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Board of Trustees
Leavenworth County Fire District #1
111 East Kansas Street, Suite 225
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Subject: Termination of the Interlocal Cooperation Agreement for FD#1

Dear Trustees,

The purpose of this letter is to provide our legal interpretation and application of the Termination provisions of the Interlocal Cooperation Agreement (ILA). As more fully set forth below, we believe the termination provisions of the ILA, given their plain meaning, provide that should any party to the ILA give proper notice of its termination to the other parties, the entire ILA is terminated, and that the Fire District then becomes a "legal shell" until its boundaries are reset and/or it is refilled with some other form of agreement/governance, or it is dissolved by the BoCC.

Fortunately, the Kansas Supreme Court has provided guidance on this very issue in *Delaware Twp. V. City of Lansing, Kan.*, 316 Kan 86, 512 P.3d 1154 (2022). The following portions of the opinion are instructive:

K.S.A. 2021 Supp. 12-2904 generally defines the scope and use of interlocal agreements, authorizes the use of interlocal agreements to handle public functions (including fire services), sets forth the basic legal requirements of agreements, and requires attorney general approval of certain types of agreements.

K.S.A. 2021 Supp. 12-2904(d)(5) requires that interlocal agreements contain a termination provision that also details the disposition of property. *The specific terms of this contract provision are left to the parties to negotiate.*

"(d) Any such agreement shall specify the following:

(1) Its duration.

- (2) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto.
- (3) Its purpose or purposes.
- (4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefore.
- (5) *The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.*
- (6) Any other necessary and proper matters." (Emphasis added.)

Paragraph 2 of the ILA provides in pertinent part "Upon the expiration of the initial term of this agreement the agreement shall automatically renew for succeeding four year terms **unless terminated by any party as provided for in this agreement.**" (Emphases added.)

10(b) of the ILA provides in pertinent part "Subject to the provisions of paragraph 2 of this agreement, **any party may terminate this agreement by providing to the other parties written notice of its intention to terminate the agreement.**" (Emphases added.)

It is important to note K.S.A. 2021 Supp. 12-2904(d)(5) gives the parties the ability to negotiate having a "**partial or complete termination.**" When drafting the ILA, the parties chose to incorporate various provisions from the enabling statutes (K.S.A. Supp. 12-2901, et seq. and 19-3601, et seq.) The fact the parties chose **not** to include provisions for partial termination, or an option enabling an individual party's withdrawal, demonstrates they bargained for an ILA that included all three entities, nothing more or nothing less.

The Kansas Supreme Court confirmed this interpretation in its opinion stating:

"... the Interlocal Agreement can operate according to its plain terms . . . without impacting the ongoing existence and viability of the Fire District. **That district will simply need to arrive at a new arrangement for the provision of fire suppression services within its boundaries.**" (Emphases added.)

* * *

"It is not the function of courts to make contracts, but to enforce them as made." *Tri-State Hotel Co., Inc. v. Sphinx Investment Co., Inc.*, 212 Kan. 234, 246, 510 P.2d 1223 (1973). ""It is the duty of courts to sustain the legality of contracts in whole or in part when fairly entered into, if reasonably possible to do so, rather than to seek loopholes and technical legal grounds for defeating their intended purpose."" *Wasinger v. Roman Catholic Diocese of Salina*, 55 Kan. App. 2d 77, 80, 407 P.3d 665 (2017).

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Thus, the Agreement is enforceable on its own terms without placing the Fire District itself in any jeopardy of being unlawfully dissolved. We understand that, as a practical matter, without the Agreement the Fire District may be just a legal "shell"—but that is in fact what a Fire District is. A shell to lawfully acquire, hold, and manage all of the assets and personnel required to provide fire suppression services within its geographical boundaries.

Based upon the above analysis, we believe the ILA terminates on December 31, 2024 by virtue of Lansing's timely notice of the same, and that the assets and liabilities of FD#1 need to be apportioned pursuant to paragraphs 10(c) & 10(d) of the ILA prior to that date to prevent delay in fire suppression services for the affected constituents.

Respectfully submitted,



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