

## **AGENDA**

### **CALL TO ORDER**

### **AGENDA ITEMS**

- [1.](#) Update from City Attorney

### **ADJOURNMENT**

For information on how to view prior meetings, please visit our website at <https://www.lansingks.org>. If you require any special assistance, please notify the City Clerk prior to the meeting.

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# AGENDA ITEM

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TO: Mayor McNeill, Lansing City Council  
FROM: Tim Vandall, City Administrator  
DATE: October 24, 2022  
SUBJECT: October 27<sup>th</sup>, 2022 Work Session

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**Explanation:** City Attorney Greg Robinson will recap the statutes and procedures laid out to allow an entity to terminate the interlocal agreement.

**Policy Consideration:** None.

**Financial Consideration:** None.

**Action:** Discussion only.



State of Kansas

Office of the Attorney General

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

PHILL KLINE  
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215  
FAX: 296-6296

June 26, 2003

Pamela Campbell Burton  
Burton Thompson & Robinson  
112 South Main  
Lansing, Kansas 66043

Re: Interlocal cooperation agreement/City of Lansing, Delaware Township, High Prairie Township, and Leavenworth County/Fire District No. 1, Leavenworth County

Dear Ms. Burton:

We have reviewed the above-referenced interlocal cooperation agreement and find that it complies with the requirements of the Interlocal Cooperation Agreement Act and with the laws of the state of Kansas.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
PHILL KLINE

Mary Feighny  
Assistant Attorney General

MF/mf  
Enclosure: Original documents

**AN INTERLOCAL COOPERATION AGREEMENT FOR THE ESTABLISHMENT OF  
A JOINT BOARD, A FIRE DISTRICT BOARD OF TRUSTEES  
AND THE FUNDING AND OPERATION OF  
FIRE DISTRICT NO. 1, COUNTY OF LEAVENWORTH, KANSAS**

COME NOW THE PARTIES TO THIS INTERLOCAL AGREEMENT: the Board of County Commissioners of Leavenworth County, Kansas, hereinafter, "County Commissioners," the City of Lansing, Kansas, hereinafter, "Lansing," Delaware Township; Leavenworth County, Kansas, hereinafter, "Delaware," and High Prairie Township, Leavenworth County, Kansas, hereinafter, "High Prairie." The aforementioned parties recite and agree to the following:

1. **AUTHORITY**

This agreement is entered into pursuant to the provisions of K.S.A. 12-2901 et seq. and amendments thereto.

2. **TERM**

The term of this agreement shall be for an initial period of five years from the date of execution. Execution of this agreement shall be accomplished by the signing of this agreement by all parties. Date of execution will be the date the last signature is inscribed on this agreement. 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.

3. **PURPOSE AND NAME**

That the purpose of this agreement is to provide for the operation and funding of a Fire District to be formed in the County of Leavenworth pursuant to the provisions of K.S.A. 19-3601 et seq. The name of the Fire District shall be "Fire District No. 1, County of Leavenworth, Kansas, hereinafter, "Fire District."

4. **AREA OF SERVICE**

The Fire District shall service the area within the boundaries of the City of Lansing, Delaware Township and High Prairie Townships, located in Leavenworth County, Kansas.

5. **APPOINTMENT OF JOINT BOARD TO NAME FIRE DISTRICT BOARD OF TRUSTEES**

The County Commissioners, pursuant to K.S.A. 19-3612a as amended, delegates its authority to appoint the members of the Fire District Board of Trustees to a joint board appointed by the governing bodies of Lansing, Delaware and High Prairie, hereinafter "Joint Board." The governing bodies of Lansing, Delaware and High Prairie shall appoint members to the Joint Board on an annual basis. In the event a vacancy arises on the Joint Board, the governing body

who appointed the person whose position is now vacant, shall, within thirty (30) days, appoint a new member to the Joint Board in keeping with the terms of this agreement. The Joint Board shall be comprised of five members: the mayor of the City of Lansing; two members of the City Council of Lansing; the Delaware Township Board Trustee; and High Prairie Township Board Trustee. Said Joint Board shall appoint the members of Fire District No. 1, County of Leavenworth, Kansas Board of Trustees, hereinafter "Fire District Board of Trustees." Members of the Joint Board shall not concurrently serve as members of the Fire District Board of Trustees and the Joint Board. The Joint Board shall set the term to be served by the Fire District Board of Trustees.

## 6. **FIRE DISTRICT GOVERNING BOARD**

The Fire District Board of Trustees appointed by the Joint Board shall be granted all powers vested in the Board of Leavenworth County Commissioners pursuant to K.S.A. 19-3601 through 19-3606, and amendments thereto and shall govern and oversee the operation and funding of the Fire District. The Fire District board of trustees so created shall exercise those powers enumerated in the provisions of K.S.A. 19-3612a.

Pursuant to K.S.A. 19-3601, the Board of Leavenworth County Commissioners shall delegate the powers and duties of the County Clerk and County Treasurer with regards to the secretary and treasurer positions with the Fire District Board of Trustees, to persons it deems qualified to serve as such. If a member of the Fire District board of trustees is appointed as secretary or treasurer of the Fire District board of trustees, then that member shall retain voting authority. If a person other than a member of the Fire District board of trustees is appointed to serve as secretary or treasurer, he or she shall not be considered a member of the Fire District board of trustees and shall hold a non-voting position. The secretary and treasurer of the Fire District board of trustees shall execute a good and sufficient surety bond, paid by the Fire District, in an amount which shall not be less than the amount of money such person or persons shall be responsible for at any one time. Said bond shall be reviewed, and if necessary, adjusted annually by the Fire District Board of Trustees.

### a. **Qualifications**

No member of the Fire District board of trustees shall be a current employee or official, whether elected or appointed, of either Lansing, Delaware or High Prairie. A member of the Fire District Board of Trustees shall not concurrently serve as member of the Fire District Board of Trustees and as a firefighter, employee or volunteer of the Fire District. Members of the Fire District board of trustees shall be qualified electors of the City of Lansing, Delaware Township or High Prairie Township and remain such resident during their term.

b. **Ex officio member**

The Fire Chief of Fire District No. 1, County of Leavenworth, Kansas shall serve as a non-voting advisor to the Fire District board of trustees.

c. **Quorum**

A quorum of a five member Fire District Board of Trustees shall consist of three members.

d. **Voting requirements**

With five members appointed to the Fire District Board of Trustees by the Joint Board, in order to conduct official business of the Fire District Board of Trustees, attendance of a three members is required.

A simple majority of a quorum is required for approval or disapproval of official business of the Fire District Board of Trustees, unless such action is otherwise limited herein.

e. **Special voting requirements**

With a five member Fire District Board of Trustees appointed by the Joint Board, a vote by four members of the Fire District Board of Trustees shall be required prior to any of the following acts being undertaken by the Fire District board of trustees:

1. Levy of taxes.
2. Entry into contracts in excess of \$5,000.00.
3. Acquire or dispose of real property.
4. Issuance of any bonds, including general obligation bonds and no-fund warrants.
5. Entry into any lease purchase agreement.
6. Creation of any indebtedness on the part of the Fire District.
7. Expenditure of Fire District funds in excess of five-thousand dollars (\$5,000.00).
8. Execution of any agreement with any entity other than the parties to this agreement for fire protection services.
9. The establishment of any permanent employee positions with the Fire District;
10. The hiring and/or termination of any permanent employee of the Fire District.
11. Establishment of salaries and other employment benefits to compensate Fire District employees.

12. The adoption or modification of the operational policies and bylaws of the Fire District.
13. Exercise of eminent domain.

f. **Representation of entire Fire District**

Each member of the fire district board of trustees so appointed shall represent the whole of the District and shall act in the best interests of the Fire District.

g. **Vacancies on the Fire District Board of Trustees**

In the event a vacancy occurs on the Fire District Board of Trustees, the Joint Board shall within thirty (30) days, convene and appoint a new member in accordance with the terms of this agreement.

h. **Creation and Adoption of Bylaws**

Within thirty (30) days of the establishment of the Fire District Board of Trustees, the members shall meet to establish bylaws for Fire District No. 1, County of Leavenworth, Kansas

i. **Five Member Fire District Board of Trustees**

This Interlocal Agreement is being prepared as to five members being appointed to the Fire District Board of Trustees by the Joint Board. In the event the Joint Board appoints less than or more than five members to the Fire District Board of Trustees, Sections 6c-Quorum, 6d-Voting Requirements and 6e-Special Voting Requirements, and any other relevant sections herein shall be amended.

7. **FUNDING**

The operation of the Fire District governed by the Fire District board of trustees created herein shall be funded through the provisions of K.S.A. 19-3610 et seq., through any additional contributions to the Fire District by any of the parties to the agreement and through any other method provided for by law. A treasurer for the Fire District as appointed under paragraph 6 herein, shall maintain the financial records of the Fire District and assist the Fire District board of trustees in the preparation of the budget for the Fire District. The budget shall be submitted and approved pursuant to K.S.A. 19-3610.

## 8. TITLE TO PROPERTY

### a. Title in name of Fire District

On or after January 1, 2004, any equipment, vehicle, building, personalty or real property acquired by the Fire District, by purchase, contribution or otherwise, except as otherwise provided below, shall be owned solely by the Fire District.

### b. Special Property

1. The existing Delaware Township Fire Station structure, located at 111 E. Kansas, Lansing, Kansas shall be retained by Delaware. On the tenth (10<sup>th</sup>) anniversary of the date of the establishment of the Fire District, the building shall be purchased from Delaware by the Fire District for the amount of \$1.00.
2. The fire station building to be constructed by High Prairie within ten (10) years shall be titled in the name of High Prairie. On the tenth (10<sup>th</sup>) anniversary of the date of the establishment of the Fire District, title to the building shall be purchased from High Prairie by the Fire District for the amount of \$1.00.
3. All fire equipment owned by Delaware on December 31, 2003, shall be retained by Delaware, and/or remain titled to Delaware, where applicable. Such equipment shall be purchased by the Fire District upon the fifth (5<sup>th</sup>) anniversary date of the establishment of the Fire District for the amount of \$1.00.
4. Fire protection vehicles owned by Delaware on December 31, 2003, shall remain titled to Delaware. Title to said vehicles shall be purchased by the Fire District on the tenth (10<sup>th</sup>) anniversary date of the establishment of the Fire District this agreement for the amount of \$1.00.
5. In the event that this agreement is terminated prior to the transfer dates set out above, the parties acknowledge they are not bound to transfer title or ownership as set forth above.

### c. Lease by Fire District

Delaware and High Prairie agree to lease to the Fire District, for use by the Fire District, the buildings, equipment and vehicles utilized by Delaware Township and High Prairie Township for fire protection for the sum of one (\$1.00), payable by the Fire District, for each calendar year, or part thereof, of use by the Fire



District. In addition, the Fire District shall be responsible, during the term of this agreement, for the payment of any debt service on the equipment, buildings and vehicles so leased and shall adequately insure and maintain such equipment, buildings and vehicles. In the event that any leased equipment, building or vehicle is damaged or destroyed the insurance proceeds shall first be applied to any repairs, where appropriate, then to the payment of any outstanding debt attributable to the item, any remaining proceeds shall become the property of the Fire District.

d. **Inventory**

Upon entry into this agreement, an inventory of items owned by the parties and leased to the Fire District shall be conducted by the Fire District and a copy of such inventory shall be provided to each of the parties. An inventory shall be undertaken each year on the 31<sup>st</sup> day of December by the Fire District, as to items which belong to Delaware and High Prairie and those which have been purchased by the Fire District. Copies of the annual inventories shall be distributed to the parties and maintained by the Fire District.

9. **INSURANCE**

- a. The Fire District agrees to indemnify and hold harmless the Delaware, High Prairie and Lansing and each individual member of the Fire District Board of Trustees and the Joint Board, from any and all liability, of any character whatsoever resulting in any claim or cause of action arising out of any action or failure to act, by the Fire District during the performance of service or the failure to perform any services.
- b. It is agreed that the Fire District shall maintain liability insurance at all times in an amount determined by the Fire District Board of Trustees to sufficiently protect the Fire District.
- c. The Fire District shall maintain sufficient insurance on property, both real and personal, utilized by the Fire District to protect such property against loss, theft or damage.

10. **TERMINATION**

- a. Upon petition pursuant to K.S.A. 19-3604, the Board of Leavenworth County Commissioners may disorganize the Fire District at any time after four (4) years from the date of publication of the final resolution for the first organization of the Fire District.

b. **Notice**

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. Such notice shall not be effective unless received by the other parties not less than eighteen (18) months prior to the effective termination date.

c. **Disposition of property**

In the event of the termination of this agreement, the property utilized and or owned by the Fire District shall be disposed of as follows:

1. Paragraph 8 of this agreement shall apply and the property referenced shall be disposed of in accordance with the terms of that section.
2. All other assets of the Fire District shall be apportioned between the parties based upon the assessed valuation of each party as compared to the assessed valuation of the Fire District as a whole. In so apportioning the assets, the parties shall utilize accepted accounting and depreciation practices to value the assets of the Fire District and shall attempt to reach an agreement as to the value and apportionment of the assets of the Fire District. In the event that no agreement can be reached, the parties shall submit to binding arbitration on the matter.

d. **Apportionment of liabilities**

In the event that there exists any liability of the Fire District at the time of the termination of this agreement, the parties shall jointly be responsible for the discharge of that liability. In determining each parties respective obligation in discharging said liability, each party shall contribute towards the discharge of the liability of the Fire District based upon a comparison of the assessed valuation of each party as each party compared to the assessed valuation of the Fire District as a whole.

11. **LEGAL SERVICES**

The fire district board of trustees may hire and retain an attorney, or attorneys, to represent the legal interest of the Fire District. No attorney representing a party to this agreement shall serve as the attorney for the Fire District without written waiver and consent of the parties and the Fire District.

12. **ASSUMPTION OF EXISTING FIRE PROTECTION AGREEMENT**

The parties agree that all agreements regarding fire protection, existing at the time of entry into this agreement and binding upon any party to this agreement, shall be assumed and honored by the Fire District.

13. **DATE OF ENTRY**

For the purpose of this agreement, the “date of entry” shall be the date of approval of this agreement by the Office of the Attorney General.

14. **MODIFICATION**

This agreement may be modified by the parties only through the adoption and execution of a subsequent interlocal agreement signed by all parties to this agreement.

15. **SEVERABILITY OF AGREEMENT**

If any term or provision of this Agreement shall be held invalid or unenforceable, then the remainder of the Agreement shall not be effected thereby and each other term and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. **CHOICE OF LAW**

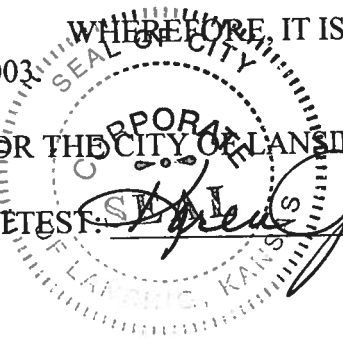
Any dispute arising from this agreement, shall be governed by the laws of the State of Kansas.

**SIGNATURE PAGES FOLLOW**

WHEREFORE, IT IS SO AGREED TO THIS 19 DAY OF June,  
2003.

FOR THE CITY OF LANSING, KANSAS: Samuel W. Bernard

ATTEST: [Signature]



WHEREFORE, IT IS SO AGREED TO THIS 2 DAY OF June,  
2003.

FOR THE DELAWARE TOWNSHIP: Sharon J. Jeselnik

ATTEST: Elizabeth Brown  
Virgil Johnson

Page 11 Fire District Interlocal Agreement

WHEREFORE, IT IS SO AGREED TO THIS 2 DAY OF June,  
2003.

FOR HIGH PRAIRIE TOWNSHIP James V. Dyer Sr

ATTEST: Philip R. Clark

WHEREFORE, IT IS SO AGREED TO THIS 16<sup>th</sup> DAY OF May 2003  
2003.

FOR THE BOARD OF LEAVENWORTH COUNTY COMMISSIONERS:

[Handwritten Signature]

ATTEST: Linda Ascheby J. Klasmaki  
deputy

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF KANSAS:

APPROVED AS TO FORM THIS 26<sup>th</sup> DAY OF June, 2003

Phill Klina  
by Asst. Att. Gen  
M. F. [Signature]



IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 122,582

DELAWARE TOWNSHIP and HIGH PRAIRIE TOWNSHIP,  
*Appellees,*

v.

CITY OF LANSING, KANSAS,  
*Appellant,*

LEAVENWORTH COUNTY, KANSAS, and  
LEAVENWORTH COUNTY BOARD OF COMMISSIONERS,  
*Appellees.*

SYLLABUS BY THE COURT

When an interlocal agreement governing the operation and management of a fire district is terminated by one of the parties under the terms of the agreement, and the district's assets are allocated under those terms, the fire district itself is not altered or dissolved as a legal entity. Provisions in such interlocal agreements permitting termination and asset allocation after sufficient notice are not void for violating public policy.

Review of the judgment of the Court of Appeals in an unpublished opinion filed March 5, 2021. Appeal from Leavenworth District Court; DAVID J. KING, judge. Opinion filed July 8, 2022. Judgment of the Court of Appeals affirming the district court is reversed. Judgment of the district court is reversed.

*Adam M. Hall*, of Thompson-Hall, P.A., of Lawrence, argued the cause, and *Todd N. Thompson*, of the same firm, was with him on the briefs for appellant.

*Timothy P. Orrick*, of Orrick & Erskine, L.L.P., of Overland Park, argued the cause, and *Chadler E. Colgan*, of The Colgan Law Firm, of Kansas City, and *David C. VanParys*, Leavenworth County Counselor, were with him on the briefs for appellees.

*Johnathan Goodyear*, staff attorney, and *Amanda L. Stanley*, general counsel, of League of Kansas Municipalities, were on the briefs for amicus curiae League of Kansas Municipalities.

The opinion of the court was delivered by

STEGALL, J.: This is a dispute between municipalities in Leavenworth County over the future and assets of a fire district. The City of Lansing wants to withdraw from an interlocal agreement governing the fire district. Other parties to the agreement object. After Lansing invoked the termination and asset division provisions of the agreement, this suit was filed. The lower courts ruled against Lansing, holding that the termination and asset division provisions of the agreement were unenforceable because of a "conflicting" statute governing the creation and termination of fire districts. Lower courts also found public policy reasons to disallow the sought-after termination. Today we reverse those decisions and hold that the agreement is enforceable by its clear terms.

The parties have stipulated to the facts as summarized below. As such, our review is plenary. *Rucker v. DeLay*, 295 Kan. 826, 830, 289 P.3d 1166 (2012); *Weber v. Board of Marshall County Comm'rs*, 289 Kan. 1166, 1175-76, 221 P.3d 1094 (2009).

In 2003, the Leavenworth Board of County Commissioners created Fire District No. 1 under K.S.A. 19-3601 et seq., the Fire Protection Act. The Fire District included the City of Lansing, Delaware Township, and High Prairie Township (all parties to this case). At the same time the County Commission created the Fire District, the municipalities all entered into an Interlocal Agreement under K.S.A. 12-2901 et seq.,

the Interlocal Cooperation Act. This Agreement set forth the terms and conditions governing the joint operation and management of the Fire District.

The Attorney General approved the Agreement as complying with Kansas' Interlocal Cooperation Act, which included approving several required provisions relevant to this lawsuit. Those required provisions detail the ownership of Fire District assets and—most importantly—how the Agreement may be terminated and the assets divided. The original term of the Agreement was five years, to be automatically renewed in subsequent four-year terms, unless a party properly terminated the Agreement.

Paragraph 8(a) of the Agreement states, "[o]n or after January 1, 2004, any equipment, vehicle, building, personalty or real property acquired by the Fire District, by purchase, contribution or otherwise, except as otherwise provided below, shall be owned solely by the Fire District."

Paragraph 8(b) of the Agreement outlines a few limited, time-based exceptions for "special property." Special property includes the existing township fire stations, which were retained by the respective townships. The Fire District would later purchase the fire stations for \$1 after 10 years per the terms of the Agreement. During the initial 10 years, the townships agreed to lease those same buildings, as well as equipment and vehicles, to the Fire District for \$1 a year.

Under Paragraph 10(b), termination of the Agreement could be initiated by "any party" but required 18 months advance notice and triggered a specific distribution of assets and liabilities. The termination provisions were divided into two sections. First, "Paragraph 8 of this agreement shall apply and the property referenced shall be disposed of in accordance with the terms of that section." As explained above, Paragraph 8 deals

with the title to property purchased by the Fire District as well as property each party brought into the Agreement, such as the townships' fire stations.

For all other assets not covered by Paragraph 8, Paragraph 10(c)(2) provides those assets "shall be apportioned between the parties based upon the assessed valuation of each party as compared to the assessed valuation of the Fire District as a whole." To determine the valuation, the parties must "utilize accepted accounting and depreciation practices." In the event a valuation dispute arose, the parties agreed to submit to binding arbitration.

Additionally, if the Fire District had any liabilities at the time of termination, Paragraph 10(d) of the Agreement provided that the parties "shall jointly be responsible for the discharge of that liability." A party's contribution would be based "upon a comparison of the assessed valuation of each party as each party compared to the assessed valuation of the Fire District as a whole."

All parties operated under the terms of the Agreement for 15 years. Then in 2018, Lansing sent appropriate notice of its intent to terminate the Agreement and begin providing its own fire protection services. As part of Lansing's right of termination, Lansing sought division and disposition of the Fire District's property.

Delaware and High Prairie petitioned for declaratory judgment to stop the dissolution or alteration of the Fire District and the disposition of the Fire District property. The townships argued that under K.S.A. 19-3604, a fire district may only be disorganized after the county commission which created the fire district adopts a resolution to disorganize it. And that this may be done only after a proper petition by county residents. The townships argued the sections in the Agreement that Lansing relied on to terminate the Agreement were illegal and unenforceable.

Lansing responded with a counterclaim seeking a declaratory judgment that the Agreement was enforceable in its entirety. It argued that its notice was sufficient to terminate the Agreement and trigger the division of assets. Crucially, Lansing maintains that ending the Interlocal Agreement does not dissolve the Fire District itself.

After the lower courts disagreed with Lansing, the city petitioned this court for review, and we granted its petition. The district court ruled in favor of Delaware and High Prairie. Lansing appealed. The Court of Appeals affirmed the judgment of the district court holding that Lansing could not unilaterally alter or disorganize the Fire District and could not force a disposition of property as a matter of public policy. *Delaware Township v. City of Lansing, Kansas*, No. 122,582, 2021 WL 833520 (Kan. App. 2021) (unpublished opinion).

#### DISCUSSION

In this case, the legal arguments arise out of two distinct statutory frameworks. The first, K.S.A. 19-3601 et seq., controls the formation, governance, and termination of fire districts in Kansas. The second, K.S.A. 12-2901 et seq., controls the creation, governance, basic terms, and termination of interlocal agreements in Kansas.

Delaware and High Prairie contend that the "more specific" fire district termination provisions of K.S.A. 19-3604 should override the Agreement's termination provisions authorized by K.S.A. 2021 Supp. 12-2904. Allowing unilateral termination of the Agreement, Delaware and High Prairie contend, is also against public policy because of the public safety importance of fire suppression.

Lansing argues the Agreement may be terminated by its terms—which conform to the requirements of K.S.A. 2021 Supp. 12-2904. From the City's perspective, the two statutory frameworks govern different things entirely, and the termination of an interlocal agreement has no legal impact on the continuing existence of a fire district as a legal entity under K.S.A. 19-3601 et seq. Lansing also insists there is no basis to the claim that this arrangement would create a threat to public safety.

We note as well that an argument concerning constitutional home rule was also bandied about by the parties and the district court in this case. Because we rule exclusively on statutory grounds, we need not reach the home rule questions as they are not relevant to the parties' dispute.

When we interpret statutes and private agreements, such as the parties' Interlocal Agreement, our review is unlimited. *Stewart Title of the Midwest v. Reece & Nichols Realtors*, 294 Kan. 553, 557, 276 P.3d 188 (2012). Likewise, when reviewing the interpretation and legal effect of written instruments, we exercise unlimited review, and are not bound by the lower courts' interpretations of those instruments. *Born v. Born*, 304 Kan. 542, 554, 374 P.3d 624 (2016).

To understand the relationship between the Agreement, the Fire District, and the statutes governing each, we must make every effort to give effect to the plain language of both the Agreement and the statutes. *State v. Smith*, 309 Kan. 929, 932-33, 441 P.3d 472 (2019).

The Agreement states that the Fire District was formed "pursuant to the provisions of K.S.A. 19-3601 et seq." Under K.S.A. 19-3601 et seq.: "The board of county commissioners of any county of the state is hereby authorized and empowered to organize one or more fire districts." The Board's power to organize fire districts is distinct

from any formation of an interlocal agreement between municipalities. To illustrate this, K.S.A. 19-3612a(b) incorporates the Interlocal Cooperation Act by reference by explaining how a designated board of county commissioners along with the governing bodies of cities and townships located within the district may enter into an interlocal agreement and delegate authority to appoint a fire district board of trustees.

At no point in K.S.A. 19-3601 et seq. or K.S.A. 12-2901 et seq. is there a reference to a fire district being *created* through the formation of an interlocal agreement—and for good reason. The purpose of an interlocal agreement is to

"permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities, persons, associations and corporations on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities." K.S.A. 12-2901.

But the power to create or dissolve a fire district is not within the scope of an interlocal agreement. In fact, the procedure to disorganize or alter the territory of a fire district is rigid and specifically laid out in K.S.A. 19-3604:

"(a) Any fire district may be disorganized by the board of county commissioners at any time after four years from the date of the publication of the final resolution for the first organization of such district upon a petition to the board and the making of an order *in like manner as in the case of organizing any fire district under K.S.A. 19-3603, and amendments thereto.*

"(b) Subject to the provisions of K.S.A. 19-270, the territory of any organized fire district *may be subsequently altered by the inclusion of new lands or by the exclusion of lands therein upon a petition to the board of county commissioners signed by the owners of at least 10% of the area of the lands sought to be included or excluded, which*

*petition shall conform, as near as may be possible, to the petition required for the organization of a fire district.* If the board of county commissioners finds the petition is sufficient, the board may adopt and publish a resolution attaching or detaching the lands described in the petition to or from the fire district. The resolution shall be published once each week for two consecutive weeks in a newspaper of general circulation in the area where the lands are located. Such publication shall include a map showing the territory of the district and the lands proposed to be attached to or detached therefrom. If within 30 days after the last publication of the resolution and map, a petition protesting the inclusion or detachment of such lands, signed by the owners, whether residents of the county or not, of more than 19% of the area of the lands sought to be included in or excluded from the fire district is filed with the county clerk, the resolution shall have no force or effect. If such a protest petition shall not be filed within such time, the resolution shall become final, and the lands shall thereupon be deemed attached to or detached from the fire district. In any case where lands are included in or excluded from a fire district as provided herein, the board shall declare the new boundary of the district by the adoption and publication of a resolution in like manner as the boundaries were declared at the time of the original organization thereof." (Emphases added.)

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 therefor.

(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.)

Lastly, K.S.A. 19-3612a outlines the process for the board of county commissioners to delegate all or some governing powers to a board of trustees. And K.S.A. 19-3612a(b) governs the process when the fire district is operating under an interlocal agreement:

*"(b) Pursuant to an interlocal agreement entered into by the board of county commissioners and the governing bodies of cities and townships located within the fire district, the board of county commissioners may delegate its authority to appoint the members of the fire district board of trustees to a joint board appointed by the governing bodies of cities and townships located within the fire district. The fire district board of trustees appointed by such joint board shall be vested with all of those powers vested in the board of county commissioners under K.S.A. 19-3601 through 19-3606, and amendments thereto.*

*"Any interlocal agreement entered into pursuant to this subsection shall be subject to the provisions of K.S.A. 12-2901 et seq., and amendments thereto."* (Emphases added.)

Both sets of statutes concern fire districts—one authorizes and governs the power to create, alter, and dissolve districts, while the other authorizes and governs how municipalities within the district can cooperate to operate and manage the fire suppression services within the fire district. These two schemes and purposes do not conflict. One is not more "specific" than the other. Instead,

they are *in pari materia*, and work together harmoniously. See *Miller v. Board of Wabaunsee County Comm'rs*, 305 Kan. 1056, 1066, 390 P.3d 504 (2017).

The takeaway from this analysis is simple—the Interlocal Agreement can operate according to its plain terms (and the parties do not dispute the plain meaning of the Agreement) 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. This is the outcome the Court of Appeals deemed "nonsensical." *Delaware Township*, 2021 WL 833520, at \*7 ("Lansing's stated intent—seems nonsensical because the Fire District itself continues to exist. The Fire District continues to need and use the property that would be disposed of. If Lansing instead sought to disorganize, or withdraw from, the Fire District, the disposition of Fire District property seems more understandable.").

However difficult it may be to separate the identity of the Fire District as a legal entity from the obligations of the parties under the Agreement, the plain language of the Agreement clearly makes this distinction itself. The Agreement acknowledges there is a functional distinction between terminating the "Fire District" and the "Agreement." Paragraph 10(a) of the Agreement incorporates the procedures of K.S.A. 19-3604 in instances where the Board of Leavenworth County Commissioners wishes to "*disorganize the Fire District*." (Emphasis added.) Alternatively, Paragraph 10(b) provides a separate procedure (included as required by K.S.A. 2021 Supp. 12-2904[d][5]) in order to terminate "*this agreement*." (Emphasis added.) Paragraph 10(c) also specifically deals with the distribution of property upon the termination of "*this agreement*." (Emphasis added.) This language, consistent with the language of the governing statutes, makes clear there is a material distinction between the "Fire District" and the "Agreement."

"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). The power of any party, including Lansing, to terminate the Agreement was clearly bargained for, and Delaware and High Prairie concede as much.

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.

Delaware and High Prairie townships continue to insist that even if the end of the Agreement does not technically dissolve the Fire District, it is a "de facto" disorganization because replacing the "guts" of the district will be difficult or impossible, resulting in a Fire District that does not provide any fire suppression services within its boundaries. The townships insist this outcome violates public policy and that any contractual provision leading to such an outcome must be void as against that public policy. We disagree.

Terminating the Agreement is certainly the beginning of an attempt by Lansing to step away from the Fire District; however, this is no reason to invalidate the termination provisions of the Agreement. If this were the case, the provision allowing for the *actual* dissolution of the Fire District would themselves violate this vague and ill-defined public

policy in favor of never altering how fire suppression services are delivered to a particular population. So, if a municipality chooses to stop participating in the management and operation of a Fire District—by invoking the very terms by which it agreed to participate in the first place—we ask rhetorically "so what?" The alternative of forcing the parties to remain locked in an agreement that no party bargained for is, to us, both nonsensical and not in furtherance of any public safety policy.

This is not to say that fire suppression is not a serious matter of public safety and concern. Contracts may indeed be void as against public policy if they are ""injurious to the interests of the public . . . or tend[] to interfere with the public welfare or safety."" *In re Marriage of Traster*, 301 Kan. 88, 105, 339 P.3d 778 (2014). But we cannot agree with the way the townships and the Court of Appeals connected the public safety dots by disincentivizing municipalities from cooperating to provide this key service in the first place. Rather, ""the paramount public policy is that freedom to contract is not to be interfered with lightly."" *Wasinger*, 55 Kan. App. 2d at 80.

Indeed, Lansing makes several compelling arguments to address public safety concerns. First, Lansing has shown there is no reason to believe any citizen would be left without adequate fire protection. Upon termination of the Agreement, the distribution of assets under Paragraph 10 would be based on a fair appraisal of each parties' percentage makeup of the Fire District. In addition to the fair distribution of assets, the Agreement also provides for a relative allocation of liabilities across all parties. This arrangement would leave no party with disproportionate access to resources or stuck with disproportionate liabilities. In the event that the parties cannot agree on what is "fair," the Agreement requires arbitration by a third party.

There is no reason to believe that individual party ownership of Fire District assets is an inherent threat to public safety. When the parties initially entered into the Agreement, the parties retained title to their own assets—leasing them to the Fire District and eventually selling them to the Fire District per the terms of Paragraph 8.

And lastly, it should be noted that no party is prejudiced by unfair surprise by termination of the Agreement, as 18 months' notice is required. This term was surely bargained for to allow the parties to make these exact kinds of appropriate arrangements.

In conclusion, we hold that Lansing's notice of termination of the Agreement was effective, and the parties must allocate assets and liabilities per the terms of the Agreement.

Judgment of the Court of Appeals affirming the district court is reversed.  
Judgment of the district court is reversed.