

A G R E E M E N T

AGREEMENT made and entered into this _____ day of December, 2002, by and between OVERLAND PARK FIRE DEPARTMENT, INC., a Kansas corporation (hereinafter referred to as "Fire Department") and the CITY OF OVERLAND PARK, a municipal corporation created and existing under the laws of the State of Kansas (hereinafter referred to as "City").

WHEREAS, Fire Department is a private not-for-profit corporation in the business of furnishing fire protection services, including firefighting, emergency medical, rescue and related service in certain areas of the City of Overland Park; and

WHEREAS, City is a municipal corporation created and existing under the laws of the State of Kansas; and

WHEREAS, City is authorized by City of Overland Park Charter Ordinance No. 37 to contract with any private entity for the provision of fire protection services within the corporate limits of City by adopting a resolution to that effect directed to the Board of County Commissioners of Johnson County; and

WHEREAS, City is desirous of obtaining Fire Department's knowledge, equipment and services for fire protection, including firefighting, emergency medical, rescue and related services, and Fire Department is desirous of providing such knowledge, equipment and services to City;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises hereinafter set forth, the parties hereto do hereby agree as follows:

1. **TERM:** The term of the Agreement shall commence on the 1st day of January, 2003, and end on the 31st day of December, 2003, unless said term shall

be sooner terminated as hereinafter provided or as extended by mutual agreement.

2. CONSIDERATION: City agrees to pay to the Fire Department as consideration for the services to be performed by the Fire Department as set forth in this contract for the term January 1, 2003, through December 31, 2003, an amount necessary to fund the 2003 Fire Department budget of Thirteen Million Five Hundred Forty Six Thousand Four Hundred Twenty and 00/100 dollars (\$13,546,420.00). The total amount paid to the Fire Department shall be determined by reducing the approved budget by the amount of cash the Department has at the end of 2002, providing said amount of cash exceeds the operating reserve set forth in Paragraph 3 herein. Such sum shall be paid in installments based upon Fire Department cash flow needs in accordance with a schedule to be determined by the City and Fire Department, but in no case less than quarterly.

If during 2003 the property tax and other revenues received by the City to support fire services are insufficient to meet in full all Fire Department budgeted expenses for 2003, the Fire Department shall reduce its expenditures accordingly, based upon a mutually agreed upon plan for reduction in expenditures, provided the City shall be solely responsible for establishing any adjusted funding level. City agrees to notify Fire Department of any projected deficiencies in funds immediately and no later than September 30, 2003.

In exchange for the consideration set forth above, the Fire Department hereby agrees to provide fire protection, including but not limited to firefighting, emergency medical, rescue and code enforcement services to the inhabitants and all property within that portion of the geographic territory located within the corporate city limits as depicted in Exhibit A. The Fire Department further agrees to provide

such services outside of said area as current custom and usage shall require. In the event the geographic territory is enlarged during the term of this contract, such additional geographic territory shall, upon mutually agreed upon times and terms, be included in and be subject to this contract. The Fire Department further agrees to maintain and operate the Overland Park Fire Training Center located at 12401 Hemlock, Overland Park, Kansas. The parties' obligations and relationship concerning said training center are set forth in a separate agreement.

3. **RESERVE FUNDS:** Fire Department shall maintain an operational reserve account for periodic operational cashflow needs in an amount not to exceed \$400,000.00.

4. **USUAL AND CUSTOMARY SERVICES:** It is understood and agreed by the parties hereto that, other than the services agreed to herein, Fire Department shall provide only such fire protection, including firefighting, emergency medical, rescue and related services as are deemed usual and customary in view of the Agreement herein and the consideration to be paid Fire Department pursuant hereto.

5. **TRAINING:** Fire Department agrees to keep all firefighting and emergency medical services personnel trained in a manner sufficient to provide the services and response agreed upon herein. Fire Department accepts complete responsibility for said training.

6. **INSPECTIONS:** Fire Department shall cause all industrial and mercantile establishments and fire protective installations in its service areas as set forth in Paragraph 2 and Exhibit A herein and other areas agreed upon by the parties, to be periodically inspected by the Fire Department's qualified personnel in

accordance with applicable codes and regulations and variances thereto granted in writing by the City.

7. **CODE ENFORCEMENT:** The Fire Department shall make available to the residents of the City technical and fire protection advice. Fire Department personnel shall be advised of and shall be familiar with and assist in the enactment and enforcement of the City of Overland Park Fire Code and such other related ordinances and policies of the City as may be enacted relating to fire protection. Fire Department enforcement activity shall include, but not be limited to, issuing notices to appear, appearing at City Council meetings, committee meetings and meetings of City Boards and Commissions when necessary to effectuate the purposes of said ordinance. The City recognizes that code enforcement staff shall have the authority of City officers pursuant to City Operating Procedure 203 and Charter Ordinance No. 60. The Fire Department shall conduct fire code inspections and perform plan reviews as set forth in this Agreement.

a. **Existing Buildings - Plan Reviews and Inspections.** The Fire Department shall cause all schools, industrial and commercial establishments within the City to be inspected on a periodic basis by qualified personnel in accordance with Section F-106.1 of the Fire Code. New construction projects in existing buildings, including tenant finish and remodel projects, will be reviewed and inspected subject to Fire Department staff availability. Plan review and inspection of construction projects in existing buildings will be in accordance with the standards set forth in this Agreement.

b. **New Construction - Plan Reviews and Inspections.** The Fire

Department shall review plans and perform inspections for all new buildings and additions as an integral component of the City's plan review and inspection process.

1) Fire Department responsibilities: The Fire Department, in accordance with City adopted code standards, will be responsible for the plan review and inspection of fire fighting tactical response matters, premises identification, hazardous materials issues, fire extinguishers, fire lanes, fire hydrant location and fire flow calculation, fire protection systems in accordance with code referenced standards and other responsibilities as outlined in the Fire Code. In addition, the Fire Department will coordinate with the Johnson County Water District No.1 the location of fire hydrants and fire flow calculations.

2) Staffing at City's Building Safety Division: To insure the Fire Department staff is an integral component of the plan review and inspection process the Fire Department will staff a desk in the City's Building Safety Division five days per week. The actual amount of time the Fire Department will staff this desk will depend upon the workload requirements and agreement between the Fire Department and City staff. The majority of Fire Department plan reviews will be conducted at City Hall.

3) Plan Review Process:

(a) Triage Process: The Fire Department staff may attend Planning and Development Services' "triage" and other meetings as necessary.

(b) PRIS System Coordination: A copy of plans received for projects logged into the PRIS system will be provided for the Fire Department. For all plans received, the Fire Department will follow the same procedures used by the City plans examiners for identification of the plans examiner, placing plans under review and approving plans.

(c) Comment letter coordination: Comment letters will include the following:

(1) Overland Park Fire Department Comments: Building Safety Division plan review comment letters will include a section titled “Overland Park Fire Department Comments.” This section will be prefaced with the following statement: “The following comments are from the Overland Park Fire Department, Inc. Questions regarding these comments should be directed to the Overland Park Fire Department, Inc. 888-6066.” Fire Department comments shall be included verbatim into the Building Safety Division comment letters to applicants. Included in this section will be **non-code recommendations** from the Fire Department Plans Examiner. Non-code recommendations will be prefaced with “RECOMMENDATION ONLY - Additional code requirements may exist based on implementation of this standard.” Non-code recommendations will include a

statement explaining reasons for the recommendation.

(2) **Fire Protection Systems Comments:**

City Building Safety Division plan review comment letters will also include a section titled “Fire Protection Systems” which will contain comments from the Building Safety Division plans examiner and the Fire Department plans examiner. The section will include a statement indicating the Building Safety Division and Fire Department plans examiners have reviewed the fire protection systems and have made the joint comments that follow.

(d) Plan Review Response Times: Fire Department plans examiners will submit their comments to the City Building Safety Division as soon as possible, provided comments will be submitted no later than seven working days after the City logs in receipt of the plans.

(e) Pre-Occupancy Permit (P.O.P.) Meetings: Fire Department staff will participate in Pre-occupancy permit (P.O.P.) meetings.

(f) Certificates of Occupancy: To document Fire Department participation in the plan review process, the Fire Department will sign-off on projects in the BILDS and PRIS systems prior to the issuance of Temporary Certificates of Occupancy and Certificates of Occupancy.

4) Inspection Notification: To insure the presence and input

of the Fire Department staff in the inspection process, the City Building Safety Division will notify the Fire Department of the date, time and location of meetings for site inspections of fire protection systems.

5) Code Board of Appeals: The Prevention Chief for the Fire Department will receive a copy of all applications to the Code Board of Appeals. Upon receipt of the application, the Prevention Chief will submit a position letter from the Fire Department. The position letter will be included in the case file and with the staff comments being sent to the applicant and board members. At the discretion of the Prevention Chief for the Fire Department or the City, a meeting may be requested between the City and Fire Department to review the case. The Prevention Chief will also be in attendance or represented at all Code Board of Appeals hearings relative to fire protection issues.

6) Conflict Resolution: After consultation with the Prevention Chief of the Fire Department, the City Code Administrator has final authority concerning the interpretation of all code issues. Time shall be of the essence in the resolution of all disputes.

7) Joint Training: The City and Fire Department staffs will conduct joint training on pertinent issues at least once per quarter each year. Each agency will be responsible for sponsoring and conducting two of the four training sessions.

8) Monthly Reports: The Fire Department and City senior staffs will review each month compliance with the performance of this agreement and make the necessary adjustments to develop and

maintain a positive team relationship. Quarterly staff reports will be prepared by the Prevention Chief of the Fire Department and the City Code Administrator. In addition, quarterly meetings will be held with the Assistant City Manager to discuss issues and ideas that will enhance the relationship between the staffs.

8. EMERGENCY MEDICAL RESPONSE AND AMBULANCE

TRANSPORT SERVICE; EMERGENCY MEDICAL SERVICE AND

AMBULANCE SERVICE, COST RECOVERY: Fire Department shall dispatch at least one piece of appropriate equipment upon any request for emergency medical response to include proper ambulance service response, unless Fire Department has actual knowledge that the request is false.

a. Emergency medical response and ambulance service response shall be provided by the Fire Department in response to 911 emergency calls for medical service. This service shall include providing both “Basic Life Support” and “Advanced Life Support” emergency medical response service and ambulance transport service. Fire Department shall provide the necessary and appropriate personnel and equipment response to all calls for service. Johnson County MED-ACT will also provide emergency medical response and ambulance transport service with the Fire Department. These services shall be provided by the Fire Department in cooperation with MED-ACT. The obligations and responsibilities of the Fire Department and MED-ACT in this cooperative effort are outlined a separate Agreement between the City and County, a copy of which is attached hereto and incorporated by reference as Exhibit B.

b. Recovery of costs. In accordance with the provisions of City Ordinance AS-2062, the Fire Department shall establish and maintain a system and procedure to recover user fees for emergency medical services and ambulance services pursuant to its fire service agreement with the City. Fees recovered pursuant to this cost recovery program shall be levied solely for the purpose of providing revenue to recover the costs of the emergency medical services and ambulance services as those services are described above.

1) Rate: The Fire Department shall recover emergency medical and ambulance service costs at the following rate:

- \$225.00 per Basic Life Support transport plus \$5.50 per mile
- \$425.00 per Advanced Life Support transport, plus \$5.50 per mile

- Charges are not to exceed the Medicaid and Medicare allowable charges, if they apply.

2) Billing: Fire Department may utilize a commercial billing service agreed upon by City to assist in the recovery of costs. Fire Department shall adhere to a billing standard that recognizes that ambulance transport is never a planned expense and a patients ability or inability to pay for service will have no affect on decisions regarding their treatment, transport or any other service the Fire Department provides.

3) Payment to City: All monies recovered by the fire department for emergency medical and ambulance service costs shall be paid to the City pursuant to procedures approved by the City Director of Finance. The approved procedures shall include:

- a) The billing company sends bill to insurance

company/client. Bill advises that payment be sent directly to a Post Office Box which is a lockbox at bank.

b) Bank deposits payments in account and sends copy of deposit to billing company, Fire Department and City.

c) City will do a “sweep withdrawal” of the payments on a weekly basis.

9. CITY ENVIRONMENTAL COMPLIANCE PROGRAM:

a. Fire Department shall provide assistance to the City's Environmental Compliance Officer in the development of a comprehensive training program.

b. Fire Department shall provide assistance to the City in the inspection of City-owned facilities and operations to determine compliance with all applicable laws.

10. EQUIPMENT, FACILITIES AND SERVICES:

a. Motor Vehicle Lease: City shall provide to Fire Department certain motor vehicles, which said motor vehicles shall be leased from the City by Fire Department on mutually agreed upon terms. Said Lease Agreement is incorporated herein and attached hereto as Exhibit C.

b. Maintenance of Apparatus: Fire Department shall maintain and repair all City-owned vehicles and equipment used and operated by Fire Department pursuant to the following terms for the period of this Agreement.

1) All parts

2) Labor

Fire Department shall establish a formal maintenance program for all vehicles and equipment. This program and related records shall be subject to

periodic review by the City.

c. Fire Stations: All fire station facilities shall be provided by the Fire Department, with the exception of the fire stations located at 15935 Metcalf Avenue and at 13801 Switzer, Overland Park, Kansas, which stations shall be leased to the Fire Department on mutually agreed upon terms. Said Lease Agreement is incorporated herein by reference and attached hereto as Exhibit D.

d. Fire Station Maintenance and Repair: Fire Department shall be responsible for interior housekeeping, lawn, driveway and grounds cleaning and all other maintenance and repair for all facilities. Fire Department shall establish a formal facilities maintenance program for all buildings that will address deterioration of the facilities. The City shall periodically inspect the facilities and review the records of the maintenance program.

e. Responsibility for Safety of Equipment: It shall be the responsibility of the Fire Department to ensure that all City-owned vehicles and property in the Fire Department's care, custody and control are maintained in a manner that complies with all federal, state and local laws.

f. Asset Ownership: At such time equipment, apparatus, machinery, fire stations, sites, buildings and other real and personal property currently owned and/or titled in the name of the Fire Department are replaced by the use of City funds, such assets shall be titled in the name of and become the property of the City. All assets previously purchased or at anytime in the future purchased by use of City funds, shall be the sole property of the City and shall as appropriate be titled in the name of the City.

g. Acquisition and Replacement of Assets: Fire Department agrees to maintain a fixed asset acquisition program and a five-year comprehensive plan approved by the City for the replacement of fixed assets to include non-motor vehicle capital assets and further agrees to participate in planning for the City's Capital Improvement Plans. These plans and programs shall be approved by the City.

In the event Fire Department loses or relinquishes its nonprofit corporate status, all assets being used and operated by the Fire Department pursuant to this Agreement at the time of such loss or relinquishment shall become property of the City.

At such time as any equipment or apparatus consisting of motor vehicles previously received by the City from the Overland Park Fire District Board are due for replacement, the City shall, upon request, transfer title to such motor vehicles to the Fire Department in order that the Fire Department may receive the residual value of such motor vehicles as a trade-in credit towards the purchase of replacement motor vehicles. Said replacement vehicles shall be titled in the name of and become the property of the City.

The Fire Department shall adhere to asset replacement standards and procedures approved by the City. These procedures shall include advertising of assets to be disposed of and use of standard asset replacement forms. In addition, the Fire Department shall notify the City when any asset is acquired or disposed of. All revenues from the sale of assets shall be paid directly to the City.

h. Utilities: Cost of utilities at all facilities shall be the responsibility of Fire Department.

11. **RECORDS AND REPORTS:** In addition to any other records and reports required by this Agreement, the Fire Department shall maintain such records and reports in respect of the subject matter hereof as are customarily kept by similar fire departments within the State of Kansas. Fire Department shall, additionally, report monthly to City on a mutually agreed on form detailing, among other things, types of fires and other incidents responded to by number, losses, fire causes, value of property involved and number of persons responding to emergencies, and shall annually summarize this data. City may perform an audit of this Agreement and the records required by this subsection annually.

12. **AUDIT AND FINANCIAL REPORTING:** Fire Department agrees to have conducted annually at its own expense a complete certified audit of its financial statements by an independent certified public accountant. Said audit shall be presented to the City within four months following the year's end. Fire Department shall also provide City with a monthly report of all revenues and expenditures. Monthly reports shall be prepared on accounting principles agreed upon between the parties, provided that during the term of this Agreement, Fire Department shall transition to the GAAP basis of accounting. In addition, Fire Department shall provide periodic reports which give a budget to actual comparison for major line item revenue and expenses.

13. **NONDISCRIMINATION:** The Fire Department agrees that:

a. The Fire Department 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 Agreement because of race, religion, color, sex, disability, national origin or ancestry.

b. In all solicitations or advertisements for employees, the Fire

Department shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the commission.

c. If the Fire Department fails to comply with the manner in which the Fire Department reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Fire Department shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency.

d. If the Fire Department 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 Fire Department 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.

e. The Fire Department shall include the provisions of subsections 6.a. through 6.d. in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

14. INDEMNIFICATION: The Fire Department agrees to defend, indemnify and hold harmless the City of Overland Park, its governing body, officers, agents, employees and representatives from and against all losses, claims, liabilities, demands, recoveries, judgments or expenses including attorney fees arising out of the Fire Department's performance or failure to perform any terms or conditions of this Agreement, to include the non-discrimination clause and including any acts or omissions by Fire Department, its employees, subcontractors or agents.

15. WAIVER: The City and the Fire Department hereby waive their rights against each other with respect to claims covered by property or automobile

physical damage insurance.

16. INDEPENDENT CONTRACTOR: In no event, while performing its obligation under this Agreement, shall Fire Department or its employees or representatives be authorized to act as the agent or employee of City, but, on the contrary, Fire Department shall be deemed for all purposes to be an independent contractor in relation to the City.

17. DEFAULT: Fire Department shall have the right on thirty days' written notice to cease service as required by this Agreement in the event City fails to pay the consideration provided for in Paragraph 2 when due.

18. INSURANCE:

PROPERTY:

The Fire Department shall carry, at its own expense, "all risk" property insurance on all real and business personal property owned by the Fire Department or owned by the City and used and operated by the Fire Department. Amounts of insurance shall be maintained for an amount equal to the replacement cost value of the property. The policy will name the City as an additional insured, as its interest may appear.

LIABILITY:

The Fire Department shall maintain liability insurance with at least limits of protection and conditions as follows:

General Liability:

Type of Coverage: Commercial General

Form: Occurrence

Limits of Protection: \$1,000,000 Combined Single Limits, Each Occurrence;
\$1,000,000 Aggregate

Conditions Included: Premises and Operations
Contractual
Independent Contractors
Broad Form Property Damage
Personal Injury
Products/Completed Operations
E.M.T. Medical Malpractice
Includes Professional Services

Automobile:

Form: Business Auto Policy

Automobiles Covered: Any Auto

Limits of Protection: \$1,000,000 Combined Single Limits, each
accident

Uninsured Motorists: \$500,000

Personal Injury: Kansas Statutory

Physical Damage:

Comprehensive: \$1000 deductible

Collision: \$1000 deductible

Conditions Included: Hired and Non-Owned Liability

Loss Payable: City of Overland Park, as
its interest may appear

Workers' Compensation:

Coverage: Statutory

Employers Liability:

Bodily Injury by Accident \$100,000 each accident

Bodily Injury by Disease \$500,000 policy limit

Bodily Injury by Disease \$100,000 each employee

Conditions: Voluntary Compensation

The Fire Department shall carry errors and omissions insurance for limits of \$1,000,000.00 each claim and \$1,000,000.00 aggregate.

Fire Department shall also provide the City evidence of such insurance coverage, and any and all renewals thereof, for the Fire Department in the form of the certificate of insurance provided by the City. The City of Overland Park shall be provided a certificate of insurance naming the City as an "Additional Insured" on the general liability, automobile and property insurance policies.

The City will only accept coverage from an insurance carrier who offers proof that it:

- a. Is licensed to do business in the State of Kansas;
- b. Carries a Best's policyholder rating of A or better; and
- c. Carries at least a Class X financial rating, or is a company mutually agreed upon by the City and Fire Department.

19. MISCELLANEOUS:

a. Waiver: It is agreed and understood that any failure to strictly enforce any provision hereof shall not constitute a waiver of right to demand strict performance of that or any other provisions hereof at any time hereafter.

b. Severable Terms: The terms and conditions of this Agreement are separate and severable, and if for any reason any court of law or administrative agency should deem any provisions hereof invalid or inoperative, the remaining provisions of this Agreement shall remain valid and in full force and effect.

c. Modification: It is understood that the terms of this Agreement

may be changed from time to time by mutual agreement of the parties hereto expressed in the form of a Letter of Agreement signed by the authorized officials of the respective parties hereto; and, in addition, all service level changes shall be summarized in such a Letter of Agreement.

d. Notices: Any notices required to be given pursuant to the provisions of this Agreement shall be given in writing by registered or certified mail, enclosing such notice in a postage prepaid envelope addressed as follows:

FIRE DEPARTMENT:

Overland Park Fire Department, Inc.
9550 West 95th Street
Overland Park, Kansas 66212

CITY:

City Clerk
City of Overland Park
8500 Santa Fe Drive
Overland Park, Kansas 66212

or to such other address as either party hereto shall designate by such notice.

e. Previous Agreements: This Agreement embodies the entire Agreement between the parties hereto with relation to the subject matter hereof and supersedes any previous agreement or understanding, whether verbal or otherwise, with relation hereto, and may not be amended, changed, revised or altered except in writing signed by the parties hereto, provided, the parties' relationship concerning the Overland Park Fire Training Center located at 12401 Hemlock, Overland Park, Kansas, is set forth in a separate agreement.

f. Legal Construction: Time is of the essence of this Agreement,

and this Agreement is deemed personal to City herein and shall not be transferable or assignable by the Fire Department without the express consent of the City.

g. Titles: The titles of the paragraphs of this Agreement are solely for the convenience of the parties and are not to be construed as an aid to interpretation of this instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officials on the day and year first above written.

OVERLAND PARK
FIRE DEPARTMENT, INC.

CITY OF OVERLAND PARK,
KANSAS

By: _____

By: _____
Ed Eilert, Mayor

ATTEST:

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Assistant City Attorney II

- EXHIBIT A - MAP - CITY LIMITS SERVICE AREA
- EXHIBIT B - AGREEMENT BETWEEN CITY AND COUNTY
- EXHIBIT C - MOTOR VEHICLE LEASE
- EXHIBIT D - REAL ESTATE LEASE AGREEMENT

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D