

## **COST-SHARING AGREEMENT**

**THIS COST-SHARING AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Lawrence, Kansas, a municipal corporation, Westar Energy, Inc., a Kansas corporation, and Midcontinent Communications, a South Dakota general partnership.

### **RECITALS**

- A.** The City of Lawrence, Kansas, a municipal corporation ("City"), has commenced a project, which includes demolishing the overhead structure ("Project") that traverses the alley between Massachusetts Street and Vermont Street from 8th Street to 9th Street ("Project Area").
- B.** At the same time, the City also wishes to remove and replace the sidewalks within the Project Area.
- C.** Westar Energy, Inc., a Kansas corporation ("Westar"), has expressed an interest in sharing in the costs of the Project, so that it can relocate certain facilities underground, beneath the sidewalks within the Project Area, while the Project is being completed.
- D.** Midcontinent Communications, a South Dakota general partnership ("Midco"), owns certain facilities that are attached to the structure that is the subject of the Project and has expressed an interest in sharing in the costs of the Project so that it can relocate its facilities underground, beneath the sidewalks within the Project Area, while the Project is being completed.
- E.** The City has the ability to accomplish the Project and to perform the sidewalk work within the Project Area.
- F.** Because the removal and replacement of the overhead structure and the removal and replacement of existing concrete sidewalks will benefit the City, Westar, and Midco together and, because the City will do the design and construction work, Westar and Midco have agreed to share the costs of the Project in accordance with the terms and conditions of this Cost-sharing Agreement.

**NOW, THEREFORE,** in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

## TERMS

1. The City agrees to undertake and to be solely responsible for the design and completion of the Project and the repair or replacement of the concrete sidewalk within the Project Area. The City will be solely responsible for all materials, equipment, and labor. The City agrees to complete the project in a timely fashion.
2. In consideration for the City's work on the Project and in exchange for the benefit of relocating its respective facilities within the Project Area, Westar and Midco each agree, hereby, to pay to the City, for the removal and replacement of the concrete sidewalk, the sum of **twenty two thousand, three hundred seventy eight, dollars and sixty sixty cents.**(\$22,378.66.) Such sum shall be paid separately by both Westar and Midco to the City in a lump sum, with the full amount due no later than thirty (30) days the delivery of an invoice for said Project from the City, which invoice shall be sent after completion of the Project.
3. After completion of the Project, the City will retain ownership of the alley and the sidewalk within the Project Area. Westar and Midco, however, will own any facilities buried beneath the alley and/or sidewalk within the Project Area.
4. The parties agree that, should any dispute arise that cannot be resolved through negotiations and by mutual consent concerning the validity and effect of this Agreement, or of any breach of the Agreement herein, venue of action concerning such dispute shall be in the District Court of Douglas County, Kansas.
5. This Agreement constitutes the entire agreement between the City, Westar, and Midco with respect to the Project, and it expressly supersedes all previous written, email, and oral communications between the parties. No amendment, alteration, or modification of this Agreement shall be valid unless executed in writing by all the parties.
6. No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fire, strikes, riots, floods, war, and other disasters or events beyond the City's or the University's reasonable control.
7. By signing this Agreement, the representative of each party represents that such person is duly authorized to execute this Agreement on behalf of that party and that the party agrees to be bound by its provisions.
8. If any section, sentence, clause, or phrase of this Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Agreement.

9. This Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the state of Kansas.

**IN WITNESS WHEREOF**, the undersigned have caused this Cost-sharing Agreement to be executed as of the date noted above.

**CITY:  
CITY OF LAWRENCE, KANSAS, a  
municipal corporation**

\_\_\_\_\_  
THOMAS M. MARKUS  
City Manager

**ACKNOWLEDGMENT**

THE STATE OF KANSAS            )  
  )     ss:  
THE COUNTY OF DOUGLAS        )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

\_\_\_\_\_  
Notary Public

My Appointment Expires:

**WESTAR:  
WESTAR ENERGY, INC., a Kansas  
corporation**

*Vince Avila*

Vince Avila  
Sr. Manager District Service Center  
Lawrence

**ACKNOWLEDGMENT**

THE STATE OF KANSAS            )  
  )  
THE COUNTY OF DOUGLAS        )        SS:

**BE IT REMEMBERED**, that on this 11 day of July, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Vince Avila as Senior Manager District Services, Lawrence for Westar Energy, Inc., a Kansas corporation, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

*Caitlyn Dolar*  
\_\_\_\_\_  
Notary Public

My Appointment Expires:

Caitlyn Dolar  
Notary Public  
State of Kansas  
My Commission Expires 9/13/21

