

## **COOPERATIVE AGREEMENT**

This Cooperative Agreement is entered into this \_\_\_\_ day of August, 2018, by and between Weatherby Lake Improvement Company, a Missouri nonprofit corporation, with a mailing and notice address of 7200 NW Eastside Drive, Weatherby Lake, Missouri 64152 (the “WLIC”), City of Weatherby Lake, Missouri, a municipal corporation existing under the laws of the State of Missouri, with a mailing and notice address of 7200 NW Eastside Drive, Weatherby Lake, Missouri, 64152 (the “CWL”), and City of Kansas City, Missouri, a municipal corporation existing under the laws of the State of Missouri by and through the Water Services Department with a mailing and notice address of D. Matt Bond, Chief Engineering Officer, 4800 E. 63rd St., Kansas City, Missouri 64130 (the “KCMO”).

Whereas, KCMO declared certain real property surplus in Ordinance No. 170713, adopted by the City Council on September 28, 2017, near Amity and Barry Road, currently being tax parcel 20-1.0-11-200-001-014.000 (“Surplus Property”), and will seek alternative land upon which to construct and operate replacement sewer pump stations;

Whereas, KCMO specified in such Ordinance No. 170713, certain easements that would be reserved for the benefit of KCMO related to existing infrastructure in place on such Surplus Property and KCMO intends to seek requests for proposals for such Surplus Property indicating a preference for alternative land upon which to construct and operate replacement sewer pump stations (“RFP”);

Whereas, WLIC wishes to collaboratively respond to the RFP, and offer a tract of land owned by WLIC, said tract of land is described on **Exhibit A** attached hereto (“East Side Property”), and desires to facilitate the separate transfers by CWL and WLIC of an additional tract of land in the aggregate as described with an overall perimeter description on **Exhibit B** attached hereto (“West Side Property”), for the purpose of constructing sewer pump stations which will replace the existing aging pump stations in exchange for the Surplus Property, with the understanding that such surplus property will be subject to easements reserved for existing infrastructure as more fully set forth in Ordinance No. 170713;

Whereas, the West Side Property is made up of three tracts, as shown on the proposed form of Certificate of Survey-Minor Subdivision for Lot Split purposes which have different ownership as shown on **Exhibit C-1** attached here;

Whereas, CWL acquired title to Tract 1 through a Dedication Deed from Mary Sue Workman Berry and Carl M. Berry, her then husband, dated September 6, 1973, recorded September 10, 1973 as Document No. 1185 in Book 425, Page 330 (“Dedication Deed”), and a portion thereof described as Tract 1A on **Exhibit C-1** is needed for the replacement sewer pump station and appurtenances, and in addition, there are necessary access and utility easements also

needed by KCMO within Tract 1, and such Dedication Deed states that the property so conveyed is for “[E]xclusively for public purposes as parks and recreational areas to be known as the “William H. Workman Park” ;

Whereas, the Dedication Deed purports to convey an interest in Tract 2 as shown on **Exhibit C-1** to CWL, but the official real estate records of the Platte County Recorder of Deeds indicates that as to Tract 2 such Dedication Deed is of no force and effect for such twenty foot wide strip, as a Warranty Deed from Lakeview Realty Company, as the grantor, was executed to the Weatherby Lake Improvement Company, as grantee, dated October 25, 1952, and recorded as Book 174, Page 582 (“Lake Deed”); there is a separate and subsequent deed for a twenty foot shoreline strip from the Wm. H. Workman and Mary Sue Workman, husband and wife (“Workmans”), as grantors, to Lakeview Realty Company, as grantee, dated December 11, 1952, and recorded as Book 177, Page 8 (“Supplemental Lake Deed”) which is substantially the same legal description for the twenty foot strip; the Workmans may not have effectively conveyed that twenty foot strip to Lakeview Realty Company prior to Lakeview Realty Company’s conveyance to WLIC in the Lake Deed; however, the Lakeview Realty Company October 25, 1952 deed to WLIC was a warranty deed, and as such may have had the effect of conveying after-acquired title, based on RSMo. 442.420;

Whereas, CWL has diligently been trying to obtain quitclaim deeds or some other form of extinguishment of any residual reversionary interests, if any, if the use of Tracts 1A, and such associated access and utility easements, for replacement sewer pump stations and appurtenances is deemed to somehow cause a reversion to the heirs of the Workmans and as of the date of this Cooperative Agreement such heirs have not agreed to the extinguishment of their interest if any;

Whereas, KCMO has been authorized by Ordinance No. 180508, passed by its City Council on July 26, 2018, with an accelerated effective date as of that same date, to commence condemnation proceedings to acquire the West Side Property, and the various necessary permanent access and utility easements, as well as temporary construction easements, and WLIC and CWL as owners of their respective portions of the West Side Property desire to cooperate in KCMO obtaining necessary title and interests to build, operate and maintain the replacement sewer pump stations, but acknowledge that KCMO has deemed it necessary to pursue condemnation proceedings to obtain the interests in Tract 1A, and associated access and utility easements, for replacement sewer pump stations and appurtenances;

Whereas, WLIC seeks to obtain title to the Surplus Property upon the removal of the existing sewer pump stations upon the completion and commencement of operations of the facilities contemplated by the project more fully described as the Weatherby #2 and Upper Rush Pump Stations Rehabilitation, being City Project #81000623, and assigned Contract # 1144 (“Replacement Pumping Stations Project”) with such Surplus Property then being available in the future in a clean and restored natural condition free of above ground structures;

Whereas, KCMO seeks WLIC's and CWL's cooperation and consideration during the construction of the Replacement Pumping Stations Project which alternative facilities will also serve the residential community within the CWL; and

Whereas, KCMO's execution of this Cooperative Agreement was authorized by Ordinance No. 180526, passed by its City Council on August 2., 2018, and this Cooperative Agreement was authorized by a vote of the membership of WLIC at its 2017 annual meeting;

Whereas, CWL's execution of this Cooperative Agreement is contemplated to be authorized by an Ordinance subsequently passed by its Board of Alderman after the earlier of (i) entry of a condemnation order for Tract 1A of the West Side Property and the associated access and utility easements, for replacement sewer pump stations and appurtenances, the payment of the condemnation award by KCMO into the court, and the lapse of any applicable appeal period, or (ii) an agreement is reached with the Workmans' heirs;

Whereas, CWL and KCMO are parties to that certain Cooperative Agreement for Sewer Service dated February 23, 1999, with an effective date of April 15, 1999, for a stated term of twenty (20) years ("1999 Sewer Cooperative Agreement") which is intended by the parties thereto to remain separate and distinct from this Cooperative Agreement and the parties acknowledge that charges, fees and costs under Article V of the 1999 Sewer Cooperative Agreement shall continue in effect and shall be determined in accordance with the charges, fees and costs as established for nonresident users by Section 60-3 of the Code of Ordinances of Kansas City, Missouri, as same now exists or as may be revised for the duration of the 1999 Sewer Cooperative Agreement, as is intended to be extended through the completion of the Replacement Pumping Stations Project;

Whereas, CWL and KCMO intend to enter into a replacement for the 1999 Sewer Cooperative Agreement upon the completion of the Replacement Pump Stations Project, and it is anticipated that the charges, fees and costs thereunder will also be the same as charges for other similarly situated nonresident users in accordance with Section 60-3 of the Code of Ordinances of Kansas City, Missouri, as same now exists or as may be revised;

Now Therefore, in consideration of the mutual promises, covenants, rights and obligations created herein, the sufficiency of which is adequate to support enforcement hereof, the CWL, WLIC and KCMO agree as follows:

- a. Upon (i) the final approval of the applications of the lot splits severing the East Side Property and the West Side Property from the tracts which they are now a part, and either the lapse of any appeal period applicable to such approval, or if an appeal is taken by any affected party, then the final favorable upholding of such municipal approval action, (ii) the final issuance by CWL of special use permits for the Cooperative Agreement for Replacement Sewer Pump Stations at Weatherby Lake-Page 3 of 11

construction and operation of the sewer pump stations and appurtenances at both the East Side Property and the West Side Property, and either the lapse of any appeal period applicable to such issuance, or if an appeal is taken by any affected party, then the final favorable upholding of the issuance of such special use permits by CWL, (iii) the grant of a variance of the minimum lot size for the West Side Property by CWL's Board of Zoning Adjustment, and either the lapse of any appeal period applicable to such grant of a variance, or if an appeal is taken by any affected party, then the final favorable upholding of the grant of the variance by CWL's Board of Zoning Adjustment, and (iv) the satisfaction and removal of title exceptions deemed objectionable to KCMO as specified in Subparagraph f below (collectively referred to as "Conditions Precedent"), then WLIC will:

- (I) transfer by Special Warranty Deed to KCMO a tract of land, the legal description of which are included on **Exhibit A** and grant certain easements to KCMO on surrounding property more specifically shown on the \_\_\_ pages that make up **Exhibit C-2** ("East Side Replacement Property");
  - (II) transfer by Special Warranty Deed to KCMO Tract 2A and Tract 3A of the West Side Property and related access easements, utility easements, and temporary construction easements all as more specifically described on **Exhibit C-1**;
  - (III) execute a Quitclaim Deed to KCMO for Tract 1A of the West Side Property; and
  - (IV) terminate its lease with CWL on the West Side Property.
- b. Upon the earlier of a written agreement being reached with the Workmans' heirs ("Workman Resolution") or an entry of a condemnation order for Tract 1A of the West Side Property and the associated access and utility easements, for replacement sewer pump stations and appurtenances, the payment of the condemnation award by KCMO into the court, and the lapse of any applicable appeal period ("Completed Condemnation") and on satisfaction of the Conditions Precedent, then CWL will:
- (I) transfer by Quitclaim Deed to KCMO Tract 1A of the West Side Property and related access easements, utility easements, and temporary construction easements all as more specifically described on **Exhibit C-1** which will include recitals related to the completed condemnation;
  - (II) execute a Quitclaim Deed to KCMO for Tract 2A and Tract 3A of the West Side Property; and

(III) terminate its lease with CWL on the West Side Property.

KCMO and CWL acknowledge that the CWL's obligations hereunder are contingent upon either a Completed Condemnation or a Workmans' Resolution being achieved. Further, the Conditions Precedent are intended to be satisfied before any transfer of the West Side Property by the CWL whichever contingency is met.

- c. Upon the Completed Condemnation, KCMO will seek, at its own expense, prior to the transfer of the East Side Replacement Property and the West Side Property appropriate lot split/replat of the East Side Replacement Property and the West Side Property in relation to this transfer, from CWL, as the municipality with the jurisdiction over determining the adequacy of the submission for such lot split/replat, and will provide a revised form of Certificate of Survey as a basis for such lot split/replat which are attached as **Exhibits C-1 (East Side Replacement Property) and C-2 (West Side Property)**, and CWL and WLIC will cooperate with KCMO in completing the lot split/replat process as diligently as possible to enable the transfer of the West Side Property and the East Side Replacement Property to occur and if necessary will subordinate its leasehold interest in the West Side Property to the lot split of that property, and join in such application, as deemed appropriate by CWL.
- d. KCMO will facilitate WLIC's submission to and seeking approval from the Kansas City, Missouri Board of Parks and Recreation Commissioners ("KCMO Parks Board") of signed and sealed engineering plans prepared on behalf of WLIC, at WLIC's expense, which plans are for the construction and maintenance, as well as ingress and egress thereto, of check dams in the drainage path, and a detention pond in that portion of Amity Park in which ground water from the east and north converge to flow west toward North Amity Road, with the understanding that any approval by the KCMO Parks Board would be conditioned upon entering into a separate agreement between WLIC and the KCMO Parks Board by which would require WLIC to construct such improvements according to the engineering plans, and maintain such improvements once constructed, and permit the KCMO Parks Board to recover its maintenance expenses in the event WLIC fails to maintain such improvements; the portion of Amity Park within which these structures will be located will not interfere with the existing concrete path through the park; such facilitation will include identifying necessary steps in the approval process and collaboratively meeting with KCMO Parks Board staff and joining in the presentation to the KCMO Parks Board.
- e. WLIC will transfer the East Side Replacement Property by Special Warranty Deed, in the form as attached as **Exhibit D**, subject to the restrictions contained therein and will transfer Tracts 2A and 3A of the West Side Property by Special Warranty Deed, in the form as attached as **Exhibit E**.

- f. WLIC and CWL will grant easements to KCMO for those portions of surrounding each of those properties as depicted on **Exhibits C-1 and C-2.**
- g. WLIC will execute a Quitclaim Deed for Tract 1A of the West Side Property to KCMO in the form of **Exhibit F** attached hereto.
- h. CWL will either 1) transfer Tract 1A of the West Side Property to KCMO by Quitclaim Deed, in the form of **Exhibit G** attached hereto after the condemnation order has been entered by the court or 2) at KCMO's election it may choose to accept a Special Warranty Deed comparable to **Exhibit E** in advance of the conclusion of the condemnation proceedings if the heirs to the Workmans have voluntarily extinguished their residual reversionary interests, if any, in a form and manner to enable KCMO to obtain title insurance in conformity with Subsection j below.
- i. WLIC will cooperate with KCMO efforts to satisfy itself that its use of the East Side Replacement Property conveyed to KCMO will be in compliance with the requirements and land use exceptions listed on that Title Insurance Commitment issued by First American Title Insurance Company, designated File No. NCS-865541-2-KCTY, with an effective date of November 15, 2017 ("East Side Title Commitment"), with the express understanding that WLIC will cooperate with KCMO on restrictions specified in Exception Nos. 9 through and including 12, and No. 17, to suspend such encumbrances while such East Side Replacement Property is being used by KCMO for the construction, operation and maintenance of a sewer pump station, provided, however, KCMO may elect not to proceed with accepting title and pursuing the construction of such replacement sewer pump stations if those exceptions or any other subsequently arising exceptions can't be removed as to either the East Side Replacement Property or West Side Property so as to permit the construction and operation of the replacement pump stations and appurtenances, as a condition to KCMO accepting title of the East Side Replacement Property, and further WLIC will take whatever steps necessary to affirm that the East Side Replacement Property will not be subject to future annual and special assessments during the period of KCMO's ownership, including those arising from those cases referenced in Exception Nos. 10, 11 and 12 of the East Side Title Commitment, or the Articles of Agreement described in Exception No. 17 of the East Side Title Commitment and further WLIC and KCMO agree that KCMO will not be subject to WLIC assessments or membership terms, and KCMO will not be entitled to any rights or privileges of membership in the WLIC.
- j. WLIC and CWL will cooperate with KCMO efforts to satisfy itself that its use of the West Side Property conveyed to KCMO will be in compliance with requirements and

the land use exceptions listed on that Title Insurance Commitment issued by First American Title Insurance Company, designated File No. NCS-865541-KCTY, with an effective date of November 15, 2017 (“West Side Title Commitment”), with the express understanding that WLIC and CWL will cooperate with KCMO on restrictions specified in Exception Nos. 12 through and including 15, and No. 22, to suspend such encumbrances while such West Side Property is being used by KCMO for the construction, operation and maintenance of a sewer pump station, provided, however, KCMO may elect not to proceed with accepting title and pursuing the construction of such replacement sewer pump stations if those exceptions or any other subsequently arising exceptions can’t be removed as to either the East Side Replacement Property or West Side Property so as to permit the construction and operation of the replacement pump stations and appurtenances, as a condition to KCMO accepting title of the West Side Property, and further WLIC and CWL will take whatever steps necessary to affirm that the West Side Property will not be subject to future annual and special assessments during the period of KCMO’s ownership, including those arising from those cases referenced in Exception Nos. 12 through and including 15 and Exception No. 23 of the West Side Title Commitment, or the Articles of Agreement described in Exception No. 30 of the West Side Title Commitment and further WLIC and KCMO agree that KCMO will not be subject to WLIC assessments or membership terms, and KCMO will not be entitled to any rights or privileges of membership in the WLIC.

- k. WLIC and CWL understand that KCMO will proceed with the condemnation proceedings for the West Side Property and will cooperate in such proceedings so as to extinguish the residual reversionary interests, if any, held by the Workmans’ heirs pursuant to the Dedication Deed or otherwise, and agree that any condemnation award made in those proceedings paid by KCMO into the court will be the amount to be paid by WLIC for the Surplus Property, even if part of that award is allocated to the Workmans’ heirs. The parties understand that KCMO will not accept title to the West Side Property with Exception No. 18 of the West Side Title Commitment appearing in the Owner’s Title Policy for such West Side Property. The condemnation proceedings do not preclude either CWL or WLIC negotiating with the Workmans’ heirs to otherwise resolve and remove such Exception No. 18, provided any commitments made in such negotiations will be the responsibility of parties other than KCMO.
- l. Concurrently with the transfer of the East Side Replacement Property to KCMO, then KCMO will transfer title in the form of a Special Warranty Deed, in the form of **Exhibit G**, to WLIC of the tract of land described in Ordinance No. 170713, subject to the reservation of easements as described and specified in such Ordinance for existing infrastructure.

- m. KCMO prior to construction of the replacement pump station on the West Side Property will cause its contractor to remove the Bob Medill Memorial Reflection Gazebo presently located on the West Side Property, and will relocate it to the restored surface of the area of the existing pump station that is to be removed, which station removal is as specified below and WLIC as the owner of the fee of such existing pump station location agrees to permit the relocation of such Gazebo unto its property in conjunction with and after the removal of the existing pump station and the remediation of the surface; WLIC and CWL will assist in identifying an interim close by location for the Gazebo between the period of time that it needs to be removed from the West Side Property, and before the remediation of the existing pump station area is completed.
- n. Upon completion of construction and commencement of operation of the new sewer pump stations on the East Side Replacement Property and the West Side Property, KCMO will remediate and relinquish possession of the tracts containing the now existing sewer pump station tracts. Before relinquishing possession, KCMO will remove all existing hardware at each site, fill the abandoned sewer line with approved, inert, hardened material, test and verify no actionable level of contaminants remain, remediate and fill the site with approved fill, and provide for vegetation cover over such fill, with the express understanding that portions of the existing pump stations three feet below grade will remain intact, but be covered with fill. During the de- construction and remediation, KCMO will follow best management practices to prevent silt and debris from leaving the site or entering the lake. The acts required in this Paragraph “n” shall be completed within six months of the pump station replacing it commencing operation.
- o. During construction of the new sewer pump stations on the East Side Replacement Property and West Side Property, KCMO will coordinate with CWL for the benefit of WLIC and its members, by:
  - (I) Causing its contractor and its subcontractors to comply with the General Requirements, Construction General Conditions, Supplementary Conditions, Summary of Work, and Project Restrictions that are a part of the Project No. 81000623, being Contract No. 1144, of the Weatherby #2 and Upper Rush Pump Stations, and such other restrictions as imposed by CWL as a part of the issuance of its building permit for such Project; without limiting the foregoing, such contractor and their subcontractors will implement the Traffic Control Plan Drawings 9, 65, 66 and 67 to reduce the impact on traffic in the vicinity of constructions and minimize the impact of construction by providing signage sufficiently before and

during construction so that members can adjust their travel routes;

- (II) KCMO will advise CWL and WLIC of construction schedules to help WLIC keep residents informed;
- (III) KCMO will have periodic construction update meetings with CWL, and WLIC will be invited to attend, at least monthly;
- (IV) KCMO will instruct its contractors and its subcontractors to not use the dam road in delivering construction materials and machinery;
- (V) KCMO will provide CWL and WLIC the name and number of the Project Manager in charge of the Project;
- (VI) KCMO will cause the construction of the Project according to the plans for such Weatherby #2 and Upper Rush Pump Stations Rehabilitation previously provided to WLIC;
- (VII) KCMO will construct, maintain and operate the Project in accordance with federal and state laws and regulations;
- (VIII) KCMO will obtain all necessary permits for the construction of the Project;
- (IX) All contractors performing construction services or supplies shall have such insurance as specified in the Project construction contract, being Sections 5.03A, 5.03B, 5.04 C, and 5.06A of the Supplemental Conditions, and Article 5 of the General Conditions of the Contract for the Project;
- (X) KCMO acknowledges that due to the threat of zebra mussels and other environmental hazards, Weatherby Lake is a closed lake; no person other than Members and specifically authorized guests (accompanied by a member) are allowed to use the lake, and further, KCMO acknowledges that it will not allow its employees to use the lake, and will warn its contractors that they are not allowed to use the lake and further KCMO, for itself, employees and its contractors, agrees that no equipment will be placed in or used in Weatherby Lake which has been used in any other body of water due to the threat of zebra mussels; and
- (XI) Construction of the new sewer pump stations shall be performed in compliance with all federal and state laws and the conditions in the building permit if any imposed by CWL.

p. Each party hereto agrees that the terms of this Agreement shall survive the Special Cooperative Agreement for Replacement Sewer Pump Stations at Weatherby Lake-Page 9 of 11

Warranty Deeds contemplated herein.

- q. CWL and KCMO intend to enter into a replacement for the 1999 Sewer Cooperative Agreement effective upon the completion of the Replacement Pump Stations Project, and may extend the term of the existing 1999 Sewer Cooperative Agreement through to the date of completion of the Replacement Pump Station Project, as such completion is determined by commencement of operations at such Project pursuant to any federal or state permits. The charges, fees and costs for the sewer services will also be the same as charges for other similarly situated nonresident users in accordance with Section 60-3 of the Code of Ordinances of Kansas City, Missouri, as same now exists or as may be revised.
- r. This Agreement shall commence upon the execution by all parties, but not earlier than the latest of the effective dates of the Ordinances passed by KCMO and CWL authorizing the execution of this Agreement. If title satisfactory to KCMO is not achievable for both the East Side Replacement Property and the West Side Property prior to \_\_\_\_\_, 2018, then KCMO may elect to terminate this Agreement. The parties hereto recognize that the municipalities need to satisfy their financial obligations hereunder out of funds annually appropriated for that purpose. In the event no funds, or insufficient funds, are appropriated and budgeted or are otherwise unavailable by any means whatsoever in any fiscal year for payments due hereunder, KCMO and/or CWL will notify the other parties of this occurrence, but no less than thirty days after such determination is made that insufficient funds are appropriated.

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**Signature Pages Appear on Subsequent Pages**

IN WITNESS WHEREOF, the each party here has signed, after all formalities have been performed, by its duly authorized officer as of the day and year above written.

**WEATHERBY LAKE IMPROVEMENT COMPANY**

A Missouri Nonprofit Corporation

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**City of Kansas City, Missouri,**  
a Municipal Corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Weatherby Lake, Missouri,**  
a Municipal Corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_