- 7.1 Ownership of Customer Data. As between Customer and Landis+Gyr and its Subcontractors, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted in Section 7.2.
- 7.2 Limited License to Use Customer Data. During the Term of this Agreement and subject to the terms and conditions of this Agreement, Customer hereby grants Landis+Gyr a limited, royalty-free, non-exclusive, non-transferable and non-sublicensable license to Process the Customer Data in the United States as instructed by Customer or an Authorized User and solely as necessary to provide the SaaS Services for Customer's benefit as provided in this Agreement.
- 7.3 Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Landis+Gyr Materials and Documentation or Third Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the Landis+Gyr Materials and the Third Party Materials are and will remain with Landis+Gyr and the respective rights holders in any such materials.

8. Confidentiality.

- 8.1 Confidential Information. From time to time during the Term of this Agreement, either Party (as the “**Disclosing Party**”) may disclose or make available to the other Party (as the “**Receiving Party**”) non-public, proprietary, confidential information about its business affairs, products, services, confidential intellectual property, trade secrets, third party confidential information, source code and other sensitive or proprietary information in oral, written, electronic or other intangible form marked or indicated as “**Confidential**” or “**Proprietary**” at the time of disclosure (collectively, “**Confidential Information**”). Confidential Information, however, shall not include: (a) Information which is already generally available to the public; (b) Information which hereafter becomes generally available to the public, except as a result of the direct or indirect action of the Receiving Party in breach of this Agreement; (c) Information known to the Receiving Party or its Representatives on a non-confidential basis prior to receipt by the disclosing party; (d) Information that is independently developed without access to the Disclosing Party's Confidential Information; and (e) Information disclosed under legal compulsion; provided, however, that prior to a disclosure pursuant to an order or applicable law, the Receiving Party, to the extent permitted by law, promptly provides the other party written notice of such proposed disclosure and reasonably cooperates with the other party in its attempts to limit or prevent such disclosure. The Receiving Party shall use the Confidential Information solely for the performance of this Agreement and shall not disclose or permit access to Confidential Information other than to its Affiliates and its or their employees, officers, directors, attorneys, accountants and financial advisors (including insurers) (collectively, “**Representatives**”) who: (a) need to know such Confidential Information for the performance of this Agreement; (b) know of the existence and terms of this Agreement and (c) are bound by confidentiality obligations no less protective of the Confidential Information than the terms contained herein. These non-disclosure obligations shall survive the termination of this Agreement and shall continue for a period of five (5) years thereafter. Information need not be marked “**Confidential**” to be considered Confidential Information. “**Confidential Information**” includes any Confidential Information disclosed prior to the effective date of this Agreement. Any subcontractor retained pursuant to Section 2.6 shall adhere to this Section 8 as it regards to Confidential Information that comes into its possession.
- 8.2 Safeguarding Confidential Information. The Receiving Party shall safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. The Receiving Party shall promptly notify Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to cooperate with Disclosing Party to prevent further use or disclosure. The Receiving Party will be responsible for any breach of this Agreement caused by its Representatives.
- 8.3 No Rights in Confidential Information. Customer and Landis+Gyr hereby acknowledge and agree that all Confidential Information of the other party shall remain the sole and exclusive property of such other party and that the receiving party shall have no proprietary rights, title or interests therein except as otherwise provided in this Agreement.
- 8.4 Termination. Upon termination for any reason, or at any other time that Customer or Landis+Gyr demands, the other party shall promptly deliver and/or certify destruction of Confidential Information, as appropriate, to the requesting party all Confidential Information (copies and originals) of the requesting party as may be in the other party's possession or under its control.

9. Data Security and Privacy.

- 9.1 Without limiting Landis+Gyr's obligation of confidentiality as further described herein, Landis+Gyr shall establish and maintain a data privacy and information security program ("**Data Security Terms**"), including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of the Customer Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the Customer Data; (iii) protect against unauthorized disclosure, access to, or use of the Customer Data; (iv) ensure the proper disposal of Customer Data; and, (e) ensure that all employees, agents, and subcontractors of Landis+Gyr, if any, comply with all of the foregoing, and which are: (y) no less rigorous than those maintained by Landis+Gyr for its own information of a similar nature; (y) no less rigorous than generally accepted industry standards, including ISO 27001 and 27002; and (z) required by all applicable federal and state laws, rules and regulations relating to privacy, the protection of personal Information and data protection laws and regulations (including without limitation applicable security breach notification laws) (collectively "**Data Privacy Laws**").
- 9.2 The Data Security Terms implemented and maintained by Landis+Gyr pursuant to this Section 9 shall include, without limitation:
- (a) User identification and access controls designed to limit access to Customer's Data to authorized users;
 - (b) the use of appropriate procedures and technical controls regulating data entering Landis+Gyr's network from any external source, including regular monitoring of security device controls (e.g., firewalls, intrusion prevention system, etc.);
 - (c) the use of encryption techniques when Customer's Data is transmitted or transferred from the RF Network into the hosted environment and when Customer's Data is at rest within the System;
 - (d) physical security measures, including without limitation securing Customer's Data within a secure facility where only authorized personnel and agents will have physical access to Customer Data;
 - (e) operational measures, including without limitation processes designed to ensure the correct and secure operations of information processing activities;
 - (f) periodic employee training regarding the security programs referenced in this Section; and
 - (g) periodic testing of the systems and procedures outlined in this Section, including regular automated vulnerability scanning of infrastructure components with commercial scanning tools, with tracked mitigation effort.
- 9.3 Unauthorized Access. Landis+Gyr will use commercially reasonable efforts to prohibit access to Customer Systems, in whole or in part, whether through Landis+Gyr's Systems or otherwise.
- 9.4 Landis+Gyr Systems. Landis+Gyr will be responsible for the security, management and maintenance of Landis+Gyr's information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by Landis+Gyr on Landis+Gyr's systems to access the Customer Systems or otherwise in connection with the provision of the SaaS Services.
10. Audit Rights
- 10.1 Landis+Gyr will procure from an independent third party, on at least an annual basis, a SOC 1 audit as set forth in the American Institute of Certified Public Accountants Statement on Auditing

Standards for Attestation Engagements (SSAE) No. 18 and once available, SOC 2. Such audit will cover Landis+Gyr's networks, systems and premises (collectively, the "**Landis+Gyr Systems**"). Landis+Gyr will provide Customer with the report of each such audit within five (5) business days of report availability. Landis+Gyr will provide an annual report and bridge letter delivery schedule no less than annually; including (i) whether the audit revealed any material vulnerability in the Landis+Gyr Systems; and (ii) if so, the nature of each vulnerability discovered. If the audit reveals one or more material vulnerabilities, Landis+Gyr will correct each such vulnerability at its sole cost and expense and will certify in writing to Customer when it has corrected all such vulnerabilities. Landis+Gyr will complete all vulnerability corrections within a commercially reasonable period of time.

- 10.2 Customer, at its own expense, will be limited to auditing Landis+Gyr output and deliverables against the applicable currently contracted scope of the services. Scope will not include provisions already covered within SSAE18 audits.
- 10.3 Third Parties: If a third party conducts an audit on the Customers behalf, in no event shall such third party be: (i) a competitor of Landis+Gyr; or (ii) an entity whose substantial business function is not performing audits of service providers; provided however, that a government agency may conduct such audit.
- 10.4 Notification of Intent to Audit: Customer will submit, and Landis+Gyr will receive, in writing, a request for an audit at least 90 days prior to the commencement of same. The written request must include a proposed scope for the audit. The Customer and Landis+Gyr must mutually agree upon the final scope of the review. The actual audit will be conducted at the times and locations acceptable to Landis+Gyr.
- 10.5 Frequency and Duration: Customer shall be permitted to perform one audit per calendar year with a maximum duration of two (2) business days, or other time frame mutually agreed upon by the parties. All fees and expenses incurred by Customer for this audit are paid by Customer.
- 10.6 Non-Disclosure: Prior to the commencement of any audit, Customer/Customer auditors must enter into Landis+Gyr's standard non-disclosure agreement.
- 10.7 Use of Audit Software: Landis+Gyr will not permit Customer/Customer auditors to install any audit/test software on any Landis+Gyr system or use it to test any Landis+Gyr network, database, file, or hosting center.
- 10.8 Actions Subsequent to the Audit: Landis+Gyr will be provided with a written report of findings and recommendations from the audit. Landis+Gyr is under no obligation to implement any changes in its controls or practices resulting from the audit. Landis+Gyr alone will determine what, if any, corrective actions will be taken.
- 10.9 Access to Other Customers Information: Customer and/or Customer auditors will not be permitted to access, view, or summarize other customer's data or information.
- 10.10 Copy and Removal of Documents from Landis+Gyr Premises: Customer will be permitted to examine (at the Landis+Gyr location) manuals, written policies, reports, computer generated listings, memorandum and other materials Landis+Gyr directly related to the scope of the audit in progress. In general, Customer may not copy and/or remove such materials from Landis+Gyr premises. Under certain circumstances, Customer may be permitted to remove such materials if

they pertain exclusively to that Customer and such materials would otherwise routinely be available to Customer as a part of normal processing.

- 10.11 No Physical Access to Data Center: Customer shall not have access to shared hosting cages within the co-located data center.

11. Disaster Recovery.

- 11.1 Landis+Gyr shall maintain throughout the Term of this Agreement a disaster recovery plan and business continuity plan that will enable Landis+Gyr to recover from a disaster and continue providing the Services under this Agreement, within the recovery time objectives set forth in such plan, or other recovery time objectives as mutually agreed to by the parties. Upon request, Customer shall have the right to review a summary of Landis+Gyr's then current plan. Landis+Gyr will test the operation and effectiveness of the plan at least annually. Upon request, Landis+Gyr will provide Customer with an annual summary audit report for disaster recovery effectiveness. If such tests reveal material deficiencies in the plan Landis+Gyr will respond with steps that will be taken to mitigate recovery deficiencies within a reasonable time frame. Landis+Gyr reserves the right to make the changes as required to the Disaster Recovery plan.

12. Information Security Incident Response.

- 12.1 In the event that Landis+Gyr confirms that the security of the System, or Customer Data, has been compromised, or that such Customer Data has been or is reasonably expected to be subject to a use or disclosure not authorized by this Agreement (an "**Information Security Incident**"), Landis+Gyr shall: (i) promptly (and in any event within 24 hours of such confirmation Information Security Incident), notify Customer, in writing, of the occurrence of such Information Security Incident per the Landis+Gyr Global Security Incident Response plan; (ii) investigate such Information Security Incident and conduct a reasonable analysis of the cause(s) of such Information Security Incident; (iii) provide periodic updates of any ongoing investigation to Customer; (iv) develop and implement an appropriate plan to remediate the cause of such Information Security Incident to the extent such cause is within Landis+Gyr's control and to mitigate the effects of the Information Security Incident; and (v) cooperate with Customer's reasonable investigation or Customer's efforts to comply with any notification or other regulatory requirements applicable to such Information Security Incident. In connection with an Information Security Incident, at Client's request, Landis+Gyr will provide, effect or accept responsibility for the following (collectively, "**Mitigation Steps**"): (a) investigate, remediate, and mitigate (1) the cause of the Information Security Incident, and (2) the effects of the Information Security Incident; (b) provide the Client with appropriate details of its remediation plan to help ensure that such Information Security Incident will not recur; and (c) provide commercially reasonable assistance to enable Client to notify public authorities or the individuals whose data were or may have been compromised.

13. Indemnification.

- 13.1 Landis+Gyr's Indemnification Obligations. Landis+Gyr will indemnify and defend Customer and its Affiliates and their respective officers, directors, employees, shareholders and members from and against any losses, claims, penalties, fines, judgments, damages, liabilities or expenses, including reasonable attorneys' fee ("**Losses**"), or threatened Losses arising out of third party claims relating to, incurred in connection with, or based upon any claim, threatened claim, suit, action or proceeding ("**Claim**") made against Customer:

- (a) that that the Services infringe any Intellectual Property Rights of a third party enforceable in the U.S. (“**Infringement Claim**”); or
 - (b) any claim for bodily injury or death of any individual, or the loss, damage or destruction of any real or personal property, resulting from the willful, negligent, reckless, fraudulent or intentional acts or omissions of Landis+Gyr or its Subcontractor.
- 13.2 Indemnification Limitations. Landis+Gyr will have no liability or obligation for any Losses to the extent that such Loss arises out of or results from any:
- (a) alteration or modification of the SaaS Services by or on behalf of Customer without Landis+Gyr's authorization (each, a “**Customer Modification**”). For this subsection (a) to be in effect, any Infringement Claim must allege infringement which would not have occurred without the Customer Modification;
 - (b) Customer’s access to or use of the SaaS Services that is expressly prohibited by this Agreement or otherwise outside the scope of access or manner or purpose of use described or contemplated anywhere in this Agreement, the Documentation or the applicable Service Order; or
 - (c) breach of this Agreement by Customer or noncompliance herewith by any Authorized User.
- 13.3 Customer’s Indemnification Obligations. Customer will indemnify and defend Landis+Gyr, its Subcontractors, Affiliates and such person’s respective officers, directors, employees, shareholder and members from and against Losses arising out of a Claim made against Landis+Gyr relating to, incurred in connection with, or based upon:
- (a) Customer’s use of the SaaS Services in breach of this Agreement; or
 - (b) any Infringement Claim asserted by any third party based upon Customer materials provided to Landis+Gyr; or
 - (c) any claim for bodily injury or death of any individual, or the loss, damage or destruction of any real or personal property, resulting from the willful, negligent, reckless, fraudulent or intentional acts or omissions of Customer.
- 13.4 Indemnification Procedures. The party seeking indemnification (the “**Indemnified Party**”) will promptly notify the other party (“**Indemnifying Party**”) in writing of any Claims for which it seeks indemnification pursuant to this Section 13 and reasonably cooperate with the Indemnifying Party at the Indemnifying Party's sole cost and expense. The Indemnifying Party will immediately take control of the defense and investigation of such Claim and will employ counsel reasonably acceptable to the other party to handle and defend the same, at the Indemnifying Party's sole cost and expense. The Indemnifying Party will not settle any Claim on any terms or in any manner that adversely affects the rights of the other party or any Indemnitee without the other party's prior written consent, which will not be unreasonably withheld or delayed. The other party and any Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. A party's failure to perform any obligations under this Section 13.4 will not relieve the Indemnifying Party of its obligations herein except to the extent that the Indemnifying Party can demonstrate that it has been prejudiced as a result of such failure.

- 13.5 Option. In addition to the foregoing indemnification obligations, if all or any part of the SaaS Services is subject to an Infringement Claim, Landis+Gyr may, at its discretion and expense, take the following actions:
- (a) Procure for Customer the right to continue using the SaaS Services; or
 - (b) Modify or replace the allegedly infringing aspect of the SaaS Services to make it non-infringing, provided, however, that such modification or replacement will not degrade the operation or performance of the SaaS Services.
 - (c) If neither of the remedies set forth in this Section 13.5 is reasonably available with respect to the Infringement Claim features then Landis+Gyr may direct Customer to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Landis+Gyr will refund to Customer any prepaid Fees for SaaS Services that have not been provided.
 - (d) Excluding the indemnity obligation owed by Landis+Gyr to Customer, the remedies set forth in this Section 13.5 are Customer's exclusive remedies with respect to any Infringement Claim.
14. Limitations of Liability.
- 14.1 EXCLUSION OF INDIRECT DAMAGES. EXCEPT WITH RESPECT TO A BREACH OF CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES THAT ARE INDIRECT, CONSEQUENTIAL, PUNITIVE OR FOR ECONOMIC LOSS, LOSS OF REVENUES, LOSS OF PROFITS, OR LOSS OF BUSINESS OPPORTUNITY.
- 14.2 CAP ON DIRECT DAMAGES. EXCEPT WITH RESPECT TO A BREACH OF CONFIDENTIALITY OBLIGATIONS, OBLIGATIONS UNDER THIS AGREEMENT RELATED TO INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT, PERSONAL INJURY OR DEATH OR DAMAGE TO ANY REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY EITHER PARTY'S NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT, THE TOTAL LIABILITY OF EITHER PARTY IN RESPECT OF ALL CLAIMS IN THE AGGREGATE, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH, CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER TO LANDIS+GYR DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY INCIDENT UNDER WHICH OR IN RELATION TO WHICH THE LIABILITY ARISES.
15. Representations and Limited Warranties.
- 15.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:
- (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;

- (b) it has, and throughout the Term and any Renewal Terms during which it does or is required to perform the SaaS Services will retain, the full right, power and authority to enter into this Agreement and perform its obligations hereunder;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate/ action of the party; and
- (d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with the Agreement terms, except as the enforceability thereof may be limited by bankruptcy and similar Laws affecting creditors' rights generally and by general equitable principles.

15.2 Additional Landis+Gyr Warranties. Landis+Gyr represents, warrants and covenants to Customer that:

- (a) it is in the business of providing the SaaS Services;
- (b) it is the lawful licensee or owner of the SaaS Services (excluding any Customer Data therein) and has all the necessary rights in the SaaS Services to grant the use of the SaaS Services to Customer;
- (c) the Service Software and Services will in all material respects conform to and perform in accordance with the Documentation and all requirements of this Agreement;
- (d) it will use its best efforts to ensure that no Disabling Code is introduced into Customer's computing and network environment by the SaaS Services; and
- (e) it will perform all Services in a timely, professional and workmanlike manner with a level of care, skill, practice and judgment consistent with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet Landis+Gyr's obligations under this Agreement.

15.3 Additional Customer Warranty. Customer represents, warrants and covenants to Landis+Gyr that:

- (a) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Landis+Gyr and Processed in accordance with this Agreement, Customer does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.
- (b) prior to Customer's delivery to Landis+Gyr of any Customer Data that is outside of the Landis+Gyr Systems, Customer shall use current industry state-of-the-art anti-virus measures to detect, prevent and remove Disabling Code, and to prevent the spread of Disabling Code between the Parties when accessing and/or exchanging data or software through the Interfaces or any other network connectivity.

15.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 15.1, SECTION 15.2 AND SECTION 15.3, ALL SERVICES AND LANDIS+GYR MATERIALS ARE PROVIDED "AS IS" AND LANDIS+GYR HEREBY

DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

16. Force Majeure.

- 16.1 Force Majeure Events. Neither party will be liable in damages or have the right to terminate this Agreement for any reasonable delay or default in performing under this Agreement if such delay or default is caused by conditions beyond the party’s reasonable control, including without limitation acts of God, natural disasters, war or other hostilities, labor disputes, civil disturbances, governmental acts, orders or regulations or failures or fluctuations in electrical power, heat, lights, air conditioning or telecommunications equipment (each of the foregoing, a “**Force Majeure Event**”), provided that the non-performing party is without fault in causing such condition. Subject to the party so delaying promptly notifying the other party in writing of the reason for the delay and the likely duration of the delay, the performance of the delaying party’s obligations, to the extent affected by the delay, will be temporarily suspended during the reasonable period of time that the cause persists, provided that if performance is not resumed within thirty (30) days after that notice, the non-delaying party may by notice in writing immediately terminate this Agreement.

17. General Provisions.

- 17.1 Compliance with Laws/Export. The Parties will comply with all applicable Laws, regulations and codes, including procurement of permits and licenses, when needed, of their respective states, territories, and/or countries in the performance of this Agreement, provided such is not in violation of the U.S. Government’s Export and Anti-boycott Rules and Regulations. The SaaS Services and Deliverables and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations and other applicable laws. Customer will (a) comply strictly with all legal requirements established under these controls; (b) cooperate fully with Landis+Gyr in any audit or inspection that relates to these controls; and (c) not export, re-export, divert or transfer, directly or indirectly, any such item to any country or person who or which is embargoed by Executive Order or any applicable law, including any rules, regulations or policies promulgated thereunder.
- 17.2 Further Assurances. Each party will, upon the reasonable request, and at the sole cost and expense, of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.
- 17.3 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.
- 17.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, will be in writing and

addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Landis+Gyr:

Landis+Gyr Technology, Inc.
3000 Mill Creek Avenue, Suite 100
Alpharetta, GA 30022
Attn: Legal Department
Facsimile: 678.258.1686

If to Customer:

City of Winfield
2701 East 9th Avenue
Winfield, KS 67156
Attn: Legal Contact
Facsimile: Fax Number

Notices sent in accordance with this Section 17.4 will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

- 17.5 Interpretation. For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; [and] (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; and all personal pronouns, whether used in the feminine, masculine, or neuter gender, include all other genders and the singular will include the plural and vice versa. Unless the context otherwise requires, references herein: (x) to Sections, Schedules and Exhibits refer to the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument or other document (including this Agreement) means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof, and together with all schedules and exhibits thereto; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Schedules and Exhibits referred to herein will be construed with, and as an integral part of, this Agreement to the same extent as if such Schedules and Exhibits were set forth verbatim herein.
- 17.6 Headings. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.
- 17.7 Entire Agreement. This Agreement, including all Service Orders and other Schedules and Exhibits and any other documents, agreements or instruments incorporated by reference herein, constitutes

the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, and all subsequent oral understandings and agreements with respect to such subject matter. In the event of any conflict between the terms of this Agreement and those of any Schedule, Exhibit or other document, the following order of precedence will govern: (a) first, this Agreement, excluding its Exhibits and Schedules; (b) second, the Exhibits and Schedules to this Agreement as of the Effective Date; and (c) third, any other documents, instruments or agreements incorporated herein by reference. This Agreement and all Service Orders take precedence over any purchase order issued by Customer, which may be accepted by Landis+Gyr for administrative convenience only.

- 17.8 Assignment. Neither party will assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement without the other party's prior written consent, which consent will not unreasonably be withheld or delayed. Any purported assignment, delegation or transfer in violation of this Section 14.8 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- 17.9 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 17.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 17.11 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable according to Law, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 17.12 Governing Law; Submission to Jurisdiction.
- (a) This Agreement and all related documents, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Georgia, without regard to Georgia's conflict of laws principles. The Uniform Computer Information Transactions Act does not have any application to this Agreement.
 - (b) Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Georgia in each case located in Fulton County, and each

party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.

- 17.13 Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.
- 17.14 Equitable Relief. The Parties will be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek equitable relief in a court of competent jurisdiction.
- 17.15 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, expert witness fees and out-of-pocket and court costs from the non-prevailing party.
- 17.16 Limitations on Actions. No actions, regardless of form, arising from the transactions under this Agreement, may be brought by either party more than two (2) years after the cause of action has accrued.
- 17.17 Schedules and Exhibits. All Exhibits that are referenced herein and attached hereto, or are signed by both parties on or after the Effective Date, are hereby incorporated by reference. The following Schedules and Exhibits are attached hereto and incorporated herein:
- Schedule A Service Level Agreement
- Schedule B Service Order; Pricing
- 17.18 Publicity. Notwithstanding any other provision of the Agreement, Landis+Gyr shall not, without the Customer's prior written consent, publish any information pertaining to the Agreement, whether during the term of the Agreement or thereafter. Nor shall the Customer, without Landis+Gyr's prior written consent, publish any information pertaining to the agreement, whether during the term of the agreement or thereafter. Consent from either party will not be unduly withheld.
- 17.19 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (to which a signed PDF copy is attached) will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

Landis+Gyr Technology, Inc.

City of Winfield

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

SCHEDULE A

SERVICE LEVEL AGREEMENT

Landis+Gyr shall provide Customer with Service Levels on the terms and conditions set forth in this Schedule and the Software as a Service (SaaS) Agreement dated as of the Effective Date, by and between City of Winfield and Landis+Gyr Technology, Inc. (the “**SaaS Agreement**”). All capitalized terms that are not defined in this Schedule shall have the respective meanings given to such terms in the SaaS Agreement.

1. Definitions. For purposes of this Schedule the following terms have the meanings set forth below.

“**Error**” means any reproducible failure of the Service Software to operate in all material respects in accordance with the Documentation and, to the extent consistent with and not limiting of the Documentation, including any problem, failure or error referred to in the Service Level Table.

“**Service Levels**” means the defined Error severity levels and corresponding required service level responses and response times referred to in the Service Level Table.

“**Service Level Table**” means the table set out in Section 2.4.

“**Support Period**” means the Service Order Term as set forth in the applicable Service Order.
2. Availability Requirement. Subject to the terms and conditions of the SaaS Agreement and this Schedule, Landis+Gyr will use commercially reasonable efforts to make the SaaS Services Available, as measured over the course of each calendar month during the Support Period and any additional periods during which Landis+Gyr does or is required to perform any SaaS Services (each such calendar month, a “**Service Period**”), at least 99.5% of the time, excluding only the time the SaaS Services are not Available solely as a result of one or more Exceptions (“**Availability Requirement**”). “**Available**” means the SaaS Services are available and operable for normal access and use by Customer and its Authorized Users over the Internet in material conformity with the Documentation.
- 2.1 Exceptions. No period of SaaS Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following (“**Exceptions**”):
 - (a) Customer's misuse of the SaaS Services;
 - (b) failures of Customer's or its Authorized Users' Internet connectivity;
 - (c) internet or other network traffic problems other than problems arising in or from networks actually or required to be provided or controlled by Landis+Gyr or its Subcontractor; or
 - (d) Customer's or any of its Authorized Users' failure to meet any minimum hardware or software requirements set forth in the Documentation.
 - (e) Force Majeure Event

- (f) Failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Landis+Gyr pursuant to the SaaS Agreement or this Schedule.
 - (g) Scheduled Downtime; or
 - (h) disabling, suspension or termination of the Services pursuant to Section 3.4 of the SaaS Agreement.
3. Support Services. Landis+Gyr will provide SaaS Service maintenance and support services (collectively, “**Support Services**”) during the support hours throughout the Support Period in accordance with the terms and conditions of this Schedule and the SaaS Agreement, including the Service Levels and other Landis+Gyr obligations set forth herein. The Support Services are included in the SaaS Services, and Landis+Gyr will not assess any additional fees, costs or charges for such Support Services.
- 3.1 Support Service Responsibilities. Landis+Gyr will:
- (a) respond to Support Requests in accordance with the Service Levels;
 - (b) provide responsive telephone or email support as set forth in Section 3.6.
 - (c) Provide online access to technical support bulletins and other user support information and forums, to the full extent Landis+Gyr makes such resources available to its other customers.
- 3.2 Service Monitoring and Management. Landis+Gyr will continuously monitor and manage the SaaS Services to optimize Availability (defined herein) that meets or exceeds the Availability Requirement. Such monitoring and management will include:
- (a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all SaaS Services, infrastructure and other components of SaaS Service security;
 - (b) if such monitoring identifies, or Landis+Gyr otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the SaaS Service, taking all necessary and reasonable remedial measures to eliminate such threat and ensure Availability;
 - (c) if Landis+Gyr receives knowledge that the SaaS Service or any SaaS Service function or component is not Available (including by notice from Customer pursuant to the procedures set forth herein or in the applicable Service Order):
 - i. Landis+Gyr will confirm the outage by a direct check of the associated facility or facilities;
 - ii. if Landis+Gyr's facility check in accordance with clause (i) above confirms a SaaS Service outage in whole or in part: (A) notifying Customer pursuant to the procedures set forth herein or in the applicable Service Order that an outage has occurred, providing such details as may be available, including a Landis+Gyr trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are resolved as Critical Service Errors in accordance with the Support Request Classification set forth in the Service Level Table.

- iii. Landis+Gyr will continuously maintain the SaaS Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services will include providing to Customer and its Authorized Users:
 - a. such updates, bug fixes, enhancements, new releases, new versions and other improvements to the SaaS Services, including the Service Software, that Landis+Gyr provides at no additional charge to Landis+Gyr's other similarly situated customers. Specific upgrades are set forth in the applicable Service Order; and
 - b. all such services and repairs as are required to maintain the SaaS Services or are ancillary, necessary or otherwise related to Customer's or its Authorized Users' access to or use of the SaaS Services, so that the SaaS Services operate properly in accordance with this Agreement and the Documentation.

3.3 Scheduled Downtime. Planned maintenance and updates are not expected to exceed ten (10) hours in a normal month. Landis+Gyr will use commercial reasonable efforts to provide Customer advance notification (via email) of scheduled maintenance that is anticipated to involve system unavailability of two (2) hours or more. Landis+Gyr will use commercially reasonable efforts to notify Customer at least 48 hours (via email) in advance to schedule maintenance and updates ("**Scheduled Downtime**"). Landis+Gyr will use commercially reasonable efforts to perform scheduled maintenance outside the hours of 7:00 AM – 7:00 PM Central Standard Time, Monday – Friday.

3.4 Service Levels.

Response times will be measured from the time Landis+Gyr receives a Support Request until the respective times Landis+Gyr has responded to that Support Request. Landis+Gyr shall respond to all Support Requests within the following times based on Landis+Gyr's designation of the severity of the associated Error, in accordance with the Table below, subject to the parties' written agreement to revise such designation after Landis+Gyr's investigation of the reported Error and consultation with Customer:

Severity Level of Incident	Definition	Target Response Time	Status
Critical	<u>Critical Business Impact</u> – Impacts multiple users and halts or severely impacts the division's ability to conduct critical operations. Postponement of any critical interface file that can delay Field Services, Billing and daily critical activities.	1 Hour or less	Within 4-8 Hours
High	<u>Significant Business Impact</u> – Impacts individual or small work group. Normal operations may be degraded but can continue.	4 Hours or less	1 Business Day
Medium	<u>Some Business Impact</u> – Impacts individual or small work group. Normal operations may be degraded but can continue, and service response may be delayed until a mutually established future time. Issue is informational in nature, a request, suggestion or report. No immediate remedial action is expected.	1 Business Day	3 Business Days
Low	<u>Non-Business Impact</u> – Maintenance request, data requests, and non-critical process enhancements.	2 Business Days	6 Business days

Landis+Gyr will respond to and investigate any suspected Incident in the Software within the time provided above. Resolution of such Incidents may take the form of a written response, supplementary documentation, work-around, coding change, product patch, or other correctional aids, which Landis+Gyr

will provide to Customer. In order for Landis+Gyr to meet Responses Time outlined above, customers should make contact via telephone to report Critical or High Incidents.

Should business requirements call for a more customized level of support, Landis+Gyr also offers Premium Support packages, which include dedicated technical support, client management and executive dashboard views to open technical views and more. Premium Support includes discounted rates for additional Smart Grid service offerings as well. Pricing for Premium Support is based on an agreed scope of work based on the options selected and can be quoted upon request.

3.5 Support Requests and Customer Obligations.

- (a) Support Requests. Customer may request Support Services by way of a Support Request. Customer shall classify its requests for Error corrections in accordance with the severity levels classifications and definitions of the Service Level Table set forth in Section 3.4 (“**Support Request**”). Customer shall notify Landis+Gyr of each Support Request by e-mail, telephone or such other means as the parties may agree to in writing. Customer shall include in each Support Request a description of the reported Error and the time Customer first observed the Error.
- (b) Customer Obligations. Customer will, by and through its employee or consultants provide Landis+Gyr with:
 - i. prompt notice of any Errors; and
 - ii. each of the following to the extent reasonably necessary to assist Landis+Gyr to reproduce operating conditions similar to those present when Customer detected the relevant Error and to respond to the relevant Support Request:
 - a. direct access to the Customer Systems and the Customer’s files and personnel;
 - b. output and other data documents and information, each of which is deemed Customer’s Confidential Information as defined in the SaaS Agreement; and
 - c. such other reasonable cooperation and assistance as Landis+Gyr may request.

3.6 Service Desk Contact Information. Landis+Gyr shall provide Customer with access to the Service Desk. Landis+Gyr’s current Service Desk business hours are 7:00 AM to 6:00 PM Central Time, Monday through Friday, excluding Landis+Gyr observed holidays (available upon request) and weekends (“**Business Hours**”). In addition, emergency access to on-call personnel via Landis+Gyr’s Emergency Dispatch Service will be provided by Landis+Gyr from 6:01 PM through 6:59 AM, and 24 hours per day on weekends and holidays. Landis+Gyr shall provide advanced troubleshooting, via telephone or e-mail, as deemed necessary by qualified Landis+Gyr personnel, to resolve Customer issues.

3.7 Submission Method. Customer can contact the Service Desk through:

- i. Telephone direct dial-in at 888.390.5733;
- ii. Fax to 218.562.5530, or

iii. E-mail at solutionsupport.na@landisgyr.com

All contact information is subject to change and update by delivery of notice and by posting on the Landis+Gyr Website at www.landisgyr.com.

4. Backup and Recovery. Landis+Gyr will conduct or have conducted at minimum, daily backups of Customer Data and perform or cause to be performed other periodic backups (snapshots, differential backups, etc.). At least one backup will be stored online (directly accessible) and one full backup will be stored near-line. Both copies will be less than one week old and may be overwritten as they are replaced with newer backups. Weekly backups are stored for a minimum of one month. Monthly backups are stored off-site for a minimum of one (1) year.
5. Business Continuity and Disaster Recovery Protection. Landis+Gyr has an ongoing Business Continuity (“**BC**”) program (that includes Risk Assessment) that covers its primary locations as well as a Disaster Recovery (“**DR**”) program for restoring its data center operations. Landis+Gyr uses industry best practices and exercises its DR program, (i.e. failing over its customer services to an alternate datacenter with client verification) for an additional fee.
6. Communications. In addition to the mechanisms for giving notice specified in the SaaS Agreement, unless expressly specified otherwise in this Schedule or the SaaS Agreement, the parties may use e-mail for communications on any matter referred to herein.

SCHEDULE B
SERVICE ORDER; PRICING
SERVICE ORDER NO. 1

This Service Order No. 1 is issued pursuant to the Software as a Service (SaaS) Agreement by and between City of Winfield (“**Customer**”) and Landis+Gyr Technology, Inc. (“**Landis+Gyr**”) (the “**SaaS Agreement**”) and is part of and incorporated into the SaaS Agreement. All capitalized terms that are not defined in this Schedule shall have the respective meanings given to them in the SaaS Agreement. In the event of any conflict between the body of the SaaS Agreement and this Service Order B, the terms of this Service Order will govern.

SCOPE OF SERVICE. Landis+Gyr shall provide Customer with access to Services on the terms and conditions set forth in the SaaS Agreement. Landis+Gyr will provide Services that will enable Customer to access the Service Software.

1. **Service(s) Description**

The Service Software provided to Customer consists of the following items:

- ☒ Gridstream Command Center RF
- ☐ Gridstream Command Center PLC
- ☐ Gridstream Command Center PLX
- ☐ Gridstream Advanced Security

2. **SaaS Service Term**

The initial term for this Service Order begins after Service Software installation upon verification of Customer’s ability to access and utilize the SaaS Services as provided herein and in the SaaS Agreement and ends thirty-six (36) months thereafter (the “**Initial Service Order Term**”).

Upon expiration of the Initial Service Order Term, this Schedule B shall automatically renew for successive one (1) year periods (each a “**Renewal Term**” and together with the Initial Service Order Term, the “**Service Order Term**”), unless a party provides the other party with written notice of its intent not to renew this Service Order at least ninety (90) days prior to the expiration of the then current term.

3. **SaaS Service Fee**

3.1 The Fee Schedule is determined by the total number of Endpoints deployed by Customer. The fee for the Initial Service Order Term of this Service Order (the “**Initial Service Fee**”) payable by Customer to Landis+Gyr is a total of \$2,555.28 per month based on 18,794 deployed endpoints.

Customer is required to add additional Endpoints prior to beneficial use of such additional Endpoints. Actual fee will be determined by the total number of Endpoints deployed by Customer, calculated and billed on a monthly basis and will include adjusted fees for the total number of deployed devices on the last business day of the previous month as indicated by the Command Center Software.

SaaS RF Mesh Command Center Pricing - SQL	
Minimum Monthly Fee	\$950.00
<i>Number of Deployed Endpoints</i>	<i>Monthly Fee Per Endpoint</i>
First 10,000	\$0.15
Next 10,001 – 50,000	\$0.12
Next 50,001 – 100,000	\$0.10

3.2 The fees for the Renewal Terms of SaaS Service are payable by Customer to Service Provider as set forth in the SaaS Agreement.

4. **Price Increases**

Landis+Gyr's Additional Endpoint Fees are fixed during the Initial Term. Landis+Gyr's Additional Endpoint fees for Renewal Terms shall escalate annually as of each anniversary of the Effective Date of the Service Order by the amount of the increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available as of that anniversary of the Effective Date.

5. **Summary of Services Included in Service Order**

SaaS Services are detailed in the SaaS Agreement. Services specific to this Service Order are detailed below:

- 5.1 **Project Coordination.** Landis+Gyr will provide a project coordinator to provide direction to Customer relating to SaaS Services. Customer to provide primary point of contact to work with the project coordinator.
- 5.2 **Installation and Configuration.** Installing the Software in the data center with standard configurations. Custom configurations are available for an additional fee as detailed in an applicable SOW. Service Software includes Landis+Gyr Application Software, operating system software, database software and any software running on the Service Provider equipment.
- 5.3 **Upgrades.** Landis+Gyr and Customer will mutually agree on an upgrade schedule for Service Software. SaaS Services include at least one (1) Software Upgrade per calendar year. Customer agrees to remain on a Supported Release of Service Software. Landis+Gyr will install all Software Upgrades on the Service Provider Equipment. Service Software includes Landis+Gyr Application Software, operating system software, database software and any software running on the Landis+Gyr Equipment. Software DOES NOT INCLUDE any application or tools software running on local Customer computers or other Customer equipment including Mobile Administration Software (“MAS”) upgrades to handheld devices, endpoint programming software upgrades at the Customer site, Endpoint Test Manager (“ETM”), RadioShop or Substation Processing Unit Software Upgrades.
- 5.4 **Integration(s).** Landis+Gyr will provide integrations to third party systems for an additional fee as detailed in the applicable SOW.

- 5.5 Data Availability. Landis+Gyr will make available on a live basis at least 90 days of Customer Data. Data older than 90 days will be archived and available to Customer upon request (additional fees may apply). Archive data will be retained for a minimum of one (1) year unless otherwise mutually agreed upon. Additional data retention periods are available for an additional fee.
- 5.6 Monitor Collector Communications (To the Extent Service Provider is providing the Backhaul Services). To the extent applicable, Landis+Gyr will monitor the status of system communications. In the event of a fault during normal business hours if the communications fault is a result of a Landis+Gyr Equipment failure, Landis+Gyr will resolve the communications fault. If the communications fault is not the result of a Landis+Gyr Equipment failure, Landis+Gyr will report the fault for resolution by Customer. In the event of a fault as a result of a Landis+Gyr Equipment failure outside of normal business hours, Landis+Gyr will attempt to resolve the issue; however, no notice of the event will be made to the Customer. Should Customer require assistance with respect to communications to the system, after hours assistance is available as described in Schedule A.
- 5.7 Process Collector Communication Fees. Landis+Gyr will process and invoice for communication fees as applicable.
6. **Customer Responsibilities:**
- 6.1 Conduct Collector Field Maintenance. Customer will perform field maintenance work on the Meters/modules and Collectors. This includes, but is not limited to, updating the collector, ETM, RadioShop and other Field Tools software to the latest version.
- 6.2 Interface Billing data to Customer Billing System. Customer is responsible for executing the Billing Extract file utilizing the functionality built into the Command Center Software and loading it into Customer's billing system. Customer is also responsible for any exception processing that is associated with endpoints that do not have billing data available for a particular billing cycle window.
- 6.3 Provide Collector Communication. Customer is responsible for purchasing and physically maintaining all collector communications infrastructure as applicable.
- 6.4 Administer Login and Passwords. Customer is responsible for assigning security officer(s), administering all Software logins and passwords, to provide Customer-selected configurations and to maintain access rights for the Customer's employees.
- 6.5 Support Utility Consumer. Customer is responsible for handling all support for Customer's own end-use consumers. Service Provider will not provide any support regarding billing inquiries or any other matter for end-use consumers.
- 6.6 Install and Upgrade Endpoint Programmer Software. Customer is responsible to load and maintain Endpoint Programmer Software on desired hardware at Customer's location including ETM , RadioShop and other field tools.
- 6.7 Loading Files. Customer is responsible for loading MMF (Meter Manufacture Files), IIF (Interchange File Format) and CIF (Customer Information Files) files to Software.
- 6.8 Application Administration. Customer is responsible to provide Customer-selected configurations and maintain access rights.
- 6.9 Application Operations. Customer is responsible to provide daily business operations of the Software monitoring jobs; reporting; coordination of issues, etc.

- 6.10 IT coordination. Customer is responsible to coordinate management of interfaces to connected Customer Systems.
- 6.11 Upgrades. Customer is responsible to validate upgrades to Software.
- 6.12 No Collection or Storage of PII. The SaaS Services under this Service Order does not collect nor store personally identifiable information (“**PII**”). Customer agrees that it will not send or provide Landis+Gyr access to any PII, whether in data or any other form. Customer agrees to be fully responsible for reasonable costs and other amounts that Landis+Gyr may incur relating to any such information mistakenly provided to Landis+Gyr or the loss or disclosure of such information by Landis+Gyr, including those arising out of any third-party claims. Should Customer mistakenly provide PII to Landis+Gyr, Customer shall immediately notify Landis+Gyr in writing in accordance with the notice provisions herein, and reasonably cooperate with Landis+Gyr to take any mitigating actions deemed necessary to remove such PII from the Landis+Gyr Systems. Should Customer wish to utilize PII, it shall enter into a separate Service Order for Landis+Gyr’s Meter Data Management System Service Software.

LANDIS+GYR
SUPPORT AGREEMENT

This Landis+Gyr Support Agreement (this “**Agreement**”), effective as of the last signature date below (“**Effective Date**”) by and between Landis+Gyr Technology, Inc. (“**Landis+Gyr**”) and City of Winfield (“**Customer**”) sets forth the parties’ supplemental rights and obligations with respect to (i) maintenance and support for the Software licensed and (ii) Landis+Gyr Equipment purchased by Customer from Landis+Gyr, under the separate Master Purchase, License and Services Agreement by and between Landis+Gyr and Customer dated also as of the Effective Date (the “**Master Agreement**”). Defined terms used but not defined in this Agreement below have the meaning given to them in the Master Agreement.

1. Definitions.

“**Audit Date**” means the date that Customer surveys the system to determine the number of communication modules in use within the Software.

“**Case**” means a communication from Customer to Landis+Gyr through the case tracking mechanisms of Landis+Gyr reporting a suspected Defect or other problems/questions the Customer is having with the Software or Equipment.

“**Commercially Reasonable Efforts**” means taking all such steps and performing in such a manner as a well-managed company would undertake where it was acting in a determined, prudent and reasonable manner to achieve a particular desired result for its own.

“**Customer Support**” means a range of services provided by Landis+Gyr to address questions and issues associated with Landis+Gyr Software and products. Services include troubleshooting, best practices, correct application of the Software and Equipment as per Documentation, assistance recreating issues, addressing product Defects and accepting all product enhancement requests.

“**Defect**” means a (i) reproducible error in the Software or (ii) failure of Equipment to perform in substantial conformity with the specifications set forth in the Documentation.

“**Diagnose**” means to troubleshoot an issue, including making a determination whether or not the root cause is a Software or Firmware Defect.

“**Documentation**” means any and all manuals, user manuals, instructions, specifications and other documents and materials that Landis+Gyr provides or makes available to Customer in any medium and which describe the functionality, components, features or requirements of the Software, including any one or more of installation, configuration, integration, operation, use, support or maintenance thereof.

“**Endpoint**” means a sensory-type device, e.g., electric meter, water meter, gas meter, DA device, load control switch, etc., that is equipped with an Advanced Metering Infrastructure (AMI) communication module.

“**Equipment**” means Network Equipment, Endpoint (a sensory device), and/or hardware that Customer has purchased either (i) directly from Landis+Gyr or (ii) through an authorized agent.

“**Firmware**” means software embedded in the Network Equipment, Endpoints and/or hardware that

the Customer has purchased either directly from Landis+Gyr or an authorized agent.

“Maintenance Release” means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that Landis+Gyr may provide to Customer from time to time during the term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software, but does not include any New Version.

“Major Release” means updated release of Software to support major enhancements and addition of new functionality/modules, typically where the number to the right of the first decimal point has been changed.

“New Version” means any new functional module of the Software that Landis+Gyr may from time to time introduce and market as a distinct licensed product.

“Patch” means a change to the Software or its supporting data released to update, fix, improve, or to address a critical failure or Software Defect.

“Respond” means to take the following steps: (i) acknowledge to Customer that a Case has been received; (ii) open a ticket for the Case in Landis+Gyr’s Case Management System and enter the relevant data; and (iii) request any additional information not included in the initial Case that is necessary for Landis+Gyr to reproduce the cause of the Case and begin to Diagnose it.

“Service Exception” has the meaning set forth in Section 9.

“Service Levels” means the corresponding responses and response times associated with defined severity levels referred to in the Service Level Table.

“Service Level Table” means the table set out in Section 5.

“Software” means executable, object code version of the Landis+Gyr proprietary application licensed to Customer, under a separate agreement, as listed on Exhibit A, and any Maintenance Releases provided hereunder.

“Supported Release” means the most recent Major Release of the Software and two preceding Major Releases, including Maintenance Releases and Patches issued since the time that preceding Major Releases became generally available; provided, however, for Meter Data Management System Software, each Major Release will remain as a Supported Release for Thirty Six (36) months after it is made generally available by Landis+Gyr.

2. **Term; Termination.** This Agreement will commence on the Effective Date and continue for an initial term of one (1) year (the **“Initial Term”**).

- 2.1 **Renewal.** Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a **“Renewal Term”** and together with the Initial Term, the **“Term”**), unless a party provides the other party with written notice of its intent not to renew this Agreement at least ninety (90) days prior to the expiration of the then current Term.

- 2.2 **Fees During Renewal Terms.** Landis+Gyr’s Fees are fixed during the Initial Term. Fees for Renewal Terms may increase annually as of each anniversary of the renewal period by the

Percentage of the Consumer Price Index (CPI-U) published for the end of Past Calendar Year. Consumer Price Index here is defined as – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100.

- 2.3 Termination. Either party may terminate this Agreement for cause upon sixty (60) days written notice for a default of material obligations by the other party not cured within such sixty (60) day period.
- 2.4 Effect of Termination. Upon termination for any reason, or at any other time that Customer or Landis+Gyr demands, the other party shall promptly deliver and/or certify destruction of all Confidential Information (copies and originals) of the requesting party as may be in the other party's possession or under its control, as appropriate, to the requesting party.

3. **Support and Maintenance Services.**

- 3.1 Subject to the terms and conditions of this Agreement and the Software license terms and conditioned on Customer's compliance therewith, during the Term, Landis+Gyr will provide to Customer Landis+Gyr's standard customer support services in connection with the identification, diagnosis, and correction of Software Defects and/or Equipment issues, the provision of: (a) multi-channel assistance via Customer Support; (b) remote services via the Customer Support using screen share tools; (c) access to technical information on Landis+Gyr's website for proper use of the Software and Equipment (collectively, the "**Support Services**").
- 3.2 "**Maintenance Services**" will consist of Landis+Gyr providing all new Patches, Major Release and New Versions of the Software that are made generally available by Landis+Gyr so long as Customer has an uninterrupted Support Agreement.
- 3.3 Landis+Gyr shall notify its customers in a commercially reasonable period of time (no less than 18 months) should Landis+Gyr find it necessary to end of life (EOL) any Landis+Gyr Software or Equipment. Support for such EOL Software or Equipment will be limited to troubleshooting and knowledge sharing.

4. **Customer Support and Access.**

- 4.1 Case (or Support Request) and Customer Obligations.
 - (1) Customer may request support services by way of a Case request. Customer along with Landis+Gyr shall classify Customer's requests for corrections in accordance with the severity levels classifications and definitions within the Service Level Table set forth below ("**Support Request**"). Customer shall submit each Case by e-mail, telephone, portal or such other means. Customer shall include in each support Case a description of the reported issue/question.
 - (2) Customer Obligations. Customer will, by and through its employees or consultants provide Landis+Gyr with:
 - 1. prompt notice of any product Defects; and

2. each of the following to the extent reasonably necessary to assist Landis+Gyr to reproduce operating conditions similar to those present when Customer detected the relevant issue and to respond to the relevant Case:
 - a. access to the Customer systems and the Customer's files and personnel;
 - b. output and other data documents and information, each of which is deemed Customer's Confidential Information; and
 - c. such other reasonable cooperation and assistance as Landis+Gyr may request.
- 4.2 **Customer Support Hours.** Landis+Gyr's Customer Support business hours are 8:00 AM to 7:00 PM Eastern Time, Monday through Friday, excluding Landis+Gyr observed holidays (available upon request) and weekends ("**Support Hours**"). In addition, emergency access to on-call personnel via Landis+Gyr's emergency service will be provided by Landis+Gyr after business hours, and 24 hours per day on weekends and holidays. Landis+Gyr shall provide advanced troubleshooting, via telephone or e-mail or portal, as deemed necessary by qualified Landis+Gyr personnel, to resolve Customer issues.
- 4.3 **Submission Method.** Customer may contact Customer Support through:
 - (a) Customer support portal
 - (b) 1-888-390-5733
 - (c) Support.na@landisgyr.com

5. **Service Levels**

Landis+Gyr shall provide Customer with support Services on the terms and conditions set forth herein.

- 5.1 **Support Service Responsibilities.** Landis+Gyr will:
 - (1) respond to support Cases in accordance with the Service Level targets;
 - (2) provide telephone, email, or portal support as set forth below.
 - (3) Provide online access to case updates, customer information letters, customer service alert notices, including white papers, product documentation, to the full extent Landis+Gyr makes such resources available to its other customers.
- 5.2 **Target Response Levels.**

Landis+Gyr shall respond to all support Cases within the following targeted Response times based on designation of the severity of the associated Case by Landis+Gyr:

Severity	Definition	Initial Target Response Time	Subsequent Target Response Time
Severity 1 (Critical)	<p>A Severity 1 (Critical) issue indicates the production system is completely shut down or system operations or mission-critical applications are down. A Severity 1 issue also includes an application that is in final testing, facing a critical Production Use go-live time frame.</p> <p>Landis+Gyr promptly initiates the following procedures:</p> <ul style="list-style-type: none"> • Assigns specialist(s) to correct the issue on an expedited basis. • Provides ongoing communication on the status. • Landis+Gyr team immediately begins work to provide a fix or temporary workaround <p>The assumption is that customer resources are available during the contractual service hours, as necessary, to collaborate on a workaround or fix.</p>	1 Hour	2 Hours
Severity 2 (High)	<p>A Severity 2 (High) issue indicates the production system is functioning but severely impacted with limited capabilities, or is unstable with major periodic interruptions, or mission critical applications, while not being affected, have experienced material system interruptions. A Severity 2 issue may also indicate there is a time sensitive question impacting performance. Landis+Gyr assigns a specialist, and provides additional, escalated procedures as determined necessary by Landis+Gyr support services staff. Landis+Gyr exercises commercially reasonable efforts to provide a workaround or include a fix for the Severity 2 issue in the next maintenance release.</p>	4 Hours	1 Business Day

Severity 3 (Medium)	A Severity 3 (Medium) issue indicates the production system is still functioning but capabilities are moderately impacted, or the system is unstable with minor periodic interruptions or a minor loss of product functionality. There is a medium-to-low impact on the business, but the business continues to function, including by using a procedural workaround.	1 Business Day	3 Business Days
Severity 4 (Low)	A Severity 4 (Low) issue is a general usage question, request for information, reporting of a documentation error, or recommendation for a future product enhancement or modification. There is low-to-no impact on the business or the performance or functionality of the system.	3 Business Days	5 Business Days

In order for Landis+Gyr to meet Target Response Times outlined above, customers should make contact via telephone to report Critical or High issues. Any resolution of such Cases may take the form of a written response, supplementary documentation, work-around, coding change, product patch, or other correctional aids, which Landis+Gyr will provide to Customer.

6. **Support Escalation Policy:**

- 6.1 For each and every support issue presented to Landis+Gyr, the Customer Support teams work to respond as per the targeted initial and subsequent target response times. Occasionally, an issue requires a faster response, more attention, and a deeper understanding of the impact on your business.
- 6.2 When Severity Level cases classified as Critical are received, all Landis+Gyr support teams, including Support Managers, Escalations Manager, and Executive Leadership are immediately notified. The critical issue is triaged immediately., and then, the escalations leader and/or case owner contacts the customer and/or opens a phone bridge to begin efforts to address the issue. Both Landis+Gyr and Customer will work in good faith to address the issue. The critical issue is worked until a work-around or resolution is provided, or customer agrees the Case severity is no longer critical and can be changed to a service level other than severity one.
- 6.3 Regardless of the Case severity, if a Customer believes that they are not receiving the proper response, the Customer may escalate the concern to Landis+Gyr. A customer may escalate the issue by notifying the concern to their Account Executive or ask the Case owner to escalate their Case to a customer Support Manager.
- 6.4 For any critical or escalated issue, the Customer Support Manager becomes involved and is responsible for ensuring the shortest possible resolution time through engaging the appropriate people and communicating the agreed action plans to the stakeholders from any of the personnel involved. They proactively engage the senior executives, as appropriate, to

improve customer relationships and demonstrate Landis+Gyr's commitment to the customer at the highest levels.

7. **Releases.** During the warranty period and the period for which maintenance has been purchased by Customer and as part of maintenance, Landis+Gyr will provide to Customer all Major Releases, Maintenance Releases, and all critical Patches of the licensed Software and Firmware as available (collectively, the "**Releases**").
 - 7.1 All Releases shall be included in the definition of Software under the separate license agreement. Such obligation is limited to Releases which Landis+Gyr generally releases to all its customers during such time period.
 - 7.2 Customer is responsible for installation and integration of any Release, excluding a Release relating to Infringement (which Release shall be the sole responsibility of Landis+Gyr). If the parties agree upon terms for Landis+Gyr to provide services in connection with the installation or further integration of a Release, that understanding will be documented under a separate consulting services agreement.
 - 7.3 Landis+Gyr will not be obligated to provide maintenance if Customer has not installed a Supported Release.
 - 7.4 For avoidance of doubt, Software upgrades do not include new modules, application extensions, components, interfaces and adapters supporting additional functions.
 - 7.5 Landis+Gyr may issue customer service alerts when necessary. Landis+Gyr will make the most current user manuals available through a customer portal that will be provided to Customer at no additional charge.
 - 7.6 Landis+Gyr will test Releases applying its Commercially Reasonable Efforts before certifying them as generally available.
 - 7.7 Custom code developed by Landis+Gyr for the Customer may be agreed upon under a mutually agreed statement of work for additional fees. Support for such customized code would be described in such statement of work.
8. **Customer Responsibilities.** Maintenance under this Agreement does not include and will not be provided by Landis+Gyr to Customer to the extent Customer does not comply in all material respects (to the extent applicable to the particular Software, Firmware and Equipment) with the following responsibilities of Customer:
 - (a) Ensure that the physical system environment, e.g., hardware requirements and configurations, temperature, humidity, physical security, is within Landis+Gyr's recommended parameters as specified in the Landis+Gyr recommended environments Documentation which is provided to Customer prior to implementation.
 - (b) Customer will perform field maintenance on the Equipment. This includes, but is not limited to, updating the Firmware and communication module Firmware to the latest versions which have been provided by Landis+Gyr
 - (c) Check system operational logs for Software Defects and verify that non-AMI network events are excluded.
 - (d) Check file system for any corruption.

- (e) Monitor disk space.
- (f) Back up the Landis+Gyr application software and configure files on a regular basis (weekly and monthly).
- (g) As applicable, maintain system users' password control and network security at all levels.
- (h) Investigate faults relating to the interconnection between the Software and the hardware of the host system.
- (i) Generate and monitor system statistics, as recommended in writing by Landis+Gyr during the project kick off meeting.
- (j) Make available to Landis+Gyr, if necessary, a remote communication connection to the Software for Landis+Gyr to provide remote system support.
- (k) Reasonably cooperate with and assist in Landis+Gyr's verification and replication of Defects.
- (l) Provide to Landis+Gyr all reasonable access to the location of the Software, Equipment and the host system hardware, including access to all relevant utilities, data communications sources, and data. Access can be in the form of secure VPN, web conferencing, remote access, or other secure access methodology as agreed by the parties in writing.
- (m) When reporting a suspected Defect, Customer is obligated to: (i) ensure that the use of the Software and Equipment is in accordance with its Documentation; (ii) use commercially reasonable efforts to eliminate any third party hardware, any operating system software, and any third party application software deficiencies; (iii) capture all relevant data, reasonably document the relevant operating conditions and other operating information, and supply Landis+Gyr with reasonably requested diagnostic information in English; and (iv) implement mutually agreed upon remedial, corrective or work-around procedure(s) and reasonably describe any limitations imposed by such corrections or workarounds that are known to Customer.
- (n) Once Customer completes its testing and validation procedures, Customer will promptly install all Software and Equipment provided by Landis+Gyr from time to time pursuant to this Agreement within a reasonable time after receipt thereof provided that such Software and Equipment is at no additional cost to Customer. Customer will use reasonable efforts to notify Landis+Gyr of any such installation of Software and Equipment within a reasonable period of time after installation. Customer shall endeavor to notify Landis+Gyr of verified resolution or otherwise take action within 10 business days of a shipment from Landis+Gyr with respect to a suspected Defect.

9. **Exclusions from Coverage.**

- 9.1 **Matters Which Cause an Exclusion of Coverage.** Support Services does not include and will not be provided with respect to any Case which is in part or whole caused by or the result of any of the following (each a "**Service Exception**"):

- (a) Any modification of the Software and Equipment performed by any party other than (i) Landis+Gyr or (ii) a third party approved in writing by Landis+Gyr in advance which performs such modifications in accordance with the Documentation.
- (b) Any use of the Software and Equipment not in compliance with Landis+Gyr Documentation.
- (c) Any hardware, peripheral products, or software not provided by Landis+Gyr or the interoperability of those products with the Software and Equipment other than those contemplated under the Agreement or the Documentation.
- (d) Any Defect, performance degradation, deficiencies, or non-compliance in any hardware or any other software used in connection with the Software, but not supplied by Landis+Gyr.
- (e) Unsealing, opening, or any modification of the Equipment performed by any party other than (i) Landis+Gyr or (ii) a third party approved in writing by Landis+Gyr in advance which performs such modifications in accordance with the Documentation.
- (f) Landis+Gyr hardware or equipment purchased from an unauthorized seller, dealer, or distributor.
- (g) Customer specific code installed and managed by the customer.
- (h) Customer specific code developed and managed by a third party.
- (i) Any other event not caused by Landis+Gyr.

9.2 Matters Excluded from Coverage. Maintenance is only provided as specified in this Agreement. Any additional services are not included in maintenance and will require other agreements between the parties. The following services are not included in maintenance:

- (a) Design and configuration of the Software.
- (b) System administration work that should be completed by Customer's system administrator, as addressed in the applicable SOW or project kick off meeting.
- (c) On-Site support services.
- (d) Delivery, license, or implementation of Software Releases other than those Releases specified herein.
- (e) Server hardware repairs and replacements.
- (f) Advanced Signaling Certification and maintenance. Certification (ANSI/ITU compliance) and maintenance for SS7, ISDN, and future advanced signaling protocols.

9.3 Reproducible Matters. Customer will promptly notify Landis+Gyr of a Defect. The parties acknowledge that maintenance under Agreement (and any warranty services in this Agreement with respect to the Software and Equipment) may be difficult to provide unless a Defect or alleged Defect is reproducible or verifiable by Landis+Gyr.

10. Limitation of Liability

- 10.1 No Consequential or Indirect Damages. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE OR PROFIT, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION UPON WHICH A CLAIM FOR DAMAGES MAY BE BASED, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY. THESE LIMITATIONS WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS IN ITS ESSENTIAL PURPOSE.
- 10.2 Maximum Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO LANDIS+GYR PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.
- 10.3 Exceptions. THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION 12 SHALL NOT APPLY TO DAMAGES OR LIABILITIES ARISING FROM: PERSONAL INJURY OR DEATH OR DAMAGE TO ANY REAL OR TANGIBLE PERSONAL PROPERTY CAUSED EITHER PARTY'S NEGLIGENT ACTS OR OMISSIONS, OR WILLFUL MISCONDUCT.

11. General

- 11.1 Complete Agreement, Modification and Assignment. The parties agree that this Agreement and any ancillary agreements, exhibits or schedules constitutes the complete and exclusive agreement between them with respect to its subject matter and supersedes all previous understandings, negotiations, proposals, acknowledgements, and representations, whether oral or written with respect thereto. No modification of this Agreement will be effective unless it is in writing and signed by authorized representatives of Customer and Landis+Gyr. Customer may not assign this Agreement, or its rights or obligations under them without the express written consent of Landis+Gyr which shall not be unreasonably withheld. Any exhibit attached hereto is incorporated herein by this reference.
- 11.2 Notices. Notices, other than routine communications having no legal effect, shall be in writing and shall be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed facsimile addressed to the addresses set forth below:

For Customer: City of Winfield
 2701 East 9th Avenue
 Winfield, KS 67156

Attn: Legal Contact
Facsimile No: Fax Number

For Landis+Gyr: Landis+Gyr Technology, Inc.
30000 Mill Creek Avenue, Suite 100
Alpharetta, GA 30022
Attn: Legal Department
Facsimile No: 678.258.1686

- 11.3 Force Majeure. Except for payment obligations, neither party is liable for failing to fulfill its obligations due to acts of God, civil or military authority, war, riots, strikes, fire, pandemic, epidemic or other communicable disease, quarantines, or other causes beyond its reasonable control. To the extent a party is substantially delayed by force majeure from performing its obligations hereunder, such party shall give notice and details of the force majeure to the other party as soon as practicable, then the parties may extend the time for performance by written agreement. In the event it shall become impossible for Landis+Gyr or Customer to perform its respective obligations because of force majeure, then in such event the party so unable to perform may terminate this Agreement upon written notice to the other. In no event shall an event of force majeure excuse or delay the payment of any amount owed by one party to the other party under this Agreement.
- 11.4 No Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no party other than Landis+Gyr and Customer shall have any legally enforceable rights under this Agreement.
- 11.5 Headings. All headings used in this Agreement are for reference purposes only and are not part of this Agreement.
- 11.6 Waiver; Severability. No delay or omission by Customer or Landis+Gyr in enforcing its rights or remedies under this Agreement shall impair such right or remedy or be deemed to be a waiver thereof. Any waiver, in whole or in part of any provision of this Agreement will not affect be considered to be a waiver of any other provision. No waiver of this Agreement shall be valid unless in writing and signed by the parties thereto. If any term of this Agreement is found to be unenforceable or invalid for any reason, such term shall not affect the other provisions, but such unenforceable term shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Customer and Landis+Gyr set forth in this Agreement, and all other terms will remain in full force and effect.
- 11.7 Independent Contractor. Nothing in this Agreement shall be read as appointing either party as the agent or legal representative of the other party for any purpose whatsoever, nor shall either party hold itself out as such. This Agreement does not create or is intended to create any express or implied relationship of joint ventures, partners, employer and employee, associates, or principal and agent between the parties, and both parties are acting as independent contractors and principals for their own accounts. Neither party is granted any right or responsibility for or on behalf of the other or otherwise to bind the other. In providing the maintenance, Landis+Gyr shall have sole responsibility for all persons employed by it in connection with the performance of such maintenance and, except as provided in this Agreement, Landis+Gyr shall solely determine the methods, details, and means of performing the Services.

- 11.8 No Personally Identifiable Information. Landis+Gyr software support specialists may request that Customer send Landis+Gyr the problem information, systems data or test cases, etc., or that Landis+Gyr support specialists be able to view it with Customer electronically. To accomplish this, Customer may be offered several options by the Landis+Gyr support specialist. Customer agrees that it will not send or provide Landis+Gyr access to any personally-identifiable information (“PII”), whether in data or any other form. Customer agrees to be fully responsible for reasonable costs and other amounts that Landis+Gyr may incur relating to any such information mistakenly provided to Landis+Gyr or the loss or disclosure of such information by Landis+Gyr, including those arising out of any third-party claims. Should Customer mistakenly provide PII to Landis+Gyr, Customer shall immediately notify Landis+Gyr in writing, and reasonably cooperate with Landis+Gyr to take any mitigating actions deemed necessary to remove such PII from the Landis+Gyr systems.
- 11.9 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Georgia and shall for all purposes be construed and enforced in accordance with Georgia law without regard to its conflicts of laws principles.
- 11.10 EEOC and Affirmative Action.
- Landis+Gyr is in compliance with all of the laws and Executive Orders prohibiting discrimination, including but not limited to Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991, 42 USC 2000(e), et seq., and all applicable state and local laws against discrimination.**
- Landis+Gyr and subcontractor, if any, shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**
- 11.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the Effective Date.

Acknowledged and agreed by the authorized representatives of the parties.

City of Winfield

Landis+Gyr Technology, Inc.

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Exhibit A

Fees and Payment Terms

Invoice and Payment. Landis+Gyr will issue invoices to Customer for all amounts owed to Landis+Gyr hereunder. Invoices for Support and Software Maintenance Services shall be issued yearly in advance. Payment is due within thirty (30) days of the invoice date. Late payments will be subject to interest from the due date at the lesser of one percent (1%) per month or the maximum rate allowed by law.

TECH STUDIO ANNUAL SOFTWARE MAINTENANCE FEE	
Description	Annual Fee
Tech Studio Annual Maintenance (per license)	\$220.00



Request for Commission Action

Date: 6/15/21

Requestor: Patrick Steward, Director of Public Improvements

Action Requested:

Approval of proposal from Bryant & Bryant for concrete curb and gutter, valley gutters, and approaches along 5th Avenue from Maris to College.

Analysis:

5th Avenue has been on the City's five year plan for improvements. However, the continual flow of water from the hospital has pushed the project to the forefront. On a typical street repair, the typical scope would be a mill and overlay of the asphalt. However, due to the condition of the existing curb and gutter coupled with sustained flows of water, create the need to perform a more significant scope of work. We are requesting approval for a contract to replace the curb and gutter for this section of roadway ahead of a mill and overlay that would occur later this year. We requested prices from both Bryant and Bryant and APAC, the other contractor that has performed this type of work for the city in recent years. Bryant & Bryant has performed ADA ramp work associated with the City's street improvement projects for several years and they submitted the lowest cost proposal for the work.

Therefore, we are requesting approval of the unit price proposal from Bryant and Bryant for performing this work for a total estimated cost of \$225,000.00

Fiscal Impact: This work is included with in the budget for this year's street maintenance work.

Attachments: Resolution

A RESOLUTION

AUTHORIZING and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for Project No. 21-TI909 for concrete curb and gutter street improvements between the City of Winfield, Kansas and Bryant and Bryant Construction, Inc., Halstead, Kansas.

WHEREAS, proposals for the street improvements were requested and accepted; and,

WHEREAS, Bryant and Bryant Construction, Inc., Halstead, Kansas submitted the apparent lowest proposal;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The Mayor and Clerk of the City of Winfield, Kansas are hereby authorized and directed to execute a contract for the amount of two hundred twenty-five thousand dollars and zero cents (\$225,000.00) for Project No. 20-TI893 for concrete curb and gutter street improvements for on 5th Avenue, between the City of Winfield and Bryant and Bryant Construction, Inc., Halstead, Kansas, a copy of which is attached hereto and made a part hereof the same as if fully set forth herein.

Section 2. This resolution shall be in full force and effect from and after its passage and approval.

ADOPTED this 17th day of June 2021.

(SEAL)

Gregory N. Thompson, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: _____
William E. Muret, City Attorney

Approved for Commission action: _____
Taggart Wall, City Manager/ps



Request for Commission Action

Date: June 17, 2021

Requestor: Taggart Wall

Action Requested: Approval of a purchase agreement between Osage Ambulances, Jefferson City, MO and the City of Winfield for the purchase of a 2022 Type II Ambulance on an Osage supplied 2022 Ford T350 High Roof Transit, Eco-Boost Engine, All-Wheel Drive Chassis.

Analysis: The City of Winfield was recently awarded a USDA grant award in the amount of approx. \$125,000.00 for an ambulance purchased in early 2021 as well as this purchase. By combining the two purchases into one grant application, nearly the entire cost of the second smaller ambulance is paid for by grant award dollars. The net cost to the City on the second ambulance is approximately \$26,000, which will go toward the cost of a Stryker Powerload Cot system that will be on the unit.

The project continues the City's efforts to replace the aged fleet of ambulance still remaining after service acquisition in 2014.

Fiscal Impact: Total fiscal impact will be approximately \$26,000 after grant reimbursement. This is an unbudgeted expense for 2021 and will be paid from reserves.

Attachments: Purchase Confirmation and Agreement 6/03/21



EMERGENCY SERVICES SUPPLY

2637 Drew Perry Road
Jefferson City, MO 65109

PURCHASE CONFIRMATION AND AGREEMENT

06/03/2021

This document is provided as confirmation of the purchase order with Winfield Fire/EMS of Winfield Kansas for 2022 Type II Ambulance on an Osage supplied 2022 Ford T350 High Roof Transit, Eco-Boost Engine, All-Wheel Drive chassis by Osage Ambulances.

Ambulance Cost: - - - - -	\$110,875.00
Stryker Powerload- - - - -	\$21,794.00
Stryker Power Cot- - - - -	\$18,793.00
Total Unit & Options Price: - - - - -	\$151,462.00

DELIVERY LOCATION:	Osage Plant or Winfield Kansas
DELIVERY TIME:	2022 (Dependent upon Ford Chassis availability)
PAYMENT:	Net on delivery per unit

Winfield Kansas Representative

Date

David Vance

David Vance
Emergency Services Supply / Osage Ambulances

06/03/21

Date