

AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the Board of County Commissioners of Johnson County, Kansas (the “County”) and the City of Overland Park, Kansas (the “City”).

WITNESSETH:

WHEREAS, the Overland Park Development Corporation (the Development Corporation”) is a non-profit public benefit corporation and an instrumentality of the City; and

WHEREAS, the Development Corporation is the owner of the Sheraton Hotel located at the northeast corner of College Blvd. and Lamar Ave., in the City of Overland Park, Kansas, (the “Property”); and

WHEREAS, the City previously entered into a Communications Lease with the Development Corporation to locate, attach and maintain radio, telephonic, electronic and video transmitting, repeating, amplifying and receiving equipment, antennas, transformers and all necessary electrical and electronic and cable connectors necessary or convenient for the placement and operation of the equipment at various locations on the Property for use by the City and the County; and

WHEREAS, the City has previously entered into an agreement with the County dated June 27, 2002, regarding the placement of the antenna and repeaters at the Property; and

WHEREAS, the County is purchasing a new communications system (hereinafter referred to as “the County Communications Equipment”), the components of which are set forth in **Exhibit A**, attached hereto and incorporated by reference herein, that will otherwise enhance, supplement or replace, in whole or in part, the current antenna and repeaters at the Property; and

WHEREAS, the County desires to locate the County Communications Equipment at the Property; and

WHEREAS, the County Communications Equipment will require more space than the antenna and repeaters currently occupy at the Property; and

WHEREAS, the County desires to have constructed an additional room on the Property to house the County Communications Equipment and is willing to pay for the cost of such construction; and

WHEREAS, the City's Communications Lease with the Development Corporation contemplates construction associated with the locating of communications equipment; and

WHEREAS, the City, in concert with the County, is willing to manage construction of the hereinafter-defined Project, subject to the provisions of this Agreement; and

WHEREAS, the parties enter into this Agreement pursuant to K.S.A. 12-2908.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable considerations, the parties hereto agree as follows:

1. PURPOSE OF AGREEMENT. The parties hereto enter into this Agreement for the purpose of providing for the construction and payment of costs associated with the construction of the climate controlled room in the Property (hereinafter the "Project") to house certain components of the County Communications Equipment and to outline the conditions regarding the location, storage and maintenance of the County Communications Equipment located on the Property.

2. ESTIMATED COST AND FUNDING OF THE PROJECT.

A. Estimated Cost. The estimated cost of the Project (“Project Cost”) is Six Hundred Thousand and 00/100 Dollars (\$600,000.00).

B. Project Cost shall include:

- (1) Labor and material used in the making of the Project; and
- (2) Such other expenses which are necessary in making the Project.

These costs include, but are not limited to, design engineering, Project administration, construction inspection, material testing and utility relocations.

C. The County shall pay One Hundred Percent (100%) of all actual Project Costs.

D. FINANCING. The County shall pay the Project Costs with budgeted and appropriated funds.

E. ADMINISTRATION OF PROJECT. The Project shall be constructed and the job administered by the City, acting by and through the Director of Public Works for Overland Park, Kansas, who shall be the principal public official designated to administer the Project; provided, that the Director of Public Works shall, among his several duties and responsibilities, assume and perform the following:

- (1) Make all contracts for the Project and, in so doing: (a) follow the procurement policy and related ordinances of the City for construction of such projects; and (b) permit the County’s Director

of the Emergency Communications Center to approve the contract amount(s) prior to the contract being executed by the City.

- (2) Insert, as a special provision of the agreement with the contractor chosen to undertake the Project construction as contemplated by this Agreement, the following paragraphs:

The Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas, the City of Overland Park, and the Overland Park Development Corporation harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the acts or omissions of the Contractor, his or her sub-contractors, agents or employees in the performance of this agreement.

The City of Overland Park, the Board of County Commissioners of Johnson County, Kansas, and the Overland Park Development Corporation shall be named as an additional insured on all policies of insurance issued to the Contractor and required by the terms of his/her agreement with the City.

- (3) Keep the County apprised of the status and progress of the Project.
- F. Submit to the County, on or before the 10th day of each month, or as received, estimates of accrued costs of constructing the Project for the month immediately preceding the month the statement of costs is received; provided that the County shall within thirty (30) days after receipt of a statement of costs as aforesaid, remit their portion of the accrued costs to the City as herein agreed.
- G. Upon completion of the Project, the Director of Public Works shall submit to the County a final accounting of all costs incurred in making the Project for the purpose of receiving final payment of the actual cost of the Project.

3. COUNTY COMMUNICATION EQUIPMENT.

- A. The County agrees to provide, insure and maintain in good working condition, the County Communications Equipment, at no cost to the City or the Development Corporation.
- B. The County agrees to contract for and pay for the installation of the County Communications Equipment, at no cost to the City or the Development Corporation.
- C. The County understands and agrees that the County Communications Equipment will be located on the Property. The final configuration will be outlined in Exhibit B, which will be attached hereto and incorporated by reference herein upon its completion. .
- D. The County shall pay all utilities, associated with the housing of the County Communications Equipment at the Property.
- E. The parties agree to conform to all applicable federal, state and local laws and regulations and comply with all applicable rules of the Federal Communications Commission relating to radio communications. The County shall be responsible for the County Communication Equipment's compliance with all laws and regulations relating to frequency, use, lighting (if any), and marking specifications.
- F. Neither the City nor the Development Corporation shall have any obligation to maintain, repair, or otherwise incur any operational expense in connection with the County Communications Equipment, which shall be the responsibility of the County.

- G. The parties acknowledge and agree that the parties do not now contemplate that the County Communications Equipment shall be used by others. If, however, either party desires to assign use of the County Communications Equipment to another entity, such assignment shall be agreed to in writing between the parties.
- H. Access to the County Communications Equipment shall be controlled by, and under the sole discretion of, the City; provided, however, County radio staff shall be provided reasonable access to the County Communications Equipment at any time with prior approval of Director of Information Technology or his or her designee to address equipment malfunctions, repairs and other needed service work, subject to any City access requirements for employee screening and notification of entry.
- I. The County shall be permitted to add or modify equipment at the Project site upon written approval of the City's Director of Information Technology. The County will provide information upon proposed equipment changes and a technical evaluation of the impact that any changes may have upon the operation of other equipment in the equipment room.
4. INDEMNIFICATION. The County agrees to and shall indemnify and hold the City and the Development Corporation harmless from all loss, damage, and injury to life or property arising out of any wrongful act of the County, its assignees, agents, and employees in connection with this Agreement. The parties expressly agree that the County is not deemed to have waived any

protections, limitations or immunities afforded to it by the Kansas Tort Claims Act.

5. PERIOD OF USE; TERMINATION. Upon completion of the Project contemplated herein (“Project Completion”), the County shall, at no further cost to the County, be permitted to house the County Communication Equipment in the location contemplated herein for an initial period of twenty (20) years from date of Project Completion as established by the City’s Director of Public Works, and thereafter this Agreement shall automatically renew for successive five (5) year periods, unless either party notifies the other, in writing, of its intent not to renew this Agreement at least six (6) months in advance of then upcoming renewal period. During such period(s), this Agreement may be terminated for cause by either party (the “notifying party”) upon written notice to the other party specifying the reason for such termination and allowing for a cure period of one hundred and eighty (180) days for remedying such cause for termination. Should the cause for termination not be remedied within the cure period stated herein, this Agreement shall be terminated upon written notice by the notifying party specifying the date of termination. Provided, further, however, following five (5) years from the date of Project Completion, this Agreement may be terminated in writing by one, or both, of the parties, without cause, at any time with ninety (90) days written notice to the other party. Notwithstanding anything in this Agreement to the contrary, the City may terminate this Agreement without cause or penalty if, at any time during the term of this

Agreement, the Overland Park Development Corporation ceases to own the Sheraton Hotel. Upon termination of this Agreement for any reason, or upon its expiration, the County shall remove the County Communications Equipment within ninety (90) days following the date of such termination or expiration.

IN WITNESS WHEREOF, the parties hereto, by and through their respective officers and legal representatives, have caused the above and foregoing Agreement to be executed on the day and year first written above.

Board of County Commissioners of
Johnson County, Kansas

Annabeth Surbaugh, Chairman

Attest:

Casey Joe Carl
Clerk of the Board

Approved as to form:

Nicholas Saldan
Deputy County Counselor

City of Overland Park, Kansas

Carl Gerlach, Mayor

Attest:

Marian Cook, City Clerk

Approved as to form:

Tammy M. Owens
Senior Assistant City Attorney

Exhibit A

System	Qty	Nomenclature	Description
RX-1	1	BMR12	ANTENNA
RX-1	100'	L1709	7/8" HELIAX
RX-1	100'	L1705	1/2" HELIAX
RX-2	100'	L1709	7/8" HELIAX
RX-2	100'	L1705	1/2" HELIAX
TX-1	1	DQ10183B09003	ANTENNA
TX-1	100'	L1713	1-1/4" HELIAX
TX-2	1	DQ10183B09003	ANTENNA
UPS	1	DSNN200	20KVA
NET	2	ST2500	ROUTER
NET	2	ST2512	ROUTER
NET	2	DSJ4900B	SWITCH
GPS	5	DSTRAK91061	FOUR PORT DDM
GPS	1	DSTRAK91009	REMOTE SITE CONFIG
GPS	50	L1700	1/4" SUPERFLEX
GTR8000	11	T7039	BASE RADIO
GTR8000	11	CAO1193AA	IP BASED BASE RADIO
GTR8000	7	CAO1193AA	BASE RADIO
RACK	5	TRN7343	7.5' RACK
RF DEVICE	1	DS42883HO1T	TTAMP
RF DEVICE	1	DDX1002	EXPANSION KIT
RF DEVICE	1	DQ7383B112D10	TX MULTICOUPLER
RF DEVICE	1	DSWIJD86208S	COMBINER WAVEG
RF DEVICE	1	DQ0183349Y01	6 CHANNEL 700 COMBINER
RF DEVICE	1	9184680Y03	700-800DIPLEXER
CABINET	2	-----	78" CABINET
RF DEVICE	1	MOBILE DATA	VARIOUS EXISTING
RF DEVICE	1	-----	800MHZ CONV EXISTING
RF DEVICE	1	-----	VHF VOTING REC

Exhibit B