

INTERGOVERNMENTAL SERVICES AGREEMENT

Pertaining to 127th Street East Funding, Improvements, and Continued Maintenance Responsibilities

THIS AGREEMENT is made and entered into this _____ day of _____, 2019, by and between Sedgwick County, Kansas ("County"), City of Wichita, Kansas ("City"), Minneha Township in Sedgwick County, Kansas ("Township"), and Crestview Country Club Improvement District in Sedgwick County, Kansas ("Improvement District").

WITNESSETH:

WHEREAS, the parties acknowledge that road improvements are needed to a portion of 127th Street East located between Central Avenue and 13th Street, specifically depicted as "Project Area" within "Exhibit A", which is attached hereto and incorporated within this Agreement (the applicable portion is described herein as "127th Street East"); and

WHEREAS, the parties acknowledge that the validity of City's annexations of a portion of 127th Street East through Annexation Ordinances 44-978 and 47-275 could be called into question to the extent that they extend into Improvement District's boundaries, pursuant to K.S.A. 12-520(c), but that no court has found such annexation to be invalid at this time; and

WHEREAS, County, City, Township, and Improvement District are authorized to enter into an agreement pursuant to K.S.A. 12-2908, as amended, and the parties do not classify this agreement as an interlocal agreement, as identified within K.S.A. 12-2901, *et seq.*; and

WHEREAS, pursuant to K.S.A. 19-2786e, because less than all of the territory within Improvement District is annexed by City, Improvement District and City are authorized to enter into an agreement in regard to the division and allocation of duplicate and overlapping powers, functions, and duties; and

WHEREAS, pursuant to K.S.A. 68-169, the parties to this agreement have the authority to enter into written agreements for the maintenance of roads; and

WHEREAS, the parties believe that improvements to 127th Street East could most appropriately and readily be completed through the shared resources of County, City, and Township, as detailed within this Agreement; and

WHEREAS, the parties intend for the future maintenance (whether major road reconstruction, road repairs, and maintenance items including but not limited to snow clearing and maintenance of road right-of-way) and jurisdiction for 127th Street East after the work contemplated within this Agreement should be the sole responsibility of City; and

NOW, THEREFORE, for and in consideration of the parties' mutual promises and covenants, it is agreed as follows:

1. The two (2) purposes of this Agreement are to: (a) provide for the construction, financing and maintenance of roadway improvements on 127th Street East , (hereinafter referred to as "the Project"); and (b) to clarify the road maintenance (whether major road reconstruction, road repairs, and maintenance items including but not limited to snow clearing and maintenance of road right-of-way) and jurisdiction for 127th Street East after the Project is completed, with such clarification accomplished by the parties agreeing not to challenge the validity of City Annexation Ordinances 44-978 and 47-275.
2. The scope of the repair work for the project includes asphalt base repairs with 6 inches of over excavation to be replaced with 6 inches of rock, a 2 inch asphalt overlay on the entire surface and new pavement markings.
3. If needed, City shall acquire necessary right of way and coordinate any utility relocations. City shall have final authority and shall be responsible for all legal and engineering matters concerning the completion of the Project, including the required bid process and selection of a vendor for the Project.
4. Costs of the Project shall be paid as follows:
 - a. City shall handle all work associated with the Project's design.
 - b. City will pay all costs associated with Project inspection and management.
 - c. Division of Costs—the estimated cost of the Project is \$450,000.00.
 - (1) If such costs do not exceed \$450,000.00, County, City, and Township shall share equally in such costs, and the shares County and Township owe City shall be paid within 60 days after completion of the project but not before July 1, 2019.
 - (2) Such costs exceeding \$450,000.00 shall be paid by City.
5. The road maintenance (whether major road reconstruction, road repairs, and maintenance items including but not limited to snow clearing and maintenance of road right-of-way) and jurisdiction for 127th Street East after the Project is completed shall remain the sole responsibility of City.
6. All of the parties to this Agreement waive any and all claims or challenges regarding the validity of City Annexation Ordinances 44-978 and 47-275.
7. Pursuant to K.S.A. 19-2786e and in recognition of the ability for improvement districts to undertake public works projects, to the extent that the boundaries of City overlap the boundaries of Improvement District, City and Improvement District agree that City shall be solely responsible for the road maintenance (whether major road reconstruction, road repairs, and maintenance items including but not limited to snow clearing and maintenance of road right-of-way) for 127th Street East.
8. The duration of this Agreement as it pertains to aforementioned road maintenance responsibilities incurred by City shall be perpetual in nature. The duration of the portion of this Agreement reached between Improvement District and City pursuant to K.S.A. 19-2786e shall be thirty (30) years, which is the maximum permitted by such statute. The portion of this Agreement regarding the work required to complete the Project shall be deemed complete

upon the successful close of such work.

General Terms and Conditions

9. **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.
10. **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 Manager's Office
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 343
Wichita, Kansas 67203-3731

and

Sedgwick County Counselor's Office
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, Kansas 67203-3731

City: City Manager's Office
Attn: Contract Notification
455 N. Main, 13th Floor
Wichita, Kansas 67202

and

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

Township: Minneha Township
Attn: Don Gragg, Trustee
50 St. Cloud Pl
Wichita, KS 67230

Improvement District: Crestview County Club Improvement District
Attn: Don Gaylor, President
76 Via Verde
Wichita, KS 67230

11. **Entire Agreement.** This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by the 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 any party to this agreement, 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.
12. **Assignment.** Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by any party to this agreement without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.
13. **Amendments.** Neither this Agreement nor any rights or obligations created by it shall be amended by any party to this agreement without the prior written consent of the other parties to this agreement. Any attempted amendment without such consent shall be null and void.
14. **Captions.** The captions and headings in this Agreement are for reference only and do not define, describe, extend, or limit the scope or intent of this Agreement.
15. **Severability.** In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.
16. **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.
17. **Anti-Discrimination.** All 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 13 (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 County or City cumulatively total \$5,000 or less during County's or City's fiscal year.

18. **Retention of Records.** Unless otherwise specified in this Agreement, County 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.

19. **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.

20. **Arbitration, Damages, Jury Trial, and Warranties.** Notwithstanding any language to the contrary, no interpretation shall be allowed to find any party to this agreement 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 the parties have consented to a jury trial to resolve any disputes that may arise hereunder. All parties waive their right to a jury trial to resolve any disputes that may arise hereunder.

21. **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 K.S.A. 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.

22. **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.

23. **Termination.** Any party may terminate this Agreement with written notice provided to the other parties up and until construction on the Project has begun.

24. **Signatures.** This Agreement (and any amendments, modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or

signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the parties hereto as if they were originals.

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

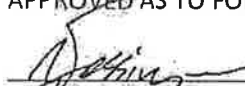
**BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS**

DAVID T. DENNIS,
Chairman, Third District

ATTEST:


KELLY B. ARNOLD,
County Clerk

APPROVED AS TO FORM:



MICHAEL L. FESSINGER,
Assistant County Counselor

**CRESTVIEW COUNTRY CLUB
IMPROVEMENT DISTRICT:**



DONALD GAYLOR,
Director

ATTEST:



PAULA CROOK
Township Clerk

APPROVED AS TO FORM:

STAN CHURCHILL
Counsel for the Improvement District

CITY OF WICHITA, KANSAS

JEFF LONGWELL
Mayor


ATTEST:

KAREN SUBLETT
City Clerk

APPROVED AS TO FORM:

JENNIFER L. MAGAÑA,
City Attorney

MINNEHA TOWNSHIP



CHRISTOPHER CARLSON
Township Treasurer

ATTEST:



PAULA CROOK
Township Clerk

APPROVED AS TO FORM:

DAVID CROCKETT
Counsel for the Township

