

SMART INFRASTRUCTURE MEMORANDUM OF UNDERSTANDING

[MUNICIPAL NAME]

This Smart Infrastructure Memorandum of Understanding [MUNICIPAL NAME] (this “MOU”) is entered into as of [SIGNING DATE], [SIGNING YEAR], between the [MUNICIPAL NAME] a [STATE] municipal corporation (the “City”), and [DEVCO NAME] LLC, a [STATE] limited liability company, and its successors and assigns (the “Developer”). The City and Developer may each be referred to herein as a “party” and collectively as the “parties.”

RECITALS

A. This MOU sets forth the terms and understanding between the parties to pursue their mutual interest in researching, developing, deploying and evaluating technology, systems and infrastructure that serve the quality of life and economy of the City; and

B. Based on multiple factors considered by Developer, including the City’s goals identified below, Developer has selected [MUNICIPAL NAME] as a partner for a smart infrastructure program to install and utilize smart infrastructure that demonstrates new, live-traffic setting technologies;

C. The City has a direct interest in leveraging technology and upgrading essential infrastructure in order to improve the quality of life of its citizens and desires to assist Developer in installing and utilizing smart infrastructure in the City; and

D. Developer contemplates financing up to \$[PROGRAM VALUE] in smart infrastructure technologies under the joint program between City and Developer inaugurated by this MOU.

In consideration of the mutual assurances and agreements contained in this MOU, and for other good and valuable consideration, the parties agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 Definitions. Capitalized words used in this MOU which are not otherwise defined shall have the following meanings:

“City” means the City of [MUNICIPAL NAME].

“Developer” means [DEVCO NAME] LLC, a [STATE] limited liability company, or its successors or assigns as permitted by this MOU.

“Location” means areas mutually selected and agreed to by City and Developer for the implementation of smart infrastructure products, including but not limited to Smart Pavement and associated technologies.

“Initial Term” has the meaning given to such term in **Section 9.1**.

“Public right-of-way” means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts. The term does not include infrastructure located within the Public Rights of Way owned by the City or other third-parties, such as poles, ducts or conduits.

“Renewal Term” has the meaning given to such term in **Section 9.1**.

“Smart Pavement” has the meaning given to such term in **Section 4.1**.

“Smart Pavement Control Centers” has the meaning given to such term in **Section 4.2**.

“Term” means, collectively, the Initial Term and all Renewal Terms.

1.2 Interpretation. In this MOU, unless a clear contrary intention appears:

(a) the singular number includes the plural number and vice versa;

(b) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(c) reference in this MOU to any article, section, appendix, annex, schedule or exhibit means such article or section thereof or appendix, annex, schedule or exhibit thereto;

(d) “hereunder”, “hereof”, “hereto” and words of similar import shall be deemed references to this MOU as a whole and not to any particular article, section or other provision thereof;

(e) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and

(f) capitalized terms, not otherwise defined in the text of this MOU shall have the definitions set forth in **Section 1.1** or as otherwise provided herein.

1.2 Legal Representation of the Parties. This MOU was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this MOU to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

ARTICLE II PURPOSE

The City is committed to improving and enhancing the safety and efficiency of its transportation system through the use of technology. This MOU is an umbrella agreement under which the parties will undertake activities to facilitate the development and deployment of smart infrastructure. The primary purpose of this MOU is to ensure the coordination necessary to implement smart infrastructure projects in the Public right-of-way including, but not limited to, the installation and operation of Smart Pavement and Smart Pavement Control Centers as described in Article IV.

This MOU is non-exclusive and subject to funding availability and does not represent a commitment on behalf of either party to pursue specific projects or partnerships. The projects and activities described in this MOU shall require subsequent agreements between the parties and may be subject to [CITY] Governing Body approval.

ARTICLE III USE OF THE PUBLIC RIGHT-OF-WAY

The Developer's use of the Public right-of-way pursuant to this MOU shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Further, the Developer's use shall be subject to all agreements, rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and is subject to all applicable laws, orders, rules and regulations adopted by the City.

**ARTICLE IV
INSTALLATION OF SMART PAVEMENT
AND SMART PAVEMENT CONTROL CENTERS**

4.1 Smart Pavement. The Developer has developed “Smart Pavement,” which is a precast concrete paving slab with embedded fiber optic sensors and wired LAN. Smart Pavement merges the fast construction, long operating life, modularity, and low life-cycle cost of ownership of precast pavement with the emerging technology needs to support connected, electric, autonomous vehicles, and municipal “Smart City” and “Smart Infrastructure” objectives.

4.2 Smart Pavement Control Centers. The Developer has developed “Smart Pavement Control Centers,” which are multi-rack units, environmentally controlled roadside equipment cabinets housing servers, routers, power systems and other IT and ITS equipment. The Control Centers provide an on-site host for data collection, local processing for interpreting the data, and an internet uplink for cloud hosting to display data to any compatible device.

4.3 Scope of Work. Developer desires to install smart infrastructure technologies, including but not limited to Smart Pavement and Smart Pavement Control Centers at the Locations. Each Location will have smart infrastructure technologies located in mutually agreeable positions that will be determined in future agreements. Initial technologies installed at Locations may be a condition precedent to support other advanced smart infrastructure technologies described below and in future documents.

4.3.1 Wireless Communications Services and Hosting

This capability enables the Smart Pavement to be a distributed antenna system providing both regulated and unregulated communications systems. Wireless communications services can be made available to vehicles, passengers, pedestrians, and other IoT vendors. This capability is compatible with Wi-Fi, 5G cellular, DSRC, LoRaWAN, V2X, and other common wireless communications methods.

4.3.2 Wireless Electric Vehicle Charging

This capability provides a standards based wireless electric vehicle charging systems for stationary and in motion electric vehicle charging. The wireless charging coils reside within the Smart Pavement with power controls, charge management, system operations, and billing managed through the Smart Pavement Control Center.

4.3.3 Automated Vehicle Enhancements

Improvements related to autonomous vehicle services, routes, and other related AV capabilities that are derived from the combination of Smart Pavement, Smart Pavement Control Centers, and Wireless Communications Services and Hosting.

4.3.4 Signal, Signage, and other ITS Integrations

Smart Pavement and Smart Pavement Control Centers provide edge-dense, open-access technology platform that can be used to integrate existing or new traffic signal management cabinets, relay information between traffic cabinets and/or the cloud, collect traffic signal phase data, provide Automated Traffic Signal Performance Measures, and support other integration existing on-site assets, and the implementation of future assets into a secure, unified, remotely accessible and configurable control system.

4.4 Smart Pavement Locations. Developer proposes to install Smart Pavement at up to ten Locations as a pilot program. Upon acceptance of the initial Location(s), City and Developer will work together to develop a 10-year smart infrastructure program for the deployment of the remainder of the proposed technology at additional Locations. Any Locations are subject to mutual approval of the parties.

4.5 Master Implementation Agreement. Developer will provide a Master Implementation Agreement (the “Agreement”) template that will be modified under mutual agreement between Developer and City. The Agreement will establish the specific expectations, requirements, and performance standards of the Developer and City. The Agreement will be used as the basis for a mutually agreed smart infrastructure program to govern the deployment of Developer’s technology for the initial term of the Agreement.

4.6 License. Developer will provide a license for public right-of-way (the “License”) template that will be modified under mutual agreement between Developer and City. The use of public right-of-way and the manner, method and requirements of the installation, maintenance and operation of the Smart Pavement, Smart Pavement Control Centers and associated facilities shall be subject to the terms and conditions of a license agreement(s). The license agreement(s) shall grant to Developer a non-exclusive license to occupy, place, and maintain Smart Pavement, Smart Pavement Control Centers and associated facilities in certain City infrastructure located in the Public right-of-way. No installation may begin until the parties have entered into a license agreement.

4.7 Schedule. Subject to Developer obtaining financing to perform its obligations hereunder, the parties agree to work together to commence work on the Agreement and the first License by [CLOSING DATE], [YEAR] and complete the execution of the Agreement and first License by [INITIATION DATE], [YEAR].

ARTICLE V OWNERSHIP AND DATA SHARING

5.1 Ownership. The Smart Pavement, Smart Pavement Control Centers and associated infrastructure, technologies and data constitute or otherwise involve valuable intellectual property rights of the Developer. Except for the rights set forth in Section 5.2, no title to or ownership of the Smart Pavement, Smart Pavement Control Centers and associated infrastructure, technologies and data will be transferred to the City under the Agreement or any License.

5.2 Reports. Subject to reasonable restrictions for the protection of confidential, proprietary and personal information, Developer shall provide the City with information and data reports obtained from the smart infrastructure (“City Data Reports”). The City Data Reports shall provide mobility data designed to fulfill the public purpose of this MOU. The specific content of the City Data Reports shall be set forth in subsequent agreement(s). The method and manner of City data collection and transmission shall be set forth in subsequent agreement(s). The City shall own the data and information contained in City Data Reports and may use the City Data Reports for the City’s non-commercial governmental purposes.

5.3 Confidentiality. Developer’s plans, designs, drawings or specifications that are of a confidential, proprietary, and commercially sensitive nature (collectively, “Confidential Information”) are confidential and proprietary and shall not be disclosed by City or its employees or contractors for any reason other than (a) as required by any open records act, or as otherwise required by law, and (b) as necessary in connection with processing and administering the Developer’s license.

5.4 Use of Data. Developer is required to follow all local, state and federal laws and regulations with respect to the collection and use of personally identifiable information. The Developer agrees that it will not collect or resell personally identifiable information generated from the traffic data collection sensors.

5.5 Data Security. Developer will use commercially reasonable efforts to: (a) establish and maintain commercially reasonable security measures designed to ensure the security and confidentiality of the Data, including physical, technological and administrative measures; (b) promptly notify City of any breach of security involving any personally identifiable information or any notices of investigation or non-compliance from any governmental or regulatory authority or agency related to the collection, use or disclosure of personally identifiable information, and cooperate with and assist City in any such investigation; and (c) provide at least industry standard security, backup and disaster recovery systems and procedures designed to protect data.

ARTICLE VI ADDITIONAL AGREEMENTS

6.1 Additional Services. The City acknowledges that Developer intends to offer additional smart-infrastructure physical technologies over time. The parties shall work together to roll out additional technologies in a manner acceptable to the City. Any such deployment and installation of additional services shall require additional agreements between Developer and City and shall be subject to all applicable City, state and federal regulations.

6.2 Exclusive Rights of Developer. The parties agree that Developer shall have exclusive rights to provide smart-infrastructure technologies similar to the Smart Pavement and Smart Pavement Control Centers at the Locations during the Term. However, the

exclusive rights shall not extend beyond five (5) years from the date of the later of (i) the date of this MOU, or (ii) the date of the License entered into pursuant to **Section 4.6** of this MOU.

6.3 Limitations of Developer Exclusive Rights. Section 6.2 shall not be construed as applying to any smart signal technologies that the City may deploy unless the smart signal technology utilizes technology similar to Smart Pavement. The parties understand and agree that the City will retain all rights to work with other providers of smart infrastructure products, services, and technologies outside of the areas defined by the Locations for which Licenses are issued to Developer by the City.

6.4 Public Announcements and Media Coordination. The City and Developer will cooperate on any joint publicity and public relations initiative related to any announcements regarding this MOU (the “Public Announcement”), the Agreement, or any Licenses issued. Subject to limitations imposed by **Section 5.3**, the City agrees that it shall not, prior to the mutually agreed issuance of a Public Announcement, issue any press releases or make any public announcements related to the MOU, the Agreement, or any Licenses issued without the prior written consent of Developer. Developer agrees that it shall not, prior to the mutually agreed issuance of a Public Announcement, issue any press releases or make any public announcements related to the MOU, the Agreement, or any Licenses issued without the prior written consent of the City.

ARTICLE VII FINANCING

7.1 Smart Pavement and Smart Pavement Control Center Project Costs. The cost of installation, maintenance and operation of the smart infrastructure improvements performed under the Agreement and each License shall be borne by the Developer. Developer intends to arrange funding and financing for a portion of the project costs through relevant federal, state and/or local programs. The parties agree to diligently work together to complete and submit applicable applications to these relevant programs as mutually determined. This MOU does not in any way obligate the City to appropriate or expend any funds, although the governing body of the City may decide to appropriate or spend funds in the future.

7.2 Smart Pavement and Smart Pavement Control Center Project Costs. Developer acknowledges it may be required to remit rent, fees, in-kind benefits or some other form of compensation to the City in consideration for the Developer’s use of the public right-of-way. Subject to certain conditions, the Parties acknowledge that any costs and fees associated with the Developer’s use of the public-right-of-way shall be abated and/or offset to the extent the Developer has provided to the City data sharing services or other valuable consideration as set forth in this MOU and subsequent agreements. Such abatement and/or offset shall continue so long as the Developer is providing to the City data sharing services or other valuable consideration. However, in no circumstances shall the abatement and/or offset extend beyond five (5) years from the date of the later of (i) the date of this MOU,

or (ii) the date of the last License entered into pursuant to Section 4.7 of this MOU.

Notwithstanding, the Developer's use of the Public right-of-way may be subject to the following fees: (i) any applicable franchise fees under State law, (ii) any applicable right of way permit or zoning and building permit fees, (iii) any street excavation fees, (iv) any floodplain permit fees, and (v) any fees and costs under any applicable License.

7.3 No Reimbursement of Expenses. Each party will remain solely and independently responsible for its own expenses under or arising from this MOU, subject only to the express provisions of this MOU or any additional agreements contemplated by this MOU.

ARTICLE VIII ASSIGNMENT BY DEVELOPER

The qualifications and identity of the Developer are of particular concern to the City. It is because of Developer's qualifications and identity that the City entered into this MOU. Any assignment of this MOU by the Developer shall require the written consent of the City.

ARTICLE IX TERM; TERMINATION

9.1 Term. The term of this MOU, and the agreements set forth herein, shall commence on the date of execution of this MOU and shall continue for a one-year period (the "Initial Term"). This MOU will automatically renew for successive terms of one year each (each, a "Renewal Term"), unless either party decides it does not wish to renew this MOU before the expiration of the Initial Term or any Renewal Term, as applicable, by providing the other party in writing of at least 90-days advance notice of cancellation prior to the completion of the Initial Term or any Renewal Term, as applicable.

9.2 Additional Agreement(s) Terms. It is anticipated that the parties will enter into the Agreement, one or more Licenses and other agreements as necessary. Such agreement(s) will provide for a term separate from the Term of this MOU.

ARTICLE X DEFAULT

10.1 Default by Developer. Developer shall be in default under this MOU if: (a) Developer fails to keep or perform any material covenant or obligation herein contained on the Developer's part to be kept or performed, and the Developer fails to remedy the same within sixty (60) days after the Developer has been given written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the Developer within such period and diligently pursued until the default is corrected; or (b) the Developer materially

breaches the representations and warranties set forth in this MOU and fails to cure or correct the same within thirty (30) days following written notice. In the event of such default, the City may take such actions, or pursue such remedies, as exist hereunder or at law or in equity, and the Developer covenants to pay and to indemnify the City against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred in connection with the enforcement of such actions or remedies. Notwithstanding the foregoing, the Developer's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall Developer be liable for any remote or consequential damages.

10.2 Default by City. The City shall be in default under this MOU if: (a) the City fails to keep or perform any material covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within sixty (60) days after the City has been given written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected; or (b) the City materially breaches the representations and warranties set forth in this MOU and fails to cure or correct same within thirty (30) days following written notice. In the event of such default, the Developer may take such actions, or pursue such remedies, as exist hereunder or at law or in equity, and the City covenants but only to the extent permitted by existing State or local law to pay and to indemnify Developer against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred in connection with the enforcement of such actions or remedies. Notwithstanding the foregoing, the City's liability for monetary amounts shall be limited by the relevant Federal, State, or Local law and to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote or consequential damages.

ARTICLE XI REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of Developer. Developer represents and warrants to the City as follows:

11.1.1 Organization. Developer is a limited liability company duly formed and validly existing under the laws of the State of [STATE]. Developer is duly authorized to conduct business in all jurisdictions in which the nature of its properties or its activities requires such authorization. Developer shall (1) preserve and keep in full force and effect its corporate or other separate legal existence and (2) remain qualified to do business and conduct its affairs in the State of [STATE] and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

11.1.2 Authority. The execution, delivery and performance by Developer of this MOU is within Developer's powers and have been duly authorized by all necessary action of Developer.

11.1.3 No Conflicts. Neither the execution and delivery of this MOU, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof, will contravene the organizational documents of Developer or any provision of law, statute, rule or regulation to which Developer is subject, or to any judgment, decree, license, order or permit applicable to Developer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer is a party, by which Developer is bound, or to which Developer is subject.

11.1.4 No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by Developer of this MOU. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by Developer of this MOU or the consummation of the transactions contemplated hereby.

11.1.5 Valid and Binding Obligation. The provisions of this MOU are the legal, valid and binding obligations of Developer, enforceable against Developer in accordance with the terms hereof.

11.2 Representations and Warranties of City. City represents and warrants to the Developer as follows:

11.2.1 Authority. The execution, delivery and performance by the City of this MOU is within its powers and has been duly authorized by all necessary action.

11.2.2 No Conflicts. Neither the execution and delivery of this MOU, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof, will contravene the ordinances, rules, regulations of the City or the laws of the State nor result in a breach, conflict with or be inconsistent with any terms, covenants, conditions or provisions of any indenture, agreement or other instrument by which the City is bound or to which the City is subject.

11.2.3 No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by the City of this MOU.

11.2.4 Valid and Binding Obligation. The provisions of this MOU are, to the fullest extent permitted by applicable law, the legal, valid and binding obligation of the City enforceable against the City in accordance with the terms hereof and thereof, subject to the relevant Federal, State, or Local law and the limited ability of the current governing body to bind future governing bodies.

ARTICLE XII

MISCELLANEOUS

12.1 Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

12.2 City Police Power. Nothing in this MOU shall be construed as a limitation on the ability of the City to exercise its governmental functions or to diminish, restrict or limit the police powers of the City granted by the [STATE] constitution, statutes or by general law.

12.3 Cooperation. The parties agree to exercise good faith and cooperate with each other under this MOU.

12.4 Personal Liability. No member of the Governing Body, official or employee of the City shall be personally liable to Developer, or any successor in interest to Developer, pursuant to the provisions of this MOU or for any default or breach of the MOU by the City. No shareholder, director, employee, affiliate or representative of Developer shall be personally liable or obligated to perform the obligations of the Developer, pursuant to the provisions of this MOU or for any default or breach of the MOU by the Developer.

12.5 Amendments. This MOU may be amended, changed or modified only by a written agreement duly executed by the City and the Developer.

12.6 Construction and Enforcement. This MOU shall be construed and enforced in accordance with the laws of the State of [STATE].

12.7 Invalidity of Any Provisions. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

12.8 Headings. The Article and Section headings shall not be treated as a part of this MOU or as affecting the true meaning of the provisions hereof.

12.9 Execution of Counterparts. This MOU may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

12.10 Time. Time is of the essence in this MOU.

12.11 Consents and Approvals. Wherever in this MOU it is provided that the City or the Developer shall, may or must give its approval or consent, the City or the Developer

shall not, unless specifically herein provided otherwise, unreasonably withhold, condition, delay or refuse to give such approvals or consents. It is agreed, however, that the sole right and remedy for the Developer or the City in any action concerning the other's reasonableness will be action for declaratory judgment and/or specific performance, and in no event shall either such party be entitled to claim damages of any type or nature in any such action.

12.12 Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes if (i) delivered by nationally recognized overnight delivery service; (ii) facsimile (with follow up by sending such notice within one (1) business day by United States Mail); or (iii) delivered in person, in each case if addressed to the parties set forth below:

To the City: **[RELEVANT OFFICIAL]**
 [RELEVANT ADDRESS]

Phone:
Fax:

With a copy to: **[RELEVANT ATTORNEY]**
 [RELEVANT ADDRESS]

Phone:
Fax:

To Developer: Scott W. Anderson
 SA Legal Advisors LC
 16201 W. 95th Street, Suite 270
 Lenexa, Kansas 66219
 Phone (913) 600-2999
 Fax (913) 273-1806
 SAnderson@SALegalAdvisors.com

All notices given by personal delivery or fax (when followed up by regular United States mail as set forth above), shall be deemed duly given the day they are so delivered / faxed. All notices sent by nationally recognized overnight delivery service shall be deemed duly given the next business day following the day such notice was deposited with such delivery service.

12.13 Entire Agreement. Together with the Exhibits hereto, this MOU constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces all prior oral or written agreements concerning the subject matter hereof.

[The Remainder of this Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written.

CITY OF [CITY], [STATE],
a **[STATE]** municipal corporation

[SEAL]

By: _____
[RELEVANT OFFICIAL]
[TITLE]

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

_____ **LLC,**
a **[STATE]** limited liability company

By: _____
Managing Member