

**KANSAS DEPARTMENT OF TRANSPORTATION AND CITY OF WICHITA  
FIBER INFRASTRUCTURE SHARING AGREEMENT**

This Agreement, dated the Effective Date as hereinafter defined, is between the Kansas Department of Transportation, hereinafter referred to as “KDOT,” and the City of Wichita, hereinafter referred to as “CITY,” collectively referred to as the “Parties.”

**WITNESSETH:**

**WHEREAS**, City has planned an existing fiber optic infrastructure located on the CITY right of way that it desires to share with KDOT; and

**WHEREAS**, KDOT has existing and planned fiber optic infrastructure located on KDOT right of way that it desires to share with City; and

**WHEREAS**, KDOT AND City desire to share fiber optic infrastructure along CITY and KDOT right of way in the Wichita Metropolitan Area in order to operate and maintain Intelligent Transportation (ITS) AND Traffic Signal Equipment to benefit the traveling public and KDOT and CITY transportation systems as set forth by the terms and conditions hereinafter set forth; and

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants, and agreements herein contained, KDOT and CITY do hereby represent, covenant, and agree as follows:

**ARTICLE I  
DEFINITIONS**

**Section 1.1. Definitions.** In addition to any words and terms defined elsewhere in this Agreement, capitalized words and terms used in this Agreement shall have the meanings given to such words and terms as set forth in this **Section 1.1**.

- a. **“Agreement”** means this Fiber Infrastructure Sharing agreement between KDOT and CITY dated the Effective Date, along with any Supplements or Amendments to this Agreement made in accordance with the provisions hereof.
- b. **“Effective Date”** means the date this Agreement is signed by the Mayor of the CITY, or designee.
- c. **“Fiber Optic Infrastructure”** means fiber optic cable (fiber), conduit, patch cords, splice vaults, electric service, cabinets, miscellaneous devices or components installed as part of this Agreement.
- d. **“ITS and Traffic Signal Equipment”** means dynamic message signs, cameras, speed detectors, sensors, digital infrastructure and traffic signals installed to manage the transportation system.
- e. **“Notice Address”** means:

- (1) With respect to KDOT:  
Kansas Department of Transportation  
700 SW Harrison Street  
Topeka, Kansas 66612-3754  
Attention: Director of Administration  
with a copy to its Chief Counsel at the same address.
  - (2) With respect to CITY:  
455 North Main  
Wichita, KS 67202  
Attention: Mayor and City Council
- f. **“Secretary”** means the Secretary of the Kansas Department of Transportation.
  - g. **“State”** means the state of Kansas.
  - h. **“State Governmental Purpose”** means any function of a state agency or public instrumentality allowed by state or federal statute or regulation to carry out noncommercial state governmental functions. Such permitted uses shall include uses by state agencies to create telecommunication connections to a city county or local unit of government, but only if the primary purpose is to carry out state governmental functions rather than city, county, or local unit of government functions.

## **Section 1.2. Rules of Interpretation.**

- a. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations, and corporations, including public bodies, as well as natural persons.
- b. All references in this Agreement to designated “Articles,” “Sections,” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections, and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or other subdivision.

## **ARTICLE II REPRESENTATIONS**

### **Section 2.1. Representations by KDOT.** KDOT makes the following representations:

- a. KDOT is a duly created state agency existing under the Constitution and laws of the State of Kansas. KDOT has the power to enter into and perform the transactions contemplated by this Agreement and to carry out its obligations.
- b. The Secretary has duly authorized the execution and delivery of this Agreement.

**Section 2.2. Representations by the CITY.** CITY makes the following representations:

- a. CITY is a duly created public instrumentality and has lawful power and authority to enter into this Agreement and to carry out its obligations hereunder.
- b. By proper action of its duly elected or appointed governing body and/or of its executive officer, CITY has lawfully authorized the execution and delivery of this Agreement to KDOT.

**ARTICLE III  
OBLIGATIONS OF KDOT AND CITY**

**Section 3.1. Obligations and Requirements of CITY.**

- a. CITY agrees to maintain and repair shared fiber optic infrastructure located on CITY right of way and installed as part of a CITY project. City will be responsible for One-Call locates of all shared conduit and fiber repair on CITY right of way.
- b. CITY agrees to grant KDOT maintenance access to any shared cabinets on CITY right of way installed as part of a CITY project.
- c. CITY agrees to operate and maintain the shared fiber Infrastructure located in CITY right of way in good working order.

**Section 3.2. Obligations and Requirements of KDOT.**

- a. KDOT agrees to maintain and repair shared fiber optic infrastructure located on KDOT right of way and installed as part of a KDOT project. KDOT will be responsible for One-Call locates of all shared conduit and fiber on KDOT right of way.
- b. KDOT agrees to grant CITY maintenance access for any shared cabinets on KDOT right of way installed as part of the KDOT project.
- c. KDOT agrees to operate and maintain the shared fiber Infrastructure located in KDOT right of way in good working order.

**Section 3.3. Mutual obligations and requirements of CITY and KDOT.**

- a. If any portion or segment of shared Fiber Optic Infrastructure on CITY right of way must be relocated, CITY shall give KDOT notice of any such relocation prior to such relocation. The expenses incurred with the relocation of shared Fiber Optic Infrastructure on CITY right of way shall be borne solely by CITY. If any portion or segment of shared Fiber Optic Infrastructure on KDOT right of way must be relocated, KDOT shall give CITY notice of any such relocation prior to such relocation. The expenses incurred with the relocation of shared Fiber Optic Infrastructure on KDOT right of way shall be borne solely by KDOT.
- b. CITY and KDOT agree both parties may utilize the shared Fiber Optic Infrastructure for any legitimate, governmental purpose and in compliance with all government codes, ordinances, laws, rules, regulations and restrictions. Fiber access and counts will be determined on a project basis and will reflect a balance of equity in negotiating access and counts.

- c. This sharing agreement provides the foundation document for all individual fiber projects between the CITY and KDOT. All project agreements will refer back to this document.
- d. Severability. Should any section of this MOU be found to be invalid or unenforceable, such section (or part thereof) shall be deemed severed from this MOU and the other sections hereof shall remain in full force and effect as if this MOU had been executed without the offending section appearing.
- e. All notices required or permitted hereunder will be in writing and will be deemed duly given on the date received if sent by personal delivery or by an overnight courier delivery service of general commercial use and acceptance (such as Airborne Express, Federal Express or UPS), addressed to the Parties as follows unless notification of change of address is given in writing:

*For City of Wichita:*

Name: Michael Mayta

Title: CIO

Address: 455 North Main, MS 1-04  
Wichita, KS 67202

with a copy to,  
Legal Department  
455 North main  
Wichita, KS 67202

*For Kansas Department of Transportation:*

Name:

Title:

Address:

## **ARTICLE IV TERM OF AGREEMENT**

### **Section 4.1. Term.**

- a. The term of this Agreement shall be for the useful life of the shared fiber infrastructure.
- b. CITY reserves the right to terminate this Agreement for any of the following reasons:
  - (1) If CITY terminates its use of its shared Fiber Optic Infrastructure located on its right of way.
- c. KDOT reserves the right to terminate this Agreement if:
  - (1) If KDOT terminates its use of its shared Fiber Optic Infrastructure located on its right of way.

**ARTICLE VI  
MISCELLANEOUS PROVISIONS**

**Section 6.1. Subletting and Assignment.** Neither party shall assign, transfer, or sublet any rights or privileges under this Agreement to any person or other entity of any nature without the prior, written consent of the other party.

**Section 6.2. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon KDOT and CITY and their respective successors and permitted assigns.

**Section 6.3. Severability.** In the event any provision of this Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect any other provision hereof.

**Section 6.4. Amendments, Supplements, and Modifications.** This Agreement may be amended, supplemented, or modified with the prior written consent of the Parties.

**Section 6.5. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 6.6. Governing Law and Regulations.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

**Section 6.7. Consents and Approvals.** Whenever the written consent or approval of KDOT shall be required under the provisions of this Agreement, such consent or approval may only be given by the Secretary, or his or her designee, in writing.

**IN WITNESS WHEREOF,** KDOT and CITY have caused this Agreement to be executed, sealed, and delivered, effective as of the Effective Date set forth above.

**KANSAS DEPARTMENT OF TRANSPORTATION  
"KDOT"**

By: \_\_\_\_\_ (date)  
Catherine Patrick, P.E.,  
State Transportation Engineer

**CITY OF WICHITA  
"CITY"**

By: \_\_\_\_\_ (date)  
Jeff Longwell  
Mayor, City of Wichita, Kansas

ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF SHAWNEE    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, x x x ,  
by Catherine Patrick, P.E., State Transportation Engineer, Kansas Department of Transportation, a duly  
recognized and existing agency of the State of Kansas under the constitution and laws of the state of  
Kansas.

(Seal)

\_\_\_\_\_  
Notary Public

My commission Expires: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, xxxx, by  
xx, a duly recognized and existing agency of the State of Kansas under  
the constitution and laws of the state of Kansas.

(Seal)

\_\_\_\_\_  
Notary Public

My commission Expires: \_\_\_\_\_

