

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT is made this _____ day of _____, 2018, by and between the City of Lawrence, Kansas, a municipal corporation, and Westar Energy, Inc., a Kansas corporation.

RECITALS

- A.** Pursuant to a franchise agreement with the City of Lawrence, Kansas, a municipal corporation (City), Westar Energy, Inc., a Kansas corporation (Westar), owns and operates certain street lights within the City's public rights of way.
- B.** Relying on studies by the National Electrical Manufacturers Association (NEMA), among others, Westar has determined that light-emitting diodes (LED) lamps, with a correlated color temperature (CCT) of 4000 kelvin (K), provide optimal visibility and employs such lamps as standard fixtures for street lights in the state of Kansas under its Street Lighting Tariff, dated October 28, 2015.
- C.** As the result of a request received from concerned citizens, the City has asked that Westar employ, as standard fixtures for its street lights in the City, LED lamps, with a CCT not to exceed 3000 K.
- D.** Westar has agreed to use LED lamps, with a CCT not to exceed 3000 K, as a standard fixture for its street lights within the City, commencing August 1, 2018, subject to the City's agreement to indemnify it for using such lamps, with the understanding that it will not retrofit existing and properly functioning lamps.
- E.** In exchange for Westar's accommodation of its request, the City hereby agrees to indemnify Westar's use of LED lamps, with a CCT not to exceed 3000 K, in accordance with the terms and conditions of this Indemnity 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. Westar's Covenant.** In consideration for the City's limited indemnification herein, Westar agrees, commencing August 1, 2018, to use, in its street lights within the City of Lawrence, Kansas, as a standard fixture under its October 28, 2015, Street Lighting Tariff or under any future street light tariff, LED lamps with a CCT not to exceed 3000 K. Westar's obligation hereunder shall only extend to the replacement of lamps that require replacement and shall not require Westar to replace or retrofit existing and properly functioning lamps, regardless of the style or type.

2. **City's Covenant.** In consideration for Westar's covenant herein, the City hereby agrees to indemnify, defend, save, and hold harmless Westar, its officers, agents, employees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including reasonable attorneys' fees, where the brightness of the street light lamp, or lack thereof, is an essential element thereof, as the result of Westar's use of LED lamps, with a CCT not to exceed 3000 K, as standard fixtures for street lights within the City.

3. **Exceptions and Limitations.** The City's indemnification hereunder shall be limited and restricted as follows:
 - (a) The City's indemnification of Westar shall not apply to Westar's own negligence or willful misconduct, nor to any conduct of Westar not involving specifically the use of LED lamps, with a CCT not to exceed 3000 K, in its street lights. However, the mere use of LED lamps, with a CCT not to exceed 3000 K, absent anything else, shall not be deemed hereunder to be negligence or willful misconduct of Westar.

 - (b) The City's indemnification of Westar shall extend only until the Illuminating Engineering Society (IES), the recognized technical and educational authority on illumination, formally recognizes that LED lamps with a CCT not to exceed 3000 K are as safe for motorists, cyclists, and pedestrians as LED lamps with a CCT of 4000 K, which is Westar's current standard for LED illumination.

 - (c) The City's indemnity and liability hereunder shall, in no case, exceed that which is permitted under the Kansas Tort Claims Act of 1979, codified as amended at K.S.A. 75-6101 *et seq.*

4. **Term.** This Indemnity Agreement shall be effective until the IES formally recognizes that LED lamps with a CCT not to exceed 3000 K are as safe for motorists, cyclists, and pedestrians as LED lamps with a CCT of 4000 K, or until Westar determines that such or similar lamps shall be standard fixtures within the state of Kansas under its Street Lighting Tariff, dated October 28, 2015, or under any future street light tariff.

5. **Integration.** This Indemnity Agreement constitutes the entire agreement between the City and Westar regarding the subject matter of this Indemnity Agreement, and it expressly supersedes all previous written, email, and oral communications between the parties. No amendment, alteration, or modification of this Indemnity Agreement shall be valid unless executed in writing by all the parties.

6. **Authorization.** By signing this Indemnity Agreement, the representative of each party represents that such person is duly authorized to execute this Indemnity Agreement on behalf of that party and that the party agrees to be bound by its provisions.
7. **Severability.** If any section, sentence, clause, or phrase of this Indemnity Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Indemnity Agreement.
8. **Governing Law.** This Indemnity Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the state of Kansas.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Indemnity 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)
)
THE COUNTY OF DOUGLAS) ss:


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**



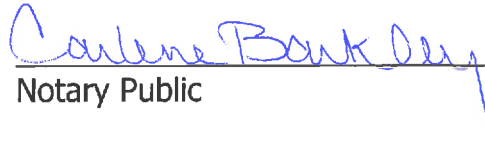
{NAME} DIRECTOR, CUSTOMER SOLUTIONS
{Title}

ACKNOWLEDGMENT

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

BE IT REMEMBERED, that on this 5th day of July, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Chad Luce as Dir, Cust. Solutions 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.



Notary Public

My Appointment Expires:
April 18, 2021

