

INTERGOVERNMENTAL SERVICES AGREEMENT FOR MABCD RECORDS

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

This Intergovernmental Services Agreement for MABCD Records ("Agreement") is entered into this _____ day of _____, 2019 ("Effective Date"), by and between Sedgwick County, Kansas ("County") and City of Wichita, Kansas ("City").

WITNESSETH:

WHEREAS, pursuant to County Resolution No. 135-2012 and City Ordinance No. 49-333, the Metropolitan Area Building and Construction Department ("MABCD") was established as a joint department of the City and County tasked with code inspection and enforcement throughout the areas of the City and County; and

WHEREAS, pursuant to County Resolution No. 175-2012 and City Ordinance No. 49-412, the Wichita-Sedgwick County Unified Building and Trade Code was adopted, effective January 1, 2013; and

WHEREAS, both City and County generate, maintain, and dispose of MABCD records and the City and County desire clarity as to the roles and responsibilities for such records; and

WHEREAS, County Resolution No. 135-2012 and City Ordinance No. 49-333, which first established the MABCD, states that, "[t]he consolidated entity [the MABCD] shall combine data management and records into a single system to allow for integration and application of efficient technology for citizens and stakeholders"; and

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

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

1. **MABCD Records Defined.** For purposes of this Agreement, the term "MABCD Records" means items that first came into the possession of the MABCD on or after January 1, 2013, including all volumes, documents, reports, maps, drawings, charts, indexes, plans, memoranda, sound recordings, microfilms, photographic records and other data, information or documentary material, regardless of physical form or characteristics, storage media or condition of use, made or received by the MABCD in pursuance of law or in connection with the transaction of official

business or bearing upon the official activities and functions of any governmental agency, or as “government records” is defined within K.S.A. 45-402, as amended.

2. **Items That Are Not MABCD Records.** The term “MABCD Records” specifically does not include the following:
 - a. Records that the City or County obtained for code inspection and enforcement operations that were first possessed by either party before January 1, 2013;
 - b. Records that have been obtained by MABCD staff in the scope of City nuisance investigations, complaints, and prosecution matters, as such records shall be considered solely City records; or
 - c. Published material acquired and preserved solely for reference purposes, extra copies of documents preserved only for convenience of reference and stocks of publications, blank forms and duplicated documents.
3. **Records Before January 1, 2013.** For any records regarding code inspection and operation services that were merged into the MABCD that were possessed by the City or County prior to January 1, 2013, the parties agree to be responsible for the storage, maintenance, retention, and destruction of their respective records. This Agreement is not intended to impose any duties upon the County for such records the City possessed prior to January 1, 2013.
4. **City Authorization for County Records Actions.** County shall be responsible for the storage, maintenance, retention, and destruction of MABCD Records. As such, City authorizes County to follow County policies that pertain to MABCD Records. Accordingly, in recognition of the joint nature of the MABCD, City also authorizes County to utilize County policies to destroy MABCD Records that may pertain to matters within the city limits of the City of Wichita, Kansas.
5. **Compensation.** City need not compensate County for the management and administrative costs involved in storing, maintaining, retaining, and destroying records under this Agreement. Expenses for such services will be paid from the general MABCD budget. In the event that other County divisions incur actual costs related to MABCD Records, such costs would be paid or reimbursed by the MABCD. County is not required to pay City under this Agreement.
6. **Applicable Laws.** County agrees to follow all state, federal, and municipal statutes and regulations that apply to the storage, maintenance, retention, and destruction of MABCD Records.
7. **Subpoenas, Court Orders, KORA Requests, and Litigation Holds.** For subpoenas, court orders and Kansas Open Records Act (K.S.A. 45-215, *et seq.*; “KORA”) requests, for purposes of

establishing the applicable party's policy and legal counsel to assist with the matter, the parties agree that City will be responsible for any subpoena, court order, or KORA request pertaining to records for property within City's city limits and for any subpoena, court order, or KORA request pertaining to records for property outside of City's city limits, County shall be the responsible party. In the event that it is unclear which party would be responsible to respond to the subpoena, court order, or KORA request, the MABCD Director or his/her designee shall determine which party's policies would apply. It is anticipated that some or all of the costs for the production of records would be paid by the requesting party. However, to the extent that such costs would not be paid by the requesting party, the costs would be borne by the County as a part of the MABCD's budget. In the event that the City is involved in litigation or anticipated litigation, City staff shall provide MABCD staff with sufficient information for County information technology staff to initiate and maintain a litigation hold or "freeze" of records that may be pertinent to such litigation or anticipated litigation.

8. **Term.** This Agreement shall be for one (1) year from its Effective Date. This Agreement will automatically renew for one (1) year terms unless either party exercises its option to terminate pursuant to Section 9 of this Agreement.
9. **Termination.** Either party may terminate this Agreement with a written notice provided to the other party not less than 90 days prior to the stated effective termination date. In the event of termination of this Agreement, the parties agree to negotiate in good faith to: (a) transfer original records or copies of original records from County to City; (b) the division of costs; and (c) any other matters that would be pertinent to ensuring the appropriate preservation of both parties' records.
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

With a copy to:

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

11. **Entire Agreement.** This Agreement contains 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.
12. **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. However, County may enter into agreements with vendors to perform specific services that may include the storage, maintenance, retention, and destruction of MABCD Records.
13. **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.
14. **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.
15. **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.
16. **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 Section (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.

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. **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.
19. **Indemnification.** County expressly agrees and covenants that it will hold and save harmless and indemnify City, its officers, agents, and employees from liability of any nature or kind arising out of any act or omission by County (including County's officers, agents, and employees) and relating to the provisions of this Agreement to the extent allowable under the Kansas Tort Claims Act, and excepting claims based on acts or omissions by City, its agents, and employees. City expressly agrees and covenants that it will hold and save harmless and indemnify County, its officers, agents, and employees from liability of any nature or kind arising out of any act or omission by City (including City's officers, agents, and employees) and relating to the provisions of this Agreement to the extent allowable under the Kansas Tort Claims Act, and excepting claims based on acts or omissions by County, its agents, and employees.

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 T. Dennis, Chairman
Commissioner, Third District

Jeff Longwell
Mayor

ATTESTED TO:

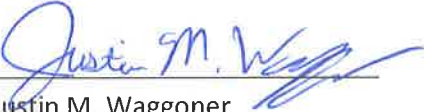
ATTESTED TO:

Kelly B. Arnold
County Clerk

Karen Sublett
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:


Justin M. Waggoner
Assistant County Counselor

Jennifer L. Magaña
Director of Law and City Attorney