COUNCIL BILL NO. 93-140 ORDINANCE NO. 93-126

AN ORDINANCE approving an agreement for the provision of wastewater treatment between the City of Joplin, Missouri, and the Village of Leawood, Missouri, a Municipal Corporation, authorizing the City Manager to execute said Agreement by and on behalf of the City of Joplin, and containing an emergency clause.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That the Agreement for Wastewater Treatment by and between the City of Joplin, Missouri, and the Village of Leawood, Missouri, a Municipal Corporation, a true and accurate copy of the same being attached hereto and the same is hereby approved.

Section 2. That the City Manager is hereby authorized and directed to execute said Agreement by and on behalf of the City of Joplin, Missouri.

Section 3. That this Ordinance dealing with the general health and safety of the citizens of the City of Joplin, Missouri, is an emergency within the meaning of Section 2.12(1) of the Home Rule Charter of the City of Joplin, Missouri, and, as such, shall be in full force and effect immediately from and after its adoption and approval.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 16TH day of AUGUST, 1993.

Mayor

ATTEST:

Mary C. Davis
City Clerk

APPROVED AS TO FORM:

City Attorney

AGREEMENT

THIS AGREEMENT, made and entered into this 13 day of August, 1993 by and between the city of Joplin, Missouri, a municipal corporation, hereinafter designated as "Joplin," and the Village of Leawood, Missouri, a municipal corporation, hereinafter designated as "Leawood."

WHEREAS, Joplin and Leawood are contiguous along certain portions of their respective corporate boundaries; and

WHEREAS, Joplin has constructed and operates a waste water collection and treatment system; and

WHEREAS, Joplin desires to construct and operate sanitary sewer lines within Leawood, and has requested the consent of Leawood therefor; and

WHEREAS, Leawood desires to consent to the construction and operation by Joplin of such sewer lines within the corporate boundaries of Leawood, provided that residents of Leawood are afforded the opportunity to utilize such sewer lines when constructed; and

WHEREAS, Joplin has agreed that upon completion of such sewer lines, residents of Leawood will have the opportunity to utilize such sewer lines; and

WHEREAS, Joplin has requested the consent of Leawood to the exercise by Joplin of the power of eminent domain within the corporate boundaries of Leawood for the purpose of obtaining necessary easements for the construction of such sewer lines; and

WHEREAS, Leawood has agreed to consent to the exercise of such power of eminent domain by Joplin, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants of each party contained herein, the parties hereto agree as follows:

1. Definitions. The following terms as used in this Agreement shall have the meanings as set forth below:

a. "Sewer Easement" shall mean, collectively, the easement(s) obtained by Joplin within Leawood for construction of the "Sewer Main."

b. "Sewer Main" shall mean, collectively, the sanitary sewer line(s) to be constructed by Joplin within the Sewer Easement.

c. "Sewage Collection System" shall mean a sewage collection system as defined in paragraph 5 of this Agreement.

d. "Abutting Owners" shall mean those owners of property within Leawood (i) whose property is subject to the Sewer Easement, or (ii) who own at least fifty (50) lineal feet of property which abuts the Sewer Easement, and (iii) any future owner of any portion of such property.

e. "Leawood Residents" shall mean, any individual, corporation, association or other entity, public or private, within Leawood.

2. Representations. Each party represents that it has full and complete authority pursuant to all applicable local and state laws and ordinances, including the ordinances of Joplin and Leawood, to enter into and to perform its respective obligations under this Agreement, and each party hereby agrees to indemnify, defend and hold harmless the other party from and against any breach of the foregoing representation and warranty; provided, however, that the consent given herein by Leawood to the exercise by Joplin of the power of eminent domain within the corporate boundaries of Leawood is not a representation or warranty that the exercise of such power is lawful or enforceable, but evidences only the consent by Leawood to the exercise of such power by Joplin.

3. Consent by Leawood. Leawood hereby consents to the use by Joplin of dedicated public utility easements located within

the corporate boundaries of Leawood. Leawood hereby further consents to the acquisition by Joplin of the Sewer Easement and the construction, operation and maintenance of the Sewer Main within the Sewer Easement on the conditions set forth below and elsewhere in this Agreement:

a. Joplin will submit the preliminary plans for each portion of the Sewer Main to Leawood for approval by the Board of Trustees of Leawood (the "Board"). The Board will not unreasonably withhold or delay such approval; provided, however, that if the Board shall determine that the proposed plans will materially and adversely affect the present or future use and development of the property in question, the orderly development of the property within Leawood or the health and welfare of the residents of Leawood, then the withholding of approval by the Board shall be deemed reasonable. The amount of compensation to be offered to any property owner or the cost of design and construction of the Sewer Main shall not be deemed to be reasonable cause to deny approval. If the Board shall fail to notify Joplin of its approval or disapproval of any such plans within 45 days of submission of such plans to Leawood, such plans shall be deemed approved.

b. At such time as Leawood shall notify Joplin that it has approved the proposed plans for any portion of the

Sewer Main, such approval shall be deemed to be consent by Leawood to the acquisition of the Sewer Easement over the property in question.

c. Joplin agrees to extend to each owner of property an offer to purchase the necessary easement rights for the fair market value of such easement rights, based upon a comparison of the value of such property before and after the proposed grant of easement rights, as determined by a certified, independent appraiser.

d. If Joplin shall be unable to obtain any portion of the Sewer Easement by purchase after having made an offer in accordance with paragraph (c) above, and shall notify Leawood of such fact, then, upon such notification, Leawood shall be deemed to have consented to the acquisition of such portion of the Sewer Easement by Joplin's exercise of the power of eminent domain, for that property only. Joplin acknowledges and agrees that Leawood shall not be required to become a party to any action in condemnation, or to expend any sum of money in connection with such action.

e. Joplin acknowledges and agrees that the approval by Leawood as set forth in paragraph (a) above shall be a pre-condition to the exercise by Joplin of the rights granted in paragraphs (b) and (c) above, and the making of

an offer to purchase in accordance with paragraph (c) above shall be a pre-condition to the consent of Leawood in paragraph (d) above.

4. Connection by Abutting Owners. Each Abutting Owner shall have the right to connect to the Sewer Main upon the following conditions:

a. Securing a permit from Joplin by paying a permit fee in the amount that is then in effect for residents of Joplin, plus the sum of $20. Such connection shall be inspected by Joplin.

b. Payment to Joplin of a connection fee in the amount of $1,000 for each separate connection;

c. Such Abutting Owner must be a customer of Missouri-American Water company;

d. All connections must be accomplished in accordance with the Joplin Plumbing Code in force and existence at the time of such connection; and

e. No such connection may in any way be connected to a septic tank.

The right granted herein to Abutting Owners shall run with the land of such Abutting Owners, and shall extend to any future owner of any portion of the land owned by an Abutting Owner.

5. Sewage Collection Systems. Residents or owners of property in Leawood may provide their own Sewage Collection Systems, which may be connected to the Sewer Main on the conditions set forth below and elsewhere in the Agreement:

a. The plans and specifications of each Sewage Collection System shall be designed by a registered engineer and approved by all appropriate agencies of Joplin, the State of Missouri and the United States. Joplin shall be provided a complete set of original design drawings of the Sewage Collection System and a reproducible set of drawings of the Sewage Collection System as constructed.

b. Sewage Collection Systems must be constructed at a point designated by the Joplin Director of Public Works for connection to the Sewer Main. The Sewage Collection System shall comply in all respects with Chapter 35, Sewers, Joplin City Code, as amended. During construction, there shall be inspection and supervision by an engineering firm or a registered engineer, and upon completion of construction, such firm or engineer shall provide a written approval and recommendation of acceptance of the construction of the

Sewage Collection System by the Leawood Residents, with a copy provided to Joplin.

c. All connections of Sewage Collection Systems to the Sewer Main shall be accomplished in accordance with the Joplin Plumbing Code in force and existence at the time such connection is actually made. Before any such connection may be accomplished, there must first be secured from Joplin a permit, and such connection shall be inspected by Joplin, and no permit shall be issued until Joplin has been paid a fee in the amount that is then in effect for residents of Joplin, plus the sum of $20. All such permits shall be obtained from the appropriate office of Joplin, which shall collect the connection and inspection fees which are customary for such connections.

d. All Leawood Residents utilizing a Sewage Collection System must be customers of the Missouri-American Water Company.

e. No connection to the Sewer Main may in any way be connected to any septic tank.

6. Maintenance of Sewage Collection System. Maintenance, repair and cleaning of a Sewage Collection System may be performed either by Leawood Residents, to the reasonable

satisfaction of the director of Public Works of Joplin, or, upon request by Leawood Residents, such work may be performed by Joplin. If performed by Joplin, it shall be upon the following conditions:

a. The Leawood Residents shall pay to Joplin a charge equal to the "hourly wage rates" multiplied by the hours of work for personnel performing the maintenance, repair and cleaning, plus thirty-four percent (34%) for supervision and employee fringe benefits. The "hourly wage rates" are defined as the rates adopted by ordinance by the Joplin City Council for employees of Joplin. In addition, the hourly rate for vehicles and equipment used shall be charged to the Leawood Residents, said amount to be separately negotiated upon an annual basis, and such rates shall not exceed those charged for similar equipment to residents of Joplin, and, further, the actual cost of materials furnished and the services performed by subcontractors of Joplin shall not exceed the amount charged to Joplin for such materials or subcontractor services within Joplin.

b. The Leawood Residents connected to each Sewage Collection System shall designate a primary and a secondary representative to coordinated repairs and maintenance to be made, unless such requirement is waived by Joplin. Notwithstanding any such waiver by Joplin, Joplin agrees

that upon request of the Leawood Residents, Joplin will continue to coordinated repairs and maintenance with such designated representative(s).

c. Joplin hereby grants to any resident of Leawood the right to connect to or utilize a Sewage Collection System. No other persons who are not residents of Leawood may connect to or utilize a Sewage Collection System which is connected to the Sewer Main without the express written permission of Joplin being first obtained.

7. Sewage Collection System Rules. As a condition of the connection of any Sewage Collection System to the Sewer Main, Joplin may require that Leawood adopt and enforce rules and regulations for the operation of a Sewage Collection System, such rules and regulations to be subject to approval by Joplin, the appropriate agencies in the State of Missouri, including the Missouri Clean Water Commission, and the appropriate agencies of the United States, including the United States Environmental Protection Agency. Rules and regulations which are substantially in the form of rules and regulations adopted by Joplin for the operation of similar systems shall be deemed satisfactory by Joplin. The provisions of this paragraph shall not apply to the connection to the Sewer Main by any Abutting Owner.

8. Charges for Services. The parties agree that Joplin shall charge, bill and collect monthly sewage treatment charges from Leawood Residents connected to the Sewer Main, in accordance with Exhibit A attached hereto, and as follows:

a. The cost of maintenance, repair and cleaning of any Sewage Collection Systems, if performed by Joplin, shall be billed to the Leawood Residents utilizing such Sewage Collection Systems.

b. The monthly basic service charge by Joplin to a Leawood Resident or, when applicable, to other persons utilizing a Sewage Collection System within Leawood, shall be adjusted annually by Joplin, to reflect the increase or decrease of the cost to Joplin for which the original rate was computed, based upon the Report of Cost for Transporting and Treating Waste Water for the City of Joplin, Missouri, 1992 through 1993, prepared by Allgeier, Martin & Associates, consulting engineers in Joplin, Missouri. Such charge may also include an additional monthly charge which shall represent each Leawood Resident's "proportionate share" of the following:

(i) Depreciation of existing equipment and facilities, including treatment plants, pumping and collection systems and lift stations;

(ii) New facilities expenses;

(iii) The cost of operation and maintenance, and the cost of wastewater treatment;

(iv) Purchase of replacement equipment as needed or required by Unites States Environmental Protection Agency and/or Missouri Department of Natural Resources Grant Application;

(v) Future expansion and growth of the wastewater treatment system of Joplin; and

(vi) A contingency fund for unforeseen expenses and those expenses actually incurred by Joplin in the operation of Joplin's wastewater treatment system, other than set forth above.

c. The term "proportionate share" as used in paragraph (b) above shall mean a pro rata share per Leawood Resident for the expenses listed in paragraph (b) above, which shall be calculated in the same manner as the proportionate share of such expenses paid by residents of Joplin.

d. The cost for monthly service per family dwelling unit, commercial or industrial use shall be established on each anniversary date of this Agreement. In the event that cost studies performed or obtained by Joplin show an increased cost for treatment of sewage due to the utilization of Joplin's system by Abutting Owners or Sewage Collection Systems, Joplin shall notify Leawood and all Leawood Residents utilizing Joplin's system by mailing a copy of said cost study to Leawood and to each Leawood Resident, and beginning the following month, the rates charged by Joplin shall be increased by an amount equal to the cost increase shown by such cost study plus the additional charges described above. Notwithstanding anything set forth herein, at no time during the term of this Agreement shall the charges to Leawood Residents be less than the charges for such services to similar residents or businesses in Joplin, nor shall such charges exceed similar charges to residents or businesses of Joplin by more than fifteen percent (15%).

e. Joplin shall collect all monthly charges from Leawood Residents in accordance with this paragraph 8 and is authorized to collect the same form Leawood Residents by all regular lawful means; provided, however, that if any such Leawood Resident shall fail to pay part of all of such charges for more than thirty (30) days after such

payment shall become delinquent, such Leawood Resident shall pay to Joplin the amount then delinquent plus the late fee required to be paid by Joplin residents. All payments, including payment for maintenance and cleaning, shall be paid by the fifteenth day of the month following the date of billing.

9. Term. This Agreement shall be and remain in full force and effect until December 31, 1998, and shall be automatically renewed thereafter for successive periods of one (1) year each, unless terminated by either party. Either party may terminate this Agreement upon one (1) year prior written notice, specifying the date of termination. Notwithstanding the foregoing, termination of this Agreement shall not affect or diminish the rights of any Leawood Resident then connected to and utilizing the Sewer Main, whether as an Abutting Owner or through a Sewage Collection System, and such Leawood Residents shall be entitled to continue utilizing the wastewater treatment system of Joplin, in accordance with the terms of this Agreement; and provided, further that any such termination shall not effect the right of an Abutting Owner, or any future owner of any portion of the land of an Abutting Owner, to connect to the Sewer Main upon the conditions herein set forth. Any resident or owner of property in Leawood which, at the time of giving of notice of termination by either party, shall have initiated the process described

herein to obtain connection to the Sewer Main, shall have the right to complete such process and connection.

10. Reciprocal Grant by Joplin. Joplin acknowledges and agrees that because of the position of the corporate boundary between Joplin and Leawood, it may be necessary for Leawood to extend sanitary sewer lines through property within the corporate boundaries of Joplin in order to connect certain residents of Leawood to a Sewage Collection System or to other wastewater treatment facilities within Leawood. In recognition of this situation, and in consideration for the rights granted to Joplin herein, Joplin hereby grants to Leawood the right to obtain easements for the construction, operation and maintenance of sanitary sewer lines within the corporate boundaries of Joplin, by purchase or by exercise of the power of eminent domain, which shall be under the same terms and conditions as set forth in paragraph 3 of this Agreement. The parties agree that in the event that Leawood shall elect to exercise such right, the parties will cooperate, in good faith, in obtaining such easement rights for Leawood.

11. Nature of Agreement, Indemnification and Hold Harmless. This Agreement contemplates that Joplin shall undertake the design, construction, and maintenance of the Joplin sewer main or mains within the Village of Leawood. As such, Joplin shall indemnify, defend and hold harmless Leawood, and the Board of

Trustees of Leawood and the members thereof and Leawood's employees from and against any and all claims, liabilities, damages, costs or expenses, including the cost of defense, incurred by or asserted against such parties for injury or damage to person or property arising out of the construction, operation or maintenance of the sewer main or mains by Joplin or the exercise of any other right granted herein to Joplin. In case any such claim shall be asserted against Leawood, Joplin agrees upon notice thereof from Leawood to defend such claim by counsel employed by Joplin.

12. Effective Date. This Agreement shall be in full force and effect on the date that both Joplin and Leawood shall have passed appropriate and ordinances to adopt the terms of this Agreement, and shall have executed this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto as of the dates indicated.

ATTEST:

Mary C. Davis
City Clerk

Approved as to form:

City Attorney

ATTEST:

Clerk

CITY OF JOPLIN

BY: Leonard Wood
City Manager

Date: 9-2-93

VILLAGE OF LEAWOOD, MISSOURI

BY: Patrick T. Doody
Chairman, Board of Trustees

Date: 8/13/93

WP28/LEAW0001.AGREEMENT

3/11/92

PROPOSED OUT OF TOWN SEWER RATES

Based on the preliminary report on anticipated sewerage system costs prepared by Allgeier, Martin and Associates, and dated February, 1992, we propose the following sewer rates for out of town users:

Rates based on 5,600 gallons per month residential; 13,000 gallons per month small commercial; and 50,000 gallons per month large commercial/ industrial.

1) Residential.

a) Calendar Years 1992 and 1993 Rate
$10.08 + 5.6(0.533) + $1(billing) = $14.10/Mo.

b) Calendar Year 1994 Rate
$10.48 + 5.6(0.55) + $1(billing) = $14.60/Mo.

c) Calendar Year 1995 Rate
$10.90 + 5.6(0.58) + $1(billing) = $15.15/Mo.

2) Small Commercial.

a) Calendar Years 1992 and 1993 Rate
$10.08 + 13(0.533) + $1(billing) = $18.00/Mo.

b) Calendar Year 1994 Rate
$10.48 + 13(0.55) + $1(billing) = $18.75/Mo.

c) Calendar Year 1995 Rate
$10.90 + 13(0.58) + $1(billing) = $19.50/Mo.

3) Large Commercial/Industrial (minimum charge).

a) Calendar Years 1992 and 1993 Rate
$10.08 + 50(0.533) + $1(billing) = $37.75/Mo.

b) Calendar Year 1994 Rate
$10.48 + 50(0.55) + $1(billing) = $39.00/Mo.

c) Calendar Year 1995 Rate
$10.90 + 50(0.58) + $1(billing) = $41.00/Mo.

All over 50,000 gallons per month shall be charged the appropriate rate per 1,000 gallons.