

## Internet Service Provider Agreement

This Internet Service Provider Agreement (the "Agreement") is entered into as of this \_\_\_\_ day of March, 2007, (the "Effective Date"), by and between the CITY OF OVERLAND PARK, KANSAS, with offices located at 8500 Santa Fe Drive, Overland Park, KS ("Customer") and the Kansas City division of Time Warner Cable, with offices located at 6550 Winchester Avenue, Kansas City, MO ("TWC"). In consideration of the mutual promises and agreements made herein and intending to be legally bound, the parties agree as follows:

1. **SERVICE.** Subject to the terms and conditions of this Agreement, TWC shall provide Customer with a dedicated "Optical Access" service connection (the "Service") between Customer's facility and TWC's (or a TWC affiliate's) facility as further described on Exhibit A attached hereto and as further described in the RFP document ("RFP") attached hereto as Exhibit B. In addition to the service standards set forth in the Service Level Appendix, attached hereto as Exhibit C, TWC shall use commercially reasonable efforts to provide the Service 7 days a week, 24 hours a day, excluding scheduled maintenance, required repair and events beyond TWC's reasonable control as further set forth in this Agreement. TWC's provision of the Service is subject to availability, provided the performance criteria and accountability standards for service and credits described in Exhibit C shall apply to the provision of Service. TWC agrees to provide the Service set forth and/or described in the attached RFP found at Exhibit B.
2. **INSTALLATION.** Customer shall obtain and maintain throughout the Term (as defined in Section 5 below) such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, TWC personnel to install, deliver, operate and maintain the Service and Equipment as contemplated herein at Customer's facilities. Subject to the Customer's internal security requirements, Customer shall permit TWC to access the Customer facilities at any time as needed to install, configure, upgrade, maintain or remove the Equipment and other service components collocated at Customer's facilities. Customer shall make and maintain throughout the Term all site preparations necessary to permit the installation, maintenance, and operation of the Service and any Equipment (as defined below) as specified by TWC. Provided that Customer properly performs all necessary site preparation and provides TWC with all required consents, TWC shall install the Service in accordance with a mutually agreed upon schedule. TWC shall provide Customer with a completion notice ("Completion Notice") upon completion of the installation of the Service. The Completion Notice will be deemed accepted upon delivery of a written acknowledgement from the Customer that receipt and availability of the Service has been tested and deemed satisfactory. Interconnection of the Service and Equipment with Customer's equipment will be performed by Customer.
3. **SUPPORT & MAINTENANCE.** TWC shall use commercially reasonable efforts to maintain the TWC provided and installed cabling, routers and other TWC-installed- equipment, if any, (collectively, the "Equipment") used by TWC to provide the Service. TWC shall provide a telephone number and email address for inquiries and remote problem support for the Service. All such Customer support shall be provided to Customer's help desk personnel only. Customer is responsible for interfacing with its employees and end users. In no event shall TWC be responsible for providing such support for any network, equipment or software not provided and installed by TWC under this Agreement or for issues or problems beyond its direct control. Customer agrees to provide routine operational Service support for Equipment and service components collocated at Customer's facility, including without limitation by performing reboots, as requested by TWC.
4. **CUSTOMER OBLIGATIONS.** Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations, the terms of this Agreement, and any Terms of Use (which are incorporated herein by this reference). "Terms of Use" means all Service policies, including without limitation acceptable use policies, and other terms and conditions established by TWC and available on the TWC web site, [www.twckc.com/business/](http://www.twckc.com/business/), as may be modified from time to time by TWC. Customer agrees not to resell or make any use of the Service other than for Customer's internal business purposes. Customer agrees to use the Service solely for transmitting data in IP form. Customer shall maintain the Equipment free and clear of all liens and encumbrances and shall be responsible for loss or damage to the Equipment while at Customer's facilities. As between the parties, Customer is solely responsible for (a) all use (whether or not authorized) of the Service, which use shall be deemed Customer's use for purposes of this Agreement; and (b) all content that is stored or transmitted via the Service.
5. **TERM.** The Agreement shall be in effect for the Initial Term of Service set forth on Exhibit A, and unless terminated earlier in accordance with this Agreement, shall thereafter automatically renew on an annual basis unless either party notifies the other party at least thirty (30) days prior to the expiration of the then-current term of such party's intent not to renew (the Initial Term and any renewal term collectively referred to as the "Term").
6. **PAYMENT.** Customer agrees to pay TWC the one-time Service installation fee and monthly recurring Service fees (collectively the "Service Charges") set forth on Exhibit A in accordance with the following payment terms: Service Charges

will be billed to Customer monthly in accordance with TWC's regular billing schedule and are payable within thirty (30) days after the date of invoice. Customer shall be responsible for all use, sales and other taxes and governmental charges applicable to the Service (which taxes and charges are not included in the Service Charges), except for taxes payable on TWC's net income. TWC shall have the right to increase Service Charges after the Initial Term only at the time of an annual renewal, provided such increase may be made only upon thirty (30) days advance written notice to Customer. TWC may charge a late fee for all overdue amounts. The late fee will be the lesser of 1½% or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts. In addition to the foregoing, and all other available remedies, TWC may discontinue Customer's access to the Service in whole or in part, until such overdue amounts, together with interest, are paid. TWC may require a security deposit, letter of credit, advance payment for Service or other reasonable assurances of payment from Customer. The parties acknowledge and agree that the Customer is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the Customer's current budget year. In the event the Customer does not so budget and appropriate the funds, the parties shall be relieved from all obligations, without penalty, under this Agreement.

7. **PROPRIETARY RIGHTS AND CONFIDENTIALITY.** (a) TWC's Proprietary Rights. All materials, including, but not limited to, any Equipment (including related firmware), software, data or information developed or provided by TWC, any identifiers or passwords used to access the Service or otherwise provided by TWC, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by TWC to provide the Service (collectively "TWC Materials") shall remain the sole and exclusive property of TWC or its suppliers. Customer shall acquire no interest in the TWC Materials by virtue of the payments provided for herein. Customer may use the TWC Materials solely for Customer's use of the Service. Customer may not reproduce, modify or distribute the TWC Materials, or use them for the benefit of any third party. All rights in the TWC Materials not expressly granted to Customer are reserved to TWC. Customer will not open, alter, misuse, tamper with or remove the Equipment as and where installed by TWC, and will not remove any markings or labels from the Equipment indicating TWC (or its suppliers) ownership or serial numbers. (b) Confidentiality. Subject to the provisions and requirements of the Kansas Open Records Act, Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the TWC Materials and any other information and materials provided by TWC in connection with this Agreement that are identified or marked as confidential or are otherwise reasonably understood to be confidential. (c) Software. If software is provided to Customer hereunder, TWC grants Customer a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term.
8. **MONITORING AND MODIFICATIONS.** TWC shall have the right, but not the obligation, to monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters). TWC shall have the right, but not the obligation, to upgrade, modify and enhance the Equipment (including related firmware) and the Service and take any action that TWC deems appropriate to protect the Service and its facilities. TWC also shall have the right to add to, modify or delete any provision of the Terms of Use or any Service descriptions, provided, that TWC will notify Customer of any material adverse change in the Terms of Use or Service descriptions by email. Upon receipt of the above referenced notification, Customer shall have sixty days to terminate this Agreement without penalty or fault. Continued use of the Service after such notice and after the sixty days waiting period, shall constitute Customer's acceptance of such change.
9. **TERMINATION.** The Customer may, by sixty days written notice to TWC terminate this Agreement at any time, either for the Customer's convenience or because of the failure of TWC to fulfill its obligations hereunto. If, after notice of termination for failure to fulfill its obligations, it is determined that TWC had not so failed, the termination shall be deemed to have been effected for the convenience of the Customer. Either party may terminate this Agreement upon thirty (30) days written notice of the other party's material breach, provided that such material breach is not cured within such thirty (30) day period. In addition, in the event that Customer fails to comply with any applicable laws or regulations, the terms of this Agreement, or the Terms of Use, TWC may suspend or discontinue Customer's Service in whole or in part without advance notice. In the event of a suspension, TWC may require a reconnect charge to restart the suspended Service. Upon the termination or expiration of this Agreement: (a) TWC's obligations hereunder shall cease; (b) Customer promptly shall pay all amounts due and owing to TWC for Service delivered prior to the date of termination or expiration and any applicable deinstallation fee, if any; (c) Customer promptly shall cease all use of any software provided by TWC hereunder, and shall return such software to TWC; and (d) Customer shall return to TWC or permit TWC to remove, in TWC's sole discretion, the Equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall be responsible for reimbursing TWC for the repair or replacement, at TWC's discretion, of any Equipment not returned in accordance with this section. The foregoing shall be in addition to any other rights and remedies that TWC may have under this Agreement or at law or equity relating to Customer's material breach.

In the event Customer terminates this Agreement for its convenience, Customer shall promptly pay TWC a termination fee equal to (i) 50% of the Service Charges that would have been due for the remainder of the Initial Term if terminated during the first 12 months of the Initial Term, (ii) 30% of the Service Charges that would have been due for the remainder of the Initial Term if terminated during months 13 through 24 of the Initial Term or (iii) 20% of the Service Charges that would have been due for the remainder of the Initial Term if terminated during months 25 through 36 of the Initial Term.

- 10. DISCLAIMER OF WARRANTY.** CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND THE INTERNET AND ACCESSES THE SAME AT ITS OWN RISK. TWC EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE OR THE INTERNET OR ACTIONS TAKEN ON THE INTERNET AND TWC EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT OR ACTIONS. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SERVICE AND RELATED EQUIPMENT AND/OR OTHER MATERIALS USED IN CONNECTION WITH THE SERVICE, IF ANY, ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY TWC, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. TWC DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE OR ERROR FREE OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE INTERNET MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY MATERIAL AND/OR DATA UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE UPLOADING, DOWNLOADING OR OTHER TRANSMISSION OF SUCH MATERIALS AND/OR DATA. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TWC'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT, AND TWC DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.
- 11. LIMITATION OF LIABILITY.** IN NO EVENT SHALL TWC OR TWC AFFILIATES BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 12. INSURANCE.** TWC agree's to provide proof of the insurance requirements contained in Subsection C of the attached RFP.
- 13. NOTIFICATIONS.** Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, are addressed by, among other laws, the Federal Cable Communications Act (the "Cable Act") and the Electronic Communications Privacy Act. Personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in the Subscriber Privacy Notice provided by TWC in writing, which is incorporated herein by reference. Customer acknowledges receipt of the Subscriber Privacy Notice. In addition to the foregoing, Customer hereby acknowledges and agrees that TWC may disclose Customer's and its employees' personally identifiable information as required by law or regulation or by the American Registry for Internet Numbers ("ARIN") or any similar agency. In addition to actions and disclosures specifically authorized by law or statute or authorized elsewhere in this Agreement, TWC shall have the right (except where prohibited by law notwithstanding Customer's consent), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril. Customer hereby consents to such actions or disclosures.
- 14. FORCE MAJEURE.** TWC shall have no liability to Customer hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, acts or omissions of other carriers, natural disaster, regulation or governmental acts, fire, civil disturbance, strike, weather, any unauthorized access to or destruction or modification of the Service, in whole or in part, any failure of heat, air conditioning, or power supply, or act or failure to act of Customer or any third party using the Service.
- 15. REGULATORY AND LEGAL CHANGES; TARIFFS.** In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any increase in universal service fees or other government imposed charges, that increases the costs or other terms of delivery of Service to Customer, Customer acknowledges and agrees that TWC may pass through to Customer any such increased costs. Further, in the event that TWC is required to file tariffs with the appropriate regulatory agency or otherwise publish rates in accordance with regulatory agency rules or policies respecting the delivery of

the Service or any portion thereof, then the terms set forth in the applicable tariff or published rates shall govern TWC's delivery of, and Customer's consumption or use of, the Service. In addition, if TWC determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then TWC may terminate this Agreement as to any or all of the Service without liability by giving Customer thirty (30) days prior written notice (or such shorter notice as is required by law or regulation) of such determination.

**16. ENTIRE AGREEMENT.** This Agreement, including without limitation all exhibits that are attached hereto and incorporated herein by this reference, sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the parties with respect hereto. TWC specifically acknowledges and agrees to the Contract provisions contained in Section D of the RFP attached hereto as Exhibit B.

**17. MISCELLANEOUS.** This Agreement shall be governed and construed in accordance with the laws of the State of Kansas. In the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth herein, and the remainder of this Agreement shall remain in full force and effect. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Customer may not assign this Agreement without the prior written consent of TWC, and any assignment in violation of this Section shall be null and void. TWC may assign its rights and obligations under this Agreement, including without limitation, in whole or in part, to any Time Warner Cable Inc. affiliated party without the prior written approval of or notice to Customer. All claims under this Agreement must be initiated not later than two years after the claim arose. There are no third party beneficiaries to this Agreement. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of TWC herein may accrue to, or be fulfilled by, any TWC affiliate, including without limitation Road Runner HoldCo LLC, as well as by TWC and/or its subcontractors. The parties to this Agreement are independent contractors. Any notice under this Agreement shall be given in writing and shall be deemed to have been given when actually received by the other party. Notices shall be delivered to Customer and TWC at the respective addresses set forth above, or to such other address as is provided by one party to the other in writing. The provisions of Sections 7, 9, 10 and 11 shall survive the termination or expiration of this Agreement. No modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Notwithstanding anything herein to the contrary, any party to this Agreement (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions and other tax analyses) that are provided to the party relating to such tax treatment and tax structure.

**CUSTOMER:**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**TWC:**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A**

**Service**

Subject to the terms and conditions of this Agreement, TWC shall provide Customer with a dedicated circuit connection between Customer's data network located at 8500 Santa Fe Dr, Overland Park, KS and the TWC facility located at 6601 Winchester Ave, Kansas City, MO. The Service shall have the following capacity: 40 Meg x 40 Meg. Customer must purchase any additional capacity at the costs below for the length of this contract.

<b>Bandwidth</b>	<b>Contract term</b>	<b>Monthly ISP cost</b>	<b>Monthly telecom costs</b>	<b>Total monthly cost</b>	<b>Initial installation cost</b>
40 mbps	3 year	included in monthly	included in monthly	\$2,300	\$500
60 mbps	3 year	included in monthly	included in monthly	\$3,000	\$500
100 mbps	3 year	included in monthly	included in monthly	\$3,500	\$500

**Prices**

Installation Fee **\$500**

Monthly Recurring Fee: **\$2400.00 (40mbps)**

**Initial Term of Service**

For a period of 36 months from the date of TWC's Completion Notice.



**City of Overland Park, Kansas**

**Request for Proposal**

**for the purchase of**

***INTERNET SERVICE PROVIDER SERVICES***

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**SECTION A  
GENERAL INFORMATION**

**A1.** The City of Overland Park, Kansas is requesting proposals for the purchase of **Internet Service Provider Services**.

**A2.** Specifications for the Internet Service Provider Services to be purchased are included in this Request for Proposal. All inquiries concerning this Request for Proposal should be directed to:

Drew Mazeitis  
Information Technology Department  
City of Overland Park  
8500 Antioch  
Overland Park, Kansas 66212  
drew.mazeitis@opkansas.org  
(913) 895-6055

**A3.** Two copies of sealed proposals will be received by the Overland Park City Clerk at the address listed below until **2:00p.m. on October 30, 2006**. Sealed proposals must be clearly marked on the outside of the envelope with the following description: "**ISP Services**". The mailing address for proposals is:

City Clerk  
Re: ISP Services  
Overland Park City Hall  
8500 Santa Fe Drive  
Overland Park, Kansas 66212

Proposals may be delivered in person or mailed to the City Clerk. However, any proposal which is mailed but does not reach the City Clerk by the deadline time set forth above will not be accepted.

**A4.** The City reserves the right to accept or reject any and all proposals and to waive any technicalities or irregularities therein. No submitted proposal may be withdrawn for a period of ninety (90) days from the date set for the opening thereof.

**A5. Definitions:** The following terms are used in this Request For Proposal.

- a. City:** The City of Overland Park, Kansas.
- b. ISP Services:** Internet Service Provider Services.
- c. RFP:** This Request For Proposal for ISP Services.
- d. Vendor:** A company that submits a proposal in response to this RFP.
- e. SLA:** Service Level Agreement.



**SECTION A  
GENERAL INFORMATION (Continued)**

- A6. Overview:** The City currently has a 6 mbps internet connection. The City requires additional internet bandwidth due to the addition of new web services, other cities connecting to City servers via VPN connections, employees increasingly using VPN connections to access the City network from home, and the City hosting metro-wide emergency services.

The City maintains two redundant data centers. The first data center is located at the Antioch Justice Center ("AJC") at:

8500 Antioch Rd.  
Overland Park, KS 66212-3503  
**TWC is bidding the Primary Internet connection at 8500 Santa Fe as our fiber terminates just outside this building.**

The second data center is located at the Fire Training Center ("FTC") at:

12401 Hemlock St.  
Overland Park, KS 66213-1451  
**TWC is bidding the Secondary Internet connection this location. Our construction costs are approximately \$43,000 so our price is in direct proportion to covering this expense. TWC will be able to offer a more competitive price on this location if the City would be willing to assist in paying for some of this construction cost. This will need to be negotiated prior to a signed agreement and we are open to this discussion.**

The City needs a primary internet connection at one of these two locations – either is acceptable – and a secondary or backup internet connection at the other location. The primary internet connection must meet all of the requirements listed under "Primary Internet Connection Requirements". The secondary connection will be a lesser connection and must meet the less stringent requirements listed under "Secondary Internet Connection Requirements".

**SECTION B  
PROPOSAL REQUIREMENTS**

- B1. Requirements for a Proposal:** Each proposal submitted must include the following in order to be accepted by the City:
- a. Proposal Sheets:** Each proposal must include the information on the Proposal Sheet in Section E. The Proposal Sheet is a minimum data requirement. Vendors can supply additional information if desired. The Proposal Sheet consists of:
    - 1. Primary ISP Pricing.** Pricing for primary ISP Services at 10 mbps, 20 mbps, 40 mbps, 60 mbps and 100 mbps. Pricing should include all recurring and non-recurring costs that the City will incur over the term of the contract with the vendor, including startup costs, installation fees, cabling fees, equipment costs, port fees, telecommunication costs, etc.
    - 2. Secondary ISP Pricing.** Pricing for a secondary internet connection. This connection will only be used if the primary connection fails and will only remain in use until the primary connection can be restored. The secondary internet connection does not require a SLA. Pricing should include all recurring and non-recurring costs that the City will incur over the term of the contract with the vendor, including startup costs, installation fees, cabling fees, equipment costs, port fees, telecommunication costs, etc.
    - 3. Activation Lead Time.** The number of days it will take to activate the primary ISP Services specified in this RFP from the time the Agreement is executed by both parties.
  - b. References:** Each proposal must include 3 references. Each reference must include the name of the organization and the name, title and telephone number of a contact person within the organization. The reference information is to be provided on the reference sheet found in Section F.
  - c. Proposal Exceptions:** Exceptions that a Vendor might have to any of the requirements found in this RFP must be fully explained in the Vendor's proposal in a separate section under the heading "Proposal Exceptions".
  - d. Assumptions:** List any assumptions made in formulating this RFP in a separate section under the heading "Assumptions". Any questions about the specifications of this RFP should be addressed through the primary contact prior to submitting an RFP response.
  - e. Additional Features:** List any additional features not required by the specification in a separate section under the heading "Additions".
- B2. Agreement to Specifications:** By submitting a proposal, respondent agrees to the specifications presented in this Request for Proposal except as noted in respondent's Proposal Exceptions. The contract between the City and the Selected Vendor is to include and fully incorporate this Request for Proposal and the Selected Vendor's response.
- B3. Agreement:** The City will negotiate an agreement with the qualified Vendor quoting the best value for ISP Services and will require that the agreement include the City's Insurance Requirements (Section C) and Contract Language (Section D). If an agreement cannot be successfully negotiated between the City and the selected Vendor within a reasonable time as determined by the City, the City will then attempt to negotiate an agreement with the qualified Vendor quoting the next best value. This process will continue with other Vendors until an agreement has been successfully negotiated or the City terminates efforts to negotiate an agreement.

**SECTION B  
GENERAL SPECIFICATIONS (Continued)**

- B4. Proof of Insurance:** The successful Vendor shall provide proof of insurance in the form, coverages, and amounts specified in Section C as a precondition to contract execution.
- B5. Contract Language:** The successful Vendor shall agree to the contract terms specified in Section D as a precondition to contract execution.
- B6. Tax Exempt:** The City of Overland Park is exempt from taxes as set forth in K.S.A. 79-3606 as a political subdivision, and proposals should be based accordingly.
- B7. Evaluation Criteria:** The following criteria will be used to evaluate each proposal received.
- a. Cost - The cost to the City for the ISP Services.
  - b. The degree to which each Vendor meets or exceeds the specifications.
  - c. SLA scoring.
  - d. Proposal exceptions.
  - e. Responses from references.
  - f. Delivery time for services.
- B8. Primary Internet Connection Requirements:** Service offerings may be more comprehensive than the following list of features. The specifications listed below are the minimum requirements necessary for consideration.

- a. Handoff to the City must be an Ethernet connection. The Vendor will provide all premise equipment necessary to provide the Ethernet handoff.

**Part of standard Metro Ethernet service.**

- b. Actively manage the internet connection up to and including the Ethernet handoff.

**Part of standard Metro Ethernet service.**

- c. Secondary and tertiary DNS for a non-restrictive number of DNS records.

**Part of standard DNS service.**

- d. A minimum of 128 contiguous public IP addresses (/25).

**In order to provide a subnet of that size, the customer must fill out an IP Justification form.**

- e. Vendor must connect to multiple Tier 1 ISPs.

- 1. Provide the name and connection type for each Tier 1 ISP.

**ATDN (AOL Transit Data Network) & Level 3 Communications**

- f. Failover from primary internet connection to secondary internet connection.

**This will be accomplished with BGP4 routing through the customer provided router and TWC's network will support this application. Failover between multiple Metro Ethernet circuits can be accommodated by utilizing BGP sessions on each**

**circuit. In such a configuration, a /24 subnetwork (256 contiguous public IP addresses) must be used by the customer.**

- g.** Provide a web site for monitoring network performance and bandwidth utilization.

**Web based circuit monitoring is available to our customers. Bandwidth utilization and circuit availability are available. Additional service metrics can be provided by request.**

- h.** Industry standard SLA that will be scored by the City for network latency, network availability, credit policy, response time, and support.

- 1.** Technical support must be available on a 7 x 24 x 365 basis.

**Technical support is available 7x24x365**

- 2.** Network operations center available on a 7 x 24 x 365 basis that can perform remote diagnostics of all vendor premise equipment.

**DOC (Division Operation Center) available on a 7x24x365 for issue reporting and service monitoring. Further troubleshooting performed by technical support staff, which is also available 7x24x365.**

**B9. Secondary Internet Connection Requirements:**

- a.** Handoff to the City must be an Ethernet connection. The Vendor will provide all premise equipment necessary to provide the Ethernet handoff.

**Standard Metro Ethernet configuration.**

- b.** Minimum of 1.5 mbps connection.

**N/A**

- c.** Automatically revert to primary connection once the connection has been reestablished.

**Refer to answer in B8 (f) above.**

## B10. Vendor Background:

- How large is your current client base? Approximately 360,000 Percent Residence 97% Percent Business 3%
- Would we have an account team assigned to the City of Overland Park?  
**Yes, the team will comprise of Greg Walkup, Brad Botts, David Purvis, Mark Tweedie, Mark Goodson, Charles Lee**
- Describe the members of the team and each person's responsibilities.  
**Greg Walkup Account Executive**  
**Brad Botts General Sales Manager**  
**David Purvis Project Coordinator**  
**Mark Tweedie Sales Engineer**  
**Charles Lee Network Engineer**  
**Mark Goodson Network Engineering Manager**
- How many customers does this account team handle?  
**Greg handles approximately 200 customers and the remainder of the team supports his accounts and all other Business Class customers.**
- Would the account team be local?  
**Yes, we are located at 6601 Winchester Ave, KC, MO 64133**
- Provide an escalation list for the account team, with names, telephone numbers, and email addresses.  
**Greg Walkup 816-743-2435 [greg.walkup@twcable.com](mailto:greg.walkup@twcable.com)**  
**Brad Botts 816-222-5837 [brad.botts@twcable.com](mailto:brad.botts@twcable.com)**  
**David Purvis 816-222-5591 [david.purvis@twcable.com](mailto:david.purvis@twcable.com)**  
**Mark Tweedie 816-222-5869 [mark.tweedie@twcable.com](mailto:mark.tweedie@twcable.com)**  
**Charles Lee 816-918-0472 [charles.lee@twcable.com](mailto:charles.lee@twcable.com)**  
**Mark Goodson 816-222-5444 [mark.goodson@twcable.com](mailto:mark.goodson@twcable.com)**
- For routine orders and changes, who do we contact?  
**Please contact Greg Walkup or Brad Botts**
- Do you have your own service staff? If so, how many local technicians do you have?  
**Yes, 8 local technicians.**
- What is the location of the service staff?  
**They located at 6601 Winchester Ave, KC, MO**
- Are the technicians subcontractors?  
**No**
- What hours are the technicians available?  
**Monday through Friday, 8am – 5pm. After Business Hours, there are 2 technicians on call for 24x7 outage/trouble reporting.**
- Describe how the technicians can be reached.  
**All trouble calls should go through the DOC (Division Operating Center) which can be reached at 816-222-5730 or email at [dl-kac-doc@twcable.com](mailto:dl-kac-doc@twcable.com) 24x7x365.**
- How many technicians do you have on call?  
**1 Primary 1 secondary, 365 days a year.**
- Who will be responsible for coordination of the installation?  
**David Purvis**
- How do we contact this person?  
**816-222-5591 or 913-208-0692 or [david.purvis@twcable.com](mailto:david.purvis@twcable.com)**

- What type of status reporting is provided during the installation process?  
**At the customer's request, David or Greg can provide you with Weekly Updates every Thursday morning.**
- How do we open a trouble ticket?  
**Trouble tickets will be opened through the DOC at 816-222-5730 or email at [dl-kac-doc@twcable.com](mailto:dl-kac-doc@twcable.com) 24x7x365**
- When opening a trouble ticket, will the person taking the call have access to a customer's specific account information, such as a list of people authorized to place tickets, specific customer procedures, etc.?  
**Yes**
- After normal business hours, are trouble calls transferred to a different, centralized call center?  
**No, you must contact the DOC at 816-222-5730 or email at [dl-kac-doc@twcable.com](mailto:dl-kac-doc@twcable.com) 24x7x365**
- If so, does this call center have access to specific information about each customer's account?  
**N/A**
- Does your call center have the ability to perform remote diagnostics?  
**They have the ability to conduct some remote diagnostics, however, the Technician assigned to the trouble ticket will be the source of authority. We have found this to be the most efficient way to service and trouble-shoot any service issue.**
- What are your escalation procedures for trouble tickets?  
**Trouble tickets will be opened through the DOC. The DOC will dispatch a technician to investigate the service issue. In the event the technician is unable to resolve the service issue, the DOC will be notified to contact the appropriate group (I.E. fiber technician, Network Engineer, etc.). During this process, the DOC will keep in regular contact with the customer giving updates and status.**
- What are your procedures for providing status information and problem resolution timeframes to the customer?  
**Updates will be relayed by the DOC to the customer. Updates via email as progress is made or as escalations have occurred.**
- Please provide a diagram of your network with your proposal.  
**See attached Visio diagram.**

**SECTION C  
INSURANCE REQUIREMENTS**

**Time Warner Cable Kansas City will comply with all these requirements in Section C. See attached Insurance Certificate.**

The Vendor must have the following minimum insurance coverages:

**C1. General**

- a. The Vendor shall secure and maintain, throughout the duration of this contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Vendor shall provide certificates of insurance and renewals thereof on forms provided by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

**C2. Notice of Claim Reduction of Policy Limits**

- a. The Vendor, upon receipt of notice of any claim in connection with the contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.
- b. The Vendor shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) in excess of \$10,000.00, whether or not such impairment came about as a result of this contract.
- c. In the event the City shall determine that the Vendor's aggregate limits of protection shall have been impaired or reduced to such extent that the City shall determine such limits inadequate for the balance of the project, the Vendor shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

**C3. General Liability**

- a. The Commercial General Liability insurance coverage that is to be provided by Vendor shall comply with appropriate section. Such insurance shall specifically insure the contractual liability assumed by the Vendor under the hold harmless section.

**b. MINIMUM INSURANCE REQUIREMENTS**

COMMERCIAL GENERAL LIABILITY POLICY  
(Complete Certificate "Form B")

General Aggregate:	\$ 500,000
Products/Completed Operations Aggregate:	\$ 500,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

- c. Policy must include the following conditions:
  - 1. Broad Form Contractual/Contractually Assumed Liability
  - 2. Independent Contractors
  - 3. Broad Form Property Damage

**SECTION C  
INSURANCE REQUIREMENTS (Continued)**

**d. Automobile Liability.**

1. Policy shall protect the Vendor against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

(a) Any Auto

OR

- (a) All Owned Autos;
- (b) Hired Autos; and
- (c) Non-Owned Autos.

2. Limits of liability protection required are the SAME as the limits for the Commercial General Liability section. Policy shall insure the contractual liability assumed by the Vendor.

**b. Workers' Compensation and Employer's Liability.**

1. This insurance shall protect the Vendor against all claims under applicable state Workers' Compensation laws. The Vendor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include liability limits not less than the following:

<u>Workers' Compensation:</u>	Statutory
<u>Employer's Liability:</u>	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

2. Owner's Protective Liability.

(a) This insurance will not be required for this Agreement.

3. Industry Ratings.

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

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of B+ or better; and
- (3) Carries at least a Class X financial rating.

OR

(4) Is a company mutually agreed upon by the City and Vendor.

4. Professional Liability Insurance.

(a) This insurance shall not be required for this Agreement.



**SECTION C**  
**INSURANCE REQUIREMENTS (Continued)**

5. Subcontractors' Insurance.
- (a) If a part of the Contract is to be sublet, the Vendor shall either:
    - (1) Cover all subcontractors in its insurance policies, or
    - (2) Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.
  
  - (b) Whichever option is chosen, Vendor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

**SECTION D  
CONTRACT LANGUAGE**

**Time Warner Cable Kansas City will comply with all requirements in Section D.**

The following language shall be included in the contract between the City and the Selected Vendor:

**D1. Non-Discrimination And Other Laws**

- a. The Vendor agrees that:
  - 1. The Vendor 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;
  - 2. In all solicitations or advertisements for employees, the Vendor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
  - 3. If the Vendor fails to comply with the manner in which the Vendor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Vendor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
  - 4. If the Vendor 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 Vendor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
  - 5. The Vendor shall include the provisions of subsections (A) (1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or Vendor.
- b. The provisions of this section shall not apply to a contract entered into by a Vendor:
  - 1. Who employs fewer than four employees during the term of such contract; or
  - 2. Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- c. The Vendor further agrees that the Vendor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all 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.
- d. Vendor agrees to defend, indemnify and hold harmless the CITY OF OVERLAND PARK and its agents and/or employees from any and all claims, settlements, and judgments for bodily injury, physical property damage and/or death arising out of Vendor's or any of its agents, servants, employees' or subcontractors negligent acts, and for failure to act in the performance of this CONTRACT. Neither acceptance of the completed Services nor payment therefore shall release Vendor of its obligation under this paragraph.

- e. The City retains the right to utilize other carriers for services, as long as the City meets its usage commitments as defined in this Contract.
- f. The usage commitment in this Contract shall be an annual commitment. Monthly variations in usage will not be subject to penalties as long as the annual commitment level is met.

## SECTION D

### CONTRACT LANGUAGE (Continued)

- g. Notwithstanding anything contained in the CONTRACT to the contrary, it is understood and agreed by the parties hereto that the CITY is obligated only to pay periodic payments or monthly installments under the CONTRACT as may lawfully be made from funds budgeted and appropriated for such purpose during the City's then current budget year (i.e., January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should the CITY fail to budget, appropriate or otherwise make available funds for payments due under the CONTRACT in any budget year, the CONTRACT shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the CITY of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have been appropriated and budgeted or are otherwise made available. City agrees to notify VENDOR of such termination, which shall not constitute a default under the CONTRACT, at least (60) days prior to the end of the City's then current budget year. This paragraph shall not be construed so as to permit the CITY to terminate the CONTRACT in order to acquire any other functionally similar services or to allocate funds directly or indirectly to perform essentially the same application for which the services under the CONTRACT are intended. Notwithstanding the foregoing and to the extent permitted by law, the CITY agrees that, if the CONTRACT is terminated in accordance with the provisions of this paragraph, the CITY shall not acquire or purchase services similar to that described in the CONTRACT for a period of ninety (90) days from the end of the then current budget year of the CITY.

**SECTION E  
PROPOSAL SHEET**

**E1. Vendor Contact**

<b>Vendor Name:</b>	<b>Time Warner Cable Kansas City</b>
<b>Contact Name:</b>	<b>Greg Walkup</b>
<b>Title:</b>	<b>Account Executive</b>
<b>Street Address:</b>	<b>6601 Winchester Avenue</b>
<b>City, State, Zip:</b>	<b>Kansas City, MO 64133</b>
<b>Phone:</b>	<b>816-743-2477</b>
<b>Email:</b>	<b><a href="mailto:greg.walkup@twcable.com">greg.walkup@twcable.com</a></b>

**E2. Vendor Signature**

I have reviewed all of the general information and specifications in the Request for Proposal, have contacted the City regarding any needed clarifications, and submit this proposal with a full understanding of the specifications.

If selected by the City as the Vendor, I agree to abide by the terms and conditions specified in this Request for Proposal.

<b>Company Officer Name:</b>	<b>Brad K. Botts</b>
<b>Title:</b>	<b>General Sales Manager</b>
<b>Signature:</b>	
<b>Date:</b>	
<b>Phone:</b>	<b>816-222-5837</b>

**SECTION E  
PROPOSAL SHEET (continued)**

**E1. Primary Internet Connection**

Bandwidth	Term (not to exceed 3 yrs.)	Monthly ISP Cost	Monthly Telecom Cost	Other Monthly Cost	Total Monthly Cost	Non- recurring Costs
10 mbps	3 year	Included in Total Monthly Cost	Included in Total Monthly Cost	Included in Total Monthly Cost	\$1,000	\$500
20 mbps	3 year	Included in Total Monthly Cost	Included in Total Monthly Cost	Included in Total Monthly Cost	\$1,600	\$500
40 mbps	3 year	Included in Total Monthly Cost	Included in Total Monthly Cost	Included in Total Monthly Cost	\$2,400	\$500
60 mbps	3 year	Included in Total Monthly Cost	Included in Total Monthly Cost	Included in Total Monthly Cost	\$3,000	\$500
100 mbps	3 year	Included in Total Monthly Cost	Included in Total Monthly Cost	Included in Total Monthly Cost	\$3,500	\$500

**E2. Secondary Internet Connection**

Bandwidth	Term (not to exceed 3 yrs.)	Monthly ISP Cost	Monthly Telecom Cost	Other Monthly Cost	Total Monthly Cost	Non- recurring Costs
5 mbps	3 year	Included in Total Monthly Cost	Included in Total Monthly Cost	Included in Total Monthly Cost	\$2,179*	\$500

\* TWC is bidding the Secondary Internet connection at 12401 Hemlock Street. Our construction costs are approximately \$43,000 so our price listed above is in direct proportion to covering this expense. TWC will be able to offer a more competitive price on this location if the City would be willing to assist in paying for some of this construction cost. This will need to be negotiated prior to a signed agreement and we are open to this discussion at any time.

**E3. Tier 1 ISP's**

ISP	Connection Speed
ADTN (AOL Transit Data Network)	OC 192 out of our RDC located in Kansas City, MO
Level 3	OC 192 out of our RDC located in Kansas City, MO

- E4.** Availability: **Number of business days after Agreement is signed until service is available**  
**Approximately 30 – 45 Business Days depending on construction challenges**
- E5.** Proposal Sheets may be submitted in a spreadsheet format, as long as the rows and columns from items E1 and E2 are included.
- E6.** The list above is not meant to be all inclusive. Bidders shall include all items necessary to provide the services specified. Additional items must be itemized and added to the list above so that the City has a complete listing of all products and services the bidder intends to bill for. Vendor price shall include ALL labor, materials, products, and services necessary to install and provide the services as specified. **THE CITY SHALL NOT BE LIABLE FOR ADDITIONAL CHARGES THAT ARE NOT STATED IN YOUR PROPOSAL.** All charges for overtime, installation, shipping, etc. must be included in your costs.
- E7.** Proposals shall not include sales tax/use tax for the State of Kansas per the exemption certificate for the project.

**SECTION F  
REFERENCES**

<b>1) Reference Company:</b>	<b>UNITED HEATING AND COOLING</b>
<b>Address:</b>	<b>301 Duck Rd</b>
<b>City, State, Zip:</b>	<b>Grandview, MO 64030</b>
<b>Contact Name:</b>	<b>Mr. Jeff Wilks</b>
<b>Title:</b>	<b>Facilities Manager</b>
<b>Phone:</b>	<b>816-918-5900 cell</b>
<b>Service(s) purchased:</b>	<b>Metro Ethernet Connection to the internet</b>

<b>2) Reference Company:</b>	<b>Wholesale Internet</b>
<b>Address:</b>	<b>2401 Holly</b>
<b>City, State, Zip:</b>	<b>Kansas City, MO</b>
<b>Contact Name:</b>	<b>Aaron Wendel</b>
<b>Title:</b>	<b>Chief Technical Officer</b>
<b>Phone:</b>	<b>816-550-9030</b>
<b>Service(s) purchased:</b>	<b>Metro Ethernet to the internet</b>

<b>3) Reference Company:</b>	<b>Shawnee Mission School District</b>
<b>Address:</b>	<b>7235 Antioch Rd</b>
<b>City, State, Zip:</b>	<b>Overland Park, KS 66204</b>
<b>Contact Name:</b>	<b>Mr. Bill Sandberg</b>
<b>Title:</b>	<b>Information Services Supervisor</b>
<b>Phone:</b>	<b>913-993-8850</b>
<b>Service(s) purchased:</b>	<b>Metro Ethernet Point to Point and Metro Ethernet to the internet.</b>



## 1. Service Level Appendix

This appendix contains the Service Level Agreement (SLA) that define the performance criteria and performance objectives to which Time Warner Cable will be held accountable for the service. The purpose of the SLA is to convey a sense of quality for the service to the customer and affirm commitment for the product.

### 1.1 Network Latency

Latency is the time delay experienced between a local computer/device generating a Layer 3 ICMP 64 byte ping message and receiving a response from the targeted remote computer/device. It is normally expressed in milliseconds (thousandths of a second). Latency is measured on a local-metro-divisional basis and regional basis.

No SLA is offered for IP packets traversing the public Internet. (Defined as the RRCS Headend router interface connecting to the Tier 1 provider, ADTN or Level3, and beyond). For Internet Access, the TW Cable/Road Runner network is an extension of the public Internet.

RRCS will measure latency using a standard 64 byte ping from one network device to a second network device in a round trip fashion. The ping test shall be conducted every 5 minutes for 24 hours for an entire month to constitute the measurement period.

A month is defined as 30 days times 24 hours for a total of 720 hours. Pinging every five minutes produces 12 pings per hour, 288 pings per day and 8,640 pings per month.

Latency will be measured as an average measurement over the month, beginning on the first of each month, to determine the performance of the network based upon the Latency Report issued by the BOSS Team. The SLA will be determined to be non-compliant if there is a period of four (4) consecutive hours or more in a 24 hour period (day) with BOSS measurements exceeding

- Latency
- 20 ms

on average to qualify for non-standard performance. The customer must open a trouble ticket with the CSC in order to qualify for the credits issued for a non-compliant SLA performance.

Network Latency will apply to both Internet Access and Private Line within the Divisional Ring architecture.

### 1.2 Division Network Latency

Division Network Latency is defined as the end-to-end roundtrip period between the customer demarcation point (media converter-iCPE) connected to the fiber optic local loop to the serving Distribution Hub and either the Tier 1 provider port on the Internet facing router in the Head End or the customer demarcation point (media converter-iCPE) connected to the fiber optic local loop to the serving Distribution Hub at the other end of the Private Line circuit within the Division.

### 1.3 End-to-End Network Availability

End-to-End Network Availability is defined as the total number of minutes in a billing month during which a Road Runner Commercial Services Ethernet service is available to exchange data between the two Customer end points, or a Customer end point and the router connecting Road Runner Commercial Services to the Tier 1 provider, divided by the total number of minutes in a billing month expressed as a percentage. A billing month has 43,200 minutes.

End-to-End Network Availability is calculated as the total number of minutes during a calendar month when a specific customer connection and local access arrangements are available to exchange data between two or more customer end points with the same type of service, divided by the total number of minutes for that month.

End-to-End Network Availability covering Type 1 (On-Net) access is 99.95% that translates to 21.6 minutes per month of down time outside the maintenance window(s) for Layer 2 Ethernet transport services.

The calculation of End-to-End Network Availability commences after the Customer opens a Trouble Ticket with Road Runner Commercial Services CSC and is based on the availability of the service during the service monthly billing period in which the Customer opens the Trouble Ticket. Network outages do not include periods of service degradation, such as slow data transmission. Network availability is calculated on reported outages outside the maintenance window(s).

Availability will be measured as an average measurement over the month, beginning on the first of each month, to determine the performance of the network based upon the Availability Report issued by the BOSS Team. The SLA will be determined to be non-compliant if there is a period of four (4) consecutive hours or more in a 24 hour period (day) with BOSS measurements exceeding

- Metro 99.97%

Availability on average to qualify for non-standard performance. Availability will apply to both Internet Access and Private Line within the Divisional Ring architecture and Regional Ring architecture

## 1.4 Credits

Credits will be issued for each four (4) hour block of time the service was not in compliance. For example, a \$5,000 a month service is out of SLA compliance for four hours. Each month is considered for Credits to have 30 days. Therefore, the month has 720 hours. Each hour is worth \$6.94. Therefore, a four hour outage is eligible for a \$27.76 credit.

For clarification a five (5) hour outage qualifies for two (2) four (4) hour blocks. Using the example above a five (5) hour outage would yield a credit of \$55.52. Similarly, a nine (9) hour outage would yield a credit of \$83.28 or three (3) four hour blocks at \$27.76 each.

## 1.5 Routine Network Maintenance

TWC/RR will perform Routine Network Maintenance for backbone improvements and preventive maintenance. TWC/RR will provide ten (10) days notice of all routine maintenance to the customer's designated point of contact. For urgent maintenance, TWC/RR shall notify the customer as soon as is commercially practical under the circumstances. Loss, damages, or degradation of services incurred by such an outage will not be applicable for compensation.



## Commercial Access Agreement

This non-exclusive agreement is entered into this \_\_\_\_\_ day of March, 2007, by and between TKCCP Trust., authorized to do business in the States of Kansas and Missouri and doing business as Time Warner Cable (“Company”) and **City of Overland Park, KS** (“Owner”).

1. Provided the Owner otherwise agrees (which agreement will not be unreasonably withheld and except for the access requirements set forth below, agreement will not be required when necessary to address emergencies), Company may install, operate, maintain, upgrade and/or remove the equipment, wiring and other personal property (the “Facilities”) necessary or useful to provide broadband communications services as provided in the Internet Service Provider Agreement entered into by the parties, to all units at 8500 Santa Fe Dr, Overland Park, Kansas, 66212 (the “Property”) in accordance with good engineering practices and applicable laws and regulations and at locations mutually agreed upon in advance by Company and Owner. Company shall at all times remain the owner of the Facilities and no third party shall have any rights therein except as expressly agreed to in writing by Company. The Facilities shall not be deemed to be a fixture of the Property. Company acknowledges that entry on the Owner’s premises is conditioned upon providing reasonable advance notice. Unless emergency access is necessary, the Company shall address access requests to the City’s IT Department. Emergency access requests shall be made to the Owner’s Police Dispatch Service. Upon receipt of an access request, Owner shall provide the assistance and escort personnel necessary to assist the Company in accessing equipment on the Owner’s facilities. Company will not be liable to Owner for damages or failure to provide service to the extent such damages of failure result from Owner’s failure to provide access to the premises as required hereby.
2. Owner shall provide, without charge, access and adequate space (including utility closets and risers) in and at the Property for the Facilities and any available drawings for Company’s use in the design, installation and operation of the Facilities.
3. Company shall be responsible for any damages directly caused by Company, its employees or contractors. The insertion of fasteners through the surface of walls for attachment of peripheral equipment or the boring of holes for the insertion of cable are a part of the normal workmanship and shall not be construed as damages, but will be repaired by Company in the event Facilities are removed.
4. Owner, its employees and contractors shall use reasonable care not to damage the Facilities installed on the Property. Except for emergencies and as otherwise agreed to by the parties, neither Owner nor anyone acting by or under the authority of Owner will use, tamper with, make alterations to or remove any portion of the Facilities, nor permit anyone else to do so, without the prior written consent of Company and in the case of emergencies, Owner will provide Company prompt notice of such tampering.
5. Owner assumes no liability or responsibility for the upkeep or maintenance of the Company’s Facilities.
6. This Agreement shall remain in full force and effect only for the duration of the Internet Service Provider Agreement (as amended, restated or replaced from time to time) entered into by the parties. Either party shall be entitled to terminate this Agreement at any time upon written notice if the other party breaches any of the terms or conditions of this Agreement. Company shall have ninety (90) days from termination of the above referenced Internet Service Provider Agreement to remove its Facilities from the Property at its own cost.
7. This Agreement shall be governed by and interpreted under the laws of the state in which the Property is located.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed upon the date first above written.

**KCCP Trust**

By: Time Warner Entertainment Company, L.P.,  
General Manager

By: \_\_\_\_\_  
Roger Ponder  
President  
Kansas City Division

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**City of Overland Park, Kansas**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form

\_\_\_\_\_  
Michael R. Santos  
Deputy City Attorney