

# DRAFT

## INTERLOCAL COOPERATION AGREEMENT

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF LAWRENCE, KANSAS AND U.S.D. NO. 497, DOUGLAS COUNTY, KANSAS, ESTABLISHING A USER AGREEMENT FOR THE TENNIS COURTS AT THE FREE STATE HIGH SCHOOL SITE PURSUANT TO K.S.A. 12-2901 et seq.**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, 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").

### *I.* **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 and the School District cooperated in the financing, operation and maintenance of the old tennis court complex along 21<sup>st</sup> Street adjacent to Lawrence High School; and

*Whereas*, the School District is constructing/remodeling/rehabilitating tennis courts (hereinafter "the tennis courts") at Free State High School (Free State), located at 4700 Overland Drive, Lawrence, Kansas as shown on Exhibit A (the "Site"). Such construction work will include the rehabilitation of five (5) existing tennis courts, the construction of three (3) new tennis courts and the lighting of all eight (8) tennis courts (the Project); and

*Whereas*, the City and the School District seek to ensure that the tennis courts to be constructed enhance both the educational mission of the School District and certain recreational needs of the Lawrence community; and

*Whereas*, the Interlocal Cooperation Act at K.S.A. 12-2901 et seq. authorizes the parties hereto to contract for certain joint cooperative purposes; and

*Whereas*, the parties desire to enter into a cooperation agreement concerning payment for the court construction, renovation and installation of appropriate lights for the tennis courts at Free State, and the use and shared maintenance thereof upon completion of construction and installation of the lights for the tennis courts; and

Whereas, the City shall not have any maintenance or financial responsibility for the School District tennis courts located on School District property near the Lawrence High School site;

**II.  
AGREEMENT**

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 provide City and School District responsibilities for the construction, reconstruction, financing, and maintenance of tennis courts and lights at the Free State site, all as set forth further in this agreement.

Section 3. City Financial Participation. The City will finance the tennis court construction and installation of lights at the tennis courts not to exceed \$547,000, subject however to change orders jointly approved by the City and the School District, with the School District being responsible for the construction management of the project with assistance from the City; provided that such construction, lights and installation of lights conform to plans and specifications reasonably approved in advance and in writing by the School District and City. The School District shall invoice the City for the full amount of the construction cost (i.e. \$547,000, subject to jointly approved change orders) upon the acceptance of the completed project, and following a period of ten (10) business days for the City to review all invoices related to the Project. The City shall pay such invoice within thirty (30) days of receipt thereof.

Section 4. Tennis Courts Calendar Committee. There is hereby established the School District / City Tennis Courts Calendar Committee (hereinafter "Committee") which shall schedule the use of the tennis courts. The Committee shall be composed of one (1) representative of the City appointed by the City Manager and one (1) representative of the School District appointed by the Superintendent of the School District. The Committee shall annually select a chair from among its members, adopt such policies and procedures as are necessary to schedule the use of the tennis courts, and meet as needed to schedule the use of the tennis courts. The first priority for the use of the tennis courts shall be for students of the Free State High School who use the facility as a physical education center or school-sponsored tennis club or team during the academic year. A secondary priority for the use of the tennis courts shall be the recreational needs of the community under activities and programs produced or sponsored by the City Department of Parks and Recreation. In scheduling the use of the tennis courts, the Committee shall endeavor to meet all recreational, educational, and competitive needs of the District and the community in a balanced manner attempting to maximize the use of the tennis courts.

Section 5. City and School District Responsibilities for Maintenance & Electric Usage at the Tennis Courts. The City shall perform regular maintenance of the tennis courts and lights at the Site to provide for reasonable use for tennis play, and safe and sanitary conditions, pursuant to all applicable laws and health and safety regulations. Such will include but not be limited to cleaning courts, net repairs or replacements, blub replacements, electrical repairs, minor crack repairs on courts, fence repairs etc. The School District and the City shall be equally responsible for all costs associated with major maintenance or rebuilding of the tennis courts and lights in excess of \$10,000 for any single major maintenance project and/or rebuilding or replacement project mutually agreed to; except that the City will replace or repair as necessary the lights for the tennis courts for proper use in the event of any casualty damage or loss including acts of vandalism and other causes typically covered under commercial property and casualty insurance policies. All of the electric costs for usage of the lights shall be paid by the City, and the School District shall be responsible for landscaping, mowing, and school parking lot maintenance of the Site. The School District will cooperate with the City to help provide reasonably secure storage of tennis equipment on the Site for City tennis instruction classes and public restroom facilities. The City will furnish and maintain any reasonably necessary temporary facilities for any non-District events that the City or its permitted users need, subject to prior written approval of the School District. The City shall have no maintenance or financial responsibility for the tennis courts located near Lawrence High School near the former Centennial school site generally located along Greever Terrace.

Section 6. Damage or Destruction of Lights. In the event the tennis court lights are damaged or destroyed, the City will reinstall the lights pursuant to the provisions of this agreement.

Section 7. City Responsibility for Use of Tennis Courts. The City shall comply with all reasonable School District rules and regulations, and with all laws governing the use of the tennis courts.

Section 8. No City Payments Required for Use of Tennis Courts. The City shall not be responsible for rental or lease payments for the City use, including City sponsored public use, of the tennis courts. The City may allow third parties to use the tennis courts subject to the provisions of this Agreement. The School District understands and agrees that the City may collect usage fees from such third parties (e.g. Tennis Association sponsored events, etc.).

Section 9. Limitation on Transfer of Tennis Courts. The School District may not transfer ownership of the Site as shown on Exhibit A, without the written permission of the City or a refunding to the City of its un-depreciated capital costs for the construction costs and tennis court lights based on a useful life of 25 years and straight line depreciation.

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, including reasonable attorneys fees, for which the School District may become liable to any person(s) or entities by reason of any claim or damages to the extent caused by acts or omissions of the City, its employees, patrons, agents, invitees, or servants relating to the use and operation of the tennis courts and lights, and relating to the City's obligations under this Agreement.

B) The School District shall at all times save and hold harmless the City from all liability, costs, damages, and expenses of any kind, including reasonable attorneys fees, for which the City may become liable to any person(s) or entities by reason of any claim or damages to the extent caused by acts or omissions of the School District, its employees, patrons, agents, invitees, or servants relating to the use and operation of the tennis courts and lights, and relating to the School District's obligations under this Agreement.

Section 11. Termination. By a majority vote of both governing bodies, the City and the School District may terminate this Agreement by jointly executing an Agreement of termination. This Agreement may not be unilaterally terminated by a single party without the written permission of the other party. In the event of any termination of this Agreement the Site together with all improvements will remain the sole property of the School District or its successors or assigns.

Section 12. 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 13. Duration. The duration of this Agreement shall be perpetual, unless terminated as herein provided.

Section 14. Survival of Representation and Warranties. All representations, warranties, covenants and agreements contained herein shall survive the termination of this Agreement.

Section 15. Assignment and Binding Effect. Neither party may assign this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld or delayed. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permissible assigns.

Section 16. Applicable Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Kansas.

Section 17. 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 18. 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 the controversy, dispute, or disagreement cannot be settled through mediation within an additional forty-five (45) days, the controversy, dispute, or disagreement will be settled in the manner directed by the Kansas Attorney General, which may include a directive to arbitrate the dispute, or to terminate this Agreement.

Section 19. Approval of the Kansas Attorney General. This Agreement shall be subject to the approval of the Kansas Attorney General as required by K.S.A. 17-2904(g). The parties will cooperate in obtaining expeditious approval by the Attorney General.

Section 20. Effective Date. The Effective Date of this Agreement will be the date it is approved by the Kansas Attorney General.

**ON BEHALF OF U.S.D. NO. 497, DOUGLAS COUNTY, KANSAS**

\_\_\_\_\_  
President, Board of Education, U.S.D. 497

This Agreement is approved as authorized by the Governing Body of U.S.D. No. 497, Douglas County, Kansas on the \_\_\_\_\_ day of \_\_\_\_\_, 2012

STATE OF KANSAS        )  
DOUGLAS COUNTY        )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, President, Board of Education, U.S.D. No. 497, Lawrence Public Schools, 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 their 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.

\_\_\_\_\_  
Notary Public:  
My appointment expires:

**ON BEHALF OF THE CITY OF LAWRENCE, KANSAS**

\_\_\_\_\_  
Robert J. Schumm, Mayor

This Agreement is approved as authorized by the governing body of the city of Lawrence, Kansas this \_\_\_\_ day of \_\_\_\_\_, 2012.

STATE OF KANSAS     )  
DOUGLAS COUNTY    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Robert J. Schumm, 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 their 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.

\_\_\_\_\_  
Notary Public:  
My appointment expires:

**APPROVAL OF THE ATTORNEY GENERAL OF THE STATE OF KANSAS**

The above and foregoing Interlocal Cooperation Agreement is hereby approved this \_\_\_\_ day of \_\_\_\_\_, 2012.

Office of Attorney General DEREK  
SCHMIDT

By:\_\_\_\_\_