

INTERLOCAL AGREEMENT

(Shawnee County Contract No. C334-2004)

(City of Topeka Contract No. 34790)

AN INTERLOCAL AGREEMENT RELATING TO FINANCING COUNTYWIDE INFRASTRUCTURE DEVELOPMENT AND ECONOMIC DEVELOPMENT TO BE FUNDED BY A ONE-HALF OF ONE CENT COUNTYWIDE RETAILERS' SALES TAX

THIS AGREEMENT is entered into this 9th day of December, 2004, by and between THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SHAWNEE, KANSAS, a governmental subdivision of the State of Kansas, hereinafter referred to as the "County," and THE CITY OF TOPEKA, KANSAS, a duly organized municipal corporation hereinafter referred to as the "City."

WHEREAS, on the August 3, 2004 election, the voters of Shawnee County approved a countywide retailers' sales tax in the amount of one-half of one cent to be levied in Shawnee County, Kansas and to take effect on January 1, 2005 and expire on December 31, 2016, to provide revenue to finance economic development and countywide infrastructure development and replacing the existing one-quarter of one cent retailer's sales tax; and

WHEREAS, economic development is defined as the implementation of the economic development priorities established on a yearly basis by the Joint Economic Development Organization (JEDO), guided by the Topeka/Shawnee County Economic Development Plan to the extent such a plan has been adopted by both parties. For purposes of this agreement, economic development includes research, target marketing, existing business retention and expansion, new business recruitment, infrastructure development, site acquisition, incentive funds, workforce training and expansion, and other such activities; and

WHEREAS, countywide infrastructure improvements include all the projects listed on the August 3, 2004 ballot question; and

WHEREAS, the County and City desire to enter into an interlocal agreement, pursuant to K.S.A. 12-2901 *et seq.*, relating to financing countywide infrastructure improvements and economic development to be funded by a one-half of one cent countywide retailers' sales tax and that shall rescind the existing interlocal agreement regarding the same; and

WHEREAS, the County and the City agree to a joint countywide economic development program as authorized by K.S.A. 12-2901 *et seq.*;

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. The County and City hereby desire to continue the Joint Economic Development Organization, hereinafter referred to as "JEDO", a separate legal entity created by Shawnee County Contract No. C261-2001 and City of Topeka Contract No. 31439, and authorize said JEDO to provide the economic development program for the County and the City. This agreement shall rescind Shawnee County Contract No. C261-2001 and City of Topeka Contract No. 31439. All other contracts and resolutions approved by JEDO prior to this agreement shall remain in full force and effect. JEDO shall be organized according to the following provisions:

- a) The JEDO shall be composed of a seven (7) member board containing the three (3) County Commissioners, the Mayor, Deputy Mayor, and two (2) City Council members. If the Deputy Mayor or other voting City Council member of the board cannot be present at a meeting, an alternate may be

appointed to serve at that meeting, with full voting rights. The alternate shall be a City Council member of the absent member's choice. The Chair of said JEDO shall rotate between the County and the City on a yearly basis with each municipality having sole discretion to designate its Chairperson. The County shall have the Chair in even numbered years. The remaining six (6) City Council members shall be ex-officio (non-voting) members of the JEDO; and

- b) The JEDO shall establish its own operational policies and procedures. The JEDO may employ such staff as is necessary for the performance of the functions and purposes of this agreement (*see* K.S.A. 12-2904a); and
- c) This contract shall be operative upon final approval of this Interlocal Agreement by the County and the City as well as the Attorney General's Office and shall be in existence for the life of the retailers' sales tax plus one (1) year. The JEDO shall have the authority to own and hold property. Any property held by the JEDO at its termination shall revert jointly to the County and City; and
- d) The JEDO shall be subject to the provisions of the Kansas Open Meetings Act, K.S.A. 75-6101, and the Kansas Open Records Act, K.S.A. 45-221; and
- e) There shall be an annual audit of the JEDO completed in accordance with approved accounting standards. Such audit and report shall be provided to the City and County and filed with the City Clerk and County Clerk and at the Topeka-Shawnee County Public Library. Both the City Clerk and the

County Clerk shall be authorized agents for the purpose of obtaining information about this one-half of one cent countywide retailers' sales tax from the Kansas Department of Revenue.

2. On or before November 1st of each year, the City Council, the Mayor, and the County Commission shall meet for purposes of considering the economic development priorities for the coming year. Thereafter, but not later than January 1st, the JEDO shall establish the economic development priorities for the next year based on the input received from the joint meeting of the City Council, the Mayor, and the County Commission. If for any reason priorities are not established by the JEDO for the next year, the priorities as established for the previous year shall remain in effect.

3. There is hereby created the JEDO Finance Committee. This Committee shall be composed of the Shawnee County Public Works Director, the Topeka Public Works Director, the Shawnee County Financial Administrator, and the Topeka City Manager or a designee. The City and County shall transfer all of the sales tax receipts into an account created and maintained by the Committee. Such account will be the holding account for all the money needed to complete the economic development program and infrastructure improvements. When money is needed for the economic development program or to further any of the infrastructure improvements, this account shall be drawn upon by the signatures of two members of the Committee, one from the City and one from the County. The actions of the JEDO and the JEDO Finance Committee with respect to the completion of the infrastructure improvements and the economic development program contained in the ballot question shall be ministerial and not discretionary.

a) Upon the later of the expiration or termination of the sales tax and the completion of and payment for the projects described/listed in Attachment A and the Topeka Boulevard Bridge project, the committee shall inform the City and County of any money remaining in the account. Unless otherwise agreed to by the parties, these excess monies, less any economic development (as provided by paragraph five of this agreement) or county bridge (as provided by paragraph six of this agreement) commitments, shall be distributed to the City and County in the proportional rates as provided by Kansas law at the time of the excess monies determination.

4. The County dedicated one (1) mill of *ad valorem* taxes in fiscal year 2002 to JEDO for economic development. This money was considered a loan to the economic development program and was to be repaid within four (4) years with no interest to the County from the one-quarter of one cent countywide retailers' sales tax. Such loan shall continue to be repaid in equal installments over the remainder of the four (4) year collection period using revenue collected from the one-half of one cent countywide retailers' sales tax. There are no changes to the terms and conditions of this loan.

5. Beginning in fiscal year 2005 and continuing throughout the life of the retailers' sales tax, the JEDO shall dedicate on an annual basis Five Million Dollars (\$5,000,000) of funds collected by the retailers' sales tax to the economic development program. Such dedication shall be made in equal monthly installments of \$416,666.66. Said monthly installments shall begin once the January 2005 collections are distributed by the Kansas Department of Revenue to the City and County. Any economic

development entity that contracts with JEDO will understand this lag in collection payments may result in receiving its initial payments late.

6. After each monthly distribution of funds as described in paragraph five, all sales tax receipts collected shall be dedicated to County bridges until such time as One Million Five Hundred Thousand Dollars (\$1,500,000) has been collected each year of the sales tax.

7. Beginning in 2007 and continuing through 2016, payments to cover the debt service of the Topeka Boulevard Bridge project shall be made. Such dedication shall occur after the payments as described in paragraphs four through six are made. The Topeka Boulevard Bridge project shall include, but not be limited to, the planning and construction projects previously approved by the Council of the City of Topeka pursuant to Ordinance Nos. 17701, 17814, 18041 and 18317.

8. All money collected in excess of the amounts set forth in paragraphs four through seven shall be distributed monthly to the JEDO Finance Committee account. JEDO shall be required to expend sufficient money to complete all of the remaining infrastructure improvements as specified in the August 3, 2004 primary election ballot question. The governing bodies and JEDO shall adhere as closely as possible to the project and payment schedule as set forth in attachment A, subject to formal approval of the projects by the appropriate governing body. Nothing in this agreement shall be construed as precluding the sales tax ballot projects being completed earlier than scheduled.

9. The JEDO shall have the authority to contract with an independent contractor to direct the economic development program. Any such contract shall

endeavor to use an amount not less than ten percent (10%) of the funds received to support economic development for socially and economically disadvantaged individuals and/or business enterprises. Any such contract shall be limited to one (1) year and subject to an annual review by the JEDO. In addition, any such contracts shall include a requirement that the contractor respond promptly to inquiries from both voting and non-voting members of the board.

10. This agreement may not be terminated by either party as it is expressly acknowledged that this agreement is time limited, revenue specific, and funded with dedicated retailers' sales tax receipts. Unless required by elector petition as provided by K.S.A. 12-187(b)(1), neither the County or City shall submit the question of repeal of the countywide retailers' sales tax approved on August 3, 2004 to the voters during the term of this agreement unless such question contains an enhancement of the countywide retailers' sales tax.

11. The parties acknowledge and agree that this agreement for the distribution of sales tax revenues is a commitment for the protection of the public property, interests, and affairs being administered. Consequently, this agreement is expressly intended by the parties to be binding on future JEDO Boards, Boards of Shawnee County Commissioners, and Topeka City Councils.

12. This agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

13. This agreement contains all of the agreements and understandings between the parties concerning its subject matter. The parties acknowledge and agree that this agreement supersedes all prior agreements and understandings, whether or not written.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the date first above written.



BOARD OF COUNTY COMMISSIONERS
SHAWNEE COUNTY, KANSAS

Theodore D. Ensley
Theodore D. Ensley, Chairman

ATTEST:

Cynthia A. Beck
Cynthia A. Beck, Shawnee County Clerk

APPROVED AS TO FORM AND LEGALITY
BY THE SHAWNEE COUNTY COUNSELOR'S OFFICE
DATE 12/9/04 BY [Signature]

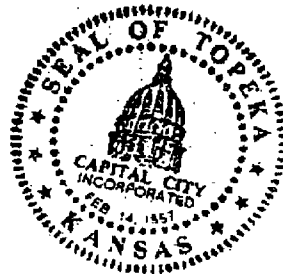
CITY OF TOPEKA, KANSAS

James A. McClinton
James McClinton, Mayor

ATTEST:

Iris E. Walker
Iris E. Walker, Topeka City Clerk

APPROVED AS TO FORM AND LEGALITY
BY THE CITY ATTORNEY'S OFFICE
DATE 12/8/04 BY [Signature]



ATTACHMENT A

SALES TAX INFRASTRUCTURE PROJECT SCHEDULE

PROJECT	CONSTRUCTION YEAR	PROJECT ADMINISTRATION AGENCY
SW Wanamaker Road & 53rd Intersection	2007	County
SW 21st Street & Urish Road Intersection	2007	City
SE Croco Road: SE 21st to SW 29th	2008	County
SW 29th Street: SW Wanamaker Road to SW Urish Road	2008	City
SW Wanamaker Road: SW 41st Street to SW 53rd Street	2009	County
SW Wanamaker Road & SW 61st Intersection	2010	County
SE Croco Road: SE 6th Street to Sycamore (I-70)	2010	County
SW Wanamaker Road: 61st Street to 53rd Street	2011	County
SE 45th Street: S. Topeka Blvd to SE Adams	2012	County
SW 21st Street: City Limits to Urish Road	2013	City
SE 45th Street: SE Adams to SE California	2014	County
SW 21st Street: SW Urish Road to SW Indian Hills Road	2015	City
N. Topeka Blvd & 46th Intersection	2016	County