

## **AGREEMENT**

AGREEMENT made and entered into this \_\_\_\_\_ day of October, 2007, by and between JOHNSON COUNTY FIRE DISTRICT NO. 2 , a fire district organized and existing under K.S.A. 19-3613 et seq. (hereinafter referred to as "Fire District") 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" or "Overland Park").

WHEREAS, Fire District is in the business of furnishing fire protection, security, emergency medical and rescue service in certain areas of Overland Park; and

WHEREAS, the Fire District is authorized pursuant to K.S.A. 19-3616, as amended, to enter into contracts; and

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

WHEREAS, City has submitted a petition for the annexation of land lying south of City's existing boundary line to the Johnson County, Kansas, Board of County Commissioners ("BOCC") whose approval is required before the City may annex the land, which land is shown on Exhibit A attached hereto and which is hereafter referred to as "the annexed area"; and

WHEREAS, if the BOCC approves the City's petition for annexation in its entirety, City wishes to obtain Fire District's knowledge, equipment and services for fire protection, emergency medical, rescue and related services within a portion of the annexed area, which portion is shown on Exhibit A ("the Service Area"), and the Fire District wishes to provide such knowledge, equipment and services to City; and

WHEREAS, the parties disagree concerning the right of City to obtain ownership of Fire District facilities in the area proposed to be annexed following detachment of said area from the Fire District;

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

1. **TERM:** If the BOCC approves the City's above-described petition for annexation in its entirety, and the City subsequently annexes the annexed area, the term of the Agreement shall be for a period of ten (10) years, commencing on the 1<sup>st</sup> day of January 2008, and ending on the 31<sup>st</sup> day of December 2017. The five (5) year period from January 1, 2008, through December 31, 2012, shall constitute Phase 1 of this agreement, and the second five (5) year period from January 1, 2013, through December 31, 2017, shall constitute Phase 2 of this Agreement.

2. **CONSIDERATION AND QUIT CLAIM OF FACILITIES:**

a. In exchange for the payments set out below, the Fire District agrees to provide fire protection, firefighting, emergency medical and rescue services and inspection services to the inhabitants and all property within the Service Area. The Fire District further agrees to provide such services outside of said area but within the city limits of the City as current custom and usage shall require.

b. The City shall pay as consideration Five Hundred Eight Thousand and 00/100 Dollars (\$508,000.00) to District annually during years 2 through 5 of Phase 1, and the District shall retain all tax revenues derived from the annexed area for budget year 2008 for services provided to the City in year 1 of this Agreement. The consideration for years 2 through 5 shall

be made in quarterly payments, with the first payment being made on March 31, 2009. Each subsequent payment due and owing under this agreement shall be made quarterly thereafter.

c. During Phase 2 of the Agreement, City shall pay as consideration Three Hundred Fifteen Thousand and 00/100 (\$315,000) annually to Fire District. During Phase 2, Overland Park will have sole responsibility for determining which portions of the annexed area Fire District will continue to serve. Payments shall be made in accordance with the schedule set forth in the previous paragraph.

d. The City represents that it has an amount of funds actually on hand in the treasury of the City for the purposes set forth in this Agreement.

e. Upon detachment of the annexed area from Fire District's service area, Overland Park shall execute and deliver to Fire District a quit claim deed for all right, title and interest to all District facilities in the annexed area. By accepting such quit claim deed, Fire District does not intend to indicate its agreement that the City has any ownership interest in Fire District's facilities, and expressly refutes such ownership interest by the City.

### **3. RESPONSIBILITIES:**

a. Fire District shall furnish all equipment, facilities and staffing to provide fire protection, emergency medical, rescue and related services to the Service Area.

b. Records and Reports. Fire District shall continue to maintain such records and reports with respect to the services set forth herein as are customarily kept by fire departments within the State of Kansas. Fire District shall, additionally, report quarterly to the City on a form currently used by the Fire District detailing, predetermined performance matters as agreed to between the Fire Chiefs for the Fire

District and the City, and shall annually summarize this data. City, at its expense, may perform an audit of this Agreement and the records required by this subsection annually.

c. Responsibility for Safety of Equipment. Fire District shall maintain its equipment and operation in a safe manner at all times.

d. Operations.

(1) Fire investigations: Fire investigations for cause and origin within the Service Area shall be conducted primarily by the City and cooperatively assisted as requested by a certified investigator from the Fire District.

(2) Code Enforcement: The following operational permits within the Service Area shall be issued for the City by the Fire District: Open Burning Permits and Recreational Burning Permits. Fire District personnel shall be given, by the City, the authority to enforce said adopted codes and ordinances pursuant to Charter Ordinance No. 60 and City Operating Procedure No. 203.

(3) Joint Training: The City and Fire District 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.

(4) Fire District's Authority. The operations of the Fire District shall be entirely under the direction and within the discretion of Fire District, but not in conflict with the terms and conditions of this Agreement.

(5) Alarm Response. Upon receiving an alarm or determining that a fire exists, Fire District shall respond the equipment reasonably necessary

to fight such fire and shall take other steps as may be reasonable and prudent to fight said fire, including, but not limited to, requesting aid from other departments and firefighting facilities. Fire District shall be permitted to aid other fire departments with reasonable staffing, equipment and apparatus at times such other fire departments may request assistance. In doing so, the Fire District shall follow customary mutual aid practices and shall always be cognizant of the fact that maintenance of reasonable protection levels for citizens and property within its service area is its first obligation.

(6) Emergency Medical Services. Fire District agrees to provide emergency medical services within its jurisdiction. Fire District shall respond one emergency medical service vehicle upon any request for such service.

(7) Training. Fire District agrees to keep all firefighting and emergency medical services personnel trained in an appropriate manner. Fire District accepts complete responsibility for said training.

**4. NONDISCRIMINATION:** The Fire District agrees that:

a. The Fire District 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 District shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("the Commission");

c. if the Fire District fails to comply with the rule and regulations of the Commission, the Fire District shall be deemed to have breached the present Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the City;

d. if the Fire District 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 District shall be deemed to have breached the present Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and

e. the Fire District shall include the provisions of subsections (4)(a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

**5. INDEMNIFICATION:** The Fire District, for purposes of this Agreement, hereby agrees to defend, indemnify and hold harmless the City , its governing body, officers, agents, employees and representatives, from and against all losses, claims, liabilities, demands, recoveries and judgments (including reasonable attorney fees and cost of defense if permitted by law) to the extent the same is caused as a result of the negligence of the Fire District, its agents, employees, representatives or others for whom the Fire District is legally responsible. Fire District's obligations hereunder shall not include amounts attributable to the fault or negligence of the City, its agents, employees, representatives, or anyone for whom the City is legally responsible. Neither the Fire District nor City shall be required under this Agreement to indemnify the other or any third party for the other's own negligence. In case of any claims against the City, its governing body, officers, agents, employees or representatives,

the indemnification obligation contained in this Agreement shall exclude losses to the extent caused by the negligence of the City, its agents, employees, representatives, or anyone for whom it is legally responsible, but shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Fire District or its employees under Workers' Compensation Acts, Disability Benefit Acts, or other employee benefit acts. The Fire District shall be entitled to the extent permitted by law, to have and assert the City's defenses and immunities provided in the Kansas Tort Claims Act, for the benefit of the Fire District. The City shall be entitled to the extent permitted by law, to have and assert the Fire District's defenses and immunities provided in the Kansas Tort Claims Act, for the benefit of the City.

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

7. **DEFAULT:** The failure of any party to perform any obligation set forth in this Agreement, after receiving notice and failing to cure, constitutes a default under this Agreement. A party claiming a default ("Claimant") shall give written notice of default to the defaulting party, specifying the default complained of. The Claimant shall not institute proceedings against the defaulting party if the defaulting party within fourteen (14) days from receipt of such notice, with due diligence, commences to cure, correct or remedy such failure and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice. If a default under this Agreement is not fully cured by the defaulting party, the Claimant at its option may thereafter (but not before) commence an action in the District Court of Johnson County, Kansas, for specific performance of the terms of this Agreement, or, in the

alternative, terminate this Agreement. The prevailing party in any such action shall be entitled to collect the expenses of prosecuting or defending such action, including reasonable attorneys' fees.

**8. INSURANCE:**

**LIABILITY:**

The Fire District shall maintain insurance with minimum limits of protection and conditions as follows:

**General Liability:**

Type of Coverage:	Commercial General
Form:	Occurrence
Limits of Protection:	\$1,000,000 Bodily Injury/Property Damage \$1,000,000 General Aggregate
Conditions Included:	Personal Injury Products/Completed Operations E.M.T. Medical Malpractice Paramedics Medical Malpractice, as applicable

**Automobile:**

Form:	Business Auto
Automobiles Covered:	Any Auto
Limits of Protection:	\$1,000,000 Combined Single Limits
Conditions Included:	Hired and Non-owned Liability

**Workers' Compensation:**

Coverage:	Statutory
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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

Errors and Omissions

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

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

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 District.

**9. AUDIT AND FINANCIAL REPORTING:** Fire District 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 six months following the year's end. In addition, Fire District shall provide City with a monthly report of all revenues and expenditures to include a balance sheet and income statements.

10. **TERMINATION:** This Agreement may terminate in the case of default as set forth in Section 7.

11. **PARTIAL ANNEXATION:** This Agreement contemplates the City's petition for annexation being approved in its entirety by the BOCC. In the event the BOCC only partially approves the petition for annexation, thereby entitling the City to annex only a portion of the proposed annexed area shown on Exhibit "A," and if the City then annexes the portion approved by the BOCC, the City and the Fire District agree to negotiate in good faith an agreement similar to this Agreement, in which the Fire District shall provide similar services to the City in exchange for proportionately similar consideration.. The parties understand that in the event of such a partial annexation, the land to be annexed is unknown at the present time, thus the responsibilities of the Fire Department to provide services cannot be ascertained, that therefore the amount of consideration to be paid is uncertain. In such event the parties anticipate an agreement which would take into consideration the financial impact on the Fire District and the services to be provided.

12. **MISCELLANEOUS:**

a. **Waiver.** Any failures or delays by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights and remedies, or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

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 provision herein invalid or inoperative, the remaining provisions of this

Agreement shall remain valid and in full force and effect unless the invalid or inoperative provision is a material part of the bargain between the parties, in which case the party for whose benefit the provision exists may elect to terminate the Agreement by written notice to the other party.

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 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 DISTRICT:

Fire Chief  
Johnson County Fire District No. 2  
19495 Metcalf  
P.O. Box 127  
Stilwell, KS 66085

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. Any such notice shall be effective as of the date it is deposited in the United States mail.

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.

f. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

g. Legal Construction. The parties hereto acknowledge and agree that (i) each party hereto is of equal bargaining strength, (ii) each such party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each party has consulted with such party's own, independent counsel, and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each such party and such party's counsel and advisors have reviewed this Agreement, (v) each such party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions thereof, or any amendments hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

h. Non-delegation. The City is entering into the Agreement based upon its knowledge of and trust in the Fire District and the Fire District shall not

delegate, transfer or assign its duties under the Agreement without the express written consent of the City as approved by its governing body.

i. 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 on the day and year first above written.

JOHNSON COUNTY FIRE DISTRICT  
NO. 2

By: \_\_\_\_\_  
Rod L. Richardson, Board Chairman

CITY OF OVERLAND PARK,  
KANSAS

By: \_\_\_\_\_  
Carl Gerlach, Mayor

ATTEST:

\_\_\_\_\_  
Gregory A. Dean, Board Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Barry D. Martin, Attorney for District

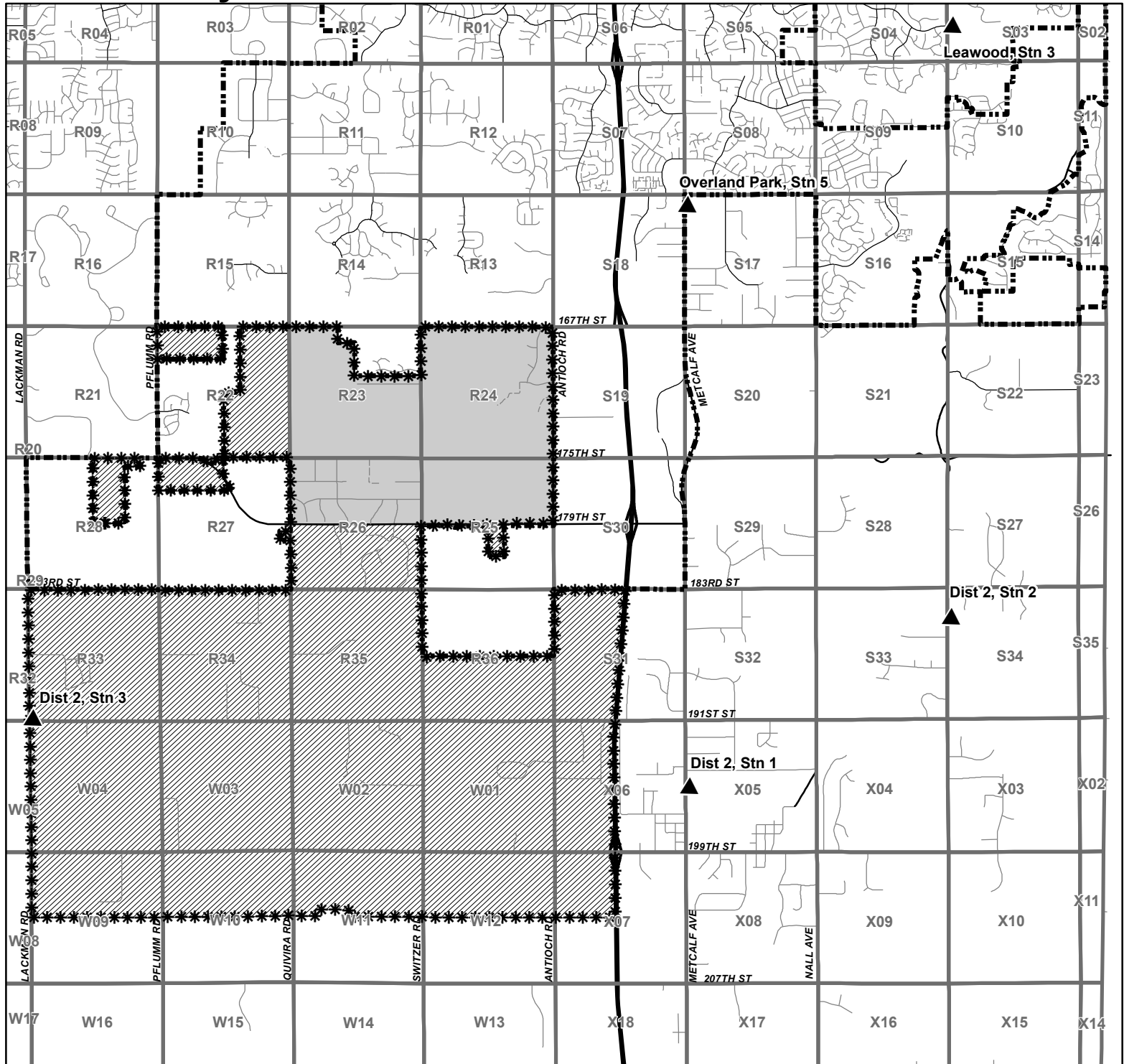
ATTEST:

\_\_\_\_\_  
Marian Cook, City Clerk


APPROVED AS TO FORM:


\_\_\_\_\_  
Robert J. Watson, City Attorney

# Exhibit A To 2007 Agreement Between City of Overland Park and Fire District No. 2





\*\*\* Boundary of Annexed Area

 The Overland Park Fire Department shall provide fire protection services within this portion of the annexed area.

 Johnson County Fire District No. 2 shall provide fire protection services within this portion of the annexed area.

 Fire Station

 JOCO Map Numbers (labeled)

 Overland Park City Limits

