



CITY OF PARK CITY, KANSAS  
COUNCIL CHAMBERS  
1941 E. 61ST STREET NORTH

February 25, 2020, 7:00 P.M.

**ROLL CALL**

**MEETING CALLED TO ORDER**

Invocation

Pledge of Allegiance

**APPROVAL OF AGENDA**

**Suggested Motion:**

Council Member \_\_\_\_\_ moved to approve the Agenda as Presented.

Council Member \_\_\_\_\_ seconded the motion.

**Other:**

**AWARDS AND/OR PRESENTATIONS**

**PUBLIC FORUM**

**STAFF REPORTS**

City Administrator

**CONSENT AGENDA:**

1. Minutes of February 11, 2020 Regular Meeting.
2. Appropriations 931-2020 with Addendums.
3. Approve Authorizing 250 Coupons for Trash Disposal in lieu of 2020 City-Wide Clean-up Day. City Obligation Not to Exceed \$6,270
4. Approve contract with Kansas Government Jobs Board Portal.



**Suggested Motion:**

Council Member \_\_\_\_\_ moved that the Consent Agenda, as Presented, be Approved.

Council Member \_\_\_\_\_ seconded the motion.

**Other:**

**NEW BUSINESS**

**5. DISCUSS AND RECEIVE 2020 CENSUS PRESENTATION FOR PARK CITY (WENDY STARK)**

**Recommended Action:** Staff recommends to receive and file.

**Suggested Motion:**

Council Member \_\_\_\_\_ moved to receive and file 2020 Census presentation.

Council Member \_\_\_\_\_ seconded the motion.

**Other:**

**6. EXECUTIVE SESSION – DISCUSSION PERTAINING TO NON-ELECTED PERSONNEL (DM)**

**Recommended Action:** Staff recommends recessing into executive session for \_\_\_\_\_ minutes.

**Suggested Motion:**

Council Member \_\_\_\_\_ moved to recess into executive session for \_\_\_\_\_ minutes to discuss the non-elected personnel.

Council Member \_\_\_\_\_ seconded the motion.



**7. DISCUSS AND CONSIDER AMENDMENT TO EMPLOYMENT AGREEMENT OF THE CITY ADMINISTRATOR RELATING TO ANNUAL COMPENSATION (RM)**

**Recommended Action:** To be Determined by Council.

**Suggested Motion:**

Council Member \_\_\_\_\_ moved to approve an amendment to the employment agreement of the City Administrator relating to annual compensation.

Council Member \_\_\_\_\_ seconded the motion.

**GOVERNING BODY REPORTS**

Mayor's Remarks

Remarks by Council Members

**ADJOURN**

**Suggested Motion:**

Council Member \_\_\_\_\_ moved to Adjourn the Meeting.

Council Member \_\_\_\_\_ seconded the motion.

**Other:**



**MINUTES OF THE GOVERNING BODY OF  
THE CITY OF PARK CITY, KANSAS  
COUNCIL CHAMBERS – 1941 E. 61<sup>ST</sup> STREET NORTH  
February 11, 2020**

**ROLL CALL**

The following were present: Council Members, John Lehnherr, George Glover, Ben Saucedo, Melvin Kerr Tom Jones, George Capps, and Brandi Baily. Council Member Jim Schroeder was absent.

Also present: City Clerk Marlo Rugg, City Administrator Sean Fox, Assistant City Administrator/Human Resources Manager Dana Walden, Police Chief Phil Bostian, City Attorney Doug Moshier, Finance Director Dee Anne Grunder, and Public Works Director Eric Miner. Mayor Ray Mann was absent.

**VISITORS**

Taylor Messick, Ark Valley News  
Terry Ford  
Jamie Johnson  
Dave Dooman  
Nathaniel Thurman

**MEETING CALLED TO ORDER**

The meeting was called to order by Council President Tom Jones at 7:00 pm. Pastor Nathaniel Thurman gave the invocation, and Council Member Melvin Kerr led the Pledge of Allegiance.

**APPROVAL OF AGENDA**

Council Member George Glover moved to approve the agenda as presented. Council Member Ben Saucedo seconded the motion. Motion carried 7-0.

**AWARDS & PRESENTATIONS**

None.

**PUBLIC FORUM**

None.

**STAFF REPORTS**



City Administrator Sean Fox reported a follow up to the January 28, 2020 Council meeting. He stated the City has had one call regarding the policy on sump pumps. He stated that staff will continue to post reminders on the City website and Facebook. Mr. Fox stated there are no display lights on the water tower

on 85<sup>th</sup> Street. He stated staff would examine the cost of lighting if Council instructs staff to do so. Mr. Fox stated the construction on the 61<sup>st</sup> Street bridge has both west bound and east bound lane access. He stated the new Exterior Grant Program has started and staff has received six applications. He stated Wendy Stark with the Kansas Counts 2020 Census will attend the next meeting and provide an overview on the progress and resources that will be made available to the public. Mr. Fox reported the 53<sup>rd</sup> Street lift station is up and running with no issues. He stated Los Aztecas Mexican Restaurant opened and the City wishes them well.

Council Member John Lehnherr requested that the City post reminders about the City's sump pump policy in the local newspaper. Council Member Ben Saucedo suggested printing a reminder on the utility bills. Mr. Fox stated there is limited space to print on and it would not be enough space to print the reminder.

**CONSENT AGENDA:**

8. Minutes of January 28, 2020 Regular Meeting.
9. Minutes of the January 21, 2020 Special Meeting.
10. Appropriations 930-2020 with Addendums.
11. Approve Cereal Malt Beverage License for F.O.E. Enterprises, LLC dba 81 Speedway, 7700 N. Broadway; Corner Market 133 LLC dba Corner Market, 61115 N. Air Cap Drive, Park City, Kansas.

Council Member John Lehnherr moved that the Consent Agenda, as Presented, be Approved.

Council Member Brandi Baily seconded the motion. Motion carried 7-0.

**NEW BUSINESS**

**12. DISCUSS AND RECEIVE ANNUAL PARK CITY BMX REPORT**

Jamie Johnson with the Park City BMX stated the progress and growth of Park City BMX since the Board took over in June 2019. She stated the BMX board is in the process of purchasing a storage container for securing track assets and the new sign will be attached to the container. Ms. Johnson stated dirt was also donated to do some renovations.

Council Member George Glover stated he was encouraged by the progress the BMX Board has made and thanked them for their work.

Council Member Ben Saucedo thanked the Board for all their work in making the BMX track a success.

Council Member George Glover moved to receive and file the Park City BMX annual report



Council Member Brandi Baily seconded the motion. Motion carried 7-0.

**13. DISCUSS AND CONSIDER DRINKING ESTABLISHMENT WAIVER FOR SPANGLES RESTURANT LOCATED AT 1023 E 61<sup>ST</sup> STREET NORTH**

City Administrator Sean Fox stated Section 3-102 of the Park City Municipal Code restricts the sale of alcoholic liquor (Drinking Establishment) by a business located within 300 feet of any church, school,

nursing home, or hospital, measured from the nearest property line without receiving a waiver of the distance limitation from the governing body. He stated the governing body shall grant such a waiver only following public notice and hearing and a finding by the governing body that the proximity of the establishment is not adverse to the public welfare or safety.

Council Member George Capps stated his observations between a drinking establishment and food establishment. Mr. Capps stated that Spangles has been a good business for the City.

Council Member Ben Saucedo asked how the alcoholic beverages would be served. Mr. Dooman with Spangles stated that the Alcoholic Beverage Control closely monitors and approves what can be served, when, where, and how. He stated less than one percent of sales will be alcohol related. Mr. Dooman stated Alcoholic Beverage Control allows alcohol to be sold between the hours of 6:00 am and 2:00 am.

A discussion ensued.

**PUBLIC HEARING**

At 7:27 Council President Tom Jones opened the public hearing.

No one appeared for the public hearing.

Council President Tom Jones closed the public hearing at 7:28 pm.

Council Member John Lehnerr moved to approve a waiver for a Drinking Establishment License for Spangles, 1023 E 61<sup>st</sup> St. N, Park City, Kansas.

Council Member Brandi Baily seconded the motion. Motion carried 5-2.

**14. DISCUSS AND CONSIDER A RESOLUTION DELINEATING THE BOUNDARIES OF THE CITY OF PARK CITY AS OF DECEMBER 31, 2019**

City Attorney Doug Moshier stated Kansas statutes require cities to adopt and publish an annual boundary resolution. He stated the City added no property to its boundaries in 2019. Mr. Moshier stated the 2019 boundary resolution describes a boundary of the City of Park City that is identical to the 2018 boundary resolution.



Council Member Brandi Baily moved to approve Resolution #1042-2020 defining the corporate Boundary of the City of Park City, Kansas as of December 31, 2019.

Council Member John Lehnherr seconded the motion. Motion carried 7-0.

#### **15. DISCUSS AND CONSIDER APPROVING REPLACEMENT OF MOTOR GRADER**

Public Works Director Eric Miner stated the current Public Works motor grader is a 1985 Champion 720A. He stated it was purchased used in 1992 for a cost \$37,500 and currently has 4,800 hours. Mr. Miner stated over the past couple of years, it has taken substantial effort to keep it operating as it is difficult to find replacement parts. He stated Public Works maintains seven dirt roads throughout the City and this piece of

equipment is vital to that process. Mr. Miner stated the cost of a new grader ranges from \$225,000 and up, which prompted Staff to research gently used machines. He stated Staff worked with Foley Equipment, and located a 2014 CASE Model 865B for \$100,000 with a trade-in allowance of \$10,000 for our old grader. Mr. Miner stated although a 5-year lease/purchase financing is available at 3.85%, Staff is recommending purchasing the grader utilizing the Special Streets and Highway Fund.

Council Member Ben Saucedo moved to approve the purchase of a 2014 Case Model 865B Motor Grader for \$90,400 to be paid out of the Special Streets and Highway Fund Capital Outlay.

Council Member George Glover seconded the motion. Motion carried 7-0.

Mr. Miner stated the grader has a five year, four-thousand-hour warranty that is transferable.

#### **16. DISCUSS AND CONSIDER AMENDMENT TO THE MUNICIPAL CODE RELATED TO THE NOISE ORDINANCE.**

City Attorney Doug Moshier stated the Council recently adopted a comprehensive noise ordinance. He stated in the discussions preceding the adoption Council Members raised several concerns about the scope of the prohibitions set out in that ordinance. Mr. Moshier stated questions were raised concerning 81 Speedway, Jeeps and the Kansas Highway Patrol shooting range and the applicability of the noise limitations set out in the noise ordinance to these businesses and facilities. He stated the proposed amendment would except these businesses and facilities from the noise ordinance prohibitions for all activities conducted between 8:00 am and 10:00 pm. Mr. Moshier stated the exceptions also address the discharge of fireworks and the operation of trash trucks when they are lawfully performing trash removal services within the City. He stated the noise ordinance contained a list of activities which were declared to be noise nuisances regardless of the measured level of noise created. Mr. Moshier stated all but one of these specific activities are removed in the amending ordinance. He stated the activities removed were antiquated references or can be addressed under other regulatory ordinances of the City.



Council Member John Lehnherr moved to approve Ordinance # 1089-2020 amending Sections 8-1201, 8-1204, 8-1205 and 8-1206 of the Municipal Code relating to prohibiting loud and unnecessary noise and establishing exceptions to that prohibition.

Council Member Ben Saucedo seconded the motion.

Council Member Ben Saucedo thanked Mr. Moshier for the changes that were made. He stated he received an email from a resident and business owner of Park City regarding the noise ordinance. He stated the email praised the business owner that was the center of the noise issues that had been addressed in previous meetings. He stated the business owner has made an effort to alleviate some of the noise. Mr. Saucedo thanked the business owner for hearing the concerns and addressing them.

Council Member Brandi Baily asked Police Chief Phil Bostian to provide how many incidents were reported to the police department regarding the noise issue. He stated there were six different dates that

citizens called 911 about the noise. Mr. Bostian stated there were four evenings with one call per night. He stated one evening had four calls, and another evening had two calls.

**Roll Call**

Council Member John Lehnherr	Yes	Council Member Tom Jones	Yes
Council Member George Glover	Yes	Council Member George Capps	Yes
Council Member Ben Saucedo	Yes	Council Member Brandi Baily	Yes
Council Member Melvin Kerr	Yes	Council Member Jim Schroeder	Absent

**17. DISCUSS AND CONSIDER SCHEDULING A SPECIAL WORKSHOP TO EVALUATE ALTERNATIVES FOR THE CONSTRUCTION OF THE 61<sup>ST</sup> STREET AND BROADWAY INTERSECTION.**

City Administrator Sean Fox stated staff has been working with WSP for alternatives for 61<sup>st</sup> Street and Broadway. He stated Council requested additional information providing two more options for the reconstruction of the intersection. Mr. Fox stated WSP will have that information available within the next week and would like to schedule a special workshop one hour prior to the regularly scheduled Council meeting on February 25, 2020.

Council Member Brandi Baily moved to approve scheduling a Special Workshop to discuss alternatives for the construction of the 61<sup>st</sup> Street North and Broadway intersection on February 25, 2020 at 6:00 pm.

Council Member Ben Saucedo seconded the motion. Motion carried 7-0.





**GOVERNING BODY REPORTS**

**Mayor’s Remarks**

None.

**Remarks by Council Members**

Council Member Brandi Baily encouraged everyone to attend a Wichita Wings game and support them.

Council Member Ben Saucedo wished his wife a Happy Valentine’s Day. He stated Convos Over Coffee will take place at the Daylight Donut on Saturday February 15, 2020 at 9:30 am.

**ADJOURN**

Council Member John Lehnerr moved to adjourn the meeting at 7:42 pm.

Council Member Ben Saucedo seconded the motion. Motion carried 7-0.

\_\_\_\_\_  
Ray Mann, Mayor

Attest:

\_\_\_\_\_  
Marlo Rugg, City Clerk

The foregoing minutes were considered at the February 25, 2020 meeting and approved with the following amendment \_\_\_\_\_.

The vote to approve the minutes \_\_\_\_\_.



CITY OF PARK CITY  
APPROPRIATION REPORT  
02/10/2020 – 02/21/2020

OPEN PURCHASE ORDERS	\$309,879.12
APPROPRIATION	\$167,730.12



VENDOR	NAME	NO# INVOICES	TOTAL AMOUNT	G/L		G/L NAME
				1099	ACCT NO#	
01-0001	CHISHOLM TRAIL ANIMAL HOS	1	54.81			N
01-0011	KS DEPT OF REVENUE PAYROL	1	3,926.21			N
01-0013	KANSAS DEPT OF REVENUE	2	50.00			N
01-0014	AIRGAS	2	328.85			N
01-0027	LEEKER'S FAMILY FOODS	4	163.19			N
01-0031	POSTMASTER	1	400.00			N
01-0047	AAA PORTABLE SERVICES LLC	2	352.00			Y
01-0063	IRS PAYROLL TAXES	3	22,844.10			N
01-0067	GREAT WEST FINANCIAL	2	1,922.05			N
01-0086	DITCH WITCH UNDERCON	1	199.87			N
01-0094	BARTELL'S TRUE VALUE	2	79.24			N
01-0096	UNIFIRST	2	307.37			N
01-0114	KPERS	14	17,868.36			N
01-0115	RAMADA TOPEKA	1	181.90			Y
01-0160	KANSAS ASSOC FOR COURT MA	1	150.00			N
01-0175	CHRISTOPHER M. DAVIS	1	860.00			Y
01-0219	GALLS, LLC	3	699.72			N
01-0245	SAM'S CLUB	1	297.50			N
01-0247	KMJA	1	25.00			N
01-0277	PATTON TERMITE & PEST CON	2	750.00			N

01-0313	CULLIGAN OF WICHITA	1	50.85		N
01-0316	NATIONAL SIGN CO INC	1	140.99		N
01-0317	CHISHOLM TRAIL STATE BANK	2	1,283.72		N
01-0334	KANSAS ONE CALL SYSTEM IN	1	231.60		N
01-0394	INTERLINGUAL INTERPRETING	1	40.00		N
01-0405	SEDGWICK COUNTY	1	1,927.80		N
01-0430	QUILL CORPORATION	1	83.99		N
			=		
VENDOR	NAME	NO# INVOICES	TOTAL AMOUNT	1099 G/L ACCT NO#	G/L NAME
01-0441	PARK CITY LIBRARY	1	57.50		N
01-0459	SAFETY KLEEN	1	189.50		N
01-0464	KANSASLAND TIRE WHOLESALE	2	260.00		N
01-0531	WATCHGUARD VIDEO	1	1,500.00		N
01-0556	KANSAS PAYMENT CENTER	1	733.85		N
01-0576	UNDERGROUND VAULT & STORA	1	4.00		N
01-0625	WESTERN NRG, INC.	1	325.00		N
01-0696	OFFICE PLUS OF KANSAS	3	213.31		N
01-0762	O'REILLY AUTO PARTS	3	471.18		N
01-0869	JESSE D WALLENDER	1	1,000.00		Y
01-0879	SURENCY LIFE AND HEALTH	1	304.00		N
01-0888	COOPER LAW OFFICE LLC	2	1,400.00		Y
01-0974	MAYER SPECIALTY SERVICES	1	2,450.00		Y
01-0994	GUARDIAN LIFE	2	220.69		N
01-1025	FOLEY RENTAL AND EQUIPMEN	1	90,000.00		Y
01-1051	RAPID SERVICES LLC	1	62.00		Y

01-1059	DELTA DENTAL OF KANSAS	4	1,461.91	N
01-1069	AUTOZONE	1	18.57	N
01-1075	JOHN GRISHAM DBA ARK FENC	1	1,460.00	Y
01-1133	FLEET SERVICES	1	3,617.49	N
01-1139	RAINIER ARMS FIREARMS ACA	1	2,040.00	Y
01-1142	SITEBOX STORAGE	1	2,500.00	N
01-1143	SHANE ALEXANDER	1	165.00	N
01-1144	MCCONNELL & ASSOCIATES CO	1	169.00	N
01-1149	LAW OFFICE OF SARAH L. GR	1	250.00	N
01-1151	IPMA-HR KANSAS	1	120.00	N
01-1154	HIGH TOUCH TECHNOLOGIES	1	1,200.00	N

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VENDOR SET: 01 City of Park City, KS

DISBURSEMENT REPORT  
VENDOR CLASS(ES): ALL CLASSES

SORTED BY VENDOR

VENDOR	NAME	NO# INVOICES	TOTAL AMOUNT	G/L 1099 ACCT NO#	G/L NAME
01-1320	SMART SECURITY INC.	1	120.00		N
01-1343	WASTE CONNECTIONS OF KS,	1	198.00		N
	*** REPORT TOTALS ***	94	167,730.12		



PURCHASE ORDER STATUS REPORT												PAGE: 1 VENDOR SET: ALL	
PO #	REQ #	VENDOR #	VENDOR NAME	STAT	DEPT	TE ORDER	LAST RECE	ORDERED	RECEIVED	VARIANCE	OUTSTANDING		
15-02870	15-02870	01-0193	GEAR FOR YOU	P	C & T	8/17/15	1/19/17	2,000.00	1,172.35		827.65		
18-03660	18-03660	01-0484	GARDNER DESIGN	P	C & T	4/11/18	3/21/19	23,550.00	13,350.00		10,200.00		
18-03689	18-03689	01-0542	APAC KANSAS, INC	P	COUNCIL	8/16/18	3/22/19	104,869.00	95,464.00		9,405.00		
18-03758	18-03758	01-0153	WSP USA INC.	P	ADMIN	12/19/18	12/30/19	150,000.00	43,190.36		106,809.64		
18-03760	18-03760	01-1010	VIA CHRISTI HEALT	O	PD	12/19/18		3,603.14			3,603.14		
18-03762	18-03762	01-1017	AIR CAPITOL CONST	O	COUNCIL	12/27/18	6/19/19	394,567.00	397,302.00	22,500.00	19,765.00		
18-03776	18-03776	01-0630	K.E. MILLER ENGIN	P	COUNCIL	11/13/18	6/07/19	33,000.00	25,290.00		7,710.00		
18-03777	18-03777	01-0630	K.E. MILLER ENGIN	P	COUNCIL	12/31/18	1/18/19	15,500.00	5,970.00		9,530.00		
19-03771	19-03771	01-1276	HARTMAN ARENA, LL	O	C & T	1/14/19		15,000.00			15,000.00		
19-03796	19-03796	01-1	OVER THE EDGE GRA	P	C & T	3/11/19	7/18/19	5,000.00	3,775.00		1,225.00		
19-03802	19-03802	01-0919	HUBER ASSOCIATES,	O	PD	3/21/19		2,500.00			2,500.00		
19-03804	19-03804	01-0630	K.E. MILLER ENGIN	P	COUNCIL	3/28/19	11/20/19	95,600.00	84,355.00		11,245.00		
19-03811	19-03811	01-0375	WICHITA WINWATER	P	WATER	4/11/19	5/08/19	1,200.00	671.25		528.75		
19-03819	19-03819	01-0503	RANSON FINANCIAL	P	GOVT BOD	5/17/19	5/22/19	5,500.00	4,000.00		1,500.00		
19-03823	19-03823	01-0153	WSP USA INC.	P	COUNCIL	5/30/19	12/30/19	19,651.00	17,994.98		1,656.02		
19-03824	19-03824	01-0625	WESTERN NRG, INC.	O	P.W.	6/03/19		3,882.80			3,882.80		
19-03832	19-03832	01-1	WICHITA INTERTRIE	O	C & T	6/26/19		1,000.00			1,000.00		
19-03833	19-03833	01-1	TOTE BAGS	O	C & T	6/26/19		10,000.00			10,000.00		
19-03847	19-03847	01-0812	KANSAS PAVING	P	COUNCIL	8/08/19	11/08/19	364,324.60	327,892.14		36,432.46		
19-03854	19-03854	01-0153	WSP USA INC.	P	COUNCIL	9/11/19	12/06/19	3,444.70	1,476.30		1,968.40		
19-03861	19-03861	01-1	WICHITA WINGS IND	P	C & T	9/30/19	1/23/20	30,000.00	12,500.00		17,500.00		
19-03888	19-03888	01-0032	CUMMINS SALES AND	O	SEWER	12/03/19		3,096.28			3,096.28		
19-03895	19-03895	01-0141	GT DISTRIBUTORS -	O	PD	12/23/19		1,245.00			1,245.00		
19-03898	19-03898	01-0999	EMPRISE BANK	O	ADMIN	12/24/19		1,104.28			1,104.28		
19-03899	19-03899	01-1120	KIESLER POLICE SU	P	PD	12/23/19	1/23/20	14,878.84	12,473.34		2,405.50		
19-03900	19-03900	01-0374	ARBOR MASTERS TRE	O	PARK	1/06/20		1,675.00			1,675.00		
19-03901	19-03901	01-0834	SINK, GORDON & AS	O	ADMIN	1/14/20		16,700.00			16,700.00		
20-03905	20-03905	01-0978	CLARK EQUIPMENT C	O	ST&HWY	1/23/20		2,580.20			2,580.20		
20-03906	20-03906	01-0418	AXON ENTERPRISE,	O	PD	1/23/20		3,684.00			3,684.00		
20-03912	20-03912	01-1140	ROADSAFE TRAFFIC	O	ST&HWY	2/14/20		5,100.00			5,100.00		
REPORT TOTALS:				PO'S	ORDERED	RECEIVED	VOIDED	VARIANCE	BALANCE				
OUTSTANDING				15	465,737.70	397,302.00	0.00	22,500.00	90,935.70				
PARTIAL				15	868,518.14	649,574.72	0.00	0.00	218,943.42				
RECEIVED				0	0.00	0.00	0.00	0.00	0.00				
COMPLETED				0	0.00	0.00	0.00	0.00	0.00				
VOIDED				0	0.00	0.00	0.00	0.00	0.00				
** TOTALS **				30	1,334,255.84	1,046,876.72	0.00	22,500.00	309,879.12				



## Agenda Item #3

**Prepared By: Dana Walden, Assistant City Administrator**

### **Summary:**

Approve Authorizing 250 coupons for trash disposal in lieu of 2020 City-Wide Clean-up Day, City Obligation not to exceed \$6,270.00.

### **Background:**

In 2015, in lieu of providing a City-Wide Clean-up Day, the City started the practice of distributing coupons to residents for trash disposal at the Waste Connections Transfer Station. Staff is requesting the Council authorize 250 coupons, of which 190 will be distributed to residents on a first come, first serve basis. Code Enforcement would have the remaining 60 coupons to distribute at their discretion.

### **Fiscal Impact**

Waste Connections, as part of their contract with the City, does not charge for the first 60 coupons redeemed. The cost for each coupon is \$33.00. The City obligation, if every coupon would be redeemed would be \$6,270.00. The history regarding the redemption of coupons is as follows:

2015 - 150

2016 – 84

2017 – 91

2018 - 72

2019 - 128

### **Staff Recommendation**

Staff recommends approval.



**Attachments**

N/A





## **Agenda Item #4**

**Prepared By: Dana Walden, Assistant City Administrator**

### **Summary:**

Approve Software License and Services Agreement with HT-SNC L.L.C. dba High Touch Technologies in the amount of \$1200.00 for the Kansas Government Jobs Board Portal.

### **Background:**

HrePartners.com, the website that the City has used to post job openings and manage the application process is scheduled to shut down on February 29, 2020. Hre was a wonderful resource for cities and counties in Kansas. IPMA-HR Kansas, an organization of HR professionals that Dana Walden, Assistant City Administrator/HR Manager is a member of, worked with High Touch Technologies to create a website to fill the void left by the shutdown.

The cost associated with this new site, \$1200 per year for IPMA-HR members, is lower than what we found with other applicant tracking systems, plus HRePartners will redirect to this site when it sunsets on February 29<sup>th</sup>.

### **Fiscal Impact**

\$1,200 per year.

### **Staff Recommendation**

Staff recommends approval.

### **Attachments**



## SOFTWARE LICENSE AND SERVICES AGREEMENT

This **SOFTWARE LICENSE AND SERVICES AGREEMENT** ("Agreement") is entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between HT-SMC, L.L.C. dba High Touch Technologies, a Kansas limited liability company ("HTT"), and the other party signing this Agreement ("Client").

**WHEREAS**, HTT has developed and owns that certain software platform commonly known as the Kansas Government Jobs Board Portal which consists of software and services designed to facilitate the hiring process for prospective employers and applicants by posting openings, accepting applications, screening applicants, providing search and management tools for the same, and other functionality (the "KSGovJobs System" as more fully described in this Agreement); and

**WHEREAS**, the purpose of this Agreement is to provide the terms for granting a limited license to Client to use certain software applications of the KSGovJobs System, provide for maintenance and support of those software applications, and to provide for various other services, all for Client's use in connection with its hiring processes ("Business Purpose").

The parties agree to the following:

### **1. DEFINITIONS**

Certain capitalized terms shall be defined as follows, in addition to those that may be elsewhere defined in this Agreement:

- a.** "Beta Software" is defined in Section 5.
- b.** "Billable Support Services" is defined in Section 10.
- c.** "Business Purpose" is defined in the second "Whereas" clause above.
- d.** "Client Data" means all data, files, documents, audio and visual information, graphics, financial information, employee information, operational data and all other data and information that Client creates, installs, uploads to or transfers in or through the KSGovJobs System or provides in the course of using the KSGovJobs System.
- e.** "Client's Marks" are defined in Section 4.
- f.** "Confidential Information" is defined in Section 23.
- g.** "Defect" means any Software Program Error that significantly and materially impacts Client's ability to utilize any KSGovJobs Applications. Defects do not include errors, bugs and glitches that are de minimis in nature.
- h.** "Disclosing Party" is defined in Section 23.
- i.** "Documentation" means any end-user installation or user guide, manual, or other end-user technical information, whether in printed or electronic form, that is normally provided by HTT to a licensee or an end-user of the KSGovJobs Application(s). Documentation specifically



excludes design documentation and any documentation related to the source code of the KSGovJobs Application(s).

- j.** "Fees" is defined in Section 11.
- k.** "Infringement Claim" is defined in Section 18.
- l.** "Initial Term" is defined in Section 2.
- m.** "License" is defined in Section 4.
- n.** "KSGovJobs Application(s)" means all HTT applications and software programs comprising the KSGovJobs System.
- o.** "KSGovJobs Application Update" means any update of an existing release of a KSGovJobs Application that is designated by HTT as a KSGovJobs Application Update.
- p.** "KSGovJobs Application(s) Upgrade" means any enhanced, improved or modified version of any of the KSGovJobs Application(s) that is classified by HTT as a KSGovJobs Application(s) Upgrade.
- q.** "KSGovJobs System" is defined in the first "Whereas" clause above, and includes the KSGovJobs Applications and the Services.
- r.** "Program Specifications" means the operating instructions, technical standards, specifications, the identity of program languages or software tools, hardware requirements, connectivity requirements, capacities, tolerances, file formats, and other technical operational and functional information set forth in any Documentation or other HTT-provided documents (whether in tangible and electronic formats) delivered or made available to Client regarding the applicable KSGovJobs Application(s), including available enhancements, KSGovJobs Application Updates, and modifications.
- s.** "Proposal" means any nonbinding document prepared by HTT and presented to Client for acquiring the right to use the KSGovJobs System.
- t.** "Receiving Party" is defined in Section 23.
- u.** "Renewal Term" is defined in Section 2.
- v.** "Restricted Materials" is defined in Section 22.
- w.** "Sales Order" means any formal document submitted by Client to HTT and agreed to by HTT in writing, for the purchase of a license to the KSGovJobs Applications, right to use the Services, purchase of any other services from HTT, lease or purchase of equipment, or any other purchase of any kind in connection with this Agreement or the KSGovJobs System. Sales Orders shall be in a form designated by HTT from time to time, or otherwise acceptable to HTT.
- x.** "Services" means access to the software and infrastructure in a hosted environment provided and maintained by HTT, which HTT grants to Client under this Agreement.
- y.** "Service Fees" means the Fees that Client is obligated to pay for the use of the KSGovJobs Applications and the Services pursuant to the applicable Sales Order.



- z.** "Support Services" is defined in Section 10.
- aa.** "Term" is defined in Section 2.
- bb.** "Third Party Obligations" is defined in Section 23.
- cc.** "Third Party Software" means application software products provided by third party vendors, including operating system and application software with which the KSGovJobs System interfaces, including, but not limited to, distinctly identifiable applications purchased or licensed by Client, such as payroll processing or payment processing applications. The term Third Party Software does not refer to any component of the KSGovJobs System which HTT has incorporated into the KSGovJobs Applications or the Services generally, such as a plug-in.
- dd.** "User(s)" means Client's employees, representatives, consultants, contractors or agents who are authorized to use the KSGovJobs Software and Service and have been supplied user identifications and passwords by Client or on Client's behalf.
- ee.** "White Label Services", such as using Client's trademark, is further defined in Section 4.

**2. TERM**

The initial term of this Agreement shall begin on the date Client is provided access to the website and shall continue for the period specified in the applicable Sales Order and shall end on the date that this Agreement is terminated (the "Term"). Except as otherwise provided under the applicable Sales Order, each Sales Order shall automatically renew for an additional period (each a "Renewal Term") equal to the initial duration of such Sales Order (the "Initial Term") upon the expiration of the immediately preceding Initial Term or Renewal Term. In the absence of provisions in a Sales Order prescribing the length of the Initial Term, the Initial Term of this Agreement shall be for one (1) year and shall auto-renew for subsequent one-year terms until terminated.

**3. SALES ORDERS**

- a.** Client may submit one or more Sales Orders to HTT from time-to-time. Sales Orders shall only be effective upon being accepted by HTT. A Sales Order may only be terminated as expressly provided in the Sales Order or as otherwise provided in this Agreement.
- b.** If there is any conflict between this Agreement and a Sales Order the terms of this Agreement shall control unless the terms of the Sales Order expressly vary this Agreement's application with specific reference to the applicable Section of this Agreement. Any variance from the terms of this Agreement in a Sales Order shall apply to that Sales Order only unless the Sales Order expressly states that the variance will be applied to other Sales Orders. No Sales Order shall otherwise modify or amend the terms of this Agreement.



#### **4. KSGOVJOBS APPLICATION(S)**

The following limited rights are granted to Client with regard to the KSGovJobs Application(s):

**a.** Subject to Client's timely performance of all of its obligations under this Agreement, including the prompt payment of all fees and charges due to HTT, and subject to the terms of this Agreement, HTT grants to Client a limited, personal, non-exclusive, nontransferable, non-assignable internal license ("License") to use any KSGovJobs Application(s) ordered pursuant to any Sales Order accepted by HTT, including all applicable KSGovJobs Application Updates, and to have HTT install the same. A KSGovJobs Application Update may or may not have enhanced, improved or modified functionality (as determined in HTT's sole discretion).

**b.** HTT shall make available a webpage or other means for use by Client's Applicants in searching for open positions, submitting applications to those positions, communicating with Client concerning such applications, and otherwise making use of the KSGovJobs System (the "KSGovJobs Portal"). HTT may provide additional features and functionality through the KSGovJobs Portal. Client's Applicants may only use the KSGovJobs Portal subject to such terms of use as agreed upon between Client and HTT. HTT will communicate with Client about required changes at least 30 days in advance of a change.

**c.** HTT shall post or allow Client to post their logos otherwise known as "Client's Marks" on the KSGovJobs Application(s) and the Services as provided to HTT for such purpose in the locations and manner reasonably determined by HTT consistent with its standard practices for white labeling the KSGovJobs Applications and KSGovJobs Portal (the "White Label Services"). HTT shall not be obligated to remove its trademarks, including, but not limited to the name KSGOVJOBS™ and related logos, from neither the KSGovJobs Applications nor the Services as part of the White Label Services; examples of how HTT shall continue to incorporate its marks in connection with the White Label Services is available upon request. The White Label Services shall not include any obligation for HTT to incorporate modification of Client's Marks into the KSGovJobs Applications or white labeling of Third Party Products, unless otherwise agreed to in writing. During the Term, Client represents and warrants to HTT that it has sufficient rights in and to Client's Marks to authorize HTT to perform the White Label Services as provided in this Subsection, and for the use of Client's Marks in the KSGovJobs Applications and Services during the Term. Unless otherwise agreed to in a Sales Order, HTT will not be obligated to make any modifications to the KSGovJobs Application(s) for Client (the "Additional Services"). HTT reserves the right to set the graphic standards for KSGovJobs and shall refuse any Client Marks that do not meet those standards or detract from the overall aesthetic looks of the KSGovJobs application, as determined by HTT.

**d.** Except as expressly provided otherwise in this Agreement, Client and any affiliate may not use, copy, have copied, modify, have modified, prepare derivative works, license, sublicense, distribute, rent, sell, decompile, disassemble, reverse engineer or otherwise attempt to derive source code of the KSGovJobs System, the Documentation or any portion thereof. All right, title and ownership of KSGovJobs System, Program Specifications, Documentation and all copies thereof, shall remain at all times the exclusive property of HTT or its licensors, suppliers or



vendors. Client agrees to employ commercially reasonable efforts to prevent any unauthorized copying or distribution of the KSGovJobs System, Program Specifications, and Documentation by Client or its agents. Client shall not remove any copyright notice or other notice imprinted in or on KSGovJobs System, Specifications, or Documentation. If ownership of any portion of the KSGovJobs System does not result as provided herein by operation of law, then Client and each of its affiliates assigns, and shall cause its respective employees, agents, and contractors to assign, without further consideration, ownership thereof, including all associated intellectual property rights, as necessary to give effect to the ownership terms regarding the KSGovJobs System to HTT or its third party licensors.

e. The parties agree that HTT shall be deemed to be the sole owner of all right, title and interest in and to the KSGovJobs System, including, but not limited to, all copyrights, design rights, trade secrets, trademarks, service marks (but not including Client's Marks used in connection with any White Labeling Services), patent rights, and all other intellectual property rights of every kind everywhere in the world.

f. Client agrees that it shares the responsibility for the security of the KSGovJobs System and all applicable information stored in or accessed through the KSGovJobs System or any equipment that Client purchases from HTT or any third party. Client agrees that it will immediately notify HTT if it becomes aware of any unauthorized access to or use of the KSGovJobs System. HTT uses and agrees to maintain throughout the term of this agreement industry standard security measures to protect the Client Data that it receives and the security of the Services; however, Client acknowledges and agrees that HTT cannot guarantee the security of the KSGovJobs Applications, the Services, or the Client Data, and that HTT shall not have any obligation as a result of any breach or unauthorized disclosure, except as expressly provided in this Agreement and by applicable law. In the case that HTT discovers a data breach, affected clients will be notified within 3 business days.

## **5. BETA SOFTWARE**

From time to time HTT may make "beta" versions (as designated by HTT) of the KSGovJobs Application(s), KSGovJobs Application Upgrades, Services, or of potential new KSGovJobs software modules or features (collectively, "Beta Software") available for Client's use if approved by Client. If Client approves use of Beta Software, Client authorizes HTT to install the Beta Software remotely or in person at a mutually agreeable time. CLIENT ACKNOWLEDGES AND UNDERSTANDS THAT ANY BETA SOFTWARE IS A PRE-RELEASE VERSION ONLY, IS STILL UNDERGOING TESTING BY HTT AND IS NOT AN HTT COMMERCIALY RELEASED PRODUCT. HTT MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY BETA SOFTWARE AND PROVIDES THE SAME ONLY ON AN "AS-IS WHERE-IS" BASIS. Client expressly agrees that the provisions of Section 19 shall not apply with respect to any Beta Software. However, Client acknowledges and agrees that all Beta Software delivered in accordance with this Section shall otherwise be considered to be a "KSGovJobs Application" for all purposes of this Agreement.

Notwithstanding anything to the contrary, as to any Beta Software, this Agreement and the limited license granted hereby will terminate on the earliest of: (a) ten (10) days after the date of



delivery by either party to the other party of written notice of termination of the beta testing period for such Beta Software; or (b) the date of HTT's commercial release of the final version of such Beta Software for licensing to its end users generally.

Upon expiration or other termination of such period, Client immediately shall discontinue any and all of use of the Beta Software and related documentation and remove or permit HTT to deactivate the Beta Software. The termination of this Agreement, as to any Beta Software, shall not affect the continuation of this Agreement as to any other KSGovJobs Application(s) that have been licensed to and are in use by Client in accordance with the terms of this Agreement. Upon expiration or other termination of any period of use of any Beta Software that Client elects not to purchase a license to use under this Agreement, Client agrees that it will immediately discontinue its use and provide to HTT remote access to Client's systems on which such Beta Software is installed for the limited purpose of permitting HTT to remove or deactivate such Beta Software and reactivate or reinstall use of the KSGovJobs Application(s) in use before the use of such Beta Software. Nothing in this Section shall entitle Client to simultaneously operate or use the KSGovJobs Application(s) and Services in beta and non-beta versions.

## **6. KSGOVJOBS SERVICES**

**a.** In consideration of payment of the Service Fees, HTT agrees to provide Client access to the Services.

**b.** HTT will communicate with Client at least 30 days prior to modifying, temporarily or permanently, the Services (or any part thereof), except for routinely scheduled down time. Client agrees that HTT will not be liable to Client or any third party for any modification or discontinuance of the Services as described in this Section, provided that the website continues to provide the functionality that it was designed to provide OR that Client is released to terminate the agreement.

**c.** Client further agrees that, unless explicitly stated otherwise, any new features that augment or enhance the Services or the KSGovJobs Applications, and/or any new Service or KSGovJobs Application hereafter purchased by Client pursuant to an amendment to this Agreement will be subject to this Agreement.

**d.** In order to use the Services, Client must have or must obtain internet access. Client must also provide all equipment necessary to make (and maintain) such connection to the internet in accordance with the Documentation.

**e.** Client may designate the number of Users it reasonably requires in order to use the Services for the Business Purpose. Client will provide and assign unique password and user names to each authorized User. Client acknowledges and agrees that Client is prohibited from sharing passwords and or User names with unauthorized Users or among authorized Users. Client will be responsible for the confidentiality and use of Client's (including its employees') passwords and User names. Client will also be responsible for all communications, including those containing business information, account registration, account holder information, financial information, Client Data, and all other data of any kind contained within emails or otherwise entered



electronically through the Service or under Client's account. HTT will act as though any electronic communications it receives under Client's passwords, User names, and/or account number have been sent by Client. Both parties agree to notify the other party if they become aware of any loss or theft or unauthorized use of any of Client's passwords, user names, and/or account number.

**f.** Client agrees that each User shall be obligated to agree to such Terms of Use as HTT posts on [www.KSGovJobs.com](http://www.KSGovJobs.com) from time-to-time as a condition of using the Services or any other portion of the KSGovJobs System, and that all use of the Services and KSGovJobs System shall be subject to such privacy policy and other policies as KSGovJobs posts on [www.KSGovJobs.com](http://www.KSGovJobs.com) from time-to-time, including all applicable updates and modifications. Client agrees that it shall be liable for all of the actions of its Users. HTT shall provide to Client a copy of the Terms of Use and all applicable policies, including any modifications thereto (which may be made in accordance with the applicable Terms of Use or policy), at least 30 days before the same shall take effect, unless a shorter time is specified in the applicable Terms of Use or policy. Client agrees that it is liable for all activities of its Users, including, but not limited to, breaches of the applicable Terms of Use or policies.

**g.** Both parties agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Services and the KSGovJobs Software, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data.

**h.** Client will ensure that each use of the KSGovJobs System by Client's Users is in accordance with the terms of this Agreement and the applicable Terms of Use and policies. Client agrees to notify HTT immediately of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of Client Data. Client shall not resell access to or use of the KSGovJobs System directly or indirectly to third parties.

**i.** Client understands that the technical processing and transmission of Client's electronic communications is fundamentally necessary to Client's use of the Service. Client expressly consents to HTT's collection and storage of electronic communications and/or Client Data transmitted through the Services. Client acknowledges and understands that Client's electronic communications will involve transmission over the internet, and over various networks, only part of which may be owned and/or operated by HTT. Client acknowledges and understands that changes to Client's electronic communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Client further understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Client agrees that HTT is not responsible for any electronic communications and/or Client Data which are lost, altered, intercepted or stored without authorization during the transmission of any data whatsoever across networks not owned and/or operated by HTT. HTT agrees to store individual applicant data for at least 3 years, provided that Client is still contracting with HTT. In the event that the contract ends, HTT agrees to provide the last three year's of applicant data, provided that Client has not breached the agreement.





j. Client agrees that it shall obtain all necessary consents from its Applicants, employees and other third parties for the use, processing, transmission and other disclosure and submission of the Client Data through the Services.

**7. THIRD PARTY SOFTWARE**

a. HTT may elect, in its discretion, to provide functionality to enable authorized Third Party Software to be integrated into the KSGovJobs System for performing certain functions for Client, such as accounting and payroll processing. Redirecting to another website for receiving applications or performing other functions is not considered third party software. Client will be responsible for and obligated to pay for all applicable Third Party Software license and subscription fees. Client acknowledges that the KSGovJobs System will not function and perform to its full capabilities without the use of Third Party Software.

b. Client acknowledges and agrees that only Third Party Software that has been authorized by HTT in writing will be permitted to be used with the KSGovJobs System, a current list of which is available at [www.KSGovJobs.com](http://www.KSGovJobs.com), and such list may be updated at any time without notice. HTT reserves the right to require Third Party Software to satisfy such requirements as HTT determines in its sole discretion, and HTT may require the applicable vendors to enter into agreements with and pay fees to HTT at any time. As between Client and HTT, HTT reserves the right to revoke or suspend any authorized Third Party Software's right to be integrated through the KSGovJobs System at any time and for any reason without notice to Client; provided, however, that HTT will use commercially reasonable efforts to provide at least 30 days' advance written notice before such revocation or suspension. Client acknowledges that such revocation or suspension may be for any reason, including, but not limited to, the Third Party Software vendor's failure to pay fees, breach of agreement with HTT, or failure to update its Third Party Software to comply with applicable laws or the most recent release of the KSGovJobs System. Client agrees that HTT shall not have any liability of any kind to Client as a result of any such revocation or suspension.

**8. RESERVED**

**9. RESERVED**



## **10. SOFTWARE SUPPORT AND MAINTENANCE**

**a.** Subject to the terms and conditions of this Agreement, HTT shall provide Client with the services described in this Section related to the maintenance and support of the KSGovJobs Application(s) ("Support Services"). Support Services shall be made available to Client by email and such other media as HTT may elect at no charge Monday through Friday between the hours of 8:00 AM and 5:00 PM CST, excluding HTT's observed holidays.

**b.** The scope of HTT's email support service will include answering questions, performing diagnosis, and problem-solving related to the use of the KSGovJobs Application(s) and Client's business procedures as they relate to such use. Email support does not include any other subject matter, including, but not limited to, general business or management advice, or issues related to Third Party Software or hardware not purchased or leased from HTT.

**c.** Each support session will be deemed to begin when a support request is initiated by Client's personnel. The end of a support session shall be determined by HTT. Client acknowledges that during a session, there may be several electronic communications made between HTT and Client's personnel. In furnishing Support Services, HTT personnel may utilize remote access to Client's equipment and system(s), screen-sharing, chat, and such other techniques and tools as HTT reasonably determines.

**d.** HTT shall verify Client detected Software Program Errors; provided that such program errors can be recreated with a test file using the appropriate release of the KSGovJobs Application(s). A "Software Program Error" means a malfunction of the licensed KSGovJobs Application(s) that causes a failure to perform according to the Program Specifications, reproducible using uncorrupted/valid data under test conditions. If a Software Program Error is verified by HTT, HTT shall correct the Software Program Error so that the program will comply with the Program Specification.

**e.** Client will be charged for all Billable Support Services based on HTT's timekeeping practices and then current published rates. "Billable Support Services" means (i) all Support Services performed outside the standard hours described above, (ii) repairing Software Program Errors caused by Client's misuse of the KSGovJobs System, (iii) Support Services which must be performed in-person, (iv) support issues resulting from Third Party Products, and (iv) Support Services relating to services, computers, tablets or other devices which have been unlocked for use with software other than the KSGovJobs System, even if such equipment was unlocked by HTT at Client's request, and (v) all services not expressly covered hereunder. HTT's determination of whether any support request initiated by Client's personnel constitutes billable support will be binding on the parties. HTT will notify client before performing any billable actions. Client will promptly reimburse HTT for all costs and expenses incurred by HTT in connection with the provision of Billable Support Services, but only to the extent that Client agrees to such Support Services in advance.

**f.** HTT may require Clients to apply browser updates to the latest version or another still-supported version as a condition to receiving Support Services. During the term of this



Agreement HTT's then currently supported versions will be specified at <http://www.KSGovJobs.com>.

## **11. CHARGES, FEES AND EXPENSES**

**a.** KSGovJobs is a subscription based service that will continue until it is cancelled. Except as otherwise provided in this Agreement, all charges, fees and proposed expenses shall be set forth in a schedule attached to the applicable Sales Order. Client shall timely pay all such amounts (the "Fees") to HTT. Unless otherwise provided in the applicable Sales Order, Client shall pay all recurring Fees at the beginning of each renewal period.

**b.** HTT reserves the right during the Term of this Agreement to increase the Service Fees by providing notice at least forty-five (45) days prior to the scheduled renewal. Such increase shall be effective at the beginning of the renewal period or such later date as HTT specifies. Client acknowledges that all Service Fees are subject to this provision.

**c.** Fees for custom software development (special projects) and other services not included in this Agreement shall be negotiated on a case-by-case basis.

**d.** If HTT incurs any increased cost from Third Party Software licenses or annual support fees during the Term, HTT reserves the right to increase the costs at the next renewal period, provided that Client will be provided at least thirty (30) days notice of the increase in cost.

**e.** Unless otherwise specifically provided, all invoices are due within thirty (30) days from the date of invoice or no later than the 15<sup>th</sup> day after the contract renewal, if payments are made annually. The date of invoice shall be the date of mailing or upon transmission if delivered electronically. If Client fails to timely remit payment of any invoice, Client shall be deemed to be in default. The mailing address for payment is:

High Touch Technologies  
110 S. Main St, Suite 600  
Wichita, KS 672020

**f.** All amounts which Client does not timely pay shall incur a late charge at a rate of one and one half percentage points (1.5%) of the unpaid balance per month or eighteen percentage points (18%) per annum until paid in full, or the maximum amount permitted by law, whichever rate is lower. This late charge will be assessed on all invoices past due as of the first day of each month.

## **12. CLIENT'S DEFAULT**

**a.** Client shall be deemed to be in default of this Agreement if:



- (i) Client files a petition for bankruptcy or is adjudicated bankrupt; undergoes an assignment for the benefit of creditors and does not contest any involuntary action by a creditor within the time limitations prescribed by law; ceases to do business for any reason for a period of thirty (30) days or more; or Client fails to perform its obligations herein for a period of thirty (30) days or more during any pending insolvency proceeding, whether a receivership, bankruptcy, or general assignment for the benefit of creditors by HTT;
  - (ii) Client commits any material breach of this Agreement, other than a failure to pay, which is not cured within thirty (30) days after HTT notifies Client in writing of such breach and Client is not then contesting HTT's assertion of breach in good faith in the manner prescribed in Section 14; or
  - (iii) Client fails to timely pay any amount otherwise due to HTT, unless such amount is being disputed in good faith and only for so long as Client pursues each succeeding step of the dispute process under Section 14 in a timely manner.
- b.** HTT shall be excused from performing its obligations under this Agreement so long as Client is in default or breach unless, and only for so long as, Client continues to pursue each succeeding step of the dispute resolution process under Section 14 in a timely manner or upon termination of this Agreement by HTT.
- c.** HTT shall not be liable for any loss, costs, damages, or other adverse consequence or effect suffered by Client which HTT determines occurred during Client's default.

### **13. HTT'S DEFAULT**

- a.** HTT shall be deemed to be in default of this Agreement if:
- (i) HTT files a petition for bankruptcy or is adjudicated bankrupt; undergoes an assignment for the benefit of creditors and does not contest any involuntary action by a creditor within the time limitations prescribed by law; ceases to do business for any reason for a period of thirty (30) days or more; or fails to perform its obligations herein for a period of thirty (30) days or more during any pending insolvency proceeding, whether a receivership, bankruptcy, or general assignment for the benefit of creditors by HTT;
  - (ii) HTT commits any material breach of this Agreement, which is not cured by HTT within thirty (30) days after Client notifies HTT in writing of such breach and HTT is not then contesting Client's assertion of breach in good faith by HTT in the manner prescribed in Section 14; or
  - (iii) the express refusal or demonstrated inability of HTT during a continuous thirty (30) day period to continue to offer support for the KSGovJobs Application(s) or to correct material deficiencies as and when required under the terms of this Agreement.



**b.** Client shall be excused from performing its obligations under this Agreement so long as HTT is in default or breach unless, and only for so long as, HTT continues to pursue each succeeding step of the dispute resolution process under Section 14 in a timely manner or upon termination of this Agreement by Client.

**c.** Client shall not be liable for any loss, costs, damages, or other adverse consequence or effect suffered by HTT which Client determines occurred during HTT's default.

#### **14. DISPUTE RESOLUTION**

**a.** In the event of any dispute or controversy arising out of or related to this Agreement, the parties shall first make a good faith effort to promptly resolve such dispute on an informal basis. If the parties are unable to reach agreement within thirty (30) days, then either party may cause such dispute to be resolved by binding arbitration; it being understood that except for a breach of this Agreement for which HTT is entitled to injunctive relief under this Agreement, arbitration shall be the exclusive forum for relief.

**b.** Arbitration shall be initiated by either party by sending written notice to the other party. Arbitration shall be immediately arranged through the American Arbitration Association or in such other manner upon which the parties shall mutually agree. Within fifteen (15) days of receipt of a request for arbitration, both parties shall each select an arbitration panel member who shall have no financial, professional, social, or other past or present relationship with either of the parties or their counsel, or have any reason to be partial to either party. Within fifteen (15) days of their selection, these two panel members shall jointly select a third arbitrator who meets the same criteria of impartiality as described above. The arbitration panel so constituted shall convene a hearing within thirty (30) days of the selection of the third arbitrator. The hearing shall be held in Wichita, Kansas. The arbitration panel shall give both parties at least fifteen (15) days written notice of the date, time, and final location of the hearing. A record shall be made of the hearing. In reaching its decision the arbitrators shall apply the principles of statutory and common law which in their opinion are applicable to the facts of the dispute. The arbitration panel shall issue a written decision by majority vote within fifteen (15) days of the close of the hearing. This decision shall be final, binding, and enforceable as provided by the Uniform Arbitration Act, K.S.A. 5-401, et-seq. The arbitration panel shall also assess fair and reasonable costs of arbitration to one or the other party or apportion such costs between the parties. The decision on costs shall be final and binding in the same manner as the decision on the merits described above. Attorney's fees shall not be considered costs. Each party shall be responsible for its own attorney's fees.

**c.** Even though applicable federal or state statutes may otherwise provide a longer statute of limitations, it is agreed that any claim Client may have or assert against HTT for any breach of this Agreement is not actionable unless formal demand is made under this Section or suit is filed in a proper court within one (1) year following Client's discovery of such breach, or within one (1) year from the time when Client, through the exercise of reasonable diligence, should have discovered the alleged breach, whichever period of time is shorter.



## **15. TERMINATION**

- a.** This Agreement may only be terminated as provided in this Section.
- b.** Client may terminate this Agreement effective upon delivery of written notice to HTT, in the event one (1) or more of the events of default occurs as described in Section 13 and such default is not timely cured.
- c.** HTT may terminate this Agreement for cause if Client fails to cure a breach or default within thirty (30) days after HTT provides Client with written notice of the same. Any such notice shall specify the event giving rise to the alleged default or breach. This Agreement shall remain in effect during the applicable cure period.
- d.** Notwithstanding the previous Subsection, HTT may also terminate this Agreement upon 30 days' notice and without providing Client the opportunity to cure if Client commits three (3) or more breaches within any twelve (12) month period, regardless of whether all three (3) breaches are timely cured.
- e.** Unless otherwise provided in the applicable Sales Order (including, but not limited to, Equipment Addenda), either party may terminate this Agreement by providing written notice to the other party specifying such termination, which shall be effective at the end of the first Initial Term or Renewal Term to expire at least thirty (30) days after the date of such notice (Illustration: if a month-to-month and year-to-year Sales Order - in month six of its term - are each in place when a termination notice is provided under this Section, then this Agreement shall terminate upon the end of the then current term of the year-to-year Sales Order).

## **16. REMEDIES**

- a.** HTT reserves the right to suspend Client's access to and/or use of the Services (i) for any late payment which is due but remains unpaid after 15 days' written notice of such delinquency, (ii) for any material breach of this Agreement which remains uncured after 30 days' written notice of such material breach. Client agrees that HTT shall not be liable to Client, or to any third party, for any suspension of the Services as described in this Section. Client agrees that it shall still be obligated to pay all applicable Fees, including, without limitation, Service Fees, for the duration of such suspension(s), and that it will not be entitled to any refund, pro-ration or credit attributable to the length of the suspension.

## **17. KSGOVJOBS SYSTEM EXPRESS WARRANTIES**

HTT provides the following warranties:

- a.** Services. Subject to the terms and conditions of this Agreement, HTT will use commercially reasonable efforts to provide all services hereunder, including the Services and the Support Services, to Client.
- b.** Limited Warranties of KSGovJobs Application(s). HTT warrants that the KSGovJobs Application(s) shall, as a whole, without customization, modification or delivery of additional services, substantially conform and perform in all material respects in accordance with



the Documentation and Program Specifications set forth in the applicable Proposal or Sales Order; provided that the KSGovJobs Application(s) are used in an appropriate operating environment via adequate network architectures and according to the Program Specifications, operator training standards, supported browsers, and instructions provided by HTT. Notwithstanding anything to the contrary in this Agreement, HTT does not warrant that the operation of the KSGovJobs Application(s) will be uninterrupted or error free.

**c. Limited Warranty for Support Services.** HTT warrants that the Support Services will be performed in a workmanlike manner consistent with industry standards reasonably applicable to the performance of such Services, subject to satisfaction of the following conditions precedent: (1) receipt by HTT of all fees due to HTT; (2) receipt of an adequate description of the failure of the KSGovJobs Application(s) alleged or found to be defective; (3) if necessary, receipt of data files or test files by HTT as soon as practical following discovery of such defect; and (4) verification of the defect(s) by HTT. If Client believes there has been a breach of this limited warranty for Support Services and so notifies HTT in writing stating in reasonable detail the nature of the alleged breach within thirty (30) days after the Support Services are delivered to Client by HTT, then HTT will promptly investigate the matter to determine the nature of the alleged breach of warranty. If there has been a breach of this warranty, then HTT's sole obligation, and Client's exclusive remedy, will be for HTT to correct or re-perform any affected Support Services as necessary to cause them to comply with this warranty. If HTT is unable to correct a breach of this warranty after repeated efforts, Client will be entitled to receive an equitable adjustment in the Fees actually paid (up to ten percent (10%) of the total amount of fees during the preceding twelve (12) month period) to reflect any reduction in the value of the Support Services as a result of the uncorrected breach of warranty.

**d.** Client shall at all times properly maintain the data and user account access components of their Client account, other than the KSGovJobs Application(s) and Services supported by HTT as provided herein. Client is responsible for the integrity of its data contained in the network and the security of such data. Client is exclusively responsible for the supervision, management, and control of its use of the KSGovJobs Application(s) and its network.

**e.** Notwithstanding anything to the contrary herein, the terms of the warranties under this Section shall not apply to, and HTT shall have no liability for any non-conformity or other problem related to any KSGovJobs Application(s) that has been (i) modified by Client or any third party; (ii) used in combination with equipment or software other than that which is consistent with the Program Specifications; (iii) used for any purpose which does not comply with the Documentation; (iv) used for any purpose for which it was not intended, or in a manner which is in breach of this Agreement, or (v) otherwise misused or abused.

## **18. INDEMNITIES**

**a. Indemnification by HTT.** If a third party asserts an infringement claim against Client asserting that Client's use of all or any portion of the KSGovJobs System in accordance with this Agreement violates that third-party's patent, trademark, or copyright rights ("Infringement Claim"), then HTT shall, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Client for any damages finally awarded against Client, but only if: (i) Client promptly



notifies HTT of the Infringement Claim; (ii) HTT retains sole control of the defense of any Infringement Claim and all negotiations for its settlement or compromise (which HTT has the sole and exclusive right to do under this Agreement); and (iii) Client provides all reasonable assistance requested by HTT, and gives all necessary authority, information and assistance as HTT may request (at HTT's expense).

HTT will not be responsible for any costs or expenses incurred or remitted by Client in the compromise of any claim by Client if agreed upon by Client or by Client's affiliate without receiving HTT's prior written consent. If use of any portion of the KSGovJobs System is permanently enjoined based upon an Infringement Claim, HTT may, in its sole discretion and at its own expense, procure for Client the right to continue using the applicable KSGovJobs Application(s), replace the same with non-infringing product while retaining substantially similar functionality, modify the offending KSGovJobs Application(s) so that it no longer infringes, or if each of the foregoing options is in HTT's determination commercially unreasonable or unduly burdensome, HTT will credit or refund to Client an amount equal to the Service Fees actually paid to HTT by Client for the infringing KSGovJobs Application(s), less a reasonable allowance for the period of time of Client's use of the non-infringing portions of the KSGovJobs System.

In no event shall HTT be liable for any costs or damages, and Client will be solely responsible to defend or settle any claim, suit or proceeding and any resulting loss or damages based upon:

(a) HTT's efforts to comply with Client's designs, specifications or instructions; (b) modification of the KSGovJobs System by Client or at the direction of Client; or (c) the use of the KSGovJobs System or any part thereof by Client in combination with any other product not specifically prescribed by HTT. This Subsection states the entire obligation and exclusive remedy of each of the Parties with respect to any actual or alleged Infringement Claim.

**b. Indemnification by Client.** Client agrees to defend, indemnify, and hold HTT harmless from and against any and all claims, damages, expenses (including attorneys' fees and out-of-pocket expenses) and liabilities arising out of (i) Client's (or any affiliate of Client) unauthorized use of all or any portion of the KSGovJobs System or Documentation, (ii) HTT's use of Client's Marks in connection with the White Labeling Services, or (iii) any breach of this Agreement by Client or any affiliate of Client, except in cases where the client is a Kansas municipality and subject to the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), in which case Client reserve the right to all defenses, limitations of liability or damages, and/or immunities available to it under the Kansas Tort Claims Act or other state or federal law.

## **19. LIMITATION OF WARRANTY**

All of HTT's warranties are subject to the following limitations:

**a. EXCEPT TO THE EXTENT OTHERWISE REQUIRED BY LAW, THE WARRANTIES CONTAINED IN SECTION 18 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH REGARD TO THE KSGOVJOBS SYSTEM OR ANY EQUIPMENT PROVIDED BY HTT OR THEIR CONDITION,**





INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE BY CLIENT AND NO OTHER EXPRESS WARRANTIES. However, to the extent the same are lawfully assignable, HTT hereby assigns to Client any and all warranties that HTT may be entitled to or receive for any third party software that is part of any KSGovJobs Application(s) sold or licensed to Client under this Agreement.

**b.** THERE ARE NO WARRANTIES (A) AGAINST INTERFERENCE WITH ENJOYMENT OF INFORMATION, (B) THAT INFORMATION, HTT'S EFFORTS, OR THE KSGOVJOBS APPLICATION(S), WILL FULFILL THE CLIENT'S PARTICULAR PURPOSES OR NEEDS, OR (C) WITH RESPECT TO DEFECTS IN THE INFORMATION OR KSGOVJOBS APPLICATION(S) WHICH AN EXAMINATION SHOULD HAVE REASONABLY REVEALED.

**c.** EXCEPT FOR CLAIMS ARISING OUT OF THE BREACH OF ANY CONFIDENTIALITY, TRADE SECRET OR NONCOMPETITION PROVISION OR FOR CLAIMS EXPRESSLY SUBJECT TO INDEMNITY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, ARISING OUT OF OR IN RELATION TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE. FURTHER, LIABILITY ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES AND NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY OR A THIRD PARTY FOR ANY INDIRECT OR SPECULATIVE DAMAGES (INCLUDING, WITHOUT LIMITING THE FOREGOING, CONSEQUENTIAL, INCIDENTAL AND SPECIAL DAMAGES), INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTIONS, AND LOSS OF PROFITS, IRRESPECTIVE OF WHETHER THE PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF ANY SUCH DAMAGES; PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT APPLY TO ANY BREACH OF ANY CONFIDENTIALITY OR TRADE SECRET OBLIGATIONS.

**d.** Any and all non-integrated third party software (e.g., libraries, utilities, plugins, etc.) distributed (if at all) with the KSGovJobs System are provided "AS IS" without warranty of any kind, whether express or implied, and use and installation thereof by Client or any affiliate of Client shall be subject to the terms and conditions of third party licenses supplied with such software (if any). HTT EXPRESSLY DISCLAIMS AND CLIENT EXPRESSLY ACKNOWLEDGES AND WAIVES ANY LIABILITY OF ANY KIND AGAINST HTT WITH RESPECT TO CLIENT'S USE OF SUCH THIRD PARTY SOFTWARE.

## **20. FORCE MAJEURE**

Except as specifically provided in this Agreement, HTT assumes no responsibility for problems or delays which are caused by acts or events beyond the control of HTT. Such acts or events include, but are not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, accidents, shortages of transportation, fuel or materials, power failures or



fluctuations, radio frequency (RF) interference, inadequately functioning telephone lines, equipment malfunction, and Defects in any proprietary software, supplied to HTT by other companies, that is required to run the KSGovJobs System or any act or event constituting force majeure.

## **21. LIMITATION ON LIABILITY**

HTT's entire liability and Client's exclusive remedy shall be as follows:

**a.** During any time while Client is in default, HTT shall have no liability for non-performance under this Agreement or for disabling Clients account or features that are embedded in the KSGovJobs System, and Client shall have no remedy against HTT for same.

**b.** All Third Party Software must be compatible with the KSGovJobs System without modification. Client understands that inherent conflicts or defects in such Third Party Software may cause the KSGovJobs System to not operate as warranted under this Agreement. Client understands that HTT may not be able to reconcile/correct the inherent conflicts or defects in such proprietary software. Client understands and agrees that HTT makes no representation or warranty as to such Third Party Software Providers, including Internet Browsers and browser plugins.

**c.** If HTT is unable to make the licensed KSGovJobs System operate as warranted because of inherent conflicts or defects in such Third Party Software or due to hardware that does not meet the Program Specifications, HTT may, as a remedy, reinstall any previous version of the licensed KSGovJobs Application(s), notwithstanding any obligations described in Section 4 or, at HTT's option, HTT may terminate this Agreement in accordance with Subsection 16(b).

**d.** Client understands and agrees that HTT does not warrant the operations of the licensed KSGovJobs System in connection with any Third Party Software, including any specific operating system. If Client experiences any difficulty with any portion of the KSGovJobs System while using it on a computer in which other software is installed, and if HTT is unable to reproduce the problem when the unaltered KSGovJobs System is run after the removal of any Third Party Software, or in a different operating environment, then HTT shall attempt to troubleshoot the issue with Client, but if it is not an HTT issue, HTT will have no responsibility with respect to such problem. Client also understands and agrees that HTT may, in the process of modifying and improving the licensed KSGovJobs System, upgrade to a newer or different version of Third Party Software, resulting in a KSGovJobs Application Update. Client understands that such changes in the Third Party Software may not support other software that may be used by Client, and nevertheless agrees to accept such changes in the software.

**e.** In all other situations involving performance or nonperformance of the KSGovJobs System furnished under this Agreement, or under any supplement to this Agreement, Client's remedy is (i) the correction by HTT of the licensed Software Program Error(s) as provided in this Agreement; or (ii) if, after exhausting efforts to correct the Software Program Error(s), HTT is unable to make KSGovJobs System operate as warranted, Client shall be entitled to recover actual damages to the limits set forth in Section 21(g).



**f.** For any other claim concerning performance or nonperformance by HTT pursuant to, or in any other way related to, the subject matters of this Agreement and any supplement to this Agreement, the Client shall be entitled to recover actual damages to the limits set forth in this Section. This limitation of liability does not apply to claims for copyright infringement or for personal injury or damage to real or tangible personal property caused by HTT's gross negligence.

**g.** The extent of HTT's liability for damages to Client for any cause and under any legal theory shall be limited to the total amount of Service Fees actually paid to HTT by Client during the twelve (12) month period occurring immediately prior to the event giving rise to the liability. THE PARTIES ACKNOWLEDGE THAT THE LIMITATION ON POTENTIAL LIABILITY SET FORTH IN THIS SUBSECTION 21(G) IS AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT. HTT NEITHER ASSUMES, NOR AUTHORIZES ANYONE TO ASSUME ON BEHALF OF HTT, ANY OTHER LIABILITY.

**h.** Notwithstanding any of the above Subsections, in no event shall HTT be liable for any damages arising from performance or nonperformance of the KSGovJobs System caused in whole or in part by Client's failure to perform Client's responsibilities described in the Program Specifications, written and oral operator training during initial installations or implementation of modifications, or any other written or oral instructions given to Client occurring at any time prior to such damages. Any other oral instructions shall be considered to have been written when given if they are followed up by a written memorandum or other record transmitted electronically or by mail within fifteen (15) days of such oral instructions. Nor will HTT be responsible for any damages that could have been prevented or mitigated had Client performed Client's responsibilities for safety, proper testing, and proper operation contained in the Program Specifications, operator training, or other instructions.

## **22. TRADE SECRETS**

The source code, Documentation, software (object code), and all other items related to the KSGovJobs Application(s) that are (i) labeled or otherwise clearly identified as being "Restricted Materials", copyrighted or any similar designation, or (ii) implicitly by their nature would be reasonably assumed to be proprietary or confidential are acknowledged to be the trade secrets of HTT. Client agrees to the following obligations:

**a.** Client shall not provide or otherwise make available all or any portion of the KSGovJobs System in any form without HTT's prior written consent except to employees of HTT, employees of Client or its affiliates who have also purchased licenses, and as provided in Section 6.

**b.** Client shall take appropriate actions to require Client's employees and independent contractors to comply with the requirements of this Section. Client shall also require every person who is given access to the source code or Documentation to sign a written acknowledgement of their personal responsibility and obligation under this Agreement in a form and manner acceptable to HTT.



c. Client agrees that normal use of the KSGovJobs System through menu selections described in the user documentation or as presented in training shall be the only authorized access to the KSGovJobs System. Client agrees not to attempt to gain unauthorized access to the KSGovJobs System.

d. Client shall not itself, and shall not assist or permit any employee or affiliate of Client or any third party to, translate, reverse engineer, decompile, recompile, update, or modify all or any part of the KSGovJobs System or merge any of it into any other software except with the prior written consent of HTT.

e. Client shall comply with all laws governing copyrighted, patented, and trade secret-protected material of other companies that may be supplied with the KSGovJobs System. Some or all of the KSGovJobs System is now, or may be in the future, copyrighted. Client agrees to comply with all laws governing such copyrighted material.

f. Notwithstanding any provision to the contrary herein, if Client deliberately or negligently violates any provisions of this Section, HTT, in addition to other remedies that may be available, may terminate this Agreement with Client effective immediately upon notice to Client.

g. The parties' respective obligations under this Section shall survive the expiration or termination of this Agreement for the longer of 20 years or until the information subject to this section 22 no longer qualifies as a trade secret under the Kansas Uniform Trade Secrets Act.

### **23. CONFIDENTIALITY**

During the term of this Agreement, each party acknowledges that it will have access to confidential information regarding the other party's business. Accordingly, each party agrees to the following:

a. As used herein, the term "Confidential Information" shall mean any and all information, technical data or know-how which one party ("Disclosing Party") discloses to the other party ("Receiving Party"), either directly or through their employees, agents, contractors or representatives, which is or may be related to (a) the business, present or future, of the Disclosing Party or its affiliates (b) the technology, services or products of the Disclosing Party or its affiliates; (c) the research and development efforts, research or investigations of the Disclosing Party or of its affiliates; (d) the business or identity of any Applicant of the Disclosing Party or its affiliates; or (e) the financial information pertaining to the Disclosing Party or its affiliates. Further, and specifically, Confidential Information shall include, without limitation, financial information, trade secrets, processes, formulas, data, algorithms, source code or object code whether created or otherwise owned or licensed to HTT from third parties, know-how, improvements, inventions, techniques, manuals, mailing lists, market or Applicant data, marketing plans and strategies, information concerning any agreements (written or oral) or contract negotiations, distributors, licensees, franchisees, franchisors, Applicants or vendors, as well as any of the foregoing that may be incorporated in notes or other documents created by the Receiving Party as a result of such disclosure. Confidential Information shall include information communicated in writing which is designated as "Confidential," "Proprietary" or some other similar designation and shall also



include information communicated orally or via email or text message, if such information is identified as being "Confidential Information" at the time of its disclosure, or if such information by its nature should reasonably be understood to be Confidential Information. Confidential Information shall also include all information created by Client while utilizing the KSGovJobs Application(s) and all information submitted by end users, including applicants for employment. All end-user installation or guides, manuals and other end-user technical information, whether in printed or electronic form, that is customarily provided by HTT to a licensee or end-user of the KSGovJobs Application(s) shall at all times be deemed to be Confidential Information.

**b.** Notwithstanding the foregoing, Confidential Information shall not include any information which:

- (i) is now or later made known to the public through no default by the Receiving Party of this Agreement;
- (ii) the Receiving Party can show was in its (or an affiliate's) possession prior to disclosure by the Disclosing Party;
- (iii) is rightfully received by the Receiving Party (or an affiliate) from a third party without breach of any confidentiality obligation;
- (iv) the Receiving Party can clearly show was independently developed by the Receiving Party (or an affiliate) by persons who did not have access to any Confidential Information of the Disclosing Party;
- (v) is disclosed by the Receiving Party after receipt of written permission to so disclose from the Disclosing Party; or

**c.** Obligation of Confidentiality. The Receiving Party acknowledges that the Confidential Information is a special, valuable and unique asset of the Disclosing Party, and the Receiving Party agrees to hold in confidence and not itself use or disclose to any third party or permit any employee, affiliate or third party to use any of the Confidential Information of the Disclosing Party without obtaining the prior written consent of the Disclosing Party. Each party agrees to use the same degree of care (and in any event not less than reasonable care) to safeguard the confidentiality of the Disclosing Party's Confidential Information that it uses to protect its own secret information. The Receiving Party agrees to limit any disclosure of the Confidential Information to only those of its employees and advisors who have a need to know and who are bound by confidentiality obligations, and only after first advising such persons of the Receiving Party's obligations under this Agreement. The parties acknowledge and agree that the Client may be a government agency and is subject to the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., and the Kansas Open Records Act, K.S.A. 45-215 et seq., and that the pricing of and final contract between the parties will be subject to public disclosure pursuant to these laws. Further the parties agree that the Client's obligations under KOMA and KORA supersede these provisions and HTT will hold Client harmless for any disclosures that are required under these applicable statutes.



**d. Use of Confidential Information.** Each party agrees to use Confidential Information received from the other party only in the lawful performance of this Agreement, and not for any other purpose. All documents, data, records and other information containing or pertaining to any Confidential Information, including electronic formats, shall be returned promptly by the Receiving Party to the Disclosing Party upon request by the Disclosing Party or the termination or expiration of this Agreement.

**e. Limitations on activities.** The parties each agree that, during the term of this Agreement and for a period of two (2) years after the expiration or termination of this Agreement, neither party will recruit the other party's employees, or otherwise seek to induce such employees to terminate their respective employment or violate any agreement to which the employee is bound.

**f. Required Disclosure.** If the Receiving Party or any affiliate of a Receiving Party is requested by subpoena, court order, or similar process or applicable governmental regulation to disclose any Confidential Information, the parties agree that the Receiving Party or its affiliate, as the case may be, will provide the Disclosing Party with prompt notice of such request or obligation so that the Disclosing Party may seek an appropriate protective order or procedure if it elects to do so. If the Disclosing Party does not obtain an appropriate protective order or procedure by the time when such disclosure is reasonably required, the Receiving Party or such affiliate shall be permitted to make such limited disclosure.

**g. Third Party Obligations.** Client acknowledges that HTT may from time to time enter into certain confidentiality or nondisclosure agreements or other agreements with Applicants, suppliers or other parties which contain confidentiality or nondisclosure provisions ("Third Party Obligations"). To the extent that any of same may be more restrictive than the obligations under this Agreement, Client (for itself and its affiliates and their employees), agrees to be bound by and to adhere to all of such terms, covenants and restrictions contained in such Third Party Obligations as agreed to by HTT, effective upon the presentment by HTT to Client of a copy of the pertinent restrictive language contained in such Third Party Obligations.

**h. Injunctive Relief.** Each of the parties acknowledges (a) that any breach or attempted breach by the Receiving Party of any of the provisions of Sections 22 and 23 would result in irreparable injury to the Disclosing Party for which there would be no adequate remedy at law; (b) that if the Receiving Party should breach or attempt to breach any such provision, the Disclosing Party may seek through due process of law to enjoin, without posting a bond, the Receiving Party from further breaches or attempted breaches of such provision, or to compel compliance with such provision by specific performance, in addition to any other remedies available to the Disclosing Party in equity or at law; and (c) that if a court of competent jurisdiction determines that the Receiving Party has breached or attempted to breach any such provision, the Receiving Party shall consent to the granting of an injunction restraining the Receiving Party from further breaches of, or compelling compliance by specific performance with, such provision.

**i. Continuing Obligation.** The obligations and covenants of this Section 23 shall survive the expiration or termination of this Agreement.



**24. LIMITATIONS**

Even though state statutes may otherwise provide a longer statute of limitations, it is agreed that any claim Client may have or assert against HTT arising out of or relating to this Agreement is not actionable unless suit is filed in a proper court within one year following the date upon which such claim accrues.

**25. TAXES, LIENS, AND ENCUMBRANCES**

Client shall keep the KSGovJobs Application(s) free and clear of all third party claims, charges, levies, liens, security interests and encumbrances, except those required for Client to obtain purchase money financing, but only to the extent to which HTT expressly agrees and evidences such consent in writing. Client shall timely and fully pay all license fees, registration fees, assessments, charges, and taxes (federal, state and local sales and use taxes, ad valorem taxes, tariffs, duties, commissions and other charges) which may be imposed on the License granted hereunder or any hardware, software or services purchased under this Agreement or any Sales Order.

**26. CONTRACT DOCUMENTS**

This Agreement consists of this document, as well as any Proposal or Sales Order executed by the parties that specifically references this Agreement, and any Program Specifications that may, from time to time, accompany the KSGovJobs System, such as a Privacy Policy. The Program Specifications are subject to modification at the discretion of HTT. Such modifications shall become effective five (5) business days after HTT provides notice by publication upon [www.KSGovJobs.com](http://www.KSGovJobs.com), or through written notice mailed or transmitted electronically. It is understood that each Sales Order will specify the current charges and costs for specific services and software to be provided by HTT under this Agreement.

**27. AMENDMENTS**

Except as expressly provided in Sections 3 and 6, this Agreement cannot be amended, modified or supplemented except by written mutual consent of HTT and Client. In the event of a conflict in the terms of Proposal in comparison to a Sales Order, the Sales Order shall control.

**28. MISCELLANEOUS**

**a.** The headings to the sections of this Agreement are for convenience only, and do not form a part of this Agreement, and shall not in any way affect the interpretation thereof. Where the context so requires, the singular will include the plural and the plural will include the singular, including specifically the meaning of "KSGovJobs Application(s)."

**b.** If any provision of this Agreement is declared by any court or administrative body of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect. This Agreement, including its interpretation and enforcement, shall be governed by the



laws of the state of Kansas. All litigation relating to this Agreement, including the enforcement of any arbitration award, shall be conducted in the courts located in Sedgwick County, Kansas. Client agrees to consent to the jurisdiction of such courts for the purposes of the enforcement of any award or HTT's exercise of the remedies provided in Subsection 23(h).

**c.** This Agreement shall inure to the successors and assigns of the parties except as provided in Section 30. Each person signing this Agreement represents and warrants that it/he/she has the requisite power and authority or legal capacity to enter into this Agreement and perform their respective obligations.

**d.** Any notice or other communication required, or which may be given pursuant to terms of this Agreement, unless otherwise specifically set forth herein, shall be deemed sufficiently given or served if first reduced to writing and delivered personally to the intended recipient or if sent by registered or certified mail, return receipt requested, postage prepaid, addressed to either party at the address set forth above. The date of service and notice served personally shall be the date upon which the same is received, five (5) business days after being placed in the mail, or one (1) business day after transmission by facsimile, confirmed email or comparable electronic system; provided, however, any notice sent by mail as herein set forth which shall be unclaimed or refused shall for purposes of this Agreement be deemed received by the party to whom notice of attempted delivery has been given by the United States Postal Service as of the date of the first attempted delivery thereof. Any party hereto may, by prior written notice to the other parties, change any address to which any notice or communication hereunder shall be sent.

**e.** Neither party is nor will be deemed to be the agent nor legal representative of the other party for any purpose whatsoever. It is understood that each party is acting and will be acting as an independent contractor in its performance under this Agreement. The Agreement shall not authorize either party to create any obligation or responsibility whatsoever, express or implied, on behalf of the other party, or to bind the other party in any manner, or to make any representation, commitment or warranty on behalf of the other party.

*Signatures are on the following page.*





The effective date of this Agreement is the date when it is signed by HT-SMC, L.L.C.

**HT-SMC, L.L.C.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
*(Please Print)*

Name: \_\_\_\_\_  
*(Please Print)*

Title: \_\_\_\_\_  
*(Please Print)*

Title: \_\_\_\_\_  
*(Please Print)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Fed. Tax I.D. #: \_\_\_\_\_

Fed. Tax I.D. #: \_\_\_\_\_

Principle Address:

Principle Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Suite 600  
110 South Main Street  
Wichita, Kansas 67202-3700



Software License and Services Agreement with HT-SNC L.L.C. dba High Touch Technologies.



## **Agenda Item #5**

**Prepared By: Dana Walden, Assistant City Administrator**

### **Summary:**

**The Importance of the Census2020 for Park City. A presentation by Wendy Stark, Kansas League of Municipalities Census Outreach Manager.**

### **Background:**

The Census count in 2020 will set population data for our state and city for many years to come. Population data, and more importantly, correctly counting all members of the community is crucial to providing necessary funding for community services.

The Kansas Health Foundation has awarded a grant to the League of Kansas Municipalities to coordinate a statewide, local-government focused campaign to promote participation in the 2020 Census.

Wendi Stark is the Census Outreach Manager and will discuss why representation matters and the importance of public engagement.

### **Fiscal Impact**

An under count in Park City means that our community could miss out on approximately \$59,337.00 in federal funding over 10 years for each household that is missed in the 2020 Census.

### **Staff Recommendation**

N/A

# Census data matters to your community.

An under count in **Park City** means our community could miss out on approximately **\$59,337.00** in federal funding (over 10 years) for each household that is missed in the 2020 Census.

# KANSAS COUNTS CENSUS2020

## FACTS ABOUT PARK CITY *(based on data from the U.S. Census Bureau)*

### COMMUNITY:

Total Population (as of 2017): **7,512**

Population Change Since 2010: **+215**

Median Age: **33.3**



### ECONOMY:

Median Household Income: **\$61,788**

Number of Residents (age 16+) Employed: **5,330**

Number Employed in Health Care, Social Assistance, and Educational Services: **1,074**

Population Working Outside of City: **86.6%**

Average Commute Time to Work: **23.9 minutes**



### HEALTH:

Number of Population with Health Insurance: **6,700**

Number with Private Insurance (i.e. Employer, Direct-Purchase): **5,932**

Number with Public Health Insurance (i.e., Medicare, Medicaid, Tricare/military): **1,621**

Number with No Insurance: **812**



\*Residents can have multiple forms of insurance

### HOUSING & LIVING:

Median Household Size: **2.85**

Median Household Value: **\$117,900**

Total Number of Structures: **2,937**

Single Unit: **2,626**

Multi-Unit: **121**

Mobile Home: **190**

Boat, RV, van, etc.: **N/A**

Households with Broadband Internet Access: **2,265**



### EDUCATION:

Number of School-age Children: **2,530**

Total Population Over 25 Years of Age: **4,583**

\*Graduated High School (incl. GED): **1,313**

\*Attained Some College, No Degree: **1,242**

\*Attained Associates Degree: **482**

\*Attained Bachelor's Degree: **835**

\*Attained Graduate or Professional Degree: **436**



\*Data points indicate highest education level achieved

Ensure that **you count, Park City counts, and Kansas counts** by completing your 2020 Census questionnaire online, by phone, or by mail.