

**MEMORANDUM OF UNDERSTANDING
"Fiber Optic Network Agreement"**

THIS MEMORANDUM OF UNDERSTANDING is made this ____ day of _____, 2015, (the "Effective Date") by and between the City of Lawrence, Kansas, a municipal corporation, and Lawrence Memorial Hospital, a charitable trust established pursuant to K.S.A. 12-1615.

RECITALS

- A.** The City of Lawrence, Kansas, a municipal corporation (the "City"), owns a fiber optic network in Lawrence, Kansas, and seeks to enhance that network;
- B.** Lawrence Memorial Hospital, a charitable trust established pursuant to K.S.A. 12-1615 ("LMH"), owns a fiber optic network in Lawrence, Kansas, and seeks to enhance that network;
- C.** The City and LMH agree that by working together and by sharing certain aspects of their fiber optic networks that they can enhance their respective networks, improve telecommunications, and save costs by avoiding the unnecessary duplication of efforts;
- D.** To achieve those goals, the City and LMH have reached a general understanding, memorialized herein, that, where possible, they will agree to join forces, work together, and share certain aspects of their fiber optic networks;
- E.** The parties agree that this Memorandum of Understanding provides a general understanding of the relationship between the City and LMH relative to their respective fiber optic networks and that separate agreements related to specific projects and interconnection will be required and may be appended hereto as addenda;
- F.** Accordingly, the parties enter into this Memorandum of Understanding governing joint projects, interconnectivity, and the sharing of certain aspects of their fiber optic networks, all in accordance with the terms of this agreement.

TERMS

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. **Interconnection.** The parties agree that this Memorandum of Understanding only authorizes the parties to work together on future projects, so as to enhance their respective fiber optic networks. The fiber optic networks of the parties will interconnect only at mutually agreed upon points and in accordance with a separate agreement. Each party shall be responsible for the maintenance of its respective fiber optic facilities.

2. **Access.** The parties agree and understand that portions of the shared fiber optic network will be located on property owned by the City or LMH or in easements dedicated or granted by or to the City or LMH. The City and LMH agree to exercise best efforts to provide advance notice of one (1) full business day should either party require access to property owned or managed by the other. LMH agrees to comply with all City rules and regulations regarding any work done in the City's Rights of Way. It is further agreed and understood that each party shall strive to provide to the other unrestricted access to any *shared* handholes, manholes, conduit, fiber optic cables, or fiber termination rooms for the purposes of emergency maintenance. Each party will maintain an emergency contact number that shall be available seven (7) days a week, twenty-four (24) hours a day. This Memorandum of Understanding expressly prohibits the City or LMH to permit any third party to access any property of the other or to have access to any shared portion of the fiber optic network, including handholes, manholes, conduit, fiber optic cables, or fiber termination rooms, without the prior written consent of the other.

Any access provisions that supplements or contradicts this paragraph shall be recorded in the specific addendum to this Memorandum of Understanding.

Emergency Contact Information-City

For Emergency Site Access or to report an outage, contact:

Primary: Todd Lohman, Traffic Supervisor, 785-832-3035 or 785-423-3339

Secondary: Kevin Harris, Project Inspector, 785-832-3035 or 785-423-3337

Tertiary: James Wisdom, Director, 785-832-3326 or 785-423-2799

Emergency Contact Information-LMH

For Emergency Site Access or to report an outage, contact:

Primary: LMH Helpdesk, I. T., 785-505-2940

Secondary: Tyler Palmer, I. T., 785-505-3188 or 785-691-6647

Tertiary: Mike Nix, I. T., 785-505 2968 or 913-488-6136

3. **Sales Unauthorized.** The parties agree that this Memorandum of Understanding only authorizes the parties to work together and is not intended to permit either the City or LMH to offer telecommunications for sale to each other or to the public. If either party wishes to offer telecommunications for sale, such may be accomplished through a separate agreement.

4. **Term.** This Memorandum of Understanding shall be effective from the Effective Date until 11:59 p.m. on December 31, 2025. Thereafter, this Memorandum of Understanding will renew for one additional ten-year term and be effective until 11:59 p.m. on December 31, 2035, unless either party notifies the other party in writing of its intent to terminate or renegotiate this Memorandum of Understanding, not less than one hundred eighty (180) days before the termination of the initial ten-year term. The additional term shall be deemed a continuation of this Memorandum of Understanding and not a new agreement or an amendment hereto.
5. **Termination.** Either party may, by giving one hundred eighty (180) days' written notice to the other, terminate this Memorandum of Understanding. Upon termination, whether by expiration of this Memorandum of Understanding or by notice given by either party, LMH will retain ownership of facilities that belong to LMH and the City will retain ownership of facilities that belong to the City. Any facilities that are jointly held shall be disposed of in accordance with the specific, separate agreement governing that project or interconnection. If there is no specific, separate agreement on point then the parties shall be deemed to be joint owners of the facility.
6. **Kansas Cash-Basis Law.** This Memorandum of Understanding and any addendum hereto must comply with the applicable provisions of the Kansas Cash-Basis Law of 1933, codified as amended at K.S.A. 10-1101 *et seq.* In the event that this Memorandum of Understanding or any addendum hereto require the expenditure of funds, the parties are only obligated insofar as those funds are budgeted and appropriated for the purposes set forth in this Memorandum of Understanding during the respective parties' current budget years. In the event that either party fails to budget and appropriate funds, the parties acknowledge and agree that they shall be relieved of all obligations under Memorandum of Understanding without penalty.
7. **Indemnity.** Subject to the limitations set forth in the Kansas Tort Claims Act of 1979, K.S.A. 75-6101 *et seq.*, as amended, the City and LMH agree to hold each other, including their respective governing body, board of trustees, officers, agents, and employees, harmless for any liability, loss, damages, claims or causes of action caused or asserted to have been caused directly or indirectly by its own actions, or the actions of its governing body, officers, agents, and employees.
8. **Assignment.** This Memorandum of Understanding or other agreement reached under this Memorandum may not be assigned without the written consent of the other party.

9. **Notice.** All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or by a recognized overnight delivery service, to the following addresses:

If to City, to:

City of Lawrence, Kansas
Attn: City Clerk
6 East 6th Street
P.O. Box 708
Lawrence, Kansas 66044

With a copy to:

City of Lawrence, Kansas
Attn: City Attorney
6 East 6th Street
P.O. Box 708
Lawrence, Kansas 66044

If to LMH, to:

President and CEO
Lawrence Memorial Hospital
325 Maine Street
Lawrence, Kansas 66044

With a copy to:

Chief Information Officer
Lawrence Memorial Hospital
325 Maine Street
Lawrence, Kansas 66044

Any such Notice shall be deemed effective upon actual receipt or refusal of receipt as shown on any return receipt obtained under this Section.

10. **Entire Agreement.** This Memorandum of Understanding constitutes the entire agreement between the parties. This Memorandum of Understanding may only be modified by a writing signed by both parties.
11. **Effective Date.** This Memorandum of Understanding shall become effective and shall be in full force and shall be binding on the City and LMH, their successors and permitted assigns, from and after the execution of this Memorandum of Understanding as shown in the introductory paragraph to this Memorandum.

12. **Severability.** If any section, sentence, clause, or phrase of this Memorandum of Understanding is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Memorandum.
13. **Governing Law.** This Memorandum of Understanding shall be construed and enforced in accordance with and shall be governed by the laws of the State of Kansas.
14. **Recitals.** The above-stated recitals are by reference incorporated herein and shall be as effective as if set forth herein *verbatim*.

[SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the undersigned have caused this Memorandum of Understanding to be executed as of the date noted above.

**CITY:
CITY OF LAWRENCE, KANSAS, a
municipal corporation**

DIANE STODDARD
Interim City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of December, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came Diane Stoddard, as Interim City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires:

**LMH:
LAWRENCE MEMORIAL HOSPITAL,
a charitable trust established
pursuant to K.S.A. 12-1615**

EUGENE W. MEYER
President and CEO

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of December, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came Eugene W. Meyer, President and CEO of Lawrence Memorial Hospital, a charitable trust established pursuant to K.S.A. 12-1615, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires: