

INTERGOVERNMENTAL SERVICES AGREEMENT

by and between:

**SEDGWICK COUNTY, KANSAS
and
CITY OF WICHITA, KANSAS**

This Agreement made and entered into this ____ day of _____, 2017, by and between Sedgwick County, Kansas (“County”) and the City of Wichita, Kansas (“City”).

WITNESSETH:

WHEREAS, there exists between County and City the Wichita-Sedgwick County Flood Control Operation, pursuant to K.S.A. 13-3301 *et seq*; and

WHEREAS, County and City share equally the funding responsibility for said Flood Control Operation within the Flood Control Project; and

WHEREAS, City has agreed to provide the necessary services associated with the Flood Control Operation; and

WHEREAS, County desires to engage City to provide said Flood Control services; and

WHEREAS, County and City are authorized to enter into an agreement for services pursuant to K.S.A. 12-2908, as amended; and

WHEREAS, County and City desire to state the terms and conditions under which City will provide said Flood Control services.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the responsibilities of both parties for the Wichita-Sedgwick County Flood Control Operation.

2. City’s Responsibilities. City shall provide the following services in connection with this Agreement (hereinafter “Project-Scope Services”):

- a. Maintain, operate, and perform administrative duties for the Wichita Valley Center Flood Control Project, the Park City Local Flood Protection Project, the Cowskin Creek Local Flood Protection Project and the West Branch Chisholm Creek Flood Control Project (hereinafter collectively referred to as “the Project”) in accordance with regulations prescribed by the Secretary of the Army and the current operations and maintenance manuals, which are attached hereto in their entirety as Exhibit A (Definite Project Report by the Corps of Engineers, 1945) and Exhibit B (Wichita Levee Certification Report by AMEC 2013) and are incorporated by reference as if fully set forth herein.

- b. Maintain the Project in “Active” status with the USACE Rehabilitation and Inspection Program, making the Project eligible for Public Law 84-99 funds. In the event damage is caused to the Project, and repairs are clearly beyond the normal, physical and financial capabilities of the City and County, the City shall request USACE repair assistance according to USACE program requirements.
- c. Provide the County Engineer with a copy of the annual report to the USACE, which highlights the accomplishments and goal attainment of flood control staff during the maintenance period. Provide the County Engineer with a copy of any report received from or sent to the USACE.
- d. Address encroachments within the Project easements and rights-of-ways that interfere with the maintenance and operations of the Project, including in the ponding areas.
- e. Comply with applicable local, state and federal regulations when performing maintenance and improvement activities within the Project’s easements and rights-of-way.
- f. Develop, update and provide, on an annual basis, a capital improvement plan for the Project that, if implemented, will maintain continued compliance of the Project with the requirements of the USACE, the National Flood Insurance Program and FEMA regulations.
- g. Submit the capital improvement plan, specific capital project funding requests and a proposed annual operating budget request to County during the County’s annual budget approval process. Attend budget meetings and hearings as requested to support budget requests.
- h. Maintain and operate the Lincoln Street Dam on the Arkansas River and the Central Street Dam on the Little Arkansas River.
- i. Maintain, as necessary for flood control purposes, the portions of the Arkansas River, the Little Arkansas River and the Cowskin Creek that are outside of the Project limits and are inside the corporate limits of the City of Wichita.
- j. When reasonable, and subject to the availability of resources and at the discretion of the City Stormwater Division Manager, provide emergency high water pumping operations in flood-prone areas.
- k. Provide engineering and construction engineering services required to implement capital improvement projects as outlined in section 5.

3. Term. The term of this Agreement shall correspond with the 2017 budget year, commencing January 1, 2017, and ending December 31, 2017.

4. Funding. During the term of this Agreement, both parties shall each contribute a sum of \$1,102,332.50 for the Flood Control Operations Budget. All revenues, fees, charges and/or assessments collected by the City under the Wichita-Sedgwick County Flood Control Operation shall be credited to the County and the City in the same percentage as each entity’s respective annual operations contribution, as that amount is set forth above. Any remaining unencumbered funds as of December 31, 2017, shall be returned to the parties hereto in the same proportion.

The parties agree that, for purposes of this Agreement, it is only those items listed in Paragraphs 2(a)-(k) of this Agreement, the “Project-Scope Services,” that comprise the “Flood Control Operations Budget.” The parties are also aware that situations requiring additional funding may arise during the term of this Agreement that are outside of the “Project-Scope Services,” set forth in Paragraphs 2(a)-(k), herein. The parties agree that, in those situations, the provisions of Paragraphs 6 or 7 will control.

5. Capital Improvement Projects. During the term of this Agreement, both parties shall each contribute a maximum sum of \$500,000.00 for capital improvements for the Project. City will provide engineering, construction engineering and other project management services as required to complete the designated capital projects. The cost of engineering design and construction engineering services provided by other City departments or contract consultants will be considered to be part of the cost of capital projects. City will bill County as work is completed, but not more frequently than monthly. Capital projects that will utilize 2017 capital funding are:

Project 1 Acquisition of LIDAR.

- Estimated cost of \$234,222.53.
- City will contract with the State of Kansas for the project.

Project 2 Replacement of Toe Drains for Levees on the Project.

- Estimated cost of \$765,777.47.

The parties understand and agree that, due to the nature of these capital projects, work on and completion of the capital projects may not occur during the Agreement term. The parties agree that the agreed-upon funding will still be available for completion of the agreed-upon capital projects as long as reasonable steps are taken to complete the capital projects, in total, during the term of this Agreement.

6. Funding Outside of Project-Scope Services. City will notify County, as soon as is practicable and in writing, of any repair or maintenance need (or the like) that would result in the expenditure of funds that are above and beyond those agreed to herein (“unanticipated expenditures”). Upon notification, County will have ten (10) business days to respond to said notification with either: (a) an agreement to fund equally the unanticipated expenditure, or (b) a request that the parties obtain an external forensic engineering report to identify the true source of the unanticipated expenditure. If County fails to respond within those ten (10) business days, or as many days as the parties mutually determine is reasonable given the circumstances, the County, by default, agrees to fund equally the unanticipated expenditure.

If the external forensic engineering report identifies as the true source of the problem: (a) the City’s action, inaction, infrastructure, activity or the like, City will be responsible for funding all necessary repairs to the Project; (b) the County’s action, inaction, infrastructure, activity or the like, County will be responsible for funding all necessary repairs to the Project, or (c) action, inaction, infrastructure, activity or the like within the Project itself, the parties will fund equally all necessary repairs to the Project.

The cost of the forensic engineering report shall be borne in accordance with the findings, as outlined above in this Section. Notwithstanding anything else in this Section, the parties agree that, prior to obtaining an external forensic engineering report, City and County staff will work together to ensure that obtaining such a report is economically feasible and fiscally responsible.

Further notwithstanding anything else in this Section, if City and County staff agree that delaying necessary repairs so as to obtain an external forensic engineering report will cause further damage and/or damage to life or property, the parties will mutually fund the repair and subsequently obtain the external forensic engineering report, in accordance with the remainder of this Section.

7. Force Majeure. The parties agree to jointly fund any damage caused by a Force Majeure Event. For purposes of this Agreement, “Force Majeure Event” means any event or circumstance, regardless of whether it was foreseeable, which is beyond the control and without the fault or negligence of either party hereto and which by the exercise of reasonable diligence neither party was able to prevent, provided that event or circumstance is limited to the following: acts of God, war, riots, civil insurrections, cyclones, hurricanes, floods, fires, explosions, earthquakes, lightning, storms, chemical contamination, epidemics or plagues, acts or campaigns of terrorism or sabotage, blockades, embargoes, accidents or interruptions to transportation, trade restrictions, acts of any Governmental Authority after the date of this Agreement, strikes and other labor difficulties, and other events or circumstances beyond the reasonable control of either party hereto.

General Terms and Conditions

8. Authority to Contract. Each party assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of each party's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of each party to act in connection with the application and to provide such additional information as may be required.

9. Notification. Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

County: Sedgwick County Public Works
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 823
Wichita, Kansas 67203

and

Sedgwick County Counselor's Office
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, Kansas 67203-3790

City: City of Wichita Public Works & Utilities
Attn: Contract Notification
455 N. Main, 8th Floor
Wichita, Kansas 67202

With a copy to:

City of Wichita Law Department
Attn: Contract Notification
455 N. Main, 13th Floor
Wichita, Kansas 67202

10. Entire Agreement. This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect. This Agreement is not intended to confer upon any person or entity other than the Parties any rights or redress hereunder.

11. Assignment. Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.

12. Amendments. Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

13. Severability Clause. In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.

14. Waiver. Waiver of any breach of any provision in this Agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by County shall not constitute a waiver.

15. Anti-Discrimination Clause. Both parties, and any contractors hired thereby, agree: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase “equal opportunity employer;” (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 8 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County or City cumulatively total \$5,000 or less during the County’s or City’s fiscal year.

16. Retention of Records. Unless otherwise specified in this Agreement, City agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of expiration or termination of this Agreement.

Matters involving litigation shall be kept for one (1) year following termination of litigation, including all appeals, if the litigation exceeds five (5) years.

17. Choice of Law. This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

18. Arbitration, Damages, Jury Trial and Warranties. Notwithstanding any language to the contrary, no interpretation shall be allowed to find either party has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find either party has consented to a jury trial to resolve any

disputes that may arise hereunder. Both parties waive their right to a jury trial to resolve any disputes that may arise hereunder.

19. Cash Basis and Budget Laws. The right of the parties to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the parties shall at all times stay in conformity with such laws, and as a condition of this Agreement the parties reserve the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SEDGWICK COUNTY, KANSAS

CITY OF WICHITA, KANSAS

David M. Unruh, Chairman
Commissioner, First District

Jeff Longwell
Mayor

APPROVED AS TO FORM ONLY:

APPROVED AS TO FORM ONLY:

Misha C. Jacob-Warren
Assistant County Counselor

Jennifer Magana
City Attorney and Director of Law

ATTESTED TO:

ATTESTED TO:

Kelly B. Arnold
County Clerk

Karen Sublett
City Clerk