



EL DORADO

THE FINE ART OF LIVING WELL

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

TO: City Commission
FROM: Tabitha Sharp, City Clerk
SUBJ: Work Session Meeting Agenda
DATE: July 11, 2018

A Work Session is scheduled for July 11, 2018 at 4:00 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. Inc MOU and Work Plan
- b. BCC Facilities Use Agreements
- c. 30% Food Sales Rule for Prairie Trails

II. MAY 21st REGULAR AGENDA REVIEW

- a. Consent Agenda
 - i. City Commission Minutes
 - ii. Appropriation Ordinance
- b. New Business
 - i. Fence SUP
 - ii. Building SUP
 - iii. Inc MOU and Work Plan
 - iv. BCC Facilities Use Agreements

III. REPORTS

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

2018 Commission Priorities

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 July, 2018, by and between the City of El Dorado, Kansas ("City") and El Dorado, Inc. ("Corporation"), a Kansas not-for-profit corporation.

WHEREAS, the Corporation has been organized by representatives of the business community and certain government agencies in the and around El Dorado, Kansas, for the purpose of promoting economic growth in the area;

WHEREAS, on November 3, 1987, the City adopted Resolution No. 1695, designating the Corporation as the Industrial Development Committee of the City;

WHEREAS, the Corporation and the City wish to continue to partner on economic development initiatives with funding allocated for such purposes as provided in Resolution No. 1695; and

WHEREAS, the City's economic development program shall be administered under the terms and conditions set forth in this Agreement, as this cooperative relationship continues to contribute importantly to the accomplishment of each entities respective exempt purposes by promoting economic development programs for the benefit of the citizens of El Dorado.

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

1. **Scopes of Services.** The Corporation agrees to provide, through its professional staff, the following services to the City:
 - a. **BUSINESS RECRUITMENT.** The Corporation shall initiate an aggressive program to identify and recruit businesses to the City. The Corporation shall undertake specific efforts to identify target businesses by industry and by name, to inform those businesses of the opportunities for locating to the City, and to follow-up with qualified prospects in order to prepare development proposals. Corporation staff shall participate in joint efforts at the local, regional, and state levels to recruit new businesses to the City.
 - b. **DEVELOPMENT PROPOSALS.** The Corporation shall assist existing and prospective businesses with the preparation of development proposals for the consideration of the City. Corporation staff shall become familiar with every aspect of economic development as it applies to the City, and shall develop an understanding of the City's objectives in developing the commercial and industrial sectors of the City. The Corporation shall act as a facilitator for prospective business development and shall assist in the presentation of development proposals to the various jurisdictions having oversight on the development of the City. The Corporation shall strive to develop a "one-stop shop" approach for development proposals so that a proponent of a project can get virtually all questions answered by or through the Corporation.
 - c. **MARKETING.** The Corporation shall provide support to the City and its staff in marketing the business advantages to potential corporate residents, which support shall include, but is not limited to, market research, accumulation of data concerning prospective tenants, development and distribution of marketing materials, attendance at trade shows, conventions and other events where appropriate market intelligence can be gained, and other activities deemed appropriate by the parties. The EDC shall initiate such activities as it deems appropriate to ensure that the City is well represented in the

commercial and industrial real estate market both regionally and nationally.

- d. **EXISTING BUSINESS RELATIONS.** The Corporation, through its professional staff, shall assist the City and its staff in establishing and maintaining relationships with existing businesses, to assist those businesses in developing and expanding their facilities within the corporate limits of the City, and to identify and pursue potential linkages with other businesses who may be candidates for locating to the City. The Corporation's staff shall specifically and purposefully offer its services to each and every business in the City. The Corporation shall develop a means of annually contacting the managers of these businesses to inform them of the services available through the Corporation. The Corporation shall annually survey businesses to determine the potential for expansion and/or growth opportunities.
2. **Performance Standards.** The Corporation shall establish a plan of work in which the specific activities to be performed by the Corporation are delineated. Such plan of work shall specifically address the nature and scope of services to be provided to the City, and shall establish performance criteria by which the Corporation's performance will be measured and evaluated. Such plan of work shall be prepared annually and shall be subject to the approval of the City Manager prior to adoption by the Corporation's Board of Directors.
3. **Policies and Procedures.** The City and Corporation agree to periodically coordinate and review policies and procedures related to economic development administered in partnership between the City and Corporation. In addition, the City and Corporation will prepare general guidelines for the administration of economic development projects.
4. **Compensation.** In consideration of the services to be provided by the Corporation, the City shall pay to the Corporation the sum of \$68,000, payable at the rate of \$34,250 on or before the fifteenth day of the months of January and July of each year during the effective period of this Agreement. The Corporation 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.
5. **Industrial Mill Levy Fund.** The City annually levies one mill for economic development initiatives that may include, but not be limited to, activities related to the development and marketing of properties owned by the City, or jointly with the Corporation, or other entities, for the specific purpose of industrial or commercial development.

A portion of the funds generated by the Industrial Mill Levy are allocated by the City as a matching contribution to the Corporation as provided by Resolution No. 1695. As such, the City agrees to annually match funds dollar for dollar based on the amount collected by the Corporation from member investors. Such matching contribution by the City shall be limited to one mill on taxable tangible property located within the corporate limits of the City.

The City shall have sole discretion on the allocation and appropriation of funds in the Industrial Mill Levy Fund, although the City reserves the right to solicit input from the Corporation on the use of such funds. It shall be the intent of both parties to use any excess funds in the Industrial Mill Levy Fund for capital expenditures or planning and preparation expenses needed for the implementation of the economic development goals of the City and to refrain from using such funds for operational expenses of either the City or the Corporation.

6. **Administrative Fees.** Understanding that both the City and the Corporation allocate time and resources to various economic projects, the City agrees to share with the Corporation half of any administrative fee(s) collected as a result of an economic development incentive granted by the City's governing body where the Corporation provided assistance to the project. Any administrative fees to be disbursed under this provision shall be remitted to the Corporation within sixty days of receipt by the City. The City and Corporation shall annually review the administrative fees collected for economic development projects to ensure that sufficient funds are collected to properly reimburse the City and Corporation for the majority of its out-of-pocket expenses related to such projects. Final approval of any and all administrative fees shall be at the sole discretion of the governing body of the City.
7. **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.
8. **No Agency Relationship.** Notwithstanding anything to the contrary contained in this Agreement, the Corporation and its employees shall not hold itself or themselves out as, and shall not be, an agent of the City. Neither the Corporation nor its employees shall have the authority to enter into agreements, leases, or other commitments on behalf of the City.
9. **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.
10. **Insurance.** The Corporation 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.
11. **Termination.** In the event one party breaches the Agreement the other party may declare the Agreement in default. The non-breaching party may elect to terminate the Agreement upon thirty days notice to the breaching party and this Agreement shall thereafter terminate unless the default is cured within such thirty days.
12. **Duties upon Termination.** It is acknowledged and agreed that in the course of performing its obligations under this Agreement, the Corporation will compile and prepare certain market information, client lists, databases, and other information relating to the City's operations, businesses, prospective businesses, and other information, all of which shall become the property of the City upon termination of this Agreement. The Corporation agrees to deliver to the City all such information not later than the fifth business day following termination of the Agreement. All such information shall be kept confidential by the Corporation following termination of the Agreement, and the Corporation agrees not to disclose such information to any third party except as otherwise required by law.
13. **Funding.** The parties acknowledge that a portion of the Corporation's ability to fulfill its obligations of the Agreement is contingent upon continued funding by its member investors, and that such funding is currently primarily comprised of voluntary private contributions and the City. The Corporation shall make reasonable efforts to gain financial support through expanded membership and through other funding sources, such as grants-in-aid and service contracts or by collecting fees for services rendered to other agencies and organizations.

14. **No Implied Appropriation of Funds.** Notwithstanding any other provision of this Agreement, the City shall not be obligated for the Corporation'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 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 Corporation in writing of any such non-appropriation of funds for the upcoming calendar year on or before October 1st.
15. **Entire Agreement.** 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 July, 2018, at El Dorado, Butler County, Kansas.

EL DORADO, INC.

CITY OF EL DORADO, KANSAS

Gene Kimball, President

Vince Haines, Mayor

Attest:

Attest:

Secretary

Tabitha Sharp, City Clerk

2018 El Dorado, Inc. Proposed Work Plan Initiatives

“Growth is never by mere chance; it’s the result of forces working together.” James Cash Penney

1. Create a “One-stop shop” for existing and prospective businesses

- Track and coordinate timely responses to requests for information from existing and new prospects.
- Educate local economic development partners to ensure all prospects are given the same access to resources.
- Develop proposals for consideration by the City, Kansas Department of Commerce, Workforce Alliance and various jurisdictions having oversight on the development of the City.
- Provide support to businesses accessing economic development incentives and workforce training programs.

2. Support, initiate and maintain relationships with the existing business community and assist those businesses in developing and expanding their facilities within the corporate limits of the City.

- Create list of companies to meet 1 on 1 at least every 24 months
 - i. Consider companies with at least 25 employees and/or \$1M+ in capital investment.
- Host networking events such as Connect and Caffeinate-work on plan to sustain ongoing contact.
- Maintain quarterly contact via electronic newsletter with El Dorado, Inc. members.
- Coordinate meetings, events, emails, direct mail or social media to educate businesses regarding local and regional resources available with Butler Community College, Workforce Alliance, BREG, Kansas Department of Commerce, Network Kansas e-community, local facade grants etc.
- Promote information on educational seminars hosted by the El Dorado Chamber, El Dorado Main Street and others.

3. Complete work with Ad Hoc Recruitment Committee to create target industries recommendation.

- Solicit feedback and incorporate input from the following:
 - i. City Manager
 - ii. El Dorado, Inc. Board of Directors
 - iii. El Dorado City Commission
 - iv. Butler County Economic Development, Greater Wichita Partnership, Kansas Department of Commerce
 - v. El Dorado, Inc. full membership
 - vi. BCC Trustees, USD 490 and USD 375
 - vii. El Dorado Main Street and El Dorado Chamber Board of Directors
 - viii. Rotary, Kiwanis, Soroptimist

Measurement: Completed targeted industries recommendation to be presented to the El Dorado City Commission and El Dorado, Inc. Board of Directors for approval by 9/4/2018.

4. Work with the City, PEC and others to make existing City and City/Inc. owned property shovel ready.

- Populate information on eldoks.com and Location One.
- Use data in development proposals to recruit “targeted industries” to El Dorado.

Measurement: Process of working with PEC is complete and information is being utilized to recruit and expand targeted industries.

5. Initiate a multi-platform marketing plan to recruit targeted industries and ensure the City is well represented in the commercial and industrial real estate market both regionally and nationally.

- Maintain market research and data concerning prospects solicited and requesting information.
- Identify companies/prospects in our targeted industries model.
- Develop marketing material and proposals for distribution and follow up with qualified prospects.
- Maintain economic development information on eldoks.com, BREG website, Location One.
- Participate in regional recruitment efforts with the Greater Wichita Partnership and its members.
- Respond to Requests for Information from the Kansas Department of Commerce and others for targeted industries.
- Participate with Team Kansas, Greater Wichita Partnership and others in trade shows, conventions and other events where appropriate market intelligence can be gained.
- Support new and ongoing community image efforts with the City and other economic development partners.
- Continue to maintain 2 billboards between Exit 76 and Exit 73 on the Kansas Turnpike.
- Work with local Realtors that represent commercial and industrial real estate.
- Maintain relationships with Commercial/Industrial Brokers in Wichita and around the country.
- Work with Greater Wichita Partnership and BREG to include El Dorado in their regional web, print, and social media.

6. Continue to work with third-parties to identify and gather information for additional shovel ready property and spec commercial buildings in El Dorado.

7. Work with City to update guidelines, fees and processes for local financial incentives.

- CID, Tax Abatements, NRP, TIF, Star Bonds etc.

Measurement: Successful update of local financial incentives in 2018.

8. Support City efforts to create more workforce housing.

- Continue to work with 2016, 2017 MIH projects
- Assist City with submission of 2018 MIH application and other programs as requested.

Measurement: Successful closing of 2016 MIH project and closing or near closing of 2017 MIH project in 2018.

9. Continue to participate in joint economic development efforts at the local, regional and state levels.

- Attend local partner meetings.
- Quarterly Regional Economic Development Meetings.
- Wichita Area Outlook Team through WSUCEDBR.
- Actively engage with Greater Wichita Partnership, BREG, Workforce Alliance, BETA at Butler, WSUCEDBR, Butler County Economic Development, and other Butler County Communities.
- Continue membership and participation in KEDA and TEAM Kansas.

10. REPORTING/MEASUREMENT:

Unless noted otherwise:

- *Activity report monthly at El Dorado, Inc. Advisory meeting.*
- *An approved written tracking report of this work plan progress will be created, maintained and provided to the El Dorado City Manager in a written format by March 31st each year. Staff will provide a quarterly progress report of active business and housing projects quarterly to the City Manager in a verbal or written format that has been approved...*

El Dorado, Inc.

City of El Dorado

Gene Kimble, President (_____, 2018)

David Dillner, City Manager (_____, 2018)

FACILITY USE AGREEMENT
East Park Softball Complex North Field

This **FACILITY USE AGREEMENT** made this ____ day of _____, 2018, ("Effective Date") by and between the City of El Dorado, Kansas, hereinafter referred to as "City," and Butler Community College, hereinafter referred to as "BCC."

The City, for and in consideration of the covenants, agreements and stipulations hereinafter contained, by these presents does grant unto BCC, and the same hereby from the City, use of the North Field at the East Park Softball Complex ("Field"), located at 100 S. Woodland Street, and the use of the concession stands, restrooms, and adjacent parking facilities ("the Premises"), upon the following terms and conditions:

1. **Use of Premises.** This Agreement shall provide BCC non-exclusive rights to use and occupy the Field and Premises, as is, from the Effective Date of this Agreement until its termination. BCC shall be provided with keys and other necessary means to access the Field and Premises during the term of this Agreement. The City shall schedule and approve the use of the Field as provided herein. The Field shall remain open to the public, except during games, practices, and other scheduled events. BCC shall have priority for use of the Field to accommodate BCC practice and play schedules including rain-out rescheduled games. BCC will coordinate with entities scheduled to use the Field in the event any BCC games are needed to be made up due to rain or other weather-related events.
2. **Term.** The term of this Agreement shall be for one year from the Effective Date of the Agreement (the "Term"). Upon expiration of the Term, this Agreement shall be automatically renewed for a one-year period (the "Renewal Term") unless, at least sixty days prior to the Renewal Term, either party gives written notice of its intent not to continue the Agreement. During any renewal term, the conditions set forth in this Agreement shall remain in effect unless modified in writing and signed by both parties.
3. **Termination.** This Agreement may be terminated upon ninety days written notice without cause or penalty by either Party. Any such termination shall become effective only after the conclusion of the then current season.
4. **Operations and Maintenance.** BCC shall maintain all of the grounds located inside the fences of the North Field of the Softball Field Complex, including, but not limited to, all aspects of seeding, fertilizing, mowing and trimming, and field preparation for games and practices, and as more thoroughly defined in Appendix A, as attached. BCC shall make routine improvements and repairs to the Field and Premises caused by normal use. BCC is responsible for all expenses related to its operation and maintenance of the Field and Premises. BCC shall not be responsible for damages caused by another party or for the preparation of the Field for use by teams unaffiliated with BCC.

The City shall be responsible for all maintenance associated with the grounds located outside of the fences of the Field and shall be responsible for and oversee all field preparation for uses of unaffiliated parties.

Such maintenance responsibilities for both parties shall continue throughout and during the Effective Term and Renewal Terms of the Agreement.

5. **In-Kind Contributions.** BCC shall be responsible for purchasing and applying, as it sees fit, the following products that may become necessary under its obligations in Section 4 of this Agreement: perennial rye, fertilizer (Type 13 13 13), crabgrass preventer, crabgrass/weed killer, grub and insect killer, soil master, infield conditioner, and field chalk. BCC shall not seek

reimbursement of any expenses for its maintenances of the Field or Premises. In consideration BCC's obligations under Sections 4 and 5 of this Agreement, the City shall not charge BCC for use of the Field or Premises.

6. **Inspections.** The City and BCC will conduct an inspection within thirty days of the Effective Date of this Agreement and another inspection following the close of each season. The inspections shall document the initial condition of the Premises. The final inspection of each season shall document the condition of the Premises and any necessary repairs or improvements to be completed by each party prior to the beginning of the next season. The City reserves the right to perform periodic inspections of the Field and Premises to assure compliance with the Agreement.
7. **Signs and Advertising.** BCC may sublease temporary advertising space at the Field and Premises during the Term of this Agreement without prior approval of the City. BCC shall also be permitted to display temporary signage for honorees, championship teams, and special athletic events. Any signage and advertisements installed on the Premises must be removed by BCC following termination of this Agreement.
8. **Vendors.** BCC shall be entitled to sublease complex services to vendors, and receive the proceeds therefrom. BCC shall assume full responsibility for any damage resulting to the Field or Premises from subletting to any vendors.
9. **Non-affiliated Rentals.** The City may allow use of the Field and Premises for events not affiliated with BCC, subject to available scheduling. The City will maintain a Master Schedule for use of the Field and Premises by BCC and other entities. Such Master Schedule shall be shared with BCC in order for non-affiliated practices and games to be scheduled accordingly. The City shall retain the authority to manage scheduling conflicts and to serve as the final arbiter of any scheduling dispute.
10. **Use of Alcohol.** The sale and consumption of alcohol during BCC sanctioned events on the Premises shall not be allowed unless formally approved by the governing body of both entities. Such sale and consumption shall be in accordance with all laws, rules, regulations and ordinances of each governing body and any state agency whose authority extends to the Premises or the sale and consumption of alcohol during any events.
11. **Condition of Premises.** BCC shall use all reasonable precaution to prevent waste, damage, or injury to the Field and Premises. BCC shall always keep the Field and Premises in a clean and presentable condition. Restrooms, seating areas, common areas, press boxes and other rooms and structures on site shall be free of trash and debris and cleaned after each use. The grounds shall be mowed, trimmed and maintained in a manner that will reflect well on both parties. BCC shall be responsible for providing security for their events. BCC shall return the Premises to the City at the expiration, or prior termination, of this Agreement in clean and good condition.
12. **Alterations to Premises.** Except as otherwise provided herein, BCC shall not make any permanent alterations, additions or improvements to the Premises without the prior written consent of the City. All alterations, additions or improvements to the Premises which shall be made by BCC, except BCC's equipment and supplies not permanently attached or affixed to the Premises, shall become the property of the City and shall remain upon and be surrendered with the Premises as part thereof, without disturbance or damage, upon expiration or termination of this Agreement, unless otherwise expressly agreed to in writing by both parties. Improvements made by BCC prior to the Effective Date of this Agreement shall remain the property of BCC, and may be removed and retained by BCC at its discretion. The improvements included in this provision shall include: awnings and scoreboard.

13. **Capital Improvements.** If a capital improvement to the Premises is desired by BCC, a request shall be made to the City in writing. After the request is delivered, the parties agree to negotiate in good faith on the scope of the project and how capital and ongoing maintenance costs will be provided by the parties. Neither party shall be obligated to agree to any requests for capital improvements or the payment for any capital improvements unless otherwise agreed to in writing.
14. **Insurance.** The City will maintain all property casualty insurance coverage for the Field and Premises. BCC shall provide the City with a general liability insurance certificate demonstrating insurance coverage of at least \$1,000,000 per occurrence, with the City named as an additional insured. In addition, BCC shall be responsible for maintaining suitable insurance coverage on any contents owned by them. The City shall not be liable for damage or theft of contents owned by BCC stored on the Field or Premises.
15. **City Equipment.** BCC employees are hereby authorized by the City to operate City-owned equipment for maintenance of the Field. BCC agrees that no students or student-athletes will use City-owned equipment. Damages to City-owned equipment by BCC shall be reported immediately. BCC shall be liable for costs associated with repair or replacement of equipment damaged during use. BCC is authorized under this Agreement to use the following City-owned equipment, as needed, in the maintenance of the Field and Premises: a) Tractor; b) In-field machine; c) Mower; d) Push mower; e) Weed trimmer; f) Blowers; g) Field chalkers; and h) Line painters. Such equipment shall be stored at the City's East Park Maintenance Building located at 422 E. Locust Street, and shall be maintained in good working order by the City.

The City shall not be liable or responsible for any injury or damage that is a result of any BCC employee or agent using City-owned property and BCC agrees to indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of BCC's use of City owned property.

16. **Utilities.** The City agrees to pay all utility expenses associated with the operation of the Premises.
17. **Restroom Cleaning; Fee.** BCC agrees to remit a payment of \$320 per year for services rendered by the City to clean the restrooms on the Premises following BCC games. BCC will generally clean restrooms following games by removing trash and ensuring that the restrooms are in good working order. BCC will notify the City as soon as possible if restrooms are not in good working order and require repair or maintenance. The City shall take actions to repair restrooms to ensure that such facilities are in good working order as soon as practicable. Such repairs shall not be unduly delayed by the City.
18. **Employment Status.** All persons working for and under BCC shall be employees of BCC, and shall not be considered employees of the City. In this relationship, should any liability arise under the Workers Compensation Act of the State of Kansas due to injury of an employee of BCC, the same shall be the sole responsibility of BCC. BCC shall provide proof of such insurance within thirty days of the Effective Date of this Agreement.
19. **Indemnification and Tort Claims Act.** Both parties shall indemnify and hold harmless the other party against all claims for damages to persons or property by reason of the other party's use or occupancy of the Field or Premises. Notwithstanding any provision herein to the contrary, it is expressly agreed between the parties that the neither party has waived any rights it may be entitled to under the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, as amended, and any

agreements made by either party found to be inconsistent with the provisions of such Act are hereby declared to be inapplicable to the parties.

20. **Notices.** Notices and communications required to be in writing pursuant to this Agreement shall be effective only if delivered personally, or sent by facsimile, electronic mail, or certified mail, to the following:

Butler Community College
Attn: President
500 S. Haverhill Road
El Dorado, KS 67042

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

21. **Assignment.** The rights and privileges of BCC under this Agreement are not assignable without the prior, written consent of the City.
22. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas.
23. **Amendment.** This Agreement may only be amended by a written amendment executed by both parties. The parties agree that they will meet from time to time, as necessary, to discuss the implementation of the Agreement, and to negotiate in good faith on any amendments that may be needed for the efficient operation and use of the Premises.
24. **Successors and Assigns.** The covenants, terms and conditions of this Agreement shall extend to and be binding upon the successors and assigns of the parties.
25. **Final Agreement.** Except for any separate agreements referenced herein, this Agreement is the entire and final expression of the agreement between the parties, and it may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or negotiations of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement in El Dorado, Butler County, Kansas, the day and year first above written.

BUTLER COMMUNITY COLLEGE

CITY OF EL DORADO, KANSAS

Dr. Kim Krull, President

David B. Dillner, City Manager

Attest:

Attest:

Secretary

Tabitha Sharp, City Clerk

APPENDIX A

Maintenance Responsibilities

The maintenance responsibilities of Butler Community College for the North Field at East Park Softball Complex, as provided in Section 3, shall be defined as follows:

- Mow the north field and bullpens, trim weeds inside the fences, maintain the batting cages, bullpens, pitcher's mound, and home plate;
- Fertilize, weed and feed, apply insecticide, and over seed the field, as needed at the sole discretion of BCC;
- Laser-level the field and repair low spots;
- Prepare the field for all BCC practices and home games, to include chalking and miscellaneous game day preparation, at the sole discretion of BCC;
- Drag, water, tamp, and maintain the infield, batter's box, pitching areas, and bullpens;
- Maintain the sprinklers located on the field and replace any needed sprinkler heads, as needed;
- Remove trash from the Premises and restrooms following games, but no later than 12:00 pm the following morning, or prior to 9:00 am the following morning if games are scheduled on the Field on the following day;
- Remove all supplies used in the concession stand immediately following games, but no later than 12:00 pm the following morning, or prior to 9:00 am the following morning if games are scheduled on the Field on the following day; and
- Submit all practice and game day schedules to the City, as well as the name and contact information for responsible coach or staff member.

The maintenance responsibilities of the City of El Dorado for the North Field at East Park Softball Complex, as provided in Section 3, shall be defined as follows:

- Maintain all City-owned equipment in good working order;
- Maintain any City-owned utilities that support the Premises, including the sprinkler system, and repair any sprinkler system problems, in good faith, and without unnecessary or undue delay;
- Clean restrooms prior to and following scheduled games and maintain the public restrooms and concession stand to ensure good working order; and
- Stock the restrooms with paper towels, toilet paper, and soap.

FACILITY USE AGREEMENT
McDonald Stadium

This **FACILITY USE AGREEMENT** made this ____ day of _____, 2018, ("Effective Date") by and between the City of El Dorado, Kansas, hereinafter referred to as "City," and Butler Community College, hereinafter referred to as "BCC."

The City, for and in consideration of the covenants, agreements and stipulations hereinafter contained, by these presents does grant unto BCC, and the same hereby from the City, use of the McDonald Stadium ("Stadium"), located at 298 N. Griffith Street, and the use of the concession stands, restrooms, and adjacent parking facilities ("the Premises"), upon the following terms and conditions:

1. **Use of Premises.** This Agreement shall provide BCC non-exclusive rights to use and occupy the Premises, as is, from the Effective Date of this Agreement until its termination. BCC shall be provided with keys and other necessary means to access the Field and Premises during the term of this Agreement. The City shall schedule and approve the use of the Stadium as provided herein. BCC shall have priority for use of the Field to accommodate BCC practice and play schedules including rain-out rescheduled games. BCC will coordinate with entities scheduled to use the Field in the event any BCC games are needed to be made up due to rain or other weather-related events.
2. **Term.** The term of this Agreement shall be for one year from the Effective Date of the Agreement (the "Term"). Upon expiration of the Term, the Agreement shall be automatically renewed for a one-year period (the "Renewal Term") unless, at least sixty days prior to the Renewal Term, either party gives written notice of its intent not to continue the Agreement. During any renewal term, the conditions set forth in this Agreement shall remain in effect unless modified in writing and signed by both parties.
3. **Termination.** This Agreement may be terminated upon ninety days written notice without cause or penalty by either Party. Any such termination shall become effective only after the conclusion of the then current season.
4. **Operations and Maintenance.** BCC shall maintain all of the non-artificial grounds located inside the fences of the Stadium, including but not limited to all aspects of seeding, fertilizing, mowing and trimming, and field preparation for games and practices from August 10th to May 15th, and as more thoroughly defined in Appendix A, attached. BCC shall make routine improvements and repairs to the Field and Premises caused by normal use. BCC is responsible for all expenses related to its operation and maintenance of the Field and Premises. BCC shall not be responsible for damages caused by another party or for the preparation of the Field for use by teams unaffiliated with BCC.

Significant damage caused by BCC shall be repaired at BCC's sole expense. Damage caused outside of BCC season shall be repaired at City's sole expense prior to the commencement of the next BCC season. Should damage occur to field by third party, BCC shall be notified immediately and repair made by City as soon as practicable. The City agrees to coordinate a meeting of all parties using the Field for the purpose of conducting an assessment of the Field to document the current condition of the Field to determine an appropriate schedule for turf replacement. The City agrees to discuss the future costs associated with such replacement, and the distribution thereof, at a subsequent future date so that the affected parties may have adequate time to plan for such considerations.

The City shall be responsible for all maintenance associated with the grounds located outside of the Stadium and all artificial grounds located inside the Stadium, and shall monitor and oversee all field preparation for games of unaffiliated parties. The City will coordinate with other parties, as necessary, to address damage or maintenance needs caused by such parties.

Such maintenance responsibilities for both parties shall continue throughout and during the Term of the Agreement.

5. **Materials.** The City shall purchase all mutually agreed upon grass seed, weed treatment, insecticide, and fertilizer. The City agrees to invoice BCC half of the cost of such materials, and BCC shall pay such invoice within thirty days of receipt. In consideration for in-kind labor for maintaining the grounds, the City agrees to charge no lease payment for use of the Stadium or Premises.
6. **Inspections.** The City and BCC will conduct an inspection within thirty days of the Effective Date of this Agreement and another inspection following the close of each season. The inspections shall document the initial condition of the Premises. The final inspection of each season shall document the condition of the Premises and any necessary repairs or improvements to be completed by each party prior to the beginning of the next season. The City reserves the right to perform periodic inspections of the Premises to assure compliance with the Agreement.
7. **Signs and Advertising.** BCC may sublease temporary advertising space at the Premises during the Term of this Agreement without prior approval of the City. BCC shall also be permitted to display temporary signage for honorees, championship teams, and special athletic events. Any signage and advertisements installed on the Premises must be removed by BCC following termination of this Agreement.
8. **Vendors.** BCC shall be entitled to sublease complex services to vendors, and receive the proceeds therefrom. BCC shall assume full responsibility for any damage resulting to the Premises from subletting to any vendors.
9. **Non-affiliated Rentals.** The City may allow use of the Stadium and Premises for events not affiliated with BCC, subject to available scheduling. The City will maintain a Master Schedule for use of the Field and Premises by BCC and other entities. Such Master Schedule shall be shared with BCC in order for non-affiliated practices and games to be scheduled accordingly. The City shall retain the authority to manage scheduling conflicts and to serve as the final arbiter of any scheduling dispute.
10. **Use of Alcohol.** The sale and consumption of alcohol during BCC sanctioned events on the Premises shall not be allowed unless formally approved by the governing body of both entities. Such sale and consumption shall be in accordance with all laws, rules, regulations and ordinances of each governing body and any state agency whose authority extends to the Premises or the sale and consumption of alcohol during any events.
11. **Condition of Premises.** BCC shall use all reasonable precaution to prevent waste, damage, or injury to the Field and Premises. BCC shall always keep the Field and Premises in a clean and presentable condition. Restrooms, seating areas, common areas, press boxes and other rooms and structures on site shall be free of trash and debris and cleaned after each use. The grounds shall be mowed, trimmed and maintained in a manner that will reflect well on both parties. BCC shall be responsible for providing security for their events. BCC shall return the Premises to the City at the expiration, or prior termination, of this Agreement in clean and good condition.

12. **Alterations to Premises.** Except as otherwise provided herein, BCC shall not make any permanent alterations, additions or improvements to the Premises without the prior written consent of the City. All alterations, additions or improvements to the Premises which shall be made by BCC, except BCC's equipment and supplies not permanently attached or affixed to the Premises, shall become the property of the City and shall remain upon and be surrendered with the Premises as part thereof, without disturbance or damage, upon expiration or termination of this Agreement, unless otherwise expressly agreed to in writing by both parties.
13. **Capital Improvements.** If a capital improvement to the Premises is desired by BCC, a request shall be made to the City in writing. After the request is delivered, the parties agree to negotiate in good faith on the scope of the project and how capital and ongoing maintenance costs will be provided by the parties. Neither party shall be obligated to agree to any requests for capital improvements or the payment for any capital improvements unless otherwise agreed to in writing.
14. **Insurance.** The City will maintain all property casualty insurance coverage for the Field and Premises. BCC shall provide the City with a general liability insurance certificate demonstrating insurance coverage of at least \$1,000,000 per occurrence, with the City named as an additional insured. In addition, BCC shall be responsible for maintaining suitable insurance coverage on any contents owned by them. The City shall not be liable for damage or theft of contents owned by BCC stored on the Field or Premises.
15. **City Equipment.** BCC employees are hereby authorized by the City to operate City-owned equipment for maintenance of the Field. BCC agrees that no students or student-athletes will use City-owned equipment. Damages to City-owned equipment by BCC shall be reported immediately. BCC shall be liable for costs associated with repair or replacement of equipment damaged during use. BCC is authorized under this Agreement to use the following City-owned equipment, as needed, in the maintenance of the Field and Premises: a) Tractor; b) In-field machine; c) Mower; d) Push mower; e) Weed trimmer; f) Blowers; g) Field chalkers; and h) Line painters. Such equipment shall be stored at the City's East Park Maintenance Building located at 422 E. Locust Street, and shall be maintained in good working order by the City.

The City shall not be liable or responsible for any injury or damage that is a result of any BCC employee or agent using City-owned property and BCC agrees to indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of BCC's use of City owned property.

16. **Utilities.** The City agrees to pay all utility expenses associated with the operation of the Premises.
17. **Employment Status.** All persons working for and under BCC shall be employees of BCC, and shall not be considered employees of the City. In this relationship, should any liability arise under the Workers Compensation Act of the State of Kansas due to injury of an employee of BCC, the same shall be the sole responsibility of BCC. BCC shall provide proof of such insurance within thirty days of the Effective Date of this Agreement.
18. **Indemnification and Tort Claims Act.** Both parties shall indemnify and hold harmless the other party against all claims for damages to persons or property by reason of the other party's use or occupancy of the Field or Premises. Notwithstanding any provision herein to the contrary, it is expressly agreed between the parties that the neither party has waived any rights it may be entitled to under the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, as amended, and any agreements made by either party found to be inconsistent with the provisions of such Act are hereby declared to be inapplicable to the parties.

19. **Notices.** Notices and communications required to be in writing pursuant to this Agreement shall be effective only if delivered personally, or sent by facsimile, electronic mail, or certified mail, to the following:

Butler Community College
Attn: President
500 S. Haverhill Road
El Dorado, KS 67042

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

20. **Assignment.** The rights and privileges of BCC under this Agreement are not assignable without the prior, written consent of the City.
21. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas.
22. **Amendment.** This Agreement may only be amended by a written amendment executed by both parties. The parties agree that they will meet from time to time, as necessary, to discuss the implementation of the Agreement, and to negotiate in good faith on any amendments that may be needed for the efficient operation and use of the Premises.
23. **Successors and Assigns.** The covenants, terms and conditions of this Agreement shall extend to and be binding upon the successors and assigns of the parties.
24. **Final Agreement.** Except for any separate agreements referenced herein, this Agreement is the entire and final expression of the agreement between the parties, and it may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or negotiations of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement in El Dorado, Butler County, Kansas, the day and year first above written.

BUTLER COMMUNITY COLLEGE

CITY OF EL DORADO, KANSAS

Dr. Kim Krull, President

David B. Dillner, City Manager

Attest:

Attest:

Secretary

Tabitha Sharp, City Clerk

APPENDIX A

Maintenance Responsibilities

The maintenance responsibilities of Butler Community College for McDonald Stadium, as provided in Section 3, shall be defined as follows:

- Mow the bullpens, trim weeds inside the fences, maintain the batting cages, bullpens, pitcher's mound, and home plate;
- Prepare the field for all BCC practices and home games, to include miscellaneous game day preparation, at the sole discretion of BCC;
- Maintain the sprinklers located on the field and replace any needed sprinkler heads, as needed;
- Maintain the BCC Locker Room, keeping the interior and exterior clean and in good condition;
- Pump water off of the field, as needed, following rain events;
- Remove trash from the Premises and restrooms following games, but no later than 12:00 pm the following morning, or prior to 9:00 am the following morning if games are scheduled on the Field on the following day;
- Submit all practice and game day schedules to the City, as well as the name and contact information for responsible coach or staff member.

The maintenance responsibilities of the City of El Dorado for McDonald Stadium, as provided in Section 3, shall be defined as follows:

- Maintain all City-owned equipment in good working order;
- Mow, fertilize, weed and feed, apply insecticide, and over seed the outfield, as needed;
- Maintain any City-owned utilities that support the Premises, including the sprinkler system, and repair any sprinkler system problems, in good faith, and without unnecessary or undue delay;
- Clean public restrooms prior to and following scheduled games and maintain the public restrooms and concession stand to ensure good working order; and
- Stock the restrooms with paper towels, toilet paper, and soap.