

2369

A G R E E M E N T

THIS INDENTURE is made and executed on this *13th* day of *April*, 1985, by and between Taury Creek Watershed Joint District No. 82, with home office at Ottawa, Franklin County, Kansas, hereinafter referred to as "Watershed District", and C.Q. Wilcox a single person, and Maxine H. Anderson, a single person, hereinafter referred to as "Landowners".

WHEREAS, Landowners have entered into or anticipate entering into an assistance agreement with the State Conservation Commission of Kansas providing for construction of a detention and flood retarding structure authorized under Kansas law, and in accordance with policies adopted by the State Conservation Commission, and according to acreage and elevation as shown in plans filed with the Taury Creek Watershed District Office, to be located upon the following described property in Douglas County, Kansas, to-wit:

The West 1/2 of the SE 1/4 of Section 16, Township 15 South, Range 20 East, Douglas County, Kansas.

WHEREAS, the said structure is described as Site 5-16 in the General Plan of the Watershed District, and Watershed District agrees to provide 20% of the construction costs thereof on that portion of the structure which is required for detention purposes and

WHEREAS, it is desirable to establish between the parties an understanding and working arrangement regarding the granting of an easement to the Watershed District, payment of construction costs, and future operation and maintenance:

NOW THEREFORE, the parties hereby covenant as follows:

1. Watershed District agrees to costshare with Landowners 20% of construction costs incurred in building only that portion of the above-described structure required for flood detention purposes. The Watershed District shall be the contracting party. Watershed District will make its payment of 20% of construction costs

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of the flood control structure directly to the contractor after presentment of the statement of the contractor and upon being satisfied that said structure has been constructed in accordance with approved plans and specifications, and that funding will be approved by the State of Kansas for its cost pursuant to Kansas law, and in accordance with policies adopted by the State Conservation Commission. Landowner C.Q. Wilcox shall pay 10% of the flood prevention structure construction costs, which amount shall be placed in escrow at The Kansas State Bank, Ottawa, Kansas, which institution is hereby designated as escrow agent hereunder. Said amount shall be paid to said escrow agent prior to the issuing of notice to proceed to the contractor by the Watershed District. Said escrow agent is hereby authorized to pay said 10% of the construction costs deposited with it by the Landowner C.Q. Wilcox directly to the Watershed District upon adequate proof of completion of the project and acceptance by the Watershed District. Watershed District will make all payments to the contractor. In the event construction on the detention and flood retarding structure is not begun within six (6) months of the date of deposit of escrow funds by Landowner C.Q. Wilcox, said escrow agent is hereby authorized to return said 10% of the construction costs, and 1 1/2% deposit for fencing and seeding costs to the Landowner C.Q. Wilcox and this agreement shall become null and void.

2. Landowners agree to operate and provide routine maintenance on said flood prevention, water retarding, agricultural waters impoundment structure, but Landowners hereby donate, grant and convey unto Watershed District a permanent easement in and upon their premises above-described for or in connection with the construction, operation, maintenance and inspection of said flood prevention, water retarding, and agricultural waters impoundment, designated as Site 5-16 in said District to be located on the above-described land for the flowage of waters in, over, upon

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or through such structure; and for the permanent storage and temporary detention, either or both, of any waters that are impounded, stored or detained by such structure for such purposes, with the rights of ingress and egress, and for any purpose consistent with the full use and privileges conferred upon it for the operation and maintenance of the above-described structure. Maintenance and repair of the dam, other than routine maintenance, shall be the responsibility of the Watershed District. Landowners hereby convey and assign unto Watershed District all their rights, title and interest in and to any easements, subordination agreements, or other instruments affecting said real property, granting unto District the right to construct, operate and maintain such structure, and conveying rights of ingress and egress for such purposes.

3. The emergency spillway and embankment areas will be seeded to permanent grasses and fenced for the protection of said structure. All seeding and fencing are to satisfy Soil Conservation Service requirements for the structure, and the cost of said seeding and fencing will be borne 30% by the Landowner C.Q. Wilcox and 70% by the State Conservation Commission. Landowner C.Q. Wilcox hereby agrees to pay to the escrow agent named above 1 1/2% of the project costs in addition to the 10% set out above, said 1 1/2% deposit to guarantee that the fencing and seeding will be completed within sixty (60) working days after completion of construction, unless an extension of said sixty-day period is granted by the Taub Creek Watershed Board. Working days are hereby defined as days when the weather reasonably permits work to be done on the fencing and seeding. Said 1 1/2% deposit shall be paid to the escrow agent before the notice to proceed is given to the contractor. The escrow agent is hereby authorized to refund said 1 1/2% deposit to the Landowner C.Q. Wilcox if fencing and seeding is completed within sixty (60) days of the completion of the project.

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The escrow agent is hereby authorized and instructed to pay said 1 1/2% amount to the Watershed District if the fencing and seeding are not completed within sixty (60) days of the completion of construction or within any extension granted thereafter by the Board of the Watershed District. The Landowners further agree to maintain the fences that are installed and to protect the seeded areas from overgrazing. If the 1 1/2% deposit is paid to the Watershed District in accordance with this paragraph, the Watershed District shall proceed to contract for the completion of the fencing and seeding. The 1 1/2% deposit plus the contribution of the State Conservation Commission shall be used to pay said contract. Any balance remaining of the 1 1/2% deposit after payment of 30% of the fencing and seeding cost shall be returned to the Landowner C.Q. Wilcox. If the 30% of the cost of fencing and seeding exceeds the amount of the 1 1/2% deposit, Landowner C.Q. Wilcox shall reimburse Watershed District for the excess.

4. In consideration of the total assistance rendered Landowners in construction and maintenance of the above-described structure which will inure to the benefit of Landowners as well as Watershed District, Landowners hereby covenant and agree to cooperate fully with Watershed District and any federal, state, or local entity of government involved in the planning, construction, maintenance or approval of said structure.

5. There is reserved to the Landowners, their heirs and assigns, the right and privilege to use the above-described land, and water impounded thereon, at any time, in any manner and for any purpose not inconsistent with the full use and enjoyment by the Watershed District, its successors and assigns, of the rights and privileges herein granted..

6. This agreement shall be binding upon the respective heirs, devisees, legatees, successors, and assigns of the

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parties hereto

IN WITNESS WHEREOF, we have set our hands the day and year above written.

By Kenneth Hubbard Pres.
Kenneth Hubbard, President

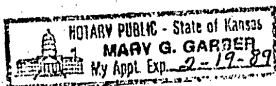
C. Q. Wilcox
C. Q. Wilcox, Landowner

Maxine H. Anderson
Maxine H. Anderson, Landowner

STATE OF KANSAS)
) ss.
FRANKLIN COUNTY)

BE IT REMEMBERED, that on this 19th day of April, 1985, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came Kenneth Hubbard, President of Taury Creek Watershed Joint District No. 82, a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed as such officer, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above mentioned.



Mary G. Garber
Notary Public
Mary G. Garber

My appointment expires: 2-19-89

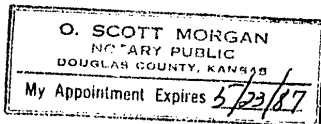
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STATE OF KANSAS)
COUNTY OF) ss.

BE IT REMEMBERED, that on this 13th day of April, 1985, before me, the undersigned a Notary Public in and for the county and state aforesaid, came C. O. Wilcox, who is personally known to me to be the same person who executed the foregoing agreement, and such person acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.



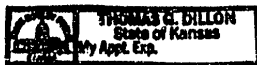
O. Scott Morgan
Notary Public
O. Scott Morgan

My appointment expires: _____

STATE OF KANSAS)
COUNTY OF DOUGLAS) ss.

BE IT REMEMBERED, that on this 5th day of APRIL, 1985, before me, the undersigned a Notary Public in and for the county and state aforesaid, came Maxine H. Anderson, who is personally known to me to be the same person who executed the foregoing agreement, and such person acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.



Thomas G. Dillon
Notary Public
Thomas G. Dillon

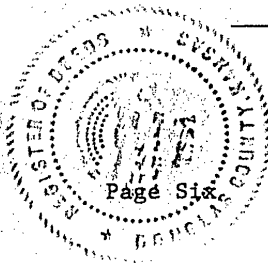
My appointment expires: 5/18/87

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FILED _____
INDEXED _____
NUMERICAL INDEX _____

ACCEPTANCE BY ESCROW AGENT

The duties of an escrow agent hereunder are hereby accepted and receipt of a copy of the foregoing Agreement is hereby acknowledged this _____ day of _____, 1985.



State of Kansas, Douglas County, SS.	
Filed and Entered in Vol. <u>380</u>	
Page <u>552</u>	at <u>1:54</u> o'clock <u>P.</u> M.
562	
APR 23 1985	
<u>Don A. Neustifter</u>	
By _____	Register of Deeds Deputy

10.40

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