



City of Leavenworth
100 N. 5th Street
Leavenworth, Kansas 66048

CITY COMMISSION STUDY SESSION & SPECIAL MEETING
COMMISSION CHAMBERS
TUESDAY, NOVEMBER 1, 2022 6:00 P.M.

Welcome to your City Commission Study Session & Special Meeting

Please turn off or silence all cell phones during the meeting

Meetings are televised everyday on Channel 2 at 6 p.m. and midnight and available for viewing on YouTube

STUDY SESSION:

1. Semi-Annual Report – Convention & Visitors Bureau (pg. 2)
2. Semi-Annual Report – Leavenworth Public Library (pg. 18)

SPECIAL MEETING:

Open Special Meeting

Action: Motion

3. First Consideration Ordinance Franchise Agreement with Unite Private Networks

Action: Consensus (pg. 19)

Close Special Meeting

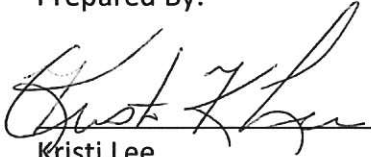
Action: Motion

Adjournment

Action: Motion


Policy Report
Leavenworth Convention and Visitors Bureau – Semi-Annual Report
Nov 1, 2022

Prepared By:



Kristi Lee
CVB Manager

Reviewed By:



Penny Holler
Assistant City Manager

BACKGROUND:

Leavenworth Convention and Visitors Bureau (CVB) Manager Kristi Lee will provide an update of activities and operations of the CVB.

Leavenworth, Kansas



CONVENTION AND VISITORS BUREAU

CVB Report 4 QTR 2022

November 1, 2022





Discussion Points

1. Nat'l Travel Industry Update
2. Kansas State Tourism Update
3. Leavenworth Tourism Update

National Travel Industry Update

Travel Forecast

The latest U.S. Travel Forecast projects that travel will remain resilient, despite high inflation and an overall decline in consumer sentiment. Domestic leisure travel spending has already surpassed pre-pandemic levels, domestic business travel is picking up and is expected to reach 81% of pre-pandemic levels. Int'l inbound travel is on a comeback due in part to the dropping of the pre-departure testing.

Meetings

While there is a positive outlook for business travel in Q3, there are headwinds on the horizon that threaten growth. Half of all companies still have policies in place restricting business travel. Companies will make travel decisions based on increased interest rates, high inflation, labor shortages and supply chain challenges. Business travel is critical to the full recovery of the US economy as a whole.

Inflation

Inflation continues to erode consumer confidence and sentiment has remained low. Consumers are spending much more on gasoline and other essentials while pulling back on discretionary spending. The economic slowdown along with labor shortages has begun to erode corporate profitability. Couple this with record low consumer expectations and a recession might be on the horizon.

Kansas Tourism

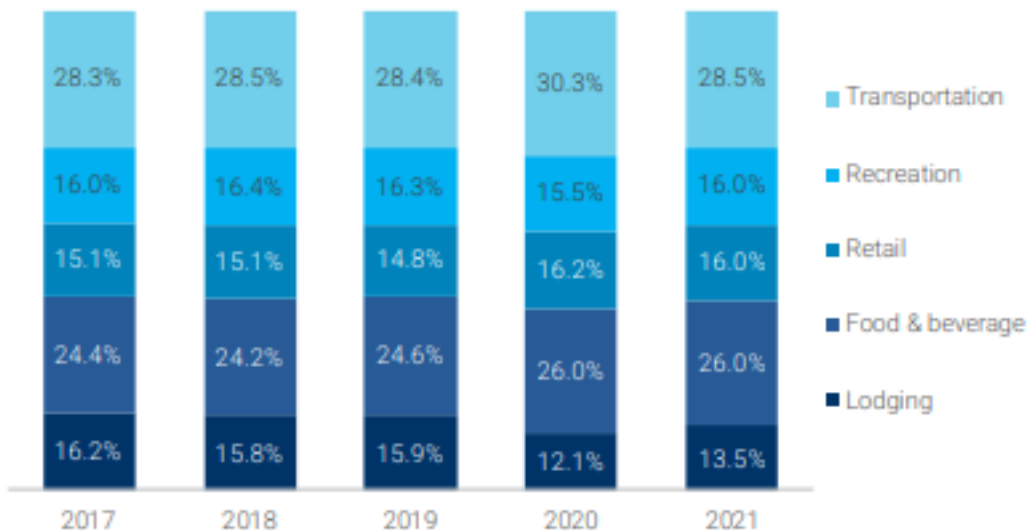


Economic Impact Key Findings for 2021

With pandemic effects on businesses lessening and travel confidence increasing, visitor activity in Kansas jumped in 2021. Visitor spending increased 28% to \$7.0 billion as tourism in rebounded back to 95% of 2019 levels. Visitor spending jumped \$1.5 billion as attractions and events reopened and restarted. Visitor spending increases were driven by visitation gains, with increases in overnight visitors, helping boost per-visitor spending. Visitation increased by 7%, rebounding to 33.7 million visitors in 2021

Visitor Spending Shares in Kansas, 2017-2021

By category, %



Visitor spending, visitor supported jobs, and business sales generated \$1.3 billion in government revenues. State and local taxes alone tallied \$700 million in 2021.

Each household in Kansas would need to be taxed an additional \$613 to replace the visitor-generated taxes generated by visitor activity in Kansas and received by state and local governments in 2021.

Source: DK Shifflet, Tourism Economics



Kansas Tourism



Economic Impact Key Findings for 2021

ECONOMIC IMPACTS IN CONTEXT



\$7.0B VISITOR SPENDING

Spread out equally, this equals over \$16 million per mile of I-70 in the state. It costs about \$1 million to pave a mile of road, so tourism money would pay that 16 times over.



\$1.5B VISITOR SPENDING INCREASE

The \$1.5 billion increase in visitor spending is equal in size to the construction cost of KCI's new terminal.



84,508 JOBS

Were all tourism supported jobs located in one city in Kansas, it would be the 7th largest city in the state – bigger than Shawnee and just shy of Lawrence.



\$700M STATE & LOCAL TAXES

Each household in Kansas would need to be taxed an additional \$613 to replace the visitor taxes received by the state and local governments in 2021.



\$4.9B

Spending by
Overnight
Visitors



\$2.0B

Spending by
Day Visitors

=



\$7.0B

Direct
Spending
Impact

Note: Numbers may not add up due to rounding



33.7 MILLION

Total Visitors to Kansas in 2021

TOTAL ECONOMIC IMPACT

The direct visitor spending impact of \$7.0 billion generated a total economic impact of \$11.2 billion in Kansas in 2021 including indirect and induced impacts. This total economic impact sustained 84,400 jobs and generated \$700 million in state and local tax revenues in 2021.



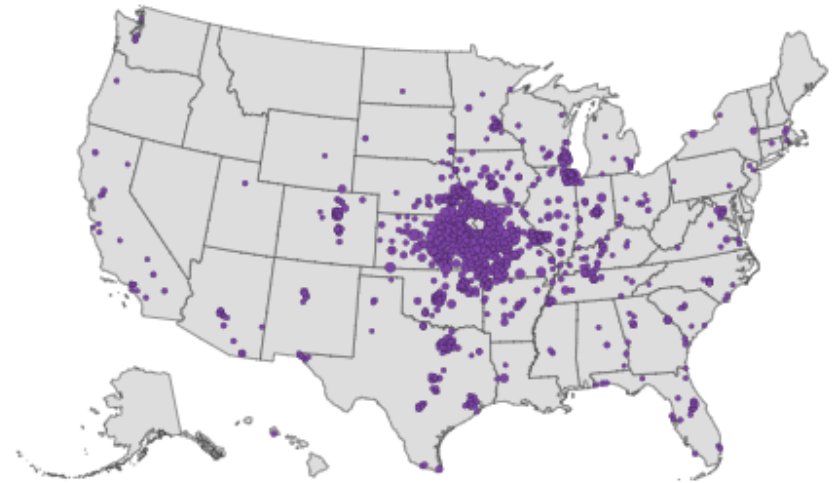
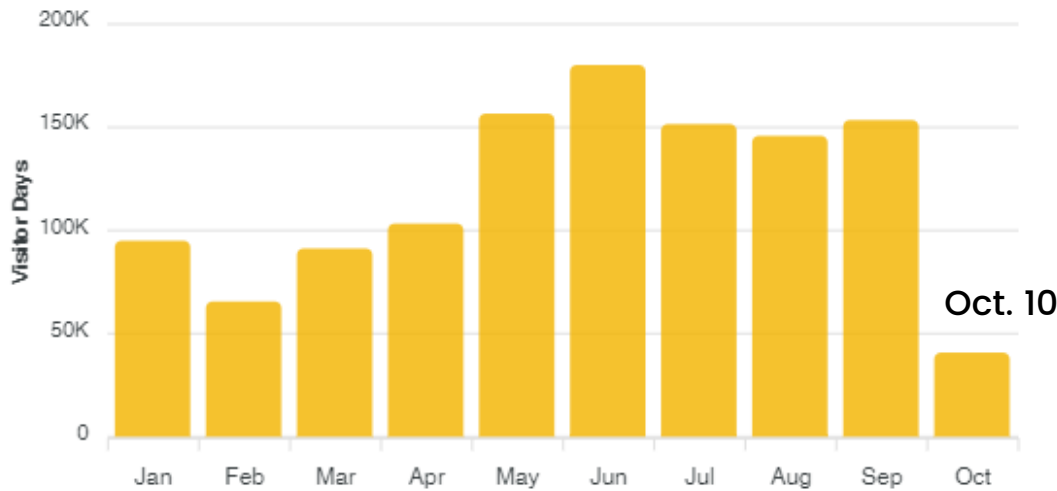
\$11.2 BILLION

Total Economic Impact of Tourism in Kansas in 2021

LEAVENWORTH STATISTICS 2022

Leavenworth Visitors from 50+ miles

Monthly Volume by Visitor Days



Age

- 16-24
- 25-44
- 45-64
- 65+

Leavenworth KS



Income

- \$0-\$50k
- \$50k-\$74k
- \$75k-\$99k
- \$100k+

Leavenworth KS



Household Size

- 1-2
- 3-5
- 6+

Leavenworth KS



Education Level

- High School
- Bachelors
- Graduate

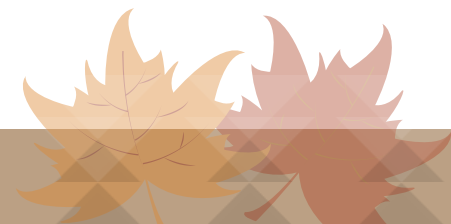
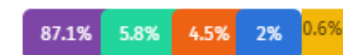
Leavenworth KS



Ethnicity

- Asian
- Black
- Hispanic
- Other
- White

Leavenworth KS

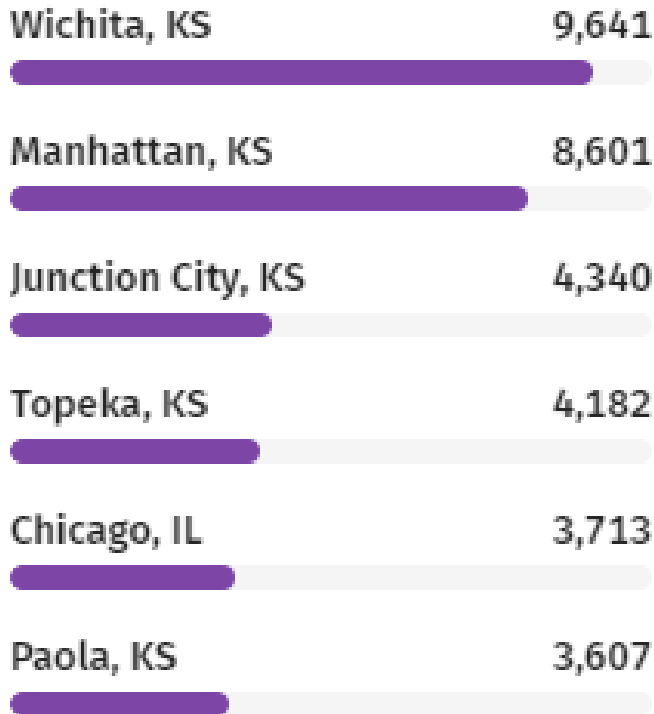


LEAVENWORTH STATISTICS 2022

Estimated visitors to Leavenworth, 50+ miles

2017	214,688	2020	133,653
2018	240,900	2021	107,688
2019	214,075	2022	118,986 Oct.

Top cities visiting Leavenworth



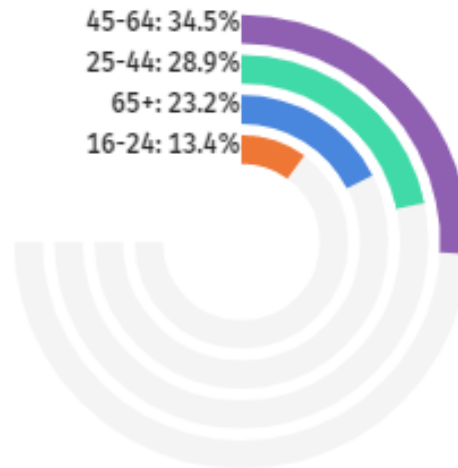
Visitor Days by Length of Stay



- Day Trip 40%
- 2 Days 8.5%
- 3 Days 5.3%
- 4 Days 5.8%
- 5 Days 10.8%
- 6+ Days 29.6%

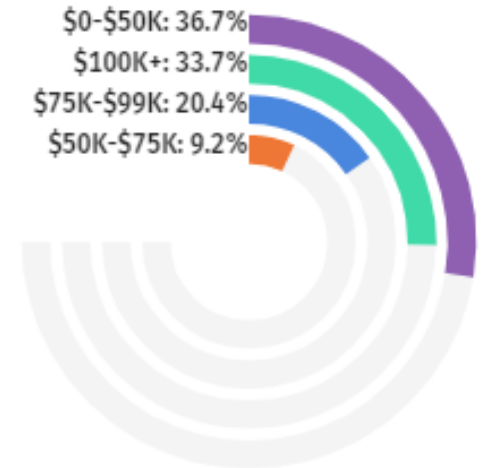
Age

- 45-64: 34.5%
- 25-44: 28.9%
- 65+: 23.2%
- 16-24: 13.4%



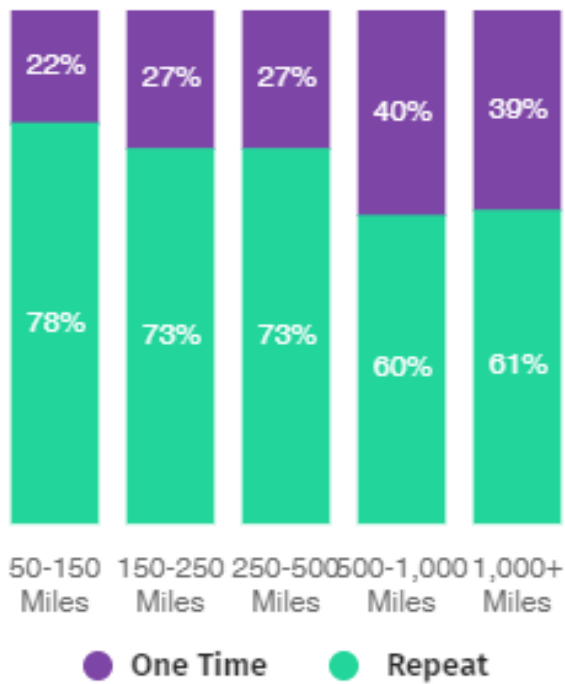
Income

- \$0-\$50K: 36.7%
- \$100K+: 33.7%
- \$75K-\$99K: 20.4%
- \$50K-\$75K: 9.2%



LEAVENWORTH STATISTICS 2022

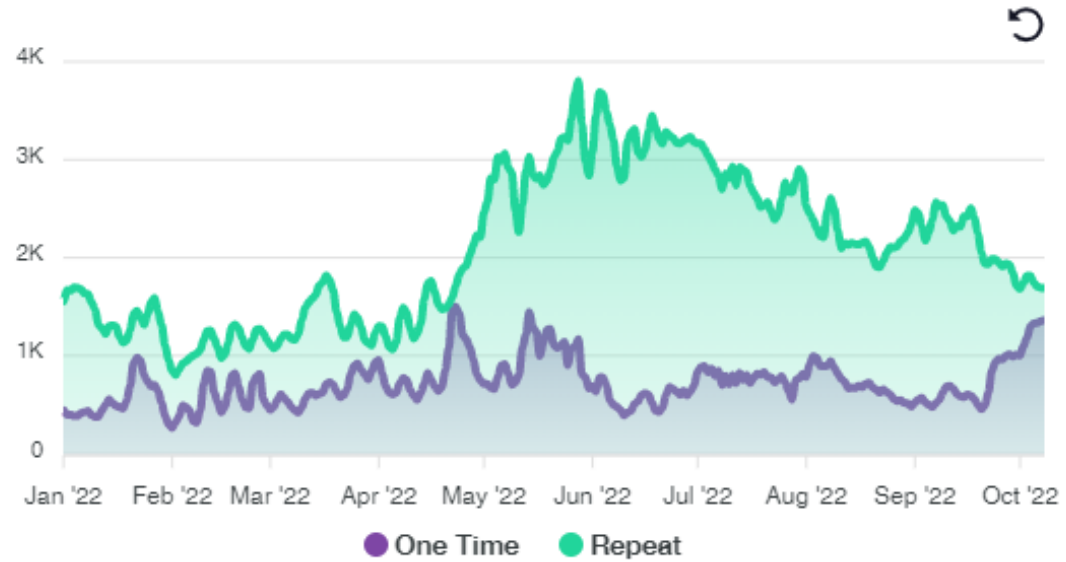
Distance



Visitor Type



Daily Visitors Over Time



LEAVENWORTH UPDATES



Jan 1 - Oct. 20



Occupancy

Leavenworth

State

61.4%

58.8%



RevPar

\$64.96

\$57.14



Average Daily Rate

\$105.77

\$95.54



TGT Funds

\$491,170.27

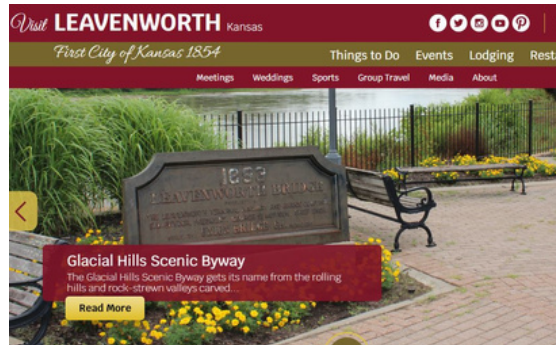
collected thru Sept.



Website Jan-Oct 2022

78,676 Unique users

165,069 Page views



Top Referral Sites

Travelks.com, Timeout.com,
Tockify.com, LeavenworthKS.org,
Kansasi70.com

LEAVENWORTH UPDATES



Visitor Guidebooks

Distributed 7,893 visitor guidebooks. They are distributed through travel centers, local delivery, hotels, trade-shows, direct inquires, on line inquires, walk ins, and RFCC lobby.

502 Direct individual requests, 426 welcome bags, and 2,470 mailed to Visitor Centers.

Print advertising

Placed 26 print ads with a distribution of 3.6 million in publications

On-Line Advertising

11 Banner ads, SEM meeting campaign, with impressions of over 765K.

E-NewsEvents Calendar

emailed to over 1,204 subscribers twice a month with an average open rate of 22%

Social Media

Facebook, Twitter, Pinterest, and Instagram have over 8,111 followers. A 4.5% increase over last year at this same time.

We are currently running an ad on FB to "Fall in Love with Leavenworth. 3,027 Reached so far and 154 CTR to website. This ad will run until Nov. 13. We will start a Holiday ad Nov 15 thru Dec 24th.



Billboards and more

2 Billboards 4 months with a reach of 1.4 million. We will run a holiday campaign Nov - Dec.



Visit Kansas I-70 Association
 October 3 at 7:00 PM · 🌐

#IPulledOverForThisKS - LEAVENWORTH – C.W. PARKER CAROUSEL MUSEUM

Leavenworth's #1 attraction opened in 2005 and features a newly restored, fully operational 1913 C.W. Parker Carousel Museum, originally made in Leavenworth by the C.W. Parker Carousel Amusement Company.

The Museum, operated by the Leavenworth Historical Museum Association, houses carousels that are historically registered, as well as a C.W. Parker cylinder piano, an Artizan A-X-1 band organ, and a Wurlitzer ... See more



Partnership Marketing

Leavenworth CVB continues to meet and support marketing campaigns with our partners. I am on the Main Street Design committee and the benches and Passage Ways programs are a part of this committee. We also sponsor several events through out the year such as the Summer Concert Series and Christmas window contest.

I-70 Association: Newsletters x 4 yr, hosted a travel writer between all the communities, and the main "I pulled over for this" summer campaign with 2 different Road Trip giveaways. I-70 Assoc. has an annual marketing budget of \$30,000.00+ and 17 member communities along I-70. We meet six times a year in member communities.

Kansas City Regional Destination Alliance has a program of work for approx. \$12,000 in 2022. KC Trips marketing committee hired 2 different travel writers in the spring, FB page postings, featured Blog posts on website, Tourism Gives Back Day as part of our Nat'l Travel and Tourism Week, updated website and more opportunities throughout the year.

Leavenworth Updates

Tourism Services and Public Relations Coordinator, Jennifer Davoren started with the CVB on July 21st. PT Administration Clerk, Shannon Umbarger was hired and started her position with the CVB on Oct. 20.

The CVB is working with Municode now Civic Plus on a website redesign/refresh. Civic Plus offers several new functions and upgrades that we will incorporate and roll out the new site in early 2023.

The CVB is working with NPG Newspaper out of St. Joe on our 2023 Visitors Guidebook. Ads are currently being sold and layout is being worked on. We are very excited about our new guide and it will be available in January 2023 for distribution.



2022 UPDATES

TGT GRANTS: Aug 1, 2022

The Tourism Grant review committee met on Aug 12th and determined the amounts for the grant applications for the Aug 1, 2022 round. We were able to roll over funding from previous unused grants. We funded 6 organizations for the Aug 1 2022 round.

First City Film Fest. - \$4000, short films
Richard Allen Cultural Ctr. - \$4000, advertising
LCHS - \$4000, Gala and Vintage Homes Tour
Heritage Events Ctr. - \$2,932, Fall Craft Show
DAR - \$1000, Greenwood Cemetery Dedication
Miss KS Vol. Pageant - \$5000, Pageant

Conferences:

August 19-21, 2022 We hosted the Kansas Dialogue Conference at the Riverfront Community Center. Over 75 people participated in the 3 day event.

Group Tours

April 15	Burlington KS Parks & Rec
May 13-14	Lions Dist. Mtg
June 3,4,5	Anders Family Reunion
June 8	359th Transportation Co.
June 10	Faust Tours
June 10	Sharp Family Reunion
June 17	SF Historic Model RR Tour
July 9	LHS 50 Class Reunion
Aug 30	Johnson Cty Parks & Rec
Sept 2-4	Brockenbrough Family Reunion
Sept 16-18	Ginny Torcia HS Reunion
Sept 22	Farmers State Bank
Sept 22	Marine Corp 3rd Battalion
Sept 29	ARS Navy Reunion
Oct. 12-13	Air Capital Tour
Dec 16	Montague Tour Design

Calendar of Events

Oct 29-Nov 7	The Kitchen Witches
Nov 5	2nd Annual Holiday Market
Nov 5	Holiday Bazaar & Flea Market
Nov 5	Holiday Open House Downtown
Nov 5	Jim Winters in Concert
Nov 11	Artisans Show and Sale
Nov 11	103rd Veterans Day Parade

TIAK

Travel Industry
Association of Kansas



AMERICAN BUS ASSOCIATION



select
TRAVELER



Midwest Travel
Network
16
#MTravel



2022 TRADE SHOWS and CONFERENCES

- American Bus Association,
Grapevine, TX Jan 7-11
- Select Travel Conference,
Cheyenne, WY March 28-30
- PAIR Day, Ft Leavenworth
April 9
- African American Travel Conference
Topeka, KS April 12-14
- Midwest Travel Market
St. Cloud, MN June 22-25
- PAIR Day, Ft Leavenworth
August 20
- Veterans Resource Fair
Leavenworth, Sept. 17
- Small Market Meetings
Wichita, KS Oct 2-4
- KS Tourism Conference
Wichita, KS Oct 17-20
- KSAE Meeting Showcase,
Topeka KS Dec 8

Happy
Holidays

Thank you!



klee@firstcity.org



www.visitleavenworthks.com



+913-758-2948




**STUDY SESSION POLICY REPORT
SEMI-ANNUAL REVIEW
PRESENTED BY
LEAVENWORTH PUBLIC LIBRARY**

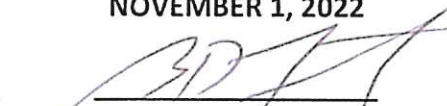
NOVEMBER 1, 2022

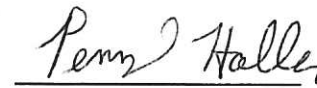
Library Director Matt Nojonen will provide the semi-annual update to the City Commission.

**POLICY REPORT
FIRST CONSIDERATION ORDINANCE
TELECOMMUNICATIONS CONTRACT FRANCHISE AGREEMENT**

NOVEMBER 1, 2022


Sarah Bodensteiner, CMC
City Clerk


Brian Faust
Public Works Director


Penny Holler
Assistant City Manager

ISSUE:

Consider the Telecommunications Contract Franchise Agreement with Unite Private Networks, L.L.C.

BACKGROUND:

The City of Leavenworth was notified that Unite Private Networks, L.L.C., is expanding into Leavenworth as part of a project to provide fiber-based telecommunications services to Leavenworth Public School District USD 453. The intent of the project is to connect the schools and other school district facilities on one network. As required by Kansas Statute K.S.A. 12-2001, an Ordinance is required to grant the franchise agreement.

The proposed agreement has been reviewed by the City Attorney and City Staff. The following are some of the highlights of the agreement:

- Unite Private Networks, L.L.C. will remit to the City a franchise fee of 5% of Gross Receipts
- Unite Private Networks, L.L.C. will pay a one-time application fee of \$1,000.00 to cover the cost of reviewing and approving the agreement
- Unite Private Networks, L.L.C., is required to obtain necessary permits and licenses
- Use of Public Right-of-Way -The City still maintains its home rule powers in administration and management of public right-of-way
- Contract shall be effective for a two-year term and will automatically renew for up to four (4) additional two (2) year terms unless either party notifies the other of its intent to terminate

ACTION:

Place on first consideration Ordinance a Telecommunications Contract Franchise Agreement with Unite Private Networks, L.L.C.

ATTACHMENTS:

- Proposed Ordinance Telecommunications Contract Franchise Agreement

ORDINANCE NO. XXXX

AN ORDINANCE GRANTING TO UNITE PRIVATE NETWORKS, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF LEAVENWORTH, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

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

SECTION 1. DEFINITIONS.

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

- a. “Access line” - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer’s premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
- b. “Access line count” - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. “Access line fee” - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. “Access line remittance” - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
- e. “City” - means the City of Leavenworth, Kansas.
- f. “Contract franchise” - means this Ordinance granting the right, privilege and franchise to Grantee to use the City’s public right-of-way to provide telecommunications services within the City.

- g. “Facilities” - means the Grantee’s telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and other equipment comprising the Grantee’s system located within the public right-of-way, designed, constructed, and used to provide telecommunication services to or from locations within the City.
- h. “Grantee” – Unite Private Networks, L.L.C., a Delaware limited liability company, authorized to do business in Kansas, as a provider of telecommunication services within the City. References to Grantee shall also include, as appropriate, any and all successors and assigns.
- i. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee’s Facilities to provide services described in Sections (1) through (6) . All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- j. “Local exchange service” - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
- k. “Public right-of-way” - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts. The term further does not include infrastructure located within the public rights-of-way owned by the City or other third parties, such as poles, ducts, or conduits, use of which shall require a separate license agreement for attachment to City facilities.
- l. “Telecommunications local exchange service provider” – means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187 and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service, or any wireless telecommunications local exchange service provider.

- m. “Telecommunication services” - means providing the means of transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received, as described in K.S.A. 17-1902(a)(3) and amendments thereto. For purposes of this contract franchise, the term telecommunication services shall not include the provision of wireless services as a wireless services provider or wireless infrastructure provider.
- n. “Wireless infrastructure provider” – shall have the meaning set forth in K.S.A. 66-2019(b)(20), as amended.
- o. “Wireless services” - means “personal wireless services” and “personal wireless service facilities” as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities, as described in K.S.A. 66-2019(b)(19).
- p. “Wireless services provider” - means a provider of Wireless Services, as described in K.S.A. 66-2019(b)(24), as amended.

SECTION 2. GRANT OF CONTRACT FRANCHISE.

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

- d. Grantee shall not provide any additional services for which a franchise or deployment agreement is required by the City, including but not limited to services as a wireless services provider or wireless infrastructure provider, without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

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

- a. Pursuant to K.S.A. 17-1902 and 12-2001, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance Relating to Streets, Sidewalks and Other Public Places codified in Chapter 42 of the Leavenworth Code and Underground Conduits as codified in Chapter 46, Article IV of the Leavenworth Code, and amendments thereto.
- c. Grantee shall participate in the Kansas One Call utility location program.

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed \$2.00 per Access line per month. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.
- b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee

limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

- c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.
- f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of one thousand Dollars (\$1,000). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.
- h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and/or 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.
- i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter into a contract franchise ordinance. Such access line (franchise) fee or gross receipts (franchise) fee shall be in the same amount or percentage as the franchise fee set forth in subsection 4.a above.

SECTION 5. INDEMNITY AND HOLD HARMLESS.

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

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs

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

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

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

SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.

- a. **Policies Required.** At all times during the term of this Contract franchise, Grantee shall keep in force and effect all insurance policies as described below:
 - (1) **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits in compliance with the statutory requirements of the State of Kansas and employers' liability insurance with a limit of \$1,000,000 each accident/disease/policy limit. This policy shall include a waiver of subrogation in favor of the City. Grantee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
 - (2) **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal and advertising injury, blanket contractual coverage and independent contractor's coverage with limits of liability of \$1,000,000 per occurrence for bodily injury and property damage and \$1,000,000 general aggregate, and \$1,000,000 products/completed operations aggregate.
 - (3) **Commercial Automobile Liability Insurance.** Commercial automobile liability covering all owned, hired and non-owned vehicles in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage.
 - (4) **Umbrella Liability Insurance.** Coverage is to be in excess of the employers' liability, commercial general liability, and automobile liability insurance required above with limits of \$1,000,000 each occurrence, \$1,000,000 aggregate.
 - (5) **Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

- b. **Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Kansas and have an "A-" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Grantee shall carry substantially the same coverage with substantially the same limits as required of Grantee.
- c. **Certificate of Insurance; Other Requirements.** Upon the execution of this Contract franchise and within ten (10) days of each insurance policy expiration date during the term of this Contract franchise, Grantee will furnish the City with a certificate of insurance ("Certificate"). The Certificate shall reference this Contract franchise and workers' compensation and property insurance waivers of subrogation required by this Contract franchise. Upon receipt of notice from its insurer the Grantee shall provide the City thirty (30) calendar days advance written notice of cancellation of insurance during the term of this Contract Franchise. The City, its Commission members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be included as Additional Insureds as their respective interests may appear under this Contract franchise under all of the policies, except workers' compensation and employer's liability, which shall be so stated on the Certificate of Insurance. All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. Grantee shall defend, indemnify and hold harmless the City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Grantee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the City upon request
- d. **Limits.** The limits of liability set out in this Section 6 may be increased or decreased by mutual written consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Grantee's exposure to risk.
- e. **Prohibited Exclusions.** No policies of insurance required to be obtained by Grantee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Contract franchise with the City except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to the City's employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Grantee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.
- f. **Deductible/Self-insurance Retention Amounts.** Grantee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.
- g. **Performance Bond.** On the Effective Date, Grantee shall provide to the City a performance bond or letter of credit in an amount of Thirty Thousand Dollars (\$30,000.00). The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Grantee's performance of all of its obligations under this Contract franchise and for the payment by Grantee of any claims, liens, taxes, liquidated damages, penalties, fees and charges due to the City which arise by reason of the construction, operation, maintenance or removal of Grantee's Facilities.

SECTION 7. REVOCATION AND TERMINATION.

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the governing body of the City present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the governing body's consideration, and shall have the right to address the governing body regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the governing body to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Leavenworth County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

SECTION 8. RESERVATION OF RIGHTS.

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

SECTION 9. FAILURE TO ENFORCE.

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

SECTION 10. TERM AND TERMINATION DATE.

a. This Contract franchise shall be effective for a two-year term beginning on the effective date of this Contract franchise. Thereafter, this Contract franchise will automatically renew for up to four additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

SECTION 11. POINT OF CONTACT AND NOTICES

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing to the addresses listed below, or to replacement address that may be later designated in writing, and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next

business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:

City of Leavenworth
100 N. 5th St
Leavenworth, KS 66048
Attn: City Clerk
913-684-0335

Grantee:

Unite Private Networks, LLC
1511 Baltimore Ave., 2nd Floor
Kansas City, MO 64108
Attn: Charlene White – V.P. Real Estate
816-903-9400

SECTION 12. TRANSFER AND ASSIGNMENT.

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

SECTION 13. CONFIDENTIALITY.

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

SECTION 14. ACCEPTANCE OF TERMS.

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

SECTION 15. PAYMENT OF COSTS.

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

SECTION 16. SEVERABILITY.

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

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

SECTION 17. FORCE MAJEURE.

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

PASSED and APPROVED by the Governing Body of the City of Leavenworth, Kansas this _____ day of _____, 2022.

Camalla M. Leonhard, Mayor

ATTEST:

Sarah Bodensteiner, CMC, City Clerk