

VIDEO SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") dated _____, 2006 (the "Effective Date"), is made by and between **Southwestern Bell Telephone, L.P.**, a Texas limited partnership doing business in Missouri as **AT&T Missouri** ("AT&T Missouri"), and the **City of Overland, Missouri**, a municipal corporation (the "City"). AT&T Missouri and the City shall sometimes be referred to individually as a "Party," and collectively as the "Parties."

RECITALS

A. AT&T Missouri is an existing provider of telecommunications services and intends to provide IP-Enabled Video Services and programming to the City's residents within the AT&T Missouri service area over its network facilities.

B. The City is a party to a Cable Television Service Franchise Agreement with an incumbent cable television provider ("Incumbent"), and seeks to authorize application by AT&T Missouri to provide new services in the City to promote competition within the City in video services for the benefit of the citizens of the City who will be consumers of video services. AT&T Missouri seeks to obtain this Agreement from the City relating to AT&T Missouri providing IP-Enabled Video Services within the City.

C. The Parties, without agreeing whether the system or services that AT&T Missouri will use in the City to provide IP-Enabled Video Services ("video") are subject to Title VI of the Communications Act of 1934, as amended ("Title VI") or other laws, have entered into this Agreement, which the Parties, in good faith, intend to be binding as a matter of contract between them.

D. While not agreeing whether the IP-Enabled Video Services to be offered by AT&T Missouri constitute "cable television service," the Parties agree that this Agreement sets forth terms that are, while different in some respects, not less burdensome nor more favorable than those under which Incumbent currently operates within the City.

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms, and conditions contained herein, the City and AT&T Missouri agree as follows.

1. Term. The term of this Agreement shall be three (3) years from the Effective Date of this Agreement. The term may be extended upon mutual agreement of the Parties.

2. Compensation to City. During the term of this Agreement and any mutually agreed upon extensions thereof, AT&T Missouri shall remit to the City five percent (5%) of the gross revenues from AT&T Missouri's IP-Enabled Video Services product delivered over the IP-enabled communications network in the City's rights-of-way (*i.e.*, recurring monthly charges; installation charges; rental of television set-top boxes or other IP Video equipment; and per-program and per-channel charges). Gross revenues include a pro rata portion of all revenue derived by AT&T Missouri pursuant to compensation arrangements for advertising, including but not limited to the Home Shopping Network advertising fees, derived from the provision of

IP-Enabled Video Services, such advertising revenues to be pro-rated on the basis of the number of subscribers in the City as compared to the total number of subscribers to video services provided by AT&T Missouri's IP-Enabled Video Services receiving such advertising. The fee does not apply to: (1) discounts, refunds, and other price adjustments that reduce the amount of compensation received by AT&T Missouri, provided that the purchase or receipt of any other goods or services is not a condition for obtaining the discount, refund, or price adjustment; (2) un-collectibles; (3) late payment fees; (4) amounts billed to IP-Enabled Video Services subscribers to recover taxes, fees, or surcharges imposed on AT&T Missouri in connection with the provision of IP-Enabled Video Services. Where AT&T Missouri offers IP Video Services as a bundled, packaged, or aggregated offering with any service other than IP-Enabled Video Service, and the price for the bundle or package is less than the combined price if each service were purchased separately, then the fee shall only apply to the proportion of the price fairly attributable to the IP-Enabled Video Service, as certified by AT&T using reasonable accounting methods.

The fee may be passed through to subscribers and identified on subscriber bills by AT&T Missouri. Fees required to be remitted to the City hereunder, together with AT&T Missouri's quarterly gross revenues report, shall be forwarded to the City within forty-five (45) days after the last day of each calendar quarter. The percentage to be applied against gross revenues referenced above may in no event exceed the lesser of: (1) five percent (5%), or (2) the percentage levied as a gross receipts franchise fee on any cable operator providing video services within the City's municipal borders. If the cable operator's fee is less than 5%, City shall inform AT&T Missouri of the applicable percentage. Late payments shall accrue interest due to the City at a rate of one and one-half percent (1.5%) per month, or such lesser rate as AT&T Missouri establishes and certifies to the City that it has charged to its customers within the City for late payments on IP-Enabled Video Services during the previous 12-month period.

3. Service Area. AT&T Missouri states that its "Service Area" in the City for IP-Enabled Video Services authorized and subject to this Agreement shall be the area within the City where AT&T Missouri offers wire line broadband Internet access service. AT&T Missouri agrees to provide access to its video services to those residential customers within its Service Area within one year and may satisfy this obligation by offering video programming, as defined in 47 U.S.C. Section 522(20); provided that such video service may include alternate service, which shall minimally include satellite television, digital video recording capability, movies on demand, and wire line broadband Internet access service.

4. Public, Educational and Governmental Programming. Within one hundred eighty (180) days after AT&T Missouri begins to offer IP-Enabled Video Services in the City, AT&T Missouri will, if requested by City:

a. provide capacity for and carry existing educational channels being carried by Incumbent; and

b. provide Educational and Governmental Transmission access for the City's noncommercial, public, educational and governmental ("PEG") programming to its IP-Enabled Video Service subscribers. The City may be required to support a change in or addition to current City technology now in use for PEG programming to make it

compatible with AT&T Missouri's IP-enabled video technology. City will obtain at its cost facilities necessary to connect its existing noncommercial system currently in operation and transmitted by Incumbent to AT&T Missouri. City shall be responsible to ensure that all transmissions, retransmission, content, or programming that may be requested to be transmitted over a channel or facility are provided to AT&T Missouri in a manner or form that is capable of being accepted and transmitted without requirement for additional alteration or change in the format or content by AT&T Missouri; and

c. To the extent the existing franchise agreement with Incumbent requires such Incumbent to remit a per subscriber fee to City in connection with equipment and programming related to Public, Educational or Governmental channels, facilities or broadcasting, AT&T Missouri shall pay a per subscriber fee at the same rate. Such per subscriber fee shall be paid within forty-five (45) days of the close of each calendar quarter.

d. Further, if any franchised cable operator pays or paid cash fees to City related to PEG programming costs, AT&T Missouri will make comparable payment to the City in an amount determined by dividing the cable operator's total payments by the number of its subscribers within the City and multiplying by the number of subscribers to AT&T Missouri's IP-enabled video service within the City. The calculation of the amount due from AT&T Missouri shall be made as of January 1 of each year beginning on January 1, 2008, using the cable operator's total payments due for the preceding year and the best available information regarding the number of each company's subscribers as of the calculation date, with 1/3 of the payment being due on by the March 1 following each year of this Agreement. City understands that the foregoing fee may be identified as a "PEG fee" and passed through on subscriber bills by AT&T Missouri.

e. If City makes a request in writing to AT&T Missouri, AT&T Missouri shall "advance" to City, as a credit against any PEG fees or costs required in subparagraph c. or d. herein, the funds necessary for the City to comply with the requirements in subparagraph b. herein. As PEG fees owed by AT&T Missouri to City under subparagraph c. or d. herein become due, AT&T Missouri shall be entitled to offset any amounts previously advanced to City for PEG. If, after the end of the three-year term, the parties agree to execute another video services agreement for a term beyond the initial three years, and if the AT&T is still entitled to any remaining PEG credits at that time, AT&T Missouri may include a provision to offset the remaining credits from future PEG fees due the City in any future agreement, unless otherwise provided in such agreement. If the parties do not execute a new agreement at the conclusion of the three year term, then the City shall not owe any such PEG debt.

5. Emergency Alert Message. After AT&T Missouri begins providing IP-Enabled Video Services, it will retransmit concurrent emergency alert messages on any local broadcaster channel provided in conjunction with AT&T Missouri's IP Enabled Video Service. Not later than 12/31/2007, AT&T Missouri shall immediately display emergency alert messages from the emergency alert system on all of its channels, unless the City extends this deadline by written extension based satisfactory evidence to the City that technological difficulties preclude

compliance by 12/31/2007. In addition, AT&T Missouri shall comply at a minimum with all FCC rules for emergency alerts applicable to cable television rules.

6. Customer Service. AT&T Missouri will provide customer service in compliance with the Customer Service Standards found in 47 CFR 76.309(c).

7. Use of Public Rights-of-Way. The Parties agree that AT&T Missouri's use of the public rights-of-way for its IP-Enabled Video Services, including construction and maintenance activities, will be carried out in accordance with Sections 67.1830 to 67.1846 of the Revised Statutes of Missouri, and the City's ordinances relating to rights-of-way management and use, provided that the ordinances do not conflict with state or federal law. The placement and location of new or expanded facilities to provide IP-Enabled Video Services shall be subject to reasonable review and approval by the City, not to be unreasonably delayed or withheld to ensure, subject to applicable law, that public safety concerns or other detriment to the public are reasonably minimized. AT&T Missouri shall make reasonable efforts to contact the nearby property owner(s) to communicate what work will be done and when.

AT&T Missouri agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition, in accordance with Code and/or City standards, any street or any public structure involved in the construction, operation, maintenance, repair, upgrade or removal of the IP Video Facilities that may become disturbed or damaged as a result of any work thereon by or on behalf of AT&T Missouri. If the size of the IP Video utility cabinet/structure placement footprint exceeds two (2) square feet, AT&T Missouri shall, upon the City's request, provide landscaping to screen the placement from public view consistent with the location chosen. AT&T Missouri shall abide by the terms of City ordinances, including but not limited to zoning regulations and the placement/screening of utility cabinets or structures on private easements or property, except to the extent such ordinances conflict with state or federal law.

8. Effect of Agreement; Issues Reserved. AT&T Missouri and City agree that this Agreement is an enforceable binding contract during its term that is not inconsistent with any applicable law and the Parties hereto agree that neither shall assert any claim to the contrary. City and AT&T Missouri agree that during the term of this Agreement, and notwithstanding any change of law that may occur, this Agreement sets forth the payments that shall be paid to the City relating to providing the IP-Enabled Video Services and that no additional or different franchise fee or gross receipts tax of the City shall apply to such services. Nothing herein shall exempt AT&T Missouri from applicable property taxes, sales taxes, or other obligations not addressed herein. Further, nothing herein shall be deemed to be an agreement or acknowledgement of any Party of the applicability of any cable television service requirement or cable television franchise requirement of the City not otherwise expressly included in this Agreement, nor shall it be an acknowledgement or agreement that any such requirements not provided herein do not apply to AT&T Missouri. To the extent a requirement or provision is not expressly addressed herein, the City and AT&T Missouri reserve and do not waive any claim either may have as to the applicability or not of such ordinance or provision, provided that both parties agree to provide reasonable notice. The City and AT&T Missouri agree that to the extent that IP-Enabled Video Services are determined by a court of competent jurisdiction to which the

parties are subject to be within the scope of the term "Cable Service" pursuant to Title VI, or otherwise within the scope of services subject to the franchise authority of the City, this Agreement shall be deemed to constitute such franchise for all relevant purposes. To the extent a court of competent jurisdiction to which the City is subject determines by final non-appealable judgment any issue herein reserved by the Parties, the Parties may thereafter rely on such judgment as to the applicability of any issues reserved by the Parties, but in no event shall AT&T Missouri claim an entitlement to return or credit to any payment made pursuant to this Agreement.

9. Nondiscrimination in Access to Service. AT&T Missouri will not deny access to its IP-Enabled Video Services within the municipal boundaries of the City because of the income or minority status of the residents within the municipal boundaries of the City.

10. Indemnification.

(a) AT&T Missouri agrees to indemnify, defend, and hold harmless the City, its officers, agents, and employees, from and against any liability for damages and for any liability or claims, resulting from acts or omissions proximately caused by AT&T Missouri's construction, operation, or maintenance of its IP Network, provided that the City shall give AT&T Missouri written notice of its obligation to indemnify the City within ten (10) days of receipt of the filing of a claim or action pursuant to this subsection. Further, AT&T Missouri agrees to indemnify the City, its officers, agents, and employees, in the event that Incumbent or other parties should bring legal action to contest the legality or terms of this Agreement or allege that this Agreement constitutes a violation, breach or claim under any agreement or franchise between the City and the Incumbent, including but not limited to lawsuits by an incumbent pursuant to 47 U.S.C. §545, following a final decision by the City on the issue of modification, if required.

(b) With respect to AT&T Missouri's indemnity obligations set forth above, AT&T Missouri shall provide the defense of any claims brought against the City by selecting counsel of AT&T Missouri's choice to defend the claim, subject to the consent of the City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the City from cooperating with AT&T Missouri and participating in the defense of any litigation by its own counsel at its own cost and expense, provided, however, that after consultation with the City, AT&T Missouri shall have the right to defend, settle or compromise any claim or action arising hereunder, and AT&T Missouri shall have the authority to decide the appropriateness and the amount of any such settlement, subject to consent of the City if the City is to be bound by such settlement. In the event that the terms of any such settlement includes the release of the City and the City does not consent to the terms of such settlement or compromise, AT&T Missouri shall not settle the claim or action, but its obligation to indemnify the City shall in such event not exceed the amount of such settlement.

(c) In determining the extent of indemnification required herein, the parties agree that the City shall be responsible for its portion of liability due from its own acts of negligence or willful misconduct to which the City is legally responsible, subject to any and all defenses and limitations of liability provided by law.

(d) Nothing herein shall be deemed a waiver of the City's Sovereign Immunity or authorize or give rise to any claim of damages against the City by any party.

(e) Notwithstanding any ordinance requirement to the contrary, this Agreement shall satisfy completion of any application requirement that may be deemed to apply and the City shall accept and AT&T Missouri shall pay to the City concurrent with execution and delivery of this Agreement a fee of \$1,500.00 as reimbursement to the City of its costs relating to negotiation and adoption of this Agreement.

11. Breach of Agreement. Should either Party claim that a breach of any part of this Agreement has occurred, that Party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other Party shall cure such breach within sixty (60) days.

12. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties and use of a mediator when such discussions have failed.

13. Notices. Any notice to be given under this Agreement shall be in writing and may be delivered either personally, by e-mail, facsimile, or certified or registered mail, with postage prepaid and return receipt requested, addressed as follows:

If to the City:	City of Overland 9119 Lackland Rd. Overland, MO 63114 Attn: City Manager
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If to AT&T Missouri:	General Counsel (MO) One AT&T Center, 35 th Floor St. Louis, MO 63101 314.2354300 Attn: _____
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14. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

15. Assignment. The City understands that AT&T Missouri may decide to have all or part of the IP-Enabled Video Services provided by an affiliate of AT&T Missouri. AT&T Missouri may freely assign or transfer all or part of this Agreement or any interest therein, to any affiliate of AT&T Missouri with prior written notice to the City. No permission from the City shall be required for such assignment or transfer. In the event any of the services set forth above are provided by any affiliate of AT&T Missouri, that affiliate shall be a party to this Agreement and, with respect to the rights and obligations so assigned or transferred, shall be entitled to the

same rights as AT&T Missouri. Any other assignment or transfer shall require City consent, not to be unreasonably withheld.

16. Entire Agreement. This Agreement, together with the Recitals, constitutes the entire agreement between the City and AT&T Missouri with respect to the IP-Enabled Video Services that are the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between the City and AT&T Missouri regarding the subject matter hereof. The Parties agree that no oral representations have been made to induce them into signing this Agreement. The Parties agree that the Parties to this Agreement have equal bargaining power, are represented by counsel, and have had a full and fair opportunity to review all of the provisions set forth herein.

17. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. In addition, by signing this Agreement, AT&T Missouri is not conceding in any way that an agreement with the City is a legal prerequisite to the IP Network upgrade or the provision of the IP-Enabled Video Services, and City is not conceding in any way a waiver or non-applicability of any other legal requirements of federal, state or local law that may not be specified in this Agreement.

18. Miscellaneous.

(a) The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit, or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

(b) AT&T Missouri and the City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

(c) Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits, or remedies upon, or creating any obligations of, the Parties hereto toward any person or entity not a Party to this Agreement, unless otherwise expressly set forth herein.

19. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties hereto and their respective past and present principals, managers, City Council members, mayors, representatives, officers, directors, shareholders, agents, employees, attorneys, successors and assigns, and any parent, subsidiary or affiliated corporations or entities, as applicable.

20. Choice of Law. This Agreement shall be construed according to the laws of the State of Missouri, exclusive of its choice-of-law provisions, and may be enforced in any court of competent jurisdiction.

21. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement as of the Effective Date set forth above.

**SOUTHWESTERN BELL TELEPHONE, L.P.
d/b/a AT&T MISSOURI**

By: _____

Name: _____

Title: _____

CITY OF OVERLAND, MISSOURI

Dated: _____, 2006

By: _____

Name: _____

Title: _____

This Agreement was approved by the City pursuant to Ordinance No. _____ dated _____, 2006, a copy of which Ordinance is attached hereto and incorporated herein by this reference.