

Memorandum City of Lawrence

TO: Mayor and City Commissioners

FROM: David L. Corliss, City Manager

Cc: Diane Stoddard, Assistant City Manager
Cynthia Boecker, Assistant City Manager
Toni Wheeler, Director of Legal Services

Date: July 14, 2009

RE: Bowersock Dam

City staff and representatives from The Bowersock Mills and Power Company met on Friday, July 10, 2009, to further refine the proposed language related to the maintenance responsibilities of the Bowersock Dam. Attached please find the revised language that resulted from Friday's meeting. This language should replace the language proposed by staff in the memorandum to the Commission posted with the City's agenda and dated July 9, 2009.

This agreement should be considered an extension and modification of the existing agreement, dated April 5, 1977 (hereinafter the "Base Agreement"). It is therefore, understood and agreed between the parties that the period for the Base Agreement, as previously extended by the Extension Agreement, is further and extended by this Agreement as follows:

The City of Lawrence, Kansas shall have the right and obligation to perform the necessary maintenance to maintain the structural integrity of the Bowersock Dam in its existing form (665' long and constructed to a height of 808' MSL) such that the dam is in compliance with applicable rules and regulations, regarding dam safety relating to maintaining the millpond necessary for the City's water supply. For the purposes of determining the structural integrity of the Dam, the City shall seek the advice of a qualified engineer, licensed by the State of Kansas, in making determinations of the necessity of a maintenance project for the Dam. The City's commitment to the maintenance of the dam shall not be construed to be for Bowersock's interests or for the purpose of hydro-electric production.

For the purposes of maintaining the Bowersock Millpond at appropriate levels for the Kaw River Water Treatment Plant and other stakeholders, the City shall provide, without cost to Bowersock, the necessary materials for raising (and maintenance and replacement) of the Dam flashboards, spillway gates, and headgates.

Bowersock shall provide, without any cost to the City, all necessary and reasonable access to the Bowersock Dam for any study, analysis, maintenance, rehabilitation or construction the City may undertake on Bowersock Dam. Bowersock shall also provide, without cost to the City, all labor required to build, install, and raise the Dam flashboards, spillway gates, and headgates. Bowersock shall also determine the times when they shall be raised, provided that prior to reducing the level of the mill pond below 807.5 msl, Bowersock shall provide the City with advance notice and shall not reduce the water below such level if the City objects and informs Bowersock that such reduction would create a substantial hardship on the operation and availability of the city public water supply. The City recognizes, however, that Bowersock will need to periodically reduce the mill pond level below 807.5 msl for various functions relating to

the maintenance of the Power Plant and Bowersock's work on the Dam. As such the City and Bowersock agree to cooperate and work together in good faith to reach mutually agreeable times during which the mill pond may be reduced below 807.5 msl. 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. In the performance of the City's responsibilities for the maintenance of Bowersock Dam as set forth in this Agreement, the City shall comply with applicable laws and regulations limited to the City's responsibilities.

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 the failure of the Bowersock Dam. The provisions of this agreement shall expire fifty (50) years from the termination of the extension of the original agreement (2027), with a termination date of 2077.