City of El Dorado, KS
220 E. First Avenue
El Dorado, KS 67402
Phone: (316) 321-9100
Fax: (316) 321-6282
www.eldoks.com

TO: City Commission
FROM: Tabitha Sharp, City Clerk
SUBJ: Work Session Meeting Agenda
DATE: August 14, 2019

A Work Session is scheduled for August 14, 2019 at 5:00 pm in the Commission Chambers at City Hall, 220 E. First Avenue. The following items will be presented:

I. ITEMS FOR PRESENTATION AND DISCUSSION

a. Main Street MOU
b. Recycling
c. City Commission Terms/Vacancies/Quorum
d. Small Cell Agreement
e. Tax Increment Financing 101
f. Storm Shelters

II. August 19, REGULAR AGENDA REVIEW

a. <u>Proclamations</u>
b. <u>Consent Agenda</u>
   i. City Commission Minutes
   ii. Appropriation Ordinance
c. <u>New Business</u>
   i. Condemnation Hearings
   ii. SUP Worship Assembly
   iii. Street Project Bids
   iv. Second Quarter Financial Report
   v. Small Cell Agreement
d. <u>Old Business</u>
   i. 2020 Excess Sales Tax Projects
e. <u>Executive Session</u>
   i. None

III. REPORTS

a. City Commission Reports
b. City Manager's Report

<u>2018 Commission Priorities</u>
Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** ("Agreement") is made and entered into as of this __day of__________, 2019, by and between the City of El Dorado, Kansas ("City") and El Dorado Main Street Association ("Association"), a Kansas not-for-profit Association.

WHEREAS, the Association was organized in 1998 as a 501(c)(3) non-profit organization by representatives of the Downtown El Dorado community and other interested stakeholders of the community for the purpose of maintaining a vibrant Downtown and Historic District;

WHEREAS, the Downtown area was designated as an Historic District in October 2013;

WHEREAS, the City has supported the Association since its inception; and

WHEREAS, the City desires to continue to partner with the Association in its efforts to maintain a vibrant Downtown and Historic District.

NOW, THEREFORE, in consideration of the premises and the performance of the covenants herein contained, the parties agree as follows:

1. **<u>Scopes of Services.</u>** The Association agrees to provide, through its professional staff, the following services to the City within the geographic boundaries of the downtown historic district ("District"):

    a. Assisting investors and building owners in rehabilitating and preserving buildings located within the District such as obtaining grants, loans, and facilitating real estate transfers in accordance with applicable regulations and requirements;
    b. Making Infrastructure Without Walls ("IWW") loans available within the District;
    c. Offer advice and assistance to building owners and/or business owners to enable them to insure changes to the facades of their buildings meet the prescribed historic design standards and specifications;
    d. Assist in attracting businesses and investors to the District;
    e. Facilitate the development, maintenance, and promotion of the Downtown artscape;
    f. Promote the District through presenting and conducting activities such as the Historic building tour and facilitating at least two other events such as: Holiday Parade and associated activities, Holly Frontier Western Celebration, and Trick-or-Treat Down the Street, or equivalent type events;
    g. Maintaining the Veteran Banner Program and participating in the city-wide banner program; and
    h. Working with City staff, businesses and others to ensure a downtown Historic District that provides a quality experience for those visiting the District.

2. **<u>Performance Standards.</u>** The Association shall establish a plan of work ("Work Plan") in which the specific activities to be performed by the Association are delineated. Such Work Plan shall specifically address the nature and scope of services to be provided to the City, and shall establish performance criteria by which the Association's performance will be measured and evaluated. Such Work Plan shall be prepared annually and shall be subject to the approval of the City Manager prior to adoption by the Association's Board of Directors.

3. **Compensation.** In consideration of the services to be provided by the Association, the City shall pay to the Association the sum of $30,000, payable at the rate of $15,000 on or before the fifteenth day of the months of January and July of each year during the Effective Period of this Agreement. The Association shall prepare an invoice for each semi-annual payment and submit such invoice to the City at least thirty days prior to the scheduled payment.

4. **Term.** This Agreement shall be in full force and effect from and after its Effective Date until and unless terminated by either party as provided herein.

5. **No Agency Relationship.** Notwithstanding anything to the contrary contained in this Agreement, the Association and its employees shall not hold itself or themselves out as, and shall not be, an agent of the City. Neither the Association nor its employees shall have the authority to enter into agreements, leases, or other commitments on behalf of the City.

6. **Indemnity.** Each party to this Agreement agrees to and shall defend and hold harmless the other for the negligent acts and omissions of such party and its agents, employees and contractors, provided, however, nothing herein shall be construed as a waiver by either party of any limitation of liability provided under the Kansas Tort Claims Act.

7. **Insurance.** The Association shall be solely responsible for obtaining all insurance coverages that it deems necessary or desirable in connection with its business and its obligations under this Agreement, including, but not limited to, general liability, workers compensation, and automobile liability coverage.

8. **Termination.** Either party may terminate the Agreement, without cause, by providing the other party written notice of its intent to so terminate the Agreement. Such voluntary termination shall become effective following the conclusion of the then-current budget year.

   Either party may terminate the Agreement in the event the other party breaches the terms and conditions as provided herein by declaring, in writing, the other party is in default of the Agreement. The non-breaching party may elect to terminate the Agreement upon ninety days' notice to the breaching party, and this Agreement shall thereafter terminate unless the default is cured within ninety days of such notice.

9. **Funding.** The parties acknowledge that a portion of the Association's ability to fulfill its obligations of the Agreement is contingent upon continued funding by supporters, and that such funding is currently primarily comprised of voluntary private contributions and the City. The Association shall make reasonable efforts to gain financial support through expanded support and through other funding sources, such as grants-in-aid, service contracts, or by collecting fees for services rendered to other agencies and organizations.

10. **No Implied Appropriation of Funds.** Notwithstanding any other provision of this Agreement, the City shall not be obligated for the Association's performance hereunder or by any provision of this Agreement during any of the City's future fiscal years unless and until the governing body of the City appropriates funds for this Agreement in the City's annual budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of the last day of the last fiscal year for which funds were appropriated. The City shall notify the Association in writing of any such non-appropriation of funds for the upcoming calendar year on or before October 1st.

11. **<u>Entire Agreement.</u>** This Agreement supersedes all prior and contemporaneous oral and written agreements and understandings pertaining to hereto. Any changes to this Agreement must be approved in writing by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hand this ___ day of _______, 2019, at El Dorado, Butler County, Kansas.

EL DORADO MAIN STREET ASSOCIATION	CITY OF EL DORADO, KANSAS
______________________________	______________________________
Frank Patton, President	Vince Haines, Mayor
Attest:	Attest:
______________________________	______________________________
Secretary	Tabitha Sharp, City Clerk

TO: City Commission
FROM: Tabitha Sharp, City Clerk
SUBJ: Quorum, Terms and Vacancies
DATE: August 12, 2019

Background:

Quorum:

The City of El Dorado changed the Quorum requirements to four (4) instead of the majority of the board in order to combat the appearance of Commissioners having a "meeting" when three (3) of them end up in the same place at the same time. Staff have discussed this with the current City Commission and believe that it is best to return the quorum to three (3) people to make the Commission better able to conduct business. The Commissioners have been trained on Open Meetings rules and understand that if three of them are together, that they should not be discussing city business in order to not violate the Open Meetings Act.

Terms:

In 2016, the State of Kansas changed the municipal election dates to the fall. In addition to this change, they also change the swear-in date to the second Monday of January following the election. Several cities experienced issues with lame-duck candidates after this change was enacted and went to the legislature to change the law. The State changed the law to allow cities to now swear-in newly elected officials anytime between December 1st and the second Monday in January. Staff are recommending that the City Commission choose a date in December in order to avoid the possibility of this issue occurring in El Dorado in the future. Our current ordinance states that elected officials will be sworn in on the second Monday in January.

Vacancies:

In 2016, when the State of Kansas changed the election rules, they also changed the rules for filling a vacancy, but it is not uniform. The City of El Dorado needs to choose a method for filling a vacancy on the City Commission. It can be done by the remaining members on the Commission or a special election can be held. Should you choose to hold a special election, there will be costs associated with that method. Staff recommend that the remaining members appoint someone to fill the position until an election takes place, at that time, someone will be elected by the citizens to complete the term if necessary.

Policy Issue:

What does the City Commission believe is in the best interests of future Commissions and the Citizens for each item?

Fiscal Impact:

There will be no apparent fiscal impact in approving these recommendations.

Trade-offs:

Should the Commission choose not to address these issues at this time, they will likely have to address them in the future in an emergency situation.

Staff Recommendation:

Allow staff to provide ordinances as recommended above.

Commission Actions:

The City Commission has the following options with respect to this issue *(listed in no particular order)*:

- Direct staff to proceed with their recommendations and provide ordinances for approval at a future meeting.
- Change the staff recommendations and direct staff to provide ordinances for approval at a future meeting.
- Request additional information from staff.

Start Dates for Terms of Certain Local Offices

Summary: Senate Bill 105 authorizes a city to determine the start date of a regular term of office for a city officer by resolution of the city. The bill requires the start date be on or after December 1 following certification of the election and no later than the second Monday in January. If the city does not establish an alternative date, the bill specifies such term will begin on the second Monday in January. This law is effective on July 1, 2019.

Do You Need to Change Your Ordinance for Swearing in Newly Elected Officers?

Step 1: Does your city's election ordinance (charter or ordinary) set the date for when newly elected officials take office?

NO

Action: Set new date by resolution. There is not a set format for resolutions in statute. Use your city's regular process.

NOT SURE

STOP. Read charter ordinance and then go back to Step 1.

YES

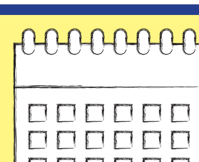
Amend Charter or Ordinary Ordinance to say:
Date will be set by resolution
OR
Amend Charter Ordinance to:
1. Charter out of
K.S.A. 25-2120 and K.S.A. 25-313
AND EITHER
a. Set a date in charter ordinance
OR
b. Set a date by ordinary ordinance

Things to Consider When Picking a Swearing In Date:

The date your city chooses can be any day on or after December 1, following the certification of the election but no later than the second Monday in January. Think about these items when choosing a date:

- Do you want a specific day?
- What happens if the date falls on a weekend?
- Do you want to pick the first regular meeting on or after December 1?
- Would it be best to choose a date that isn't specific (i.e. the first Tuesday in December)?
- Avoid major holidays.

Be sure to pick the best option for your city!



SB 105 is effective July 1, 2019. Any resolution, charter ordinance, or ordinary ordinance passed before that date should become effective on July 1, 2019.

The League of Kansas Municipalities
300 SW 8th Avenue, Suite 100, Topeka, KS 66603

2.04.030 - Qualifications of commissioners—Vacancies—How filled.

Each commissioner shall be a citizen of the United States and a qualified elector of such city, and the removal from the city of any commissioner shall cause a vacancy in such office. In case a vacancy in the office of any commissioner occurs by resignation, death or any reason, the remaining commissioners shall within ten days after the occurrence of the vacancy, elect some suitable person to fill the vacancy until the next election, at which time a successor shall be elected to fill the unexpired term; provided, that there is any portion of such term unexpired. In case the remaining commissions cannot agree upon some suitable person for the office of commissioner, they shall then call in the city attorney, who shall cast the decisive vote for such appointment.

(Prior code § 8-212)

25-2117. Vacancies in certain elective city offices; appointment by governing body. Whenever any vacancy occurs in any elective city office, and no other provision is made by law for filling such vacancy, the vacancy shall be filled by appointment by the governing body of the city, or the remaining member or members of such governing body. A majority of the members of the governing body then in office shall be sufficient for approval of any such appointment.

History: L. 1969, ch. 191, § 1; May 1.

14-1305. Vacancy in office of mayor or commissioner, how filled. In case of any vacancy from any cause in the office of mayor or any commissioner, the remaining members of the board of commissioners within 10 days after the occurrence of the vacancy shall elect some suitable person to fill the vacancy for the balance of the unexpired term of such office. If the remaining members cannot agree upon some such suitable person, then they shall call in the then city attorney who shall cast the decisive vote for such appointment. The resignation of the mayor or any commissioner elected under this act shall be made in writing for their action thereon. If the mayor or any commissioner shall remove from the territorial limits of the city, such removal shall ipso facto be deemed to create a vacancy in such person's office.

History: L. 1909, ch. 82, § 14; L. 1915, ch. 136, § 1; R.S. 1923, § 14-1305; L. 1968, ch. 274, § 40; L. 1985, ch. 80, § 5; May 2.

CHARTER ORDINANCE NO. 19

AN CHARTER ORDINANCE EXEMPTING THE CITY OF EL DORADO, KANSAS, FROM THE PROVISIONS OF K.S.A. 14-1308, AND PROVIDING SUBSTITUTE PROVISIONS ON THE SAME SUBJECT

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF El DORADO, KANSAS.

Section 1: Exemption. The City of El Dorado, Kansas, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to and does exempt itself and make inapplicable to it K.S.A. 14-1308 which applies to this city but does not apply uniformly to all cities.

Section 2: Regular and Special Meetings. The quorum necessary for the transaction of business shall be either three (3) of four (4) members-elect of the Governing Body and shall be determined by the Governing Body by ordinary ordinance or in the absence of a duly adopted ordinary ordinance, the quorum shall be three (3) members-elect of the Governing Body. The ordinary ordinance establishing the quorum of the Governing Body shall expire on 15th day of June of every year, beginning in 2005, thereby requiring a new ordinance establishing the number of members-elect required for a quorum to be adopted and take effect from and after the 15th day of June, every year. An ordinary ordinance establishing a quorum of four (4) members-elect of the Governing Body shall require the affirmative votes of four (4) members-elect of the Governing Body for adoption. An ordinary ordinance establishing a quorum of three (3) members-elect of the Governing Body shall require the affirmative votes of three (3) members-elect of the Governing Body for adoption.

Section 3. Publication. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 4. Effective Date. This Charter ordinance shall take effect 61 days after the final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided in Article 12, Section 5 of the Constitution of the State of Kansas, in which case this Charter ordinance shall become effective upon approval by a majority of the electors voting thereon.

FOOTNOTE(S):

--- (**1**) ---

* KSA Sections 12-1641 and 12-1642, referred to in this charter ordinance, have been renumbered to be KSA Sections 12-1617e and 12-1617f, respectively.

FRANCHISE AGREEMENT

A FRANCHISE AGREEMENT GRANTING A FRANCHISE AND AUTHORIZING COX WIRELESS ACCESS, L.L.C, A WHOLLY OWNED SUBSIDIARY OF COX COMMUNICATIONS, TO CONSTRUCT, MAINTAIN AND OPERATE AS A WIRELESS INFRASTRUCTURE PROVIDER IN THE PUBLIC RIGHT-OF-WAY.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, TERMS, AND CONDITIONS HEREIN PROVIDED, THE PARTIES HERETO AGREE, AS FOLLOWS:

Section 1. Definitions.

For purposes of this franchise ordinance, the following words and phrases shall have the following meanings:

Cable service is defined as set forth in 47 U.S.C. Section 522(6), and amendments thereto.

City means the City of El Dorado, Kansas.

Competitive infrastructure provider means an entity which leases, sells or otherwise conveys Facilities located in the Public right-of-way, or the capacity or bandwidth of such Facilities for use by FCC licensed wireless telecommunications service providers in the provision of Telecommunications services, internet services, or other intrastate and/or interstate traffic, but does not itself provide services directly to end users within the corporate limits of the City.

Distributed antenna system ("DAS") facility or facilities mean certain components of the Network consisting of distributed antenna systems which may be located on existing or new streetlights, stand-alone poles, third party utility poles, and other structures located on or within the ROW as permitted under this contract franchise ordinance, and which will be connected to underground and aboveground fiber optic cable, fiber handholes and enclosures, fiber repeaters and related equipment.

Facility or facilities means any portion or component of the Network located in, along, over, upon, under, or through the public right-of-way.

Franchise fee means the fees established under this article for each grant of access to the public rights-of-way.

Grantee means the franchisee, Cox Wireless Access, L.L.C., a wholly owned subsidiary of Cox Communications, Inc. a Delaware corporation.

Network means the franchisee's fiber network and distributed antenna system facilities or small wireless facilities, including the antenna nodes, poles, equipment cabinets, underground and aboveground fiber optic cable, wires, lines, fiber handholes and enclosures, fiber repeaters and related equipment and appurtenance, and similar facilities and appurtenances, designed, constructed or occupied for the purpose of producing, receiving, amplifying or distributing telecommunications service to or from locations within the city.

Law(s) means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the city or other governmental entity or agency having joint or several jurisdiction over any aspect of this contract franchise agreement or the parties' activities hereunder, whether now existing or hereafter adopted, including but not limited to a city right-of-way management ordinance and the city's zoning and land use laws to the extent they are not inconsistent with state and federal law regulating use of the public rights-of-way, and any related laws, rules, or regulations and amendments thereto relating to the use and occupancy of the public rights-of-way.

Public right(s)-of-way ("ROW") 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 nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts, or facilities or property owned by the City even if located within the ROW.

Small Wireless Facilities or *Wireless Facilities* means a wireless facility that meets both of the following qualifications:

a) All antennas are located inside an enclosure of not more than (6) six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than (6) six cubic feet, and
b) All other wireless equipment associated with the facility is cumulatively not more than (28) twenty-eight cubic feet on volume, or (50) fifty cubic feet in volume if the equipment was ground mounted before the effective date of this section. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:
    i. An electric meter.
    ii. Concealment elements.
    iii. A telecommunications demarcation box.
    iv. Grounding equipment.
    v. A power transfer switch.
    vi. A cutoff switch.
    vii. Vertical cable runs for the connection of power and other services.

Telecommunications service(s) 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.

Wireless Services Provider means a provider of wireless services.

Wireless Support Structure means a freestanding structure, such as a pole, monopole, self-supporting tower, or suitable existing structure or alternative structure designed to support or capable of supporting Wireless Facilities. Wireless Support Structure does not include any telephone or electrical Utility pole or any tower used for the distribution or transmission of electrical service.

<u>Section 2</u>. –Grant of Contract Franchise.

(a) **Competitive Infrastructure Provider**. This contract franchise ordinance hereby grants to Cox Wireless Access, L.L.C., the nonexclusive contract, right, privilege, and franchise to locate, construct, place, attach, install, operate, use, control, repair, replace, upgrade, enhance and maintain, facilities along, across, upon and under the ROW for the purpose of Cox Wireless Access, L.L.C. providing competitive infrastructure to third-party carriers to provide telecommunications services, internet services, or other intrastate or interstate traffic, subject to the terms and conditions of this contract franchise ordinance.

(b) **Affiliate Contract Franchise**. Nothing in this contract franchise ordinance is intended to preclude the city from seeking or authorize the city to seek, a franchise from an affiliate or third party providing telecommunications services.

(c) **Conveyance of Title**. This contract franchise ordinance shall not convey title, equitable or legal, in the ROW, and gives only the right to occupy the ROW, for the purposes and for the period stated herein and subject to the terms stated in this Contract Franchise Ordinance. This Contract franchise ordinance 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 whether inside or outside of the ROW, specifically including, but not limited to, poles, street lights, buildings, towers, park property, City Hall property, or other facilities;

3. Excuse the Grantee from obtaining appropriate access or attachment agreements or permits before locating its Facilities on Facilities or property owned or controlled by the City or a third-party;

4. Grant to any licensee or lessee of Grantee or other third party a right of access or authority to the City's right-of-way without said licensee, lessee, or third party obtaining all necessary permits and authorizations from the City in accordance with Ordinance No. 2293 of the City or any then current ordinance or regulation of the City

dealing with management of the ROW and, if determined necessary by the City, a contract franchise for said licensee, lessee, or third party.

5. Provide any additional services for which a franchise is required by the City 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 or Network by any third party in violation of any federal, state, or local law.

(d) **Cable Service.** This contract franchise ordinance does not provide Cox Wireless Access, L.L.C. the right to provide cable service to the city and inhabitants thereof. If, during the term of this franchise, Cox Wireless Access, L.L.C. desires to provide cable service within the corporate boundaries of the city, Cox Wireless Access, L.L.C. shall follow the requirements of K.S.A. 12-2021, *et seq*., as amended, in providing notice and paying a video service provider fee to the city. In the event that K.S.A. 12-2021, *et seq*. is repealed or amended in such a way as to provide direct franchising authority to the City, Cox Wireless Access, L.L.C. shall promptly notify the city of its intent to provide cable service and renegotiate this contract franchise ordinance in accordance with applicable law prior to providing such service. Nothing in this contract franchise ordinance is intended to preclude the city from seeking, or authorize the city to seek, a franchise from Cox Wireless Access, L.L.C. or any subsidiary, affiliate, or third party providing cable services, to the extent any such franchise is permitted under applicable law at the time such service commences. Cox Wireless Access, L.L.C. and the city agree that nothing in this franchise is intended to authorize the city to seek from Cox Wireless Access, L.L.C., nor to require Cox Wireless Access, L.L.C. to obtain, a franchise to offer "open video systems" as that term is used in section 653 of the Telecommunications Act of 1996 (codified at 47 U.S.C. 573). Cox Wireless Access, L.L.C. and the city further agree, however, that this article does not authorize Cox Wireless Access, L.L.C. to offer "open video systems" without paying a fee on the gross revenues of the system operator for the provision of cable service in lieu of a franchise fee, pursuant to and in the manner described in 47 U.S.C. 573(c)(2)(b) and without complying with Federal Communication Commission (FCC) regulations promulgated pursuant to 47 U.S.C. 573.

(e) This contract franchise ordinance is subject to and conditioned upon the terms and conditions of all applicable federal, state and local laws, existing now or in the future, and the parties shall comply with any such laws in the exercise of their rights and performance of their obligations under this contract franchise ordinance. “Laws” means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the city or other governmental entity or agency having joint or several jurisdiction over any aspect of this contract franchise ordinance or the parties’ activities hereunder, whether now existing or hereafter adopted, including but not limited to the City’s then current ROW management ordinance or regulations and the city’s zoning and land use laws to the extent they are not inconsistent with state and federal law regulating use of the ROW, and any related laws, rules, or regulations and amendments thereto relating to the use and occupancy of the ROW.

(f) The authority of Cox Wireless Access, L.L.C. to use and occupy the ROW 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 ROW provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Cox Wireless Access, L.L.C. shall comply with all laws, rules, and lawful city regulations, in effect now or as may be adopted in the future, governing the use of ROW, specifically including City of El Dorado Ordinance No. 2293 as amended or replaced, the City's zoning, land use, and subdivision regulations and amendments thereto.

Section 3. - Term.

(a) This contract franchise ordinance shall be effective for a term of five (5) years from the effective date of this contract franchise ordinance. Thereafter, this contract franchise ordinance shall automatically renew for three (3) additional five-year terms, unless a party notifies the other party of its intent to terminate the contract franchise ordinance prior to 180 days before the termination of the current term. The additional terms are a continuation of this franchise and not a new franchise or amendment.

(b) Upon written request of either the city or Cox Wireless Access, L.L.C., this contract franchise ordinance shall be renegotiated at any time in accordance with the requirements of K.S.A. 12-2001 and K.S.A. 17-1902, as amended, 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 Cox Wireless Access, L.L.C., including but not limited to the scope of the contract franchise ordinance granted to the Cox Wireless Access, L.L.C. or the compensation to be received by the city.

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

Section 4. - Compensation.

(a) **Competitive Infrastructure Provider Franchise Fee.** In consideration of this contract franchise ordinance, Cox Wireless Access, L.L.C. agrees to pay the city a franchise fee of one hundred and fifty dollars ($150.00) per year per attachment for the attachment of wireless equipment to support DAS or SWF installations within the city on city owned infrastructure or newly placed Cox Wireless Access, L.L.C poles within the city. Cox Wireless Access, L.L.C. shall pay its franchise fee on the 15th day of the second month following the month in which the gross revenue is received.

(b) **Additional Fees**. In addition to the fees allowed by law and pursuant to this contract franchise ordinance, and in exchange for other valuable consideration, Cox Wireless Access, L.L.C. shall pay a one-time application fee of $1,000. This fee shall be in addition to other city permit and review fees that exist as of the date the DAS or Small Wireless Facility is installed that relate to the installation of the DAS or Small Wireless Facility. Cox Wireless Access, L.L.C. shall pay the one-time application fee upon submission of a complete application for the installation of a DAS or Small Wireless Facility per this article and after the date of Cox Wireless Access, L.L.C.'s submission of a complete application, the city shall not retroactively apply any new permit or licensing fees to the DAS or Small Wireless Facility.

(c) Cox Wireless Access, L.L.C. shall reimburse the city for the publication costs related to the adoption or amendment of this contract franchise ordinance.

(d) If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest shall accrue from the due date until received, at an annual rate of ten percent (10%), or if lower, the highest percentage allowed by law.

(e) Cox Wireless Access, L.L.C. shall keep accurate books of account at its principal office in Buhler, Kansas, or such other location of its choosing, for the purpose of determining the amounts due to the city pursuant to this subsection. The city shall have access to, and the right to examine, at all reasonable times, all books, receipts, files, records and documents of Cox Wireless Access, L.L.C. necessary to verify the correctness of compensation paid to the city, and to correct the same, if found to be erroneous. The city may only exercise its right to examine the books, receipts, files, records, and documents one time per year at a mutually agreeable time. If the statement of fees paid by Cox Wireless Access, L.L.C. is incorrect, Cox Wireless Access, L.L.C. shall promptly make payment upon such corrected statement. The city agrees to hold in confidence any non-public information it learns from Cox Wireless Access, L.L.C. to the fullest extent permitted by law.

<u>Section 5</u>. – Installation of the Facilities.

(a) Pursuant to the grants provided herein, Cox Wireless Access, L.L.C. shall have the right to construct, maintain, and operate the Facilities along, across, upon, and under the ROW.

(b) Cox Wireless Access, L.L.C. shall construct and maintain the facilities in a skillful and workmanlike manner that does not obstruct or hinder the usual travel or public safety on such ROW, and that does not obstruct or interfere with the legal use of the ROW by other utilities. Cox Wireless Access, L.L.C. shall be solely responsible for communicating with Kansas One-Call, or for taking other necessary measures to determine the location of public improvements or other facilities located in the ROW. Cox Wireless Access, L.L.C. shall install facilities in accordance with traffic control plans for temporary construction work that are approved by the city, which approval shall not unreasonably be withheld, conditioned or delayed. Cox Wireless Access, L.L.C. shall coordinate the placement of its facilities in the ROW in a manner that minimizes adverse impact on public improvements, as reasonably determined by the city engineer.

(c) Cox Wireless Access, L.L.C. shall be the city's point of contact and all communications shall be through Cox Wireless Access, L.L.C.. Cox Wireless Access, L.L.C. 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 Cox Wireless Access, L.L.C. in the event of an emergency. Cox Wireless Access, L.L.C. shall provide the city with the local contact's name, address, telephone number, fax number and e-mail address.

(d) Cox Wireless Access, L.L.C. shall cooperate with the city and follow all legally binding city policies and state and local ordinances with respect to aesthetics.

(e) In addition to the approvals required by this section, Cox Wireless Access, L.L.C. must obtain and is responsible for any necessary permit, license, certification, grant, registration, and any other authorization or approval required by the city (collectively, the "permits and approvals") relating to the installation, maintenance, and repair of the facilities or network and for the use and occupancy of the ROW, including but not limited to all permits and approvals required under a city ROW ordinance or zoning regulation and that are not inconsistent with state and federal laws regarding the regulation of the public ROW. The city shall process each valid and administratively complete application for requested permits and approvals in accordance with the time requirements of applicable laws, and shall not unreasonably or unlawfully withhold or delay any permits and approvals. Cox Wireless Access, L.L.C. shall comply with any condition or requirement set forth in any permit and approval, if they comply with the laws.

(f) When Cox Wireless Access, L.L.C. is allowed to place DAS or Small Wireless Facilities above ground under this section, Cox Wireless Access, L.L.C. may attach its DAS or Small Wireless Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner and or to cable strand owned by Cox Wireless Access, L.L.C. or any affiliate, subject to obtaining an encroachment permit. Cox Wireless Access, L.L.C. agrees that in areas where there are existing poles, Cox Wireless Access, L.L.C. will work with the owner of that existing pole to collocate DAS or Small Wireless Facilities, but only when the pole owner is willing to allow such attachment and where such attachment is feasible from a safety, technical, and engineering (structural and radio frequency coverage) perspective. Any necessary replacement of any pole to accommodate the attachment shall be subject to the proper exercise of the city's police powers, and in no instance shall Cox Wireless Access, L.L.C. erect a new pole absent the city's prior authorization.

(g) In granting this contract franchise ordinance, the city makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of the ROW. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Cox Wireless Access, L.L.C..

(h) Cox Wireless Access, L.L.C. shall take all reasonable measures necessary to maintain accurate and complete records in electronic format, of all facilities constructed, reconstructed, or relocated in the ROW. Cox Wireless Access, L.L.C. shall cooperate promptly and fully with the city and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its facilities located within the ROW when requested by the city or its authorized agents for a public project. Such location and identification shall be at the sole expense of Cox Wireless Access, L.L.C. without expense to the city, its employees, agents, or authorized contractors.

(i) Cox Wireless Access, L.L.C. may trim trees overhanging the ROW that may come into contact with Cox Wireless Access, L.L.C. facilities in accordance with Ordinance No. 2293 of the City or any then current ordinance or regulation of the City dealing with management of the ROW. S

Section 6. **Cox Wireless Access, L.L.C. and City access to the facilities.**

(a) Subject to the requirements of El Dorado Ordinance No. 2293, or any then current ordinance or regulation of the City dealing with management of the ROW, Cox Wireless Access, L.L.C. will be given reasonable access to each of the facilities in the ROW for the purposes of routine installation, repair, maintenance or removal of facilities.

Section 7. **- Maintenance and repair.**

(a) Cox Wireless Access, L.L.C. shall pay for the electricity and other utilities services it consumes in its operations at the rates charged by the servicing utility companies.

(b) Cox Wireless Access, L.L.C. shall, at Cox Wireless Access, L.L.C.'s sole cost and expense, perform all maintenance and repairs reasonably needed to maintain its facilities in good condition and neat and orderly appearance, and in compliance with all applicable laws including Ordinance No. 2293 of the city, or any then current ordinance or regulation of the City dealing with management of the ROW. In the event any facility requires replacement because such part cannot be repaired, Cox Wireless Access, L.L.C. shall, at Cox Wireless Access, L.L.C.'s sole cost and expense, replace the irreparable facility. Cox Wireless Access, L.L.C. shall not cause rubbish, garbage or debris on or around the facilities and shall not permit any rubbish, garbage or debris to accumulate on or around any enclosed areas around the facilities. If the city gives Cox Wireless Access, L.L.C. written notice of a failure by Cox Wireless Access, L.L.C. to maintain the facilities, Cox Wireless Access, L.L.C. shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice.

(c) Cox Wireless Access, L.L.C. shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by Cox Wireless Access, L.L.C.'s construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of facilities in the ROW. Cox Wireless Access, L.L.C. shall promptly repair such damage and restore the ROW and any affected adjacent property to a safe and satisfactory condition to the city in accordance with the city's applicable street or ROW restoration standards, or to the property owner if not the city. If Cox Wireless Access, L.L.C. fails to make the repairs required by the city, the city may affect those repairs and charge Cox Wireless Access, L.L.C. the cost of those repairs. If the city incurs damages as a result of a violation of this subsection, then the city shall have a cause of action against Cox Wireless Access, L.L.C. for violation of this section, and may recover its damages, including reasonable attorney fees, if Cox Wireless Access, L.L.C. is found liable by a court of competent jurisdiction. Cox Wireless Access, L.L.C.'s obligations under this section shall survive for one (1) year past the completion of such reparation and restoration work and return of the affected part of the ROW by Cox Wireless Access, L.L.C. to the city, or such longer period as may be established by the city's ROW ordinance, rules or regulations or other applicable laws.

Section 8. **– Non-interference.**

(a) Cox Wireless Access, L.L.C. shall operate its network in a manner that will not cause interference with city non-public safety communications systems and to the services and facilities of other licensees or lessees of city property located at or near the Facilities that were in operation prior to the installation of the network or that are in operation prior to any modifications Cox Wireless Access, L.L.C. may make to the network.

(b) Cox Wireless Access, L.L.C.'s network and facilities shall not cause interference with public safety communications systems operated by city or any other public agency, regardless of the date such systems or any components thereof have been placed in service. Nor shall Cox Wireless Access, L.L.C.'s network and facilities cause interference with the city's use of the Cox Wireless Access, L.L.C. poles for the city's intended city purpose.

(c) If such interference with the facilities described in subsections (a) or (b) occurs, Cox Wireless Access, L.L.C. shall, upon receipt of written notice from the city, immediately commence commercially reasonable, diligent, efforts to correct or eliminate such interference. If such interference cannot be corrected by Cox Wireless Access, L.L.C. to the reasonable satisfaction of the city within the cure period set forth in the city's notice, which notice shall not be less than 30 days, absent an emergency or danger to public health and safety requiring shorter notice, such interference shall be deemed a material breach under this contract franchise ordinance and city may terminate the contract franchise ordinance. Interference caused by actions of Cox Wireless Access, L.L.C.'s customer(s) remains the responsibility of Cox Wireless Access, L.L.C.

Section 9. **- Indemnity and hold harmless.**

(a) It shall be the responsibility of Cox Wireless Access, L.L.C. to take adequate measures to protect and defend its facilities in the ROW from harm or damage. If Cox Wireless Access, L.L.C. fails to accurately or timely locate facilities when requested, it has no claim for costs or damages against the city and its authorized contractors unless such party is responsible for the harm or damage by their gross 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 Cox Wireless Access, L.L.C.'s facilities.

(b) Cox Wireless Access, L.L.C. shall indemnify, defend, and hold harmless the city, its agents, representatives, officers, officials, employees and contractors, from and against all liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense to the extent resulting from activities undertaken by Cox Wireless Access, L.L.C. or any agent, officer, director, representative, employee, or affiliate of Grantee pursuant to this contract franchise ordinance, except to the extent arising from or caused by the gross negligence or willful misconduct of the city, its agents, representatives, officers, officials, employees or contractors.

(c) Cox Wireless Access, L.L.C. waives all claims, demands, causes of action, and rights it may assert against the city on account of any loss, damage, or injury to any portion of the network, or any loss or degradation of the services provided by the network resulting from any event or occurrence except for any loss, damage, or injury to any portion of the network, or any loss or degradation of the services provided by the network, resulting from the gross negligence or willful misconduct of the city.

(d) The city will be liable, if at all, only for the cost of repair to damaged portions of the facilities arising from the gross negligence or willful misconduct of the City or its employees. The city, its agents, officers, employees, or contractors, shall not be liable for any damage from any cause whatsoever to the facilities, specifically including, without limitation, damage, if any, resulting from the city's maintenance operations adjacent to the facilities or from vandalism or unauthorized use of the facilities, except to the extent such damage is caused by the gross negligence or willful misconduct of city, its officers, or employees. The city will in no event be liable for indirect or consequential damages.

(e) In no event shall Cox Wireless Access, L.L.C. be liable for indirect or consequential damages in connection with or arising from this contract franchise ordinance, or its use of the network or ROW.

(f) Cox Wireless Access, L.L.C. or the city shall promptly advise the other in writing of any known claim or demand against Cox Wireless Access, L.L.C. or the city related to or arising out of the Cox Wireless Access, L.L.C.'s activities in a ROW.

<u>Section 10</u>. - Insurance requirement and performance bond.

(a) During the term of this franchise, Cox Wireless Access, L.L.C. shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers with an A.M. Best rating of no less than A-:VII. Cox Wireless Access, L.L.C. shall provide not less than the following insurance:

(1) Workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

(2) Commercial general liability with limits of insurance not less than $2,000,00 each occurrence, $2,000,000 annual aggregate, $2,000,000 completed Operations/Product Aggregate covering claims for bodily injury, property damage, personal and advertising injury, completed operation/product liability and contractual liability arising from the activities and operations of the franchisee and independent contractors operating on their behalf. The city shall be included as an additional insured. The insurance for the additional insured shall be as broad as the insurance for the named insured and apply on a primary/noncontributor basis and include protection for completed operations/products claim. Coverage for the additional insured shall include defense expense. If in order to accomplish the required limits of insurance, the franchisee must purchase a excess liability/umbrella policy, such policy shall be written on a follow form basis and be as broad as the underlying insurance. The city shall be included as additional insured to the policy.

(3) Business Auto Liability Insurance with limits of insurance not less than $1,000,00 Combined Single Limit for bodily injury and property damage covering ownership or use of all owned, hired and non-owned autos used in connection with the Franchisee operations and activities. The city shall be included as additional insured to the auto liability policy.

(b) As an alternative to the requirements of subsection (a), Cox Wireless Access, L.L.C. may demonstrate to the satisfaction of the city that it is self-insured and as such Cox Wireless Access, L.L.C. has the ability to provide coverage in an amount not less than $1,000,000.00 per occurrence and $2,000,000.00 in aggregate, to protect the city from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Cox Wireless Access, L.L.C., or alleged to so have been caused or occurred.

(c) Cox Wireless Access, L.L.C. shall, as a material condition of this franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the city a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the city, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the city 30 days prior written notice. Cox Wireless Access, L.L.C. shall make available to the city on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

(d) Cox Wireless Access, L.L.C. shall, as a material condition of this franchise, prior to the commencement of any work and prior to any renewal of this franchise, deliver to the city a performance bond in the amount of $100,000.00, payable to the city to ensure the appropriate and timely performance in the construction and maintenance of facilities located in the ROW as set forth in this article; to ensure Cox Wireless Access, L.L.C.'s repair and restoration of its damage to its facilities or the ROW; and to ensure Cox Wireless Access, L.L.C.'s removal of its facilities, as set forth herein. The required performance and maintenance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the city attorney in form and substance.

Section 11. - Taxes.

Cox Wireless Access, L.L.C. agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the network and this contract franchise ordinance. Pursuant to Section 79-5(a)(26) of the Kansas Revenue and Taxation Code, as amended, the city hereby advises, and Cox Wireless Access, L.L.C. recognizes and understands, that Cox Wireless Access, L.L.C.'s use of the ROW and/or Cox Wireless Access, L.L.C. facilities may create a possessory interest subject to real property taxation and that Cox Wireless Access, L.L.C. may be subject to, and responsible for, the payment of real property taxes levied on such interest. Cox Wireless Access, L.L.C. will cooperate with the county appraiser in providing any information necessary for the appraiser to make a property tax determination. Cox Wireless Access, L.L.C. reserves the right to challenge any such assessment, and the city agrees to reasonably cooperate with Cox Wireless Access, L.L.C. in connection with any such challenge.

Section 12. - Nondiscrimination.

(a) Cox Wireless Access, L.L.C. will not, on the grounds of race, religion, color, sex, disability, national origin or ancestry, discriminate or permit discrimination against any person in the use of the ROW or in activities under this franchise.

(b) **Equal Protection**. If any other provider of wireless infrastructure or an entity whose business may consist of small cell deployment is lawfully authorized by the City or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the City, the City shall within thirty (30) days of a written request from Cox Wireless Access, LLC, modify this Franchise to insure that the obligations applicable to Cox Wireless Access, LLC are no more burdensome than those imposed on the new competing provider(s). If the City fails to make modifications consistent with this requirement, Cox Wireless Access, LLC's Franchise shall be deemed so modified thirty (30) days after the initial written notice. As an alternative to the Franchise modification request, the Cox Wireless Access, LLC shall have the right and may choose to have this Franchise with the City be deemed expired thirty (30) days after written notice to the City. Nothing in this Franchise shall impair the right of Cox Wireless Access, LLC to terminate this Franchise and, at Cox Wireless Access, LLC's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

Section 13. -Transfer and assignment.

This franchise shall be assignable in accordance with the laws of the State of Kansas. Cox Wireless Access, L.L.C. shall provide the city written notice of any transfer or assignment within thirty (30) days, including notice of the name and address of the assignee and contact information. Grantee's obligations under this contract franchise ordinance 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 any transfer or assignment.

Section 14. **Default; abandonment; expiration or termination of contract franchise.**

(a) A "default'' shall be deemed to have occurred if a party fails to cure a breach, within thirty (30) days after written notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

(b) Upon a party's failure to timely cure a breach after city notice, and upon expiration of the above cure periods, then the other party may terminate this contract franchise and pursue all remedies provided for in this contract franchise and/or any remedies it may have under applicable law or principles of equity relating to such breach.

In addition to the remedies set forth herein, the city shall have the right to terminate this contract franchise if (i) the city is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the ROW; or (ii) if Cox Wireless Access, L.L.C.'s licenses are terminated, revoked, expired, or otherwise abandoned. Such termination rights under subsection (i) shall be subject to Cox Wireless Access, L.L.C.'s rights to just compensation, if any, from the federal, state or local government requiring such removal for any taking of a protected property right.

(c) In the event Cox Wireless Access, L.L.C. ceases to operate and abandons the network, any facility, or parts thereof, for a period of ninety (90) days or more, Cox Wireless Access, L.L.C. shall, at its sole cost and expense and within ninety (90) days from the date of abandonment, vacate and remove the network or the abandoned part thereof. If such removal disturbs the facility or adjacent property (including ROW or city real property), Cox Wireless Access, L.L.C. shall also, at its sole cost and expense, restore or repair the ROW, each facility, and any adjacent property to its original condition, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment or other aesthetic improvements made by Cox Wireless Access, L.L.C. to the facility or adjacent property. Alternatively, the city may allow Cox Wireless Access, L.L.C., in the city's sole and absolute discretion, to abandon the network, or any part thereof, in place and convey it to the city.

(d) Upon expiration or termination of this contract franchise for any reason, Cox Wireless Access, L.L.C. shall have the right to remove any and all of its Facilities within sixty (60) days after such termination or expiration, or, subject to the approval of the City Engineer said approval not to be unreasonably withheld, to transfer any and all of its Facilities to another entity authorized to place facilities in the ROW. Cox Wireless Access, L.L.C. has the duty, immediately upon any such removal, to restore the ROW from which the facilities are removed to as good a condition as the same were before removal was performed. If Cox Wireless

Access, L.L.C. fails to remove or transfer its Facilities within sixty (60) days, the city may, at its option, remove any or all of the Facilities at Cox Wireless Access, L.L.C.'s expense, or take ownership of any or all of Facilities for the city's use and/or disposal.

<u>Section 15</u>. Notices.

Except in emergencies, all notices by one party to the other shall be made by personal delivery, by depositing such notice in the U.S. mail, certified mail, return receipt requested, or by facsimile. Any notice served by 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 Cox Wireless Access, L.L.C.-observed holidays excepted. Emergency notices shall be provided by telephone, with written notice immediately following by facsimile.

Notices shall be addressed to the city as follows:

City of El Dorado
Attn: City Clerk
220 E. First Avenue
El Dorado, Kansas 67042

Notice to Cox Wireless Access, L.L.C. shall be addressed to the company as follows:

Cox Wireless Access, L.L.C.
Attn: Cox Business
901 S. George Washington Blvd
Wichita, KS 67211

With copy to:

Cox Communications
6205B Peachtree -Dunwoody Road
Atlanta, Georgia 30328
Attn: VP of Government Affairs

Notice shall be given as required by the terms of this contract franchise ordinance. Notice shall be provided to the above-named addressees unless directed otherwise in writing by the city or Cox Wireless Access, L.L.C. Both Cox Wireless Access, L.L.C. and the city shall provide to the other contact information with telephone and facsimile numbers for use in emergencies.

<u>Section 16</u>. Acceptance.

Prior to the effective date of this franchise, Cox Wireless Access, L.L.C. shall file with the city clerk its acceptance in writing of the provisions, terms and conditions of this contract franchise ordinance, which acceptance shall be duly acknowledged before an officer authorized by law to administer oaths. When so accepted, the ordinance and acceptance shall constitute a contract between the city and Cox Wireless Access, L.L.C. subject to the provisions of the laws of the state of Kansas.

Section 17. **- Reservation of rights.**

(a) The City specifically reserves its right and authority as a customer of the company and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning the company's rates and services to ensure the rendering of efficient telecommunications service at reasonable rates, and the maintenance of the company'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 granting its consent hereunder, Cox Wireless Access, L.L.C. does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

Section 18. **Entire Agreement; Modification; Waiver.**

This contract franchise ordinance constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, oral or written, relating to the subject matter hereof are merged into and superseded by this contract franchise ordinance. The parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting party. Any modification or amendment to this contract franchise ordinance shall be of no force and effect unless it is in writing, signed by the parties, and adopted pursuant to the requirements of state law. No waiver of any of the provisions of this contract franchise ordinance shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

Section 19. **- Severability.**

If any clause, sentence, or section of this contract franchise ordinance, or any portion thereof, shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid;

provided, however, the City or Cox Wireless Access, L.L.C. may elect to declare that the entire agreement is invalidated if the portion declared invalid is, in the judgment of the City or Cox Wireless Access, L.L.C., an essential part of this contract franchise ordinance.

Section 20. **- Survival of Terms.**

All of the terms and conditions in this contract franchise ordinance related to payment, removal due to termination or abandonment, indemnification, limits of City's liability, attorneys' fees and waiver shall survive termination of this contract franchise.

Section 21. **- Governing law and venue.**

(a) As a condition of this contract franchise ordinance, Cox Wireless Access, L.L.C. 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 FCC or the Kansas Corporation Commission (KCC), subject to Cox Wireless Access, L.L.C.'s right to challenge in good faith such requirements as established by the FCC, KCC or other City regulations. Cox Wireless Access, L.L.C. shall also comply with all applicable laws, statutes and/or City regulations, subject to Cox Wireless Access, L.L.C.'s right to challenge in good faith such laws, statutes, and/or City regulations.

(b) The obligations and undertakings of both parties hereto shall be performed at El Dorado, Butler County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this franchise, the same shall be brought in state or federal courts, as appropriate, having jurisdiction for Butler County, Kansas.

Section 22. **- Effective date of franchise.**

The effective date of this franchise shall be ________, 2019.

THE CITY OF EL DORADO, KANSAS

____

VINCE HAINES, MAYOR

ATTEST:

____

HILLARY LAWRENCE, ASSISTANT CITY CLERK

COX WIRELESS ACCESS, L.L.C.

BY: ______________________________

A Primer:
Tax Increment Financing

August 5, 2019

What is Tax Increment Financing?

Tax Increment Financing, or “TIF,” is a municipal financing tool used to target redevelopment to specific, defined geographic areas.

Facilitates the (re)development of areas designated as ***blighted***, ***environmentally contaminated***, ***conservation areas***, and ***enterprise zones***.

TIF captures ***new, incremental property tax dollars*** generated from the defined geographic area to fund public improvements necessary for development.

What will TIF fund?

What will TIF fund?

State law allows for increased property tax increment to fund various public infrastructure components necessary for development such as:

Acquisition of property within the redevelopment area;

Site preparation, including utility relocations;

Sanitary and storm sewers and lift stations;

Drainage conduits, channels, and levees;

Street grading, paving, and curb and guttering;

Street lighting fixtures, connections, and facilities; and

Underground gas, water, heating and electric services located within the public right-of-way.

How is TIF revenue generated?

Primary revenue comes from incremental increases in property tax revenues otherwise distributed to local taxing authorities.

TIF ***does not*** capture the state school district levy (20 mills), school district capital outlay or the state mill levy (1.5 mills).

Allocation of "new" franchise fees, sales taxes, and transient guest receipts derived from the development area, and any other general revenue appropriated by the City.

Private sources or contributions.

Federal and state loans and grants may also be used to fund eligible expenses.

What financing may be used with TIF?

The City may issue ***special obligation bonds***, ***general obligation (G.O.) bonds***, or ***private activity bonds*** to finance eligible development expenses.

- Special obligation bonds are repaid from revenue generated from the project; investors take on additional risk and require a interest premium.
- G.O. bonds are backed by the full faith and credit of the City, meaning taxes may be raised to offset any revenue shortfall from the project.
- Private activity bonds are special loans backed by the project revenue and the private developer.

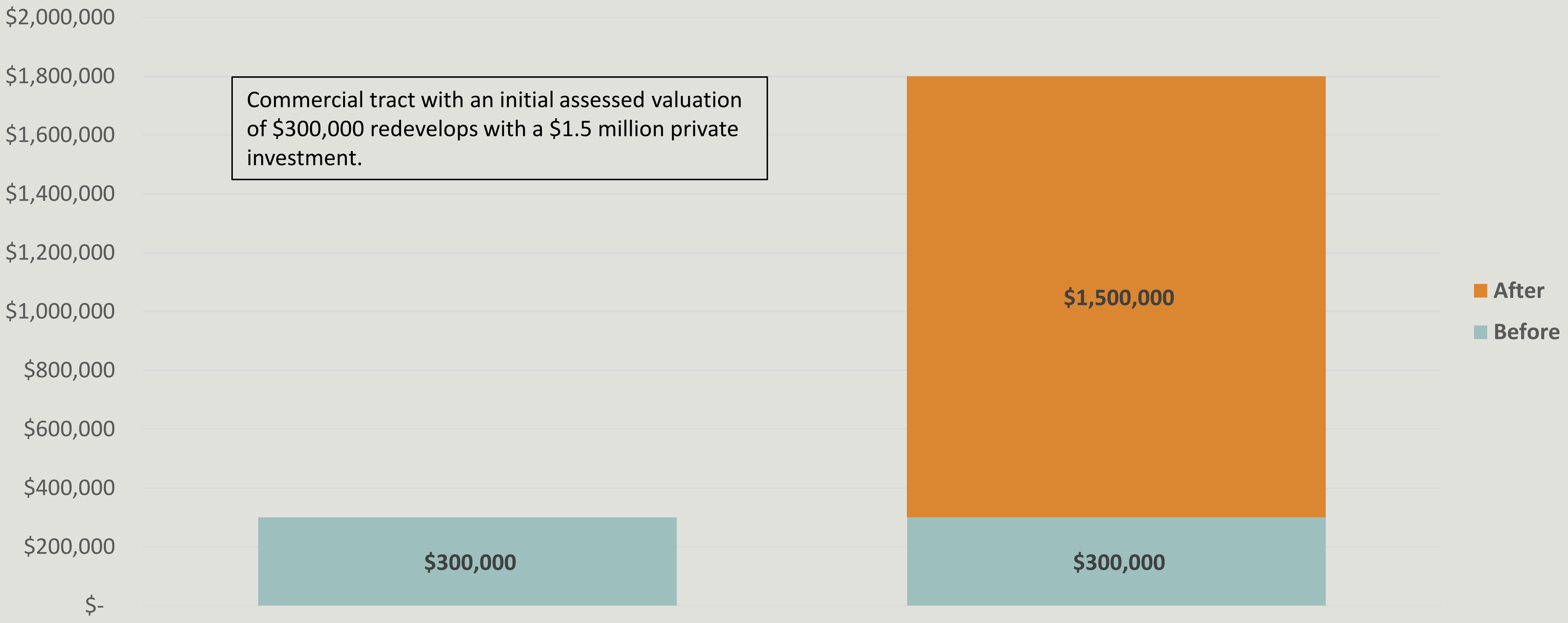
The City may also elect to facilitate projects on a ***pay-as-you-go*** basis; the developer pays for improvements upfront and is reimbursed with TIF proceeds over time.

Private developers may also receive an industrial revenue bond (and the subsequent benefits under state law), but may not simultaneously receive a property tax abatement.

TIF Example

A PRIMER: TAX INCREMENT FINANCING

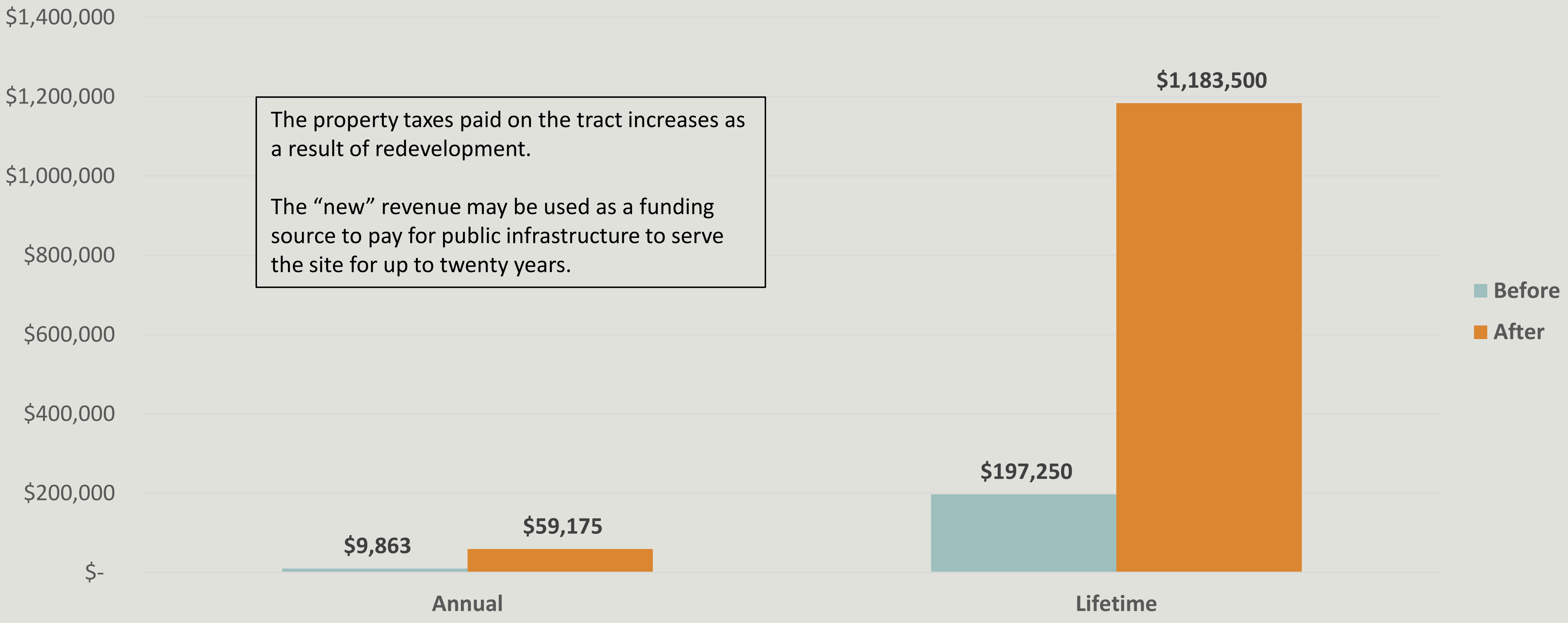
Assessed Valuation



Property Taxes

The property taxes paid on the tract increases as a result of redevelopment.

The “new” revenue may be used as a funding source to pay for public infrastructure to serve the site for up to twenty years.



TIF Process

A PRIMER: TAX INCREMENT FINANCING

TIF Process: Establishing a TIF District

1. The City adopts a resolution stating its intent to create a TIF District and describes the District Plan.
2. The City adopts a resolution calling a public hearing. Notice of public hearing is provided to County, School District, and property owners, as well as published in the official newspaper.
3. Public hearing on proposed TIF District is held. Following the hearing, the City adopts a resolution making certain findings in support of the creation of a TIF District.
4. The City passes an ordinance establishing the TIF District.
5. No privately owned property may be acquired or redeveloped using TIF if either the BOCC or BOE determines that the TIF District will have an adverse effect on either entity.

TIF Process: Establishing a TIF Project

1. The City, in consultation with the Planning Commission, develops a Project Plan for specific development proposals within the TIF District.
2. The Project Plan must include a feasibility study to review the costs and benefits of the Project and the projected revenue to be derived by the development.
3. The City adopts a resolution calling a public hearing. Notice of public hearing is provided to County, School District, and property owners, as well as published in the official newspaper.
4. Upon conclusion of the public hearing and upon making the appropriate findings, the City may adopt an ordinance accepting the Redevelopment Plan. The ordinance must be adopted by the City Commission by no less than a two-thirds majority.
5. The City issue bonds to finance the Project, except that G.O. bonds may not be issued until a protest petition period expires.

Questions?