

AGREEMENT

This agreement made and entered into this 5th day of April, 1977, by and between the City of Lawrence, Kansas, a municipal corporation, hereinafter referred to as City, and Bowersock Mills and Power Company, a Kansas corporation, hereinafter referred to as Bowersock; Kansas Fibreboard, Inc., a Kansas corporation, hereinafter referred to as Fibreboard, and Justin D. Hill, Sr. and Stephen Higdon Hill, individually and collectively, hereinafter referred to as Hills.

WHEREAS, there was platted as a part of the original plat of the City a certain tract of land identified as Levee, a portion of which is now bounded on the north by the Kansas River, on the south by Sixth Street, extended, on the west by Massachusetts Street and on the east by Reserve No. 8, and

WHEREAS, on or about September 30, 1872, the City of Lawrence, Kansas, did, make and enter into a certain written agreement with one Orlando Darling, a copy of which is attached hereto as Exhibit "A" which by reference is incorporated herein and shall hereafter be referred to as Darling Agreement, and

WHEREAS, through a series of transfers and assignments of the Darling Agreement over the years that portion of the above-described real estate, less the south 60 feet thereof reserved for a street, lying west of the following described line is occupied and possessed by Bowersock, with Fibreboard occupying and possessing that portion, less the south 60 feet thereof reserved for a street, lying east of said line which is described as follows, to-wit:

Commencing on the south line of the Levee at a point 270 feet east of the center line of Massachusetts Street; thence north $0^{\circ} 10'$ west 202.5 feet to the north line of the right of way of the Atchison, Topeka and Santa Fe Railway Company; thence westerly along the north line of said right of way for a distance of 83.82 feet; thence to the right on an angle $88^{\circ} 08'$ to the Kansas River, and

WHEREAS, through a series of transactions, Hills are the owners and holders of one certain mortgage note executed and delivered by Fibreboard, and whereas Fibreboard gave as a part of the security for the payment of said note a written assignment of all of its right, title and interest in and to the purported lease of the above-described real estate, which said written assignment the Hills are also the owners and holders of, and

WHEREAS, Hills have commenced an action in the District Court of Douglas County, Kansas, Case No. CV31250B, for judgment on said mortgage note, a determination that they have a first and prior security interest in and to the real estate

above described as being occupied and possessed by Fibreboard, pursuant to the Darling Agreement and for foreclosure of said security interest, and

WHEREAS, the parties hereto are mutually desirous of entering into a written agreement whereby the rights of the parties in and to all of the above-described real estate, together with all appurtenances thereon and improvements thereto, shall be specifically determined, fixed and agreed to.

WITNESSETH, that the City, Bowersock, Fibreboard and Hills, individually and collectively, agree each with the other as follows:

1. In consideration of the sum of Twenty Five Thousand Dollars (\$25,000.00) to be paid by the City to Bowersock upon the execution of this agreement, through the First National Bank of Lawrence, Lawrence, Kansas, as escrow agent, Bowersock agrees to, and by these presents does, subject to the conditions hereafter set forth, hereby grant, sell, convey, assign, transfer and set over to the City all of Bowersock's right, title and interest in any and all leasehold interests Bowersock now has or hereafter may have in the following described real estate situated in Douglas County, Kansas, to-wit:

Beginning at a point 702 feet North and 270.60 feet East of the intersection of the centerlines of 7th Street and Massachusetts Street in the Original Townsite of the City of Lawrence, Kansas, thence North $0^{\circ} 10'$ West 131.50 feet to the centerline of the main track of the Atchison, Topeka and Santa Fe Railway, thence West along the said centerline 120 feet, thence North $14^{\circ} 07'$ East to the river, thence westerly along the river to the centerline of Massachusetts Street, thence South along the said centerline to the North right of way of 6th Street extended thence East, 270.6 feet, to the point of beginning. (such description being subject to the survey hereafter provided),

which said claimed leasehold interests have resulted from a series of assignments and transfers of the Darling Agreement. The escrow agent shall immediately deposit said \$25,000.00 in an interest bearing passbook savings account with said amount and all earnings thereon to be retained by the escrow agent for distribution as hereinafter provided.

It is the express intent of the parties that by this agreement, any and all leasehold interests created in the last above-described real estate by reason of the Darling Agreement, all assignments and transfers thereof and Bowersock's present occupancy and possession thereof, subject only to the conditions hereinafter stated, shall cease, terminate and be of no further force and effect from and after the date upon which this transaction shall be closed. The exact boundaries and description of said real estate, including the real estate now occupied by Fibreboard under the Darling Agreement, shall be as determined by a survey to be made by

a licensed engineer to be agreed upon between Bowersock and City. Bowersock agrees to pay up to \$750.00 of the cost of the survey or one-half of such cost, whichever is less, with the City to pay the balance thereof.

It is further understood and agreed by the parties hereto, that subject to the conditions stated herein, and as additional consideration hereof Bowersock sells, assigns, transfers and sets over to the City all of Bowersock's right, title and interest in and to all improvements and appurtenances on the last described real estate, except for the existing power plant building and maintenance shop building which shall remain the property of Bowersock, and the exact location of which shall be set out on the survey map. Bowersock shall be entitled to the use of the land upon which said power plant building and maintenance shop building are located without charge, for so long as it shall be entitled to occupy said buildings under the terms of this agreement. Further, Bowersock shall be entitled to the right of "foot traffic" ingress to and egress from said buildings over such route upon the property of the City, which the City shall acquire hereunder, as the City shall hereafter designate.

The parties further agree that at the time of closing there shall be no tenants occupying any of the premises now occupied by Bowersock, and which is to be the property of the City hereunder, for a period longer than month-to-month, except for Closeout Carpet, Inc., whose lease expires September 1, 1977, and until the date of closing this transaction Bowersock shall be entitled to retain all income from the premises and it shall keep said premises in as good condition as of the date of this agreement, fair wear and tear and damage by the elements excepted and it shall be liable for the payment of all expenses, obligations and taxes thereon. Bowersock shall have the right to the continued use of its present office space located in the Closeout Carpet building until such time as the City commences renovation or demolition of said building, all without charge, except for utilities, taxes, maintenance and other charges ordinarily incurred in the keeping of said offices.

The parties further agree that as additional consideration, that certain existing Dam spanning the Kansas river just east of and generally parallel with Massachusetts Street, Lawrence, Kansas, and commonly known and referred to as Bowersock Dam (hereinafter referred to as Dam) shall be operated and maintained under the following terms and conditions for a period of 50 years from the date of closing, or such earlier date as this agreement concerning said Dam, by its terms, shall terminate:

(a) Bowersock shall have the right, during the 50 year period, to operate the power plant, which is operated in conjunction with said Dam, and receive all income therefrom, and shall generate electricity therefrom at a rated capacity of not less than 1,000 kilowatts per hour. Should Bowersock fail to operate the power plant and generate electricity at the minimum rated capacity of 1,000 kilowatts per hour because of reasons other than those beyond its control, economic feasibility and financial inability being within the control of Bowersock, the City shall have the right to take and possess immediately all of Bowersock's right, title, interest and ownership in said Dam, power plant and building and maintenance shop building and all equipment, materials and other property used in the operation and maintenance of the Dam and power plant, except hand tools and mobile equipment, such as fork lifts, and supplies.

(b) So long as Bowersock shall operate the power plant and generate the minimum of 1,000 kilowatts per hour of electricity, as herein provided, the City shall provide, without cost to Bowersock, the necessary materials for the maintenance and raising of the Dam flashboards and spillway gates and headgates. Bowersock shall provide, at no cost to the City, all labor and services required to properly maintain or replace said Dam flashboards, headgates and spillway gates.

(c) Bowersock shall, at its sole expense, provide all labor required to raise the Dam flashboards, headgates and spillway gates, and shall also determine the times when they shall be raised, provided:

(1) Bowersock shall determine the level at which the pool of water behind the Dam shall be maintained at any time.

(2) The City shall be entitled to the use of the water in the pool for the City water supply and recreational purposes and the City shall have first priority on control and use of the water in the pool behind the Dam when the water level is below 7 1/2 feet, and should such control and use by the City cause a reduction in the amount of electricity produced by Bowersock, the City shall not be liable to Bowersock by reason thereof.

(d) Bowersock shall have access across the Levee on the north end of the Dam so long as it shall operate the power plant.

(e) In the event the City should remove the building now supporting the trans-river cable, it shall, without cost to Bowersock, erect a suitable tower to support the cable which shall be the property of Bowersock. However, should the City acquire all of Bowersock's right, title and interest in the Dam, power plant and related property, as in this agreement provided, the tower, cable and

[Handwritten signature]

cable car shall then become the property of the City. ~~Not~~ more than 6 months "down time" shall result from the removal of such building and erecting and having ready for satisfactory use the tower installation.

(f) Should the City remove the building which now serves as the cable car operating station, it shall forthwith erect a suitable replacement facility which shall become the property of Bowersock until such time as the City shall acquire all of Bowersock's right, title and interest in the Dam, power plant and related property, under the terms of this agreement, at which time the replacement facility shall become the property of the City.

(g) Bowersock shall not be responsible to the City for any maintenance on the Dam of whatever nature except for maintenance of flashboards, spillway gates and headgates, as set out above. The City shall have the right to perform any maintenance of the Dam which may be required to maintain a pool for its water supply and/or public recreation purposes. However, the City shall be under no obligation to perform such maintenance on behalf of Bowersock and in no event shall the City be liable to Bowersock for any temporary or permanent loss of power generation because of failure of the Dam or any decision by the City to discontinue maintenance of the Dam. In the event the City shall elect to discontinue maintenance of the Dam, it shall relinquish all of its rights relating to said Dam, except for the use of the water supply by the City which said use shall be without restriction on the use of said water supply by Bowersock in the generation of electricity from and through its power plant. Upon its election to so discontinue maintenance of the Dam, the City shall notify Bowersock of its decision in writing, in which event Bowersock shall have and hereby reserves the right to perform maintenance of the Dam, at its own expense, with full right in Bowersock to continue to operate the power plant for generating electric current for the balance of the 50 year term. The City shall maintain the Dam until such written notice of its intent to discontinue such Dam is given Bowersock.

(h) Bowersock shall not sell, transfer, assign, give, lease or license any of its interest in and to the power plant, Dam, electrical generating equipment, cable, cable car and related property without making ~~of~~ such transaction, subject to all the terms, conditions and covenants of this agreement. *[Handwritten signature]*

(i) At the end of the 50 year term, provided the City has not sooner taken over the interest of Bowersock in the Dam, power plant and related facilities and

equipment, the City shall have, for a period of 120 days thereafter, the exclusive right to purchase from Bowersock, all of its right, title and interest in the Dam, power plant, maintenance facility, trans-river cable system and all related equipment, facilities and property at the then current fair market value. The City shall exercise its right to purchase by delivering to Bowersock within said 120 days its written notice to so do. Such value shall thereafter be determined by three appraisers, with one to be designated by Bowersock, one to be designated by the City and the third to be selected by the other two appraisers. The resulting fair market value determination shall be binding upon the parties.

It is further agreed by the parties that the City will cooperate with Bowersock to the extent possible in permitting Bowersock to temporarily cross over Massachusetts Street with its 2,300 volt power line which now runs from its power plant to the Kansas Power and Light 6th Street substation. This temporary rerouting of said line will be required because of the future removal and replacement of the existing Massachusetts Street bridge. Bowersock shall route said line under the new bridge at the earliest time it shall be permitted to do so by appropriate public authorities. The City shall also provide Bowersock with a 15 foot easement for the installation and maintenance of a power line from the power plant to the present utility easement owned by Bowersock along the Santa Fe Railroad.

It is further agreed that Bowersock shall be entitled to keep all salvageable machinery, equipment and materials currently in the buildings now possessed or occupied by Bowersock, together with the wooden floors on the mezzanine level of that certain building commonly referred to as Closeout Carpet Building. Salvageable materials shall not include electrical or plumbing fixtures, doors, windows or other items customarily used in the operation of said buildings. Bowersock shall have a period of 120 days following the closing of this transaction, or any part thereof, within which to remove such items, otherwise such shall immediately become the property of the City.

Bowersock agrees to maintain a favorable appearance of the power plant and maintenance building, at its own expense, such maintenance being construed to mean the general upkeep of the premises, including painting, replacing or cleaning windows, trash pickup, and general orderliness of the area, all so long as Bowersock shall operate and possess said property. Should, however, the City desire major changes or improvements to alter or improve the appearance of these facilities, Bowersock agrees to allow the City to effect such changes, at its own expense,

provided such changes and alterations do not affect the operation of the revenue generating capabilities of the power plant.

It is expressly agreed by the parties that should the City elect to construct its City Hall on the area now possessed or occupied by Bowersock, the sales price of \$25,000.00 as hereinbefore provided shall be reduced to \$1.00 and the City shall be entitled to a return from the escrow agent of said \$24,999.00, together with all interest earned on said \$25,000.00, with Bowersock to be paid the remaining \$1.00 by the escrow agent. For the purposes of that part of this transaction relating to the property now occupied and possessed, Bowersock shall deliver possession of all the property, it is so bound to do by the terms of this agreement, to the City on the closing date, however, the \$25,000.00 purchase price, together with all earnings thereon, shall be retained by the escrow agent for a period of 6 months following said closing date. The City shall advise Bowersock in writing within 6 months after the closing date of this transaction of its intent to build City Hall on said property, and upon its failure to give such written notice, Bowersock shall be entitled to receive from the escrow agent the entire \$25,000.00 purchase price, together with all interest earned thereon.

2. In consideration of a sum not exceeding Twenty Thousand Dollars (\$20,000.00) to be paid by the City to Fibreboard and/or Hills, as shall hereafter be provided, through the escrow agent, Fibreboard and/or Hills agree to sell to City and City agrees to purchase all of Fibreboard's and/or Hills' right, title and interest, now held or hereafter acquired, in and to the following real estate possessed and/or occupied by Fibreboard, together with all improvements thereto and appurtenances thereon, to-wit:

That portion of the Levee generally described as lying East of Building A (which is presently leased to Kansas Color Press), South of Fibreboard Switch Track, West of Building C, and North of the South line of 6th Street, extended, and upon which are located Buildings B-1, B-3, B-4, B-5, B-6, Shed No. 4 addition, Shed No. 4, waste paper receiving office, scale, 40,000 gal. gravity water tank and Building B-11, all as outlined yellow and shown on Exhibit "B" hereto which by reference is incorporated herein. The exact legal description of said real estate to be determined and fixed by the survey as provided for above.

It is expressly agreed by the parties hereto that by this agreement it is intended that all right, title and interest of Fibreboard and/or Hills, now held or hereafter acquired, in and to the aforesaid ~~supported~~ leasehold interest in the real estate last above described and intended to be conveyed to the City hereby, shall be canceled, terminated and held for naught immediately upon the closing of that part of this

transaction relating to the real estate last above described.

It is further agreed by the parties that all the leasehold interests of Fibreboard and/or Hills, now held or hereafter acquired, in and to the remainder of the real estate above described and now occupied and possessed by Fibreboard and which is not intended to come into the possession of the City upon closing, hereafter referred to as remaining real estate, shall likewise be void, terminated, canceled and held for naught from and after the date of closing that part of this transaction relating to the real estate last above described.

The parties further agree that as additional consideration, upon the closing of this agreement, Fibreboard and/or Hills shall have the right to occupy, possess and use for its and/or their own benefit, said remaining real estate, together with all improvements thereto and appurtenances thereon, for a period of 30 years from the date of closing without payment to the City. At the end of said 30 year term, said lease shall terminate and be of no further force and effect and the City shall be entitled to the immediate possession, occupancy and control of said remaining real estate, together with all improvements thereto and appurtenances thereon, without further compensation. During the term of the 30 year lease, the Lessee shall be fully responsible for the payment of all taxes assessed thereon, utilities and all other expenses of any kind or nature incurred in Lessee's occupancy, possession and use thereof. The City shall not be responsible for the care or maintenance of said premises, including the improvements thereto and appurtenances thereon. The Lessee shall not during the 30 year term, mortgage, sell, pledge, hypothecate, assign or sublease or sublet said premises, or any part thereof, without making any such transaction subject to all the express terms of this agreement. Upon the expiration of said 30 year lease, or at such earlier time as the City shall obtain and take possession of the remaining real estate, the City will provide to Bowersock, without cost, an easement for an electrical transmission line, poles, anchors and related equipment necessary to transmit electricity from the power plant now operated by Bowersock to a point East of the property now occupied and possessed by Fibreboard. Said easement shall be upon the land acquired by the City from Fibreboard hereunder and shall be over a route to be determined by the City. Also, upon termination of said 30 year lease, or at such earlier time as the City shall obtain and take possession of the remaining real estate, Bowersock shall be entitled to the continued use of the roadway presently upon the retained real estate which runs generally east and west and which provides ingress to and egress from the power plant now

operated by Bowersock, so long as Bowersock shall possess and operate said power plant. The City, however, may elect to close said roadway at the end of said 30 year lease term, in which event the City shall provide Bowersock with an area upon the retained real estate on which Bowersock can relocate its roadway to the power plant, provided Bowersock is then operating and possessing said power plant.

The City shall permit the Lessee and its tenant of Building "A" (now occupied by Kansas Color Press, Inc.) located on the remaining real estate and hereinbefore described, access to the south side of said building by the most direct route across City's property from and to New Hampshire Street.

The parties further understand and agree that water lines are presently located in and upon the real estate to be possessed by City upon the closing date which serve the remaining real estate. The City intends to reconstruct the land upon which said water lines are located and it shall not be liable to the Lessee of the remaining real estate for losses of any nature incurred by reason of the destruction of or damage to said water lines. If said water lines are in place and operable after the City has completed its reconstruction in the area of said lines, the Lessee of the remaining real estate shall be solely responsible for the maintenance of said lines, however, said Lessee shall not perform such maintenance upon the City's property without prior written approval by the City. Should circumstances require, the Lessee of the remaining real estate, may, at its and/or their sole expense, reroute said water lines in and upon a location to be agreed upon by the City, and the City shall cooperate with the Lessee in providing such location.

The parties further agree that prior to closing of this transaction, all leasehold interests and the buildings and improvements now located upon the real estate now possessed by Fibreboard, and which are to pass to the City upon closing, shall be appraised at fair market value by an appraiser to be agreed upon by City and Fibreboard and/or Hills. If the parties cannot agree upon a single appraiser, each side shall select its own appraiser with the two appraisers selecting a third appraiser. The fair market value determined by the single appraiser or the three appraisers, as the case may be, shall determine the amount the City shall pay Fibreboard and/or Hills hereunder, however, in no event shall the amount required to be paid by the City exceed \$20,000.00. The cost of the appraisal shall be paid one-half by the City and one-half by Fibreboard and/or Hills.

It is further agreed by the parties that all machinery, equipment and materials

now upon the property possessed by Fibreboard, and to be acquired by City upon closing, shall remain the property of Fibreboard and/or Hills and shall be completely removed from said premises within 120 days following the date of closing. During such intervening period, the City shall in no way be responsible for such machinery, equipment or materials. Should such property not be removed from the premises by the time above provided, the City shall become the owner thereof and shall be entitled to remove and dispose the same without payment, obligation or liability of any kind or nature whatsoever.

The City shall have the right and option to sandblast or otherwise improve all or any part of the exterior portion of the aforesaid Building "A", provided there shall be no extraordinary inconvenience to the tenant of said building.

The parties further agree that Fibreboard presently owns the fee simple title to the following described real estate situated in Douglas County, Kansas, to-wit:

Lots 19 and 20 on Pinckney Street and Lots 7, 9 and 11 on Rhode Island Street, City of Lawrence.

The City and Fibreboard and/or Hills hereby mutually agree, that as additional consideration of this agreement, Fibreboard and/or Hills will sell to the City and the City will purchase said real estate for the appraised fair market value thereof, free and clear of all liens, taxes, defects in title and encumbrances of every nature, except restrictions, reservations and easements now of record. Such value shall be determined prior to the date of closing by a team of three appraisers, one to be selected by Seller, one to be selected by Buyer and a third to be chosen by the other two. The decision of the three appraisers as to value of said property shall be binding upon the parties with that amount to be paid by the City to the Seller at closing. The cost of said appraisal shall be divided between the Seller and the Buyer.

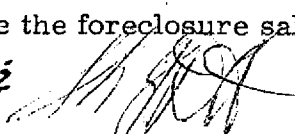
3. All parties hereto, singularly and collectively, agree, that as an express condition of this agreement, all property, be it real, personal or mixed, which the City by these presents has contracted to acquire from Bowersock, Fibreboard and/or Hills upon the closing of this transaction shall then be delivered to the City free and clear of all liens, taxes, defects in title and encumbrances of every nature, save and except for restrictions, reservations and easements now of record. In the event Bowersock, Fibreboard and/or Hills are unable, to so deliver and convey to the City all of said property, this agreement, except as hereinafter provided, at the option of the City, shall become and be null and void and the escrow agent

shall return to the City all monies paid hereunder, together with all earnings thereon. Neither Bowersock, Fibreboard or Hills shall have any liability to the City hereunder.

It is further agreed by the parties hereto the City may elect at any time hereafter, but in no event longer than 90 days after it shall be determined that Fibreboard and/or Hills cannot deliver good and merchantable title as by this agreement required, and upon 30 days written notice to Bowersock, to close that part of this agreement relating to the property now possessed and occupied by Bowersock, including the Dam, notwithstanding the fact that Fibreboard and/or Hills are unable at that time to deliver and convey to the City good and merchantable title to the property Fibreboard now possesses and occupies and which the City is to acquire at closing, free and clear of all liens, taxes, defects in title and encumbrances, except present restrictions, reservations and easements, all as aforesaid; in which case all of the rights pertaining to the property now possessed and occupied by Fibreboard shall continue thereafter for a period of 30 years under the same terms and conditions above provided as if that part of this transaction concerning the property now possessed and occupied by Fibreboard had been closed. It is expressly understood and agreed that should the City elect to proceed to earlier close with Bowersock, as herein provided, Bowersock shall still be required to deliver said property, be it real, personal or mixed, to the City, free and clear of all liens, taxes, defects in title and encumbrances of every nature, except for restrictions, reservations and easements now of record.

It is understood by and between the parties that the closing of the above-described transactions shall take place within 30 days after:

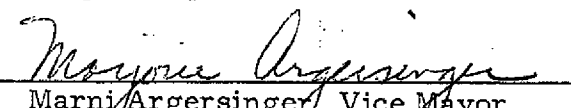
(a) Hills have obtained judgment in Case No. CV31250B pending in the District Court of Douglas County, Kansas.

(b) Hills have bid in above-described real estate the foreclosure sale in said case and have received a Sheriff's Deed ~~therein~~ ^{therefor;}  provided said property will be conveyed and delivered to the City free and clear of all liens, taxes, defects in title and encumbrances of every nature, except restrictions, reservations and easements now of record.

Time is of the essence in the performance of this agreement.

This agreement is and shall be binding upon the parties and their heirs, administrators, executors, personal representatives, successors and assigns.

CITY OF LAWRENCE, KANSAS,
a municipal corporation

By 
Marni Argersinger, Vice Mayor

ATTEST:


Vera Mercer, City Clerk

