

AGREEMENT FOR PROFESSIONAL ECONOMIC DEVELOPMENT SERVICES

This Agreement is made and entered into this 17th day of August, 2018, by and between the City of Ogallala, Nebraska, a Nebraska municipal corporation (CITY), The County of Keith, Nebraska (COUNTY), and Keith County Area Development, Inc., a Nebraska Non-Profit Corporation (KCAD).

RECITALS:

WHEREAS, CITY and COUNTY have the authority, among other things, to promote the general interest and welfare of the municipality and county and its habitants, commerce and development; and

WHEREAS, CITY and COUNTY desire to cooperate in the promotion and implementation of economic development within and throughout the CITY and COUNTY and to enter into this Agreement with KCAD; and

WHEREAS, KCAD is organized under the laws of the State of Nebraska as a non-profit corporation with corporate purposes including but not limited to: promoting the resources of Keith County, Nebraska, in order to support and facilitate economic growth in Keith County, Nebraska; locating and identifying new businesses, enterprises and industries best suited to the resources of Keith County, Nebraska; encouraging, developing and implementing an economic development plan for Keith County, Nebraska; promoting and assisting in the recruitment of new

businesses, enterprises and industries to Keith County, Nebraska and encouraging and promoting the expansion and growth of existing business and industry in Keith County, Nebraska; and enhancing the quality of life in Keith County, Nebraska, by promoting and coordinating the economic development efforts of businesses, citizens and governmental entities located in Keith County, Nebraska; and

WHEREAS, KCAD has agreed to provide services as the Economic Development Coordinator (EDC) to perform duties in the promotion, improvement, development and implementation of community and economic development strategic plans and programs for and on behalf of the CITY and COUNTY and to hire one full time employee of KCAD and such support staff as KCAD may deem necessary to effectively carry out KCAD's duties in the promotion, improvement, development and implementation of community and economic development plans and programs for and on behalf of the CITY and COUNTY, and

WHEREAS, CITY, COUNTY and KCAD deem it in the best interest of the general public and citizens of Ogallala and Keith County to coordinate their efforts to promote, improve, develop and implement economic development within Ogallala and Keith County, Nebraska and that any and all economic development in Keith County directly benefits the CITY and the COUNTY; and

WHEREAS, CITY and COUNTY shall study and evaluate on a continuing basis the benefits that may result to CITY and COUNTY from the coordination of their efforts as described herein; and

WHEREAS, CITY, COUNTY and KCAD desire to enter into this Agreement under which KCAD will be the CITY and COUNTY EDC to promote, improve, develop and implement economic development within the CITY and throughout the COUNTY, as more fully set forth below, upon the terms and conditions set forth herein.

Now, Therefore, in consideration of the agreements contained herein, CITY, COUNTY and KCAD do mutually agree as follows:

1. RATIFICATION: The parties hereto acknowledge that the foregoing recitals are true and correct and adopt the same as a material part of this Agreement.

2. ECONOMIC DEVELOPMENT COORDINATOR: KCAD shall be the CITY and COUNTY EDC and perform a variety of administrative and professional duties in the promotion, improvement, development and implementation of community and economic development strategic plans and programs for the CITY and COUNTY and shall hire one full time employee and such support staff as KCAD may deem necessary to effectively carry out KCAD's duties as set forth herein.

3. TERM OF AGREEMENT: This agreement shall be in full force and effect for a five (5) year term commencing on September 1, 2018, and continuing through August 31, 2023. This Agreement shall thereafter be automatically renewed for additional two year

terms beginning on September 1, 2023, and terminating on August 31st of the second succeeding year thereafter, if neither the CITY, COUNTY or KCAD has delivered a notice of intent not to renew this Agreement by July 1, 2023, and July 1st of each second year thereafter. This renewal provision shall be deemed continual and in full force during the initial term or any extension of this Agreement. It is understood between the parties hereto that each party reserves the right not to renew this Agreement for any reason whatsoever and that the right not to renew shall not be limited by any other provisions of this Agreement. This Agreement may only be terminated during its term or any renewal term by a party hereto for cause.

4. CITY AND COUNTY COSTS: CITY shall pay \$115,000.00 and COUNTY shall pay \$56,569.06 to KCAD to be used by KCAD for economic development efforts as herein described, including but not limited to the expenses of EDC, including salary, benefits, health insurance, retirement, workman's compensation insurance and education and seminars for its employees. KCAD shall be responsible for payment of its employees' salary, benefits, health insurance, retirement, workman's compensation insurance, education and seminars, and daily operating expenses, including costs of capital expenditures or the purchase of equipment and other related expenses it may have in performing its duties hereunder. During the initial term of this Agreement, CITY and COUNTY shall pay their annual payments as identified herein one-

half (1/2) on or before September 1, 2018, and one-half (1/2) on or before March 1, 2019. During any subsequent term of this Agreement, the CITY and COUNTY shall pay their payments as identified herein one-half (1/2) on or before September 1st, and one-half (1/2) on or before March 1st in each additional year of the Agreement. The annual payments required of CITY and COUNTY herein shall automatically increase by 2%, effective with the beginning of each new contract year.

5. RESOLUTION: Each party hereto pledges its full faith and credit to pass necessary resolutions and take the proper legal steps to perform and effectuate this Agreement.

6. KCAD PERFORMANCE REVIEW: CITY and COUNTY shall measure KCAD's performance pursuant to the terms of this Agreement against the strategic plan for economic development as adopted by CITY and COUNTY and as amended or supplemented from time to time by resolution of both the CITY and COUNTY. The CITY and COUNTY shall review and restate the strategic plan for economic development by joint resolution of the CITY and COUNTY pursuant to this Agreement, at least annually.

7. WAIVER: Waiver by either party of, or the failure of either party to take action with respect to, any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

8. TIME OF THE ESSENCE: It is agreed that time is of the essence of this agreement and each and every covenant, term, condition and provision hereof.

9. TERMINATION: Either party may terminate this Agreement if the other party fails to cure any breach of the terms herein following 30 days written notice of said breach to the breaching party.

10. REPORTS: KCAD shall provide the CITY and COUNTY with a quarterly report identifying the various economic development activities undertaken by KCAD pursuant to the terms of this Agreement and shall attend at least one regular or special meeting of the CITY and COUNTY at least quarterly to present such report and to provide such information as may be reasonably requested by CITY and COUNTY.

11. EXPENDITURE OF FUNDS: KCAD shall expend any funds received from the CITY and COUNTY pursuant to this Agreement for no purpose other than for the purpose of providing such EDC services as set forth herein. KCAD shall establish and maintain separate accurate files, records, both financial and operational, of all aspects of the services and activities and the matters funded in whole or in part with the funds provided by the CITY and COUNTY hereunder. Without limiting the scope of the forgoing, KCAD shall establish and maintain the separate accurate financial books and accounting records relating to the services and activities and the funds received and expended, together with

all invoices, documents, payrolls, time records and other data relating to the matters covered by this Agreement. KCAD shall maintain all such separate records to be maintained under this Paragraph in a readily accessible location and condition for a period of not less than five (5) years after the end of the year in which such record was created. KCAD shall make available to the CITY and COUNTY, their employees and authorized representatives, during regular business hours, all of the separate files, records, books, invoices, documents, payrolls and other data required to be established and maintained by KCAD under this Agreement. The rights of the CITY and COUNTY pursuant to this Paragraph shall remain in effect so long as KCAD has the obligation to maintain such separate files, records, books, invoices, documents, payrolls and other data set forth herein. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed to allow or permit the CITY and COUNTY to request access to any other books and records of KCAD unrelated to KCAD's performance under the terms of this Agreement.

12. MISCELLANEOUS:

- A. This Agreement shall be construed and governed in accordance with the laws of the State of Nebraska. The parties acknowledge that they are dealing totally on their own good judgment and not upon the representations which have been made by either

of them to the other outside the terms and conditions of this Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties regarding the subject matter hereof. This Agreement shall not be modified, amended, altered or changed except by written document agreed and signed by the parties hereto.

- B. The captions which precede the paragraphs of this agreement are for convenience only and shall in no way affect the manner in which any provision thereof is construed.
- C. Whenever the agreement so requires, singular words shall be construed in the plural and vice versa.
- D. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition, without invalidating the remainder of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
- E. The parties specifically agree to execute any and all necessary documents to carry out the terms, purposes and intent of this Agreement.

F. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the applications of rules of interpretation of contracts generally.

G. Notwithstanding any provision contained herein to the contrary, this Agreement shall not be construed as in any way creating a joint entity as between the parties hereto; and KCAD shall, at all times during the term of this Agreement, remain a separate and independent non-profit corporation organized exclusively for purposes within the definition and meaning of Section 501(c)(3) of the Internal Revenue Code.

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

City of Ogallala, a Nebraska
Municipal Corporation



Darrell G. Bassett,
Council President

Keith County, Nebraska



Lonnie Peters,
Chairman of Keith County
Commissioners

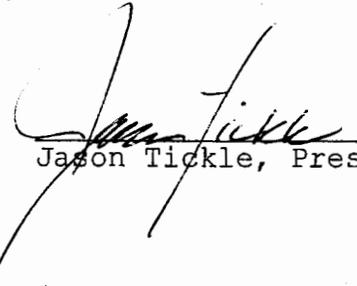
ATTEST:


Jane Skinner, City Clerk

ATTEST:


Sandra Olson, County Clerk

Keith County Area Development,
Inc.

By: 
Jason Tickle, President

City/Interlocal Agrmt/RE KCAD