

**USER AGREEMENT
BETWEEN
THE CITY OF OVERLAND PARK
AND
THE CITY OF GARDNER, KANSAS**

This AGREEMENT made and entered into on this ____ day of January 2013 by and between the City of Overland Park, Kansas, hereinafter referred to as "SYSTEM PROVIDER," and the City of Gardner, Kansas, hereinafter referred to as "USER AGENCY."

WHEREAS, the SYSTEM PROVIDER is the operator of the Records Management (RMS), and Mobile Data Computer (MDC) systems, hereinafter referred to collectively as "SYSTEM;" and

WHEREAS, the USER AGENCY desires to utilize said SYSTEM; and

WHEREAS, the parties hereto wish to enter into an AGREEMENT pursuant to which SYSTEM PROVIDER will allow USER AGENCY access to the SYSTEM for the consideration and upon the terms and conditions herein provided.

WHEREAS, the parties' home rule power and/or K.S.A. 12-101, K.S.A. 12-2908, K.S.A. 19-101 or K.S.A. 19-2862 authorize the parties to cooperate in making the AGREEMENT; and

WHEREAS, the governing bodies of each of the parties have determined to enter into this AGREEMENT;

NOW, THEREFORE, in consideration of the compensation to be paid to SYSTEM PROVIDER the sufficiency of which is hereby acknowledged and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the SYSTEM PROVIDER for itself and its successors, and the USER AGENCY for itself, and its successors and assigns or its executors and administrators as follows:

ARTICLE 1. OBLIGATIONS OF SYSTEM PROVIDER

The SYSTEM PROVIDER shall be responsible for providing the servers, server software (I/LEADS, I/MDT), databases, system administration, and necessary interfaces for the SYSTEM. The SYSTEM PROVIDER will be responsible for maintaining the interface to the Kansas City, Missouri REGIS system and to the Johnson County Sheriff's Radio Network Controller (RNC) as long as these connections are necessary. The SYSTEM PROVIDER will also be responsible for maintaining the Intergraph Public Safety supplied interfaces to mugshot systems, fingerprint identification systems, and interfaces between Intergraph Public Safety products. The SYSTEM PROVIDER will further be responsible to execute a maintenance contract for the servers, server software, and the hardware necessary for the operation of the SYSTEM and to apply appropriate upgrades as necessary at the SYSTEM PROVIDER'S sole discretion. The SYSTEM PROVIDER shall be responsible to monitor new technology to maintain a technologically current SYSTEM. Based upon the data gathered, it shall be the sole

responsibility of the SYSTEM PROVIDER to determine the hardware and software that will maximize benefits to both the SYSTEM and the USER AGENCY. The

SYSTEM PROVIDER shall establish and maintain a protocol for the diagnosis and correction of system errors. The SYSTEM PROVIDER shall establish and coordinate user groups to facilitate communication, direction, problem solving and to provide technical assistance for the operation of the SYSTEM. The SYSTEM PROVIDER shall have the responsibility to carefully consider and evaluate all requests, suggestions and recommendations that user groups present in writing to the SYSTEM PROVIDER. The SYSTEM PROVIDER must respond to all requests, suggestions and recommendations presented to it by a user group within a reasonable amount of time.

ARTICLE 2. OBLIGATIONS OF USER AGENCY

A. Workstation and Software

The USER AGENCY shall be responsible for providing the required workstations and workstation software along with all appropriate software licenses. The workstations will be located in the Gardner Police Department. The workstation software shall be compatible with the software operating on server of SYSTEM PROVIDER. USER AGENCY shall execute maintenance agreements for the software installation on the equipment used by USER AGENCY to access the SYSTEM.

B. Connection to Network

The USER AGENCY is responsible for establishing a connection to the network of SYSTEM PROVIDER. This includes all acquisition, installation, and maintenance of network connections. USER AGENCY shall provide the physical cabling and software necessary to attach to the network of SYSTEM PROVIDER. This connection will be done at the direction and under the supervision of the Information Technology Department of SYSTEM PROVIDER. No action will be taken relative to this connection without the written consent of SYSTEM PROVIDER.

The USER AGENCY shall comply with all of the terms and conditions of the Connectivity Attachment, a copy of which has been attached hereto and incorporated by reference herein as Exhibit A.

C. User Agreement for REGIS and KCJIS Access

The USER AGENCY is required to maintain a current user agreement with the Board of Police Commissioners of Kansas City, Missouri for access to the criminal justice information provided on SYSTEM including but not limited to, REGIS, the National Crime Information Center (NCIC), Missouri Uniform Law Enforcement System (MULES), Missouri Department of Revenue (DOR), Kansas Department of Revenue (KDOR), the Automated Statewide Telecommunications Records Access (ASTRA), and the National Law Enforcement Telecommunications System (NLETS). The USER AGENCY agrees to abide by all terms and conditions of the user agreement with the Board of Police Commissioners of Kansas City,

Missouri. Violation of that agreement shall be considered a violation of this AGREEMENT and pursuant to Article 5, is grounds for immediate termination of this AGREEMENT. The USER AGENCY further agrees to abide by the policies and procedures set forth in the Memorandum of Agreement regarding the installation and use of KIBRS Gateway software received from the Kansas Criminal Justice Information System (KCJIS). A violation of those polices and procedures shall be considered a violation of this AGREEMENT and pursuant to Article 5, is grounds for immediate termination of this AGREEMENT.

D. Dissemination of Information

The USER AGENCY agrees to abide by all federal and state laws and regulations, relating to the collection, storage, retrieval, and dissemination of criminal justice information. Under no circumstances will the USER AGENCY disseminate information entered into the SYSTEM by SYSTEM PROVIDER or any other user agency. The SYSTEM PROVIDER will not disseminate information entered into the SYSTEM by the USER AGENCY.

Both parties understand that information entered into the system can be viewed by other user agencies as well as law enforcement support groups, Emerging Threat Analysis Capability Center (ETAC) and Kansas City Terrorism Early Warning Group (KCTEW), and such access by these agencies is not considered a dissemination of this information for purposes of this AGREEMENT.

E. Completeness, Accuracy, Submission, and Security

The USER AGENCY agrees to be responsible for the accuracy, timeliness, and completeness of information entered into or through the SYSTEM by the USER AGENCY. The USER AGENCY agrees to make a good faith effort to maintain the integrity of the I/LEADS Master Name Index, Master Location Index, and Master Property Index. The USER AGENCY is responsible for the submission of criminal offense and criminal arrest data to the State of Kansas or any other entity as is required by law. The USER AGENCY is responsible for managing security of information contained in the databases, as well as the user access and security for its employees.

F. Training

USER AGENCY agrees to train any personnel accessing the SYSTEM according to the training standard provided by Intergraph Public Safety. The USER AGENCY represents and agrees that they assume the responsibility to ensure that all persons operating the software shall be properly qualified, supervised, and trained, and have demonstrated effectively that the operator is proficient to properly access the SYSTEM.

USER AGENCY further agrees to train any personnel accessing the SYSTEM regarding all obligations of USER AGENCY created herein. USER AGENCY shall adequately supervise

personnel accessing the system to ensure compliance herewith.

ARTICLE 3. BACKUP SERVER

The SYSTEM PROVIDER and the USER AGENCY may agree to work together to implement and maintain a backup server at the USER AGENCY site. The USER AGENCY will supply this server and have primary responsibility for its maintenance.

ARTICLE 4. TERM

This AGREEMENT shall commence upon the date it is executed, and shall continue in effect until Midnight, December 31 of the year of execution. The term of this AGREEMENT shall be automatically extended at the end of the initial term for a twelve month period, and in a like manner in succeeding years, unless either party notifies the other, in writing, at least 120 days prior to the end of the AGREEMENT current at the time, that the party intends to terminate the AGREEMENT and it will not be extended.

Notwithstanding the foregoing or any other language contained in this AGREEMENT, the USER AGENCY is obligated to pay only such periodic payments or monthly installments thereof as may lawfully be made from funds budgeted and approved for the purpose. USER AGENCY agrees to notify SYSTEM PROVIDER at the earliest possible time of the non-availability of funds from which to make any periodic payment or monthly installment.

In the event the USER AGENCY fails to make any payments due to SYSTEM PROVIDER under this AGREEMENT, SYSTEM PROVIDER may at its option immediately thereafter terminate this AGREEMENT upon 15 days written notice from SYSTEM PROVIDER of an overdue payment.

ARTICLE 5. TERMINATION

The SYSTEM PROVIDER or the USER AGENCY may terminate this AGREEMENT for any reason upon at least 120 days notice. If the USER AGENCY fails to comply with terms and conditions of this AGREEMENT, the SYSTEM PROVIDER reserves the right to immediately terminate the AGREEMENT.

ARTICLE 6. CONSIDERATION

Consideration for this AGREEMENT will consist of two elements calculated and invoiced as follows:

- (a) Maintenance agreement costs will be spread among USER AGENCIES and will be determined annually by SYSTEM PROVIDER. Costs will be calculated based on the number of access licenses declared each year by USER AGENCIES, and

such declaration will remain in effect for that year. USER AGENCIES must declare to SYSTEM PROVIDER their necessary access licenses by May 1 of each year.

An Invoice for final or estimated maintenance costs will be distributed to each USER AGENCY by June 1 of each year so that USER AGENCY can budget for the expenditure. In the event SYSTEM PROVIDER incurs additional or reduced costs due to contract negotiations, a corrected invoice will be sent no later than November 1. Invoices for maintenance costs must be paid by the USER AGENCY no later than January 31 of the following year.

- (b) SYSTEM PROVIDER may, in its sole discretion, determine whether software or hardware upgrades are necessary or desirable for continued, efficient operation of the system. Upgrade costs will be spread among USER AGENCIES and will be determined every three years or as SYSTEM PROVIDER deems necessary. Upgrade costs will be determined by the number of access licenses declared during the previous year by USER AGENCIES.

An invoice for upgrade costs will be distributed to each USER AGENCY once upgrade costs are determined. Invoices for upgrade costs must be paid no later than January 31 of the following year.

For purposes of this AGREEMENT an access license is defined as a live connection to either the I-Cad database, I-Leads database and/or I-Netviewer. The access license is granted by the SYSTEM PROVIDER in return for compensation, and may be terminated under the terms of this AGREEMENT.

ARTICLE 7. INDEMNIFICATION

To the extent permitted by law and subject to the immunity and maximum liability provisions of the Kansas Tort Claims Act, the USER AGENCY agrees to indemnify and hold harmless the SYSTEM PROVIDER, and its agents, servants, and employees from and against any and all claims, demands, actions, suits, judgments, and proceedings by others, against all liability, including but not limited to, any liability for damages by reason of or arising out of any false arrests, imprisonment, or any loss, cost expense, or damage arising from, arising out of or in connection with this AGREEMENT to the extent that such liability results from the intentional or negligent acts or omissions of the USER AGENCY, its employees or agents. This Agreement to indemnify shall not run in favor of or inure to the benefit of any liability insurer or third party.

ARTICLE 8. WARRANTY

The SYSTEM is provided without any warranty or condition, expressed or implied. SYSTEM PROVIDER specifically disclaims any implied warranties of title, merchantability,

fitness for a particular purpose, and non-infringement. The USER AGENCY acknowledges that the SYSTEM may not operate totally without interruption and warrants that it shall maintain a manual system adequate to back up the SYSTEM should it become unavailable for use, either planned or unplanned. SYSTEM PROVIDER makes no representations, warranties, or guarantees regarding "up-time" for the SYSTEM. The SYSTEM PROVIDER and THE USER AGENCY both agree to pursue remedies through Intergraph Public Safety to all software problems arising from software provided by Intergraph Public Safety. Remedies for problems arising that are caused by circumstances outside of Intergraph Public Safety's control (network connection issues, user errors, hardware failures, etc.) shall be pursued jointly by the SYSTEM PROVIDER and the USER AGENCY until a resolution is achieved.

ARTICLE 9. NON-DISCRIMINATION

- A. USER AGENCY and SYSTEM PROVIDER, for purposes this section referred to singularly as "AGENCY" and collectively as "AGENCIES," agree that:
1. AGENCIES shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of the work under the present contract because of race, color, religion, age, disability, sex, ancestry, national origin, veteran status or low income.
 2. In all solicitations or advertisements for employees, AGENCIES shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission, hereinafter, "Commission."
 3. If the AGENCIES fail to comply with the reporting requirements of K.S.A. 44-1031 and amendments thereto, the offending AGENCY shall be deemed to have breached the present AGREEMENT it may be canceled, terminated or suspended, in whole or in part, by the contracting agency.
 4. If AGENCIES are found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the offending AGENCY shall be deemed to have breached the present AGREEMENT and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency.
 5. AGENCIES shall include the provisions of Article 9, subsections (1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by

a contractor:

- (a) who employs fewer than four employees during the term of such contract; or
 - (b) whose contracts with the AGENCY cumulatively total \$5,000.00 or less during the fiscal year of the AGENCY.
- B. The AGENCIES further agree that they 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.

ARTICLE 10. MISCELLANEOUS

- A. This AGREEMENT shall supersede and replace all other Agreements between the parties relative to the extension of Intergraph Access Services.
- B. Amendments to this AGREEMENT may be made only in writing and must be signed and dated by both parties. Validly executed amendments shall be considered official changes to the AGREEMENT and shall require no further action.

IN WITNESS WHEREOF, the parties hereto caused this AGREEMENT to be executed by the proper officers and officials.

APPROVED AS TO FORM:

City of Gardner, Kansas

CITY ATTORNEY

By

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY OF OVERLAND PARK, KANSAS

John J. Knoll
SENIOR ASSISTANT CITY ATTORNEY

By _____
CARL GERLACH
MAYOR

ATTEST:

MARIAN COOK
CITY CLERK

EXHIBIT A
CONNECTIVITY AND FIBER USE ATTACHMENT

1. **Definitions.** When the term "Network" is used in this Exhibit, it shall mean the data network owned and maintained by the SYSTEM PROVIDER which includes but is not limited to copper wire, fiber-optic cable, conduits, junction boxes, and networking equipment. When the term "Connection" is used in this Exhibit, it shall mean the USER AGENCY's connection to the Network via a high speed data connection and/or other connection.
2. **Connection, Equipment and Access.** SYSTEM PROVIDER hereby grants to USER AGENCY the right to establish a Connection or Connections at the USER AGENCY's sole cost and expense with the Network as outlined herein. The USER AGENCY may also place USER AGENCY owned networking equipment ("Equipment") in certain SYSTEM PROVIDER facilities to allow access to and use of the Connection. The location of the Equipment will be at SYSTEM PROVIDER's sole discretion. The location and description of the Equipment is set forth in Exhibit B. SYSTEM PROVIDER will provide accompanied access to the Equipment at times convenient to SYSTEM PROVIDER upon reasonable notice from USER AGENCY.
3. **Fiber Connection and Use.** If USER AGENCY is connecting to SYSTEM PROVIDER via fiber, is utilizing SYSTEM PROVIDER fiber, and/or is pulling USER AGENCY fiber through SYSTEM PROVIDER conduit the following provisions apply:
 - a. A specific description of the location of any Connection and/or the strands of fiber as well as a designation of ownership is set forth in Attachment B, attached hereto and incorporated by reference herein.
 - b. The USER AGENCY is responsible at its sole cost and expense for running fiber

to a location specified by the SYSTEM PROVIDER's Director of Information Technology for the purpose of making the Connection to SYSTEM PROVIDER's fiber via a junction box. SYSTEM PROVIDER will then, at USER AGENCY's sole cost and expense, connect the USER AGENCY's fiber to SYSTEM PROVIDER's fiber. If there is not currently a junction box for the USER AGENCY to connect to the Network, a junction box will be installed at the USER AGENCY's cost and expense, ownership of the junction box shall vest in the City. Within thirty (30) days of the receipt of an invoice, the USER AGENCY shall reimburse SYSTEM PROVIDER the actual cost of the connection.

- c. The USER AGENCY is responsible at its sole cost and expense for securing access to all public or private rights of way and easements, as well as any necessary pole attachments, needed to run USER AGENCY fiber from USER AGENCY facilities to the City's designated Network connection points.

4. **Use of Contractors.** If a Contractor is performing any work described herein on behalf of the USER AGENCY, Director of Information Technology of SYSTEM PROVIDER shall be notified in advance. The USER AGENCY shall insert the following paragraphs as special provisions to any Contractor chosen to do the work:

The Contractor shall defend, indemnify and save the City of Overland Park, Kansas harmless from and against all liability for damages, costs and expenses including attorney fees arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reasons of the acts or omissions of the Contractor, or its sub-contractors, agents or employees in the performance of its contract.

The City of Overland Park, Kansas shall be named as an additional insured on all policies of insurance issued to the Contractor and required by the terms of the Contractor's agreement with the USER AGENCY.

5. **Insurance.** During the performance of this Agreement, USER AGENCY agrees to maintain insurance coverage of the types and minimum liability as set forth below. USER AGENCY shall furnish to the SYSTEM PROVIDER a Certificate of Insurance verifying such coverage, listing the certificate holder as an additional insured for the general liability coverage. The certificate holder on the Certificate of Insurance shall be as follows:

City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, KS 66212

Prior to any material change or cancellation, the SYSTEM PROVIDER will be given thirty (30) days advanced written notice by registered mail to the stated address of the certificate holder.

- a. Commercial General Liability insurance on an occurrence basis in amounts no less than \$500,000 bodily injury and property damage per occurrence, including personal and advertising injury; \$500,000 general aggregate.
- b. Automobile Liability insurance in an amount no less than \$500,000 bodily injury and property damage combined single limit, including all owned (if any), hired and non-owned autos.
- c. Workers' Compensation and Employers' Liability, protecting against all claims under applicable state Workers' Compensation laws. USER AGENCY 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 "all states" insurance, and the liability limits shall not be less than Statutory (Workers' Compensation); \$100,000 / \$500,000 / \$100,000 (Employers Liability).

SYSTEM PROVIDER will only accept coverage from an insurance carrier who carries a Best's policyholder rating of A-:VIII or better; or is a company mutually agreed upon by the SYSTEM PROVIDER and USER AGENCY.

6. **Maintenance of, Changes to, or Construction of the Network and Equipment.** USER AGENCY and SYSTEM PROVIDER acknowledge that SYSTEM PROVIDER is the owner of the Network and that SYSTEM PROVIDER shall have the sole responsibility for maintenance of same. SYSTEM PROVIDER agrees that maintenance and repair of the Network or changes to or construction of the Network shall be at no charge, cost, or expense to USER AGENCY.

The USER AGENCY is the owner of the Equipment and the USER AGENCY shall have the sole responsibility for repair and maintenance of the same and shall be at no charge, cost, or expense to SYSTEM PROVIDER. SYSTEM PROVIDER shall not be responsible for any damage to the Equipment. USER AGENCY shall maintain insurance sufficient to cover the Equipment.

The USER AGENCY understands that SYSTEM PROVIDER has a Network change policy and procedure which is incorporated by reference as it now exists or may be adopted or amended in the future, acknowledges receipt of same, and agrees to abide by same to the extent that any changes would impact the Network's general operation.

7. **Interference with Network.** USER AGENCY agrees that its use of the Network shall

not interfere with the Network's general operation. USER AGENCY will take whatever steps necessary to ensure that such interference does not occur or to eliminate any interference.

In the event that USER AGENCY is unable to eliminate interference to SYSTEM PROVIDER's Network within a reasonable time as determined at the sole discretion of the Information Technology Director for SYSTEM PROVIDER, SYSTEM PROVIDER or its contractors are authorized to adjust, relocate or remove USER AGENCY's Equipment, as is reasonably necessary to eliminate the interference. Consistent with Article 8, below, SYSTEM PROVIDER shall not be liable for any damage to USER AGENCY's Equipment resulting from such activity.

8. **Troubleshooting.** USER AGENCY agrees that its employees will contact the USER AGENCY Information Technology (IT) Department or representatives before contacting SYSTEM PROVIDER regarding issues related to this Agreement. USER AGENCY agrees that if its IT Department determines there is a problem related to connectivity with SYSTEM PROVIDER, the USER AGENCY will contact SYSTEM PROVIDER's IT Help Desk at (913) 895-5050 and will send an email to netnotify@opkansas.org. After business hours, USER AGENCY may contact the SYSTEM PROVIDER Police Command and Control Center at (913) 895-6300 for assistance. SYSTEM PROVIDER agrees to make reasonable efforts to identify and remediate any problem as quickly as possible; however, SYSTEM PROVIDER does not guarantee any specific uptime, nor is SYSTEM PROVIDER liable for any damages associated with performance under this Agreement, including but in no way limited to any downtime.
9. **Limitation of Liability.** In no event shall SYSTEM PROVIDER be liable for any damages, including special, incidental, direct, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of, or in connection with this Agreement. This shall include but not be limited to damages resulting from , transmission interruptions or problems, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by SYSTEM PROVIDER, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability. USER AGENCY releases SYSTEM PROVIDER from any claims related to same.

USER AGENCY's access to and use of the Network is provided without any warranty or condition, expressed or implied. The USER AGENCY understands and acknowledges that the Network may not operate totally without interruption and warrants that it shall maintain processes to provide redundancy to the Network should it become unavailable for use, either planned or unplanned.

10. **Security and Privacy Protocols.** USER AGENCY understands and agrees that all use of the Network shall be subject to and consistent with all applicable City, State and

Federal standards and protocols related to security and privacy. All of which are incorporated by reference as they exist now or may be adopted or amended in the future.

11. **Miscellaneous.** This Attachment shall be governed by and construed in accordance with the laws of the State of Kansas. The provisions of this Intergraph User's Agreement and Attachment encompass the entire agreement between the parties regarding connectivity. No modification, addition, or deletion to this Attachment shall be effective unless placed in writing and signed by the parties hereto. The provisions of this Attachment are intended to be for the sole benefit of the parties hereto and their respective successors and assigns. None of the provisions of this Attachment are intended to be, nor shall they be construed to be, for the benefit of any third party. The language used in this Attachment shall be deemed to be the language chosen by both parties to express their mutual intent, and no rule of strict construction against either party shall apply to any term or condition of this Attachment.

Exhibits A and B may be amended or supplemented by the parties hereto from time to time. Such amendment or supplement may be executed by the Director of Information Technology on behalf of Overland Park and by _____
_____ on behalf of the USER AGENCY.

Exhibit B

Intergraph connectivity locations:

Antioch Justice Center

Mission

Merriam

Roeland Park

Shawnee

JCSO

Westgate

Olathe

JCSO

Park Police

ECC

Lenexa

Fire Training Center

County CCC

OP Sheraton

Prairie Village

Leawood

