

**Kansas Department of Transportation
Fiber Optic Infrastructure System
Contract**

**Between
The
Kansas Department of Transportation
and
Digital Teleport, Inc.**

**For the
Kansas City Metropolitan Area**

CONTRACT

This contract, entered into this 12 day of July, 1998, by and between the Secretary of Transportation of the State of Kansas, hereinafter referred to as "Secretary" and Digital Teleport, Inc., hereinafter referred to as "DTI", pursuant to the Solicitation for Fiber Optic Infrastructure System, Project Number 106 K-6454-01.

It is the Secretary's desire to contract with a firm to provide a Fiber Optic Infrastructure System (equipment and service) and a Passive Network (empty conduit or innerduct and handholes) for meeting current and future Intelligent Transportation System (ITS) and communication needs. DTI desires to use KDOT's right-of-way (approximately 147 miles) in the Kansas City Metro Area (KCMA) to install and operate DTI's communication network.

It is in the Secretary's and State of Kansas' best interests to award a contract to DTI for a Fiber Optic Infrastructure System and a Passive Network in exchange for DTI's limited use of KDOT's right-of-way.

The parties agree as follows:

ARTICLES OF THE CONTRACT
ARTICLE I DEFINITIONS:

The following terms are defined as:

1. The "Secretary" is the Secretary of Transportation, or his designee, for the State of Kansas Department of Transportation, KDOT. He is empowered with powers and duties pursuant to K.S.A. 68-404 et. seq. to execute this contract with DTI.
2. The "DTI" is Digital Teleport, Inc., a corporation legally authorized to do business in the State of Kansas. For purposes of applying the Standard Specifications, the term "Contractor" means DTI.
3. The term "Parties" refers to the Secretary and DTI.
4. The term "Person" means any natural person, association, corporation or partnership.
5. The term "building" (Or "facility") means any structure needed to house and support any element of the Fiber Optic Infrastructure System and Passive Network.

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6. The term "completion" means the Secretary's acceptance of all installation work to be performed under this contract for both the Fiber Optic Infrastructure System and the Passive Network, including testing and training.
7. The term "service" means any act necessary to maintain a continuously operating fiber optic infrastructure and to repair the Passive Network for 30 years in the KCMA.
8. The term "Contract Documents" is as defined in Article V, Item 1.
9. The term "Fiber Optic Infrastructure System" means the infrastructure of the supporting equipment, optical fiber, conduit, pull boxes, handholes and other items necessary to interconnect and create a functioning ITS network that provides a system of organized assembly of equipment, personnel, procedures and other facilities designed to perform a specific function.
10. The term "Passive Network" means a system of empty conduit or innerduct and handholes for KDOT's use that are installed in conjunction with the Fiber Optic Infrastructure System, including pull ropes, duct caps, warning tape, labor and other items required to build the network according to KDOT's requirements.
11. The term "Kansas City Metro Area" means the map in Figure 1 for the Kansas City Metro Area for the Strategic Deployment Plan for the ITS Early Deployment Study in the Kansas City Metropolitan Bi-State Area.
12. The term "Standard Specifications" shall mean the 1990 edition (English and metric) of the KDOT Standard Specifications for State Road and Bridge Construction and subsequent revisions and editions.
13. The term "HUP" shall mean collectively the following permits and associated policies: The Highway Permit Agreement Use of Right of Way, D.O.T. Form No. 304; the Highway Permit Agreement Attachments to Bridges and Other Structures, D.O.T. Form No. 310; KDOT Utility Accommodation Policy 1994; Highway Permit for Highway Access, D.O.T. Form No. 309; Kansas Department of Transportation Corridor Management Policy 1997; and any subsequent revisions and editions to the permits and policies described.

All of the remaining terms are defined in the Solicitation for Fiber Optic Infrastructure System, Section 1.5 Definitions.

ARTICLE II GENERAL PROVISIONS:

The parties mutually agree that the specific requirements of this contract are:

1. Contract Scope.
 - a. DTI shall install a Fiber Optic Infrastructure System that supports ITS implementation and operation in the KCMA area, including Phase I and future phases.
 - b. DTI shall install, at its expense, a Passive Network for KDOT. Upon KDOT's acceptance of the Project, the Passive Network becomes KDOT's sole property. DTI shall provide to KDOT a location map of the Passive Network along with a written letter stating the transfer of the Passive Network ownership to KDOT within 30 days of KDOT's acceptance of the Project.
 - c. DTI shall provide to KDOT at no cost services for 30 years as outlined in Article III, Section 5. Service Requirements and Section 7. Service Level Agreement.

2. Kansas City Metro Area. This Project shall require the interface and interconnection of the fiber optic infrastructure with the planned Traffic Operations Center (TOC) of KCMA. The interface of electronic and optical signals between the Fiber Optic Infrastructure System deployed under this contract in the KCMA area and the fiber optic system deployed in Missouri, shall be transparent to KDOT. In addition, the signals and services rerouted from KDOT systems over the Fiber Optic Infrastructure System shall be delivered to and received from the TOC site in Missouri on fiber under the same transport protocols and standards as the signal was originally input into the Fiber Optic Infrastructure System.

3. Highway Use Permit Required. As a condition subsequent to the contract, the parties must agree on the terms and conditions of the Highway Use Permit (HUP). The HUP must specify the location(s) on the right of way of all required facilities, any limitations or conditions regarding the term or placement of facilities, and any matter regarding or relating to reinstallation or removal of facilities from the right of way. The term facilities as used in this section for Highway Use Permit shall include the fiber optics for this Project, the infrastructure, the network, and the passive network which are defined in Section 1.5 of the Solicitation for Fiber Optic Infrastructure System.

All terms and conditions of the HUP may be subject to negotiation following a required field check. KDOT has the option to have location established by survey. If a survey is required, it will be done at KDOT's expense.

4. Interface with KDOT. DTI, including the project manager, deputy project manager, and other key personnel and subcontractors, shall be responsible for maintaining a regular and complete dialogue with KDOT's project manager or project management team, including regular updates and briefings on Project status. Meetings shall be held at KDOT's Project Management office in the Metro Engineer's office at I-35 and Lamar in Kansas City, Kansas unless otherwise directed or approved by KDOT's project manager or his/her deputy or authorized representative.

Briefings shall include status of work, including engineering, permits, construction, testing and proofing and activation of facilities and system. This shall include schedule and progress updates, identification of delays, deficiencies and remedies and action taken to correct same, all in writing and/or electronic format.

All questions related to the construction of the Project shall be directed to the KDOT's Project Management office in the Metro Engineer's office in Kansas City, Kansas.

5. The Standard Specifications. The Standard Specifications shall apply only as specifically indicated in the contract documents.

ARTICLE III DTI'S RESPONSIBILITIES:

1. General Responsibilities. DTI shall supply its own equipment, materials, supplies, administrative support, property, and all other items necessary to perform its obligations under the contract.
2. Costs. DTI will pay 100 percent of the construction, operation and maintenance costs of the Fiber Optic Infrastructure System. DTI will install the Passive Network at no cost to KDOT, except for Labor Costs delineated in Article V. 37 Labor Cost. DTI will pay 100 percent of the cost for the Article III.5 Service Requirements and the Article III.7 Service Level Agreement for thirty years.
3. Construction Permits. As required by the Standard Specifications, Section 107.02, DTI shall procure all permits and licenses necessary to accomplish the Project. Section 107.02 applies to work involving construction of new or modification of existing structures. To obtain permission to work on KDOT's right-of-way, DTI shall apply for a HUP. DTI shall apply for a Highway Use Permit. DTI agrees and acknowledges that the HUP governs the terms of DTI's fiber optic infrastructure being on KDOT's right-of-way. If the permit is not approved, the Agreement is null and void. Upon

receiving the HUP, DTI shall complete all the installation of the Fiber Optic Infrastructure System along with the Passive Network, and administer this Project to ensure Project completion consistent with the Contract Documents. Except for the service, the Project will be considered complete after DTI completes all required construction and installation tasks and the Secretary accepts the Project.

DTI shall apply for all other permits (including but not limited to electrical, structural, mechanical, fire suppression, civil work, and site preparation) with the entity authorized to grant the permit. DTI also shall take any action and pay any fees, charges, and taxes necessary to obtain and sustain the permits. Finally, DTI's operations are subject to any review and inspections necessary to obtain and sustain the permits.

3. Insurance Requirements. DTI shall provide the insurance required by the Standard Specifications, Section 107.14 rather than the insurance required by the HUP.
- ~~4. Contract Bond. DTI shall provide a contract bond in the penal sum of \$13,500,000 and furnish the contract bond with the application for the HUP. The contract bond shall be executed on D.O.T. Form 283 with a surety authorized to do business in Kansas by the Kansas Commissioner of Insurance and approved by the Secretary. The contract bond shall be conditioned upon the faithful performance of the contract requirements for the Passive Network and the payment of all indebtedness incurred for all labor, materials, and supplies furnished for the Passive Network. The contract bond must be kept in full force for the period required by law. For purposes of K.S.A. Section 68-410, the completion date of the contract has the same meaning as the term "completion" in Article I of this contract. In the event the surety or bonding company fails or becomes financially insolvent, DTI shall file a new and sufficient bond in the amount the Secretary designates. DTI shall file this new bond within five days of such failure or insolvency.~~
5. Construction and Installation Requirements. Construction of the Fiber Optic Infrastructure System and Passive Network within KDOT's right-of-way shall be in accordance with the standards set forth in the Solicitation for Fiber Optic Infrastructure System. KDOT's Utility Accommodation Policy defines the general policy and requirements for the installation of the fiber optic infrastructure and Passive Network. Exceptions and some specific requirements are as stated herein.
 - a. DTI shall be allowed to install fiber optic cables, conduit, and construct a trench along the right-of-way and parallel to the centerline, as well as to

install crossings of the right-of-way in the manner allowed and approved by KDOT. DTI shall make arrangements to provide or have installed electrical power and connection to communication services or providers off the KDOT right-of-way. Points of access to the right-of-way shall be at established locations, including interchanges, on and off ramps, rest or service areas, or other locations approved by KDOT in writing.

- b. Attachment to bridges and other structures shall comply with the Highway Permit Agreement Attachments to Bridges and Other Structures, D.O.T. Form No. 310.
 - c. The passive network required by KDOT shall consist of three 1-inch PVC or HDPE innerducts with pull ropes and duct plugs installed. Conduit or innerduct shall be installed in trench or using a chute plow, and the KDOT conduit/innerduct may be installed in the same trench or plow line as the conduit or innerduct installed by DTI for the fiber optic system. Handholes shall be fiberglass or concrete, at least two feet wide by three feet long by two feet deep, bedded in at least six inches of gravel to allow for water to drain off. Handholes shall be flush with the ground but not to exceed 1 inch. Handholes shall be rated for AASHTO H-20 loading, both the body and the lid, and shall have the words "KDOT COMM" permanently inscribed on the lid.
 - d. DTI shall not construct structures such as buildings within the right-of-way unless specifically allowed by KDOT through an approved HUP. DTI shall acquire through purchase or lease real property to meet these ends. In the event DTI leases property that will house or support equipment critical to the operation of services provided to KDOT under this Project, the leases shall be of sufficient life span to ensure continuous operation of KDOT's services for the life of this contract. Any facility housing or supporting equipment critical to the operation of services provided to KDOT under this Project shall be secured to prevent unauthorized access.
- Barring warning markers, any installation that is above grade (extending two inches above the surface), including, but not limited to, cabinets, buildings, utility poles, and other items proposed by DTI shall be reviewed and approved by KDOT prior to installation.
- e. DTI shall install a 4 inch wide (minimum) colored plastic warning tape at least 12 inches above ducts or direct buried fiber installed under this Project. The tape shall be marked with the words "CAUTION - FIBER OPTIC CABLE". DTI shall install colored markers along the cable or conduit path, no further than 2 feet off the centerline of the path, on 1000 foot centers; however, in instances where visibility is limited due to

brush, curves, rising or falling terrain or other factors, the markers shall be installed at closer intervals. These markers may be located at an offset to the ducts or direct buried fiber at the ROW line at the direction of the KDOT. At minimum, the two adjacent markers shall be visible from any given marker. Markers shall be 3 feet tall, flexible and frangible, with information defining the installation it marks.

- f. The fiber optic and passive network trench or plow line, where parallel to the right-of-way centerline, shall be located in accordance with the KDOT Utility Accommodation Policy with adjustments to accommodate existing structures and utilities. DTI shall be required to identify and locate structures and utilities, and bring any and all conflicts to the attention of KDOT, along with proposed adjustments for trench route centerline. KDOT will review the proposed routes and advise DTI on any required changes. The Passive Network shall be installed in the same trench or plow line as the conduit or innerduct installed by DTI for the Fiber Optic Infrastructure System.

6. Service Requirements. DTI shall conform to the Standard Specifications and requirements stated herein as well as the standard practices of the telecommunications and fiber optics industry.

Construction of the Fiber Optic Infrastructure System and Passive Network within KDOT's Right-of-Way shall be in accordance with KDOT's Standard Specifications and KDOT's Utility Accommodation Policy, which define the general policy and requirements for the installation of the fiber optic infrastructure. Exceptions or specific requirements are as stated herein.

- a. DTI shall provide a SONET-based transport system using singlemode fiber optic cable as the interconnecting media between active electronic devices in the DTI system. SONET equipment shall meet all current communication industry standards for SONET systems; DTI shall provide shop drawings and equipment descriptions of the SONET equipment to KDOT to allow KDOT to coordinate ITS equipment with the transport system; DTI will verify in writing that the equipment meets standards and specifications.
- b. Upon KDOT's receipt of written notice from DTI that the Fiber Optic Infrastructure System is ready for testing and acceptance, KDOT shall perform, at its cost, such testing of the portions of the Fiber Optic Infrastructure System used by KDOT hereunder as it may reasonably deem necessary, with the assistance and cooperation of DTI. This shall include verification of the correct operations of information transmittal and receipt at ITS locations, and confirmation of the proper operation of the bi-directional transmission capability of the network. KDOT shall

begin testing after notification is received from DTI of the system being ready, and in conjunction with the ITS installation and activation plan.

KDOT shall have the right to delay testing of the ITS channels and interconnection; however, such a delay shall not prevent DTI from activating the network for DTI or DTI's customer use, nor shall it be taken as a waiver of KDOT's right to test the system for proper operation for ITS equipment. Within 15 calendar days of the completion of KDOT testing, KDOT shall notify DTI of acceptance of the system OR of any deficiencies in the system.

- c. KDOT shall be provided bandwidth capacity up to an aggregate OC-12 level with growth to OC-48 across the KCMA system at Nodes along the Fiber Optic Infrastructure System as set forth on Appendix A-Service Points, as per the bandwidth level in Table 1, Article III, Section 5.g. When requested by KDOT to meet it's ITS needs, DTI will initiate service through the Fiber Optic Infrastructure System at Nodes. Adjoining Service Points and Nodes for which KDOT has requested service shall be physically interconnected with the Passive Network. At all Nodes, the Fiber Optic Infrastructure System shall have the capability of providing electronic interconnection points through which KDOT can interconnect its fiber optic cable running through the Passive Network.
- d. The ITS design is expected to be implemented over a multi-year schedule. KDOT shall work with DTI to identify likely future highway construction to avoid the need to relocate the Passive Network or Fiber Optic Infrastructure System due to such construction.
- e. The locations for Nodes and Service Points are shown in Appendix A. The anticipated level of service requirements for each Node location are shown in terms of bandwidth capacity in Appendix A. This level of bandwidth at the Nodes on the Fiber Optic Infrastructure System must be available to KDOT when service is requested from time-to-time to meet KDOT ITS needs, provided, however, that the aggregate bandwidth on the Fiber Optic Infrastructure System used by KDOT shall not exceed an OC-12 level initially, or OC-48 within the terms allowed for growth of service.
- f. DTI will propose a method by which equipment and/or fiber can be modified and/or added to support future ITS equipment with Service Points near these Nodes, provided, however, that KDOT shall pay to DTI the cost of all such modifications or extensions.
- g. KDOT shall have the right to insert data and signals into the Fiber Optic Infrastructure System at Nodes for which service has been requested,

provided, however, that the aggregate bandwidth on the Fiber Optic Infrastructure System used by KDOT shall not exceed an OC-12 level initially, or OC-48 within the terms allowed for growth of service. KDOT shall have the right to request increases in the overall bandwidth up to OC-48, in DS-3 increments at the rate as defined in Table 1. If KDOT requires additional bandwidth capacity beyond an OC-48 level or in excess of the growth allowed for by this agreement, DTI shall be allowed to charge KDOT a reasonable fee for such services, not exceeding the prices for service extended to other clients of DTI using the same system.

If KDOT requests additional bandwidth ahead of the scheduled growth, but within the OC-48 bandwidth, and DTI provides this for a fee from KDOT, the fees shall apply only until such time as the additional bandwidth would be available for KDOT's use. At that time, the fees shall cease. Growth shall be available to KDOT as shown in the following schedule:

Table 1

Bandwidth Level in KCMA Area	Available Date (Years after Acceptance of Phase I)
OC-24	2
OC-36	7
OC-40	12
OC-48	17

KDOT may choose to delay growth at its sole discretion, provided it gives DTI 12 months notice of a planned delay. Any delay in growth shall not affect the scheduled availability of following growth.

- h. The initial levels of service for each construction phase are shown below, with additional growth as defined herein.

Levels of Service by Project Phases

Project Phase	Level of Service
KCMA - Phase I Facilities	OC-12
KCMA - Phase II Facilities	OC-12

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- i. Project Schedule. Phase I services for the Kansas City Metro Area shall start (construction complete) on or before January 1, 2000. Phase II services for the KCMA shall start (construction complete) twenty-four (24) months after the written Phase I Notice to Proceed from KDOT. 2. 2. 2000
- j. DTI will provide KDOT with access to and the use of the channels and bandwidth of a SONET-communication transport system. KDOT shall have the right to determine and select the means, manner and methods by which information input and extracted to the system, including but not limited to channel banks, DS-1 or higher rate channels up to a DS-3 or multiples of DS-3 channels at any given node, ATM or other. KDOT will provide DTI with direction as to channel provisioning on a node-by-node basis on or before September 1, 1999.
- k. KDOT shall have the right to connect to the Nodes using copper wire (twisted pair, coaxial, etc.) or low speed optical fiber. KDOT has made an effort to identify the required locations for each Node in Appendix A Service Points. DTI shall connect these Nodes to the Fiber Optic Infrastructure System. Nodes shall be equipped to provide service at a minimum interface level of DS-1. This interface can be provided either directly to the SONET equipment or indirectly through channel banks or multiplexers.
- l. Electronic Interface Between Contractor and KDOT. At each Node, DTI shall provide a handhole, vault or above ground cabinet at the property or Right-of-Way line for cable splicing or equipment. KDOT will extend copper (twisted pair, coaxial, etc.) or fiber optic cables from field components or facilities to these Nodes. DTI shall be responsible for connecting KDOT's cable to the Fiber Optic Infrastructure System including end connectors.
- m. DTI shall construct a Passive Network for use by KDOT for ITS and related services among KDOT facilities and installations or other applications and uses as deemed necessary by KDOT and the State of Kansas. The Passive Network will consist of three 1-inch (25.4 mm) PVC or HDPE schedule 40 innerducts, including pull ropes, duct caps, warning tape, labor and other items required to build the network in accordance with KDOT's requirements along the route set forth in Figure 1 attached hereto. The Passive Network shall be labeled "KDOT" and color-coded different from DTI's system to indicate ownership.
- n. KDOT makes no representation or warranties concerning subsurface conditions, latent physical conditions, or other geological conditions to be encountered by DTI on KDOT's Right-of-Way. Any relief for such site conditions allowed under Standard Specifications Section 104.03 or implied in any other contract provision shall not apply to this Project.

- o. Plans for installation and construction, including equipment and material specifications and shop drawings shall be made available to KDOT for review and approval by KDOT or a third party at KDOT's sole discretion. KDOT shall review DTI's plans and specifications for the construction and installation of the Passive Network and those portions of the Fiber Optic Infrastructure System Fiber Optic Infrastructure System to be used by KDOT hereunder, and shall, within thirty (30) days after receiving such plans and specifications, notify DTI in writing of any objections thereto, specifying the grounds for such objections in reasonable detail. Failure by KDOT to so notify DTI of any such objections within such period of 30 days shall be deemed to be approval by KDOT of such plans and specifications.
 - p. DTI will assist KDOT in connecting to the TOC, located in Lee Summit, MO, either with dedicated fibers and equipment, or through bandwidth capacity on the ITS fiber network already deployed in Missouri. DTI will assist KDOT in acquiring use of a portion of the six available fibers, determining installation of electronics along the route and interface at the TOC, or providing alternate means to accomplish this goal.
7. Environmental Permits. DTI shall ascertain the need for any and all air, water and other environmental pollution permits regarding the work involved in this Project and shall obtain and pay for all required permits.
8. Service Level Agreement. DTI shall guarantee the level and quality of service provided for the Fiber Optic Infrastructure System and the Passive Network.

Guarantees on service shall commence as each portion of the Fiber Optic Infrastructure System and Passive Network are activated and accepted by KDOT and shall be for a period lasting until the end of the contract. These guarantees shall include all maintenance and repair necessary to maintain a fully operational system. Repairs of the operational system shall include all parts, labor, equipment and related items. Service repairs shall commence on site within four hours of notification by KDOT of a failure, and shall be solely at DTI's expense. In the event that the system failure cannot be repaired within four hours of corrective action commencing, the failed equipment will be replaced immediately, but no latter than twenty-four (24) hours after notification of a failure.

DTI shall notify KDOT of any and all outages or failures in the system, including cable and equipment, detected by DTI within one hour of the event being detected by DTI, and shall identify all steps being undertaken by

DTI to correct the situation. DTI shall coordinate with KDOT for any corrective measures that require the operation of vehicles and personnel employed by DTI or its sub-contractors within KDOT's right-of-way.

9. Training. DTI shall conduct an orientation class for up to ten KDOT representatives on the connection, operation and maintenance procedures used by DTI. This class shall be repeated at 5-year intervals throughout the life of the contract. These classes shall cover the knowledge needed by KDOT to properly interface with the installed electronic equipment and infrastructure.
10. Documentation. DTI shall document important aspects of the Fiber Optic Infrastructure System. This documentation shall describe the system operations including, but not limited to, network diagrams, technical descriptions of physical equipment installed, and protocols transported by the system, and list troubleshooting steps or remedies that KDOT can monitor or correct. The documentation shall also identify the information needed by DTI for the changes, addition and removal of service.

ARTICLE IV - KDOT RESPONSIBILITIES

1. Inspection. All work performed within the KDOT right-of-way or within KDOT facilities, and all materials furnished for the Project shall be subject to inspection by KDOT's designated inspectors.

KDOT's inspectors shall have the authority to 1) reject unacceptable work; 2) reject defective material; and 3) suspend the work, in whole or in part, due to DTI's failure to correct conditions unsafe to workers, or the general public, carry out provisions of the contract, or carry out orders. DTI will not be entitled to contract adjustment under the Standard Specifications, Section 108.06 (Temporary Suspension of Work) for temporary suspensions caused by the conditions listed above.

KDOT's inspectors shall also have the authority to suspend the work, in whole or in part, if they identify a hazardous or unsafe condition, issue an immediate stop-work order. If this should occur, DTI and/or its subcontractors shall cease all work until such time as the condition is corrected. If Standard Specification Section 108.06 is met, DTI may be entitled to a contract adjustment for temporary suspensions caused by hazardous or unsafe conditions.

This section increases the inspectors' authority beyond that provided in the Standard Specifications.

2. Documentation Access. KDOT will provide DTI access to necessary plans, documents, reports, programs, diagrams and any other documentation required for the successful completion of this Project. Such documentation is solely for the use of this contract.
3. Right-of-Way. KDOT is only obligated to provide access to right-of-way according to the Utility Accommodation Policy and the Corridor Management Policy.

ARTICLE V - CONTRACT DOCUMENTS AND CLAUSES

1. Contract Documents. This contract between the Secretary and DTI consists of (1) the Highway Use Permit; (2) this contract and all attachments; (3) the Solicitation for Fiber Optic Infrastructure System Project 106K-6454-01.
2. Document Priority. The Contract Documents are complimentary. If there is a conflict or discrepancy among the contract documents, such conflict or discrepancy shall be resolved by giving precedence to (1) the Highway Use Permit followed by (2) this contract and all attachments followed by (3) the Solicitation for Fiber Optic Infrastructure System.
3. Compliance with Laws. In addition to this set of specifications, DTI hereby agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances; and all provisions required thereby to be included herein, are hereby incorporated by reference.
4. Equal Employment Opportunities. DTI shall comply with the provisions of federal, state and local regulations to ensure that no employee or applicant for employment is discriminated against because of race, religion, sex, national origin, age or handicap. DTI is directed to the Specific Equal Employment Opportunity Contractual Requirements, which is attached in Special Attachment No. 1. DTI shall review this policy and act accordingly within its requirements.
5. Warranty Against Contingent Fees. DTI shall identify all companies or persons retained (other than a bona fide employee working solely for DTI) to solicit or secure this contract, and warrants that it has not paid or agreed to pay any person or entity (other than a bona fide employee working solely for DTI) any fee, commission, percentage, brokerage fee, gift, or other consideration on a basis that is contingent upon the award of this contract. For breach or violation of this warranty, the Secretary shall have the right to

annul the contract without liability or in its discretion, to deduct from the contract price the full amount of such commission, percentage, brokerage, or contingent fee.

6. Assignment, Transfer, Conveyance, Subcontracting, and Disposal. ~~DTI shall not assign, transfer, convey, encumber, or dispose of this contract, or its rights or duties, title, interest or power to execute such assignments to any other person, company, corporation, or entity without the prior written consent of the Secretary. In no event shall DTI be permitted to assign, transfer, convey, encumber, or dispose of only a portion of the Fiber Optic Infrastructure System. This contract shall immediately terminate in the event of its assignment, conveyance, encumbrance, or other transfer by DTI without the prior written consent of the State. If KDOT approves a successor or the assignment of duties, DTI's HUP becomes null and void and the successor shall apply for a HUP in accordance with the UAP.~~ *
7. Disputes. Should any disputes arise with respect to this contract, DTI and KDOT agree to act immediately to resolve such dispute. DTI agrees that in the event of a dispute it will continue, without delay, to carry out all of its responsibilities under the contract for all non-disputed work. Any additional costs incurred by DTI as a result of such failure to proceed shall be borne by DTI and DTI shall make no claim against KDOT for such costs.
8. Waiver. In the event of a breach of the contract, or any provision thereof, the failure of the Secretary to exercise any of his rights or remedies under this contract shall not be construed as a waiver. The remedies herein reserved shall be cumulative and additional to any other remedies at law or in equity.
9. Project Management. KDOT will provide overall Project direction. Assignment of project management, coordination and supervision of DTI's staff assigned will be DTI's responsibility.
10. Differing Site Conditions. KDOT makes no representations or warranties concerning subsurface conditions, latent physical conditions, or other geological conditions to be encountered by DTI on KDOT's right-of-way. Any relief for such site conditions allowed under Standard Specifications Section 104.03 or implied in any other contract provision shall not apply to this Project
11. Plans/Drawing Review and Approval. Plans for installation and construction, including equipment and material specifications and shop drawings shall be made available to KDOT for review and approval by KDOT or a third party at KDOT's sole discretion, before construction begins, with adequate lead time to allow KDOT to review and comment. KDOT shall have the right to reject any item, method or means of construction if it fails, in KDOT's sole

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* To be negotiated by
the parties.

judgment, to meet KDOT's standards or to properly ensure the safety of the general public.

12. Service Location. All services will take place in the Kansas City Metropolitan Area, as per Appendix A Service Points found in Solicitation for Fiber Optic Infrastructure System.
13. Durability. This contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
14. Force Majeure. DTI shall not be liable if the failure to perform this contract arises out of causes beyond the control of or negligence of DTI and any of its subcontractors and suppliers. Causes may include, but are not limited to, acts of nature, fires, quarantine, abnormally severe weather, strikes other than by DTI's employees, subcontractors employees, and suppliers employees, and freight embargoes.
15. Contract Length and Termination. The contract length and term for service shall be consistent with the terms of the Highway Use Permit which will be more or less than 30 years after Phase I of the KCMA Project area is fully operational and accepted for same by KDOT
16. Bankruptcy. If DTI is declared bankrupt or becomes insolvent, or upon the appointment of a receiver, trustee or assignee for the benefit of its creditors, KDOT reserves the right and sole discretion to cancel this contract at its option and without further cost or to refund the contract and hold DTI liable for all resulting damages. If this contract is canceled by KDOT, the terms of this contract pertaining to termination of the contract shall remain in full force and shall apply immediately at the time of bankruptcy.
17. Termination. When this contract is terminated, for reasons other than breach of contract, KDOT shall have the option to:
 - a. Require DTI to remove all Fiber Optic Infrastructure System and related appurtenances from KDOT's property at DTI's own cost and repair all damages to KDOT's property which results. DTI shall have one hundred and eighty (180) days from the termination of the contract to complete that work. DTI shall not block or materially delay, impede or interrupt traffic to effect the removal of its property and shall not take any action which creates a dangerous condition of public property or which would endanger any pedestrian or occupant of a motor vehicle. If KDOT elects this option, DTI must remove all hazardous or regulated wastes it generates or is responsible for (directly or indirectly) from the KDOT property and must restore the KDOT property to at least the condition it

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*Opportunity to cure to be negotiated by the parties.

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was in before it was awarded this contract, in accord with all federal, state and local environmental laws, regulations and ordinances.

- b. Allow DTI to abandon any or all portions of the Fiber Optic Infrastructure System on KDOT's property, in which instance that portion of the Fiber Optic Infrastructure System becomes the sole and exclusive property of KDOT; except, however, DTI may not abandon any items or equipment which may contain or create hazardous or regulated wastes or materials without prior notice to KDOT of the description and location of those materials. KDOT may refuse to accept the abandonment of all or any portion of the Fiber Optic Infrastructure System tendered by DTI until any hazardous or regulated wastes or materials have been removed in accordance with all applicable laws. In any event, DTI remains liable for the remediation and full restoration of any damage or injured real or personal property and for injuries or death resulting from the presence of any hazardous or regulated wastes or materials on or adjacent to KDOT's property, which wastes or materials are or were, owned or placed or operated by DTI.
- c. Buy the Fiber Optic Infrastructure System and DTI's owned equipment and fixtures pertinent to the system on the KDOT property, or any portion thereof which is acceptable to KDOT, at a price to be mutually agreed upon.
- d. Allow DTI to sell the Fiber Optic Infrastructure System to a successor provider of fiber optic cable services which agrees to provide the services required hereunder and which is acceptable to KDOT.

Regardless of the options stated above, in the event of termination of the contract due to breach of contract, bankruptcy, or mutual agreement, KDOT shall have the right to continue to use the Fiber Optic Infrastructure System to support the ITS networks for a period of two years, or until an alternate means of supplying the service is found, whichever comes first.

18. Notices. All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be in writing and shall be made by personal delivery or sent by United States certified mail, postage prepaid, return receipt requested or by overnight delivery, prepaid, addressed as follows:

**Matt Volz
Kansas Department of Transportation
Transportation Planning
915 SW Harrison**

Docking State Office Building – 8th Floor
Topeka, Kansas 66612-1568
Tel: 785-296-6356
Tel: 785-296-8168

Digital Teleport, Inc.
11111 Dorsett Road
St. Louis, Missouri 63043
Attention: President

or to any other persons or addresses as may be designated by notice from one party to the other.

19. Independent Contractor. Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not for any purpose be construed to be the employees or agents of the other party.

DTI accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees who are engaged in work authorized by this contract.
20. Conflict of Interest. DTI shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employment of the State and who are providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, DTI shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least one year after his/her termination of employment with the State.
21. Hold Harmless. DTI shall indemnify the State against any and all claims for injury to or death of any persons; for loss or damage to any property; incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance DTI may carry which provides for indemnification for any loss or damage to property in DTI's custody and control, where such loss or destruction is to State property. DTI shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

*Kansas Department of Transportation
Fiber Optic Infrastructure System*

DTI hereby expressly agrees to save the Secretary and the Secretary's authorized representatives harmless from any and all costs, liabilities, expenses, suits, judgements and damages to persons or property caused by DTI, its agents, employees or subcontractors which may result from acts, errors, mistakes or omissions from DTI's operation in connection with the services to be performed hereunder.

22. Care of State Property. DTI shall be responsible for the proper care and custody of any state-owned personal tangible property and real property furnished for DTI's use in connection with the performance of this contract, and DTI will reimburse State for such property's loss or damage caused by DTI, normal wear and tear excepted.
23. Prohibition of Gratuities. Neither DTI nor any person, firm or corporation employed by DTI in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.
24. Federal, State and Local Taxes-DTI. The State makes no representation as to the exemption from liability or any tax imposed by any governmental entity on DTI.
25. Modification. This contract shall be modified only by the written agreement of the parties. No alternation or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.
26. Third Party Beneficiaries. This contract shall not be construed as providing an enforceable right to any third party.
27. Captions. The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
28. Severability. If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected, and each provision of this contract shall be enforced to the fullest extent permitted by law.
29. Governing Law. This agreement shall be governed by the laws of the State of Kansas and shall be deemed executed at Topeka, Shawnee County, Kansas. In the event of breach of contract, KDOT and DTI shall have all

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equitable and legal rights, defenses, and remedies available under Kansas Law.

30. Jurisdiction. The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Shawnee County. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas shall be the venue for any federal action or proceeding arising hereunder in which the State is a party.
31. Mandatory Provisions. The provisions found in Contractual Provisions Attachments (form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.
32. Labor Costs. KDOT will pay the difference between DTI's wages and the prevailing wages in the KCMA for the labor used to construct the Passive Network only. KDOT shall be allowed to audit DTI's wage records to ensure compliance with Special Provision 90P-11-R3 attached hereto as Appendix B. Prevailing wage rates for the KCMA are attached hereto as Appendix C.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly authorized officers on the day and year first above written.

7-12-98
Date


E. Dean Carlson
Secretary of Transportation
for the State of Kansas

Attest: _____

July 2, 1998
Date


Richard Weinstein
CEO and President
Digital Teleport, Inc.

Attest: _____


Dan Davis

Kansas Department of Transportation
Fiber Optic Infrastructure System

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7-12-98
Date

E. Dean Carlson
E. Dean Carlson
Secretary of Transportation
for the State of Kansas

Attest: Maria D. Harting

July 2, 1998
Date

Richard D. Weinstein
Richard Weinstein
CEO and President
Digital Teleport, Inc.

Attest: Dan Davis

FORM APPROVED BY 9507-1398 Legal Dept. KDOT