

## Section XI Appendix D-1 Existing Partnership Agreements

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE  
CITY OF LAWRENCE, KANSAS, AND U.S.D. NO. 497,  
LAWRENCE PUBLIC SCHOOLS ESTABLISHING A USER  
AGREEMENT FOR THE PLANNED CITY INDOOR AQUATIC  
CENTER, PURSUANT TO K.S.A. 12-2901 et seq.**

**THIS AGREEMENT** is made and entered into by and between the City of Lawrence, Kansas (hereinafter referred to as the "City") and U.S.D. No. 497, Douglas County, Kansas (hereinafter referred to as the School District").

**RECITALS**

**Whereas**, the City and the School District have a long history of cooperation to provide recreational services to the Lawrence community; and

**Whereas**, the City is planning to construct and operate a City indoor aquatic center facility (hereinafter "facility") on property near Lawrence Free State High School (hereinafter "property"), said property to be subject to a separate transfer from the School District to the City; and

**Whereas**, the City and the School District seek to ensure that the operation of the facility is compatible with the Lawrence Free State High School campus, enhances the educational mission of the School District, and meets the recreational needs of the Lawrence community; and

**Whereas**, on October 9, 1998, the School District and the City entered into a Memorandum of Understanding concerning the planning, design, construction, and necessary land transfers for the property and the facility, in contemplation of an interlocal cooperation agreement governing the use of the fifty (50) meter pool (hereinafter "fifty (50) meter pool") in the facility by the School District; and

**Whereas**, K.S.A. 12-2901 et seq. and amendments thereto, authorizes the parties to enter into agreements for joint or cooperative action; and

**Whereas**, the parties desire to enter into this cooperation agreement concerning the use of the facility when construction is complete and the facility is ready for use;

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

Section 1. Recitals. The recitals are hereby incorporated by reference as if fully set forth herein.

Section 2. Purpose. The purpose of this Agreement is to establish policies and procedure to govern the School District use of the fifty (50) meter pool in the facility to adjoin the Lawrence Free State High School.

Section 3. Fifty Meter Pool Calendar Committee. There is hereby established the Fifty Meter Pool Calendar Committee (hereinafter "Committee") which shall schedule the use of the fifty (50) meter pool to be located in the facility and shown in Attachment A to this Agreement. The Committee shall be composed of two (2) representatives of the City appointed by the City Manager and two (2) representatives of the School District appointed by the Superintendent of the School District. The Committee shall select a chair from among its members, adopt such policies and procedures as are necessary to schedule the use of the fifty (50) meter pool, and meet as needed to schedule the use of the fifty (50) meter pool; provided, that the Committee shall meet prior to the school year to secure dates for use by the School District of the fifty (50) meter pool for School District usage, in student team training, practice and meet sessions, and student educational sessions. In scheduling the use of the fifty (50) meter pool the Committee shall endeavor to meet all recreational, educational, and competitive needs of the community in a balanced manner attempting to maximize the use of the facility and fifty (50) meter pool, subject to first priority to all reasonable educational and athletic needs of the School District.

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Section 4. City Responsibility for Continuous Operation and Maintenance of Facility and Fifty (50) Meter Pool. The City agrees that it will complete construction of the facility in accordance with an approved site plan, building design, and specifications subject to reasonable School District approval, by no later than September 1, 2001, and that it will thereafter continuously operate the facility and fifty meter pool as a public facility so that the School District will have a continuous right of access to and use of the Fifty (50) Meter Pool in accordance with the terms and conditions of this Agreement. The City shall maintain the facility and the fifty (50) meter pool pursuant to reasonable industry standards for facilities and pools of similar design and usage. The facility and pool shall be maintained in an attractive, clean, safe, and sanitary condition, and in compliance with all applicable laws and health and safety regulations.

Section 5. No Lease, Sale, or Other Transfer of the Facility or the Fifty (50) Meter Pool. The City will not lease the use of, or sell or otherwise transfer the ownership and control of, the facility or the fifty (50) meter pool to anyone else, without obtaining prior written consent from the School District.

Section 6. Special Option in the Event of Discontinuance of Use of Facility as City Aquatic Center. If notwithstanding the provisions of Section 4, the School District determines that the facility is no longer being used as a public aquatic recreation center, except during the initial construction of the facility or during closure of the facility necessary for maintenance or repair, the School District shall have the right to purchase the facility for the fair market value of the facility, including all improvements, equipment, and appurtenances thereto. This right shall be in addition to any and all the rights of the School District. The determination of the fair market value of the facility shall not include the value of the real estate property transferred from the School District to the City. The fair market value of the facility shall be determined by any reasonable manner agreed to jointly by the City and the School District. In the absence of such agreement, the fair market value shall be determined as follows: the City shall select a qualified appraiser; the School District shall select a qualified appraiser; and the selected appraisers shall select an additional appraiser. The three (3) appraisers shall agree on



a fair market value for the facility pursuant to the provisions of this Agreement, but if they are unable to agree upon the fair market value, the fair market value will be the mean between the two highest appraisals. The City and the School District shall enter into such necessary instruments, with the usual and customary conditions and provisions thereto, to conclude the sale and transfer of the facility and property, except that the School District may elect within sixty (60) days after determination of the fair market value, at its sole discretion, not to purchase the facility or to condition the purchase upon the successful passage of a bond issue to finance the purchase. The costs of appraisal shall be divided equally between the School District and the City, provided that if the School District thereafter declines to purchase the facility, it shall bear the full costs of appraisal. Upon consummation of such purchase, this Agreement will terminate.

Section 7. School District Responsibility for Use of Facility and Fifty (50) Meter Pool.

The School District shall comply with all reasonable rules and regulations and with all laws governing the use of the facility and the fifty (50) meter pool.

Section 8. School District Payments required for Use of Facility and Fifty (50) Meter Pool.

The City shall establish a budget for the operation and maintenance costs (O&M costs") for a calendar year for the fifty (50) meter pool, including but not limited to: 1) costs for utilities, including any water, sanitary sewer, and storm water utility charges that are billed to the facility; 2) costs for routine maintenance; 3) costs for chemicals; 4) costs for City staffing of the fifty (50) meter pool; and 5) such other costs reasonably attributable to the operation and maintenance of the fifty (50) meter pool. For costs which apply to the entire facility, a fair and reasonable proportionate share shall be allocated to the fifty (50) meter pool. O&M costs shall not include the capital costs required to design, construct, add to, or improve the facility and the fifty (50) meter pool. The historic and projected O&M costs for the fifty (50) meter pool shall be used in determining the hourly rate for usage of the fifty (50) meter pool. On or before May 1 of each year, the City will provide the School District with copies of its proposed budget and a fair and reasonable use charge to the School District for its use of the fifty (50)



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meter pool for the next calendar year. All user groups, including the School District, using the fifty (50) meter pool shall pay an hourly rate for the use of the fifty (50) meter pool. The School District's hourly rate for the first twelve (12) months of usage of the fifty (50) meter pool shall not exceed \$50.00 per hour of usage.

Section 9. City Regulation of City Parking Area for Facility. City employees and facility users shall park in the City parking area for the facility designated on the approved site plan. The City shall exercise its police powers and other regulatory powers to enforce City parking regulations to notice, fine, or tow motor vehicles which park in the City parking area in violation of City laws.

Section 10. Mutual Indemnification.

- A. The City shall at all times save and hold harmless the School District from all liability, costs, damages, and expenses of any kind by reason of any claim or liability caused by any acts or omissions of the City, its employees, patrons, agents, or servants in the construction, installation, maintenance, use and operation of the facility and the fifty (50) meter pool.
- B. The School District shall at all times save and hold harmless the City from all liability, costs, damages, and expenses of any kind by reason of any claim or liability caused by any acts or omissions of the School District, its employees, invitees, patrons, agents, servants and students when using the facility under the auspices of the School District in the use of the facility and the fifty (50) meter pool.

Section 11. City Use of School District Property Pursuant to School District Approval and Regulations. Pursuant to applicable School District regulations and prior School District approval, the City may have reasonable use of School District property in conjunction with the operation and maintenance of the facility. In addition, the City may

have use of the School District's small gymnasium and locker areas in conjunction with swimming meets using the fifty (50) meter pool; provided prior approval is obtained from the School District and the City make reasonable arrangements for the security of school facilities, for clean up, and for reimbursement to the School District of reasonable costs it may incur.

Section 12. Adoption and Enforcement of Smoking Prohibition. Within thirty (30) days of the transfer of the property to the City, the City shall adopt an ordinance prohibiting the smoking or use of tobacco products on the property. The City shall be responsible for the enforcement of the ordinance.

Section 13. Party Wall Agreement. This Agreement will be subject to the terms and conditions of a party wall agreement between the parties in the form attached hereto as Attachment B, which is incorporated herein by reference.

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 governing body and by its legal counsel as to form and legality, that the execution, delivery and performance of this Agreement by such party has been authorized by resolution 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.

Section 15. Duration. The duration of this Agreement shall be perpetual, unless terminated as herein provided.

Section 16. Survival of Representation and Warranties. All representations, warranties, covenants and agreements contained herein shall survive the termination of this Agreement.

Section 17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

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Section 18. Applicable Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Kansas.

Section 19. Resolution of Disputes. The parties shall in good faith attempt to resolve any controversy, dispute, or disagreement arising out of or relating to this Agreement, or the breach thereof, by negotiation. If any such controversy, dispute or disagreement is not resolved within thirty (30) days, then the controversy, dispute or disagreement will be submitted to mediation, but if controversy, dispute or disagreement cannot be settled through mediation within an additional forty-five (45) days, the controversy, dispute or disagreement will be settled by all other lawful means.

Section 20. Effective Date. This Agreement shall be effective as of the date of approval by the Kansas Attorney General, or as otherwise provided in K.S.A. 12-2904(f) take effect upon the date first set out above.

Section 21. 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.



**U.S.D. NO. 497, DOUGLAS COUNTY, KANSAS**

This Agreement is approved as authorized by the Governing Body of U.S.D. No. 497,  
Douglas County, Kansas on the \_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Maley K. Wilkins, President

STATE OF KANSAS       )  
DOUGLAS COUNTY       )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_ 1999, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Maley K. Wilkins, President, U.S.D. No. 497. Douglas County, Kansas, who is personally known to me to be the same person who executed the above Interlocal 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 by notarial seal the day and year last mentioned.

\_\_\_\_\_  
Notary Public

My appointment expires:  
\_\_\_\_\_

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**CITY OF LAWRENCE, KANSAS**

This Agreement is approved as authorized by the Governing Body of the City of Lawrence, Kansas on the \_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Martin A. Kennedy, Mayor

STATE OF KANSAS     )  
DOUGLAS COUNTY    )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 1999, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Martin A. Kennedy, Mayor, City of Lawrence, Kansas, who is personally known to me to be the same person who executed the above Interlocal 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 by notarial seal the day and year last mentioned.

\_\_\_\_\_  
Notary Public

My appointment expires:

\_\_\_\_\_  
Approved pursuant to K.S.A. 12-2901 et seq.

\_\_\_\_\_  
The Honorable Carla Stovall  
Attorney General  
State of Kansas