

CONDUIT SALE AGREEMENT

between

DIGITAL TELEPORT, INC.

and

CITY OF OVERLAND PARK

Dated September 9, 2002

CONDUIT SALE AGREEMENT

This Conduit Sale Agreement (the "Agreement") is made as of September 9, 2002, by and between Digital Teleport, Inc., a Missouri corporation ("Provider"), and the City of Overland Park, a Kansas municipality ("Recipient"), each of Provider and Recipient, a "Party."

RECITALS

Recipient wishes to obtain from Provider, and Provider is willing to provide to Recipient, title to the conduit set forth on Exhibit A attached hereto in Provider's fiber optic communication transmission facilities as set forth on Exhibit A attached hereto, in exchange for the payments to be made by Recipient herein and on the other terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings ascribed to them:

"Acceptance Date" shall have the meaning ascribed in Section 3.1(b).

"Affiliate" shall mean any Person that directly or indirectly controls or is controlled by or is under common control with the specified Person.

"Associated Property" shall have the meaning ascribed in Section 2.2.

"Costs" shall mean one hundred and fifteen percent (115%) of all direct internal and third party costs incurred by Provider in performing the services or work and which it utilizes in billing third parties for reimbursable projects.

"Delivery Date" shall have the meaning ascribed in Section 4.1.

"Grant of Title" shall have the meaning ascribed in Section 2.1.

"Imposition" shall mean all taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, gross receipts taxes and franchises, license and permit fees) together with any penalties, fines or interest thereon, arising out of the transactions contemplated by this Agreement and/or imposed upon the Recipient Conduit by any federal, state, or local government or other public taxing authority.

“**Person**” shall mean any individual, partnership, corporation, limited liability company, joint venture, trust, business trust, cooperative or association, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

“**Recipient Conduit**” shall mean the conduit along the System Route as indicated in the column entitled Recipient Conduit Provided on Exhibit A dedicated exclusively to Recipient’s use along the System Route.

“**Specifications**” shall mean the construction specifications set forth in Exhibit B attached hereto with respect to the Recipient Conduit.

“**System**” shall mean the Provider’s fiber optic communication system along the System Route.

“**System Route**” shall mean the route set forth on Exhibit A.

“**System Segment**” shall mean one of several portions of the System along the System Route.

“**Underlying Rights**” shall mean, generally, all deeds, leases, easements, rights of way, licenses, franchises, permits and other rights, titles or interests as are necessary for the construction, installation, operation, maintenance or repair of the System, including all uses of the System by Recipient hereunder, as specifically set forth in Section 2.3(a).

ARTICLE 2. GRANT OF TITLE

2.1 Grant of Title to Recipient.

In consideration of the fee referenced in Section 5.1 and Exhibit A to be paid by Recipient to Provider, and subject to the conditions hereinafter set forth, effective automatically, and without further action, on the Delivery Date, Provider hereby grants to Recipient good, sufficient, full and exclusive title to the Recipient Conduit free and clear of all liens, encumbrances and other claims of third parties (“Grant of Title”).

2.2 Associated Property.

(a) Legal title to the tangible and intangible property on and in the System that is needed for the use of the Recipient Conduit, including handholes, manholes, cable and any bridge attachments, brackets, insulators, fixtures, guy wires, anchors, and other hardware needed or used to fasten or support the Recipient Conduit shall be held by Provider (the “Associated Property”); *provided however*, the Grant of Title includes the nonexclusive right to use the Associated Property throughout the useful life of the Recipient Conduit, and as the same might, from time to time, be replaced.

(b) Recipient may install its own handholes and manholes along the System Route to access the Recipient Conduit, *provided, however*, that all work associated with

moving, accessing or changing the location of the Recipient Conduit to install such handholes and manholes shall be performed only under the reasonable rules and supervision of Provider. Recipient shall pay Provider 115% of all costs incurred by Provider in reviewing and supervising such work.

2.3 Underlying Rights.

(a) Provider has obtained standard utility facility construction permits along the System Route as a certificated utility in the states in which the System Route is located and such permits constitute the Underlying Rights. Recipient has been provided access to all previously issued construction permits and will be provided copies of all subsequently issued construction permits. Recipient has been provided contact names at all permitting agencies issuing such permits. Provider expressly disclaims any representations and warranties as to the Underlying Rights other than as evidenced in such permits. Provider shall cooperate with Recipient in transferring to Recipient all Underlying Rights with respect to the Recipient Conduit, to the extent permitted under applicable law.

(b) Notwithstanding anything in this Agreement to the contrary, it is expressly understood that Recipient shall be solely responsible for compliance with all legal and regulatory requirements associated with its business or operation of the Recipient Conduit including maintaining all required franchises, permits, authorizations, licenses, approvals or other consents, and Provider shall have no responsibility or liability whatsoever in connection therewith.

ARTICLE 3. ACCEPTANCE AND MAINTENANCE

3.1 Acceptance and Testing

(a) The Recipient Conduit has been constructed in accordance with the Construction Specifications in Exhibit B.

(b) Recipient shall be deemed to have accepted a System Segment of the Recipient Conduit covered by Provider's inspection if Recipient either (i) does not commence its inspection of the Recipient Conduit within thirty (30) days of the date of execution of this Agreement ("Deemed Acceptance") or (ii) does not notify Provider within ten (10) days of receipt of the results of such inspection that they are unacceptable. If the test results of Recipient's inspection performed at its option are within the parameters of the Specifications in Exhibit B, Recipient shall, within ten (10) days of receipt of the Recipient inspection results, provide Provider with a written notice accepting the Recipient Conduit. The date of this notice or the date of Deemed Acceptance of the Recipient Conduit, as the case may be, shall be the "Acceptance Date."

3.2 Maintenance.

Upon delivery of the Recipient Conduit, Provider shall maintain and repair the Recipient Conduit pursuant to the Operating Specifications set forth in Exhibit C so as to assure continuing conformity to the Recipient Conduit with the Specifications. Notwithstanding any provision in this Agreement to the contrary, the Costs of procurement, installation,

splicing, splice testing and other Costs associated with the replacement or restoration of the System in excess of \$10,000 for any event or series of closely related events shall be shared pro-rata among all users of the System portion according to the total number of Conduits each user has in use in the same route as the System portion which is to be restored or replaced. In the event that Provider shall recover any such replacement or restoration costs from any third party, Provider shall pay to Recipient a portion of such recovered amount (net of the reasonable costs of obtaining such recovery) in the same pro-rata sharing manner as such costs were paid by Recipient. Provider, at Recipient's sole expense and at Provider's then prevailing rates, shall perform maintenance and repair necessitated by Recipient's negligence or willful misconduct or upon Recipient's elective maintenance or repair requests. Provider shall not be responsible for any maintenance or repair of any Recipient equipment except as set forth above. Recipient and Provider shall cooperate with one another in carrying out any maintenance or repair services along the System Route where Recipient has Recipient Conduit and Provider has other facilities. As between Provider and Recipient, Provider shall have first priority in maintaining and restoring its facilities (not including Recipient Conduit) along the System Route.

3.3 Relocation.

If, after the Acceptance Date, (i) Provider or Recipient is required by a governmental or other authority to relocate any portion of a Segment (including, without limitation, the grantor of the Underlying Rights if such relocation is not being required as a result of Provider's failure to observe and perform its obligations under such Underlying Rights or this Agreement), including the Recipient Conduit or any of the Associated Property, including any condemnation or taking under the power of eminent domain of all or any portion of the Segment, or (ii) with Recipient's concurrence upon Provider's request, Provider shall relocate such portion of the System Route then, Provider shall give Recipient sixty (60) days prior notice of any such relocation, if possible, and shall have the obligation to diligently proceed with such relocation, including, but not limited to, the right to determine the extent of, the timing of, and methods to be used for such relocation; provided that any such relocation shall be constructed in accordance with the Specifications set forth herein. Provider shall relocate the affected portion of such fiber optic network and, Provider shall be reimbursed by Recipient for Recipient's proportionate share of all Costs associated with the relocation of the System, pro-rated based on the total Conduit count of the Recipient Conduit in the affected System as so relocated. Provider shall deliver to Recipient updated as-builts with respect to any relocated facilities not later than one hundred eighty (180) days following the completion of such relocation.

ARTICLE 4. DELIVERY, USE AND CONNECTION

4.1 Delivery of Conduit.

Provider agrees to deliver to Recipient the Recipient Conduit on or before September 30, 2002 ("Delivery Date"). On the Delivery Date, the parties shall execute the Delivery Date Acknowledgement and Bill of Sale attached as Exhibit D.

4.2 Access.

Recipient may establish connections to new or existing Recipient facilities only at the points along the System Route set forth on Exhibit A. Provider will perform each connection at Recipient's sole expense. In order to schedule a connection of this type, Recipient shall contact Provider to undertake the work at least sixty (60) days in advance of the date the connection is requested to be completed.

4.3 Use of Recipient Conduit.

- (a) On and after the date of this Agreement, except with the prior written approval of the other, neither Provider nor Recipient, will:
- (i) cause or permit, by any act or failure to act, any of the Underlying Rights to expire or to be surrendered or modified, or take any action that is reasonably likely to result in the suspension, revocation or material adverse modification of any of the Underlying Rights;
 - (ii) interfere or otherwise cause a material interruption of the use of the other's facilities;
 - (iii) use their respective facilities in any manner that is not in compliance with any and all applicable government codes, ordinances, laws, rules, regulations and/or restrictions; or
 - (iv) use any product or service that fails to comply with any applicable safety rules or that would cause any facility of the other to violate any state or federal environmental laws.
- (b) Recipient may use the Recipient Conduit for any non-commercial, governmental purpose. Recipient shall not have any limitations on the types of electronics or technologies employed to utilize their respective facilities subject to their respective use of commercially reasonable safety procedures and so long as any electronics or other technologies do not interfere with the quiet use and enjoyment of or create any risk of damage to all or any portion of the facilities of the other or any other user of such facilities.

4.4 Liens And Encumbrances.

On and after the Delivery Date, except with the prior written approval of the other, neither Provider nor Recipient, will place, create, allow or assume any lien, claim or other liability of any nature whatsoever ("Lien") on the facilities of the other except to the extent the party placing, creating or allowing such Lien shall obtain from any entity in whose favor such Lien shall have been placed, granted or created, a written non-disturbance, subordination or such other agreement substantially to the effect that the holder of such Lien acknowledges the other party's rights and interests in and to the other party's facilities and agrees that the same shall not be diminished, disturbed, impaired or interfered with in any adverse respect by the holder of such Lien.

ARTICLE 5. CONSIDERATION

5.1 Consideration.

In exchange for the Grant of Title and other rights described herein, Recipient shall pay to Provider the Total Fee set forth in Exhibit A upon the payment schedule set forth in Section C of Exhibit A.

5.2 Tax Treatment.

It is understood and agreed between Provider and Recipient that the Grant of Title, together with the other rights described herein, shall be treated for federal, state and local tax purposes as the sale of the Recipient Conduit. The Parties agree to file their respective income and other tax returns and reports for their respective Impositions on such basis and, except as otherwise required by law, not to take any positions inconsistent herewith.

ARTICLE 6. WARRANTIES

6.1 Disclaimer of Warranties.

Except as specifically provided herein, Provider disclaims any and all warranties, express or implied, as to the use or condition of the System or any other matter hereunder, including without limitation warranties of merchantability, workmanship, quality or fitness for a particular purpose.

ARTICLE 7. DELAYS AND LIMITATION OF LIABILITY

7.1 Delays.

Under no circumstances shall either Provider or Recipient ever be liable for any delay in restoring any service or any operational aspect of the fiber optic systems which has been subjected to an outage, interference or interruption, whatever the cause of such outage, interference or interruption, unless due to willful nonfeasance or willful misfeasance of such Party.

7.2 Limitation of Liability.

Notwithstanding any provision of this Agreement to the contrary, in no event shall any Party to this Agreement be liable to any other Party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, including but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by, any Party to this Agreement, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability. No claims for damages with respect to this Agreement may be made more than five (5) years after the date that the event giving rise to such claim is known or reasonably should have been known to the

person or entity making such claim; and no claim for indemnity under the provisions of Section 6 hereof may be made more than five (5) years after the first notice of any claim received by the Party claiming under such indemnity provision.

ARTICLE 8. INDEMNIFICATION

8.1 Indemnification

As permitted by law, each Party shall defend, indemnify and save the other Party harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the acts or omissions of the indemnifying Party, or its sub-providers, agents, or employees in the performance of this Agreement.

ARTICLE 9. INSURANCE

9.1 Insurance.

Provider shall secure and maintain, throughout the duration of this Agreement, insurance, on an occurrence basis, of such type and in at least such amounts as set forth below.

Commercial General Liability

Limits –

General Aggregate:	\$ 1,000,000
Products / Completed Operations Aggregate:	\$ 1,000,000
Personal & Advertising Injury:	\$ 1,000,000
Each Occurrence:	\$ 1,000,000

Such policy MUST include the following conditions:

- a) Explosion, Collapse & Underground
- b) Independent Providers

ARTICLE 10. FORCE MAJEURE

10.1 Force Majeure.

Notwithstanding any other provision of this Agreement, the performance of the obligations set forth in this Agreement, other than obligations to pay money, shall be suspended or excused in the event and only to the extent that such performance is prevented by an event of Force Majeure or its adverse effects. If the performance of a Party's obligations under this Agreement is suspended or excused by an event of Force Majeure or its adverse effects, such Party shall use commercially reasonable diligence to cause such event or effects to cease or be reduced. In the event that Provider's performance is excused by an event or events of Force Majeure that total in the aggregate more than one hundred twenty (120) days with respect to any System Segment then Recipient may terminate this Agreement with respect to any such System

Segment without any liability under this Agreement with respect thereto. "Force Majeure" shall mean the occurrence or nonoccurrence of any act or event beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party pursuant to this Agreement. Such acts or events include, but are not limited to, the following:

(a) acts of God, landslides, sink holes, lightning, hurricanes, earthquakes, tornadoes, high winds, fires, explosions, floods, volcanic action, major environmental disturbances, unusually severe weather conditions, epidemics, nuclear accidents, acts of civil or military authority, government regulations, embargoes, acts of a public enemy, wars, terrorist acts, blockades, insurrections, riots or civil disturbances;

(b) strikes, work slowdowns, or work stoppages;

(c) orders, writs, decrees or judgments of any federal, state or local court, administrative agency, or governmental body, so long as not the result of negligent or willful action or inaction of the Party relying thereon; *provided, however*, the contesting in good faith by such Party of any such order or judgment, or the good faith failure by such Party to contest any such order or judgment, shall not constitute or be construed to constitute a negligent or willful action or inaction of such Party;

(d) suspension, termination, interruption, denial, or failure of issuance or renewal on commercially reasonable terms, of any permit, license, consent, right of way, easement, lease, authorization, or approval necessary to the design, construction or installation of a Party's fiber optic communication system, in which event the provisions of Section 3.3 shall apply regardless whether Acceptance for such portion of the System has occurred;

(e) adoption of or change, after the date of the execution of this Agreement, in any federal, state, or local laws, rules, regulations, ordinances, permits, or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits, or licenses by a court or public agency having jurisdiction;

(f) inability to secure products or services of other persons or transportation facilities, acts or omissions of transportation common carriers, or failure of any subcontractor or any supplier to furnish labor, services, materials, or equipment in accordance with its contractual obligations; or

(g) a defect in manufactured components; *provided, however*, that in any case where such equipment or component was manufactured by the Party (or an Affiliate of such Party) seeking to rely upon such defect as an event of Force Majeure, such defect shall be deemed an event of Force Majeure only to the extent that the defect was caused by an independent event of Force Majeure.

ARTICLE 11. INTENTIONALLY OMMITTED

ARTICLE 12. TAXES

12.1 Payment of Impositions.

To the extent Impositions imposed upon or with respect to the System Route during such periods Recipient has title to the Provided Recipient Conduit may feasibly be separately assessed or imposed upon or against the respective interests of Provider and Recipient in the System Provider and Recipient shall each pay their own Impositions. Otherwise, Provider shall timely pay any and all such Impositions provided that, upon receipt of a notice of any such Imposition, Provider shall promptly notify Recipient of such Imposition and following payment of such Imposition by Provider, and to the extent that Recipient has use of the Recipient Conduit, Recipient shall promptly reimburse Provider for its proportionate share of such Imposition. Recipient's proportionate share of such Imposition shall be determined to the extent possible, based upon the manner and methodology used by the particular person or authority imposing such Impositions (e.g., on the cost of the relative property interests, historic or projected revenue derived there from, or any combination thereof). However, if the person or authority imposing such Imposition uses projected revenue or gross receipts, then Recipient's proportionate share shall be based on the relative number of Recipient Conduits in the affected portion of the System Route compared to the total number of Conduits in the affected portion of the System Route in use during the relevant period of use by Recipient. If Provider's assessed value, for property tax purposes, is based on its entire operation in any state (i.e., central assessment), Provider and Recipient shall work together in good faith to allocate a proper portion of said assessment to the System and Recipient's interest in the System Route. Provider shall provide Recipient with reasonable supporting documentation for Impositions for which Provider seeks reimbursement.

12.2 Original Impositions.

Provider shall be solely responsible for Impositions imposed or assessed prior to the Delivery Date, or imposed or assessed in exchange for the approval of the original construction of the System, or that were assessed in return for the original right to install the System on public property or in public right of way.

12.3 Contest of Impositions.

Notwithstanding any provision herein to the contrary, Provider shall have the right to contest any Imposition. The out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Provider in any such contest shall be shared by Provider and Recipient in the same proportion as to which the Parties shared in any such Imposition, as it was originally assessed. If Recipient shall establish with a taxing authority that the Recipient Conduit is exempt from an Imposition by that authority, then Recipient shall no longer be responsible for sharing the costs of any contest of such Imposition. In the event of any refunds or credits resulting from a contest brought by Provider, all such expenses shall first be paid from such refund or credit, after which such credit or refund shall be divided between Provider and Recipient in the same proportion as the Impositions were borne by Provider and Recipient. Further, where Provider does not contest an Imposition, Recipient shall have the right, after notice to Provider, to contest such Imposition as long as such contest does not materially,

adversely affect the title, property or rights of Provider. The out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Recipient and any refund or credit Imposition in any such contest shall not be shared by Provider.

12.4 Net Income Impositions.

Notwithstanding anything to the contrary in this Article 12, Provider shall have complete authority over and discretion to control (including the authority to dismiss or not pursue) any contests relating to Impositions based upon the computation of Provider's taxable income under the Federal Internal Revenue Code or state income or franchise tax laws (hereinafter "Net Income Based Impositions"). Provider shall have no obligation to disclose to Recipient its income or franchise tax returns and records except as to the discrete portion of such return or record that directly relates to the computation and payment of such Net Income Based Impositions.

12.5 Receipts Impositions.

Following the Acceptance Date, Provider and Recipient, respectively, shall be separately responsible for any and all Impositions (i) expressly or implicitly imposed upon, based upon, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to such Party due to its respective interest or use of the System Route and/or any facility to which rights are granted hereunder, or (ii) which have been separately assessed or imposed upon the respective interest of use by such Party in the System Route and/or any Provided Facility. If the Recipient Conduit are the only facilities located in the System from the point where the Recipient Conduit leaves the Underlying Rights to a Recipient point of interconnection, Recipient shall be solely responsible for any and all Impositions imposed on or with respect to such portion of the System Route.

ARTICLE 13. TERMINATION AND DEFAULT

13.1 Termination.

(a) This Agreement shall remain in force until the twentieth (20th) anniversary of the Acceptance Date for the last System Segment.

(b) Notwithstanding the foregoing, no termination or expiration of this Agreement shall affect the rights or obligations of any Party hereto with respect to any prior breach or any then existing defaults or the obligation to make any payment hereunder for services rendered prior to the date of termination or expiration or pursuant to this Agreement or with regard to any Articles of this Agreement that shall survive the expiration or termination hereof.

13.2 Default.

A Party shall not be in default under this Agreement herein unless and until the other Party shall have given written notice of such default and such default is not cured within thirty (30) days after receipt of such notice; provided, however, that where such default cannot reasonably be cured within such thirty (30) day period, if the defaulting Party shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such default (except for payment defaults and Insolvency Defaults,

as defined below and the failure of Provider to satisfy its obligations pursuant to Section 4.1) shall be extended for such period of time as may be necessary to complete such curing; provided, however, such period of extension shall not exceed ninety (90) days. Events of default shall include, but not be limited to, the making by a Party of a general assignment for the benefit of its creditors, the filing of a voluntary petition in bankruptcy or the filing of a petition in bankruptcy or other insolvency protection against a Party which is not dismissed within ninety (90) days thereafter, or the filing by a Party of any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution, or similar relief (collectively, an "Insolvency Default"). Any event of default by a Party may be waived under the terms of this Agreement at the other Party's sole option. Upon the failure by a Party to timely cure any such default after written notice thereof, the other Party may (i) take such action as it determines, in its sole discretion, to be necessary to correct the default, (ii) terminate this Agreement, and (iii) pursue any legal remedies it may have under applicable law or principles of equity relating to such breach. Notwithstanding the above, if a defaulting Party certifies to the other Party in writing that a default has been cured, such default shall be deemed to be cured unless the other Party otherwise notifies the defaulting Party in writing within fifteen (15) days of receipt of such notice.

ARTICLE 14. GENERAL PROVISIONS

14.1 Amendments.

This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by both Parties.

14.2 Assignment.

After the Delivery Date, this Agreement and the rights and obligations may be freely assigned, provided, however, that promptly following any assignment or transfer, the assigning Party shall provide the other Party written notice identifying the assignee or transferee, and provided further that in the event of any partial assignment of any rights hereunder, the assigning Party shall remain the sole party and point of contact with the other Party hereunder. This Agreement and each of the Parties' respective rights and obligations under Agreement, shall otherwise be binding upon and shall inure to the benefit of the Parties hereto and each of their respective successors and assigns.

14.3 Limitation of Benefits.

It is the explicit intention of the Parties hereto that no Person other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any Party hereto, and that covenants, undertakings, and agreements set forth in this Agreement shall be enforceable only by the Parties hereto or their respective successors or permitted assigns.

14.4 Notices.

Unless otherwise provided in this Agreement, all notices, demands, requests, approvals or other communications which may be or are required to be given, served or sent pursuant to this Agreement shall be in writing and shall be hand-delivered, mailed by

first-class, registered or certified mail, return receipt requested, postage prepaid, or delivered by overnight courier addressed as follows:

If to Provider: Digital Teleport, Inc.
8112 Maryland Avenue, 4th Floor
St. Louis, Missouri 63105
Attention: President

with a copy to: Digital Teleport, Inc.
8112 Maryland Avenue, 4th Floor
St. Louis, Missouri 63105
Attention: General Counsel

If to Recipient: The addresses set forth on Exhibit A.

Each Party may designate by notice in writing a new address to which any notice, demand, request, report, approval or communication may thereafter be so given, served or sent. Each notice, demand, request, report, approval or communication which shall be mailed or delivered in the manner described above, shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee (with the return receipt or the delivery receipt being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

14.5 Severability.

If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be held to be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or enforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said agreement; *provided, however*, that if any such ineffectiveness or unenforceability of any provision of this Agreement, in the good faith judgment of either Party, renders the benefits to such Party of this Agreement as a whole uneconomical in light of the obligations of such Party under this Agreement as a whole, then Provider and Recipient shall negotiate in good faith in an effort to restore insofar as possible the economic benefits of the transaction to the Parties.

14.6 Independent Contractors.

In all matters pertaining to this Agreement, the relationship of Provider and Recipient shall be that of independent contractors, and neither Provider nor Recipient shall make any representations or warranties that their relationship is other than that of independent contractors. This Agreement is not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between Provider and Recipient; and no Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the

employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and worker's compensation responsibilities.

14.7 Labor Relations.

Each Party hereto shall be responsible for labor relations with its own employees. Each Party agrees to notify the other immediately whenever it has knowledge that a labor dispute concerning its employees is delaying or threatens to delay timely performance of its obligations under this Agreement.

14.8 Exercise of Rights.

No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14.9 Additional Actions and Documents.

Each of the Parties hereto hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

14.10 Survival.

The obligations of the Parties under Article 6 (Warranties), Article 7 (Delays and Limitation of Liability), Article 12 (Taxes), Article 13 (Termination and Default), Section 14.5 (Severability), and Section 14.14 (Governing Law) shall survive any termination of this Agreement.

14.11 Headings.

Article headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

14.12 Incorporation of Exhibits.

The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written at length herein.

14.13 Governing Law.

This Agreement and each of its provisions shall be governed by and construed and interpreted according to the substantive laws of the State of Kansas without regard to its conflicts of law or choice of law provisions.

14.14 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

14.15 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the transaction contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.

14.16 Performance.

Except as specifically set forth herein, for the purpose of this Agreement, the normal standards of performance within the telecommunications industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely.

14.17 Non-Discrimination/Other Laws

- (a) The Provider agrees that:
 - (i) The Provider shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
 - (ii) In all solicitations or advertisements for employees, the Provider shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - (iii) If the Provider fails to comply with the manner in which the Provider reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Provider shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
 - (iv) If the Provider is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Provider shall be deemed to have breached the present agreement and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
 - (v) The Provider shall include the provisions of subsections (i) through (iv) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

- (b) The Provider further agrees that the Provider shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE WHICH MAY BE ENFORCED BY THE PARTIES HERETO.

DIGITAL TELEPORT, INC.

By: _____

Name: _____

Title: _____

THE CITY OF OVERLAND PARK, KANSAS

Ed Eilert, Mayor

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

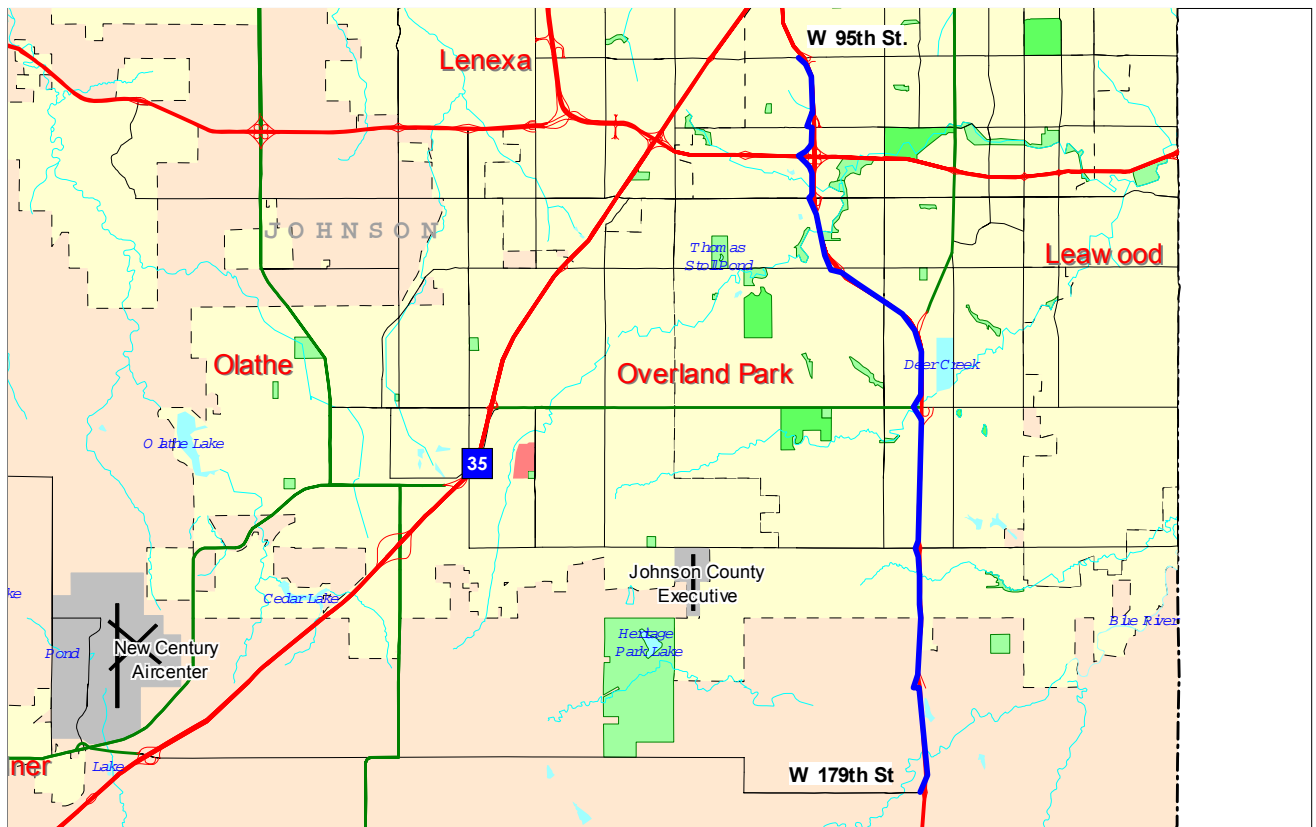
Jane Neff-Brain
Senior Assistant City Attorney

EXHIBIT A. ROUTE SPECIFICS

A. Description of the System

System Route	Recipient Conduit Provided	Estimated System Route Miles	Fee Per System Route Foot	Total Fee
Along US Hwy 69 from 95th St to 179 th St	One (1) 1.25" i.d. inner duct	62,304 feet	\$ 0.95	\$59,188

B. Route Map



C. Consideration

\$59,188 payable upon execution of this Agreement by City of Overland Park.

D. Notices

Recipient Notice Address:

City of Overland Park, Kansas
City Traffic Engineer
8500 Santa Fe
Overland Park, Kansas 66212

E. Access Points

Location of Handhole

Southbound exit ramp US 69 and 95th St.
Southbound exit ramp US 69 and 103rd St.
NW corner US 69 & I-435
SW corner US 69 & I-435
Southbound exit ramp US 69 and College Blvd.
Southbound exit ramp US 69 and 119th St.
SW corner US 69 and Antioch Rd.
North of Hemlock St. on US 69 near OP Fire Dept.
SW corner US 69 and 127th St.
Southbound exit ramp US 69 and 135th St.
NW corner US 69 and 139th St.
NW corner US 69 and 143rd St.
Southbound exit ramp US 69 and 151st St.
NW corner US 69 & 159th St.
Southbound exit ramp US 69 and 167th St.
Southbound exit ramp US 69 and 179th St.

Identification

KS-035-John-75.14
KS-035-John-133.42
KS-035-John-150.00
KS-035-John-180.82
KS-035-John-205.06
KS-035-John-263.06
KS-035-John-313.82

KS-035-John-358.54
KS-035-John-408.90
KS-035-John-437.18
KS-035-John-463.82
KS-035-John-516.68
KS-035-John-570.70
KS-035-John-628.74
KS-035-John-711.24

EXHIBIT B. CONSTRUCTION SPECIFICATIONS

SECTION 1

1. General Standards. The latest editions of the following codes and regulations define the minimum safety and construction standards required by Provider:

- National Electrical Manufacturer's Association
- Code of Federal Regulations, Title 29, Occupational Safety and Health Standards (OSHA)
- National Electric Code (NFPA No. 70)
- Underwriter's Laboratories, Inc.
- Lightning Protection Code (ANSI – 5.1)
- Applicable State, County and Local Ordinances
- Applicable Safety Codes Required From Provider's Right-Of-Way Vendors (e.g. Highway, DOT, Railroad, etc.)

SECTION 2

2. Conduit Placement

2.1 All conduit is high-density polyethylene (HDPE) duct with an SDR-11 rating or schedule 40 PVC or equivalent.

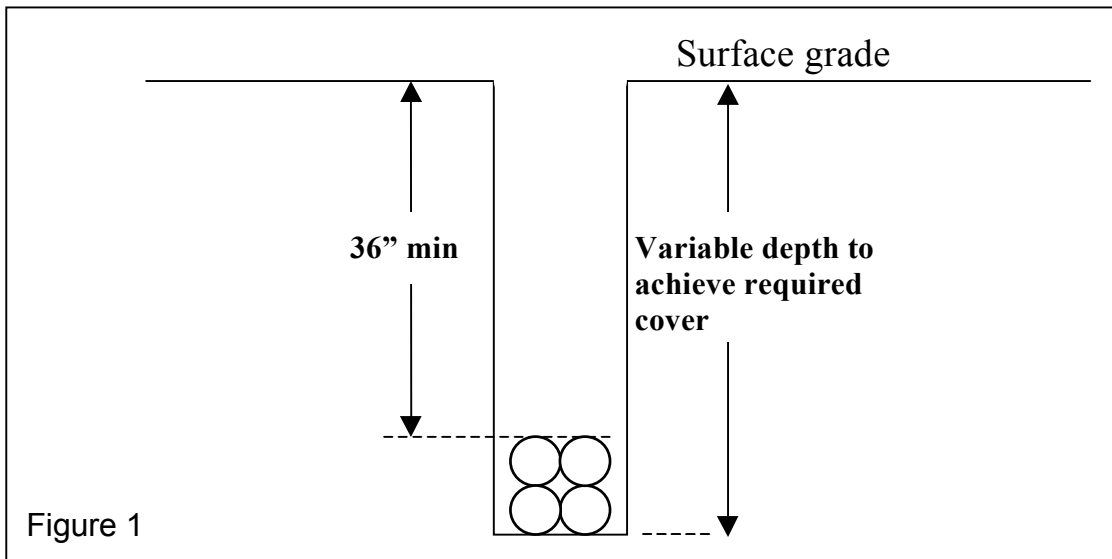
2.2 Conduit must be colored and include stenciling, during manufacture, to include the following labeling which shall repeat every 5 feet maximum:

WARNING - DIGITAL TELEPORT, INC. FIBER OPTIC CABLE – CALL 1-800-604-6688

2.3 The lettering on the duct must be between 0.75 and 1 inch in height, black in color and be a plain, non-serif font.

2.4 The minimum depth that the duct must be buried will vary with type of construction, the nature of Provider's right-of-way agreement and the area and conditions of a particular project. This document contains generic requirements for Provider network engineering and construction. Provider may specify project specific reductions or increases in minimum depth.

2.5 Unless superceded by project specific requirements, duct installed shall be placed at the minimum required 36 inch depth below grade (see figure 1). At any location where the presence of rock prevents the cable from being at least 36 inches below surface grade, the trench line shall be backfilled with concrete slurry material.



2.6 All road crossings shall be at a minimum depth of 48 inches of cover unless otherwise specified in writing by the authorized Provider representative. Duct installed under waterways such as streams, rivers and lakes will be at 60 inches below the bottom of the waterway.

2.7 At locations where the duct will cross other subsurface utilities or other structures, the duct shall be installed to provide a minimum of twelve inches of vertical clearance from the other utility or obstacle. The duct can be installed above the other utility or obstacle, provided the minimum clearance and depth is maintained; otherwise, the Provider duct shall be installed under the existing utility or other structure.

2.8 The depth of existing conduit will be the actual engineered depth of the conduit.

2.9 Duct shall be engineered to be placed in a consistent location along a ROW. This means, for example, that a “standard” or “typical” location shall be selected at which the majority of the duct can be installed without deviation. For example, on interstate highway ROWs, duct is often placed at 5 feet from the edge of the ROW edge to get the cable close to the edge of the ROW yet allow enough room for a rock saw to operate (if required). In other areas, a running line twenty (20) feet from the edge of pavement where the highway ROW is sufficiently large to accommodate such offset was preferred. Placing the standard running line of the duct to be less than 20 feet from the edge of the pavement requires approval of the authorized Provider representative. Any deviation which would place any portion of the duct within ten (10) feet of the edge of pavement along a highway ROW requires specific Provider authorization.

2.10 Duct placement shall be designed to be the best compromise between occupying the path of least cost within the confines of limiting changes in the “standard” running line as described above. For example, if the standard running line is selected to be 20 feet from the edge of the pavement, the majority of the duct must be installed at this location. However, deviations from the standard running line shall be engineered to avoid obstacles such as bridges, heavily wooded areas, rock, etc. Changes in the running line shall be physically marked in the field with a marker post and on the as-built drawings. Any field required deviation from engineering drawings in excess of 36 inches of the engineered running line shall be approved in writing by Provider.

2.11 Acceptable positions for the running line to avoid obstacles at the standard running line location include edge of shoulder or in the median strip of the highway (with approval of the applicable permitting agency). If duct is placed in the median strip, to shall be offset from the center on the median by at least 4 feet.

2.12 Duct shall be brought into a manhole that is offset from the standard running line so as to maintain as much diversity as possible. Duct must exit the standard running line with no less than 50 feet of separation.

2.13 When duct is constructed in rock, the trench must be backfilled with material containing rocks no larger than one inch in diameter.

3. Engineering and Placement of Handholes

3.1 Handholes must be designed in at distances no greater than approximately 5,000 feet.

3.2 Manholes will be specified and installed in traveled surface streets. Handholes shall be placed in all other areas.

3.3 Handholes/manholes will be specified to be either installed flush with existing grade or buried below grade by 6 inches. Typically, Provider requirement is that handholes in metropolitan areas will be buried flush and rural routes will be buried 6 inches below grade unless otherwise specified by an authorized Provider representative.

3.4 All handholes/manholes must be set on a base of at least 3 inches of aggregate rock to allow for water drainage.

3.5 Handholes shall be equipped with EMS markers fabricated into the lids for easy identification and locating.

3.6 All handholes will have a minimum load rating of at least H-20 (15,000 pounds) and include the standard Provider handhole logo.

3.8 Whenever possible, handholes designed for intersections or interchanges shall be placed near existing traffic control boxes.

4. Warning Markers

4.1 When ducts are installed using plow or trenching methods, warning tape shall be placed at 12 inches directly above the duct. All warning tape will be orange in color and include the standard Provider warning tape logo. Both the orange color and the black writing shall use inks, dyes and other materials to insure they will be colorfast (will not fade or bleed) with prolonged exposure to moisture or sunlight.

4.2 At reel ends of the warning tape, the ends of the tape shall be tied together such that they cannot be pulled apart when a force of twice the maximum cable pull tension is applied.

4.3 Provider specified tubular cable warning marker posts shall be placed along the ROW identifying the presence of buried cable unless otherwise specified by the authorized permitting agency. Marker posts shall be installed to mark handholes, changes in running line, both sides of a street crossing, the tops of hills (for best visibility) and at a maximum spacing of 1,000 feet.

4.4 Marker posts next to handholes typically include an extra band of one inch thick orange reflective tape applied to the tubular post approximately 2 inches below the orange top of the marker post.

4.5 Occasionally, local conditions or authorized permit agency will not permit the use of Provider's preferred marker posts. In these cases, the engineering contractor shall recommend the best alternative such as monument markers, flush mount sidewalk markers, etc.

4.6 Marker posts shall be installed for best visibility while minimizing the introducing of obstacle to vision of motorists and minimizing the burden to lawn mowing operations. Marker posts shall be placed adjacent to other posts, traffic control boxes, pedestals, etc.

4.7 On highway ROWs, the placement of marker posts shall be along the edge of the mowed ROW or fence line if possible.

EXHIBIT C. MAINTENANCE SPECIFICATIONS

1. Maintenance.

(a) **Scheduled Maintenance.** Routine maintenance and repair of the System described in this section (“Scheduled Maintenance”) shall be performed by or under the direction of Provider, at Provider’s reasonable discretion or at Recipient’s request. Scheduled Maintenance shall commence with respect to the Recipient Conduit upon the Delivery Date. Scheduled Maintenance shall include the following activities:

(i) Patrol of System route on a regularly scheduled basis;

(ii) Maintenance of a “Call-Before-You-Dig” program and all required and related cable locates;

(iii) Maintenance of sign posts along the System right-of-way with the number of the local “Call-Before-You-Dig” organization and the “800” number for the appropriate “Call-Before-You-Dig” program; and

(iv) Assignment of maintenance technicians to locations along the route of the System at approximately 200-mile intervals dependent upon terrain and accessibility.

(b) **Unscheduled Maintenance.** Non-routine maintenance and repair of the System which is not included as Scheduled Maintenance (“Unscheduled Maintenance”), shall be performed by or under the direction of Provider. Unscheduled Maintenance shall consist of:

(i) “Emergency Unscheduled Maintenance” in response to an alarm identification by Provider’s Network Control Center (“NCC”), notification by Recipient or notification by any third party of any failure, interruption or impairment in the operation of a Recipient Conduit, or any event imminently likely to cause the failure, interruption or impairment in the operation of a Recipient Conduit.

(ii) “Non-Emergency Unscheduled Maintenance” in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of a Recipient Conduit.

Recipient shall immediately report the need for Unscheduled Maintenance to Provider in accordance with procedures promulgated by Provider from time to time. Provider will log the time of Recipient’s report, verify the problem and dispatch personnel immediately to take corrective action.

2. Network Control Center.

Provider shall operate and maintain a NCC monitored twenty-four (24) hours a day. Provider’s maintenance employees shall be available for dispatch twenty-four (24)

hours a day, seven (7) days a week. Provider shall have its first maintenance employee at the site requiring Emergency Unscheduled Maintenance activity within four (4) hours after the time Provider becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by circumstances beyond the reasonable control of Provider. Provider shall maintain a toll-free telephone number to contact personnel at the NCC. Provider shall dispatch maintenance and repair personnel along the System to handle and repair problems detected in the System, (i) through the Recipient's remote surveillance equipment and upon notification by Recipient to Provider, or (ii) upon notification by a third party.

3. Cooperation and Coordination.

Recipient shall utilize the Provider Operations Escalation List, as updated from time to time, to report and seek immediate initial redress of exceptions noted in the performance of Provider in meeting maintenance service objectives.

(b) Provider will, as necessary, arrange for unescorted access for Recipient to all sites of the System, subject to applicable contractual, underlying real property and other third-party limitations and restrictions.

(c) In performing its services hereunder, Provider shall take workmanlike care to prevent impairment to the signal continuity and performance. The precautions to be taken by Provider shall include notifications to Recipient. In addition, Provider shall reasonably cooperate with Recipient in sharing information and analyzing the disturbances regarding the cable and/or fibers. In the event that any Scheduled or Unscheduled Maintenance hereunder requires a traffic roll or reconfiguration involving facilities of the Recipient, then Recipient shall, at Provider's reasonable request, make such personnel of Recipient available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with Provider in performing such maintenance as required of Provider hereunder.

(d) Provider shall notify Recipient at least ten (10) business days prior to the date in connection with any PSWP of any Scheduled Maintenance and as soon as possible after becoming aware of the need for Unscheduled Maintenance. Recipient shall have the right to be present, at its sole cost and expense, during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with Provider's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for whatever reason as previously notified, Provider shall notify Recipient at Provider's earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.

4. Recipient Conduit.

Provider shall maintain the System in a manner which will permit Recipient's use, in accordance with the terms and conditions provided under the terms of the Agreement.

5. System.

(a) Provider shall perform appropriate Scheduled Maintenance on the System in accordance with Provider's then current preventative maintenance procedures as agreed to by Recipient, which shall not substantially deviate from standard industry practice.

(b) Provider shall have qualified representatives on site any time Provider has reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of the Conduit.

(c) Provider shall maintain sufficient capability to teleconference with Recipient during an Emergency Unscheduled Maintenance in order to provide regular communications during the repair process. When correcting or repairing Recipient Conduit discontinuity or damage, including but not limited to in the event of Emergency Unscheduled Maintenance, Provider shall use reasonable efforts to repair the discontinuity within four (4) hours after the Provider maintenance employee's arrival at the problem site. In order to accomplish such objective, it is acknowledged that the repairs so affected may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Emergency Unscheduled Maintenance, Provider shall commence its planning for permanent repair, and thereafter promptly shall notify Recipient of such plans, and shall implement such permanent repair within an appropriate time thereafter.

6. Planned Service Work Period (PSWP).

Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be coordinated between the parties. Generally, this work should be scheduled after midnight and before 6:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for PSWP weekends. A calendar showing approved PSWP will be agreed upon in the last quarter of every year for the year to come. The intent is to avoid jeopardy work on the first and last weekends of the month and high-traffic holidays.

7. Restoration.

(a) Provider shall respond to any interruption of service or a failure of the System to operate in accordance with the specifications set forth in Exhibit B (in any event, an "Unavailability") as quickly as possible (allowing for delays caused by circumstances beyond the reasonable control of Provider) in accordance with the procedures set forth herein.

(b) When restoring an Unavailability, the Parties agree to work together to restore all traffic as quickly as possible. Both Parties agree to work together to restore the Unavailability as quickly as possible. Provider, promptly upon arriving on the site of the source of an Unavailability, shall determine the course of action to be taken to restore the Recipient Conduit and shall begin restoration efforts. Recipient shall have the right to begin restoration, excluding the restoration of Recipient Conduit, prior to the arrival of Provider.

8. Subcontracting.

Provider may subcontract any of the maintenance services hereunder; provided that Provider shall require the subcontractor(s) to perform in accordance with the requirement and procedures set forth herein. The use of any such subcontractor shall not relieve Provider of any of its obligations hereunder.

EXHIBIT D. DELIVERY DATE ACKNOWLEDGMENT AND BILL OF SALE

1. The parties acknowledge and agree that the Delivery Date occurred on _____, 2002.

2. KNOW ALL MEN BY THESE PRESENTS that, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and upon acceptance of the Recipient Conduit by City of Overland Park, ("Buyer") pursuant to the terms of the Conduit Sale Agreement between the parties dated September 9, 2002, Digital Teleport, Inc., a Missouri corporation, ("Seller") does hereby grant, bargain, sell, assign, transfer, convey and set over unto Buyer all right, title and interest in one (1) one and one quarter (1.25") inside diameter SDR-11 HDPE duct, including appurtenances (the "Recipient Conduit"), installed on approximately 12 miles along US Hwy 69 from 95th St to 179th St.

Seller hereby warrants to Buyer that immediately prior to the delivery of this Bill of Sale, Seller was the owner of the full legal and beneficial title to the Recipient Conduit and that Seller had the good and lawful right to sell the same and that good and marketable title to the Recipient Conduit is hereby vested in Buyer free and clear of all taxes, liens, claims, encumbrances and right of others. Seller agrees to warrant and defend such title forever, at its expense, against the claims of third parties (excepting there from persons or entities claiming rights based on real property rights), including the manufacturers, vendors, contractors and subcontractors from which Seller acquired the Recipient Conduit or components thereof, but excluding those manufacturers and vendors of materials supplied by Buyer and installed in the Recipient Conduit.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed and delivered in its name this ____ day of _____, 2002 in St. Louis, Missouri.

Digital Teleport, Inc.

By: _____

(SEAL)

Title: Sr. Vice President

ATTEST:
