

INTERLOCAL AGREEMENT

by and between:

SEDGWICK COUNTY, KANSAS
and
BUTLER COUNTY, KANSAS

This Agreement made and entered into this ____ day of _____, 2017, by and between Sedgwick County, Kansas ("Sedgwick") and Butler County, Kansas ("Butler").

WITNESSETH:

WHEREAS, Butler previously leased approximately four (4) acres of land from the Kansas Turnpike Authority ("KTA") ("KTA Lease"), which land is more specifically described as follows:

A triangular tract of land in the Northwest Corner of the Northwest Quarter of the Southeast Quarter of Section 8, Township 27 South, Range 3 East, Butler County, Kansas, described as follows:

Beginning at the center of said Section 8, thence South 428.10 feet to a point 150 feet Northwesterly and at right angles to the centerline survey of the Kansas Turnpike at Station 5415-29.31; thence Northwesterly and parallel to said centerline a distance of 904.96 feet more or less to the North line of the Southeast Quarter of said Section 8, thence West 798.89 feet to a point of beginning (containing 3.93 acres more or less); and

WHEREAS, pursuant to an agreement dated November 29, 2010, Sedgwick County also became bound by terms of the KTA Lease ("Co-Ownership Agreement"); and

WHEREAS, pursuant to the terms of the Co-Ownership Agreement, Sedgwick and Butler previously cooperated in the financing, construction, operation and maintenance of a communications tower; and

WHEREAS, the parties desire to enter into an updated cooperation agreement concerning the use and maintenance of the communications tower and site, as well as the ability to sublease space on the communications tower and site to both public and private entities; and

WHEREAS, the Interlocal Cooperation Act, K.S.A. 12-2901 *et seq.*, authorizes the parties hereto to contract for certain joint cooperative purposes; and

WHEREAS, all parties are, pursuant to K.S.A. 12-2903, public agencies, capable of entering into interlocal agreements under K.S.A. 12-2904.

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

1. **Recitals.** The recitals are hereby incorporated by reference as if fully set forth herein.
2. **Authority to Contract.** Each of the parties hereby agrees to the terms and conditions of this

Agreement. Each party has taken the necessary affirmative action to adopt the Agreement by a resolution properly presented, adopted and passed as an action of each respective county commission, pursuant to K.S.A. 12-2904(b). A true and correct copy of the resolution adopted by each party is attached hereto as Exhibit A.

3. Submission to Attorney General. Upon its adoption by each party hereto, this Agreement shall be submitted to the Kansas Attorney General for approval, pursuant to K.S.A. 12-2904(g), then filed in the Register of Deed's Office of each party hereto, pursuant to K.S.A. 12-2905, and filed in the office of the Kansas Secretary of State.

4. Purpose. The purpose of this Agreement is to set forth the responsibilities of both parties for the use, maintenance and sublease power(s) of the radio communications tower and site, all as set forth further in this Agreement.

5. Joint Ownership and Use. It is agreed between the parties that, having previously split the cost of construction of the radio communications tower, they shall jointly own the radio communications tower as tenants in common, which radio communications tower they shall jointly use for their public purposes. More specifically, the allocation of space, according to tower elevations, shall be as follows:

Sedgwick	380' at base for 2 – 800 MHz transmit antennas West Side of Tower
	360' at base for 1 – 800 MHz receive antenna West Side of Tower
	280' at base for 1 – VHF paging antenna on West Side of Tower
	240' at base for 1 – 800 MHz Omni Directional antenna
	150' at base for 2 – 6 ft. Microwave Dishes (location may be adjusted in accordance with final microwave path study)
Butler	340' at base for 2 – 800MHz transmit antennas East Side of Tower
	320' at base for 1 – 800 MHz receive antenna East Side of Tower
	300' at base for 1 – DB224 VHF paging antenna East Side of Tower
	260' at base for 1 – DB809 800 MHz Omni Directional North Side of Tower
	210' at center for 1 – 8 ft. microwave dish
	180' at center for 1 – 6 ft. microwave dish
	200' at center for 2 – PTP600 panel antennas or 2 ft. microwave dish or combination of both
	100' at base for future cellular collocation panel antennas

6. Administration. This Agreement shall be administered by Butler, acting by and through its designated representative who shall be a Butler County representative, or his or her designee. The representative shall assume and perform all necessary duties under this Agreement including, but not limited to: inspection and coordination of maintenance.

7. Cost, Utilities and Maintenance. The parties agree that Butler will oversee the payment of all utilities and shall provide for all necessary maintenance of the tower and common equipment. Once per calendar year, Butler will invoice Sedgwick for one-half (50%) of the costs associated with such utilities and maintenance and Sedgwick agrees to pay such invoice within thirty (30) days of receipt of the same. For purposes of this provision, costs shall include both fixed and variable expenses including, but not limited to insurance, inspections, licensing and taxes (to the extent the parties are not exempt).

8. **Equipment Shelter.** The parties agree that they will occupy equally the Equipment Shelter located at the base of the tower, with Butler occupying the rear half of the shelter and Sedgwick occupying the front half of the shelter. Each party shall be responsible for the maintenance of infrastructure communications equipment housed within its portion of the shelter. Any damage resulting from negligence that is not indemnified by insurance shall be the responsibility of the causing party.

9. **Ingress Egress Access.** Each party shall have equal ingress and egress access to the tower site and the Equipment Shelter. Such access shall include, but not be limited to keys, alarm codes and any other information necessary for ingress and egress access.

10. **Installation of Antennas.** Each party is responsible for any and all costs associated with the installation of its respective antennas and coax lines.

11. **Installation of Additional Equipment.** The parties acknowledge that the structural integrity of the tower contemplated by this Agreement has been designed to include all of the above-listed locations for both parties, as well as space for a future cell carrier. The installation of additional equipment by either party, or a third party, requires the consent of both parties to this Agreement as well as a structural analysis study, to be completed at the expense of the party wishing to change and/or add equipment.

12. **Subletting.** Pursuant to Section 9 of the KTA Lease Agreement, the parties understand and agree that they will not assign the lease or sublet any part of the tower or site without the prior written consent of the KTA. Upon such consent, the parties shall share equally in any revenues, rent or royalties generated from any assignment or sublease, after the parties remit to the KTA the sixty percent (60%) thereof as set forth in the KTA Lease Agreement. The parties further understand that any sublease between Butler and Sedgwick, or between Butler and the City of Andover, Kansas, does not require the consent of the KTA, nor shall the KTA be entitled to any percentage rent or royalties therefrom.

Any assignment or sublease contemplated under this Agreement shall require the assignee or subtenant, at its sole cost and expense, to obtain a study by an appropriate third party which shall indicate any additional equipment added to the radio communications tower will not interfere with the State of Kansas 800 MHz Radio System, or any other communications systems used by the KTA. Any assignee or subtenant shall be required to provide to the KTA a letter from the State of Kansas indicating compliance with this no-interference provision, as is also set forth in Section 7 of the KTA Lease Agreement

13. **Insurance.** The parties shall share equally the cost of personal property insurance in connection with the personal property located on the tower site. Butler and Sedgwick shall be listed as insured parties on all certificates of insurance issued, and each party shall receive a copy of such certificates of insurance. The parties agree that KTA shall also be listed as a covered entity on all issued certificates of insurance.

14. **Mutual Indemnification.** Sedgwick shall at all times save and hold harmless Butler from all liability, costs, damages and expenses of any kind, including reasonable attorney's fees, for which Butler may become liable to any person(s) or entities by reason of any claim or damages to the extent caused by acts or omissions of Sedgwick, its elected and appointed officials, officers, managers, members, employees or agents relating to the use and operation of the tower, and relating to Sedgwick's obligations under this Agreement.

Butler shall at all times save and hold harmless Sedgwick from all liability, costs, damages and expenses of any kind, including reasonable attorney's fees, for which Sedgwick may become liable to any person(s) or

entities by reason of any claim or damages to the extent caused by acts or omissions of Butler, its elected and appointed officials, officers, managers, members, employees or agents relating to the use and operation of the tower, and relating to Butler's obligations under this Agreement.

15. Termination. By majority vote of both governing bodies, Sedgwick and Butler may terminate this Agreement by jointly executing an agreement of termination. This Agreement may not be unilaterally terminated by a single party without the written permission of the other party. Upon any termination of this Agreement, the tower site together with all improvements will remain the sole property of Butler and Butler shall be solely responsible for all operations and maintenance going forward.

In the event that the tower and/or the tower site is damaged, through no fault of either party, to the point where it is no longer able to be used for the purpose(s) as originally set forth under this Agreement, this Agreement shall automatically terminate.

Upon termination of this Agreement for any reason, the parties agree that any and all personal property on the tower and/or the tower site shall remain the property of its owner.

16. Acquisition, Holding and Disposition of Real Property. At the time of the signing of this Agreement, the parties agree that they do not jointly and/or separately own any real property in relation to this Agreement. Should the parties decide to acquire real property pursuant to this Agreement at some future point, the parties agree that Butler shall be responsible for acquiring and holding such real property. Such real property acquisition may occur by gift, purchase or by condemnation as authorized and provided by the Eminent Domain Procedure Act, K.S.A. 26-201 *et seq.* and K.S.A. 26-501 *et seq.*, and any such acquisition shall comply with all federal and state law requirements. The parties further agree that Butler shall be responsible for disposition of all real property in relation to this Agreement and that any proceeds therefrom shall be split in proportion to each party's contribution to the purchase of the real property, if applicable.

17. Acquisition, Holding and Disposition of Personal Property. Each party shall be responsible for the acquisition, holding and disposition of any and all of its personal property during the duration of this Agreement, and at any time upon or after termination of this Agreement.

18. Duration. The duration of this Agreement shall be perpetual, unless terminated as herein provided.

19. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same instrument. Further, this Agreement may be executed by both parties by facsimile signature (or other electronic format), such that execution of this Agreement by facsimile signature (or other electronic format) shall be deemed effective for all purposes as though this Agreement was executed as a "blue ink" original.

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

SEDGWICK COUNTY, KANSAS

BUTLER COUNTY, KANSAS

David M. Unruh, Chairman
Commissioner, First District

Jeff Masterson, Chairman
Butler County Commission

APPROVED AS TO FORM ONLY:

APPROVED AS TO FORM ONLY:

Misha C. Jacob-Warren

Misha C. Jacob-Warren
Assistant County Counselor

Terrence L. Huelskamp
Butler County Counselor

ATTESTED TO:

ATTESTED TO:

Kelly B. Arnold
County Clerk

Don Engels
County Clerk

KANSAS ATTORNEY GENERAL:

Derek Schmidt

Date