

**COOPERATION AGREEMENT BETWEEN THE
CITY OF LAWRENCE, KANSAS, AND
THE UNIVERSITY OF KANSAS**

THIS AGREEMENT is made and entered into effective April 7th, 2005, by and between the City of Lawrence, Kansas (hereinafter referred to as the "City") and the University of Kansas, an educational institution, public body, and independent agency of the State of Kansas (hereinafter referred to as the "University"), the City and the University from time to time herein collectively referred to as "the parties."

RECITALS

WHEREAS, the City and the University have a long history of cooperation regarding their shared mutual interests in a strong and vibrant University and Lawrence community. The long term vibrancy and health of the University are in the interest of the City and the long term health and vibrancy of the City are in the interest of the University; and

WHEREAS, the University, acting under the authority of the Board of Regents of the State of Kansas, has the authority, pursuant to state law, to possess, hold, administer, and maintain real property for the purposes of its mission of research, teaching, and service; and

WHEREAS, the City of Lawrence, Kansas, has adopted comprehensive planning, zoning, and subdivision regulations pursuant to K.S.A. 12-741 et seq., to promote the general health, welfare and safety of the community; such regulations sometime hereafter referred to as the City's land use regulations; and

WHEREAS, the Kansas Supreme Court has stated that whether a state agency is immune from local zoning regulations requires the balancing of certain interests:

"In the absence of a clear expression of legislative intent, whether one governmental agency is subject to land use regulation of another depends on an inference of legislative intent derived from an overall evaluation of all relevant factors, including: (1) the nature and scope of the instrumentality seeking immunity; (2) the kind of function or land use involved; (3) the extent of the public interest to be served thereby; (4) the effect local land use regulation would have upon the enterprise concerned; and (5) the impact of the proposed use upon legitimate local interests. In some instances one factor will be more influential than another or may be so significant as to completely overshadow all others. No one factor, such as the granting or withholding of the power of eminent domain, is to be thought of as ritualistically required or controlling. Even if immunity is found to be present, the State's action may be judicially reviewed as to whether the State acted arbitrarily."

Hermann v. Board of County Commissioners, 246 Kan. 152, Syl. 4, (1990)

and;

WHEREAS, the Kansas Supreme Court has not ruled that a state university is subject to local zoning; and

WHEREAS, Kansas Statutes Annotated ("K.S.A.") 75-3741c(a) stipulates that "no state capital improvement project. . . shall be subject to any building permit requirement or building code of any county, township, district, city or other political subdivision of this state . . ."; and

WHEREAS, all public universities in Kansas are required to adhere to the guidelines in K.S.A. 31-132 et seq., 31-144(a), 31-150, and 31-150a, for the construction of school buildings and are subject to penalties for noncompliance; and

WHEREAS, the University and the City desire to cooperate in the best interests of the citizens of the State of Kansas, the citizens of the Lawrence community, and the students of the University concerning the University's state-wide mission of higher education, research, teaching, and service, and the use of land by the University as it may support the University's state-wide mission as well as affect the neighborhoods and the City community; and

WHEREAS, the City and the University further desire to avoid disputes and disagreements concerning the applicability of certain City land use regulations to University property; and

WHEREAS, the City and the University further desire to enter into an agreement that shall specify those City land use regulations the University shall comply with in its ownership and use of University real property within the City boundaries; and the City and the University shall mutually benefit from the express determination of the applicability of certain City land use regulations as specified in this Agreement;

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

Section 1. Pre-Existing Conditions. Any condition existing as of the effective date of this Agreement in any property of the University, the Kansas University Endowment Association or the Kansas University Center for Research, Incorporated, shall be considered to be a pre-existing condition and shall not be subject to corrective or remedial action, including, but not limited to, platting or subdivisions, or study, including any traffic study, storm water study, or wastewater study. No remodeling, repairs or maintenance of pre-existing conditions anywhere on University property, including parking lots, which does not increase the building footprint or height, shall subject any pre-existing conditions to any City land use regulation that might otherwise be required by virtue of the provisions of this Agreement.

Section 2. Purposes. The purposes for which the parties have entered into this agreement are to cooperate in the application of certain City land use regulations that shall apply to specified real property owned and used by the University. These purposes include the parties agreement that: 1) the University will adhere to certain City land use regulations as herein described in consideration of the City's agreement to not attempt to otherwise impose its zoning requirements on the University; 2) applicability of certain regulations to specified University property shall be clear to the parties; and 3) that the communities served by the City and the University shall benefit by the limited application

of certain City land use regulations to specified University property, which will protect and enhance the general health, safety, and welfare of the community. To this end, the University will provide a map, last revised on December 10, 2004, representing the properties comprising the Primary University of Kansas, Lawrence, Campus, as designated in Section 3 below of this Agreement (Appendix A). Further, the City shall designate the Primary University of Kansas, Lawrence, Campus on the City's zoning map as "U" and shall amend its zoning ordinance to specify that such "U" designation refers to this Agreement only and does not otherwise include any zoning requirement or condition.

Section 3. Definitions. For purposes of this Agreement, the following terms and phrases shall have the following meanings:

- a) Primary University of Kansas, Lawrence, Campus. The Primary University of Kansas, Lawrence, Campus shall be that property titled to the State of Kansas, the Board of Regents, and/or the University of Kansas, or that is leased to or otherwise made available to the University or the Kansas University Center for Research, Incorporated on the main and west campuses of the University of Kansas, Lawrence, as well as land owned by the Kansas University Endowment Association or the Kansas University Center for Research, Incorporated, within the area bounded by Iowa, 15th, Kasold, and 23rd Streets, as further designated by the map in Appendix A. The Primary University of Kansas, Lawrence, Campus also shall include all properties contiguous to the main and west campuses of the University of Kansas, Lawrence, including 1) what is commonly known as "North College," comprising the Gertrude Sellards Pearson and Corbin residence halls, the parking garage N-College, and the housekeeping facility at 1043 Indiana Street, and 2) the Continuing Education Building and Oldfather Studios.
- b) University of Kansas Property Outside the Primary University of Kansas, Lawrence, Campus. For the purposes of this Agreement, University of Kansas Property Outside the Primary University of Kansas, Lawrence, Campus shall include all University property in the corporate limits of the City of Lawrence that is not contiguous with the boundaries of the Primary University of Kansas, Lawrence, Campus and is titled to the State of Kansas or the Board of Regents and/or the University of Kansas or the University of Kansas Center for Research, Incorporated.
- d) City Land Use Regulations. Unless further specifically defined within this Agreement, the City's land use regulations shall include all City laws enacted pursuant to the provisions of Article 7, Chapter 12 of the Kansas Statutes Annotated, including but not limited to zoning, site planning, and subdivision regulations. Nothing in this Agreement shall be construed to require attendance of University representatives in their official capacities at hearings, public meetings or other activities of any City committee, commission, council or other body.

Section 4. Applicability of Certain City Land Use Regulations.

- a) University of Kansas Property Outside the Primary University of Kansas Campus.

The University agrees that all University of Kansas Property Outside the Primary University of Kansas Campus shall comply with the City's land use regulations, except those regulations that are in conflict with or are superseded by the provisions of K.S.A. 75-3741c and any other provision of state law or regulations. The University shall adhere to City land use regulations for University of Kansas Property Outside the Primary University of Kansas, Lawrence, Campus regardless of use or proposed use, it being the intent of the parties that University of Kansas Property Outside the Primary University of Kansas, Lawrence, Campus shall be in compliance with the City's land use regulations in the same manner as property titled to other property owners within the City, except as noted herein.

b) Primary University of Kansas, Lawrence, Campus Property within 150 feet of Boundary

There is hereby designated a 150 foot buffer area within the Primary University of Kansas, Lawrence, Campus Property that shall extend 150 feet into the Primary University of Kansas Campus from the exterior boundary depicted in Exhibit A. The University shall comply only with the following City land use regulations for any new construction within the 150 foot buffer area, it being specifically understood and agreed by the parties that, pursuant to section 1, Pre-Existing Conditions, above, the University is exempted from any storm water study for the drainage areas that flow from the Primary University of Kansas, Lawrence, Campus and from any detention requirements other than those attributable specifically and only to new construction within the 150 foot buffer area:

- 1) the City's standards and requirements for potable water service;
- 2) the City's standards and requirements for wastewater service for all new construction;
- 3) the City's standards and requirements for storm water management and detention for all new construction;
- 4) the City's requirements governing access to City public rights-of-way and public streets, creation of curb cuts, and similar traffic control measures;

Further, any new University construction within the 150 foot buffer area shall have a height no greater than its set-back from the public right of way adjacent to the nearest City-maintained street, and on-site parking pursuant to City requirements shall be provided for student housing structures built within the 150 foot buffer area. Existing structures shall not be subject to these provisions. Additionally, any renovations, expansions or construction on the following locations or structures shall not be subject to the height and off street parking requirements: the Kansas Memorial Stadium; the scholarship halls planned or under construction on Ohio Street (formerly identified as lots 209, 211, 213, 215, 217, 219, 221, 223, and 225 on Ohio Street in the City of Lawrence, Douglas County, Kansas); the parking garage adjacent to the Memorial Union; and any University-owned or KUEA-owned properties on Stewart Avenue or on either or both sides of Iowa Street from 15th (Bob Billings Parkway) Street south to 23rd Street (Clinton Parkway). The University will require any student who lives in the scholarship halls planned

or under construction on Ohio Street and registers an automobile with the University to purchase a University parking pass.

Whenever the University has final approval from the Kansas Board of Regents and, if required, the Kansas legislature to undertake a construction project, other than routine repairs and maintenance, on Primary University of Kansas, Lawrence, Campus Property that is within 150 feet of the exterior boundary, the University shall conduct an impact analysis and will provide appropriate notification to representatives of affected neighborhoods and involve them in the planning process. As a general practice, this shall involve the establishment of an *ad hoc* Community Program Advisory Committee with representation from adjoining property owners, neighborhood association representatives, City representatives, and appropriate University representation. Such advisory committees shall review architectural plans and drawings, site and footprint layouts, provide recommendations for changes and improvements, and shall have the opportunity to review subsequent planning documents. Concerns which may be discussed at such *ad hoc* Community Program Advisory Committee meetings include, but are not limited to: off street and on street parking, height and setbacks of proposed buildings, exterior lighting, location of service entrances and screening of such entrances, location of HVAC units and screening of such systems, location of trash receptacles and screening of such receptacles, and noise generation. Should the *ad hoc* Community Program Advisory Committee not reach a consensus on one or more concerns, it shall prepare a report, including any dissenting views, for consideration by the University Building Committee and the Provost of the University. The Provost will review the report, receive the recommendations of the University Building Committee, and issue a written response, which will explain any deviation from the desires of the *ad hoc* Community Program Advisory Committee, including dissenters. The Provost's decision shall be final.

In addition, the University shall seek the advice and recommendation of the City (Lawrence-Douglas County Metropolitan Planning Department) in attempting to achieve consistency with the City's master street tree plans; it being the agreement of the parties to not establish a requirement for the University to comply with the City's master street tree plan but to seek voluntary adherence to the street tree goals set forth in the City's street tree plans.

c) Primary University of Kansas, Lawrence, Campus The University shall comply with the following City land use regulations for property located on the Primary University of Kansas, Lawrence, Campus, it being specifically understood and agreed by the parties that, pursuant to section 1, Pre-Existing Conditions, above, the University is exempted from any storm water study for the drainage areas that flow from the Primary University of Kansas, Lawrence, campus and from any detention requirements other than those attributable specifically and only to new construction:

- 1) the City's standards and requirements for potable water service;
- 2) the City's standards and requirements for wastewater service for all new construction; and
- 3) the City's standards and requirements for storm water management and detention for all new construction.

Any expansion or addition of the boundaries of the Primary University of Kansas, Lawrence, Campus beyond the boundaries that exist on the date of the execution of this Agreement as shown in Exhibit A, shall be treated as property outside the Primary University of Kansas, Lawrence, Campus, consistent with the provisions of section 4.

If, after the execution of this Agreement, any property described in Section 3 of this Agreement is no longer titled to entities set forth in Section 3 of this Agreement, and instead titled to a private person or entity, then this Agreement shall no longer apply to such privately titled property.

Section 5. Annual Development Plan. The University shall make available to the City Commission and the City Manager the annual five-year proposed capital improvement plan for the University of Kansas as approved by the Board of Regents. The parties recognize that such plan does not guarantee the development or redevelopment of projects in the plan. The parties further recognize that, from time to time, projects not listed in the five-year plan may be undertaken when unplanned or immediate funding opportunities are available. All capital improvement projects are subject to prior review and approval of the Board of Regents.

Section 6. Transportation and Pedestrian Traffic Analysis for Major Projects. The University shall conduct a transportation and pedestrian impact analysis on all new major development projects that substantially increase vehicle and pedestrian traffic, unless other provisions of this Agreement require additional traffic impact analysis. The analysis required by this Section shall be intended to identify any potential need for future City infrastructure improvements and any appropriate mitigating measures from the University pending completion of infrastructure improvements. While the University shall determine method, means, subject matter, and format of any such analysis involving University property, elements to be addressed as a part of the analysis include vehicular traffic, public and private transit routes and loading zones, and, when appropriate, bicycle and pedestrian traffic.

Section 7. Codes and Standards. The City shall not have any authority to require the issuance of building permits or City inspections for University construction or projects. The University shall construct, or otherwise permit the construction, of all development or redevelopment on University property pursuant to the most current codes and standards adopted by the State of Kansas. The University shall conduct, or otherwise have performed on the University's behalf, inspections pursuant to the code requirements adopted by the State of Kansas.

Section 8. Noise Standards. Noise levels within 150 feet of the exterior boundary of the University Primary University of Kansas, Lawrence, Campus Property from University structures or buildings shall not exceed the currently existing noise level standards established by the City for similar private or public projects within the City. This limitation shall not extend to University and community events involving group activities such as athletic events, concerts, University-sponsored residence hall activities, and other University-sponsored or hosted activities involving gatherings of persons.

Section 9. Notice to Parties. The parties desire to communicate on development and construction projects as they may be affected by the provisions of this Agreement and as such development and construction may affect the interests of the parties.

- a) The University shall notify the City of any development and construction, other than maintenance or repair work, within ten (10) working days prior to commencement of such development and construction: 1) on property within the 150 foot buffer area of the Primary University of Kansas, Lawrence, Campus; and 2) on property that is designated as University of Kansas Property Outside the Primary Campus. The demolition of any structure outside the Primary University of Kansas, Lawrence, Campus that is nine (9) feet or greater in height shall require notification pursuant to this Section. For property within the 150 foot buffer area, the University shall prepare an impact analysis report of the proposed development and construction governed by this subsection and shall provide the City with a copy of the impact analysis report no less than twenty-one days prior to the development and construction. The impact analysis report shall include documentation indicating compliance with the provisions of this Agreement. Completion of an impact analysis pursuant to this provision shall not obligate the University to carry out any proposed development or construction should the University, in its sole discretion, choose not to proceed with the proposed development or construction. No impact analysis report shall be required for property that is designated as University of Kansas Property Outside the Primary Campus because the University shall, except as provided in Section 4, above, comply with all city land use regulations for such property, which shall include application to the City for development and construction governed by the City's land use regulations. The parties specifically agree the University shall not in any case be required to obtain building or demolition permits from the City.
- b) The City shall notify the University of any City infrastructure development and construction, other than maintenance or repair improvements, located within the 150 foot area exterior to the boundary of the Primary University of Kansas Campus. The City shall, within 5 working days of its receipt of such an application, notify the University of any private development and construction, other than maintenance or repair improvements, requiring a City building permit for structures located within the 150 foot area exterior to the boundary of the Primary University of Kansas Campus. The City shall notify the University of any scheduled public hearing on a change in zoning on property located within the 150 foot area exterior to the boundary of the Primary University of Kansas Campus. The City shall, within 5 working days of its receipt of such a request, notify the University of any request to obtain a license to operate a retail liquor store or a drinking establishment on property within the 150 foot area exterior to the boundary of the Primary University of Kansas Campus. The City shall within 5 working days of issuance, notify the University of any issuance of a Notice of Violation of the City's environmental code or City laws governing unsafe and dangerous structures on property within the 150 foot area exterior to the boundary of the Primary University of Kansas Campus.
- c) Notice to the University shall be to the Vice Provost for Facilities and Planning and Management, 250 Strong Hall, University of Kansas, Lawrence, Kansas, 66045. Notice to the City shall be to the City Clerk, 6 East 6th Street, City Hall, Lawrence, Kansas 66044.

Section 10. Requirements Concerning Fees. The University shall not be required to pay land use regulation fees, including rezoning, platting, and site plan review fees. Nothing in this Agreement waives any requirement consistent with state law for the University to pay other City usage fees and utility charges, including water, wastewater, sanitation, or storm water utility usage charges.

Section 11. Historic Review Memorandum of Understanding Not Affected. Nothing in this Agreement shall be interpreted as altering or changing the requirements and obligations of the City and the University as set forth in the Memorandum of Understanding between the City and the University dated September 21, 2001 governing certain historic preservation reviews as required by law. Nothing in this Agreement is intended to preclude modification of the Historic Review Memorandum of Understanding as provided in such Memorandum or to supersede state law or regulations regarding Historic Preservation.

Section 12. Amendment or Modification. This Agreement may be modified or amended at any time upon the mutual written agreement of the duly authorized representatives of the parties.

Section 13. Termination. This Agreement shall have a duration of five (5) years from the effective date stated above. Not later than four (4) years following the effective date, duly authorized representatives of the parties shall meet to discuss any desired changes or modifications to the Agreement and shall attempt to reach mutual agreement upon such changes or modifications. If either party determines to terminate the Agreement in lieu of changing it or extending it into another term, that party must give notice of intent to terminate the Agreement not later than 180 calendar days before the Agreement terminates. In the absence of mutual written modification or notice of termination given in accordance with this section, at the end of each five (5) year term, this Agreement shall otherwise renew for another five-year term with the then-existing provisions to be effective for that term. Any termination pursuant to the provisions of this section shall not constitute a breach under section 21 of this Agreement. . Nothing in this Agreement is intended to waive any right of sovereign immunity either party may have upon termination of the Agreement.

Section 14. Approval and Authorization. Each of the parties warrants and represents by the execution of this Agreement that it has been approved by its legal counsel as to form and legality, that the execution, delivery and performance of this Agreement by such party has been duly authorized and that this Agreement constitutes a legal, valid and binding obligation of such party enforceable in accordance with its terms.

Section 15. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors, and assigns.

Section 16. Venue. It is agreed by and between the parties that, should any dispute arise, that cannot be resolved through negotiations and by mutual consent, concerning the validity and effect of this Agreement, or of any breach of the Agreement herein, venue of action concerning such dispute shall be in the District Court of Douglas County, Kansas.

Section 17. 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.

Section 18. Effective Date. This Agreement shall take effect upon its approval by the last party indicating approval.

Section 19. Prior Agreements. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements, negotiations, and discussions concerning any matter contained herein.

Section 20. Applicable Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Kansas.

Section 21. Breach of Agreement. The parties shall have all rights and remedies available to them at law and equity to enforce provisions.

THE UNIVERSITY OF KANSAS

This Agreement is approved as authorized by the University of Kansas, Douglas County, Kansas on the 7th day of April, 2005.



David E. Shulenburg, Provost and
Executive Vice Chancellor

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

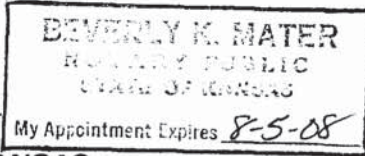
BE IT REMEMBERED, that on this 7th day of April, 2005, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came David E. Shulenburg, Provost and Executive Vice Chancellor of the University of Kansas, who is personally known to me to be the same person who executed the above Agreement, and such person duly acknowledged the execution of the same to be her free and voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last mentioned.

Beverly K. Mater
Notary Public

My appointment expires:

August 5, 2008



CITY OF LAWRENCE, KANSAS

This Agreement is approved as authorized by the Governing Body of the City of Lawrence, Kansas on the 29th day of March 2005.

Mike Rundle

Mike Rundle, Mayor

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 30TH day of March, 2005, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Mike Rundle, Mayor, City of Lawrence, Kansas, who is personally known to me to be the same person who executed the above Agreement, and such person duly acknowledged the execution of the same to be his free and voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last mentioned.

Frank S. Reeb
Notary Public

My appointment expires

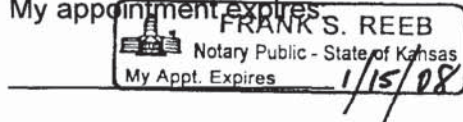


EXHIBIT "A"

PROPERTY MAP

June 11, 2003
 Revised Nov. 30, 2004
 Revised Dec. 9, 2004
 Revised Dec. 10, 2004

MAIN CAMPUS
 UNIVERSITY OF KANSAS

OLDFATHER STUDIOS
 1821 W. 9TH

N COLLEGE

N 2,000'

S 2,000'

SCALE: 1"=

WEST CAMPUS
 UNIVERSITY OF KANSAS

S 4,000'

SCALE: 1"= 400'

LEGEND

- STATE OF KANSAS/KUEA PROPERTIES
- 150 FT. BOUNDARY LIMIT

SCALE:

