



City of Spring Hill, Kansas

Request for Proposal (RFP)

for

**Partnership for Deployment of a
Fiber-to-the-Premises (FTTP) Network**

Issued: August 12, 2019

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I. Introduction

The City of Spring Hill, Kansas issues this Request for Proposal (RFP) to convey its interest in partnering with a sophisticated and motivated partner (Partner) to bring fiber-based, Gigabit-class broadband service to the City (Project). The successful Partner will either build, or partner with the City to build, and support a fiber-to-the-premises (FTTP) deployment capable of enhancing broadband connectivity to residents, businesses, and community anchor institutions (CAIs) within the City limits of Spring Hill.

We welcome responses from all prospective partners, including incumbent service providers; competitive providers; nonprofit organizations; public cooperatives; and entities that are not traditional Internet Service Providers (ISP) but are interested in offering service under innovative business models. Nontraditional providers may respond as part of a partnership with an ISP or may provide separate responses that outline their approaches.

II. Background

The Governing Body responded to an expressed need by residents for broadband speed, service and options in late 2016. The **Broadband Task Force** — a seven-member board comprised of residents from different career sectors — began their work in January 2017. The Task Force is responsible for evaluating the feasibility of a range of models and remains in place to make recommendations to the Governing Body throughout the duration of the Project.

A **feasibility study** was conducted in 2017 to develop three models for City consideration. At the conclusion of the study, the Broadband Task Force (BTF) made recommendations to the Governing Body with responsible and reasonable deadlines for each step. Among the recommendations were implementation of a right-of-way permitting process (underway), a coinciding dig-once policy (underway), conduit master plan, and distribution of a Request for Information (RFI) for a partner in a fiber-to-the-premise (FTTP) rollout. At their May 30, 2019, meeting, the BTF recommended release of a Request for Proposal (RFP) instead of the planned RFI. The feasibility study, along with the recommendations of the Broadband Task Force, are provided on the City's webpage, www.springhillks.gov, along with the history of the Project to date.

Simultaneously, an informal **community survey** was released in 2017 to gain more insight into the needs of our residents and businesses related to broadband. The results confirmed there are pockets of residential areas within Spring Hill that have either no internet access or limited internet speeds. Additionally, for many businesses the option of fiber is not available to them and they are finding other means to gain access to the service they need through more expensive, less reliable means.

III. The City's Vision

The City envisions a complete FTTP deployment benefitting both residential and commercial customers, existing and future. The City views fiber-based broadband connectivity as an essential utility. Every home, business, nonprofit organization, government entity and educational institution should have the opportunity to connect. Providing reliable and affordable access to communications infrastructure and service is essential to promoting equal opportunity in business, education, employment, healthcare and all other aspects of everyday life.

Greater access to broadband is an important driver of lowering business costs; attracting and retaining residents; attracting new industries and retaining existing businesses; and creating sustainable new jobs in an entrepreneurial economy based on innovation and creativity. Robust business, residential and institutional connectivity will also expand opportunities for local students in K-12 and beyond and enable more open government and civic engagement.

We intend to empower our residents and local businesses to be network economy producers— not just consumers of network information and data services. Further, we envision that our businesses will have the broadband capacity they need to compete successfully in the global marketplace, and to support the local community.

IV. Spring Hill – Community at a Glance

With a population of approximately 6,625, the City of Spring Hill, Kansas, is a city of two counties, both geographically and in our economic character. Like our fellow Johnson County cities, Spring Hill is conveniently close to major highway systems. Spring Hill's location on the southern edge of Johnson County along U.S. Highway 169 has been a major catalyst in our booming growth since the early 2000s. Builders and businesses are attracted to Spring Hill for easy highway access to commute and transport goods. This growth has also been fueled by our city's progressive mindset toward future development.

In size, we're more comparable to our neighbors to the south in Miami County — a quality that brings big advantages to our businesses. Because of our smaller population, Spring Hill is a city where large businesses become partners in growing our community. Our leaders acknowledge industry's importance in creating a better city for our residents and are dedicated to fostering an atmosphere of growth and prosperity.

Spring Hill is proud to be called home to many industrial businesses including manufacturing and warehousing and commercial businesses including banking institutions, urgent care facilities, physician offices, retail chains and locally owned retail establishments. The Spring Hill School District

is recognized across the state and nationally for leading edge learning opportunities for more than 3,000 students.

Attracting new commercial and industrial business is important to the growth of Spring Hill and high-speed, leading edge technology and service are key to economic development. The Spring Hill Chamber of Commerce is invested in making a difference in Spring Hill by being “A voice that promotes planned economic growth by linking people in business, government, and the community”.

Spring Hill currently has nearly 3,000 households, our median age is 30 years and median household income is \$70,490. Additional demographic information is available on the City’s website at <http://springhills.gov/214/Demographics>.

V. Project Goals

The City seeks a creative partnership that will meet the current connectivity needs and anticipate potential future needs. The partner should plan for a long-term relationship with the City and should base its response on the City’s vision and project goals.

The City has prioritized a partnership that:

1. **Balances financial risk.** The City seeks creative solutions where investment can be beneficial to future city infrastructure needs while supporting the overall project. As outlined under City Participation, the City anticipates investments into network infrastructure through a successful partnership where both parties will have a financial stake in the project’s success.
2. **Sustainable, affordable, scalable approach.** A financially sustainable business model will ensure that businesses, residents, and community anchor institutions can access affordable, market-leading broadband services. As the City grows - both in population and commercial/industrial development - the solution should be scalable to meet the increased needs.
3. **Community-wide deployment.** Residential and business-class service are equally important, offering service options to all members of the community regardless of income level. Service to every Spring Hill residential subdivision, current and future, is key to a successful project, not just key areas or customers that may provide a quicker return on capital investment.

VI. Project Requirements

The City has identified key requirements for the services to be offered and the physical network to be constructed. Respondents to this RFP should indicate how their proposal will meet the following:

A. Service Requirements:

1. Offer internet & data service at download speeds of up to 1,000 Mbps, which is also referred to as “1 Gbps” or “Gigabit” to all addresses (residential, institutional, industrial and commercial) within the city limits.
2. Provide data infrastructure to every Spring Hill home, business, public facility, and private institution to allow residents, workers, and visitors the opportunity to access affordable, high-speed connections to the Internet and other networks.
3. Provide cost-effective services at a regionally competitive price point. For the network to have the intended economic and quality of life impacts, we consider both cost and availability of service to be important.
4. Operate a network that is neutral with respect to applications, websites, type of use, and type of end-user device.

B. Network: The following baseline technical attributes are preferred:

1. Full connectivity to residential and business customers alike.
2. Network capacity capable of providing direct homerun connections to businesses and residential “power” users.
3. Network capacity and physical architecture (e.g., handhole placement, backbone routes, etc.) anticipating full deployment to all homes and businesses.
4. Network capacity to each customer that is sufficient to provide redundancy and support for future unknown applications.
5. Low latency to reduce the number of hops to the Internet backbone.
6. Backbone topology capable of supporting connections over diverse paths from one or more central hub locations to distribution cabinets distributed throughout the city to facilitate high-availability service offerings.
7. Distribution plant placed in underground conduit (as opposed to direct burial cable) to more readily facilitate repairs and capacity upgrades.
8. Aerial distribution plant constructed on utility poles where beneficial.
9. Active components placed in environmentally hardened shelters and/or cabinets equipped with backup power generation and/or batteries, as appropriate, capable of sustaining services in the event of extended power outages.

VII. City Participation

The City seeks a mutually beneficial partnership with a balance of risk and reward between the parties. In exchange for a comprehensive, city-wide solution that serves all Spring Hill residents, the following incentives will be considered by the City:

1. Waiver of right-of-way permit (ROW) and inspection fees, granted under Resolution 2019-R-14, for internet providers who deploy gigabit-capable broadband services for sale to residents, businesses, and governmental entities in the city limits of Spring Hill.
2. Assist the Partner in navigating necessary permitting requirements to streamline planning and construction efforts.
3. Dedicated resources to support our selected Partner(s) through plan review, coordination, and inspection services to assure an expedited approach to construction and installation in the public ROW and will work with the Partner to facilitate work.
4. Access to non-public resources that identify City infrastructure and, where available, access to existing conduit infrastructure. Such information includes but is not limited to traffic, sewer, water, and storm-drainage facilities.
5. Assist Partner to facilitate conversations and collaboration with other jurisdictions or entities that may govern the Partner's access to necessary infrastructure, poles, rights of way, and other components necessary to successfully deploy a robust FTTP network. Additionally, the City acknowledges that municipal-funded investment into infrastructure is necessary to ensure success of the Project or advance the timeline for service availability.
6. The Partner may benefit from the city's planned project to construct dark fiber between city facilities, see Appendix B for map and addresses of City facilities, estimated to take place in 2020, by reducing their own capital costs to serve those areas in the following ways:
 - a. Contract with the City to design and construct dark fiber between city facilities as outlined in Appendix B in a project estimated at \$350,000, with the potential for increased budget dependent upon addition of optional facilities. Partner may use open ground to install its own fiber in cost-sharing or cost-covered agreement; or
 - b. Partner may use open ground to install its own fiber during city construction of dark fiber project through cost-sharing or cost-covered agreement.

VIII. RFP Response Format

The City requests the following information—in clear and concise detail—from respondents. All responses must adhere to the following response and page requirement and use the appropriate

response headers to allow for easier review and evaluation. Electronic responses must be submitted in PDF.

1. **Cover Letter:** Please include company name, address of corporate headquarters, address of nearest local office, contact name for response, and that person's contact information (address, phone, cell, email). Keep response to one (1) page.
2. **Business Model Summary:** Summarize the business model you intend to use for the partnership. This should be a concise explanation of the key components of your business model, including but not limited to the division of network and operations responsibility and ownership. Keep response to two (2) pages.
3. **Affirmation:** Affirm that you are interested in this partnership and address the core project goals and requirements listed. List each goal and requirement with a brief statement of how you will comply. Please indicate any requirements to which you take exception and provide an explanation of the exceptions. Keep response to two (2) pages.
4. **Experience:** Provide a statement of experience discussing your firm's past performance, capabilities, and qualifications. Identify other networks your firm has designed, built, maintained, or operated; include the levels of broadband speed, availability, and adoption among different categories of end users and unique capabilities or attributes. Discuss any partnerships with other service providers, government, or nonprofit entities you have undertaken. Describe the nature of the projects and your firm's role. For entities currently providing communication services in or near Spring Hill, describe your current service footprint in the city, including a description of the type of infrastructure and services you currently offer and the technology platform(s) used. Explain how your firm is a suitable respondent for this project. Keep response to no more than three (3) pages.
5. **Technical and Operational Capabilities:** At a high level, summarize the technical and operational approach you would use for this project. Keep response to no more than five (5) pages.
 - a) How would you use technology to meet the City's goals?
 - b) How would you perform network management?
 - c) At what sort of facility, or facilities, would you place network electronics?

d) Do you limit, quota, cap, or otherwise ration a user's total upload and download data capacity to an extent that limits reasonable use of broadband?

e) Provide a proposed network diagram.

6. **Business Structure:** Summarize the business approach you would use for the project. How would your business plan help to meet the City's goals? What are the key assumptions? What are your main areas of risk, and how can the City help reduce the risks? What is the City's main areas of risk, and how will you reduce the risk to the City? Keep response to three (3) pages or less.

7. **Schedule:** Describe your proposed schedule for implementing service. Offer a timeline with key milestones. Would you be able to begin service before the entire network is constructed? Are there areas within Spring Hill you would recommend be constructed first? Keep response to two (2) pages (one for response, one for schedule).

8. **Maintenance:** Describe your ability to perform maintenance on an ongoing and as-needed basis. If you are not performing maintenance, who is? Keep response to one (1) page.

9. **Privacy:** Describe your ability to provide secure network service or infrastructure that complies with public safety and other security and privacy regulations and requirements. Please describe how you will protect the privacy of network users. Keep response to one (1) page.

10. **Financing and Funding:** List any requirements the City must meet for you to partner with the City on this project.

a) What, if any, financial incentives do you need from the City in order to enter into a partnership?

b) How do you propose to finance the network build-out?

c) If you intend to borrow funds, how will those monies be secured, and by whom? (Financing is defined as any borrowing required.)

d) How is the project funded? (Funding is the cash flow that includes investment funds, subscriber revenues, taxes, or other sources that are used to cover operation, maintenance, debt service, and other expenses.)

If you do not address this question, we will assume that you are interested in the partnership but have no financial requirements whatsoever of the City.

12. **Services:** Describe the service options you plan to offer over this network (for example, data only; voice and data; a triple play of voice, data, and cable television; etc.). What download/upload or symmetrical speeds would you offer and guarantee to end users? How will your residential and business offerings differ? What types of service level agreements (for lit services: availability and packet delivery; for dark fiber: repair time) would you be prepared to offer? Keep response to two (2) pages.
13. **Competitive Marketplace:** Provide your approach to pricing the proposed services. For managed services, please describe factors impacting non-recurring costs (estimated fiber path distances, equipment redundancy, etc.); recurring costs for varying capacity levels; and any key technical assumptions upon which prices are based. For dark fiber offerings, please describe desired pricing models. Keep response to two (2) pages.
14. **Local Participation and Economic Development:** Provide a statement of how your proposed participation would help the City and the region's economic development goals. Describe your interests and plans to hire local contractors and providers in the greater Kansas City area, and how your participation would help local job creation. Describe your relationships with local businesses in the region, if any, as well as your interest and plans to engage them in this project. Keep response to three (3) pages.
15. **References:** Provide a minimum of three (3) references, including contact information, from previous contracts or partnerships. Keep response to two (2) pages.
16. **Mutual Confidentiality and Non-Disclosure Agreement:** Respondents must complete and attach two signed copies of the Mutual Confidentiality and Non-Disclosure Agreement included as Appendix C.

IX. The Evaluation Process

We understand an FTTP network that extends throughout the entire city limits of Spring Hill may seem implausible for some providers, and we intend to work with the Partner to make this an attainable goal. Respondents who believe these goals to be a barrier to their ability to successfully partner with the City should clearly articulate their reasoning and describe how they may provide a "good-enough" contingency plan for community-wide FTTP access. Although community-wide access is an important component of our vision, the City is willing to facilitate collaboration with multiple partners to create alternatives that might otherwise meet the connectivity needs.

The City will consider a range of construction, operation, and ownership models for the FTTP network. The City and selected Partner will collaboratively determine the most mutually beneficial partnership structure, which may include cost-sharing, infrastructure leasing, and profit-sharing arrangements.

Responding to the RFP is not a guarantee of a contract award. Further, the City reserves the right to withdraw the RFP, decline to award a contract, cancel or delay plans to deploy an FTTP network, or choose another direction deemed in the community's best interest.

X. Selection Criteria

For the network to have the intended economic and quality-of-life impacts, we consider both cost and availability of service to be important. We encourage responses that address both to maximize adoption of service.

The City will evaluate all responses based on the following criteria:

- Business Model and Business Structure
- Experience and Reference
- Commitment to competitive marketplace
- Funding and Financing
- Schedule
- Service options and pricing
- Requested City incentives

XI. Response Process

Questions

Questions related to this RFP should be emailed to bids@springhillks.gov, with a subject line of "Spring Hill RFP-Broadband" no later than **Friday, September 6, 2019**. Answers to questions will be emailed back to inquirer as well as posted to the City website by **September 13, 2019**.

RFP Deadline: Responses must be received no later than **4:00 PM CST on Monday, September 30, 2019**.

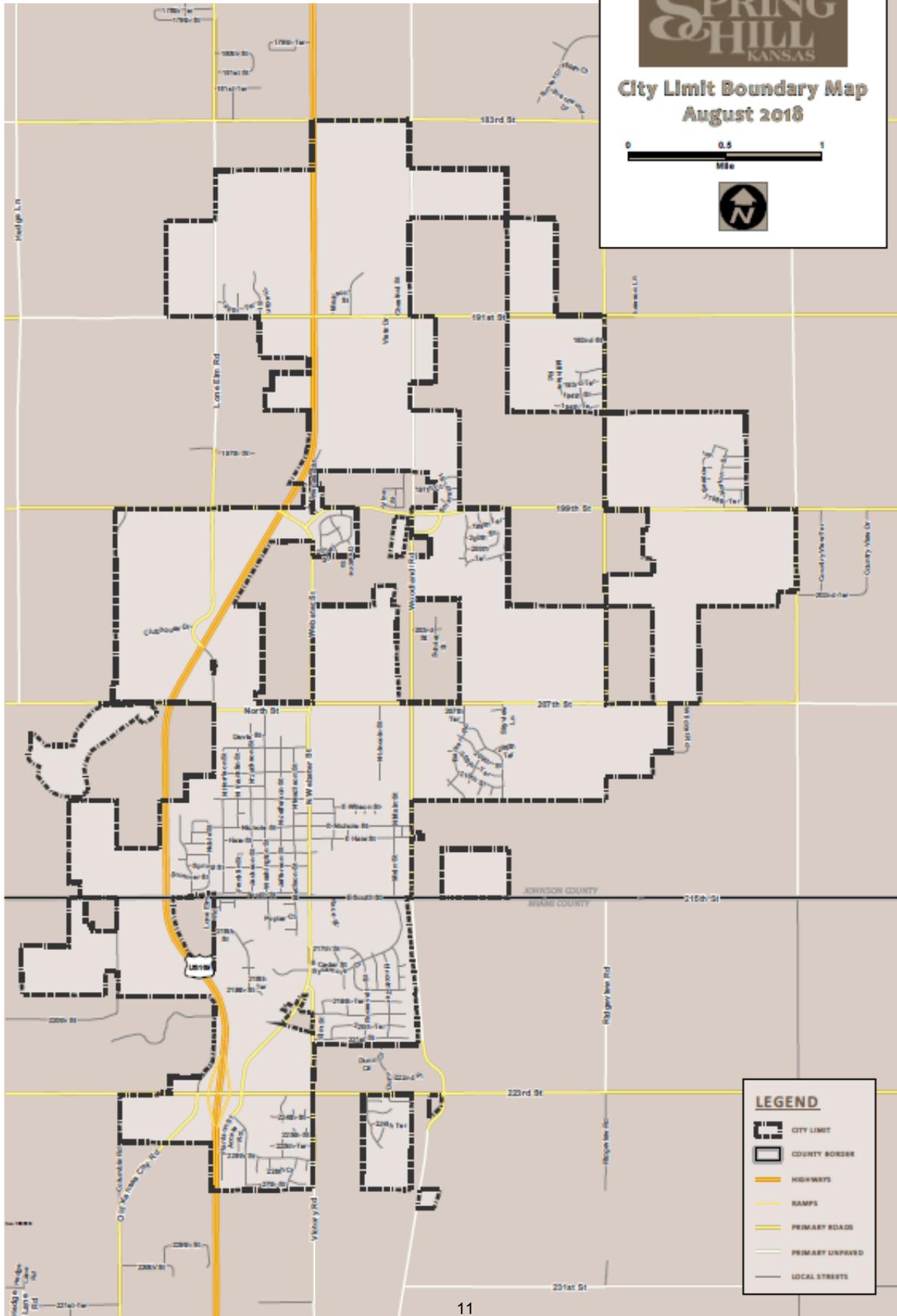
RFP Submission: All respondents must submit three (3) hard copies via mail and an electronic (flash drive) copy to:

Melanie Landis, Assistant City Administrator
401 N. Madison St.
P.O. Box 424
Spring Hill, KS 66083-0424

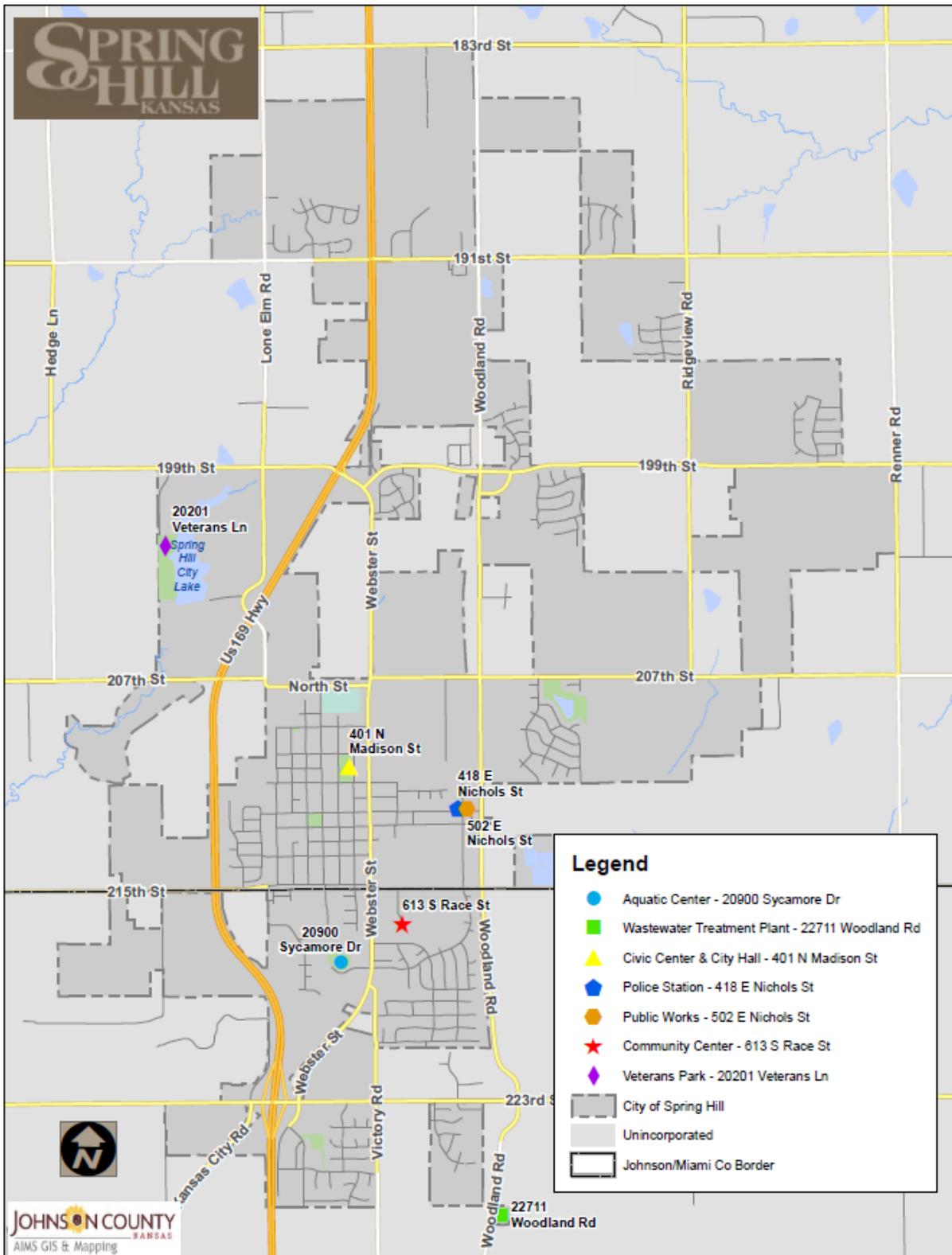
The outside of any envelope or package must clearly indicate the name of the project “Spring Hill RFP-Broadband”. The name and address of the Respondent must be clearly printed on the outside envelope or package.

All responses will be held in strict confidence by the City, in accordance with the non-disclosure agreement. Review of responses and communication with the Respondents will occur during the 60 days following the RFP due date.

Appendix A: City Limits Map



Appendix B: Potential City Facility Dark Fiber Map



Appendix C: Mutual Confidentiality and Non-Disclosure Agreement

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “**Agreement**”) is made and entered into on this ____ day of _____, 2019 (the “**Effective Date**”), by and between _____ a _____ with its principal place of business located at _____ (“**Company**”), and the City of Spring Hill, Kansas, a Kansas municipal corporation (“**City**”). Company and Client shall be referred to herein individually as a “**Party**” and collectively referred to herein as the “**Parties**”.

RECITALS

WHEREAS, the Parties, prior to and in connection with entering into discussions with each other regarding their evaluations of possible business transactions between or among them (“**Proposed Transactions**”), desire to enter into this Agreement in order to protect the highly confidential nature of their discussions and evaluation of the Proposed Transactions;

WHEREAS, the Parties are interested in discussing with each other Proposed Transactions. In connection with such discussions and/or in connection with the Proposed Transactions each Party may or will be disclosing to the other Party certain Confidential Information, as defined in Section 1. below.

NOW, THEREFORE, in order to induce the Parties to enter into discussions between or among the Parties regarding the Proposed Transactions, and in order to induce the Parties to disclose such Confidential Information to each other pursuant to this Agreement, and for other consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definitions:

“**Confidential Information**” shall mean information, whether written or oral, received by the Recipient or its Representatives (defined below) that relates to the Disclosing Party or its affiliates and is not generally available to the public, or which would reasonably be considered confidential and/or proprietary, or which, if written, is marked “Confidential” or “Proprietary” by Disclosing Party. Without limiting the generality of the foregoing, Confidential Information includes, without limitation: (i) information relating to research, development, inventions, information systems, software code, software applications, pricing, product/service specifications, customer lists, financial or other economic information, accounting, engineering, personnel relations, marketing, merchandising, and selling; customer or employee data or statistics, (ii) potential sources of financing, and (iii) all analyses, compilations, forecasts, studies or other documents prepared in connection with the review and possible consummation of the Transaction. In the event Confidential Information is the basis of, is incorporated into, or is reflected in other documents, whether separately or jointly generated by the Parties, such other documents shall be deemed Confidential Information subject to the terms of this Agreement. All oral communications associated with the Transaction between the Parties or their respective Representatives pertaining to the business of the Disclosing Party, its affiliates or any Transaction shall be deemed to be Confidential Information.

“**Representatives**” shall mean the respective directors, officers, employees, affiliates, representatives (including, without limitation, financial advisors, brokers, attorneys and accountants) or agents of the Recipient.

2. Non-Disclosure Obligations.

a. The Recipient, for a period beginning with the Effective Date, and continuing for two (2) years from the cessation of unsuccessful negotiations, as evidenced by the delivery of a written notice of termination by one Party to the other Party, or the consummation of the Transaction (by execution of the relevant document(s)), whichever occurs first, shall maintain and protect the confidentiality of the Confidential Information with the same degree of care as is normally used in the protection of its own confidential and proprietary information but in no event with less than a reasonable standard of care; provided, however, the Recipient shall keep any: (i) personally identifiable information (“**PII**”) confidential as required by any applicable law, and (ii) trade secrets of the Disclosing Party confidential as long as such information is deemed a trade secret. The Recipient further agrees not to use Confidential Information for any purpose, except for the purposes of evaluating, analyzing, negotiating, consummating or effectuating the Transaction.

b. Without the prior consent of the Disclosing Party, the Recipient will not allow its Representatives to disclose to any unauthorized third party, including but not limited to the press: (i) the fact that any evaluation, investigation, discussions or negotiations are taking place concerning a possible transaction involving the Parties, (ii) the fact that the Parties have requested or received Confidential Information from each other, or (iii) any of the terms, conditions or other facts with respect to the possible Transaction, including the status of the Transaction, the substance of any negotiations or any of the terms of this Agreement or its existence.

c. The Recipient shall limit access to the Confidential Information to those Representatives who: (i) need to know such information solely for the purpose of developing or evaluating the Transaction; (ii) have been informed of the confidential nature of such information; and (iii) Recipient agrees hereby to be responsible for causing to act in accordance with the terms of this Agreement. The Recipient shall cause its Representatives to observe the terms of this Agreement and shall be responsible for any breach of this Agreement by any of its Representatives. The Recipient shall take all reasonable measures, including without limitation, court proceedings, to restrain their Representatives from unauthorized use or disclosure of the Confidential Information.

d. The restrictions set forth in this Section 2 shall not apply with respect to Confidential Information that the Recipient can clearly demonstrate: (i) is already available to the public; provided, however, PII remains subject to confidentiality obligations regardless of its availability to the public or availability through unauthorized disclosure, (ii) becomes available to the public through no fault of the Recipient or its Representatives; provided, however, PII remains subject to confidentiality obligations regardless of its availability to the public or availability through unauthorized disclosure, (iii) is already known to the Recipient on a non-confidential basis, as shown by written records in its possession at the time that the Confidential Information was received, (iv) becomes available on a non-confidential basis from a source that, to the best of the knowledge of the Recipient, is not under an obligation to the Disclosing Party, or (v) is independently developed by the Recipient without regard to the Confidential Information of the Disclosing Party.

3. Proprietary Interest. Nothing in this Agreement shall be construed to grant to Recipient a license to any Confidential Information disclosed or to any patents, trademarks, copyrights or any other intellectual property derived from the Confidential Information disclosed.

4. Disclosures Required By Law. In the event the Recipient is required by law, regulation, stock exchange requirement or legal process to disclose any of the Confidential Information, the Recipient agrees to: (i) give Disclosing Party, to the extent permitted by law, advance notice prior to disclosure so the

Disclosing Party may contest the disclosure or seek a protective order, and (ii) limit the disclosure to the minimum amount that is legally required to be disclosed.

5. Return or Destruction of Confidential Information. If requested by the Disclosing Party, within twenty (20) business days, Recipient will deliver to the Disclosing Party all documents and other materials comprising Confidential Information, in the possession or under its control or that of its Representatives, together with all copies and summaries thereof, or provided the Disclosing Party provides its prior written consent, the Recipient will destroy all documents and other materials constituting Confidential Information in its possession or under the control of its Representatives. The Recipient agrees that if requested by the Disclosing Party, an authorized officer will certify to the Disclosing Party in writing that all such information and materials have been delivered or destroyed in accordance with the terms of this Agreement. If Recipient's computer system automatically backs up and archives Confidential Information, and such Confidential Information cannot be expunged without employing unduly burdensome and non-cost effective measures, Recipient may retain an automatically archived backup copy of the Confidential Information for the period that Recipient normally archives backed up computer records pursuant to Recipient's official document retention policy. Notwithstanding the delivery or destruction of Confidential Information and related materials required by this Section 5, any and all duties or obligations existing under this Agreement will remain in full force and effect until all Confidential Information, including automatically archived Confidential Information, has been returned to the Disclosing Party or destroyed pursuant to this Section 5.

6. Accuracy of Information. All Confidential Information disclosed hereunder is provided "AS IS". Disclosing Party makes no implied or express representations or warranties as to the accuracy or completeness of the Confidential Information.

7. Remedies. Recipient acknowledges that remedies at law may be inadequate to protect the Disclosing Party against any actual or threatened breach of this Agreement, and without prejudice to any other rights and remedies otherwise available, the Recipient agrees that the Disclosing Party shall be entitled to seek injunctive or other equitable relief as a remedy for any such actual or threatened breach in a court of competent jurisdiction. Such a remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available at law or equity.

8. No Waiver. The Parties agree that no failure or delay by a Party in exercising any right, power or privilege hereunder will operate as a waiver thereof; nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

9. Choice of Law. The Parties mutually acknowledge and agree that this Agreement shall be construed and enforced in accordance with the laws of the State of Kansas, excluding any choice of law provisions. The Parties agree to consent to the exclusive jurisdiction of the state and federal courts of Kansas to resolve any dispute arising from this Agreement and waive any defense of inconvenient or improper forum. The Parties acknowledge that this Section 9 is subject to the jurisdiction of the court of competent jurisdiction for injunctive relief specified in Section 7.

10. Entire Agreement. This Agreement represents the entire agreement between the Parties concerning the subject matter hereof. All prior and contemporaneous agreements, understandings, negotiations or representations, whether oral or in writing, relating to the subject matter of this Agreement are superseded and canceled in their entirety. No modifications of this Agreement or waiver of the terms and conditions hereof will be binding upon a Party unless approved in writing by the Parties.

11. No Purchase or Sale Commitment. It is expressly understood between the Parties that nothing contained in this Agreement shall commit or obligate either Party to enter into a transaction or business

relationship with the other, or to use said other Party for any other activities with regard to the Confidential Information or the products or services of either Party absent a separate written agreement between the Parties.

12. Titles. The titles used herein are for convenience only and shall not be considered in construing or interpreting any of the provisions of this Agreement.

13. Assignment. The Parties shall not have the right to assign or transfer this Agreement or any rights or obligations hereunder to any other Party without prior written consent of the other Party.

14. Counterpart Signatures. This Agreement may be signed in counterparts, and may be delivered by each Party electronically, with the same effect as if both Parties had signed one and the same document.

15. Notices. Any notice or other communications required or permitted under this Agreement shall be in writing and shall be deemed given on the date of transmission when sent by telefax or facsimile, on the third business day after the day of mailing when mailed by certified mail (postage pre-paid, return receipt requested from within the United States), by recognized overnight delivery services such as FedEx, or on the date of actual delivery, whichever is earliest, and shall be sent to the Parties at the following addresses, or at such other address as the Party may hereafter designate by written notice to the other:

If to the City: City of Spring Hill, Kansas
401 North Madison Street
P.O. Box 424
Spring Hill, KS 66083
Facsimile: (913) 592-5040
Attn: Glenda Gerrity, City Clerk

If to Company: _____

(Address)

Facsimile: _____
Attn: _____

16. Severability. The terms and provisions of this Agreement shall be deemed severable, and in the event that any term or provision hereof or portion thereof is deemed or held to be invalid, illegal or unenforceable in a final order, rule, regulation, or law by a court or governmental authority with the jurisdiction to do so, this Agreement shall nevertheless continue and be deemed to be in full force and effect and binding upon the Parties only if the Parties amend this Agreement, as necessary, to restore the original balance of benefits and burdens intended by the parties, consistent with prevailing law. If the Parties are unable to mutually agree on an amendment, as provided in this Section 16, then this Agreement shall be terminated, with Sections 2 & 5 above surviving such termination.

17. Publicity. Neither Party shall make any public disclosures regarding the other Party, or the subject matter hereof, including, without limitation, any advertisements, publications or documents, without the prior written approval of the other Party.

18. City Exception-City Disclosure/Kansas Records Act Demand. The Parties acknowledge that as a municipal corporation, the City is subject to the Kansas Open Records Act. In the event the City receives from a third person or entity any request under the Kansas Open Records Act for the disclosure of Confidential

Information of a Party, the City shall promptly notify the Disclosing Party, or Parties as the case may be, of the request s that the Disclosing Party or Parties have a reasonable opportunity to prevent disclosure of the Confidential Information. The Disclosing Party or Parties are exclusively responsible for defending its or their position concerning the confidentiality of the requested information. The City may, but is not required to, assist the other Party or Parties in opposing disclosure of the Confidential Information.

IN WITNESS WHEREOF, the Parties have executed this Mutual Confidentiality and Non-Disclosure Agreement on the Effective Date.

“CITY”

CITY OF SPRING HILL, KANSAS

By: _____
Steven M. Ellis, Mayor

ATTEST:

Glenda Gerrity, City Clerk

(SEAL)

Approved as to Form:

Frank H. Jenkins Jr., City Attorney

“COMPANY”

By: _____

Capacity: _____