

Extension and Modification Agreement

This Extension and Modification Agreement (this "Agreement") is entered into this 25th day of August 2009, by and between the City of Lawrence, a municipal corporation (hereinafter the "City") and Bowersock Mills and Power Company, a Kansas corporation (hereinafter "Bowersock").

WHEREAS, by that certain agreement titled "Agreement" and dated April 5, 1977 (hereinafter the "Base Agreement"), the City granted Bowersock a ground lease to occupy, possess and use, for a period of 50 years, certain land under the buildings known as the power plant and building and the maintenance shop building (collectively hereinafter the "Power Plant"), with Bowersock retaining ownership of the Power Plant and other improvements to the real estate; and

WHEREAS, the Base Agreement provides that the dam spanning the Kansas River just east of and generally parallel with the Massachusetts Street bridge, commonly known and referred to as the Bowersock Dam (hereinafter the "Dam"), remains owned by Bowersock, and outlines the rights and obligations of the City and Bowersock with respect to the operation and maintenance of the Dam during the term of the ground lease and Bowersock's use and occupancy of the Power Plant; and

WHEREAS, in the Base Agreement, the City also granted to Kansas Fibreboard, Inc., a Kansas corporation, and to Justin D. Hill, Sr. and Stephen Higdon Hill, a ground lease to occupy, possess and use, for a period of 30 years, certain land under the building known as Bowersock Warehouse-Building 1A; and

WHEREAS, the rights of Kansas Fibreboard, Inc. and Justin D. Hill, Sr. and Stephen Higdon Hill were succeeded to by Bowersock Mills and Power Company, pursuant to assignments of all rights under the Agreement of April 5, 1977, which assignments the City approved by that certain agreement titled "Extension Agreement" and dated November 21, 2000 (hereinafter the "Extension Agreement"); and

WHEREAS, in the Extension Agreement, the term of the ground lease for possession and occupancy of the land originally leased to Kansas Fibreboard, Inc. was extended for an original term of 30 years to 50 years, to correspond with the term of Bowersock's ground lease to occupy, possess and use the land pursuant to the Base Agreement; and

WHEREAS, to facilitate the construction of the Lawrence Riverfront Mall, Bowersock subsequently relinquished its rights with respect to some of the land encumbered by the Base Agreement; and

WHEREAS, by that certain agreement titled, "Ground Lease" and dated November 11, 2002 (the "2002 Agreement"), the City and Bowersock entered into a lease pursuant to which Bowersock was given the right to occupy, possess and use, for

a period expiring November 11, 2027, certain land more particularly described in said 2002 Agreement, for driveway purposes; and

WHEREAS, the Power Plant is in need of substantial capital improvements, including stabilization of foundations and structural components, which cannot be reasonably amortized over the remaining term of the Base Agreement; and

WHEREAS, it is not feasible to make the necessary capital improvements to the Power Plant unless the Base Agreement is amended and extended as provided in this Agreement; and

WHEREAS, the City believes that entering into this Agreement is in the public interest because it will facilitate continuation of a public/private partnership that has led Bowersock to expend substantial private funds to operate the Dam and maintain a pool of water for the benefit of the City and because it will facilitate Bowersock's making of capital improvements to the Power Plant to provide for its long term viability and continued production of renewable energy and continuation of the millpond.

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 amended and extended by this Agreement as follows:

1. Maintenance of Dam. With respect to the maintenance, construction, repair, and operation of the Dam, the following shall apply and inconsistent provisions in the Base Agreement are superseded:

a. The City shall have the right and obligation to perform the necessary maintenance to maintain the structural integrity of the Dam in its existing form (665 feet 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 continued structural integrity of 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 power production. In the performance of the City's responsibilities for the maintenance of the Dam as set forth in this Agreement, the City shall comply with applicable laws and regulations relating 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 hydro-electric power production because of the failure of the Bowersock Dam; provided, however that Bowersock shall have the authority to assert claims and pursue legal actions to cause the City to maintain the structural integrity of the dam, but only if a court of

competent jurisdiction determines as part of the legal action that maintenance of the dam is required for the City's interests as stated herein.

b. For the purposes of maintaining the millpond at appropriate levels for the City's 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.

c. Bowersock shall provide, without any cost to the City, all necessary and reasonable access to the Dam for any study, analysis, maintenance, rehabilitation or construction the City may undertake with respect to the 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 and lowered, provided that prior to reducing the level of the millpond 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's public water supply. The City recognizes, however, that Bowersock will need to periodically reduce the millpond 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 millpond 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.

2. Mutual Indemnification. Bowersock shall save and hold harmless, protect and indemnify the City, its employees, agents and officials, from and against any and all liabilities, obligations, damages, penalties, claims of any kind, causes of action, costs, charges and expenses, including reasonable attorney's fees and expenses which may be imposed upon or incurred or served against the City by reason of Bowersock's use, occupation or possession of the land pursuant to the Base Agreement, the 2002 Agreement or this Agreement. The City shall save and hold harmless, protect and indemnify Bowersock, its employees, agents and officials, from and against any and all liabilities, obligations, damages, penalties, claims of any kind, causes of action, costs, charges and expenses, including reasonable attorney's fees and expenses which may be imposed upon or incurred or served against Bowersock by reason of the actions of the City's contractors, employees and officials in performing the maintenance of the Dam pursuant to the Base Agreement, the 2002 Agreement or this Agreement. The foregoing indemnifications shall be in addition to, and not in limitation of, any additional contractual indemnifications between the City and Bowersock.

3. Extension of Term. The period for the use, occupancy, and possession of the property subject to the Base Agreement and the 2002 Agreement, together with the

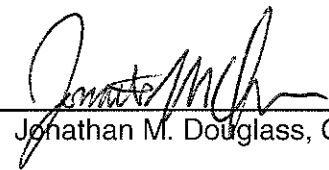
City's maintenance obligations of the Dam as provided in this Agreement, is extended an additional 50 years after the date that they would expire without this Agreement, such that they now expire April 5, 2077.

4. Reaffirmation. Except as amended and extended by this Agreement, the Base Agreement and 2002 Agreement are reaffirmed.

5. Counterparts. This Agreement may be executed in any number of counterparts (delivered by U.S. mail, fax, overnight delivery service or electronic mail), each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

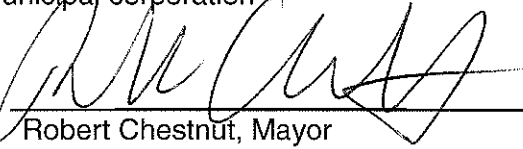
IN WITNESS WHEREOF, this Agreement is executed by the parties on dates set forth below, effective as of the date first above stated which is the date of the last party to sign this Agreement.

Attest:

By: 
Jonathan M. Douglass, City Clerk

CITY:

City of Lawrence, Kansas,
a municipal corporation

By: 
Robert Chestnut, Mayor

Date of Execution: 8/25/09

BOWERSOCK:

Bowersock Mills and Power Company,
a Kansas corporation

By: 
Stephen H. Hill, President

Date of Execution: 9/9/09 12/1/09

ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

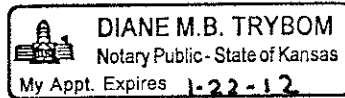
BE IT REMEMBERED, that on this 25th day of August 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid came Robert Chestnut, Mayor of the City of Lawrence, Kansas, a municipal corporation, who is personally known to me to be the same person who executed the within and foregoing instrument of writing, and duly acknowledged the execution of the same to be the free act and deed of such city.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Diane M.B. Trybom
Notary Public

My Commission Expires:

JAN 22, 2012



ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 2nd day of October 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen H. Hill, President of Bowersock Mills and Power Company, a Kansas corporation, who is personally known to me to be the same person who executed the foregoing instrument of writing, and such person duly acknowledged the execution of the same to be the free act and deed of such company.

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

Sharon M. Powley
Notary Public

My Commission Expires:

2/24/2013

