

## **COOPERATION AGREEMENT**

THIS COOPERATION AGREEMENT ("Agreement") is made and entered into this 30<sup>th</sup> day of August, 2006, by and between THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS (hereinafter referred to as the "County") and THE CITY OF LAWRENCE, KANSAS (hereinafter referred to as the "City").

### **RECITALS**

WHEREAS, K.S.A. 12-2908 provides that any city or county may contract with any other city or county to perform any governmental service, activity or undertaking which each contracting city or county is authorized by law to perform; and

WHEREAS, City and County have entered into contract titled "Agreement Between the City of Lawrence, Kansas and Board of County Commissioners of Douglas County, Kansas" by which the City and the County have agreed to cooperate in the installation of certain sanitary sewer facilities generally located in or near the City's southeast boundaries (the "Southeast Lawrence Sewer Agreement"), as more specifically stated therein; and

WHEREAS, pursuant to K.S.A. 19-27a01 et. seq., County proposes to create three special benefit districts, to be named (i) Southeast Lawrence Sanitary Sewer Main Benefit District No. 1; (ii) Southeast Lawrence Sanitary Sewer Main Benefit District No. 2; and (iii) Southeast Lawrence Sanitary Sewer Main Benefit District No. 3, each to include the real estate described on attached Exhibit A (individually a "Benefit District" and collectively the "Benefit Districts"); and

WHEREAS, the purpose of the Benefit Districts is to design, construct, and finance sanitary sewer systems to benefit the real estate within the boundaries of the Benefit Districts and assess a portion of the costs thereof against such real estate, as stated in the petition filed with the County requesting that the County form the Benefit Districts; and

WHEREAS, part of the proposed sanitary sewer system improvements will benefit and improve the current sewer system facilities that the City owns, maintains, and operates and, as a result, City has agreed to reimburse County for part of the costs of the proposed sanitary sewer systems as set forth in this Agreement.

### **TERMS OF AGREEMENT**

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

1. Purposes. The parties enter into this Agreement to cooperate in design and construction of the sanitary sewer system improvements, to comply with the requirements of the Southeast Lawrence Sewer Agreement, and to provide for the City to pay a portion of the costs associated with the improvements. As used herein, the term "Project" shall include the combination of all sewer system improvements to be installed and constructed pursuant to each of the three petitions filed to form each of the three Benefit Districts.

2. City's Consent. Pursuant to the Southeast Lawrence Sewer Agreement and pursuant to K.S.A. 19-27a05(b), City hereby consents to County's creation of the Benefit

Districts and construction of the sanitary sewer system improvements. The specific cost sharing provisions of this Agreement supersede all inconsistent provisions in the Southeast Lawrence Sewer Agreement that state the City has no financial responsibility for preparation of plans and specifications or construction costs for any sewer system improvements. Nothing in this Section, however, shall relieve the County from complying with all other provisions of the Southeast Lawrence Sewer Agreement and this Agreement.

3. Obligations of County.

- a. The County shall be the lead agency in the design and construction of the Project.
- b. The County shall secure the services of Peridian Group, Inc. to provide engineering design services and prepare construction plans and specifications for the Project, provided that the design contract shall separately specify the charges for preparation of plans and specifications for the improvements associated with each of the three Benefit Districts for purposes of determining the City's Share of the design costs.
- c. The County shall issue periodic payments due to the engineering consultant for engineering design services in accordance with the design contract.
- d. The County shall acquire all property interests, including real estate and easements, necessary for the construction, operation, and maintenance of the Project, with each property interest including the City as a grantee.
- e. Prior to bidding the construction contract for any part of the Project, the County shall obtain City's written consent to the construction plans and specifications.
- f. The County shall secure the services of a contractor through the County's normal bidding process for construction of the Project, provided that the construction contract shall be bid in a manner that the costs for construction of the improvements associated with each of the three improvements Benefit Districts is ascertainable for purposes of determining the City's Share of the construction costs.
- g. The County shall prepare periodic pay estimates, and issue payments due to the contractor in accordance with the construction contract
- h. County shall issue periodic payments due to the City for all inspection services of the Project provided by City personnel, as City invoices. For purposes of this Agreement, the City's costs of providing inspection by City personnel shall be determined based upon actual hours expended by City personnel and out of pocket costs incurred (including mileage), in a manner similar to those required for reimbursement under state and federally funded projects. All payments shall be made within 30 days of the City's invoice.
- i. The County shall periodically invoice the City for the City's share (as defined herein) of all engineering, design, land acquisition, inspection, and construction

costs associated with the Project. All payments shall be made within 30 days of the County's invoice.

- j. The County shall invoice the City at the conclusion of the Project for any interest that the County paid on any temporary notes or indebtedness that the County issued to pay for costs for which City is required to reimburse County, but only for interest accrued between the dates of County's payment and City's reimbursement thereof.

4. Obligations of City.

- a. The City shall review and approve construction plans and specifications for the Project.
- b. The City shall review and approve bidding documents, including the form of construction contract, associated with construction of the Project.
- c. The City shall issue periodic payments to the County for the City's Share of the Project, as County invoices. All payments shall be made within 30 days of the County's invoice.
- d. City shall provide inspection services for the Project.
- e. City shall periodically invoice the County for all inspection services of the Project provided by City personnel. For purposes of this Agreement, the City's costs of providing inspection by City personnel shall be determined based upon actual hours expended by City personnel and out of pocket costs incurred (including mileage), in a manner similar to those required for reimbursement under state and federally funded projects. All payments shall be made within 30 days of the City's invoice.

5. Approval and Authorization. Each of the persons signing this Agreement warrants and represents that this Agreement has been approved by its governing body, that the execution, delivery and performance of this Agreement by such party has been authorized by action duly adopted by its governing body, and that this Agreement constitutes a legal, valid and binding obligation of such party enforceable in accordance with its terms. Each party further warrants and represents that the expenditures anticipated pursuant to this Agreement and the entering into of this Agreement do not and will not violate the Kansas cash basis laws, K.S.A. 10-1101, et. seq.

6. City's Share.

The "City's Share" of any payments for the Project shall be determined as follows:

- a. With respect to improvements to be made with respect to Southeast Lawrence Sanitary Sewer Main Benefit District No. 1, primarily consisting of a Pump Station and Force Main to 25\_PS, having an engineering estimated total cost of \$2,617,225, the City's Share shall be 26.1% of the total costs, including engineering, construction, land acquisition, inspections, and other costs or expenses of the County directly attributable to the improvements.

b. With respect to improvements to be made with respect to Southeast Lawrence Sanitary Sewer Main Benefit District No. 2, primarily consisting of a Gravity Main from Pump Station to West Side of Kitsmiller Property with Removal of Jail Pump Station, having an engineering estimated total cost of \$762,749, the City's Share shall be 11.6% of the total costs, including engineering, construction, land acquisition, inspections, and other costs or expenses of the County directly attributable to the improvements.

c. With respect to improvements to be made with respect to Southeast Lawrence Sanitary Sewer Main Benefit District No. 3, primarily consisting of a Gravity Main from West Side of Kitsmiller Property to Fairfield Farms East Addition, with Removal of Two Pump Stations, having an engineering estimated total cost of \$692,783, the City's Share shall be 5.0% of the total costs, including engineering, construction, land acquisition, inspections, and other costs or expenses of the County directly attributable to the improvements.

7. Applicable Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Kansas.

8. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Agreement should be determined by a court of competent jurisdiction to be invalid for any reason whatsoever, such decision shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect; and to this end the provisions of this Agreement are hereby declared to be severable and shall be presumed to have been agreed upon knowing that the various provisions of this Agreement are severable.

9. Cooperation Agreement. This Agreement is entered into between City and County pursuant to K.S.A. 12-2908 as a cooperation agreement and is not an inter-local agreement under the provisions of K.S.A. 12-2901, et. seq.

10. Effective Date. This Agreement shall take effect upon the date fully executed by both parties.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and made effective as of the day and year first set out.

This Agreement is approved, as authorized by the Board of County Commissioners of Douglas County, Kansas at a meeting held on the 30<sup>th</sup> day of August, 2006.

This Agreement is approved, as authorized by the City Commissioners of the City of Lawrence, Kansas at a meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2006.

**CITY OF LAWRENCE, KANSAS**

By: \_\_\_\_\_  
Mike Amyx, Mayor

ATTEST:

\_\_\_\_\_  
Frank Reeb  
City of Lawrence Clerk

**BOARD OF COUNTY COMMISSIONERS  
OF DOUGLAS COUNTY, KANSAS**

By: \_\_\_\_\_  
Bob Johnson, Chair

ATTEST:


\_\_\_\_\_  
Jameson D. Shew  
Douglas County Clerk

EXHIBIT A  
(Land Within the Benefit Districts)

Fairfield Farms East Addition No. 1:

All lots within the final plat of Fairfield Farms East Addition No. 1, located within the City of Lawrence and in the Northwest Quarter (NW ¼) of Section 9, Township 13 South, Range 20 East of the Sixth Principal Meridian, Douglas County, Kansas; also,

Fairfield Farms East Addition No. 2:

All lots within the final plat of Fairfield Farms East Addition No. 2, located within the City of Lawrence and in the Northwest Quarter (NW ¼) of Section 9, Township 13 South, Range 20 East of the Sixth Principal Meridian, Douglas County, Kansas; also,

Fairfield Farms West Addition:

Lot 3, Block 1 within the final plat of Fairfield Farms West Addition located within the City of Lawrence and in the Northeast Quarter (NE ¼) of Section 8, Township 13 South, Range 20 East of the Sixth Principal Meridian, Douglas County, Kansas; also,

Fairfield Farms West Addition No. 2:

All lots within the final plat of Fairfield Farms West Addition No. 2 located within the City of Lawrence and in the Northeast Quarter (NE ¼) of Section 8, Township 13 South, Range 20 East of the Sixth Principal Meridian, Douglas County, Kansas; also,

Unplatted parcel:

The South Half of the North Half of the Northwest Quarter of the Southwest Quarter (S ½ N ½ NW ¼ SW ¼) of Section 9, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas; also,

Unplatted parcel:

The Southwest Quarter of the Southwest Quarter of the Northwest Quarter (SW ¼ SW ¼ NW ¼) of Section 9, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas.