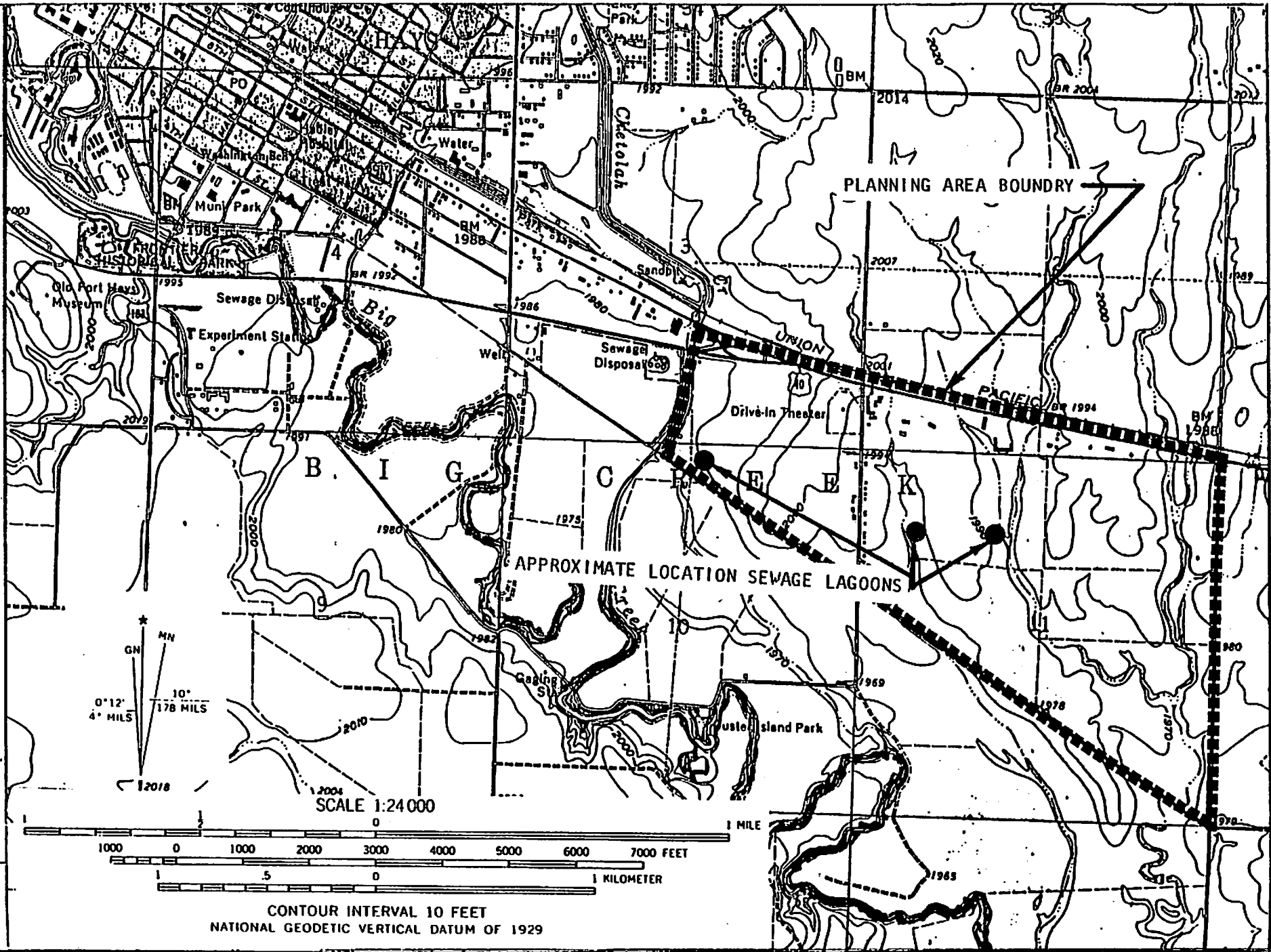


PLANNING AREA

F-1



CONTOUR INTERVAL 10 FEET  
NATIONAL GEODETIC VERTICAL DATUM OF 1929

R E S O L U T I O N

052

BE IT RESOLVED BY THE COUNTY COMMISSIONERS OF ELLIS COUNTY, KANSAS,

THAT WHEREAS, on the 24th day of April, 1978, a petition was presented to the Board of County Commissioners of Ellis County, Kansas seeking the incorporation of an improvement district within the lands described therein, to be known as Big Creek Improvement District No. 1; and,

WHEREAS, the statutes governing the creation of improvement districts require certain acts be performed, and certain findings be made by the Board of County Commissioners;

NOW THEREFORE, BE IT RESOLVED, that the following findings be entered upon the records of the Board of County Commissioners of Ellis County, Kansas:

1. That on April 28, 1978, notice of the hearing of said petition was published in The Hays Daily News, a newspaper of general circulation in Ellis County, Kansas; that on said date, notice of the hearing was posted in three (3) public places in the territory; that on said date, notice was sent, along with a copy of the petition, to the Secretary of the Hays-Ellis County Planning Commission, to the director of the division of planning of the Kansas Department of Economic Development, and to the City Clerk of the City of Hays, Kansas, a portion of which lies within five miles of the boundaries of the proposed district. That all of said notices stated the time of the hearing to be May 15, 1978 at 10:00 a.m. in the meeting room of the Board of County Commissioners of Ellis County, Kansas, and that the notice required by the Act controlling the incorporation of such districts has, in all respects, been given according to law.
2. That the petition contains the signatures of a majority of the taxpayers of taxes on real property situated within the proposed district and residing within the boundaries of the proposed district, and that the petition is in all respects in conformity with the requirement of the Kansas Statutes governing same, and that all of the allegations contained within said petition are true.
3. That the formation of this proposed improvement district is in the best interests of Ellis County.

BE IT FURTHER RESOLVED, that the territory described in the petition, to-wit:

A tract of land in Sections Two (2), Three (3), Ten (10), and Eleven (11), Range Eighteen (18) West, Township Fourteen (14) South, of the 6th P.M. in Ellis County, Kansas, and described as follows:

Beginning at the intersection of the easterly boundary line of the City of Hays and the South right-of-way line of U.S. Highway 40; thence Southerly along said easterly boundary line to the South right-of-way line of a county

3-200  
182-10-10-4-1.01

RESOLUTION  
(Big Creek Improvement District No. 1)

Page 2

road known as Reservation Road; Thence southeasterly along said south right-of-way line to its intersection with the east-west quarter line of Section 11; Thence along said quarter line to the center of Section 11; Thence north to the north quarter corner of Section 11; Thence north to the intersection of the north-south quarter line of Section 2, with the south right-of-way line of U.S. Highway 40; Thence West along said south right-of-way line of U.S. Highway 40 to the point of beginning,

is declared to be, and constitutes a public corporation, and the inhabitants within such bounds are incorporated as an improvement district under the name of "The Big Creek Improvement District No. 1", Ellis County, Kansas, and henceforth the described territory and the inhabitants and their successors shall constitute a body politic and corporate under said corporate name, and shall have perpetual succession, all as provided by the applicable Kansas statutes.

BE IT FURTHER RESOLVED, that the first election to choose the officers of the improvement district shall be held on the 7th day of November, 1978, at ELLIS COUNTY SHOP

and that \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_\_ are appointed to act as clerks of said election  
and that \_\_\_\_\_,  
and \_\_\_\_\_ are appointed to act as judges  
of said election.

Harold S. Kraus  
George W. Wasylyk  
Eugene Schmitt  
COUNTY COMMISSIONERS  
Ellis County, Kansas

A G R E E M E N T

THIS AGREEMENT, Made this 27 day of January, 1983, by and between THE CITY OF HAYS, KANSAS, a municipal corporation, hereinafter called the "City", and BIG CREEK IMPROVEMENT DISTRICT # 1, ELLIS COUNTY, KANSAS, a quasi-municipal corporation, hereinafter called the "District".

W I T N E S S E T H:

THAT WHEREAS, the District is engaged in a project to construct a sanitary sewer system to serve the District; and

WHEREAS, the District desires to provide for the treatment of sewage from its system by the City in the City's sewage treatment facility; and

WHEREAS, the City is willing to treat said sewage under the following terms and conditions; and

WHEREAS, the parties hereto wish to make other agreements relating to the treatment of said sewage, and the operation of the sewage system of the District;

NOW, THEREFORE, the parties hereto, for and in consideration of the mutual promises, covenants and conditions herein contained, agree and contract as follows, to-wit:

1. FLOW MEASUREMENT: The District shall install and maintain a flow measuring device in its sewage system so as to measure the flow of sewage into the City's sewage treatment facility. Said flow measuring device shall give a continuous measurement of the flow of said sewage. The District shall supply the City with a report of the sewage flow on a monthly basis. The City reserves the right to monitor the flow measuring device and make random checks on its accuracy.

2. CHARGE FOR SEWAGE TREATMENT: The District shall pay to the City the sum of Sixty-five Cents (\$0.65) for each hundred cubic feet of sewage treated. The District shall pay the City for sewage treatment on a quarterly basis ( four annual payments). Payment shall be made on the 15th day of the month following each quarter for sewage treatment in the previous quarter, and the District shall, with each payment, submit to the City a report of sewage flow for the quarter for which payment is made, as required in paragraph 1 hereof.

3. INCREASE IN RATES: The City may increase the amount charged for sewage treatment, but said increase shall not take effect until the quarter following notice to the District by the City of the amount of said increased charges. Additionally, said sewage treatment charges shall not exceed One and one-half (1 1/2) times the amount charged to residents of the City of Hays for sewage disposal. However, the District shall not be liable for minimum monthly charges based upon meter size as outlined in Section 28-146 of the Code of Ordinances, City of Hays, Kansas. The charges shall further be determined by comparing users within the District to similar users within the City (i.e. residential sewage costs for the District shall be determined by reference to residential user charges within the City and commercial/industrial sewage costs for the District shall be determined by reference to the same requirements and user costs as commercial and/or industrial users within the City).

4. ORDINANCES OF CITY REGULATING SEWER TREATMENT AND SYSTEM USAGE: The District shall comply with all City Ordinances regulating the content of sewage entering the Cities treatment facility, and shall comply with all Ordinances of the City intended to protect the treatment facility and the City's sewage system.

5. MAINTENANCE: In the event of the need for emergency repairs to the District's system, the City shall make every attempt to make such emergency repairs, subject to the availability of City work crews and equipment. The District shall be responsible for the cost of materials used in said repairs of its system, and shall further pay to the City the actual labor and equipment cost per hour for each hour the City's employees and equipment are engaged in the repair of said system. The City shall not be responsible for regular maintenance of the District's system and said maintenance shall be the sole responsibility of the District. The District further agrees to establish a preventive maintenance program acceptable to the City and file annual reports with the City showing implementation of said preventive maintenance program.

6. EMERGENCY POWER GENERATORS: The District shall, together with the PRAIRIE ACRES IMPROVEMENT DISTRICT, ELLIS COUNTY, KANSAS, purchase a standby portable power generator for use in powering the lift station installed in the District's sewage system. The City currently owns a standby portable power generator. In the event the City is in need of additional emergency power generation for its sewage system at a time when neither the District or said Prairie Acres Improvement District require their portable generator, the City shall be entitled to use the portable generator owned by said districts, and shall pay the cost of operating same. In the event the District is in need of additional emergency power generation at a time when the City does not require its portable generator, the District may use the City's portable generator, and shall pay the cost of operating same. In the event the District is using the City's generator and the City requires its use, the City may immediately take possession of same for its own use. In the event the City is using the District's generator and the District requires its use, the District may immediately take possession of same for its own use.

The City shall store the portable power generator belonging to the district without charge to the District.

7. CITY NOT LIABLE-HELD HARMLESS: The District hereby agrees to save and hold the City, its agents and employees, free and harmless from any and all claims or damages sustained by anyone against any loss, injury or damage as a result of any activities of the District, its agents and employees and the users of said sewage system and/or from any damage or loss sustained by the District in the repair of said sewer lines or sewage system by employees of the City.

EXECUTED AND ADOPTED THE DATE AND YEAR FIRST ABOVE WRITTEN.

THE CITY OF HAYS, KANSAS

BY: George Philip  
Mayor

ATTEST:

Arvidson Soderstrom  
Clerk

(SEAL)

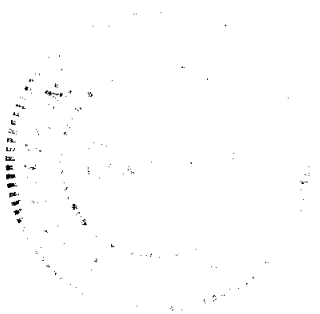
BIG CREEK IMPROVEMENT  
DISTRICT # 1, ELLIS  
COUNTY, KANSAS

BY: Richard Powell  
President

ATTEST:

Leo M. Orth  
Secretary

(SEAL)



## AGREEMENT

THIS AGREEMENT, made this 23<sup>rd</sup> day of December, 2004, by and between THE CITY OF HAYS, KANSAS, a municipal corporation, hereinafter called the "City", and BIG CREEK IMPROVEMENT DISTRICT, ELLIS COUNTY, KANSAS, a quasi-municipal corporation, hereinafter called the "District".

WITNESSETH:

WHEREAS, the District operates a sanitary sewer system to serve the District; and

WHEREAS, the District has heretofore entered into agreements with the City providing for the treatment of sewage from the District's system by the City in the City's sewage treatment facility; and

WHEREAS, the parties have engaged in litigation in Ellis County Case No. 98-C-14 regarding the interpretation and application of the agreements between the City and the District; and

WHEREAS, additional information has been gathered by the parties regarding the volume of flow of sewage from the District's system to the City's sewage treatment facility, and the cost of treatment of the sewage; and the parties wish to re-establish and maintain the relationship of cooperative efforts to serve the citizens of the City and the District, allowing a more efficient use of the City's sewage treatment facilities and allowing the District to avoid the need to construct and maintain its own sewage treatment facilities; and the parties recognize that because of their proximity, they are tied in many beneficial ways, economically; and

NOW THEREFORE, the parties hereto, for and in consideration of the mutual promises, covenants and conditions herein contained, agree and contract as follows, to-wit:

1. Flow Measurement. The District shall maintain an accurate flow measuring device in its sewage system so as to measure the flow of sewage from its collection system into the City's sewage treatment facility. Said flow measuring device shall give a continuous measurement of the flow of said sewage, and shall be maintained in such a fashion as to be accurate in its measurements. The District shall be responsible for all maintenance of said flow measuring device and shall supply the City with a report of the sewage flow on a monthly basis. The City shall have the right to monitor the flow measuring device and make random checks on its accuracy, in addition to checks on its accuracy by the District.
- 1a. Backflow Detection. The District shall install and maintain, at its sole expense, a sonar-recording device, which shall be approved by the City, to monitor and detect backflow of sewage from the City sewer system. The City shall advise the District in advance of backflow occurrences, and in such an event, the District shall disregard the actual flow for that day or days and use an average daily flow for that quarter billing cycle. In the event the District is not notified of backflow in advance, then, in that event, the day or days of backflow shall be free of charge from the City.

2. Charge for Sewage Treatment.

- A. The District shall pay to the City, commencing effective the 1st day of the 1st quarter of 2005, for all sewage delivered by the District to the City for treatment, based upon the City's cost of treatment, calculated by using the annually totalized volume of wastewater as recorded at the City's treatment facility, based upon a three year running average for the expense categories that make up the basis for the rate. New rates for a given year shall be based upon the best available numbers from the prior three years, using, if possible, the actual, audited expenditures, and if not otherwise practicable, using the published budget numbers to establish the rate. By way of example, the parties have attached the analysis of the City's cost of wastewater treatment, as Exhibit A, which shows that the beginning cost of treatment, to be used for purpose of calculating the District's obligation for treatment of \$1.69 per 100 cubic feet. The District shall pay a rate, based upon that cost of treatment, beginning at \$1.69 per 100 cubic feet, times 1.7, to account for the fact that the District is outside the limits of the City, for a beginning rate to be paid per 100 cubic feet of treatment of \$2.87, effective as stated above, with said payments to be made on a quarterly basis, four (4) annual payments made within 30 days following each quarter for sewage treatment in the previous quarter.

The parties agree that at the conclusion of the year 2004, and each year thereafter during which this agreement is in effect, the parties will recalculate the cost of treatment, based upon the prior year's experience, using the formula set out above, and the factors contained in Exhibit A, and shall then adjust the rate accordingly, for the following calendar year.

- B. The parties agree that the calculation of all amounts due under prior agreements of the parties by the District to the City shall be resolved by the parties stipulating that the total amount due, as of December 31, 2004, is \$ 5202.00, which amount the parties agree and stipulate is a total amount of arrearages, and the parties further agree and stipulate that the arrearages will be paid, in addition to current charges under the foregoing agreement, in the following manner:

Payment in full at time of final approval of this agreement.

3. Regulation of Sewer Treatment and System Usage. The District shall comply with all City ordinances regulating the content of sewage entering the City's treatment facility, and shall be responsible for complying with all ordinances of the City intended to protect the integrity and operation of the treatment facility and the City's sewage system.



4. Maintenance. In the event of the need for emergency repairs to the District's system, the City shall make every attempt to make such emergency repairs, subject to the availability of City work crews and equipment. The District shall be responsible for the cost of materials used in said repairs of its system, and shall further pay to the City the labor and equipment costs incurred by the City in the use of its employees and equipment in the repair of said system. The City shall not be responsible for regular and periodic maintenance of the District's system, which shall be the sole responsibility of the District. The District further agrees to continue to maintain a preventive maintenance program as set out in EPA Guidelines governing the District.
5. Parties to be Held Harmless. Each party to this agreement hereby agrees to save and hold the other party, its agents and employees, free and harmless from any and all claims or damages sustained by anyone and against any loss, injury or damage as the result of any activities of the other party, its agents or employees and the users of said sewage system and/or from any damage or loss sustained by the other party in the repair of sewer lines or the sewage system by the City.
6. Dispute Resolution. The City and the District agree and stipulate that in the event of any future dispute or disagreement regarding charges by the City to the District for sewer treatment, the parties shall follow the dispute resolution procedures contained in the City's ordinances pertaining to customer disputes, and the parties agree that during the resolution of any dispute, the challenged amount due shall be paid to the City, to be held in escrow pending resolution of said dispute.
7. Settlement and Release. The parties agree and stipulate that this agreement is intended to be a full and complete settlement of any and all disputes between the parties regarding the subject matter of this agreement, and the parties hereby waive any further claims, including, but not limited to any claim of arrearages under any prior sewage treatment agreements, or credits claimed due, except those charges that are currently incurred and being incurred, under this new agreement, to be paid pursuant to Paragraph 2. above. The parties agree to dismiss, with prejudice, their claims by and against each other in the Ellis County District Court Case No. 98-C-14.
8. Termination. The term of this agreement shall be twenty (20) years from the date first above written. This agreement shall continue for additional terms of twenty (20) years from the date of the initial term, or any succeeding terms, of such party's intention to terminate this agreement in which event this agreement shall terminate as to both parties as of the end of the term in which notice is given in accordance herewith provided that in the event that the District does not pay the treatment charges as provided herein within the first 30 days of the month following the quarter for which charges have been made, the City may terminate this agreement after giving twenty (20) days notice in writing of the District's right to cure breach of contract.

9. Approval by State and Federal Officers and Agencies. To the extent necessary, the parties agree to cooperate with and assist each other in the obtaining of any necessary approvals of this agreement, or its implementation, by any other State or Federal or local government or agency.

EXECUTED AND ADOPTED THE DAY AND YEAR NEXT SET OUT BESIDE THE SIGNATURES OF THE PARTIES.

CITY OF HAYS, KANSAS

By *Sunell Koerner*  
SUNELL KOERNER  
Mayor

12-23-04  
Date

ATTEST:

*Mark Loughry*  
MARK LOUGHRY  
City Clerk

(SEAL)



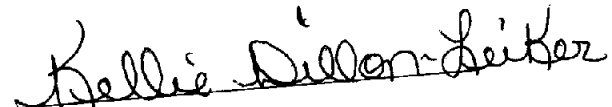
BIG CREEK IMPROVEMENT DISTRICT,  
ELLIS COUNTY, KANSAS

By *Duane Kuhn*  
Duane Kuhn [Print Name]  
President

12-10-04  
Date

AGREEMENT  
Page 5

ATTEST:

  
Secretary

(SEAL)

A G R E E M E N T

THIS AGREEMENT, Made this 27 day of January, 19 83, by and between THE CITY OF HAYS, KANSAS, a municipal corporation, hereinafter called the "City", and BIG CREEK IMPROVEMENT DISTRICT # 1, ELLIS COUNTY, KANSAS, a quasi-municipal corporation, hereinafter called the "District".

W I T N E S S E T H:

THAT WHEREAS, the District is engaged in a project to construct a sanitary sewer system to serve the District; and

WHEREAS, the District desires to provide for the treatment of sewage from its system by the City in the City's sewage treatment facility; and

WHEREAS, the City is willing to treat said sewage under the following terms and conditions; and

WHEREAS, the parties hereto wish to make other agreements relating to the treatment of said sewage, and the operation of the sewage system of the District;

NOW, THEREFORE, the parties hereto, for and in consideration of the mutual promises, covenants and conditions herein contained, agree and contract as follows, to-wit:

1. FLOW MEASUREMENT: The District shall install and maintain a flow measuring device in its sewage system so as to measure the flow of sewage into the City's sewage treatment facility. Said flow measuring device shall give a continuous measurement of the flow of said sewage. The District shall supply the City with a report of the sewage flow on a monthly basis. The City reserves the right to monitor the flow measuring device and make random checks on its accuracy.

2. CHARGE FOR SEWAGE TREATMENT: The District shall pay to the City the sum of Sixty-five Cents (\$0.65) for each hundred cubic feet of sewage treated. The District shall pay the City for sewage treatment on a quarterly basis ( four annual payments). Payment shall be made on the 15th day of the month following each quarter for sewage treatment in the previous quarter, and the District shall, with each payment, submit to the City a report of sewage flow for the quarter for which payment is made, as required in paragraph 1 hereof.

3. INCREASE IN RATES: The City may increase the amount charged for sewage treatment, but said increase shall not take effect until the quarter following notice to the District by the City of the amount of said increased charges. Additionally, said sewage treatment charges shall not exceed One and one-half (1 1/2) times the amount charged to residents of the City of Hays for sewage disposal. However, the District shall not be liable for minimum monthly charges based upon meter size as outlined in Section 28-146 of the Code of Ordinances, City of Hays, Kansas. The charges shall further be determined by comparing users within the District to similar users within the City (i.e. residential sewage costs for the District shall be determined by reference to residential user charges within the City and commercial/industrial sewage costs for the District shall be determined by reference to the same requirements and user costs as commercial and/or industrial users within the City).

4. ORDINANCES OF CITY REGULATING SEWER TREATMENT AND SYSTEM USAGE: The District shall comply with all City Ordinances regulating the content of sewage entering the Cities treatment facility, and shall comply with all Ordinances of the City intended to protect the treatment facility and the City's sewage system.

5. MAINTENANCE: In the event of the need for emergency repairs to the District's system, the City shall make every attempt to make such emergency repairs, subject to the availability of City work crews and equipment. The District shall be responsible for the cost of materials used in said repairs of its system, and shall further pay to the City the actual labor and equipment cost per hour for each hour the City's employees and equipment are engaged in the repair of said system. The City shall not be responsible for regular maintenance of the District's system and said maintenance shall be the sole responsibility of the District. The District further agrees to establish a preventive maintenance program acceptable to the City and file annual reports with the City showing implementation of said preventive maintenance program.

6. EMERGENCY POWER GENERATORS: The District shall, together with the PRAIRIE ACRES IMPROVEMENT DISTRICT, ELLIS COUNTY, KANSAS, purchase a standby portable power generator for use in powering the lift station installed in the District's sewage system. The City currently owns a standby portable power generator. In the event the City is in need of additional emergency power generation for its sewage system at a time when neither the District or said Prairie Acres Improvement District require their portable generator, the City shall be entitled to use the portable generator owned by said districts, and shall pay the cost of operating same. In the event the District is in need of additional emergency power generation at a time when the City does not require its portable generator, the District may use the City's portable generator, and shall pay the cost of operating same. In the event the District is using the City's generator and the City requires its use, the City may immediately take possession of same for its own use. In the event the City is using the District's generator and the District requires its use, the District may immediately take possession of same for its own use.

The City shall store the portable power generator belonging to the district without charge to the District.

7. CITY NOT LIABLE-HELD HARMLESS: The District hereby agrees to save and hold the City, its agents and employees, free and harmless from any and all claims or damages sustained by anyone against any loss, injury or damage as a result of any activities of the District, its agents and employees and the users of said sewage system and/or from any damage or loss sustained by the District in the repair of said sewer lines or sewage system by employees of the City.

EXECUTED AND ADOPTED THE DATE AND YEAR FIRST ABOVE WRITTEN.

THE CITY OF HAYS, KANSAS

BY: George Philby  
Mayor

ATTEST:

Arviden Salschner  
Clerk

(SEAL)

BIG CREEK IMPROVEMENT  
DISTRICT # 1, ELLIS  
COUNTY, KANSAS

BY: Richard Powell  
President

ATTEST:

Leo M. Orth  
Secretary

(SEAL)

