

FIRST AMENDMENT TO INTERLOCAL AGREEMENT

THE CITY OF WICHITA, KANSAS, AND THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, ON THIS _____ DAY OF _____, 2019, CONCURRENT WITH THE ADOPTION OF A JOINT ORDINANCE-RESOLUTION REGARDING THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION AND THE METROPOLITAN AREA PLANNING DEPARTMENT, DO HEREBY AGREE TO THE FOLLOWING:

WHEREAS, Sedgwick County and the City of Wichita entered into an interlocal agreement approved by the Office of the Kansas Attorney General on November 14, 2016 (“Original Agreement”); and

WHEREAS, the subject matter from the Original Agreement is the same as this First Amendment to Interlocal Agreement (“Agreement”); and

WHEREAS, Sedgwick County and the City of Wichita wish to make amendments to the Original Agreement, as contained in the terms of this Agreement; and

WHEREAS, this Agreement shall, upon its effective date, supersede and replace the Original Agreement.

1. Joint Ordinance and Resolution. Within a Joint Ordinance-Resolution, the City of Wichita, Kansas (“City”) and Sedgwick County, Kansas (“County”), through their governing bodies, have agreed to enter into joint and cooperative action as described within this Interlocal Agreement (“Agreement”). This Agreement is entered into pursuant to K.S.A. 12-744(c) and 12-2901 *et seq.*

2. Effective Date, Original Term, Renewal, and Notice of Termination. The term of this Agreement will begin on its effective date, which will occur once it has been approved by the Kansas Attorney General pursuant to K.S.A. 12-2904(g) and filed with both the Kansas Secretary of State and the Sedgwick County Register of Deeds pursuant to K.S.A. 12-2905. This Agreement shall be perpetual in duration unless and until either party notifies the other party in writing of its decision to terminate the Agreement. Any such written notice of termination or partial termination will not become effective until ninety (90) days from the date it is sent, or any such date greater than ninety (90) days in the future that is specified within the notice.

3. Planning Commission, Membership, Term, and Compensation. The Wichita-Sedgwick County Metropolitan Area Planning Commission (“Commission”) shall consist of fourteen (14) members, seven (7) of whom shall be appointed by the Mayor of the City by and with the consent of the City Council, and seven (7) of whom shall be appointed by a majority vote of the Board of County Commissioners, upon the recommendation of each individual County Commissioner for five (5) members and with two (2) at-large members.

All appointments made by the Board of County Commissioners shall be for four (4) years from the date of appointment and until their successors have been duly appointed. Nevertheless, all members appointed by the Board of County Commissioners shall serve at the pleasure of the Board of County Commissioners and may be removed or replaced by a vote of the Board of County Commissioners prior to the conclusion of a term.

All appointments made by the City Council shall be made in accordance with City Code Sections 2.12.010, 2.12.020, and 2.12.030.

Any members of the Wichita-Sedgwick County Metropolitan Area Planning Commission who are serving at the time this Agreement is entered into shall continue to serve the remainder of their terms.

In case of death, incapacity, resignation, removal, replacement or disqualification of any member, the party making the appointment of such member shall appoint another member for the unexpired term of such deceased, incapacitated, resigned, removed, replaced or disqualified member.

Any person residing within the City of Wichita city limits shall be eligible for appointment by the City by and with the consent of the City Council. Any person residing within Sedgwick County (including incorporated areas) shall be eligible for appointment by the County.

Members of the Commission shall serve without compensation.

4. Purpose. The purpose of this Agreement is to provide for the joint planning authority, responsibilities and functions as permitted by K.S.A. 12-741 *et seq.*, as amended.

5. Meetings, Officers, Prior Action, Quorum. The Commission shall convene for its meetings at such time and place as shall be fixed by the Commission, and shall meet not less frequently than once per month.

The Commission shall elect one member as Chair and one member as Vice Chair. The terms of the Chair and Vice Chair shall be for one (1) year and until a successor has been elected and qualified. The Commission shall elect a Secretary and may also elect an Assistant Secretary. Both the Secretary and Assistant Secretary may be persons who are not members of the Commission. If a Secretary or Assistant Secretary is not a member of the Commission, said Secretary or Assistant Secretary would serve in an ex officio, non-voting capacity. The Secretary shall cause a proper record to be made and preserved of all the proceedings of the Commission.

Any of the following that have been approved, completed, or established by the Wichita-Sedgwick County Metropolitan Planning Commission prior to this Agreement shall continue in full force and effect: bylaws, policies, subcommittee(s), election of officers, and provision of notices.

The Commission may further adopt new bylaws or amend existing bylaws for the transaction of business and hearing procedures.

Special meetings of the Commission may be called by the Chair, or in his or her absence, by the Vice Chair, on not less than twenty-four (24) hours' notice, such notice to be by mail or personal service by the Secretary or the Secretary's representative, at the address given to the Secretary by such member.

A quorum shall consist of a majority of the members of the Commission appointed and qualified at any given time. Accordingly, any vacancy that exists shall reduce the size of the Commission for purposes of determining a quorum.

6. Commission Authority, Function, Responsibilities. The Commission shall have such power and duties as may be prescribed by law from time to time, including but not limited to those responsibilities in K.S.A. 12-741 *et seq.*, as amended, and any local ordinances and resolutions. As a primary function, the Commission shall have the responsibility for the preparation, adoption, recommendation and maintenance of a long-range comprehensive plan, pursuant to K.S.A. 12-747 *et seq.*, as amended.

The Commission shall assume and perform all powers, duties and functions heretofore vested in the previously constituted Wichita-Sedgwick County Metropolitan Area Planning Commission.

7. Wichita-Sedgwick County Metropolitan Area Planning Department. The Wichita-Sedgwick County Metropolitan Area Planning Department's ("Department") responsibilities pertain to land use planning and zoning, as permitted by law. This includes, but is not limited to items referenced in K.S.A. 12-741, *et seq.* The Director of the Department shall be appointed by the City Manager and the County Manager, by joint appointment. All subordinate employees within the Department shall be appointed by the Director. The Director shall serve at the pleasure of the City Manager and the County Manager. The Director's job performance will be annually evaluated by both the County Manager and the City Manager. Performance issues shall be addressed through an evaluation and improvement plan, jointly developed by the County Manager and City Manager, which uses objective performance measures and identifies corrective actions, if needed. In the event that either the County Manager or the City Manager, are displeased with the Director's performance, a performance plan can be implemented which describes the sought after change in performance.

The Director and current and future employees within the Department will remain as employees of the City. Employees of the Department shall also be considered City employees for the purposes of the defense of claims under the Kansas Tort Claims Act.

8. Budget, Disbursing Agent. On an annual basis, by a date jointly agreed upon by the County Manager and the City Manager, the Department shall submit to both managers a proposed budget of income and expenditures for the ensuing fiscal year for the Department. The Managers will then make their budget recommendations to their respective governing bodies.

Such proposed budget, either as submitted or as the same may be amended, will be approved and adopted by said governing bodies. The two bodies must agree what the total annual budget of the Department will be. The City and County reserve their respective statutory authorities and responsibilities regarding budget, tax levy, and other funding matters, but it is agreed herein that each will appropriate an amount equal to fifty percent (50%) of the agreed upon budget for the Department. The City Treasurer is hereby designated as the custodian and disbursing agent for the total budget.

9. Revenues, Fees, Charges, Assessments, and Payments. All revenues, fees, charges or assessments collected by the Department will be remitted daily to the City Treasurer. Sedgwick County will make four (4) equal quarterly payments to the City each year that this Agreement is in place. Said payments shall equal one-fourth (1/4) of the amount of funds budgeted by the Board of County Commissioners for that particular year's budget. The payments shall be made such that they are received by the City Treasurer not later than March 31st, June 30th, September 30th, and December 31st of each year that this Agreement is in place. If the Department's expenses for each calendar year are less than the total funds budgeted by the City and County and the fees or other revenue received by the Department, any surplus shall be refunded to each party equal to the proportion of their contributions for that budget year.

10. Accounting, Purchasing, Administrator. The City will maintain accounting records for each revenue and expenditure of the Department. All purchases for the Department will be processed by the purchasing department of the City in the name of the City.

The City will process all Department payroll.

The City will provide to the County timely quarterly financial reports disclosing the revenues and expenditures for the year to date compared with the budgets.

The City agrees to provide the County with an annual certified audit of City-County revenues and expenditures for the Department.

The City shall serve as the administrator for the Department.

11. Equipment and Maintenance of Records. The City will provide the office equipment, computer hardware and software, office furniture, and other items necessary for the Department which are presently used by the Department. Replacement of any of the aforementioned items will be paid for from the annual Department budget approved by the parties' governing bodies. The City shall be responsible for the maintenance and storage of all records for the Department.

The City will be responsible for providing, insuring, and paying the vehicle registration fees for any necessary vehicles for Department staff to complete their duties.

12. Personal Cars –Parking. Department employees shall have all parking rights and privileges and to the same extent as other employees of the City and County, with respect to the specific location(s) where such employees are based.

13. Legal Matters and Representation. All legal matters involving zoning or subdivision rules and regulations, vacation and dedication occurring within the City of Wichita or within any area by law determined to be within the jurisdiction of the City of Wichita shall be the responsibility of the City Law Department. All legal matters involving zoning or subdivision rules and regulations, vacation and dedication occurring within the unincorporated area or within any area by law determined to be within the jurisdiction of Sedgwick County shall be the responsibility of the County Counselor’s Office.

14. Workers Compensation, Unemployment Compensation, Retirement etc. The City will be responsible for all Department employees’ claims for workers compensation, unemployment payments, social security, employee retirement, health insurance, life insurance, and any other benefits that may be provided by the City to its employees. These costs will be considered as part of the Department budget for which the parties are jointly responsible.

15. Disposition of Property and Equipment Upon Termination.

This section shall apply to all property and equipment that is specifically and primarily used by the Department in its operations, as defined within this Agreement.

A. Property Owned by a Single Party.

If this Agreement is terminated for any reason, ownership of equipment, real property or other assets owned entirely by either party, whether before or after the start of this Agreement, shall be returned to that party with established ownership rights.

1. Property and equipment owned solely by the County at the start of this Agreement includes, but is not limited to the following:
 - a. The real property located at 271 West 3rd Street, Wichita, Kansas, including any fixtures on said real property, regardless of the time such items are considered fixtures.
 - b. Any additional property and equipment for which the County can reasonably demonstrate established ownership rights.
2. Property and equipment owned solely by the City at the start of this Agreement includes, but is not limited to the following:
 - a. Any property and equipment for which the City can reasonably demonstrate established ownership rights.

B. Property Owned Jointly by the County and City.

If this Agreement is terminated for any reason, any property and equipment: (1) acquired or purchased by the Department, whether before or after this Agreement was entered into; or (2) via joint funding by the parties, said property and equipment shall be distributed to the City and County such that each party receives fifty percent (50%) of the present fair market value of said property. The City and County may agree to receive their fifty percent (50%) fair market value shares in cash, property and equipment, or agreed upon combination of cash, property and equipment.

C. Presumption of Jointly Owned Property and Equipment.

For purposes of this Agreement, any property and equipment for which neither party can reasonably establish ownership rights, whether before or after the effective date of this Agreement, shall be considered property that is jointly owned. Either party can overcome the presumption of jointly owned property and equipment through prior receipts, invoices, purchase orders, or other documentation which indicates that the party was solely responsible for the purchase or receipt of such property and equipment.

16. Planning Matters - prior action and pending proceedings. All planning and zoning actions of every kind or character heretofore taken by the Wichita City Planning Commission, the Sedgwick County Planning Commission, and the Wichita-Sedgwick County Metropolitan Area Planning Commission as it existed prior to this Agreement, shall be continued in full force and effect and shall in no way be affected by the joint resolution and ordinance or this Agreement. All petitions for zoning change, petitions for vacation of streets, alleys and other public ways, requests for changes in street names, requests for approval of plats and dedications, master or comprehensive plans, and all other matters pending before the Wichita-Sedgwick County Metropolitan Area Planning Commission upon the effective date of the joint resolution-ordinance and this Agreement shall continue to be processed by said Commission before which such applications may be pending until such matters are concluded. Furthermore, any actions previously taken by the Wichita-Sedgwick County Metropolitan Area Planning Commission, the City, and the County as a result of joint planning and zoning are hereby ratified by the City and County, to the extent that such actions apply within their respective jurisdictions.

17. Effect of This Agreement. This Agreement supersedes and replaces any previous agreements between the parties concerning the Commission and the Department, and any joint planning.

18. Compliance with K.S.A. 12-2901, et seq. Upon execution of this Agreement it shall be sent to the Kansas Attorney General for approval pursuant to K.S.A. 12-2904. Following approval by the Attorney General, or, lacking any rejection ninety (90) days after the

receipt of the Agreement by the Attorney General, this Agreement will be filed with the Sedgwick County Register of Deeds and the Kansas Secretary of State.

19. Governing Law. This Agreement shall be governed by the laws of the State of Kansas.

20. Amendment. An amendment to this Agreement must be in writing and approved by the governing bodies for the City and County, and subsequently approved by the Kansas Attorney General pursuant to K.S.A. 12-2904.

21. Severability. If any part of this Agreement shall be held or determined to be unenforceable, the remaining provisions shall continue in full force and effect.

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PASSED by the governing body of the CITY OF WICHITA, KANSAS, this _____ day of _____, 2019.

JEFF LONGWELL, Mayor

ATTEST:

KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

JENNIFER L. MAGAÑA, City Attorney

APPROVED THE _____ DAY OF _____, 2019 BY:

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

DAVID T. DENNIS, Chairman

ATTEST:

KELLY B. ARNOLD, County Clerk

APPROVED AS TO FORM:



JUSTIN M. WAGGONER,
Assistant County Counselor

APPROVED this _____ day of _____, 2019, pursuant to K.S.A. 12-2904, by:

DEREK SCHMIDT, KANSAS ATTORNEY GENERAL

Filed with the Office of the Kansas Secretary of State this _____ day of _____, 2019.

Name: _____

Title: