

CONNECTIVITY AND FIBER USE AGREEMENT

THIS CONNECTIVITY AND FIBER USE AGREEMENT (the "Agreement") is made effective the ____ day of _____, 2009, by and between _____, ("Agency") and the City of Overland Park, Kansas ("Overland Park").

WHEREAS, Overland Park maintains a data network ("Network"); and

WHEREAS, the Network includes but is not limited to copper wire, fiber-optic cable, conduits , junctions boxes, and networking equipment owned by Overland Park; and

WHEREAS, the Agency desires to connect to the Network via a high speed data connection and/or other connection ("Connection"); and

WHEREAS, Overland Park is willing to allow the Connection to the Network subject to the terms and conditions outlined herein; and

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

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein made and contained the sufficiency of which is hereby acknowledged, Agency and Overland Park agree as follows:

1. Connection, Equipment and Access. Overland Park hereby grants to Agency the right to establish a Connection or Connections at the Agency's sole cost and expense with the Network as outlined herein. The Agency may also place Agency owned networking equipment ("Equipment") in certain Overland Park facilities to allow access to and use of the Connection. The location of the Equipment will be at Overland Park's sole discretion. The location and description of the Equipment is set forth in **Exhibit A**, attached hereto and incorporated by reference herein, unless said Equipment is fiber. The location of fiber is set forth in **Exhibit B** as provided below. Overland Park will provide accompanied access to the Equipment at times convenient to Overland Park upon reasonable notice from Agency.

2. Fiber Connection and Use.

- a. Agency is connecting to Overland Park via fiber, is utilizing Overland Park fiber, and/or is pulling Agency fiber through Overland Park conduit. 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 **Exhibit B**, attached hereto and incorporated by reference herein.
- b. The Agency is responsible at its sole cost and expense for running fiber to a location specified by the Overland Park Director of Information

Technology for the purpose of making the Connection to Overland Park's fiber via a junction box. Overland Park will then, at Agency's sole cost and expense, connect the Agency's fiber to Overland Park's fiber. If there is not currently a junction box for the Agency to connect to the Network, a junction box will be installed at the 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 Agency shall reimburse Overland Park the actual cost of the connection.

- c. The 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 Agency fiber from Agency facilities to the City's designated Network connection points.

3. Use of Contractors. If a Contractor is performing any work described herein on behalf of the Agency, Director of Information Technology of Overland Park shall be notified in advance. The 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 Agency.

4. Insurance. During the performance of this Agreement, Agency agrees to maintain insurance coverage of the types and minimum liability as set forth below. Agency shall furnish to the Overland Park 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 City 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. 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).

Overland Park 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 Overland Park and Agency.

5. Term. The term of this Agreement shall be perpetual and be in full force and effect during the life of the Connection or until either party notifies the other in writing of its intent to terminate this Agreement. Except as provided in Section 6 herein, Overland Park will provide one hundred eighty (180) days notification for Agency's removal of Equipment and Connection from the Network. Upon termination by either party, the manner of the Agency's removal of the Equipment and disconnection from the Network shall be approved by Overland Park and shall be at the Agency's sole cost and expense.

6. Maintenance of, Changes to, or Construction of the Network and Equipment. Agency and Overland Park acknowledge that Overland Park is the owner of the Network and that Overland Park shall have the sole responsibility for maintenance of same. Overland Park 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 Agency.

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

The Agency understands that Overland Park 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. Agency agrees that its use of the Network shall not interfere with the Network's general operation. Agency will take whatever steps necessary to ensure that such interference does not occur or to eliminate any interference.

In the event that Agency is unable to eliminate interference to City's Network within a reasonable time as determined at the sole discretion of the Information Technology Director for Overland Park, Overland Park or its contractors are authorized to adjust, relocate or remove Agency's Equipment, as is reasonably necessary to eliminate the interference. Consistent with Articles 8 and 9, below, Overland Park shall not be liable for any damage to Agency's Equipment resulting from such activity.

8. Troubleshooting. Agency agrees that its employees will contact the Agency Information Technology (IT) Department or representatives before contacting Overland Park regarding issues related to this Agreement. Agency agrees that if its IT Department determines there is a problem related to connectivity with Overland Park, the Agency will contact Overland Park's IT Help Desk at (913) 895-5050 and will send an email to netnotify@opkansas.org. After business hours, Agency may contact the Overland Park Police Command and Control Center at (913) 895-6300 for assistance. Overland Park agrees to make reasonable efforts to identify and remediate any problem as quickly as possible; however, Overland Park does not guarantee any specific uptime, nor is Overland Park 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 Overland Park 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 Overland Park, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability. Agency releases Overland Park from any claims related to same.

Agency's access to and use of the Network is provided without any warranty or condition, expressed or implied. The 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. Indemnification. Subject to the provisions and limitations of the Kansas Tort Claims Act, Agency shall defend, indemnify and save Overland Park harmless from and against all liability for damages, costs, and expenses, including attorneys' fees,

arising out 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 Agency, its contractors, agents or employees, in the performance of this Agreement.

11. Security and Privacy Protocols. 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.

12. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. The provisions of this Agreement encompass the entire agreement between the parties hereto. No modification, addition, or deletion to this Agreement shall be effective unless placed in writing and signed by the parties hereto. The provisions of this Agreement are intended to be for the sole benefit of the parties hereto and their respective successors and assigns. None of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party. The language used in this Agreement 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 Agreement.

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 the Director of Information Technology on behalf of the Agency.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

**THE CITY OF OVERLAND PARK,
KANSAS**

Chairman

Mayor

ATTESTED:

ATTESTED:

Clerk

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Attorney

City Attorney