

## A G R E E M E N T

AGREEMENT made and entered into this \_\_\_\_\_ day of December, 2011, by and between CONSOLIDATED FIRE DISTRICT NO. 2 OF NORTHEAST JOHNSON COUNTY, 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").

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

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

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

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

WHEREAS, City is desirous of obtaining Fire District's knowledge, equipment and services for fire protection, emergency medical, rescue and related services within certain areas of the City as described in Exhibit A, attached hereto, and the Fire District is desirous of providing such knowledge, equipment and services to City;

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

1. **TERM:** The initial term of the Agreement shall be for a period of one year, commencing on the 1st day of January, 2012, and ending on the 31st day of December, 2012. Thereafter, this Agreement shall renew automatically for successive one-year periods unless terminated by either party upon written notice to the other no less than thirty (30) days prior to the expiration of the initial term or any renewal term.

2. **CONSIDERATION:** For the services provided by Fire District in the geographic area set forth in Exhibit A attached hereto, the City shall pay as consideration **Four Hundred Fifty Thousand Nine Hundred Eighty-one and 00/100 Dollars (\$450,981.00)**. The consideration for services in the area set forth in Exhibit A shall be paid in installments within fifteen (15) days after tax monies are received by the City.

Should the tax funds actually received by the City for fire services during 2012 be insufficient to meet in full all Fire District budgeted expenses to be paid by the City for 2012, the payment to the Fire District for such budgeted items shall be prorated not to exceed the actual amount of tax funds received by the City, however, upon any such proration by the City, the parties shall renegotiate the terms of this Agreement to govern the remainder of the contract period. The City agrees to promptly inform the Fire District when the City knows or has reason to believe that a tax shortfall is anticipated or is known to exist.

Notwithstanding anything contained in this Agreement to the contrary, it is understood and agreed by the parties hereto that the City is obligated only to make payments under this Agreement 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 this Agreement in any budget year, the Agreement 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 payments herein agreed for which funds have been appropriated and budgeted or otherwise made available. The City agrees to notify the Fire District of such termination, which shall not constitute default under this Agreement, at least sixty (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 Agreement in order to acquire any other functionally similar service or to allocate funds directly or indirectly to perform essentially the same application in the same area for which the service under this Agreement is intended.

For the consideration set forth herein, the Fire District hereby agrees to provide fire protection, firefighting, emergency medical and rescue services and inspection services to the inhabitants and all property within that portion of the geographic territory as depicted in Exhibit A attached hereto as part of this Agreement. The Fire District further agrees to provide such services outside of said area as current custom and usage shall require.

3. **RESPONSIBILITIES:** The Fire District shall have the following responsibilities within the territory reflected in Exhibit A.

a. Equipment, Facilities and Staffing. Fire District shall furnish all equipment, facilities and staffing to provide fire protection, emergency medical, rescue and related services.

b. Records and Reports. Fire District shall continue to maintain such records and reports in respect to the services set forth herein as are customarily kept by fire departments within the State of Kansas. Fire District shall, additionally, report monthly to the City on a form currently used by the Fire District detailing, among other things, types of fires and other incidents responded to by number, losses, fire causes, value of property involved and number of persons responding to emergencies, and shall annually summarize this data. City, 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) Inspections. Fire District shall cause all schools, industrial and mercantile establishments and fire protective installations in its service area as set forth in Exhibit A herein to be inspected periodically by the Fire District's qualified personnel in accordance with applicable codes and regulations and variances thereto granted in writing by the City.

(2) Code Enforcement. Fire District shall make available to residents of the City technical and fire protection advice. Fire District personnel shall be advised of and shall be familiar with and assist in the enactment and enforcement of the City of Overland Park fire code and such other related ordinances and policies of the City as may be enacted relating to fire protection. ~~Fire District epartment~~ <sup>[KN1]</sup> enforcement activity shall include, but not be limited to, appearing at City Council meetings, committee meetings, and meetings of City Boards and Commissions when necessary to effectuate the purposes of said ordinance. The Fire District shall conduct fire code inspections and perform plan reviews as set forth in this Agreement. The City recognizes that code enforcement staff shall have the authority of City officers pursuant to City Operating Procedure 203 and Charter Ordinance No. 60.

(3)a. Plan Reviews and Inspections - Existing Buildings <sup>[KN2]</sup> ~~Plan Reviews and Inspections~~. The Fire ~~District epartment~~ shall cause all schools, industrial and commercial establishments within ~~the~~ <sup>[KN3]</sup> ~~City~~ to be inspected on a periodic basis by qualified personnel in accordance with Section F-106.1 of the Fire Code. New construction projects in existing buildings, including tenant finish and remodel projects, will be reviewed and inspected subject to Fire ~~District epartment~~ staff availability. Plan review and inspection of construction projects in existing buildings will be in accordance with the standards set forth in this Agreement. Plan reviews and inspection of existing buildings shall

be done in cooperation with City.

~~(4)b.~~ Plan Reviews and Inspections - New Construction

~~[KN4] -Plan Reviews and Inspections.~~ The Fire ~~District epartment~~ shall review plans and perform inspections for all new buildings and additions as an integral component of the City's plan review and inspection process. Plan reviews and inspections of new construction shall be done in cooperation with Overland Park Fire Department.

~~(5)~~ 1) Tactical Response, Etc. Fire Department

~~[KN5] responsibilities~~ The Fire ~~District, epartment,~~ in accordance with City adopted code standards, will be responsible for the plan review and inspection of fire fighting tactical response matters, premises identification, hazardous materials issues, fire extinguishers, fire lanes, fire hydrant location and fire flow calculation, fire protection systems in accordance with code referenced standards and other responsibilities as outlined in the Fire Code. In addition, the Fire ~~District, epartment~~ will coordinate with the Johnson County Water District No.1 the location of fire hydrants and fire flow calculations.

~~(6)2)~~ 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.

~~(7)3)~~ 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.

(84) 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 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 are its first obligation.

(95) 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.

(106) 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; and

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 commission; and

c. If the Fire District fails to comply with the manner in which the Fire District reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, 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, subject to Fire District's right to cure pursuant to Section 71 and ~~contracting agency;~~<sup>[KN6]</sup>

d. If the Fire District is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the eCommission 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 City, subject to Fire District's right to cure pursuant to Section 7; and<sup>[KN7]</sup> ~~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 Tor 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.

~~The Fire District agrees to defend, indemnify and hold harmless the City of Overland Park, its governing body, officers, agents, employees and representatives from and against all losses, claims, liabilities, demands, recoveries, judgments or expenses including attorney fees if permitted by Kansas law arising out of the performance or failure to perform any terms or conditions of this Agreement to specifically include the nondiscrimination clause set forth in paragraph 4, herein and including any acts or omissions by Fire District, its employees, subcontractors or agents.~~

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:** In the event either party hereto shall commence any legal arbitration or other proceeding against the other for breach of this Agreement, all expenses, ~~(including attorney's fees, if permitted by Kansas law),~~ court cost, or arbitration costs shall be paid by the party which does not prevail. Fire District shall have the right on thirty (30) days written notice to cease service as required by this Agreement and seek payment of any unpaid amounts due under this Agreement should the City fail to pay the consideration provided for in ~~Section~~Paragraph 2 when due.

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

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
Employers Liability:	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee
Conditions:	Voluntary Compensation

The Fire 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:** Either party may terminate this Agreement by notifying the other party in writing at least thirty days prior to date of termination~~termination~~. This Agreement may also terminate for lack of funding as described in Section 2 ~~above~~ and Section 7 ~~above~~.

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

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.

~~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.~~

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  
Consolidated Fire District No. 2 of Northeast Johnson  
County  
3921 West 63<sup>rd</sup> Street  
Prairie Village, Kansas 66208

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.

~~This Agreement and Exhibits embody 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. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto except as expressly set forth in this Agreement, not [KN8] benefit or obligate any person or entity other than the parties hereto.~~

~~f. Legal Construction. Time is of the essence of this Agreement, and this Agreement is deemed personal to City herein and shall not be transferable or assignable by the Fire District without the express consent of the City.~~

~~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.

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

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.

j. Good Faith and Fair Dealing. The parties agree to exercise good faith and fair dealing in the performance of this Agreement. The parties shall direct their staffs to work cooperatively on all matters that they must carry out under this Agreement.

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

CONSOLIDATED FIRE DISTRICT  
NO. 2 OF JOHNSON  
COUNTY, KANSAS

CITY OF OVERLAND PARK, KANSAS

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

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



ATTEST:

\_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_

Barry D. Martin  
Attorney for Fire District

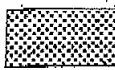
APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_  
John J. Knoll  
Senior Assistant City Attorney

# EXHIBIT A MAP

Exhibit A

 Geographic Area Served  
By Consolidated Fire District  
No. 2 of Johnson County

