

Kansas Water Authority Meeting
Lawrence, Kansas
9:00 a.m. – October 18, 2023
Agenda

<i>Time</i>	<i>Agenda Item</i>	<i>Presenter</i>	<i>KWA Advice</i>	<i>KWA Decision</i>	<i>Page No.</i>
9:00 am	Call to Order/Roll Call	Dawn Buehler			--
9:05 am	Approval of Meeting Minutes	Dawn Buehler			--
	August 23, 2023 Meeting			X	2-5
9:10 am	KWA Public Water Supply Committee	John Bailey			6-7
	Water Purchase Contract No. 23-05, City of Emporia	Nathan Westrup		X	8-31
	Water Purchase Contract No. 23-06, City of Coffeyville	Nathan Westrup		X	32-52
	Water Purchase Contract No. 23-08, City of Independence	Nathan Westrup		X	53-74
10:00 am	KWA RAC Operations Committee	Jeremiah Hobbs			--
	RAC Membership	Angela Anderson		X	75
	RAC Chair Reporting to KWA	Angela Anderson	X		76
10:30 am	BREAK				--
10:45 am	KWA Planning Discussion				--
	2024 KWA Annual Report	Victoria Asbury	X		--
	Other Planning Items	Dawn Buehler	X		--
11:30 am	Kansas Biological Survey Update	Sara Baer			--
12:00 pm	LUNCH				
1:00 pm	Hays/Russell Water Transfer	Matt Unruh	X	X	77
2:00 pm	State Association of Kansas Watersheds Update	Jeremiah Hobbs Olivia Bergmaier			--
2:20 pm	KWA Ex Officio Agency Updates	Dawn Buehler			--
2:45 pm	Director's Report	Connie Owen			--
2:50 pm	New Business	Dawn Buehler			--
3:00 pm	Adjourn	Dawn Buehler			--

Upcoming Meetings:

- November 15 & 16, 2023 - Governor's Conference on the Future of Water in Kansas, Manhattan
- December 13, 2023 – Kansas Water Authority, TBD
- January 23 & 24, 2024 – Kansas Water Authority, Topeka
- April 17, 2024 – Kansas Water Authority, TBD
- June 11, 2024 – Kansas Water Authority, TBD
- August 21, 2024 – Kansas Water Authority, TBD
- October 16, 2024 – Kansas Water Authority, TBD
- December 11, 2024 – Kansas Water Authority, TBD

Minutes

KANSAS WATER AUTHORITY

August 23, 2023

In-Person Meeting

McPherson, KS

CALL TO ORDER: Chair Dawn Buehler called the **August 23, 2023**, Kansas Water Authority (KWA) meeting to order at **09:10 a.m.**

MEMBERS PRESENT: Dawn Buehler, Michael Armstrong, John Bailey, Lynn Goossen, Randy Hayzlett, Jeremiah Hobbs, Pete Loecke, Carolyn McGinn, Allen Roth, Allan Soetaert, Jean Steiner, David Stroberg

MEMBERS ABSENT: None

EX-OFFICIO MEMBERS

PRESENT: Susan Duffy, Earl Lewis, Jay Kalbas, Susan Metzger, Sara Baer, Leo Henning, Mike Beam, Andrew Lyon, Connie Owen

EX-OFFICIO MEMBERS ABSENT: Brad Loveless, Kayla Savage

APPROVAL OF MINUTES:

Motion No. 08-23-01 It was moved by Carolyn McGinn and seconded by Allen Roth to approve the June 7, 2023, Minutes for the Regular Meeting of the Kansas Water Authority. **Motion carried with no dissenting votes.** Information found in meeting materials.

KWA PUBLIC WATER SUPPLY COMMITTEE:

John Bailey reported for the Public Water Supply Committee. Nathan Westrup then presented an overview of the City of Independence Negotiation Authorization, the City of Marion Contract Approval, and the CNRBWAD#3 Contract Renegotiation. Dawn Buehler opened the floor for questions and comments.

Items that were discussed:

- Allen Roth asked if the City of Independence was required to have a municipal conservation plan. The committee noted that their plan is up to date.
- Dawn Buehler asked if the basin could support the additional water allocation in a drought year. The committee noted that a drought situation has been modeled by the KWO and shows that the basin would be able to support the additional contract.
- Jean Steiner asked if there would be a fixed rate for the new City of Marion contract. The committee noted that the new contract will have a variable rate.
- John Bailey discussed the possibility of a joint water treatment plant below the reservoir.
- Dawn Buehler asked if there would be potential to renegotiate the contract in the future. The committee noted that would be possible if there was a potential reason.

City of Independence Negotiation Authorization

Motion No. 08-23-02

It was moved by Allan Soetaert and seconded by David Stroberg to approve the Director's Request to begin contract negotiations with the City of Independence (Water Marketing Application No. 258). **Motion carried with no dissenting votes.** Information found in meeting materials.

Water Purchase Contract No. 23-1, City of Marion

Motion No. 08-23-03

It was moved by John Bailey and seconded by Jean Steiner to approve the Water Purchasing Contract 23-1 with the City of Marion. **Motion carried with no dissenting votes.** Information found in meeting materials.

Renegotiation storage contract with the Cottonwood & Neosho River Basins Water Assurance District No. 3

Motion No. 08-23-04

It was moved by Mike Armstrong and seconded by Lynn Goossen to for the Kansas Water Authority to approve the Director's Request to begin contract renegotiations with the Cottonwood and Neosho River Basins Water Assurance District No. 3 for the purchase of additional storage space. **Motion carried with no dissenting votes.** Information found in meeting materials.

KWA RAC OPERATIONS COMMITTEE:

Jeremiah Hobbs reported for the RAC Operations Committee. He presented the slate of RAC applicants from the recent RAC Membership Drive. The drive filled all but 15 positions. The full membership slate can be found in meeting materials.

Dawn Buehler thanked everyone who applied or reapplied to a RAC. She opened the floor for questions and comments.

- Mike Armstrong asked why there were still vacant positions. The committee noted that open positions had either no applicants or the applications didn't meet the criteria.

It was proposed that there should be a RAC Chair present at all KWA meetings going forward. All members agreed with the proposal.

Approval of proposed RAC membership slate and appoint RAC Applicants for each RAC

Motion No. 08-23-05

It was moved by Allen Roth and seconded by Peter Loecke for the Kansas Water Authority to approve the proposed RAC membership slate and appoint those RAC applicants to each RAC. **Motion carried with no dissenting votes.** Information found in meeting materials.

KWA BUDGET COMMITTEE:

Mike Armstrong reported for the Budget Committee. He presented the updated State Water Plan Fund FY 2025 Budget Recommendations, with each agency providing an overview of new/updated projects and initiatives funded by the additional \$18 million dollars transferred to the SWPF. Matt Unruh then presented an overview on the RAC budget input process for the SWPF FY 2025 budget.

Dawn Buehler opened the floor for questions and comments.

Items that were discussed:

- Mike Beam asked for clarification on the research coordination team.
- Mike Armstrong mentioned that projects should tie back to the Kansas Water Plan, prioritize urgent projects such as drought response and safety, and prioritize projects that can be implemented quickly to show use of money responsibly. This will tell a story and highlight metrics to the legislature.

- **Dawn Buehler** highlighted that RACs should be thinking about metrics for progress on goals and action plans for reporting to the legislature. She also mentioned that RACs should identify the low hanging fruit of the goals and action plans and start with those.

SWPF FY 2025 Budget Recommendations

Motion No. 08-23-06

It was moved by **Mike Armstrong** and seconded by **Carolyn McGinn** for the Kansas Water Authority to adopt the State Water Plan Fund FY 2025 expenditure recommendations. **Motion carried with no dissenting votes.** Information found in meeting materials.

HAYS/RUSSELL WATER TRANSFER:

Connie Owen, Earl Lewis, and Leo Henning were absent from this discussion. **Matt Unruh** presented an update on the Hays/Russell Water Transfer and the KWA's potential for recognition as a commenting agency during the ongoing administrative hearing on the matter.

Dawn Buehler opened the floor for questions and comments.

Items that were discussed:

- **Jean Steiner** said acting as a commenting agency would allow the KWA to keep their options open.
- **Dawn Buehler** requested RAC input from the Smoky Hill-Saline RAC and Great Bend Prairie RAC be presented to the KWA at the October meeting. KWA support for this feedback

Motion No. 08-23-07

It was moved by **Lynn Goossen** and seconded by **Jean Steiner** for the Kansas Water Authority to approve the KWA Chair coordinate with the Assistant Director of KWO to appropriately submit a request for the KWA to be formally recognized as a commenting agency in the Hays/Russell Water Transfer administrative hearing. **Motion carried with no dissenting votes.**

KWA EX-OFFICIO AGENCY UPDATES:

Jay Kalbas gave an update for the Kansas Geological Survey.

Susan Duffy gave an update for the Kansas Corporation Commission.

Susan Metzger gave an update for Kansas State University.

Sara Baer/Ted Harris gave an update for the Kansas Biological Survey.

Leo Henning gave an update for the Kansas Department of Health and Environment.

Mike Beam gave an update for the Kansas Department of Agriculture.

Andy Lyon gave an update for the Department of Conservation.

Earl Lewis gave an update for the Division of Water Resources.

DIRECTOR'S REPORT:

Connie Owen reported for the Kansas Water Office. The KWO advised the Governor to release a new drought declaration Executive Order. Katie Goff, GIS Coordinator for the KWO, was recognized for a Special Achievement in GIS Award. New grant programs are in the works.

NEW BUSINESS:

No new business.

ADJOURNMENT:

It was moved by **Carolyn McGinn** and seconded by **Allen Roth** to adjourn. **Motion carried with no dissenting votes.** The meeting was adjourned at **2:33 p.m.**

Dawn Buehler, Chair

Connie Owen, Secretary

MEMO



DATE: October 11, 2023
TO: Kansas Water Authority
FROM: John Bailey, Chair, Public Water Supply Committee
Nathan Westrup
RE: Public Water Supply Committee Update

900 SW Jackson Suite 404
Topeka, KS 66612
Phone: (785) 296-3185
Fax: (785) 296-0878
www.kwo.ks.gov

Items Proposed for Action:

- Consider approval of Water Purchase Contract No. 23-5 with the City of Emporia
- Consider approval of Water Purchase Contract No. 23-6 with the City of Coffeyville
- Consider approval of Water Purchase Contract No. 23-8 with the City of Independence

City of Emporia, Water Purchase Contract No. 23-5

- Water supply yield of Council Grove Lake is sufficient for the negotiated contract quantity
- Key contract terms:
 - 22.2-year contract
 - 2,281 MGY, based on modeled projected demand through the year 2045
 - Based on modeled projected demand through the year 2045
 - Quantity 1,186 MGY in excess of expiring Water Purchase Contract No. 81-2
 - Variable rate (expiring contract was capped at 10 cents / 1,000 gallons)
- Standard contract, with one exception
 - Article 6b – standard statutorily required article (Review and Adjustment), but additional language providing guidance for justification of contract quantity reduction
 - Discussion with PWS Committee raised a question of how Article 17 “Right of First Refusal” would be applied if there is a future contract quantity reduction.
 - Answer (documented to file): The parties to the contract, the City of Emporia and the Kansas Water Office, are in agreement and have the shared understanding that, under the terms of Contract 23-05 as written, if the parties execute an amendment to Contract No. 23-05 in the future to modify the cited quantity, from that point forward the right of first refusal described in Article 17 would apply to the modified quantity cited in such amendment.
- See also, Findings (attached)

The PWS Committee recommends the Kansas Water Authority approve Water Purchase Contract No. 23-5 with the City of Emporia, as negotiated.

City of Coffeyville, Water Purchase Contract No. 23-6

- Water supply yield of Elk City Lake is sufficient for the negotiated contract quantity
- Key contract terms:
 - 10-year contract
 - 500 MGY
 - Based on current modeled demand
 - Quantity 200 MGY in excess of expiring Water Purchase Contract No. 81-5
 - Variable rate (expiring contract was capped at 10 cents / 1,000 gallons)

- Noteworthy fact: This is the last capped rate water purchase contract
- Standard contract language
- See also, Findings (attached)

The PWS Committee recommends the Kansas Water Authority approve Water Purchase Contract No. 23-6 with the City of Coffeyville, as negotiated.

City of Independence, Water Purchase Contract No. 23-8

- Water supply yield of Elk City Lake is sufficient for the negotiated contract quantity
- Key contract terms:
 - 5-year contract
 - 200 MGY
 - This contract is in addition to Water Purchase Contract No. 22-1 (60 MGY)
 - Modeled water supply releases needed to supplement natural flows for the city's full authorized (water rights) demand of 844 MGY are as much as 369 MGY (YOR is 1956)
 - Variable rate
- Standard contract language
- See also, Findings (attached)

The PWS Committee recommends the Kansas Water Authority approve Water Purchase Contract No. 23-8 with the City of Independence, as negotiated.

FINDINGS
REQUEST BY CITY OF EMPORIA
TO PURCHASE WATER
FROM COUNCIL GROVE LAKE FOR MUNICIPAL PURPOSES
October 9, 2023

The Director of the Kansas Water Office submits findings to the Kansas Water Authority for review and to decide whether to approve the negotiated Water Purchase Contract No. 23-05 with the City of Emporia for water supply from Council Grove Lake. The Kansas Water Office received a written application on May 26, 2023 and the KWA authorized the Director to begin negotiations on June 7, 2023. Emporia currently holds Water Purchase Contract No. 81-2 for water supply from Council Grove Lake, which will expire on October 21, 2023. Article 17 of their contract provides the purchaser a right of first refusal to enter into a new contract, contingent on the yield availability.

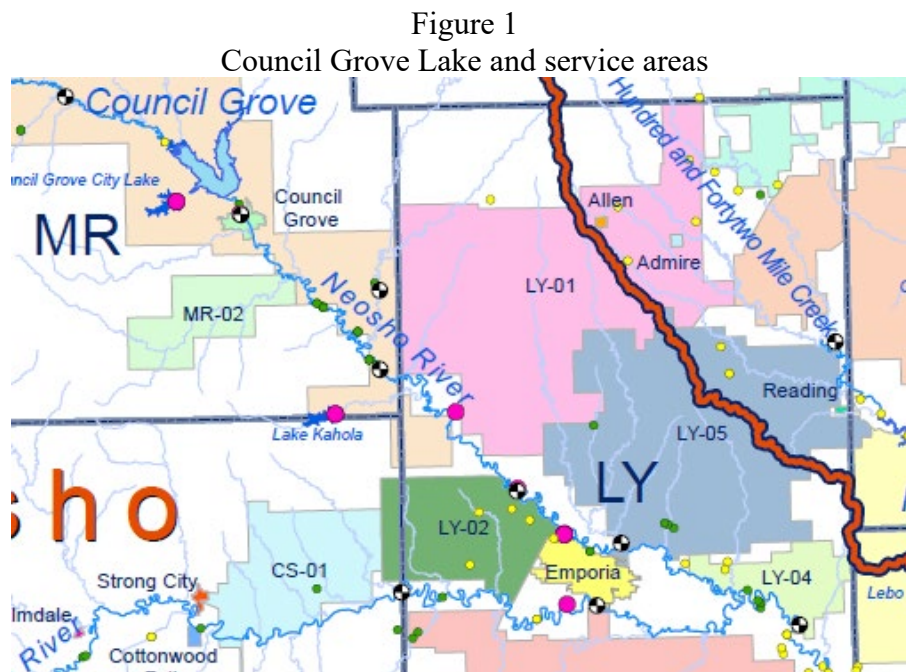
In accordance with K.S.A. 82a-1305, which states, in part:

"Whenever the authority finds that a proposed withdrawal and use of water, other than surplus waters, is in the interest of the people of the state of Kansas and will advance the purposes set forth in article 9 of chapter 82a of Kansas Statutes Annotated, and amendments thereto, it shall authorize the director to enter into negotiations for the purpose of entering into written contracts with any person for withdrawal and use within or without the state of waters from conservation storage water supply capacity committed to the state."

As noted in the citation above, before negotiations for a contract can begin, the Kansas Water Authority (KWA) must find:

1. That the proposed sale is in the public interest, and
2. That it will advance the purposes of the State Water Planning Act and the State Water Plan.

If the Kansas Water Authority finds that the request meets these two criteria, it should authorize the Director to begin negotiations with the applicant. Figure 1 is a map of Council Grove Lake and municipal water service areas.

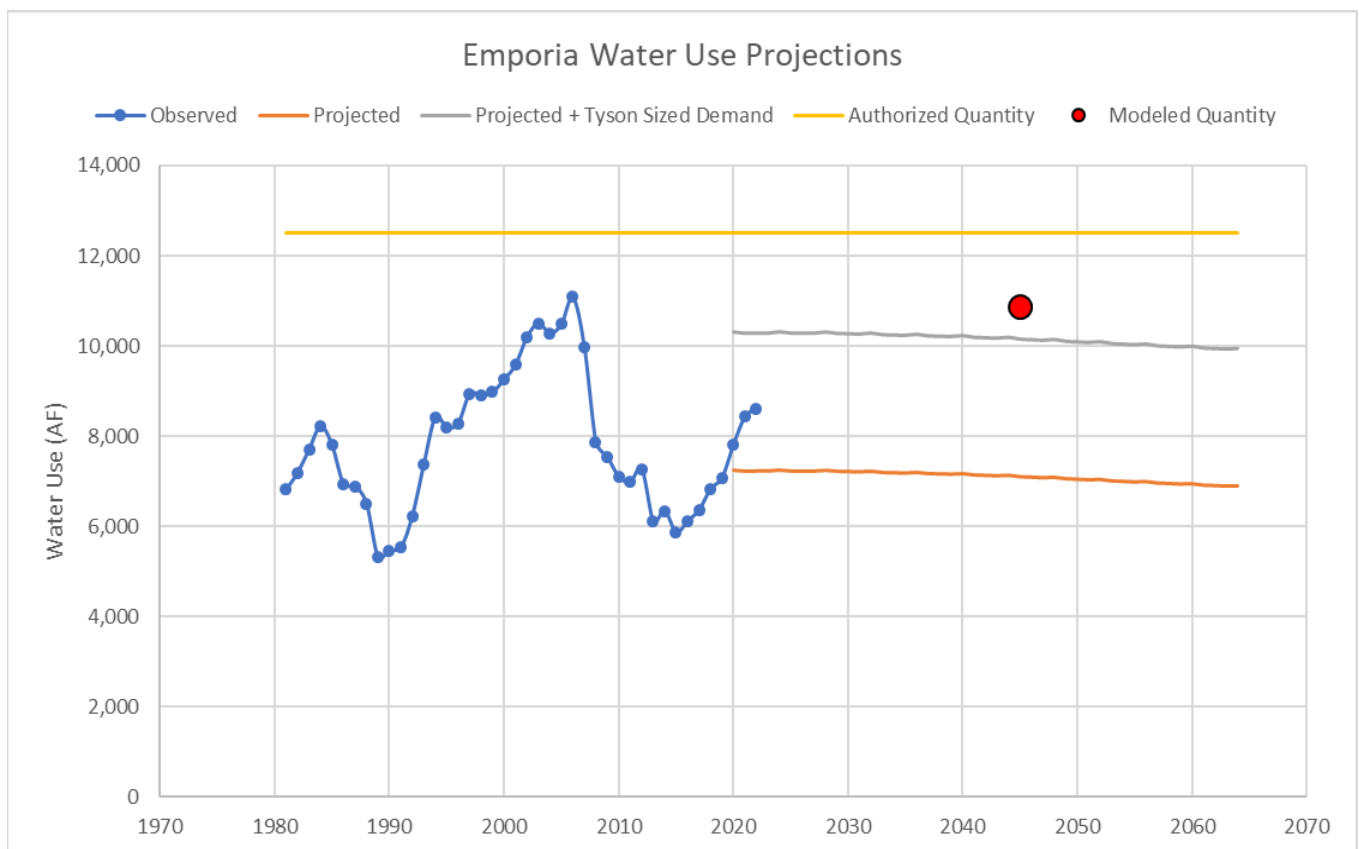


The Kansas Water Authority shall consider the following items in determining whether the proposed contract is in the best interest of the people of the State of Kansas and whether benefits to the State for approving the contract outweigh the benefits to the state for not approving the contract.

1. The present and future water supply needs of the applicant;

The applicant’s source of water is the Neosho River and water rights held by the city have an authorized quantity that has been of sufficient quantity to meet their water supply demand. Water Purchase Contract No. 81-2 authorizes the city to withdraw an additional 1,095 MGY from Council Grove Lake, however, the contract has only been used to supplement the city’s demand when natural flows in the Neosho River are insufficient. The applicant is requesting to negotiate a contract for 2,281 MGY from Council Grove Lake.

The chart below shows 40+ years of annual water use and future projections. The projected demand (Modeled Quantity) was evaluated with the KWO’s OASIS system model to determine the amount of supplemental releases necessary to supply Emporia’s projected demand, 2,281 MGY.



In addition to use within the city, Emporia also provides regional sales to water to Hartford, Olpe, and rural water districts Lyon 1, 2, 4, 5, and Coffey 2.

The intent of the applicant is to decrease their drought vulnerability. A water purchase contract to provide access to water supply storage in Council Grove Lake and supplement their water supply needs when natural flows are insufficient in the Neosho River has been in place for 40 years.

Negotiations: A more accurate description of the place of use was provided, as follows: City of Emporia; within the boundaries of R.W.D. Nos. 1, 2, 3, 4, and 5, Lyon County, Kansas; the Lyon County portion of R.W.D. No. 2, Coffey County, Kansas; the City of Olpe, Kansas and immediate vicinity; the City of Admire, Kansas and immediate vicinity; the City of Bushong, Kansas and immediate

vicinity; the City of Allen, Kansas and immediate vicinity; the City of Neosho Rapids, Kansas and immediate vicinity; the Emporia Municipal Golf Course; Panhandle Eastern Pipeline Company; Harmony Hill Grade School; and the City of Hartford, Kansas and immediate vicinity.

The place of use description did not impact the projected demand, but does demonstrate Emporia as an important regional water supply. The projected demand was found to be reasonable and justified for the year 2045. The primary negotiation topic was the term of the contract. The city was proposing a 5 year term and the modeled contract quantity, sufficient to support the projected demand, was based on the year 2045. The city's justification for a 5 year term was to explore the concept of off-stream local storage and conservation measures. The negotiating team added contract language to Article 6b, allowing more consideration of the Purchaser's efforts to conserve or enhance storage capabilities, that might provide for a contract quantity reduction on and after the 6th anniversary of the execution of the contract. The negotiated contract term is approximately 22 years, through December 31, 2045.

2. Any current beneficial uses being made of the non-contracted water proposed to be diverted;

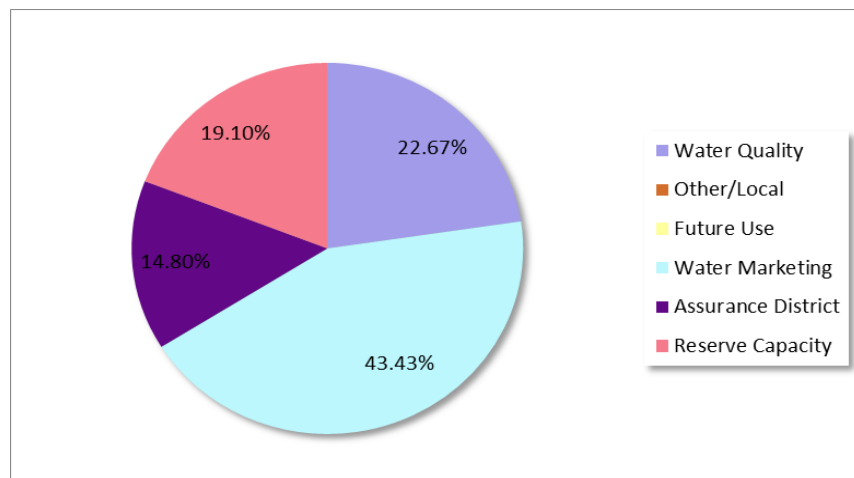
The City of Council Grove also has an existing contract for water supply, see table below. The Kansas Water Office's preliminary modeling indicates that the Water Marketing storage and Reserve Capacity storage is sufficient to provide adequate yield for current and proposed contract obligations. Almost half (48%) of the requested quantity is currently under Emporia's existing contract, for which the city has right of first refusal. The additional quantity will largely be supplied by dedicating the Reserve Capacity to the Water Marketing Program.

Purchasers, Contract Numbers, and Contract Quantities
Council Grove Lake

Contract Number	Customer Name	Contract End Date	2023 Maximum Gallons	2023 Maximum AF	Annual Contract Maximum Gallons	Annual Contract Maximum AF
81-2	City of Emporia	10/21/2023	1,095,000,000	3,360	1,095,000,000	3,360
93-4	City of Council Grove	9/13/2023	60,000,000	184	150,000,000	460
			1,155,000,000	3,544	1,245,000,000	3,820

3. Any reasonable foreseeable beneficial use of the water;

As mentioned in the previous section, Water Marketing storage is sufficient to meet contract obligations for water supply, assuming current (and proposed) contract quantities carry forward.



The reasonable and foreseeable use of the available yield from Council Grove Lake is primarily needed to meet the supplemental water supply needs of the City of Emporia and the City of Council Grove, to a lesser extent. The City of Council Grove's primary source of supply is Council Grove City Lake. KWO will consider the best available data on all future demands in the region during negotiations.

Negotiations: It is noteworthy to mention that the Assurance District could have purchased additional non-contracted storage, but modeling shows that the storage is needed to support the demands of Emporia. Emporia is both an Assurance District member and a Water Marketing customer and, at this time, chose to enhance the water purchase contract quantity.

4. The economic, environmental, public health and welfare, and other benefits or adverse impacts;

A dependable long-term water supply is essential for the for the local economy, public health, and welfare. No adverse impacts have been identified.

5. Alternative sources of water available to the applicant;

The City of Emporia has retained the water rights associated with Lake Kahola, however, the property is owned by the residents around the lake, potentially inhibiting access to water in storage. Additionally, the outlet works of the lake are in disrepair and releases must be siphoned over the spillway. The Cottonwood River is a viable source of water but a significant amount of infrastructure would be required to access water from the Cottonwood. Over the next 5 years (or so), the city will be conducting further evaluation of alternative sources, including Lake Kahola and the Cottonwood River.

Negotiations: The city plans to pursue viability of enhanced storage and conservation.

6. The preliminary plan of design construction and operation of any works or facilities used in conjunction with transporting the water to its point of use;

All diversion works and facilities are existing and long-standing. The natural water course, the Neosho River, will deliver water released from storage to the city's water supply intake on the Neosho River.

7. Whether the proposed purchase is consistent with the state water plan approved by the Legislature;

Nothing in this proposed use of water has been identified that would be inconsistent with the State Water Plan and the State Water Plan Storage Act. The Kansas Water Plan indicates that development of regional solutions and use of existing sources is preferred in water supply development. The city is serving as a valuable regional supplier.

8. The date of the application to contract for withdrawal and use of water;

Application No. 267 was received by the Kansas Water Office from the City of Emporia on May 26, 2023.

9. Minimum streamflow requirements; and

The KWO and the Tulsa District of the U.S. Army Corps of Engineers cooperatively operate Council Grove Lake and provides a minimum release to the Neosho River (see table below). A portion of the conservation storage (22.67%) in Council Grove Lake is dedicated to serving water quality needs below the reservoir and is used for the minimum release.

Council Grove Lake Minimum Release Schedule (cfs)

Reservoir	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Council Grove	4	4	4	4	5	7	8	8	6	4	4	4

Minimum Desirable Streamflows (MDS) have been established in the Cottonwood/Neosho basin (see table below).

Cottonwood/Neosho MDS Flows (cfs)

Gage Location	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Americus	5	5	5	5	5	5	5	5	5	5	5	5
Plymouth	20	20	20	20	20	20	20	20	20	20	20	20
Iola	40	40	40	40	40	40	40	40	40	40	40	40
Parsons	50	50	50	50	50	50	50	50	50	50	50	50

The location most impacted by the operations of Council Grove Lake is Americus, located between Council Grove Lake and the City of Emporia's intake. Releases to meet Emporia's water supply demand result in a positive benefit to flow at Americus. The use of both water quality storage and water supply storage is necessary to maintain target flows throughout the system, in accordance with the Cottonwood/Neosho River Basins Water Assurance District No. 3 operations agreement. Releases from Water Marketing storage do not conflict with water assurance district operations.

10. Whether the applicant has adopted and implemented a water conservation plan;

The City of Emporia has an approved water conservation plan. The plan was consistent with the current guidelines of the Kansas Water Office and was approved on December 24, 2019.

Based on these findings, the Kansas Water Office recommends that the Kansas Water Authority Water Purchase Contract No. 23-5 with the City of Emporia for the purchase of water from Council Grove Lake for municipal water supply purposes.

KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 23-05

This contract is executed and entered into this _____ day of _____, 2023, by and between the State of Kansas, as represented by the Kansas Water Office (hereinafter referred to as the “State”), an authorized agency to enter such contracts for the State of Kansas and the City of Emporia, Lyon County, Kansas, (hereinafter referred to as the “Purchaser”).

RECITALS

WHEREAS, the Purchaser desires to purchase a supply of Raw Water for a municipal and industrial use to supplement its existing Water Rights during times of short supply; and

WHEREAS, the State has signed Agreements (Contract Nos. DACW56-75-C-0052 and DACW56-96-WS-0004) with the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), for water supply storage space in the Reservoir; and

WHEREAS, the State has filed appropriate water reservation rights with priority dates of March 27, 1974 and May 2, 1994, authorizing it to divert and store water in the conservation storage water supply capacity in the Reservoir; and

WHEREAS, the Director is authorized by K.S.A. 74-2615, and by K.S.A. 82a-1305, to negotiate contracts for the sale of water from the conservation storage water supply capacity in the Reservoir committed to the State; and

WHEREAS, the Purchaser filed an appropriate application on May 26, 2023, with the State to negotiate the purchase of Raw Water from the Reservoir, in compliance with the State Water Plan Storage Act, K.S.A. 82a-1301, *et seq.*; and

WHEREAS, on May 26, 2023, the Purchaser provided a written notice requesting to enter into negotiations for a contract with the Director; and

WHEREAS, on June 7, 2023, the Authority granted permission to the Director to enter into negotiations with the Purchaser; and

WHEREAS, some of the Purchaser's immediate and projected water supply needs can be provided from the Reservoir; and

WHEREAS, the withdrawal of up to 2,280.958 million gallons of Raw Water annually from the Reservoir for use by the Purchaser is in the interest of the people of the State of Kansas and will advance the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

WHEREAS, the quantity of Raw Water from the Reservoir being negotiated does not exceed the yield capability from the conservation storage water supply capacity in the Reservoir that is available to the State for use under the water marketing program through a drought having a two percent chance of occurrence in any one year.

NOW, THEREFORE, in consideration of the foregoing, the Parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

As used in this contract, unless the context otherwise requires:

- a. "Authority" means the Kansas Water Authority, per K.S.A. 74-2622, or its successor.
- b. "Contract Quantity" means the quantity of Raw Water from the State's conservation storage water supply capacity in the Reservoir as set out in Article 6, paragraph (a).
- c. "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.
- d. "Minimum Charge" means the annual payment set out in Article 7 paragraph (b).

e. "Party" or "Parties" means the State of Kansas, as represented by the Kansas Water Office, and the Purchaser.

f. "Point of withdrawal from the reservoir" means the point at which water is taken from the Reservoir by pump, siphon, canal, or any other device or released through the dam by gates, conduits, or any other means.

g. "Point of redirection" means the point where released water is taken for beneficial use from the watercourse by which it is transported.

h. "Raw Water" refers to untreated water from the Reservoir.

i. "Reservoir" means Council Grove Lake in Morris County, Kansas.

j. "Water Right" and "Water Rights" means vested and appropriation water rights established pursuant to the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*

ARTICLE 2. TERM OF THE CONTRACT

The term of this contract shall be for the period, beginning October 22, 2023 and ending December 31, 2045. The Purchaser may begin withdrawing Raw Water under this contract on October 22, 2023.

ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

This contract, and all amendments and renewals, are subject to disapproval and revocation by the Kansas Legislature as provided in K.S.A. 82a-1307.

ARTICLE 4. UNITED STATES APPROVAL

a. Except when the Point of withdrawal from the reservoir is a release through the dam by gates or conduits owned and operated by the United States, the Purchaser shall secure the right from the United States to construct, modify, alter, or maintain installations and facilities at

the Point of Withdrawal from the Reservoir as the Purchaser shall deem necessary to effectuate the terms of this contract when any such installations and facilities are on federal lands.

b. The Purchaser shall bear any and all costs of construction, modification, operation, and maintenance of Purchaser-owned, leased, or constructed installations and facilities.

c. The Purchaser shall provide the Director, upon written request, with proof of any easement granted by the United States for rights-of-way across, in, and upon federal land required for intake, transmission of Raw Water, and necessary appurtenances by and for the benefit of the Purchaser.

ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES AND REGULATIONS

a. This contract is subject to all applicable federal and state statutes and regulations including specifically, but not by way of limitation, the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*; the State Water Resource Planning Act, K.S.A. 82a-901, *et seq.*; the State Water Plan, K.S.A. 82a-927, *et seq.*; and the State Water Plan Storage Act, K.S.A. 82a-1301, *et seq.* All references to statutes, rules, and regulations in this contract include any applicable amendments enacted after the execution of this contract.

b. The Parties agree to comply with all applicable statutes and regulations.

ARTICLE 6. QUANTITY OF WATER

a. Contract Quantity. During the term of this contract, defined in Article 2, and subject its conditions, the Purchaser is entitled to withdraw not more than 2,280.958 million gallons of Raw Water from the State's conservation storage water supply in the Reservoir during any one (1) calendar year. If the Purchaser does not withdraw the entire Contract Quantity in any calendar year, the unused amount of water shall not add to the Purchaser's entitlement during any subsequent year.

b. Review and Adjustment. The Director shall review the quantity and purposes for which water is used on the sixth anniversary of the execution of this contract and on each annual anniversary for the remaining portion of the term of this contract. The Director may adjust the total amount of water contracted for on the sixth anniversary of the execution of the contract and on each annual anniversary thereafter, if the Purchaser does not begin full payment for the water under contract and another water user is ready willing and able to contract for such water. The parties jointly interpret this provision to prevent adjustment as long as the Purchaser is making actual payments in accordance with this contract. The parties acknowledge that this contract is being executed for the purpose of providing supplemental water supply, the stated quantity of which is substantiated by specific analysis and modeling, and that use of the full quantity stated in this contract is not expected to be made each and every year during the contract period.

Alternatively, on the sixth anniversary of the execution of this contract, and on each anniversary thereafter, the Director may reduce the total amount of water contracted for, upon request by the Purchaser, accompanied by the Purchaser's sufficient demonstration of the need to reduce the amount as requested. The granting or denial of this request shall be at the discretion of the Director. However, if Purchaser sufficiently demonstrates that the reduced need is, or will be, due to the Purchaser's incorporation of conservation measures and/or lawful storage capacity enhancement measures, this showing will create a presumption that the Purchaser's request should receive strong consideration for approval.

c. Water Rights. Any Water Rights acquired by the Purchaser after, and having priority dates later than the date of execution of this contract, and any water diverted pursuant to such rights, shall not be used by the Purchaser to offset or reduce the Contract Quantity or the Purchaser's payment obligations, as provided in Article 9 unless approved by the Director.

d. The Purchaser may redivert Raw Water withdrawn from the Reservoir in accordance with the terms of this contract without obtaining a permit or Water Right under the Kansas Water Appropriation Act. Rights of the Purchaser under this contract shall be entitled to the same protection as any other vested property interest including vested water rights, water appropriation rights, and approved applications for permit to appropriate water.

ARTICLE 7. PRICE OF WATER

a. Price. The Purchaser agrees to pay the State, at the rate set in accordance with K.S.A. 82a-1306, for each one thousand (1,000) gallons of Raw Water withdrawn or Raw Water which must be paid for under terms of this contract; provided, however, that the Purchaser is obligated and agrees to pay the Minimum Charge in accordance with this Article regardless of the quantity of Raw Water actually withdrawn, except as provided in Article 13. The rate for Raw Water which must be paid for under terms of this contract shall be \$0.473 for each one thousand (1,000) gallons during calendar year 2023.

b. Minimum Charge. The Purchaser agrees to pay to the State a Minimum Charge whether or not water is withdrawn during any calendar year during the term of this contract. The Minimum Charge for each calendar year shall be determined as provided in K.S.A. 82a-1306. The Minimum Charge for calendar year 2023 and each succeeding calendar year shall be the sum of the following two components:

(1) fifty (50) percent of the Contract Quantity multiplied by the rate established in accordance with paragraph (a) of this Article or as adjusted in accordance with paragraph (c) of this Article; and

(2) a charge on the remaining fifty (50) percent of the Contracted Quantity computed by multiplying the net amount of moneys advanced from state funds for costs incurred

and associated with that portion of the conservation storage water supply under the State Water Marketing Program by the average rate of interest earned during the past calendar year by the Pooled Money Investment Board on thirty (30) day repurchase agreements.

c. Review and Adjustment of Rates. The Director shall review the rate stated in this Article by July 15 of each year during the term of this contract and, as provided in K.S.A. 82a-1306, may adjust the rate effective January 1 of the following year. Such adjusted rate shall be charged for all Raw Water withdrawn by the Purchaser or all Raw Water which must be paid for under terms of this contract. The Director shall notify the Purchaser in writing by July 31 of each year of the adjusted rate which will become effective on January 1 of the ensuing year. Failure to furnish such notification by July 31 shall not relieve the Purchaser of the obligation to pay such adjusted rate.

ARTICLE 8. PURPOSE AND PLACE OF USE

a. Purpose. Water purchased under this contract shall be used for purposes which are stated in the recitals.

b. Place of Use. The place of use for water purchased under this contract shall be within and in the immediate vicinity, as defined at K.A.R. 5-1-1(mm), of the City of Emporia; within the boundaries of R.W.D. Nos. 1, 2, 3, 4, and 5, Lyon County, Kansas; the Lyon County portion of R.W.D. No. 2, Coffey County, Kansas; the City of Olpe, Kansas and immediate vicinity; the City of Admire, Kansas and immediate vicinity; the City of Bushong, Kansas and immediate vicinity; the City of Allen, Kansas and immediate vicinity; the City of Neosho Rapids, Kansas and immediate vicinity; the Emporia Municipal Golf Course; Panhandle Eastern Pipeline Company; Harmony Hill Grade School; and the City of Hartford, Kansas and immediate vicinity. The place of use authorized under this contract shall be consistent with the place of use authorized under the

Purchaser's related water right acquired under the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*, and amendments thereto.

c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any intention to sell any Raw Water under this contract to any person or entity located outside the place of use defined in paragraph (b) of this Article. Whenever the Purchaser shall propose to enter into a contract to sell Raw Water purchased under this contract to any such person or entity outside the defined place of use, the Purchaser shall, before execution thereof, submit a copy of such contract to the Director for review by the Authority. The Purchaser agrees not to execute and enter into any such contracts unless approved by the Authority.

ARTICLE 9. BILLING AND PAYMENT SCHEDULE

a. Payments. Remittance of the Minimum Charge, as provided in Article 7 (b) and this Article shall be paid to the State in either one annual payment on or before the due date established in Article 9, or in equal monthly installments during the calendar year in which the Minimum Charge is due, whether or not water is withdrawn during the calendar year.

b. Determination of Charges. Charges for Raw Water for which payment is required shall be determined by the State in accordance with K.S.A. 82a-1308a. The Purchaser acknowledges and agrees that rate computations are subject to change, based on subsequent amendments to State statutes that may affect the terms of this contract.

c. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all Raw Water withdrawn under terms of this contract up to the maximum quantity obligated by

this contract (2,280.958 million gallons per year). In no event shall the Purchaser be permitted to withdraw more than the maximum of 2,280.958 million gallons in any one calendar year.

d. Initial Minimum Charge. The initial Minimum Charge shall become due within 30 days after the execution of this contract and will be calculated on the remainder of the calendar year. Payment of the initial Minimum Charge shall entitle the Purchaser to receive up to one-half (1/2) of the prorated maximum annual quantity of Raw Water in 2023 as set forth in Article 6, without additional charge.

e. Subsequent Minimum Charges. On each subsequent January 1st, the Minimum Charge shall be in accordance with paragraph (a) of this Article. Payment of the Minimum Charge shall entitle the Purchaser to receive during the calendar year, without additional charge, one-half (1/2) of the maximum annual quantity obligated under terms of this contract.

f. Water in Excess of Minimum. Within thirty (30) days after the end of each calendar year during the term of this contract, the State shall bill the Purchaser for any Raw Water withdrawn during the calendar year in excess of the amount of Raw Water used to compute the Minimum Charge. The Purchaser shall be given credit for the proportionate share of the payment which was made as an interest charge on the net amount of monies advanced from the State General Fund for the costs incurred and associated with providing fifty (50) percent of the total annual amount of water contracted for purchase during that calendar year. Remittance for payments for Raw Water withdrawn in excess of the quantity used to calculate the Minimum Charge shall be paid to the State in full within thirty (30) days after receipt of a bill from the State.

g. Overpayment or Underpayment. If for reason of error in computation, measuring device malfunction, or other causes, there is an overpayment or underpayment to the State by the Purchaser of the charges required by this contract, such overpayment shall be reimbursed or

underpayment shall be billed, as the case may be. The State shall notify the Purchaser thereof in writing. However, all charges made in any year shall be conclusively presumed to be correct six (6) months after the end of such year.

h. Adjustment for Apportionment. In the event the Purchaser is unable in any year to withdraw the quantity used to calculate the Minimum Charge due to an apportionment under paragraph (c) of Article 13, the amount of the Minimum Charge actually paid in excess of the charge for the amount of Raw Water actually withdrawn by Purchaser shall be credited to reduce the Minimum Charge obligation of the Purchaser for the subsequent calendar year.

i. Overdue Payments. If the Purchaser fails to make any of the payments when due, then the overdue payments shall bear interest, compounded annually at the rate prescribed in K.S.A. 82a-1317. This shall not be construed as giving the Purchaser the option of either making payments when due or paying interest, nor shall it be construed as waiving any of the rights of the State that might result from such default by the Purchaser.

j. Payments. Any payments due and payable to the Kansas Water Office under the terms of this contract shall be transferred electronically under such arrangements as the Purchaser and the State determine or shall be sent to:

Kansas Water Office
Attention: Accounts Payable/Water Marketing
900 SW Jackson Street, Suite 404
Topeka, KS 66612

ARTICLE 10. POINT OF WITHDRAWAL AND REDIVERSION

a) The Point of withdrawal from the reservoir shall be at the release gates of Council Grove Lake.

b) The Purchaser's Point of rediversion shall be the point of diversion in the Neosho River authorized by the Purchaser's Water Rights located in the NE ¼ of the NE ¼ of the NE ¼ of Section 10, Township 16 South, Range 8 East, in Lyon County, Kansas.

ARTICLE 11. METERING OF WATER

a) The Purchaser shall, at its own expense, furnish, install, operate, and maintain a commercial measuring device at the Point of rediversion that complies with the Kansas Water Appropriation Act and the rules and regulations adopted by the Kansas Department of Agriculture, Division of Water Resources ("DWR").

b) The Purchaser shall test and calibrate all measuring devices upon installation and thereafter as necessary or whenever requested by the Director, but not more frequently than once every twelve (12) months. A measuring device that meets the standards set forth in DWR regulations shall be deemed to be accurate. Testing and calibration of measuring devices must comply with DWR regulations.

c) The previous readings of any measuring device disclosed by a test to be inaccurate shall be corrected for the three (3) months previous to such test or one-half (1/2) the period since the last test, whichever is shorter, in accordance with the percentage of inaccuracy found by such tests.

d) If any measuring device fails to register for any period, the amount of Raw Water furnished during such period shall be determined by the Director, in consultation with the Purchaser.

e) During the withdrawal of Raw Water the Purchaser shall, upon the Director's request, read the measuring device and send such readings to the Director on a weekly basis.

f) The Purchaser shall provide to the State monthly reports of all water diverted from any sources under authority of Water Rights acquired and subject to Article 6 paragraph (c).

g) Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.

h) The State may measure withdrawals by other suitable means to verify the accuracy of the Purchaser's measuring device or to measure the amount of rediverted Raw Water when the Purchaser's measuring device fails to register.

ARTICLE 12. WATER WITHDRAWAL

The Purchaser shall notify the Director prior to any withdrawal of Raw Water. At that time, the Purchaser shall provide such notification, in writing, of the estimated amounts, dates, and rates of withdrawal. In no event, during the term of this contract, shall the Purchaser withdraw Raw Water in excess of the maximum daily rate of 20 million gallons.

ARTICLE 13. CONTINUITY OF WATER SERVICE

a. The Director shall make all reasonable efforts to perfect and protect the water reservation rights necessary for the satisfaction of the State's water supply commitment. In the event it becomes necessary for any reason to apportion the water among all of the persons having contracts to purchase water from the conservation storage water supply capacity in the Reservoir, or to temporarily discontinue the furnishing of water to such persons, the Director will give each person oral notice, followed by a written notice, of such action as far in advance as is reasonably practicable.

b. The Director, Kansas Water Office, and the Authority shall not be responsible for, or have any legal liability for any insufficiency of water, or for the apportionment thereof, and the duty of the Director, Kansas Water Office, and the Authority to furnish water is specifically subject to the following conditions:

(1) If the total amount of water contracted for withdrawal by all purchasers from the Reservoir in any year is greater than the supply available from the conservation storage water supply in the Reservoir, the Director, with the approval of the Authority, will apportion the available water among all the purchasers having contracts therefor, as may best provide for the health, safety, and general welfare of the people of Kansas as determined by the Authority.

(2) The Director shall evaluate the effect of sediment deposits in the Reservoir and, if such evaluation indicates that the sediment deposits have reduced the yield from the State's conservation storage water supply space, the Director will apportion available water among the persons having contracts to purchase water from the conservation storage water supply capacity in the Reservoir in relation to the annual volume of water contracted. If a reduction has been made and future calculations and/or experience proves an increased yield from the Reservoir, the Purchaser's Contract Quantity shall be increased proportionally up to the Contract Quantity.

(3) If the United States temporarily discontinues or reduces water storage available to the State in the Reservoir under the State's agreement with the United States of America for the purpose of inspection, investigation, maintenance, repair, or rehabilitation of the Reservoir or for other reasons deemed necessary by the United States of America, the Director will apportion the available water among the persons having contracts for water from the conservation storage water supply in the Reservoir as determined by the Director.

(4) If, because of an emergency, the Director deems it necessary for the health, safety, and general welfare of the people of Kansas to reduce or terminate the withdrawal of water from the Reservoir, the Director, with the approval of the Authority, will apportion any available water among the persons having contracts to purchase water from the conservation storage water supply in the Reservoir as may best provide for the health, safety, and general welfare of the people of Kansas.

c. In the event the Director finds it necessary to apportion the available water from the conservation storage water supply in the Reservoir among the persons having contracts therefore, and such apportionment results in the Purchaser being unable, during any year, to receive the amount of water that has been purchased by payment of the Minimum Charge, the Purchaser shall pay the State only for the amount of water actually made available to the Purchaser during the year.

ARTICLE 14. LIABILITY

a. The Parties acknowledge that this contract is for Raw Water from the conservation storage water supply in the Reservoir. The State, the Director, the Authority, or any employee, agent, or agency of the State of Kansas, makes no guarantee for, nor assumes any liability for any claim arising out of the control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond the Point of withdrawal from the reservoir except as provided in the Kansas Tort Claims Act, K.S.A. 75-6101, *et seq.*, and the Purchaser shall hold the State harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the control, carriage, handling, use, disposal, or distribution of Raw Water beyond the Point of withdrawal from the reservoir. Nothing in this Article shall be construed to impair any protection of the rights of the Purchaser as set forth in Article 6.

b. In addition, neither the Director nor the Authority shall be liable for any claim by Purchaser arising out of the quality of the Raw Water in the Reservoir or at the Point of rediversion. The Purchaser shall hold the State, its agencies, employees, and agents harmless from or on account of any and all damage to Purchaser of any nature whatsoever arising out of or connected with the quality of the Raw Water in the Reservoir, at the Point of withdrawal from the reservoir or at the Point of rediversion.

ARTICLE 15. AMENDMENT

The contract may be amended or nullified by written agreement of the Parties, as provided in K.S.A. 82a-1316.

ARTICLE 16. ASSIGNMENT OF CONTRACT

a. The Purchaser may not assign, sell, convey, or transfer all or any part of this contract, or any interest therein, unless and until the same is approved by the Director and the Authority pursuant to K.S.A. 82a-1316 and K.A.R. 98-5-5.

b. Whenever the assignment, sale, conveyance, or transfer of all or any part of this contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the contract or portion thereof and make the water available for purchase by persons who have filed applications in accordance with rules and regulations for administration of the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.*

ARTICLE 17. RIGHT OF FIRST REFUSAL

As required by the provisions of K.S.A. 82a-1305(a), upon expiration of this contract, the Director shall give the Purchaser the first right of refusal to purchase any offering of the water subject to this contract before offering the same to any other applicant under the provisions of K.S.A. 82a-1310a, *et seq.*

ARTICLE 19. WATER CONSERVATION PLAN

The Purchaser shall adopt and implement a water conservation plan, prepared in accordance with the guidelines developed and maintained by the Kansas Water Office.

ARTICLE 21. MISCELLANEOUS PROVISIONS

a. Severability. In the event any provisions of this contract, or any part of any provision of this contract, are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms that can be given effect without the invalid provision or portion of such provision, and to that end the terms of this contract are intended to be severable.

b. Choice of Law, Jurisdiction, and Venue. Disputes arising out of this contract shall be determined under the laws of the State of Kansas, in the district courts of that state, sitting in Shawnee County, Kansas.

c. Kansas Contract Provisions Attachment. The provisions of Form DA-146a, which is attached, are hereby incorporated in this contract and made a part thereof by reference.

d. Headings. Headings used in this contract are informational and not to be considered persuasive or determinative of any clause or matter in dispute.

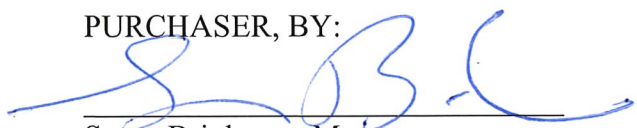
e. Merger. This contract contains the full understanding of the Parties with respect to the matters hereto and supersedes all prior agreements and understandings, whether written or oral, pertaining thereto, and may not be amended or modified except by a writing signed by both Parties.

IN WITNESS WHEREOF, the Parties affirm and acknowledge the terms and conditions agreed to above, and further affirm that they have the authority to bind the Parties by their signatures and have executed this contract as of the day and year first above written.

THE STATE OF KANSAS, BY:

Connie Owen

PURCHASER, BY:



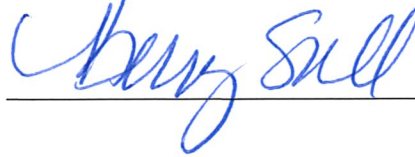
Susan Brinkman, Mayor

Director, Kansas Water Office

City of Emporia, Lyon County, Kansas

WITH THE EXPRESS APPROVAL OF
THE KANSAS WATER AUTHORITY,
BY:

ATTEST:

A handwritten signature in blue ink, appearing to read "Cheryl Sull", is written over a horizontal line.

Dawn Buehler
Chair, Kansas Water Authority



CONTRACTUAL PROVISIONS ATTACHMENT A

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of

ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

FINDINGS
REQUEST BY CITY OF COFFEYVILLE
TO PURCHASE WATER
FROM ELK CITY LAKE FOR WATER SUPPLY PURPOSES
October 9, 2023

The Director of the Kansas Water Office submits findings to the Kansas Water Authority for review and to decide whether to approve the negotiated Water Purchase Contract No. 23-06 with the City of Coffeyville for water supply from Elk City Lake. The Kansas Water Office received a written application on December 28, 2022 and the KWA authorized the Director to begin negotiations on January 25, 2023. Coffeyville currently holds Water Purchase Contract No. 81-5 for water supply from Elk City Lake, which will expire on December 16, 2023. Article 17 of their contract provides the purchaser a right of first refusal to enter into a new contract, contingent on the yield availability.

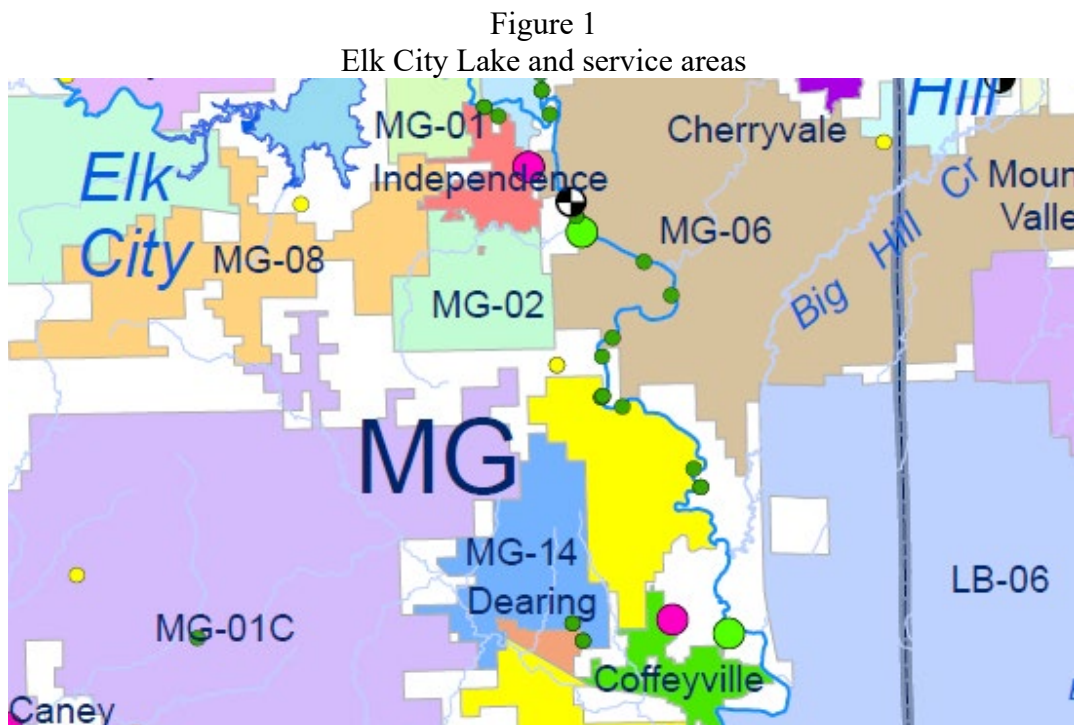
In accordance with K.S.A. 82a-1305, which states, in part:

"Whenever the authority finds that a proposed withdrawal and use of water, other than surplus waters, is in the interest of the people of the state of Kansas and will advance the purposes set forth in article 9 of chapter 82a of Kansas Statutes Annotated, and amendments thereto, it shall authorize the director to enter into negotiations for the purpose of entering into written contracts with any person for withdrawal and use within or without the state of waters from conservation storage water supply capacity committed to the state."

As noted in the citation above, before negotiations for a contract can begin, the Kansas Water Authority (KWA) must find:

1. That the proposed sale is in the public interest, and
2. That it will advance the purposes of the State Water Planning Act and the State Water Plan.

If the Kansas Water Authority finds that the request meets these two criteria, it should authorize the Director to begin negotiations with the applicant. Figure 1 is a map of Elk City Lake and municipal water service areas.



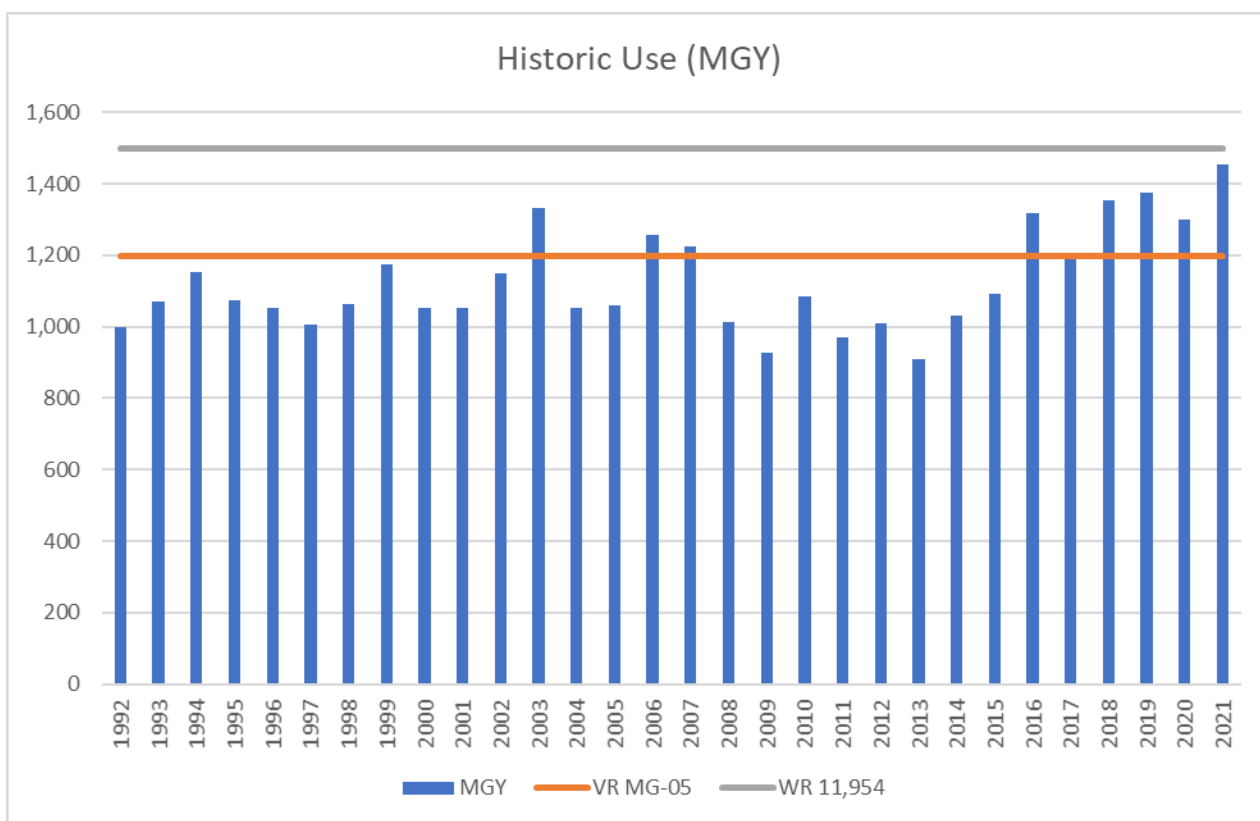
The Kansas Water Authority shall consider the following items in determining whether the proposed contract is in the best interest of the people of the State of Kansas and whether benefits to the State for approving the contract outweigh the benefits to the state for not approving the contract.

1. The present and future water supply needs of the applicant;

The applicant's source of water is the Verdigris River and water rights held by the city have an authorized quantity that has been of sufficient quantity to meet their water supply demand. Water Purchase Contract No. 81-5 authorizes the city to withdraw an additional 300 MGY from Elk City Lake, however, the contract has only been used to supplement the city's demand when natural flows in the Verdigris River are insufficient. The applicant is requesting to negotiate a contract for 500 MGY from Elk City Lake.

Water Right	MGY
MG-005	1,197
11,954	303
Total	1,500

The chart below shows 30 years of annual water use from the Verdigris River. Water use was somewhat stable but has been trending upward in recent years. During negotiations, KWO will work with the applicant to develop future demand projections for use in the model.



In addition to use within the city, Coffeyville also sells water to rural water districts in the area, as follows: Dearing, Labette RWD 6, Montgomery RWD 1C, 2C, & 14, So. Coffeyville OK, Nowata RWD 7 OK

The intent of the applicant is to decrease their drought vulnerability. A water purchase contract to provide access to water supply storage in Elk City Lake and supplement their water supply needs when natural flows are insufficient in the Verdigris River.

Negotiations: The city is in the process developing long term water demand projections and were not able to provide any estimates during negotiations. The city is exploring the potential to provide water to the City of Caney, KS and has included Caney as an authorized place of use, should this interconnection come to fruition. KWO modeling scenarios included the city's recent demands and the addition of Caney. The modeling results show that the 500 MGY contract is justified and reasonable for current demand. The city has chosen a 10 year contract term.

2. Any current beneficial uses being made of the non-contracted water proposed to be diverted;

The City of Independence and Coffeyville Resources also have existing contracts for water supply, see table below. The Kansas Water Office's preliminary modeling indicates that the Water Marketing storage is more than sufficient to provide adequate yield for current and proposed contract obligations through 2062 but KWO will scrutinize all system demands during negotiations.

Purchasers, Contract Numbers, and Contract Quantities
Elk City Lake

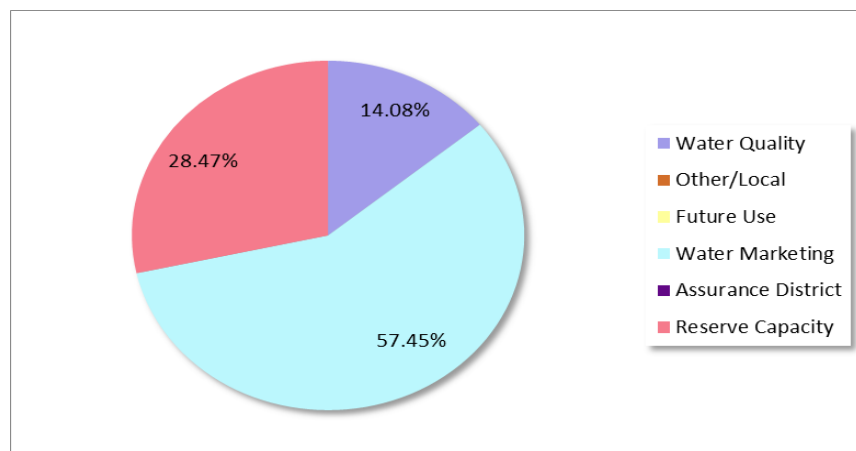
Table 2: Contracted Quantities

Contract Number	Customer Name	Contract End Date	2023 Maximum Gallons	2023 Maximum AF	Annual Contract Maximum Gallons	Annual Contract Maximum AF
81-5	City of Coffeyville	12/16/2023	300,000,000	921	300,000,000	921
99-5	Coffeyville Resources	12/3/2039	608,000,000	1,866	608,000,000	1,866
12-7	Coffeyville Resources	8/9/2051	400,000,000	1,228	400,000,000	1,228
22-01	City of Independence	8/17/2062	60,000,000	184	60,000,000	184
			1,368,000,000	4,199	1,368,000,000	4,199

Negotiations: The only substantive change during the time of negotiations is that the City of Independence has applied for an additional 200 MGY of the non-contracted water.

3. Any reasonable foreseeable beneficial use of the water;

As mentioned in the previous section, Water Marketing storage is sufficient to meet contract obligations for water supply, assuming current (and proposed) contract quantities carry forward.



The reasonable and foreseeable use of the available yield from Elk City Lake is most likely to meet the supplemental water supply needs of the City of Coffeyville, City of Independence, and Coffeyville Resources. The City of Independence, recently acquiring WPC 22-01, may also be interested in increasing their contracted water supply from Elk City – as there appears to be additional industrial growth in the near future. KWO will incorporate the best available data on all future demands in the region during negotiations.

Negotiations: As mentioned in the previous section, Independence has applied for an additional 200 MGY and is largely based on industrial growth in the area.

4. The economic, environmental, public health and welfare, and other benefits or adverse impacts;

A dependable long-term water supply is essential for the for the local economy, public health, and welfare. No adverse impacts have been identified.

5. Alternative sources of water available to the applicant;

No reasonably viable alternative sources have been identified to supplement the city’s needs.

6. The preliminary plan of design construction and operation of any works or facilities used in conjunction with transporting the water to its point of use;

All diversion works and facilities are existing and long-standing. The natural water courses, the Elk River and Verdigris River will deliver water released from storage to the city’s water supply intake on the Verdigris River.

7. Whether the proposed purchase is consistent with the state water plan approved by the Legislature;

Nothing in this proposed use of water has been identified that would be inconsistent with the State Water Plan and the State Water Plan Storage Act. The Kansas Water Plan indicates that development of regional solutions and use of existing sources is preferred in water supply development. The city is serving as a valuable regional supplier.

8. The date of the application to contract for withdrawal and use of water;

Application No. 266 was received by the Kansas Water Office from the City of Coffeyville on December 28, 2022.

9. Minimum streamflow requirements; and

The KWO and the Tulsa District of the U.S. Army Corps of Engineers cooperatively operate Elk City Lake and provides a minimum release to the Elk River (see table below). A portion of the conservation storage (14.08%) in Elk City Reservoir is dedicated to serving water quality needs below the reservoir and is used for the minimum release.

Elk City Reservoir Minimum Release Schedule (cfs)

Reservoir	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Elk City	5	5	5	5	5	5	5	5	5	5	5	5

While there are no minimum desirable streamflows (MDS) in the Verdigris Basin, target flows (see table below) are specified by the MOA at the Altoona, Fredonia, and Independence gages.

Verdigris Basin Target Flows (cfs)

Gage Location	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Altoona	3	3	3	3	5	5	5	5	5	3	3	3
Fredonia	5	5	5	5	5	5	5	5	5	5	5	5
Independence	35	35	35	35	35	35	35	35	35	35	35	35

The use of both water quality storage and water supply storage is necessary to maintain target flows throughout the system, particularly from Elk City Lake.

10. Whether the applicant has adopted and implemented a water conservation plan;

The City of Coffeyville has an approved water conservation plan. The plan was consistent with the 1990 guidelines of the Kansas Water Office and was approved on January 19, 2007. KWO is assisting the applicant to ensure that their WCP is consistent with the most recent guidelines.

Based on these findings, the Kansas Water Office recommends that the Kansas Water Authority approve Water Purchase Contract No. 23-06 with the City of Coffeyville for the purchase of water from Elk City Lake for municipal water supply purposes.

KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 23-06

This contract is executed and entered into this _____ day of _____, 2023, by and between the State of Kansas, as represented by the Kansas Water Office (hereinafter referred to as the “State”), an authorized agency to enter such contracts for the State of Kansas and the City of Coffeyville, Montgomery County, Kansas, (hereinafter referred to as the “Purchaser”).

RECITALS

WHEREAS, the Purchaser desires to purchase a supply of Raw Water for a municipal and industrial use to supplement its existing Water Rights during times of short supply; and

WHEREAS, the State has signed Agreements (Contract Nos. DACW56-76-C-0132 and DACW56-96-WS-0005) with the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), for water supply storage space in the Reservoir; and

WHEREAS, the State has filed appropriate water reservation rights with priority dates of March 27, 1974 and December 15, 1994, authorizing it to divert and store water in the conservation storage water supply capacity in the Reservoir; and

WHEREAS, the Director is authorized by K.S.A. 74-2615, and by K.S.A. 82a-1305, to negotiate contracts for the sale of water from the conservation storage water supply capacity in the Reservoir committed to the State; and

WHEREAS, the Purchaser filed an appropriate application on December 28, 2022, with the State to negotiate the purchase of Raw Water from the Reservoir, in compliance with the State Water Plan Storage Act, K.S.A. 82a-1301, *et seq.*; and

WHEREAS, on December 28, 2022, the Purchaser provided a written notice requesting to enter into negotiations for a contract with the Director; and

WHEREAS, on January 25, 2023, the Authority granted permission to the Director to enter into negotiations with the Purchaser; and

WHEREAS, some of the Purchaser's immediate and projected water supply needs can be provided from the Reservoir; and

WHEREAS, the withdrawal of up to 500 million gallons of Raw Water annually from the Reservoir for use by the Purchaser is in the interest of the people of the State of Kansas and will advance the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

WHEREAS, the quantity of Raw Water from the Reservoir being negotiated does not exceed the yield capability from the conservation storage water supply capacity in the Reservoir that is available to the State for use under the water marketing program through a drought having a two percent chance of occurrence in any one year.

NOW, THEREFORE, in consideration of the foregoing, the Parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

As used in this contract, unless the context otherwise requires:

- a. "Authority" means the Kansas Water Authority, per K.S.A. 74-2622, or its successor.
- b. "Contract Quantity" means the quantity of Raw Water from the State's conservation storage water supply capacity in the Reservoir as set out in Article 6, paragraph (a).
- c. "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.
- d. "Minimum Charge" means the annual payment set out in Article 7 paragraph (b).
- e. "Party" or "Parties" means the State of Kansas, as represented by the Kansas Water Office, and the Purchaser.

f. “Point of withdrawal from the reservoir” means the point at which water is taken from the Reservoir by pump, siphon, canal, or any other device or released through the dam by gates, conduits, or any other means.

g. "Point of redirection" means the point where released water is taken for beneficial use from the watercourse by which it is transported.

h. “Raw Water” refers to untreated water from the Reservoir.

i. “Reservoir” means Elk City Lake in Montgomery County, Kansas.

j. “Water Right” and “Water Rights” means vested and appropriation water rights established pursuant to the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*

ARTICLE 2. TERM OF THE CONTRACT

The term of this contract shall be for a period of ten (10) years beginning on December 17, 2023. The Purchaser may begin withdrawing Raw Water under this contract on December 17, 2023.

ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

This contract, and all amendments and renewals, are subject to disapproval and revocation by the Kansas Legislature as provided in K.S.A. 82a-1307.

ARTICLE 4. UNITED STATES APPROVAL

a. Except when the Point of withdrawal from the reservoir is a release through the dam by gates or conduits owned and operated by the United States, the Purchaser shall secure the right from the United States to construct, modify, alter, or maintain installations and facilities at the Point of Withdrawal from the Reservoir as the Purchaser shall deem necessary to effectuate the terms of this contract when any such installations and facilities are on federal lands.

b. The Purchaser shall bear any and all costs of construction, modification, operation, and maintenance of Purchaser-owned, leased, or constructed installations and facilities.

c. The Purchaser shall provide the Director, upon written request, with proof of any easement granted by the United States for rights-of-way across, in, and upon federal land required for intake, transmission of Raw Water, and necessary appurtenances by and for the benefit of the Purchaser.

ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES AND REGULATIONS

a. This contract is subject to all applicable federal and state statutes and regulations including specifically, but not by way of limitation, the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*; the State Water Resource Planning Act, K.S.A. 82a-901, *et seq.*; the State Water Plan, K.S.A. 82a-927, *et seq.*; and the State Water Plan Storage Act, K.S.A. 82a-1301, *et seq.* All references to statutes, rules, and regulations in this contract include any applicable amendments enacted after the execution of this contract.

b. The Parties agree to comply with all applicable statutes and regulations.

ARTICLE 6. QUANTITY OF WATER

a. Contract Quantity. During the term of this contract, defined in Article 2, and subject its conditions, the Purchaser is entitled to withdraw not more than 500 million gallons of Raw Water from the State's conservation storage water supply in the Reservoir during any one (1) calendar year. If the Purchaser does not withdraw the entire Contract Quantity in any calendar year, the unused amount of water shall not add to the Purchaser's entitlement during any subsequent year.

b. Review and Adjustment. The Director shall review the quantity and purposes for which water is used on the sixth anniversary of the execution of this contract and on each annual anniversary for the remaining portion of the term of this contract. The Director may adjust the total amount of water contracted for on the sixth anniversary of the execution of the contract and on each annual anniversary thereafter, if the Purchaser does not begin full payment for the water under contract and another water user is ready, willing, and able to contract for such water.

c. Water Rights. Any Water Rights acquired by the Purchaser after, and having priority dates later than the date of execution of this contract, and any water diverted pursuant to such rights, shall not be

used by the Purchaser to offset or reduce the Contract Quantity or the Purchaser's payment obligations, as provided in Article 9.

d. The Purchaser may redivert Raw Water withdrawn from the Reservoir in accordance with the terms of this contract without obtaining a permit or Water Right under the Kansas Water Appropriation Act. Rights of the Purchaser under this contract shall be entitled to the same protection as any other vested property interest including vested water rights, water appropriation rights, and approved applications for permit to appropriate water.

ARTICLE 7. PRICE OF WATER

a. Price. The Purchaser agrees to pay the State, at the rate set in accordance with K.S.A. 82a-1306, for each one thousand (1,000) gallons of Raw Water withdrawn or Raw Water which must be paid for under terms of this contract; provided, however, that the Purchaser is obligated and agrees to pay the Minimum Charge in accordance with this Article regardless of the quantity of Raw Water actually withdrawn, except as provided in Article 13. The rate for Raw Water which must be paid for under terms of this contract shall be \$0.473 for each one thousand (1,000) gallons during calendar year 2023.

b. Minimum Charge. The Purchaser agrees to pay to the State a Minimum Charge whether or not water is withdrawn during any calendar year during the term of this contract. The Minimum Charge for each calendar year shall be determined as provided in K.S.A. 82a-1306. The Minimum Charge for calendar year 2023 and each succeeding calendar year shall be the sum of the following two components:

(1) fifty (50) percent of the Contract Quantity multiplied by the rate established in accordance with paragraph (a) of this Article or as adjusted in accordance with paragraph (c) of this Article; and

(2) a charge on the remaining fifty (50) percent of the Contracted Quantity computed by multiplying the net amount of moneys advanced from state funds for costs incurred and associated with that portion of the conservation storage water supply under the State Water Marketing Program by the average

rate of interest earned during the past calendar year by the Pooled Money Investment Board on thirty (30) day repurchase agreements.

c. Review and Adjustment of Rates. The Director shall review the rate stated in this Article by July 15 of each year during the term of this contract and, as provided in K.S.A. 82a-1306, may adjust the rate effective January 1 of the following year. Such adjusted rate shall be charged for all Raw Water withdrawn by the Purchaser or all Raw Water which must be paid for under terms of this contract. The Director shall notify the Purchaser in writing by July 31 of each year of the adjusted rate which will become effective on January 1 of the ensuing year. Failure to furnish such notification by July 31 shall not relieve the Purchaser of the obligation to pay such adjusted rate.

ARTICLE 8. PURPOSE AND PLACE OF USE

a. Purpose. Water purchased under this contract shall be used for purposes which are stated in the recitals.

b. Place of Use. The place of use for water purchased under this contract shall be within and in the immediate vicinity, as defined at K.A.R. 5-1-1(mm), of the City of Coffeyville, Kansas and immediate vicinity; the City of Dearing, Kansas and immediate vicinity; the City of Caney, Kansas and immediate vicinity; within the boundaries of Consolidated Rural Water District No. 1, Montgomery County, Kansas and immediate vicinity; within the boundaries of Consolidated Rural Water District No. 2, Montgomery County, Kansas and immediate vicinity; within the boundaries of Rural Water District No. 14, Montgomery County, Kansas and immediate vicinity; within the boundaries of Rural Water District No. 6, Labette County, Kansas and immediate vicinity; the City of South Coffeyville, Oklahoma, and immediate vicinity; and within the boundaries of Rural Water District No. 7, Nowata County, Oklahoma and immediate vicinity.

c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any intention to sell any Raw Water under this contract to any person or entity located outside the place of use defined in paragraph (b) of this Article. Whenever the Purchaser shall propose to enter into a contract to

sell Raw Water purchased under this contract to any such person or entity outside the defined place of use, the Purchaser shall, before execution thereof, submit a copy of such contract to the Director for review by the Authority. The Purchaser agrees not to execute and enter into any such contracts unless approved by the Authority.

ARTICLE 9. BILLING AND PAYMENT SCHEDULE

a. Payments. Remittance of the Minimum Charge, as provided in Article 7 (b) and this Article shall be paid to the State in either one annual payment on or before the due date established in Article 9, or in equal monthly installments during the calendar year in which the Minimum Charge is due, whether or not water is withdrawn during the calendar year.

b. Determination of Charges. Charges for Raw Water for which payment is required shall be determined by the State in accordance with K.S.A. 82a-1308a. The Purchaser acknowledges and agrees that rate computations are subject to change, based on subsequent amendments to State statutes that may affect the terms of this contract.

c. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all Raw Water withdrawn under terms of this contract up to the maximum quantity obligated by this contract (500 million gallons per year). In no event shall the Purchaser be permitted to withdraw more than the maximum of 500 million gallons in any one calendar year.

d. Initial Minimum Charge. The initial Minimum Charge shall become due within 30 days after the execution of this contract and will be calculated on the remainder of the calendar year. Payment of the initial Minimum Charge shall entitle the Purchaser to receive up to one-half (1/2) of the prorated maximum annual quantity of Raw Water in 2023 as set forth in Article 6, without additional charge.

e. Subsequent Minimum Charges. On each subsequent January 1st, the Minimum Charge shall be in accordance with paragraph (a) of this Article. Payment of the Minimum Charge shall entitle the

Purchaser to receive during the calendar year, without additional charge, one-half (1/2) of the maximum annual quantity obligated under terms of this contract.

f. Water in Excess of Minimum. Within thirty (30) days after the end of each calendar year during the term of this contract, the State shall bill the Purchaser for any Raw Water withdrawn during the calendar year in excess of the amount of Raw Water used to compute the Minimum Charge. The Purchaser shall be given credit for the proportionate share of the payment which was made as an interest charge on the net amount of monies advanced from the State General Fund for the costs incurred and associated with providing fifty (50) percent of the total annual amount of water contracted for purchase during that calendar year. Remittance for payments for Raw Water withdrawn in excess of the quantity used to calculate the Minimum Charge shall be paid to the State in full within thirty (30) days after receipt of a bill from the State.

g. Overpayment or Underpayment. If for reason of error in computation, measuring device malfunction, or other causes, there is an overpayment or underpayment to the State by the Purchaser of the charges required by this contract, such overpayment shall be reimbursed or underpayment shall be billed, as the case may be. The State shall notify the Purchaser thereof in writing. However, all charges made in any year shall be conclusively presumed to be correct six (6) months after the end of such year.

h. Adjustment for Apportionment. In the event the Purchaser is unable in any year to withdraw the quantity used to calculate the Minimum Charge due to an apportionment under paragraph (c) of Article 13, the amount of the Minimum Charge actually paid in excess of the charge for the amount of Raw Water actually withdrawn by Purchaser shall be credited to reduce the Minimum Charge obligation of the Purchaser for the subsequent calendar year.

i. Overdue Payments. If the Purchaser fails to make any of the payments when due, then the overdue payments shall bear interest, compounded annually at the rate prescribed in K.S.A. 82a-1317. This shall not be construed as giving the Purchaser the option of either making payments when due or paying

interest, nor shall it be construed as waiving any of the rights of the State that might result from such default by the Purchaser.

j. Payments. Any payments due and payable to the Kansas Water Office under the terms of this contract shall be transferred electronically under such arrangements as the Purchaser and the State determine or shall be sent to:

Kansas Water Office
Attention: Accounts Payable/Water Marketing
900 SW Jackson Street, Suite 404
Topeka, KS 66612

ARTICLE 10. POINT OF WITHDRAWAL AND REDIVERSION

- a) The Point of withdrawal from the reservoir shall be at the release gates of Elk City Lake.
- b) The Purchaser's Point of rediversion shall be the point of diversion in the Verdigris River authorized by the Purchaser's Water Rights located in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26, Township 34 South, Range 16 East, 3,700 feet North and 4,200 feet West of the Southeast Corner of said Section, in Montgomery County, Kansas.

ARTICLE 11. METERING OF WATER

- a) The Purchaser shall, at its own expense, furnish, install, operate, and maintain a commercial measuring device at the Point of rediversion that complies with the Kansas Water Appropriation Act and the rules and regulations adopted by the Kansas Department of Agriculture, Division of Water Resources ("DWR").
- b) The Purchaser shall test and calibrate all measuring devices upon installation and thereafter as necessary or whenever requested by the Director, but not more frequently than once every twelve (12) months. A measuring device that meets the standards set forth in DWR regulations shall be deemed to be accurate. Testing and calibration of measuring devices must comply with DWR regulations.

- c) The previous readings of any measuring device disclosed by a test to be inaccurate shall be corrected for the three (3) months previous to such test or one-half (1/2) the period since the last test, whichever is shorter, in accordance with the percentage of inaccuracy found by such tests.
- d) If any measuring device fails to register for any period, the amount of Raw Water furnished during such period shall be determined by the Director, in consultation with the Purchaser.
- e) During the withdrawal of Raw Water the Purchaser shall, upon the Director's request, read the measuring device and send such readings to the Director on a weekly basis.
- f) The Purchaser shall provide to the State monthly reports of all water diverted from any sources under authority of Water Rights acquired and subject to Article 6 paragraph (c).
- g) Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.
- h) The State may measure withdrawals by other suitable means to verify the accuracy of the Purchaser's measuring device or to measure the amount of rediverted Raw Water when the Purchaser's measuring device fails to register.

ARTICLE 12. WATER WITHDRAWAL

The Purchaser shall notify the Director prior to any withdrawal of Raw Water. At that time, the Purchaser shall provide such notification, in writing, of the estimated amounts, dates, and rates of withdrawal. In no event, during the term of this contract, shall the Purchaser withdraw Raw Water in excess of the maximum daily rate of 7 million gallons.

ARTICLE 13. CONTINUITY OF WATER SERVICE

- a. The Director shall make all reasonable efforts to perfect and protect the water reservation rights necessary for the satisfaction of the State's water supply commitment. In the event it becomes necessary for any reason to apportion the water among all of the persons having contracts to purchase water from the conservation storage water supply capacity in the Reservoir, or to temporarily discontinue the

furnishing of water to such persons, the Director will give each person oral notice, followed by a written notice, of such action as far in advance as is reasonably practicable.

b. The Director, Kansas Water Office, and the Authority shall not be responsible for, or have any legal liability for any insufficiency of water, or for the apportionment thereof, and the duty of the Director, Kansas Water Office, and the Authority to furnish water is specifically subject to the following conditions:

(1) If the total amount of water contracted for withdrawal by all purchasers from the Reservoir in any year is greater than the supply available from the conservation storage water supply in the Reservoir, the Director, with the approval of the Authority, will apportion the available water among all the purchasers having contracts therefor, as may best provide for the health, safety, and general welfare of the people of Kansas as determined by the Authority.

(2) The Director shall evaluate the effect of sediment deposits in the Reservoir and, if such evaluation indicates that the sediment deposits have reduced the yield from the State's conservation storage water supply space, the Director will apportion available water among the persons having contracts to purchase water from the conservation storage water supply capacity in the Reservoir in relation to the annual volume of water contracted. If a reduction has been made and future calculations and/or experience proves an increased yield from the Reservoir, the Purchaser's Contract Quantity shall be increased proportionally up to the Contract Quantity.

(3) If the United States temporarily discontinues or reduces water storage available to the State in the Reservoir under the State's agreement with the United States of America for the purpose of inspection, investigation, maintenance, repair, or rehabilitation of the Reservoir or for other reasons deemed necessary by the United States of America, the Director will apportion the available water among the persons having contracts for water from the conservation storage water supply in the Reservoir as determined by the Director.

(4) If, because of an emergency, the Director deems it necessary for the health, safety, and general welfare of the people of Kansas to reduce or terminate the withdrawal of water from the Reservoir, the Director, with the approval of the Authority, will apportion any available water among the persons having contracts to purchase water from the conservation storage water supply in the Reservoir as may best provide for the health, safety, and general welfare of the people of Kansas.

c. In the event the Director finds it necessary to apportion the available water from the conservation storage water supply in the Reservoir among the persons having contracts therefore, and such apportionment results in the Purchaser being unable, during any year, to receive the amount of water that has been purchased by payment of the Minimum Charge, the Purchaser shall pay the State only for the amount of water actually made available to the Purchaser during the year.

ARTICLE 14. LIABILITY

a. The Parties acknowledge that this contract is for Raw Water from the conservation storage water supply in the Reservoir. The State, the Director, the Authority, or any employee, agent, or agency of the State of Kansas, makes no guarantee for, nor assumes any liability for any claim arising out of the control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond the Point of withdrawal from the reservoir except as provided in the Kansas Tort Claims Act, K.S.A. 75-6101, *et seq.*, and the Purchaser shall hold the State harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the control, carriage, handling, use, disposal, or distribution of Raw Water beyond the Point of withdrawal from the reservoir. Nothing in this Article shall be construed to impair any protection of the rights of the Purchaser as set forth in Article 6.

b. In addition, neither the Director nor the Authority shall be liable for any claim by Purchaser arising out of the quality of the Raw Water in the Reservoir or at the Point of redirection. The Purchaser shall hold the State, its agencies, employees, and agents harmless from or on account of any and all damage

to Purchaser of any nature whatsoever arising out of or connected with the quality of the Raw Water in the Reservoir, at the Point of withdrawal from the reservoir or at the Point of redirection.

ARTICLE 15. AMENDMENT

The contract may be amended or nullified by written agreement of the Parties, as provided in K.S.A. 82a-1316.

ARTICLE 16. ASSIGNMENT OF CONTRACT

a. The Purchaser may not assign, sell, convey, or transfer all or any part of this contract, or any interest therein, unless and until the same is approved by the Director and the Authority pursuant to K.S.A. 82a-1316 and K.A.R. 98-5-5.

b. Whenever the assignment, sale, conveyance, or transfer of all or any part of this contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the contract or portion thereof and make the water available for purchase by persons who have filed applications in accordance with rules and regulations for administration of the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.*

ARTICLE 17. RIGHT OF FIRST REFUSAL

As required by the provisions of K.S.A. 82a-1305(a), upon expiration of this contract, the Director shall give the Purchaser the first right of refusal to purchase any offering of the water previously purchased before offering the same to any other applicant under the provisions of K.S.A. 82a-1310a, *et seq.*

ARTICLE 19. WATER CONSERVATION PLAN

The Purchaser shall adopt and implement a water conservation plan, prepared in accordance with the guidelines developed and maintained by the Kansas Water Office.

ARTICLE 21. MISCELLANEOUS PROVISIONS

a. Severability. In the event any provisions of this contract, or any part of any provision of this contract, are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms

that can be given effect without the invalid provision or portion of such provision, and to that end the terms of this contract are intended to be severable.

b. Choice of Law, Jurisdiction, and Venue. Disputes arising out of this contract shall be determined under the laws of the State of Kansas, in the district courts of that state, sitting in Shawnee County, Kansas.

c. Kansas Contract Provisions Attachment. The provisions of Form DA-146a, which is attached, are hereby incorporated in this contract and made a part thereof by reference.

d. Headings. Headings used in this contract are informational and not to be considered persuasive or determinative of any clause or matter in dispute.

e. Merger. This contract contains the full understanding of the Parties with respect to the matters hereto and supersedes all prior agreements and understandings, whether written or oral, pertaining thereto, and may not be amended or modified except by a writing signed by both Parties.

IN WITNESS WHEREOF, the Parties affirm and acknowledge the terms and conditions agreed to above, and further affirm that they have the authority to bind the Parties by their signatures and have executed this contract as of the day and year first above written.

THE STATE OF KANSAS, BY:

PURCHASER, BY:

Connie Owen
Director, Kansas Water Office

Ann Marie Vannoster, Mayor
City of Coffeyville, Montgomery County, Kansas

WITH THE EXPRESS APPROVAL OF
THE KANSAS WATER AUTHORITY,
BY:

ATTEST:

Dawn Buehler
Chair, Kansas Water Authority

Melissa Carter, City Clerk
City of Coffeyville, Montgomery County, Kansas

CONTRACTUAL PROVISIONS ATTACHMENT A

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

FINDINGS
REQUEST BY CITY OF INDEPENDENCE
TO PURCHASE WATER
FROM ELK CITY LAKE FOR WATER SUPPLY PURPOSES
October 09, 2023

The Director of the Kansas Water Office submits findings to the Kansas Water Authority for review and to decide whether to approve the negotiated Water Purchase Contract No. 23-08 with the City of Independence for water supply from Elk City Lake. The Kansas Water Office received a written application on June 23, 2023 and the KWA authorized the Director to begin negotiations on August 23, 2023.

In accordance with K.S.A. 82a-1305, which states, in part:

"Whenever the authority finds that a proposed withdrawal and use of water, other than surplus waters, is in the interest of the people of the state of Kansas and will advance the purposes set forth in article 9 of chapter 82a of Kansas Statutes Annotated, and amendments thereto, it shall authorize the director to enter into negotiations for the purpose of entering into written contracts with any person for withdrawal and use within or without the state of waters from conservation storage water supply capacity committed to the state."

As noted in the citation above, before negotiations for a contract can begin, the Kansas Water Authority (KWA) must find:

1. That the proposed sale is in the public interest, and
2. That it will advance the purposes of the State Water Planning Act and the State Water Plan.

If the Kansas Water Authority finds that the request meets these two criteria, it should authorize the Director to begin negotiations with the applicant. Figure 1 is a map of Elk City Lake and municipal water service areas.

Figure 1
Elk City Lake and service areas



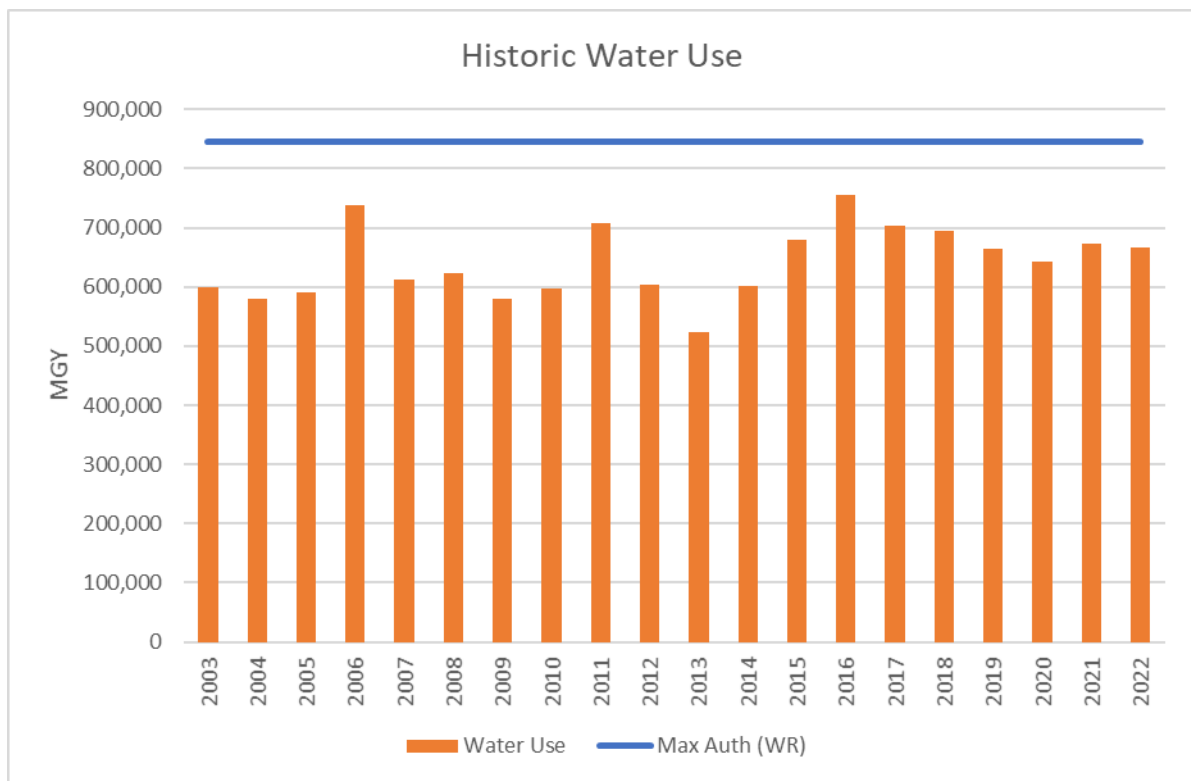
The Kansas Water Authority shall consider the following items in determining whether the proposed contract is in the best interest of the people of the State of Kansas and whether benefits to the State for approving the contract outweigh the benefits to the state for not approving the contract.

1. The present and future water supply needs of the applicant;

The applicant's sole source of water is the Verdigris River. In addition to water rights, the city entered into a water purchase contract for 60 mgy and the subject application is proposing another 200 mgy.

Water Right	MGY	WPC	MGY
MG-004	550	22-1	60
11,401	294.5142	App. 268	200
37,162	789.217		
Total	844.5142		260

The chart below shows 20 years of annual water use from the Verdigris River. The water use is relatively stable, however, the city just signed a water supply contract with a new industry with a demand of 0.6 MGD or 219 MGY. The additional water demand will most likely fully use the authorized quantity under their water rights and they are in the process of submitting application to DWR for additional water rights.



In addition to use within the city and they new industry, Independence also sells water to rural water districts in the area, as follows: Montgomery County, RWD's 1, 1c, 2, 4, 6 and 8.

The intent of the applicant is improve their drought resilience. The water purchase contract provides access to water supply storage in Elk City reservoir to supplement their water supply needs when natural flows are insufficient in the Verdigris River. KWO modeling shows that 260 MGY of supplemental releases from Elk City is adequate for all drought years since 1956. The modeling performed used the city's current max authorized quantity under their existing water rights.

At this point, the city commission was only comfortable increasing the contracted quantity by 200 MGY but may need to apply for more in the future, as the new industrial demand is expected to expand in phases. If all new industrial demands come to fruition the city's total annual water demand is preliminarily estimated to reach 1,606 MGY.

Negotiations: The city has requested a 5 year term and KWO finds this to be acceptable, as modeling demonstrates that their current demands justify the requested quantity. The city's reasoning for the shorter term is the uncertainty of the new industry and their success.

2. Any current beneficial uses being made of the non-contracted water proposed to be diverted;

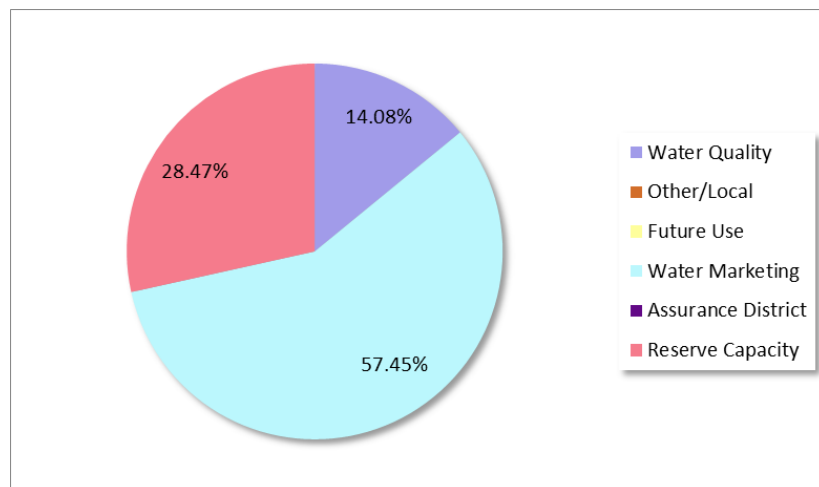
The City of Coffeyville, Coffeyville Resources, and the City of Independence have existing contracts for water supply, see table below. Contract negotiations are on-going with the City of Coffeyville for a contract quantity of 500 MGY, an increase of 200 MGY. The Kansas Water Office's modeling indicates that the Water Marketing storage is sufficient to provide adequate yield for current and proposed contract quantities.

Purchasers, Contract Numbers, and Contract Quantities
Elk City Lake

Contract Number	Customer Name	Contract End Date	2023 Maximum Gallons	2023 Maximum AF	Annual Contract Maximum Gallons	Annual Contract Maximum AF
81-5	City of Coffeyville	12/16/2023	300,000,000	921	300,000,000	921
99-5	Coffeyville Resources	12/3/2039	608,000,000	1,866	608,000,000	1,866
12-7	Coffeyville Resources	8/9/2051	400,000,000	1,228	400,000,000	1,228
22-1	City of Independence	8/17/2062	60,000,000	184	60,000,000	184
			1,308,000,000	4,015	1,308,000,000	4,015

3. Any reasonable foreseeable beneficial use of the water;

Approximately 14% of conservation storage is intended to support minimum releases and downstream flow to the border with Oklahoma. Approximately 86% of conservation storage is for water supply and intended to support municipal and industrial demands. Reserve Capacity, in the pie chart below, is water supply storage that has not yet been dedicated for use in the Water Marketing Program but will be converted as the contractual obligations increase.



The reasonable and foreseeable use of the available yield from Elk City Lake is most likely to meet the supplemental water supply needs of the City of Coffeyville, City of Independence, and Coffeyville Resources.

4. The economic, environmental, public health and welfare, and other benefits or adverse impacts;

A dependable long-term water supply is essential for the for the local economy, public health, and welfare. No adverse impacts have been identified.

5. Alternative sources of water available to the applicant;

No reasonably viable alternative sources have been identified to supplement the city's needs.

6. The preliminary plan of design construction and operation of any works or facilities used in conjunction with transporting the water to its point of use;

All diversion works and facilities are existing and long-standing. The natural water courses, the Elk River and Verdigris River will deliver water released from storage to the city's water supply intake on the Verdigris River.

7. Whether the proposed purchase is consistent with the state water plan approved by the Legislature;

Nothing in this proposed use of water has been identified that would be inconsistent with the State Water Plan and the State Water Plan Storage Act. The Kansas Water Plan indicates that development of regional solutions and use of existing sources is preferred in water supply development. The city is serving as a valuable regional supplier and this supplemental contract is a critical step toward reducing institutional drought vulnerability in the region.

8. The date of the application to contract for withdrawal and use of water;

Application No. 268 was received by the Kansas Water Office from the City of Independence on June 23, 2023.

9. Minimum streamflow requirements; and

The KWO and the Tulsa District of the U.S. Army Corps of Engineers cooperatively operate Elk City Lake and provides a minimum release to the Elk River (see table below). A portion of the conservation storage (14.08%) in Elk City Reservoir is dedicated to serving water quality/in-stream needs below the reservoir and is used for the minimum release.

Elk City Reservoir Minimum Release Schedule (cfs)

Reservoir	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Elk City	5	5	5	5	5	5	5	5	5	5	5	5

While there are no minimum desirable streamflows (MDS) in the Verdigris Basin, target flows (see table below) are specified by the MOA at the Altoona, Fredonia, and Independence gages.

Verdigris Basin Target Flows (cfs)

Gage Location	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Altoona	3	3	3	3	5	5	5	5	5	3	3	3
Fredonia	5	5	5	5	5	5	5	5	5	5	5	5
Independence	35	35	35	35	35	35	35	35	35	35	35	35

The use of both water quality storage and water supply storage is necessary to maintain target flows throughout the system, particularly from Elk City Lake.

10. Whether the applicant has adopted and implemented a water conservation plan;

The City of Independence has an approved water conservation plan. The plan is consistent with the guidelines of the Kansas Water Office and was approved on March 18, 2009.

Based on these findings, the Kansas Water Office recommends that the Kansas Water Authority approve Water Purchase Contract No. 23-08 with the City of Independence for the purchase of water from Elk City Lake for municipal water supply purposes.

KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 23-08

This contract is executed and entered into this _____ day of _____, 2023, by and between the State of Kansas, as represented by the Kansas Water Office (hereinafter referred to as the “State”), an authorized agency to enter such contracts for the State of Kansas and the City of Independence, Montgomery County, Kansas, (hereinafter referred to as the “Purchaser”).

RECITALS

WHEREAS, the Purchaser desires to purchase a supply of Raw Water for a municipal use to supplement its existing Water Rights during times of short supply; and

WHEREAS, the State has signed Agreements (Contract Nos. DACW56-76-C-0132 and DACW56-96-WS-0005) with the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), for water supply storage space in the Reservoir; and

WHEREAS, the State has filed appropriate water reservation rights with priority dates of March 27, 1974 and December 15, 1994, authorizing it to divert and store water in the conservation storage water supply capacity in the Reservoir; and

WHEREAS, the Director is authorized by K.S.A. 74-2615, and by K.S.A. 82a-1305, to negotiate contracts for the sale of water from the conservation storage water supply capacity in the Reservoir committed to the State; and

WHEREAS, the Purchaser filed an appropriate application on June 26, 2023, with the State to negotiate the purchase of Raw Water from the Reservoir, in compliance with the State Water Plan Storage Act, K.S.A. 82a-1301, *et seq.*; and

WHEREAS, on June 26, 2023, the Purchaser provided a written notice requesting to enter into negotiations for a contract with the Director; and

WHEREAS, on August 23, 2023, the Authority granted permission to the Director to enter into negotiations with the Purchaser; and

WHEREAS, some of the Purchaser's immediate and projected water supply needs can be provided from the Reservoir; and

WHEREAS, the withdrawal of up to 200 million gallons of Raw Water annually from the Reservoir for use by the Purchaser is in the interest of the people of the State of Kansas and will advance the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

WHEREAS, the quantity of Raw Water from the Reservoir being negotiated does not exceed the yield capability from the conservation storage water supply capacity in the Reservoir that is available to the State for use under the water marketing program through a drought having a two percent chance of occurrence in any one year.

NOW, THEREFORE, in consideration of the foregoing, the Parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

As used in this contract, unless the context otherwise requires:

- a. "Authority" means the Kansas Water Authority, per K.S.A. 74-2622, or its successor.
- b. "Contract Quantity" means the quantity of Raw Water from the State's conservation storage water supply capacity in the Reservoir as set out in Article 6, paragraph (a).
- c. "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.
- d. "Minimum Charge" means the annual payment set out in Article 7 paragraph (b).
- e. "Party" or "Parties" means the State of Kansas, as represented by the Kansas Water Office, and the Purchaser.

f. “Point of withdrawal from the reservoir” means the point at which water is taken from the Reservoir by pump, siphon, canal, or any other device or released through the dam by gates, conduits, or any other means.

g. "Point of rediversion" means the point where released water is taken for beneficial use from the watercourse by which it is transported.

h. “Raw Water” refers to untreated water from the Reservoir.

i. “Reservoir” means Elk City Lake in Montgomery County, Kansas.

j. “Water Right” and “Water Rights” means vested and appropriation water rights established pursuant to the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*

ARTICLE 2. TERM OF THE CONTRACT

The term of this contract shall be for a period of five (5) years beginning on October 18, 2023. The Purchaser may begin withdrawing Raw Water under this contract on October 18, 2023.

ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

This contract, and all amendments and renewals, are subject to disapproval and revocation by the Kansas Legislature as provided in K.S.A. 82a-1307.

ARTICLE 4. UNITED STATES APPROVAL

a. Except when the Point of withdrawal from the reservoir is a release through the dam by gates or conduits owned and operated by the United States, the Purchaser shall secure the right from the United States to construct, modify, alter, or maintain installations and facilities at the Point of Withdrawal from the Reservoir as the Purchaser shall deem necessary to effectuate the terms of this contract when any such installations and facilities are on federal lands.

b. The Purchaser shall bear any and all costs of construction, modification, operation, and maintenance of Purchaser-owned, leased, or constructed installations and facilities.

c. The Purchaser shall provide the Director, upon written request, with proof of any easement granted by the United States for rights-of-way across, in, and upon federal land required for intake, transmission of Raw Water, and necessary appurtenances by and for the benefit of the Purchaser.

ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES AND REGULATIONS

a. This contract is subject to all applicable federal and state statutes and regulations including specifically, but not by way of limitation, the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*; the State Water Resource Planning Act, K.S.A. 82a-901, *et seq.*; the State Water Plan, K.S.A. 82a-927, *et seq.*; and the State Water Plan Storage Act, K.S.A. 82a-1301, *et seq.* All references to statutes, rules, and regulations in this contract include any applicable amendments enacted after the execution of this contract.

b. The Parties agree to comply with all applicable statutes and regulations.

ARTICLE 6. QUANTITY OF WATER

a. Contract Quantity. During the term of this contract, defined in Article 2, and subject its conditions, the Purchaser is entitled to withdraw not more than 200 million gallons of Raw Water from the State's conservation storage water supply in the Reservoir during any one (1) calendar year. If the Purchaser does not withdraw the entire Contract Quantity in any calendar year, the unused amount of water shall not add to the Purchaser's entitlement during any subsequent year.

b. Review and Adjustment. The Director shall review the quantity and purposes for which water is used on the sixth anniversary of the execution of this contract and on each annual anniversary during the remaining portion of the term of this contract. Unless the Purchaser begins payment for the total Contract Quantity, the Director may reduce the Contract Quantity on the sixth anniversary of the execution of the contract and on each annual anniversary thereafter, if (1) another water user is ready, willing, and able to contract for Raw Water from the conservation storage water supply in the Reservoir and (2) there is an insufficient supply in the conservation storage water supply in the Reservoir to supply (a) the Contract Quantity plus (b) the quantity of Raw Water for which another water user is ready willing and able to

purchase. The Contract Quantity cannot be reduced if the Purchaser begins payment for the full Contract Quantity.

c. Water Rights. Any Water Rights acquired by the Purchaser after, and having priority dates later than the date of execution of this contract, and any water diverted pursuant to such rights, shall not be used by the Purchaser to offset or reduce the Contract Quantity or the Purchaser's payment obligations, as provided in Article 9.

d. The Purchaser may redivert Raw Water withdrawn from the Reservoir in accordance with the terms of this contract without obtaining a permit or Water Right under the Kansas Water Appropriation Act. Rights of the Purchaser under this contract shall be entitled to the same protection as any other vested property interest including vested water rights, water appropriation rights, and approved applications for permit to appropriate water.

e. At least 180 days before any proposed reduction of the Contract Quantity, the State must provide the Purchaser with written notice that another water user is ready, willing, and able to contract and pay for Raw Water in the conservation storage water supply in the Reservoir, the Director's intent to enter into a water supply contract with the prospective user, and the Director's intent to reduce the Contract Quantity.

ARTICLE 7. PRICE OF WATER

a. Price. The Purchaser agrees to pay the State, at the rate set in accordance with K.S.A. 82a-1306, for each one thousand (1,000) gallons of Raw Water withdrawn or Raw Water which must be paid for under terms of this contract; provided, however, that the Purchaser is obligated and agrees to pay the Minimum Charge in accordance with this Article regardless of the quantity of Raw Water actually withdrawn, except as provided in Article 13. The rate for Raw Water which must be paid for under terms of this contract shall be \$0.473 for each one thousand (1,000) gallons during calendar year 2023.

b. Minimum Charge. The Purchaser agrees to pay to the State a Minimum Charge whether or not water is withdrawn during any calendar year during the term of this contract. The Minimum Charge for each calendar year shall be determined as provided in K.S.A. 82a-1306. The Minimum Charge for calendar year 2023 and each succeeding calendar year shall be the sum of the following two components:

(1) fifty (50) percent of the Contract Quantity multiplied by the rate established in accordance with paragraph (a) of this Article or as adjusted in accordance with paragraph (c) of this Article; and

(2) a charge on the remaining fifty (50) percent of the Contract Quantity computed by multiplying the net amount of moneys advanced from state funds for costs incurred and associated with that portion of the conservation storage water supply under the State Water Marketing Program by the average rate of interest earned during the past calendar year by the Pooled Money Investment Board on thirty (30) day repurchase agreements.

c. Review and Adjustment of Rates. The Director shall review the rate stated in this Article by July 15 of each year during the term of this contract and, as provided in K.S.A. 82a-1306, may adjust the rate effective January 1 of the following year. Such adjusted rate shall be charged for all Raw Water withdrawn by the Purchaser or all Raw Water which must be paid for under terms of this contract. The Director shall notify the Purchaser in writing by July 31 of each year of the adjusted rate which will become effective on January 1 of the ensuing year. Failure to furnish such notification by July 31 shall not relieve the Purchaser of the obligation to pay such adjusted rate.

ARTICLE 8. PURPOSE AND PLACE OF USE

a. Purpose. Water purchased under this contract shall be used for purposes which are stated in the recitals.

b. Place of Use. The place of use for water purchased under this contract shall be within and in the immediate vicinity, as defined at K.A.R. 5-1-1(mm), of the City of Independence, Kansas and immediate

vicinity, in areas within 3 miles of the city limits of Independence, Kansas and within the boundaries of Rural Water Districts Nos. 1, 1c, 2, 4, 6, & 8 Montgomery County Kansas, and their immediate vicinities.

c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any intention to sell any Raw Water under this contract to any person or entity located outside the place of use defined in paragraph (b) of this Article. Whenever the Purchaser shall propose to enter into a contract to sell Raw Water purchased under this contract to any such person or entity outside the defined place of use, the Purchaser shall, before execution thereof, submit a copy of such contract to the Director for review by the Authority. The Purchaser agrees not to execute and enter into any such contracts unless approved by the Authority.

ARTICLE 9. BILLING AND PAYMENT SCHEDULE

a. Payments. Remittance of the Minimum Charge, as provided in Article 7 (b) and this Article shall be paid to the State in either one annual payment on or before the due date established in Article 9, or in equal monthly installments during the calendar year in which the Minimum Charge is due, whether or not water is withdrawn during the calendar year.

b. Determination of Charges. Charges for Raw Water for which payment is required shall be determined by the State in accordance with K.S.A. 82a-1308a. The Purchaser acknowledges and agrees that rate computations are subject to change, based on subsequent amendments to State statutes that may affect the terms of this contract.

c. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all Raw Water withdrawn under terms of this contract up to the maximum quantity obligated by this contract (200 million gallons per year). In no event shall the Purchaser be permitted to withdraw more than the maximum of 200 million gallons in any one calendar year.

d. Initial Minimum Charge. The initial Minimum Charge shall become due within 30 days after the execution of this contract and will be calculated on the remainder of the calendar year. Remittance

of the initial Minimum Charge shall be in accordance with paragraph (a) of this Article. Payment of the initial Minimum Charge shall entitle the Purchaser to receive up to one-half (1/2) of the prorated maximum annual quantity of Raw Water in 2023 as set forth in Article 6, without additional charge.

e. Subsequent Minimum Charges. On each subsequent January 1st, the Minimum Charge shall be in accordance with paragraph (a) of this Article. Payment of the Minimum Charge shall entitle the Purchaser to receive during the calendar year, without additional charge, one-half (1/2) of the maximum annual quantity obligated under terms of this contract.

f. Water in Excess of Minimum. Within thirty (30) days after the end of each calendar year during the term of this contract, the State shall bill the Purchaser for any Raw Water withdrawn during the calendar year in excess of the amount of Raw Water used to compute the Minimum Charge. The Purchaser shall be given credit for the proportionate share of the payment which was made as an interest charge on the net amount of monies advanced from the State General Fund for the costs incurred and associated with providing fifty (50) percent of the total annual amount of water contracted for purchase during that calendar year. Remittance for payments for Raw Water withdrawn in excess of the quantity used to calculate the Minimum Charge shall be paid to the State in full within thirty (30) days after receipt of a bill from the State.

g. Overpayment or Underpayment. If for reason of error in computation, measuring device malfunction, or other causes, there is an overpayment or underpayment to the State by the Purchaser of the charges required by this contract, such overpayment shall be reimbursed or underpayment shall be billed, as the case may be. The State shall notify the Purchaser thereof in writing. However, all charges made in any year shall be conclusively presumed to be correct six (6) months after the end of such year.

h. Adjustment for Apportionment. In the event the Purchaser is unable in any year to withdraw the quantity used to calculate the Minimum Charge due to an apportionment under paragraph (c) of Article 13, the amount of the Minimum Charge actually paid in excess of the charge for the amount of Raw Water

actually withdrawn by Purchaser shall be credited to reduce the Minimum Charge obligation of the Purchaser for the subsequent calendar year.

i. Overdue Payments. If the Purchaser fails to make any of the payments when due, then the overdue payments shall bear interest, compounded annually at the rate prescribed in K.S.A. 82a-1317. This shall not be construed as giving the Purchaser the option of either making payments when due or paying interest, nor shall it be construed as waiving any of the rights of the State that might result from such default by the Purchaser.

j. Payments. Any payments due and payable to the Kansas Water Office under the terms of this contract shall be transferred electronically under such arrangements as the Purchaser and the State determine or shall be sent to:

Kansas Water Office
Attention: Accounts Payable/Water Marketing
900 SW Jackson Street, Suite 404
Topeka, KS 66612

ARTICLE 10. POINT OF WITHDRAWAL AND REDIVERSION

a) The Point of withdrawal from the reservoir shall be at the release gates of Elk City Lake.

b) The Purchaser's Point of rediversion shall be the point or points of diversion in the Verdigris River authorized by the Purchaser's Water Rights located in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 30, Township 32 South, Range 16 East, 4,310 feet North and 1,400 feet East of the Southeast Corner of said Section, in Montgomery County, Kansas.

ARTICLE 11. METERING OF WATER

a) The Purchaser shall, at its own expense, furnish, install, operate, and maintain a commercial measuring device at the Point of rediversion that complies with the Kansas Water Appropriation Act and the rules and regulations adopted by the Kansas Department of Agriculture, Division of Water Resources ("DWR").

b) The Purchaser shall test and calibrate all measuring devices upon installation and thereafter as necessary or whenever requested by the Director, but not more frequently than once every twelve (12) months. A measuring device that meets the standards set forth in DWR regulations shall be deemed to be accurate. Testing and calibration of measuring devices must comply with DWR regulations.

c) The previous readings of any measuring device disclosed by a test to be inaccurate shall be corrected for the three (3) months previous to such test or one-half (1/2) the period since the last test, whichever is shorter, in accordance with the percentage of inaccuracy found by such tests.

d) If any measuring device fails to register for any period, the amount of Raw Water furnished during such period shall be determined by the Director, in consultation with the Purchaser.

e) During the withdrawal of Raw Water the Purchaser shall, upon the Director's request, read the measuring device and send such readings to the Director on a weekly basis.

f) The Purchaser shall provide to the State monthly reports of all water diverted from any sources under authority of Water Rights acquired and subject to Article 6 paragraph (c).

g) Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.

h) The State may measure withdrawals by other suitable means to verify the accuracy of the Purchaser's measuring device or to measure the amount of rediverted Raw Water when the Purchaser's measuring device fails to register.

ARTICLE 12. WATER WITHDRAWAL

The Purchaser shall notify the Director prior to any withdrawal of Raw Water. At that time, the Purchaser shall provide such notification, in writing, of the estimated amounts, dates, and rates of withdrawal. In no event, during the term of this contract, shall the Purchaser withdraw Raw Water in excess of the maximum daily rate of 6.0 million gallons.

ARTICLE 13. CONTINUITY OF WATER SERVICE

a. The Director shall make all reasonable efforts to perfect and protect the water reservation rights necessary for the satisfaction of the State's water supply commitment. In the event it becomes necessary for any reason to apportion the water among all of the persons having contracts to purchase water from the conservation storage water supply capacity in the Reservoir, or to temporarily discontinue the furnishing of water to such persons, the Director will give each person oral notice, followed by a written notice, of such action as far in advance as is reasonably practicable.

b. The Director, Kansas Water Office, and the Authority shall not be responsible for, or have any legal liability for any insufficiency of water, or for the apportionment thereof, and the duty of the Director, Kansas Water Office, and the Authority to furnish water is specifically subject to the following conditions:

(1) If the total amount of water contracted for withdrawal by all purchasers from the Reservoir in any year is greater than the supply available from the conservation storage water supply in the Reservoir, the Director, with the approval of the Authority, will apportion the available water among all the purchasers having contracts therefor, as may best provide for the health, safety, and general welfare of the people of Kansas as determined by the Authority.

(2) The Director shall evaluate the effect of sediment deposits in the Reservoir and, if such evaluation indicates that the sediment deposits have reduced the yield from the State's conservation storage water supply space, the Director will apportion available water among the persons having contracts to purchase water from the conservation storage water supply capacity in the Reservoir in relation to the annual volume of water contracted. If a reduction has been made and future calculations and/or experience proves an increased yield from the Reservoir, the Purchaser's Contract Quantity shall be increased proportionally up to the Contract Quantity.

(3) If the United States temporarily discontinues or reduces water storage available to the State in the Reservoir under the State's agreement with the United States of America for the purpose of inspection, investigation, maintenance, repair, or rehabilitation of the Reservoir or for other reasons deemed necessary by the United States of America, the Director will apportion the available water among the persons having contracts for water from the conservation storage water supply in the Reservoir as determined by the Director.

(4) If, because of an emergency, the Director deems it necessary for the health, safety, and general welfare of the people of Kansas to reduce or terminate the withdrawal of water from the Reservoir, the Director, with the approval of the Authority, will apportion any available water among the persons having contracts to purchase water from the conservation storage water supply in the Reservoir as may best provide for the health, safety, and general welfare of the people of Kansas.

c. In the event the Director finds it necessary to apportion the available water from the conservation storage water supply in the Reservoir among the persons having contracts therefore, and such apportionment results in the Purchaser being unable, during any year, to receive the amount of water that has been purchased by payment of the Minimum Charge, the Purchaser shall pay the State only for the amount of water actually made available to the Purchaser during the year.

ARTICLE 14. LIABILITY

a. The Parties acknowledge that this contract is for Raw Water from the conservation storage water supply in the Reservoir. The State, the Director, the Authority, or any employee, agent, or agency of the State of Kansas, makes no guarantee for, nor assumes any liability for any claim arising out of the control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond the Point of withdrawal from the reservoir except as provided in the Kansas Tort Claims Act, K.S.A. 75-6101, *et seq.*, and the Purchaser shall hold the State harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the control, carriage, handling, use, disposal, or

distribution of Raw Water beyond the Point of withdrawal from the reservoir. Nothing in this Article shall be construed to impair any protection of the rights of the Purchaser as set forth in Article 6.

b. In addition, neither the Director nor the Authority shall be liable for any claim by Purchaser arising out of the quality of the Raw Water in the Reservoir or at the Point of diversion. The Purchaser shall hold the State, its agencies, employees, and agents harmless from or on account of any and all damage to Purchaser of any nature whatsoever arising out of or connected with the quality of the Raw Water in the Reservoir, at the Point of withdrawal from the reservoir or at the Point of diversion.

ARTICLE 15. AMENDMENT

The contract may be amended or nullified by written agreement of the Parties, as provided in K.S.A. 82a-1316.

ARTICLE 16. ASSIGNMENT OF CONTRACT

a. The Purchaser may not assign, sell, convey, or transfer all or any part of this contract, or any interest therein, unless and until the same is approved by the Director and the Authority pursuant to K.S.A. 82a-1316 and K.A.R. 98-5-5.

b. Whenever the assignment, sale, conveyance, or transfer of all or any part of this contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the contract or portion thereof and make the water available for purchase by persons who have filed applications in accordance with rules and regulations for administration of the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.*

ARTICLE 17. RIGHT OF FIRST REFUSAL

As required by the provisions of K.S.A. 82a-1305(a), upon expiration of this contract, the Director shall give the Purchaser the first right of refusal to purchase any offering of the water subject to this contract before offering the same to any other applicant under the provisions of K.S.A. 82a-1310a, *et seq.*

ARTICLE 19. WATER CONSERVATION PLAN

The Purchaser shall adopt and implement a water conservation plan, prepared in accordance with the guidelines developed and maintained by the Kansas Water Office.

ARTICLE 21. MISCELLANEOUS PROVISIONS

a. Severability. In the event any provisions of this contract, or any part of any provision of this contract, are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms that can be given effect without the invalid provision or portion of such provision, and to that end the terms of this contract are intended to be severable.

b. Choice of Law, Jurisdiction, and Venue. Disputes arising out of this contract shall be determined under the laws of the State of Kansas, in the district courts of that state, sitting in Shawnee County, Kansas.

c. Kansas Contract Provisions Attachment. The provisions of Form DA-146a, which is attached, are hereby incorporated in this contract and made a part thereof by reference.

d. Headings. Headings used in this contract are informational and not to be considered persuasive or determinative of any clause or matter in dispute.

e. Merger. This contract contains the full understanding of the Parties with respect to the matters hereto and supersedes all prior agreements and understandings, whether written or oral, pertaining thereto, and may not be amended or modified except by a writing signed by both Parties.

IN WITNESS WHEREOF, the Parties affirm and acknowledge the terms and conditions agreed to above, and further affirm that they have the authority to bind the Parties by their signatures and have executed this contract as of the day and year first above written.

THE STATE OF KANSAS, BY:

PURCHASER, BY:

Connie Owen
Director, Kansas Water Office

Louis Ysusi, Mayor
City of Independence, Montgomery County, Kansas

WITH THE EXPRESS APPROVAL OF
THE KANSAS WATER AUTHORITY,
BY:

ATTEST:

Dawn Buehler
Chair, Kansas Water Authority

CONTRACTUAL PROVISIONS ATTACHMENT A

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

MEMO



DATE: October 11, 2023
TO: Kansas Water Authority
FROM: Jeremiah Hobbs, RAC Operations Committee Chair
RE: RAC Membership & RAC Chair Reporting

900 SW Jackson Street
Topeka, KS 66612
Phone: (785) 296-3185
Fax: (785) 296-0878
www.kwo.ks.gov

The KWA RAC Operations Committee met on October 3, 2023, via GoTo Meeting. Discussion from the meeting included the following topics:

- RAC Membership
 - New Membership Application for the Red Hills Regional Advisory Committees
- RAC Chair Reports at KWA Meetings Guideline Suggestions

RAC Membership

The Committee reviewed and discussed the application of Michael Grant from Harper, KS for membership on the Red Hills RAC. The following membership recommendation was approved by the RAC Operations Committee:

- Recommend Michael Grant be considered for the *Industry/Commerce 2* category with a term expiration of June 2027.

*The KWA RAC Operations Committee recommends KWA approval of the proposed
RAC membership action for the Red Hills RAC.*

Guideline Suggestions for RAC Chair Reporting at KWA Meetings:

The Committee compiled the following suggested guidelines to be considered for RAC Chair Reports to take place during KWA meetings:

- The RAC Chairs will provide a brief overview of
 - The RAC in general and an overview of their goals.
 - A success story or something that is going well in the region.
 - The most pressing issues in the region.
 - A pressing issue the KWA should act upon in order to benefit their region.
- The report time should be limited to 3-5 minutes per RAC with 1-2 minutes for questions, as a general guideline; the total time spot saved in the KWA meeting agenda for all RACs to report should be about 15 minutes (each RAC's time as to how long they report may be modified within the above time limits by the RAC Chairs depending on the needs of each RAC scheduled to report and the format of the KWA meeting).
- Process of which RACs will be in attendance:
 - The RAC Chairs in the most immediate area of the KWA meeting location will be invited by the KWA Chair and/or the KWO Planner for the Region. The RAC Chairs may choose to provide a report if they are available to attend that KWA meeting and are interested/have something to report.
 - If the RAC has a memo that goes through the RAC Operations Committee process and the RAC would prefer to assist in the presentation of their memo, the RAC Chair may attend to assist in the memo presentation, even if the meeting is not in the RAC's immediate area.

The KWA RAC Operations Committee recommends moving forward with the proposed guidelines for inviting RAC Chairs to present at KWA meetings, beginning with the January 2024 KWA meeting.

MEMO



DATE: October 9, 2023
TO: Kansas Water Authority
FROM: Keadron Pearson and Amelia Nill
RE: Hays/Russell Water Transfer Feedback from the
Great Bend Prairie and Smoky Hill – Saline Regional
Advisory Committees to the Kansas Water Authority

900 SW Jackson Street, Suite 404
Topeka, KS 66612
Phone: (785) 296-3185
Fax: (785) 296-0878
www.kwo.ks.gov

At their meeting on August 23, 2023, the Kansas Water Authority (KWA), as a part of their discussion on the ongoing administrative hearing on the Hays/Russell water transfer, requested to receive feedback from the impacted Regional Advisory Committees (RAC) from both the basin of origin and basin of use on this matter. The Great Bend Prairie RAC and Smoky Hill – Saline RACs both met on October 2, 2023, to discuss this topic and provide feedback for consideration by the KWA at the October meeting. Both RACs received presentation from representatives of the cities of Hays and Russell, and GMD5 and Water PACK during these meetings on October 2. Following these presentations, members of each RAC were given the opportunity to ask questions to presenters and engage in group discussion. Feedback was noted by KWO staff present and ultimately approved by each of the RACs to send on to the KWA.

The following feedback was provided for consideration by the KWA from both the Great Bend Prairie and Smoky Hill-Saline RACs:

Great Bend Prairie RAC Feedback to KWA:

- The RAC recommends that the hearing panel would hear all parties out and give due consideration before making a final decision.
- The RAC acknowledge the conservation effort that the cities of Hays and Russell have implemented.
- The RAC would like to ensure that the decision to transfer water is a sound choice.
- The RAC would like to challenge experts to define “What is Sustainability”.

Smoky Hill – Saline RAC Feedback to KWA:

- The RAC recognizes the commitments, both financially and over time, that the cities of Hays and Russell have put forth towards this process.
- The RAC desires to ensure that the allocation numbers and data are accurate to ensure sustainability into the future.
- The RAC encourages all parties to continue open discussions.
- The RAC would like to acknowledge that all parties involved are willing participants and eminent domain was not used for the purchase of the land and associated water rights of the R9 Ranch

Feedback from the Smoky Hill-Saline and Great Bend Prairie RACs is for review and consideration by the KWA. Further discussion and potential action on KWA comments to provide for ongoing Hays/Russell water transfer administrative hearing is needed.
