

FIBER OPTIC LEASE AGREEMENT

THIS FIBER OPTIC LEASE AGREEMENT (the “Agreement”) is hereby made by and between the Reorganized School District No. 7 of Jackson County, Missouri (hereinafter, the “School District”) and the City of Lee’s Summit, Missouri (hereinafter, the “City”) and is effective as of the ____ day of _____, 2017.

WHEREAS, the School District and the City entered into a “Fiber Optic Strand Lease Agreement” dated August 15, 2002 (the “2002 Lease”), whereby the City leased certain fiber optic strands from the School District; and

WHEREAS, the School District and the City entered into an “Addendum to Fiber Optic Strand Lease Agreement” dated July 23, 2003 (the “2003 Lease Addendum”), whereby the City leased additional fiber optic strands from the School District; and
WHEREAS, the 2002 Lease and the 2003 Lease Addendum have since expired and the parties entered an agreement in 2014 addressing the lease arrangement; and

WHEREAS, the School District and the City now desire to memorialize a formal written agreement extending the 2014 arrangement between the parties that reflects the fiber optic strands actually being used by the City and that provides for an appropriate compensation for such use, subject to the terms and conditions contained herein.

NOW, THEREFORE, for the mutual consideration set forth herein, the School District and the City hereby agree and covenant as follows:

1. **Use of Property:** The City hereby leases from the School District, and the School District hereby leases to the City, the fiber optic strands described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter, the “Leased Equipment”) for City’s use and enjoyment.
2. **Connection:** The City shall have the right, at its sole expense, to install such facilities necessary to connect its fiber optic network to the Leased Equipment, together with any other facilities necessary to support such connection and the City’s use and enjoyment of the Leased Equipment (collectively, the “Connection Facilities”). The design, installation and connection of the Connection Facilities shall be in accordance with plans mutually agreed upon by the parties. Any work performed by the City on School District property associated with the Connection Facilities will be coordinated with the School District by prior notification to the liaisons designated, in writing, by the School District.
3. **Term:** The Initial Term of this Agreement shall be for three (3) years beginning July 1, 2017 (hereinafter, the “Commencement Date”). This Agreement shall be automatically renewed for three additional terms (each a “Renewal Term”) of three (3) years each, unless either party provides written notice of its intention not to renew not less than one hundred eighty (180) days prior to the expiration of the

Initial Term or Renewal Term, or unless this Agreement is terminated in accordance with paragraph 12 of this Agreement.

4. **Rent:** The City agrees to pay the School District, for use and enjoyment of the Leased Equipment, rents paid annually, in advance, and beginning on the Commencement Date. The rent during the Initial Term shall be Twenty Five Cents (\$0.25) per lineal foot per fiber optic strand (hereinafter, the "Rent Rate"). Exhibit A hereto sets forth the total of the rent due based on the quantity of Leased Equipment being leased by the City at the Commencement Date. If the City desires to add additional fiber optic strands, or reduce the fiber optic strands being leased, the adjustment in rent will be calculated by multiplying the Rent Rate times the lineal feet of optic strand. Exhibit A will be reviewed and adjusted annually by the parties as needed, as follows: (a) by May of each year the City will have reviewed its use of fiber strands and determined whether any strands are no longer needed for the upcoming year and will have further notified the School District of its determination; (b) this will allow the School District to determine the adjustments, if any, to the rent and notify the City of any such adjustment in the amount that will be invoiced in the following July.
5. **Renewal Term Rent:** During any Renewal Term, the rent paid by the City to the School District shall be increased to the amount agreed to by the parties..
6. **Billing:** Each year during the Initial Term and/or Renewal Term, the School District shall send an invoice to the City for the rent due for the subsequent year. The City shall remit payment no later than July 1 of that year, or forty-five (45) days after receipt of an invoice from the School District, whichever is later.
7. **Removal of Connection Facilities:** The City shall remove the Connection Facilities within ninety (90) days of the date of termination or expiration, and shall repair any damage to the Leased Equipment caused by construction, installation, operation, maintenance or removal of the Connection Facilities within fifteen (15) days of the occurrence of the damage. Any Connection Facilities not removed within said ninety (90) days shall become the property of the School District, and the City shall reimburse the School District for any costs incurred in removing and or disposing of the Connection Facilities.
8. **Maintenance:** The School District will maintain, at its costs, all of its original fiber strands, including the Leased Equipment, in accordance with its normal maintenance operations.
9. **Emergency Repair:** In any event which causes unanticipated damage to the Leased Equipment (such as a cable cut or downed utility pole), the School District will be responsible for coordinating the repair of the fiber line. The School District will act responsibly and efficiently to ensure the repair is completed in as timely a manner as is reasonable, with an emphasis on having the repair done within one (1) business day of the School District learning of the problem. The

School District liaisons will provide the City's liaisons with a status report on the repair upon request. The City shall be responsible for emergency repair costs in proportion to the number of strands leased in a given line in relation to the total number of strands in such line. The School District shall bill the City for the City's proportionate share of the emergency repair costs by invoice, and the City shall pay such invoice within thirty (30) days of receipt. City shall only be responsible for paying a share of repair costs where strands City leases are affected. If any portion of the emergency repair costs is recovered from or reimbursed by a third-party (by insurance or otherwise), the City shall be reimbursed its proportionate share of the amount recovered.

10. **Coordination:** Any planned events by either party that could disrupt transmission along Leased Equipment must be coordinated with each party with at least twenty-four (24) hours prior notice to the liaisons that the School District and the City designate in writing.
11. **Title and Quiet Use:** Each party warrants to the other that it has the right to enter into this Agreement, and that that the person signing this Agreement has the authority to sign. The School District warrants that is the owner of the Leased equipment and agrees that the City is entitled to access to the Leased Equipment and to the quiet use of the Leased Equipment consistent with the terms and conditions of this Agreement throughout the Initial Term and each Renewal Term. The City agrees to quit and deliver possession of the Leased Equipment to the School District when this Agreement terminates by termination or expiration, and the City agrees that the Leased Equipment shall be in substantially the same order and in as good condition as received, normal wear and tear excepted.
12. **Termination:** Either party may terminate this Agreement at any time by giving the other party at least one hundred eighty (180) days advance written notice.
13. **Applicable Law; Choice of Forum:** This Agreement shall be governed by and construed according to the laws of the State of Missouri. Any legal action to interpret or enforce this Agreement shall be brought in the Circuit Court of Jackson County, Missouri at Independence.
14. **Contract Binding:** This Agreement shall be binding on and inure to the benefit of the parties and their respective officers, directors, elected officials, agents, attorneys, employees, successors and assigns.
15. **Assignment:** Except as otherwise provided herein, neither the City nor the District shall sell, assign, transfer or otherwise convey any of their respective rights or duties under this Agreement to any third party without the prior written consent of the other party. Such consent may be withheld at the sole discretion of the party whose consent is sought. The City shall not sub-lease its use of the Leased Equipment to any third party without the prior written consent of the

District, which consent may be granted or withheld in School District's sole discretion.

16. **Notice:** Any notice required under the terms of this Agreement, except for any notice to be given to a designated liaison, shall be deemed to have been given as of the time of actual receipt, shall be sufficiently given if delivered to the intended individual in person or at the corresponding address designated in this Agreement, and shall be made in writing at the following address or such other address as the party shall designate in writing:

a. City: Chief Technology Officer and City Attorney
City of Lee's Summit City of Lee's Summit
220 SE Green 220 SE Green
Lee's Summit, MO 64063 Lee's Summit, MO 64063

b. School District:
Executive Director of Technology
Lee's Summit R-7 School District
301 NE Tudor
Lee's Summit, MO 64086

And to:
Superintendent
Lee's Summit R-7 School District
301 NE Tudor
Lee's Summit, MO 64086

17. **Liaisons:** Unless otherwise indicated by a party in writing, the liaison for the School District shall be the Executive Director of Technology and the liaison for the City shall be the Chief Technology Officer.

18. **Non-Waiver:** No temporary sufferance of a breach of a provision of this Agreement shall be deemed a waiver of such provision absent an express written waiver, and no waiver of any condition or covenant contained in this Agreement or any waiver of a breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

19. **Warranties:** Each party represents and warrants to each other that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions; and (d) has not assigned or transferred any claim against the other party that is the subject of this Agreement.

20. **Severability:** If any term or provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall not be affected and each

other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

21. **Headings:** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of the Agreement.
22. **Jointly Drafted:** This Agreement shall be deemed to have been jointly drafted by the parties and shall not be construed more strongly against any party hereto.
23. **Entire Agreement:** The terms and conditions herein constitute the entire agreement of the parties and supersede all prior written and oral agreements and understandings (including but not limited to the 2002 Lease and the 2003 Lease Addendum) relating to the subject matter hereof, and this Agreement may be amended altered, or modified only by a writing executed by duly authorized representatives of the parties hereto.
24. **Agreement Contractual:** The terms and provisions of this Agreement are contractual and not mere recitals.
25. **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

CITY OF LEE'S SUMMIT

Mayor Randy Rhoads

ATTEST:

Approved as to Form:

City Clerk, Denise R. Chisum

Acting/Assistant/City Attorney

REORGANIZED SCHOOL DISTRICT
NO. 7 OF JACKSON COUNTY

Board President

ATTEST:

Board Secretary

EXHIBIT A

to the Fiber Optic Lease Agreement between the City of Lee's Summit and
the Reorganized School District No. 7 of Jackson County, Missouri (a/k/a Lee's Summit
R-7 School District)

Lease Items

| ITEM | DESCRIPTION | DISTANCE – linear foot | COST (\$0.25/linear foot) |
|------|---|--|---------------------------|
| 1 | 2 strands from LSR-7 Transportation building at 500 SE Transport on Hamblen Rd. to splice point at 1 st and Douglas | 26,118 linear feet (each strand 13,059) | \$6,529.50 |
| 2 | 2 strands from LSR-7: Parks and Recreation Center, 110 SW Blue Parkway to splice point at 1 st and Douglas | 10,642 linear feet (each strand 5,321) | \$2,660.50 |
| 3 | 2 strands from LSR-7: splice point at Blackwell & Scruggs Rd. at Legacy Park to LSR-7, 600 SE Miller to splice point at 1 st and Douglas | 53,730 linear feet (each strand 26,865) | \$13,432.50 |
| 4 | 2 Strands from R-VII: Splice point at Rice Road and Colburn to 1 st & Douglas | 36,516 linear feet (each strand 18,258) | \$9,129.00 |
| 5 | 2 Strands from R-VII: Splice point at 3 rd and Pryor to splice point for 110 SW Blue Pkwy | 39,510 linear feet (each strand 19,755) | \$9,877.50 |
| 6 | 2 Strands from R-VII: Splice point for 3650 SW Windemere Dr to Splice point for 110 SW Blue Pkwy | 53,978 linear feet (each strand 26,989) | \$13,494.50 |

| | | | |
|---|--|--|--------------------|
| 7 | 2 Strands from R-VII: Splice point for 101 NE Blackwell Rd to splice at Blackwell and Scruggs (Legacy Park Item 3) | 10,744 linear feet (each strand 5,372) | \$2,686.00 |
| | Total | 231,238 linear feet | \$57,809.50 |