

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) made and entered into this 26 day of Nov, 2013 by and between Jeffrey T. Easter, Sheriff of Sedgwick County, Kansas (“Sheriff”) and Wichita Area Sexual Assault Center (“WASAC”).

WHEREAS, the Sheriff operates the Sedgwick County Detention Facility (“SCDF”);

WHEREAS, WASAC offers services to victims of sexual abuse or assault and has agreed to provide such services to inmates in the SCDF at no cost to the inmate, to the Sheriff or to Sedgwick County, Kansas; and

WHEREAS, WASAC and the Sheriff wish to document their understandings and expectations for performance of said services.

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

1. PURPOSE.

The purpose of this MOU is to set the method of cooperation for WASAC to provide services to inmates who may have been victims of sexual abuse or assault.

2. TERM.

The effective date of this MOU begins on the date of acceptance by both parties as indicated above and concludes one calendar year from that date.

3. SHERIFF’S DUTIES.

The Sheriff agrees to perform duties as follows:

- Upon receiving a request by any inmate for counseling related to sexual abuse or assault, the Sheriff will contact the Wichita Area Sexual Assault Center on behalf of the inmate to request services provided for in this MOU.
- Allow an authorized representative of the Wichita Area Sexual Assault Center to enter the SCDF for the purpose of providing to inmates confidential emotional support services related to sexual abuse or assault.

4. WASAC’S DUTIES.

WASAC agrees to perform duties as follows:

- Any representative of WASAC who enters the Sedgwick County Detention Facility must first pass a background check; be issued a Detention Facility issued photo ID card; and attend Prison Rape Elimination Act training.
- Provide to inmates of the SCDF confidential emotional support services related to sexual abuse or assault. Said services are to be provided as requested by the inmate. Said services are to be provided at no cost to the inmate, the Sheriff or to Sedgwick County, Kansas.
- Any representative of WASAC who receives information from an inmate that he/she has suicidal thoughts or ideations will report such matters to a supervisor with the Sheriff's Office.
- Provide reports showing quarterly aggregate numbers of inmates counseled by WASAC. Said reports are to be provided by the first business week after January 15, April 15, July 15 and September 15.
- WASAC acknowledges that it does not have authority or power to grant requests made by inmates, including but are not limited to: contacting (either directly or indirectly) an inmate's friends or family; conditions of confinement; handling legal or business matters.

5. CONTACT PERSONS.

Sheriff Easter and Col. Daniel Bardez Bain (or his designee) are contact persons on behalf of the Sheriff. Kathy Williams (or her designee) is the contact person on behalf of WASAC.

6. SECURITY.

WASAC and its representatives shall abide by all of the SCDF rules, regulations and policies, including but not limited to those pertaining to contraband. The Sheriff may prohibit entry to any portion of the SCDF, or remove from the SCDF, a WASAC representative who violates the SCDF's security rules and procedures or who does not perform his/her duties in a professional manner. In addition, introducing contraband into the SCDF (or attempting to do so) may subject the violator to criminal prosecution.

7. INDEMNIFICATION.

To the degree such indemnification is allowed by law, WASAC agrees and covenants that it will hold and save harmless and indemnify Sheriff, County, their elected and appointed officials, officers, agents, servants, employees, volunteers and others working on behalf of Sheriff or County, from liability of any nature or kind connected with the work to be performed hereunder arising out of any act or omission of WASAC or of any employee or agent of WASAC.

8. INSURANCE.

WASAC must purchase from and maintain, in a company or companies lawfully authorized to do business in the State of Kansas, insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury, including death, and from claims for damages, which may arise out of WASAC's services under this MOU, whether such services be by WASAC or by a subcontractor or anyone directly or indirectly employed by or acting on behalf of any of them. WASAC shall maintain such insurance in full force and effect at all times during the term of this MOU, including any extensions hereof, in the following minimum amounts:

<u>COVERAGES</u>	<u>LIMITS OF LIABILITY</u>
Worker's Compensation Insurance	Per applicable statutory requirements
Employer's Liability	\$100,000.00
Comprehensive Liability Insurance	
Bodily Injury	\$500,000.00 Each Occurrence \$500,000.00 Each Aggregate
Property Damage	\$500,000.00 Each Occurrence \$500,000.00 Each Aggregate
Personal Injury	\$500,000.00 Each Occurrence \$500,000.00 Each Aggregate
Comprehensive Automobile Liability	\$100,000.00 Each Person
Insurance, owned, non-owned & hired	\$500,000.00 Each Occurrence
Property Damage	\$500,000.00 Each Occurrence

Liability insurance coverage must be as primary coverage and not as excess insurance coverage. All subcontractors employed by or acting on behalf of WASAC under this MOU (if any) must provide insurance coverage with the limits specified in this section.

Prior to commencement of the services, WASAC shall provide the Sheriff with a Certificate of Insurance showing the coverage specified above which will be delivered to the Office of the Sedgwick County Counselor and the County's Risk Manager for approval. **Sheriff and County, their elected and appointed officials, officers, agents, servants, employees and volunteers must be named as additional insureds on said insurance policies.** The certificate of insurance must contain a provision that coverage afforded under the policies will not be canceled, reduced, limited, or restricted until ten (10) days after County's Risk Manager receives notice of such change. The following conditions are a material breach of this Agreement: failure to give to

County's Risk Manager 10 days' notice of cancellation, reduction, limitation or restriction of insurance coverage; failure to maintain insurance coverage in the minimum amount specified above; and/or failure to provide a certificate evidencing such insurance coverage.

9. PROPERTY.

Nothing in this MOU shall be deemed to give WASAC rights to the use of office or work space at a time or in a manner which is not in conformity with the SCDF rules, regulations and policies.

10. OPEN RECORDS.

In recognition of the Sheriff's obligations under the Kansas Open Records Act ("KORA"), WASAC acknowledges that this MOU along with any reports and/or records provided pursuant to this MOU are public documents and are subject to disclosure under KORA. WASAC will not provide to the Sheriff records made by WASAC in the course of counseling inmates.

11. REPRESENTATIVES AND WARRANTIES.

Each of the parties to this MOU represent and warrant that each has the full right, power and authority to enter into, and perform its obligations under this MOU, and that the terms and conditions of this MOU shall not violate, interfere with or infringe upon the rights of any third parties pursuant to written agreement or otherwise. Each party further represents that it has obtained all of the necessary approvals and has complied with all laws, ordinances, codes, rules and regulations relating to this MOU and its performance hereunder.

12. ASSIGNMENT AND TERMINATION.

This MOU is not assignable by either party. Either party may terminate this MOU at any time upon thirty (30) days written notification to the other party.

13. INDEPENDENT CONTRACTOR RELATIONSHIP.

The legal relationship between WASAC and the Sheriff is of a contractual nature. Both parties assert and believe that WASAC is acting as an independent contractor in providing the services and performing the duties in this MOU. WASAC is at all times acting as an independent contractor and not as an officer, agent, or an employee of the Sheriff. As an independent contractor, WASAC, employees, servants and agents of WASAC are not within the protection or coverage of Sedgwick County's Worker's Compensation Insurance, nor are WASAC and employees of WASAC entitled to any current or future benefits provided to employees of Sedgwick County or the Sheriff. Further, Sedgwick County or the Sheriff are not responsible for withholding of social security, federal, and/or state income tax or unemployment compensation from payments (if any) made by the Sheriff to WASAC.

14. FORCE MAJEURE.

The Sheriff shall not be responsible for any delay or failure of performance resulting from fire, flood, other acts of God, vandalism, strike, labor dispute of a third party, domestic or international unrest, delay in receipt of supplies, energy shortage or failure, or any other cause beyond his reasonable control.

15. PERSONNEL.

A. **QUALIFIED PERSONNEL.** WASAC represents that it has, or shall secure at its own expense, all personnel required in performing the services under this MOU. Such personnel shall not be employees of, or have any other contractual relationship with Sedgwick County or the Sheriff except as specifically required herein. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this MOU. Should the Sheriff reasonably object to an individual employed or engaged by WASAC to perform the services hereunder, WASAC agrees to promptly replace that person with an individual approved by the Sheriff.

B. **MINIMUM WAGES.** WASAC will comply with the minimum wage and maximum hour's provisions of the Federal Fair Labor Standards Act when applicable.

C. **EMPLOYEE CONFLICT OF INTEREST.** WASAC shall establish safeguards to prohibit employees, servants or agents from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

16. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

In carrying out this Agreement, WASAC shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 et seq.

A. WASAC shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under this agreement because of race, religion, color, sex, disability, national origin or ancestry.

B. In all solicitations or advertisements for employees, WASAC shall include the phrase "Equal Opportunity Employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If WASAC fails to comply with the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, WASAC shall be deemed to have breached this MOU and it may be canceled, terminated or suspended, in whole or in part, by the Sheriff.

D. If WASAC is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Kansas Human Rights Commission which has

become final, WASAC shall be deemed to have breached this MOU and it may be canceled, terminated or suspended, in whole or in part by the Sheriff.

E. WASAC shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

F. The provisions of this section shall not apply to a contract entered into by a contractor who: 1) employs fewer than four (4) employees during the term of this contract; or 2) whose contracts with the Sheriff cumulatively total \$5,000.00 or less during the fiscal year of Sedgwick County pursuant to K.S.A. 44-1031(c).

17. MODIFICATION.

This MOU may not be modified except in writing signed by the parties hereto. To provide necessary flexibility for the most effective execution of this MOU, whenever both WASAC and the Sheriff mutually agree, changes to this MOU may be effected by placing them in writing.

18. ENTIRE AGREEMENT.

This MOU represent the entire agreement between the parties hereto and any provision not contained herein shall not be binding upon either party, nor have any force or effect.

19. NO INFERENCES REGARDING DRAFTER.

The parties acknowledge and agree that the terms and provisions of this MOU have been negotiated and discussed between the parties and their attorneys, and this MOU reflects their mutual understanding regarding the same. Because of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this MOU; therefore, no presumption for against validity or as to any interpretation hereto, based upon the identity of the drafter shall be applicable in interpreting or enforcing this MOU.

20. SUBCONTRACTING.

None of the work or services covered by this MOU shall be subcontracted without prior written approval of the Sheriff. All approved subcontracts must conform to applicable requirements set forth in this MOU and in its appendices, exhibits and amendments, if any.

21. COMPLIANCE WITH APPLICABLE LAWS.

A. SERVICE STANDARDS AND PROCEDURES. WASAC shall perform the services set forth in the MOU in compliance with applicable standards and procedures specified herein which cover the specific purpose, goals and objectives of this MOU.

B. GOVERNING LAW. This MOU shall be interpreted under and governed by the laws of the State of Kansas, without reference to its conflicts of law principles.

C. COMPLIANCE WITH LAW. WASAC shall comply with all applicable local, state and federal laws and regulations in carrying out this MOU, regardless of whether those legal requirements are specifically referenced in this MOU.

22. NOTIFICATIONS.

Notifications required pursuant to this MOU shall be made in writing and mailed to the following addresses. Such notification shall be deemed complete upon mailing.

SHERIFF: Jeffrey T. Easter  
141 W. Elm  
Wichita, KS 67203

WASAC: Wichita Area Sexual Assault Center  
355 N. Waco Street  
Wichita, KS 67202

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the parties hereto have executed this MOU on this 25 day of November, 2013.

SHERIFF OF SEDGWICK COUNTY, KANSAS

  
JEFFREY T. EASTER, Sheriff

ATTEST:

  
KELLY B. ARNOLD, County Clerk  
Sedgwick County, Kansas



APPROVED AS TO FORM:

  
KAREN L. POWELL *12-5-13*  
Assistant County Counselor

ON BEHALF OF WICHITA AREA  
SEXUAL ASSAULT CENTER

  
KATHY WILLIAMS, Executive Director



