

AGREEMENT BETWEEN THE CITY OF OVERLAND PARK, KANSAS AND THE BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS, FOR THE SHARED PROVISION OF ADVANCED LIFE SUPPORT AND BASIC LIFE SUPPORT SERVICES WITHIN THE CITY OF OVERLAND PARK.

THIS AGREEMENT, made and entered into this ___ day of _____, 2013 by and between the CITY OF OVERLAND PARK, KANSAS, (hereinafter the "City"), and the BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS (hereinafter the "County"), each party having been organized and now existing under the laws of the State of Kansas,

WITNESSETH:

WHEREAS, K.S.A. 65-6101 et seq., and amendments thereto, authorize the City and the County to establish, operate and maintain an emergency medical or ambulance service as a municipal function within or without the boundaries of their respective jurisdictions; and

WHEREAS, the City has established, operates and maintains an emergency medical service within its boundaries through the Overland Park Fire Department, a City department; and

WHEREAS, the County has established, operates and maintains an emergency medical service (hereinafter "Med-Act") within the boundaries of the County; and

WHEREAS, both City and County acknowledge that each is a Covered Entity with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, including the provisions of the American Recovery and Retirement Act of 2009 ("ARRA") specifically referred to as the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and other federal and state

statutes that protect the privacy and security of Protected Health Information (“PHI”); and

WHEREAS, the City and County agree that the mission of both parties would best be served by their joint cooperation in providing such services within the City and County; and

WHEREAS, K.S.A. 12-2908 authorizes either party hereto to contract with the other to perform any governmental service, activity or undertaking which either party is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties entered into an Agreement dated May 2, 2002, that was amended by the parties on June 5, 2003, for the purpose of cooperating in the furnishing of ambulance services within the boundaries of the City pursuant to K.S.A. 12-2908; and

WHEREAS, the governing bodies of each of the parties have determined the May 2, 2002, Agreement, as amended, should be terminated and replaced by this Agreement; and

WHEREAS, the governing body of the City, did approve and authorize its mayor to execute this Agreement by official vote of the body on the __ day of _____, 2013; and

WHEREAS, the County did approve and authorize its chairman to execute this Agreement by official vote of the body on the __ day of _____, 2013;

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

1. Purpose of Agreement.

The City and the County by mutual consent terminate the May 2, 2002, Agreement, as amended, pertaining to the shared provision of advanced life support (ALS) and basic life support (BLS) services and replace it with this Agreement outlining their mutual understandings and respective obligations and responsibilities in jointly cooperating in the operation, maintenance and furnishing of emergency medical care and transport (hereinafter "EMS") services to persons in need of ALS and BLS services within City boundaries.

2. Responsibilities of the County, through Med-Act:

A. Provide a single point of contact supervisor on each of three (3) twenty-four (24) hour shifts to act as organizational liaison, and to provide on-scene supervision for the jointly provided (hereinafter "Partnership") EMS crew personnel.

B. Provide and maintain all portable EMS and patient related equipment on all Partnership ambulances. Approval of the equipment specifications and design must be obtained from OPFD. It is understood and agreed by the parties hereto that the term "Partnership" as used in this Agreement shall not be construed to give rise or meaning to any created legal entity of the parties or to any employer-employee relationship between or amongst them, but rather shall be deemed as merely descriptive in characterizing the joint and cooperative means and efforts intended and employed by the parties under this Agreement.

C. Provide and maintain the restocking of all pharmacological and soft

good supplies for all Partnership ambulances and ALS pumpers.

D. Bill patients using its established fee schedule for all services provided by the Partnership ambulances with a scene location outside the City or for services provided by non-partnership Med-Act ambulances with a scene location within the City. The County shall retain all collections derived from these billings.

E. Help defray the cost of ambulance replacement by sharing in the cost of acquiring ambulances when the City purchases Partnership ambulances. Med-Act will pay the City one-half (1/2) of the purchase price of each Partnership ambulance. This contribution will create no ownership interest in the ambulances and the ambulances will be owned by the City; and

F. Provide sufficient fleet reserve capacity to yield at least a fifty percent (50%) reserve for all first out ambulances in the Partnership and Med-Act fleet added together.

G. Provide a minimum of five (5) paramedics per shift to co-staff the Partnership ambulance units and serve as the unit officer until such time as Med-Act and OPFD agree that a paramedic unit officer may be provided by OPFD and a paramedic by Med-Act. Each party shall provide half the officers needed to staff the partnership ambulances.

H. Maintain the original medical records of all Partnership calls (hereinafter "Partnership PHI") and provide quick and easy access to those records by OPFD whenever needed, subject to the provisions of Section 5 of this Agreement.

3. Responsibility of the City, through OPFD:

A. Provide and maintain at least five (5) Partnership ambulances. Maintenance will include fuel for all the Partnership ambulances. Approval of the ambulance specifications and design must be obtained from Med-Act.

B. Provide a minimum of five (5) paramedics or firefighter-paramedics to co-staff the Partnership ambulances, with the remaining firefighter-paramedics staffing the ALS pumpers.

C. Employ no more than the number of paramedics needed to staff the Partnership ambulances and the first response fire apparatus with one (1) paramedic each. There shall be allowed a forty percent (40%) additional number of paramedics to provide leave and other coverage. As of January 1, 2013, this is anticipated to be forty-seven (47) paramedics. Paramedics may be employed in excess of these numbers when approved in writing by Med-Act.

D. Bill all patients transported by the Partnership units from within the City. The City will share the user fees collected by OPFD with Med-Act on a monthly basis. This monthly payment will be made to Med-Act at the end of each month. The City will keep all other user fees collected by OPFD for EMS services provided by the Partnership ambulances. The shared amount will be determined on December 31 for the prospective year. The shared amount will be figured by multiplying the total number of billable partnership transports from the previous year by Fifty-five and 60/100 Dollars (\$55.60) and dividing that total by 12. The numbers will be rounded to the nearest dollar. For example, in 2011 the total billable transports were 5,862. Therefore, the monthly amount for 2012 is calculated to be Twenty-seven Thousand One

Hundred and Sixty-one and 00/100 Dollars (5,862 x \$55.60 = \$325,927/12 = \$27,161). In the event that there is a material change in user fee revenue or a material change in system design that impacts expenses or revenues, it is understood and agreed that the monthly amount will be re-negotiated between the parties.

E. Provide facilities and provisions for all Partnership locations. It is understood and agreed that the five (5) current OPFD fire stations will house all Partnership ambulances within the City and two (2) reserve ambulances.

F. Provide a supervisor for each station who shall be responsible for managing the station activities including the station activities of the Med-Act personnel.

G. Provide first response ALS service outside of the City as staffing permits for "Code 1 Closest" situations.

H. When no Partnership ambulance is available for response, provide First Response ALS on other apparatus when staffing and equipment is available.

4. Medical Control.

The City and County acknowledge and agree that Med-Act and OPFD jointly will provide a plan for the provision of medical control, including quality assurance and improvement programs.

5. Transfer of Data.

A. Documents; Standards. Each party may electronically transmit to or receive from the other party any Partnership PHI that is required to carry out the terms and provisions of this Agreement. Each party agrees to comply with the standards established by HIPAA,

ARRA, HITECH, and any other state or federal requirement to maintain the confidentiality and security of electronically transmitted Partnership PHI.

B. Costs of Third-party Service Providers. In the event either party contracts with or provides access to a third-party service provider for the transmission or use of Partnership PHI, such party shall be solely responsible for the costs of such third-party service provider with which it contracts.

D. Liability for Acts of Third-party Service Providers. Each party shall be liable for the acts or omissions of its third-party service provider while transmitting, receiving, storing, or handling Partnership PHI or performing related activities for, with, to, or from such party, provided that, if both the parties use the same third-party service provider to effect the transmission and receipt of such Partnership PHI, the originating party shall be liable for the acts or omissions of such third-party service provider as to such Partnership PHI.

E. System Operations. Each party, at its own expense, shall provide and maintain the equipment, software, services, and testing necessary to effectively, reliably, and confidentially transmit and receive Partnership PHI.

F. Signatures. Each party shall adopt as its signature (“Signature”) an electronic identification consisting of symbol(s) or code(s) that are to be affixed to or contained in each transmission of Partnership PHI by such party. Each party agrees that any Signature of such party affixed to or contained in any Partnership PHI transmitted shall be sufficient to verify that such party originated the transmission of such Partnership PHI. Neither party shall disclose to any unauthorized person the Signature of the other party.

G. Proper Receipt. Partnership PHI shall not be deemed to have been properly received, and shall not give rise to any obligation, until such Partnership PHI is accessible to the receiving party at such party's Receipt Counter.

H. Verification. Upon proper receipt of Partnership PHI, the receiving party shall promptly and properly transmit a functional acknowledgment in return. A functional acknowledgment shall constitute conclusive evidence that the receiving party has properly received Partnership PHI.

I. Integrity. The parties will take reasonable measures to protect the integrity of all documents and data. Neither party will insert any virus, key locks, or other programs into the system, regardless of whether or not a dispute exists between the parties. The receiving party will return the information in usable form upon request or at the end of the Contract.

6. Protected Health Information.

The City and County acknowledge that each is a Covered Entity with obligations under HIPAA, as amended, including provisions of ARRA and HITECH, and other federal and state statutes and regulations that protect the privacy and security of PHI. Each party agrees to comply with such standards pertaining to the confidentiality, security, transmission and use of Partnership PHI regardless of source and shall obtain a Business Associate Agreement from any agent, subcontractor, or third-party service provider to whom access to Partnership PHI is provided in compliance with such standards. Each party agrees to notify the other of any security incident, use or disclosure of Partnership PHI of which it becomes aware that does not comply with applicable law or this Agreement, and shall notify the other of any such use, disclosure or security incident that involves their respective business associates.

7. Insurance.

The parties shall secure and maintain, throughout the duration of this Agreement, insurance of such types and in at least such amounts as required herein. The parties (each hereinafter the "insured") shall provide to the other with certificates of insurance and renewals thereof evidencing such coverage's, and shall be notified by receipt of written notice from the other party's applicable insurer at least thirty (30) days prior to material modifications or cancellation of any policy listed on their respective certificates.

Commercial General Liability- Policy shall protect the insured against claims for Bodily Injury, Property Damage and Personal Injury arising from the insured's premises or operations. Minimum limits are \$500,000 per occurrence and \$1,000,000 annual aggregate.

Professional Liability- Policy shall protect the insured against claims for Injury arising out of the professional duties of employed paramedics or other medical professionals. Minimum limits are \$500,000 per medical incident.

Commercial Automobile Liability- Policy shall protect the insured against claims for bodily injury and/or property damage arising from the use of any owned and non-owned vehicles. Minimum limit per accident is \$500,000 Combined Single Limit.

Workers' Compensation-This insurance shall protect the insured against all claims under applicable state workers' compensation laws. Each party shall also be protected against claims of injury, disease or death of employee which, or any reasons, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than \$500,000 for workers' compensation, and \$500,000 each accident-bodily injury

by accident/ \$500,000 policy limit-bodily injury by disease/\$ 500,000 each employee-bodily injury by disease for Employer's Liability.

Industry Rating-Each party will only accept coverage from an insurance carrier who is either licensed to do business in the State of Kansas and carries an A.M. Best rating of at least A:IX, or is a company mutually agreed upon by the City and County. If the self-insured retention for any of the above coverage's equals or exceeds \$250,000.00, each party reserves the right to review the necessary financial documents of the other to confirm adequate funding.

8. Indemnification and Hold Harmless.

To extent permitted by law, the County shall indemnify and hold the City harmless for any and all liability, claims, suits for personal injury, death or damage to property resulting from or caused by the error, omission or negligence of the County, or any that of any of its officers, employees, agents or subcontractors including but not limited to penalties or losses resulting from the breach of any HIPAA, ARRA, HITECH or other state or federally protected health information requirements. To the extent permitted by law, the City shall indemnify and hold the County harmless for any and all liability, claims, suits for personal injury, death or damage to property resulting from or caused by the error, omission or negligence of the City, or any of its officers, employees, agents or subcontractors including but not limited to penalties or losses resulting from the breach of any HIPAA, ARRA, HITECH or other state or federally protected health information requirements.

9. Licensing.

The parties will cooperate in obtaining and maintaining proper State licensing

for operation.

10. Administrative Officers.

The Chief of Johnson County EMS:Med-Act, or such officer at the time performing equivalent duties to that of the Chief, shall be the administrative officer for the County respecting this Agreement, and any approvals or other decisions necessary under this Agreement will be made by the Chief of Johnson County EMS:Med-Act. The Chief of OPFD or such officer at the time performing equivalent duties to that of the Chief, shall be the administrative officer for the City respecting this Agreement, and any approvals or other decisions necessary under this Agreement will be made by the Chief of OPFD.

11. Joint Review.

The Administrative Officers of each party agree to periodically review the terms of this Agreement as well as the procedures, methods or systems used to administer its provisions and are encouraged to propose changes for the effective administration of this Agreement. Such changes may be adopted and implemented by written agreement of the Administrative Officers without the necessity of formally amending this Agreement so long as they do not conflict with the provision of this Agreement.

12. Notices.

Any notices, demands or request required by this Agreement shall be made in writing and shall be sent by U.S. Mail postage prepaid, to the following addresses:

Johnson County: Ted McFarlane, Chief
Johnson County EMS:Med-Act
11811 South Sunset Drive, Ste. 1100
Olathe, KS 66061

City: Bryan Dehner, Chief
Overland Park Fire Dept.
12401 Hemlock
Overland Park, KS 66213-1451

13. Duration and Termination of Agreement.

This Agreement shall commence on the date it has been approved by the governing bodies of both parties, and shall continue through December 31, 2022. Either party may terminate this Agreement upon twelve (12) months written notice to the other party or at any time upon mutual consent of the parties.

14. Amendment.

This Agreement may be amended by written amendment mutually agreed upon and executed by duly authorized representatives of the parties hereto.

15. Severability.

All agreements, clauses and covenants contained herein are severable, and in the event any of them shall be deemed or held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable agreements, clauses and covenants were not contained herein.

16. Applicable Law.

The interpretation of the terms and conditions and the resolution of any disputes arising under the terms of this Agreement shall be governed by the laws of the State of Kansas. If any action or other proceeding is brought in connection with this Agreement, the venue of such action shall be exclusively in Johnson County, in the State of Kansas.

17. Placing Agreement In Force.

The attorney for the City shall cause this Agreement to be executed in quadruplicate. Each party hereto shall receive a duly executed copy of this Agreement for its official records.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed in quadruplicate by each of the parties hereto on the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS

By _____
Ed Eilert, Chairman

ATTEST:

Melissa McChesney, Clerk of the Board

APPROVED AS TO FORM:

Roger Tarbutton
Assistant County Counselor

CITY OF OVERLAND PARK, KANSAS

By _____
Carl Gerlach, Mayor

ATTEST:

Marion Cook
City Clerk

APPROVED AS TO FORM:

John Knoll, Assistant City Attorney

