

**Kansas Water Authority Meeting  
Conference Call / Zoom  
9:00 a.m. – December 1, 2021  
Agenda**

| <i>Time</i> | <i>Agenda Item</i>                                       | <i>Presenter</i> | <i>KWA<br/>Advice</i> | <i>KWA<br/>Decision</i> | <i>Page<br/>No.</i> |
|-------------|----------------------------------------------------------|------------------|-----------------------|-------------------------|---------------------|
| 9:00 am     | <b>Call to Order/Roll Call</b>                           | Dawn Buehler     | --                    | --                      | --                  |
| 9:05 am     | <b>Approval of Meeting Minutes</b>                       |                  |                       |                         |                     |
|             | October 6, 2021 Meeting (Zoom)                           | Dawn Buehler     |                       | X                       | 2                   |
| 9:10 am     | <b>KWA Public Water Supply Committee</b>                 | John Bailey      |                       |                         | 4                   |
|             | Water Marketing Contract No. 21-2 – DG Co. RWD No. 3     | Nathan Westrup   |                       | X                       | 6                   |
|             | Water Marketing Contract No. 21-4 – DG Co. RWD No. 6     | Nathan Westrup   |                       | X                       | 23                  |
|             | Water Marketing Contract No. 21-3 – City of Hillsboro    | Nathan Westrup   |                       | X                       | 39                  |
| 10:00 am    | <b>KWA RAC Operations Committee</b>                      |                  |                       |                         |                     |
|             | RAC Membership                                           | Jeremiah Hobbs   |                       | X                       | 55                  |
| 10:10 am    | <b>Kansas Water Plan Update</b>                          | Matt Unruh       | X                     |                         | --                  |
| 10:20 am    | <b>KWA Annual Report to the Governor and Legislature</b> | Matt Unruh       |                       | X                       | 56                  |
| 11:10 am    | <b>Black Vermillion Water Quality Success Story</b>      | Travis Sieve     | X                     |                         | --                  |
| 11:40 am    | <b>Director's Report</b>                                 | Connie Owen      | X                     |                         | --                  |
| 11:50 am    | <b>New Business</b>                                      |                  |                       |                         |                     |
| 12:00 pm    | <b>Adjourn</b>                                           |                  |                       |                         |                     |

**Upcoming Kansas Water Authority Meetings**

- January 26-27, 2022 – Topeka, KS
- April 20, 2022 – TBD
- June 22, 2022 – TBD
- August 17, 2022 – TBD
- October 19, 2022 – TBD
- November 2022 – Governor's Conference on the Future of Water in Kansas
- December 14, 2022 TBD

**December 1 Zoom Meeting Information**

Join Meeting through Zoom at:

<https://us06web.zoom.us/j/82443111976?pwd=NFY0ci81TTRSeVZ0bG1CdDVRaHBZUT09>

Meeting ID: 824 4311 1976

Passcode: 096678

## Minutes

### KANSAS WATER AUTHORITY

October 6, 2021

Zoom Meeting

Virtual

- CALL TO ORDER:** Chair Dawn Buehler called the **October 6, 2021**, Kansas Water Authority conference call to order at **8:00** a.m.
- MEMBERS PRESENT:** Dawn Buehler, Mike Armstrong, John Bailey, Lynn Goossen, Randy Hayzlett, Jeremiah Hobbs, Alan King, Chris Ladwig, Carolyn McGinn, Allen Roth, Jean Steiner, Allan Soetaert, David Stroberg
- MEMBERS ABSENT:** ALL PRESENT
- EX-OFFICIO MEMBERS PRESENT:** Susan Duffy, Lane Letourneau, Susan Metzger, Brad Loveless, Sara Baer, Leo Henning, Andrew Lyon, Connie Owen, Mike Beam
- EX-OFFICIO MEMBERS ABSENT:** Ernie Minton, David Toland, Kayla Savage, Rolf Mandel
- APPROVAL OF MINUTES:**  
**Motion No. 10-06-01** It was moved by **Allen Roth** and seconded by **Allan Soetaert** to approve the August 17, 2021 Minutes for the Regular Meetings of the Kansas Water Authority as amended. **Motion carried with no dissenting votes.** Information found in meeting materials.
- Matt Unruh** gave an update on Kansas Water Plan Formal Public Comment Phase
- Jean Steiner** gave an update to the Kansas Water Authority from the Kansas Water Plan Sub-Committee
- Rob Manes** gave a presentation from the Kansans for Conservation
- RAC Operations Committee**  
*New RAC membership*  
**Motion No. 10-06-02** It was moved by **Allan Soetaert** and seconded by **Jeremiah Hobbs** for the Kansas Water Authority to approve Abe Lollar's application for the At Large Public 3 position on the Upper Ark RAC. **Motion carried with no dissenting vote.** Information found in meeting materials.
- Dawn Buehler** gave an update on hold dates for the 2022 Kansas Water Authority Meetings
- Lane Letourneau** gave an update on the WCAs
- Connie Owen** gave a director's report. She gave an update on KWO staffing, to include the promotion of Matt Unruh to Assistant Director, and an update on the KWO contract with a consultant to design a model to assist with the KWO water marketing program.

**New Business:**

**Brad Loveless** gave an update on the public comment period on the proposed Candidate Conservation Agreement with Assurances and the programmatic Safe Harbor Agreement

**Leo Henning** gave an update on a letter KDHE sent to the EPA

**Susan Duffy** gave an update on KCC's ready request to the Federal Government for funding to help plug abandon wells should the current infrastructure bill pass.

**ADJOURNMENT**

The KWA adjourned at **11:33 am**

# MEMO



DATE: November 19, 2021  
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.org

## Items Proposed for Action:

- Consider approval of Water Purchase Contract No. 21-2 with Douglas County Rural Water District No. 3
- Consider approval of Water Purchase Contract No. 21-4 with Douglas County Rural Water District No. 6
- Consider approval of Water Purchase Contract No. 21-3 with the City of Hillsboro

## Douglas County RWD No. 3, Water Marketing Contract No. 21-2

- Water supply yield of Clinton Lake is sufficient to support the negotiated contract quantity
- Contract terms:
  - 20-year contract (through 2041)
  - 650 MGY
    - Quantity was reduced from 684 MGY to 650MGY based on anticipated demand from for DGRWD#3, OSRWD#5, and SNRWD#8.
    - No changes to place of use or point of withdrawal.
- Non-standard clauses
  - Article 6(d) – Quantity contingent on water purchase agreements with OSRWD#5 and SNRWD#8.
    - Quantity reduction if water purchase agreements are not renewed, 100 MGY associated with OSRWD#5 and 350 MGY associated with SNRWD#8.
  - Article 16(c) – The three districts are working toward forming, through an interlocal agreement, a new entity called the Tri-District Water Authority. If this is realized, the intent will be to assign this contract to the Tri-District Water Authority.

*The Public Water Supply Committee recommends\* the Kansas Water Authority approve Water Purchase Contract No. 21-2 with Douglas Co. Rural Water District No. 3, as negotiated.*

\*The consensus of present voting members, 2 of 4. 2 advisory members were also in attendance.

## Douglas County RWD No. 6, Water Marketing Contract No. 21-4

- Water supply yield of Clinton Lake is sufficient to support the negotiated contract quantity
- Contract terms:
  - Single, 20-year contract (through 2041)
  - 33.2 MGY
    - Quantity based on a consolidation of quantity authorized under the expiring Water Purchase Contract No. 79-2 and Water Purchase Contract No. 90-2.
    - No changes to place of use or point of withdrawal.

- Non-standard clause
  - Article 20, Rescission of Prior Agreements
    - Water Purchase Contract No. 90-2 will be rescinded upon execution of Water Purchase Contract No. 21-4

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*The Public Water Supply Committee recommends\* the Kansas Water Authority approve Water Purchase Contract No. 21-4 with Douglas Co. Rural Water District No. 6, as negotiated.*

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*\*The consensus of present voting members, 2 of 4. 2 advisory members were also in attendance.*

**City of Hillsboro, Water Marketing Contract No. 21-3**

- Water supply yield of Marion Reservoir is sufficient to support the negotiated contract quantity
- Contract terms:
  - Single, 40-year contract (through 2061)
  - 300 MGY
    - Quantity equivalent to expiring Water Purchase Contract No. 80-1, based on the right of first refusal to renew the same and available yield. The city also provided evidence of potential growth in additional industrial use through the term of the contract.
- No non-standard clauses added

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*The Public Water Supply Committee recommends\* the Kansas Water Authority approve Water Purchase Contract No. 21-3 with the City of Hillsboro, as negotiated.*

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*\*The consensus of present voting members, 2 of 4. 2 advisory members were also in attendance.*

**KANSAS WATER OFFICE**  
**WATER PURCHASE CONTRACT NO. 21-2**

This contract is executed and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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 Rural Water District No. 3, Douglas County, Kansas, (hereinafter referred to as the “Purchaser”).

WHEREAS, the Purchaser desires to purchase a supply of water for a municipal and industrial water supply; and

WHEREAS, the State has signed an Agreement (Contract No. DACW41-77-C-0149) with the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), as amended, for water supply storage space in the Reservoir; and

WHEREAS, the State has filed an appropriate water reservation right on May 13, 1974, to divert and store water in the Reservoir; and

WHEREAS, the State and Purchaser entered into a contract on December 13, 1979, to provide water for municipal and industrial water supply from the Reservoir, which expires on December 13, 2021; and

WHEREAS, the Director of the Kansas Water Office is authorized by K.S.A. 74-2615, as amended, and by K.S.A. 82a-1305, as amended, to negotiate contracts for the sale of water; and

WHEREAS, the Purchaser filed an appropriate application on March 4, 2021, 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.*, as amended; and

WHEREAS, the Purchaser requested permission to negotiate on March 4, 2021; and

WHEREAS, the Kansas Water Authority granted permission to the Director on April 26, 2021 to enter into negotiations; and

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

WHEREAS, the withdrawal and use of up to 650 million gallons of water annually from the Reservoir 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 amendments thereto; and

WHEREAS, the Purchaser's application to purchase raw water from the Reservoir is approved for a maximum total amount of 650 million gallons per year in accordance with Articles 9 and 13 of Chapter 82a of Kansas Statutes Annotated.

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, or its successor.
- (b) "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.
- (c) "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.
- (e) "Raw water" refers to untreated water at the point of withdrawal from the reservoir.
- (f) "Reservoir" means Clinton Lake.

#### **ARTICLE 2. TERM OF THE CONTRACT**

The term of this contract shall be for a period of twenty (20) years beginning on December 14, 2021. The Purchaser may commence using water under this contract on December 14, 2021.

### **ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION**

This contract, any amendment hereto, or renewal thereof is subject to disapproval and revocation by the Kansas Legislature as provided in K.S.A. 82a-1307, and amendments thereto.

### **ARTICLE 4. UNITED STATES APPROVAL**

The Purchaser shall secure the right from the federal government 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 such installations and facilities are on federal lands. The Purchaser shall bear any and all costs of construction, modification, operation, and maintenance of Purchaser-owned, leased, or constructed installations and facilities.

The Purchaser shall provide the Director, upon written request, with proof of any easement granted by the federal government for rights-of-way across, in, and upon federal government land required for intake, transmission of water, and necessary appurtenances by and for the benefit of the Purchaser for the purposes of this contract.

### **ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES**

This contract is subject to such federal and state statutes as may be applicable, including specifically, but not by way of limitation, the State Water Resource Planning Act, K.S.A. 82a-901 *et seq.*, and amendments thereto; the State Water Plan, K.S.A. 82a-927 *et seq.*, and amendments thereto; and the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.*, and amendments thereto; and the Purchaser agrees to comply with such applicable statutes and any amendments to said statutes which may be enacted subsequent to the execution of this contract.

### **ARTICLE 6. QUANTITY OF WATER**

a. Quantity. During the term of this contract, defined in Article 2, subject to the conditions herein stated, the State will permit the Purchaser to withdraw not more than 650 million gallons of raw water from the water supply storage in the Reservoir in any one (1) calendar year. If the Purchaser in any

calendar year does not withdraw the entire annual raw water amount obligated under terms of this contract, the unused amount of water shall not add to the Purchaser's entitlement in 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 Appropriation Rights. Any rights under the Kansas Water Appropriation Act, K.S.A. 82a-701 et seq., and amendments thereto, acquired by the Purchaser and having priority dates later than the date of execution of this contract, shall not be used by the Purchaser to offset the minimum cost or volume of any quantity of raw water obligated under the terms of this contract. Any water received under authority of such water appropriation rights shall not be counted against the Purchaser's annual water entitlement under this contract even though the Purchaser may have to pay the State as if the water had been received under this contract as provided in Article 9.

The Purchaser may use water withdrawn 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.

d. Existing Contracts for Purchase of Water from Purchaser. As of the date of execution of this contract, the Purchaser has existing water agreements with Shawnee County Rural Water District No. 8 and Osage County Rural Water District No. 5. The parties acknowledge that a portion of the total contract quantity established in paragraph (a) of Article 6 contains 350 million gallons that Purchaser provides or has available to provide to Shawnee County Rural Water District No. 8 and 100 million gallons that

Purchaser provides or has available to provide to Osage County Rural Water District No. 5. If either Shawnee County Rural Water District No. 8 or Osage County Rural Water District No. 5 fails to renew its water agreement with Purchaser by April 26, 2023, upon proper written notice, the total contract quantity in paragraph (a) of Article 6 may be reduced by the quantity attributed to such rural water district as stated in this paragraph. To reduce the total contract quantity established in paragraph (a) of Article 6, Purchaser must notify the State in writing that either Shawnee County Rural Water District No. 8 or Osage County Rural Water District No. 5 has failed to renew its water agreement by May 26, 2023. Following proper written notice of failure to renew, the parties agree to execute an addendum reflecting the reduced quantity in paragraph (a) of Article 6.

#### **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, and amendments thereto, for each one thousand (1,000) gallons of raw water used 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 charges in accordance with this Article regardless of the quantity of raw water actually used, except as provided in Article 13. The rate for raw water which must be paid for under terms of this contract shall be \$0.436 for each one thousand (1,000) gallons during calendar year 2021.

b. Minimum Charge. The Purchaser agrees to pay to the State a minimum charge whether or not water is withdrawn during the calendar year. The minimum charge for each calendar year shall be determined as provided in K.S.A. 82a-1306, and amendments thereto. The minimum charge for calendar year 2022 and each succeeding calendar year, unless changed by amendment of State statutes, shall be the sum of the following two components:

(1) fifty (50) percent of the total amount of water contracted for annually during the term of this contract 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 water contracted for during the year 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 and by the portion of the remaining fifty (50) percent under contract to the total conservation water supply capacity available under the State Water Marketing Program.

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 may adjust the rate effective January 1 of the following year. Such adjusted rate shall be charged for all water used or water which must be paid for under terms of this contract as provided in Article 9. The Director shall notify in writing the Purchaser 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 preamble of this contract.

b. Place of Use. The place of use for water purchased under this contract shall be within the boundaries of Rural Water District No. 3, Douglas County, Kansas; Rural Water District No. 8, Shawnee County, Kansas; and Rural Water District No. 5, Osage County, Kansas; and for a municipal and industrial water supply within or in the vicinity of the cities of Scranton and Overbrook, Osage County, Kansas.

c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any intention to sell any water under this contract to any person or entity located outside the place of use defined in (b) of this Article. Whenever the Purchaser shall propose to enter into a contract to sell 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 Authority for review. 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. The Purchaser shall transmit all payments due hereunder to the Director. Remittance for minimum payments as provided in paragraph (d) of Article 9 and paragraph (e) of Article 9 shall be paid to the Director 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 payment is due, whether or not water is withdrawn during the calendar year. Remittance for payments due for raw water used in excess of the quantity obligated by the minimum payment as provided in paragraph (f) of Article 9 shall be paid to the Director in full within thirty (30) days after date of billing by the State.

b. Determination of Charges. Charges for water for which payment is required shall be determined by the State in accordance with K.S.A. 82a-1308a and subsequent amendments thereto. 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 water received under terms of this contract up to the maximum quantity obligated by this contract (650 million gallons per year). In no event shall the Purchaser be permitted to withdraw in any one year more than the maximum of 650 million gallons per year.

d. Initial Minimum Payment. The initial minimum payment shall become due on January 1, 2022. Remittance for the initial minimum payment shall be in accordance with paragraph (a) of Article 9. Payment of the initial minimum charge shall entitle the Purchaser to receive up to one-half (1/2) of the maximum annual quantity of water in 2022 as set forth in Article 6, without additional charge.

e. Subsequent Minimum Payments. On each subsequent January 1<sup>st</sup> following the due date of the initial minimum payment, subsequent minimum payments shall become due. Remittance for minimum payments shall be in accordance with paragraph (a) of Article 9. Payment of the minimum payment 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. At the end of each calendar year throughout the term of this contract or within thirty (30) days after the end of each calendar year, the State shall bill the Purchaser for any water used during the calendar year in excess of the amount of water used to compute the minimum payment. 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.

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 provided herein, 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 due to an apportionment under paragraph (c) of Article 13 to withdraw the amount that the Purchaser is entitled to receive after payment of the minimum payment, the amount of such minimum payment in excess of the amount of water actually received by Purchaser shall be credited to reduce the minimum payment obligation of the Purchaser for the subsequent calendar year.

i. Overdue Payments. If the Purchaser shall fail 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,

and amendments thereto, during the term of this contract. 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**

The point of withdrawal from the Reservoir shall be in NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 16, Township 13 South, Range 19 East, Douglas County, Kansas.

#### **ARTICLE 11. METERING OF WATER**

The Purchaser shall, at its own expense, furnish, install, operate, and maintain at the place of diversion, a commercial measuring device as ordered by the Director.

The Purchaser shall test and calibrate as accurately as possible such measuring device or 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 as set forth in the current regulations regarding water meter specifications (K.A.R. 5-1-4) shall be deemed to be accurate. Certification of measuring devices shall be obtained from a commercial testing company approved by the Director.

The previous readings of any measuring device disclosed by 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.

If any measuring device fails to register for any period, the amount of water furnished during such period shall be determined by the Director, after consultation with the Purchaser.

The Purchaser shall read the measuring device on or before the last calendar day of each month, and shall send such reading to the Director within ten (10) days after it has been taken.

The Purchaser shall provide to the State monthly reports of all water withdrawn from any sources under authority of Purchaser-held water use permits or water appropriation rights if additional rights are acquired and subject to Article 6c. Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.

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 water furnished when the Purchaser's measuring device fails to register.

## **ARTICLE 12. WATER WITHDRAWAL**

Initial withdrawal of water under this contract will be on the 14<sup>th</sup> day of December 2021. Upon request by the Director, the Purchaser shall provide notification, in writing, of the estimated amounts, dates, and rates of withdrawal for the time period identified by the Director. In no event, during the term of this contract, shall the Purchaser withdraw water in excess of the maximum daily rate of 3.6 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 water supply commitment. In the event it becomes necessary for any reason to apportion the water among the persons having contracts, therefor, 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. Neither the Director nor the Authority shall be responsible or have any legal liability for any insufficiency of water or the apportionment thereof, and the duty of the Director 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 the year is greater than the supply available from the conservation water supply storage 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 this State 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 water supply storage space, the Director will apportion available water among the persons having contracts 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 described under Article 6 of this contract.

(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 in the Reservoir as determined by the State.

(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 in the Reservoir therefore 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 Reservoir among the persons having contracts therefore, and such apportionment results in the Purchaser being unable during the 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 herein acknowledge that this contract is for raw water from the conservation water supply storage at the Reservoir. The Kansas Water Office, 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 as described in this contract except as provided in the Kansas Tort Claims Act, K.S.A. 1982 Supplement 75-6101 et seq., and amendments thereto; 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 water beyond the point of withdrawal. 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 of the Kansas Water Office nor the Kansas Water Authority shall be liable for any claim by Purchaser arising out of the quality of water in the Reservoir to the point of withdrawal. 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 water in the Reservoir up to the point of withdrawal or 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, and amendments thereto.

## **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 same is approved by the Authority under such reasonable terms and conditions as the Authority may impose.

b. Whenever the assignment, sale, conveyance, or transfer of all or any part of this water purchase contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the water purchase 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., and amendments thereto.

c. The parties acknowledge that the Purchaser, along with Rural Water District No. 8, Shawnee County and Rural Water District No. 5, Osage County, have created the Tri-District Water Authority, by way of an Interlocal Cooperation Agreement Creating the Tri-District Water Authority approved by the Attorney General of the State of Kansas on or about October 16, 2014. This entity was created to manage the Tri-District water facility and other related property, but implementation was delayed. The parties are now prepared to engage the Tri-District Water Authority to treat water for distribution to the individual water districts, but additional time will be necessary to obtain the transfer of property and permits to the Tri-District Water Authority. The parties acknowledge that the Tri-District Water Authority intends to continue the same purpose of use and place of use of the water as the Purchaser, merely under the Tri-District Water Authority. This is provided for notice of the intentions of the Purchaser and the other Districts, and any assignment grant will be determined at the time the same is proposed by these parties. .

## **ARTICLE 17. RIGHT OF FIRST REFUSAL**

As required by the provisions of K.S.A. 82a-1305(a), and amendments thereto, 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., and amendments thereto.

#### **ARTICLE 18. TERMINATION**

In the event the Purchaser is unable to obtain, construct, maintain, operate the necessary water diversion and distribution facilities, the Purchaser may terminate this contract upon giving the State thirty (30) days written notice of its intent to do so, and all rights and liabilities of the Purchaser hereunder shall cease. Provided, however, that nothing in this Article shall be construed to affect the duty of the Purchaser to pay the prorated share of the minimum charge for the year in which the contract is terminated or the actual charge for the quantity of water withdrawn, whichever is greater, before notice of termination is given.

#### **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 20. MISCELLANEOUS PROVISIONS**

a. Severability. In the event any provisions of this agreement, or any part of any provision of this agreement, are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms hereof which can be given effect without the invalid provision or portion of such provision, and to that end the terms of this agreement 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 found in contractual provisions attachment (Form DA-146a – Attachment A), which is attached hereto, are hereby incorporated in this contract and made a part thereof by reference herein.

d. Headings. Headings used in this agreement 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 to the same, and hereto have executed this agreement as of the day and year first above written.

THE STATE OF KANSAS, BY:

\_\_\_\_\_  
Connie Owen  
Director, Kansas Water Office

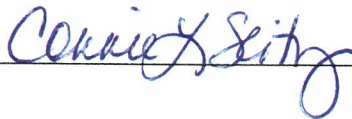
PURCHASER, BY:

  
\_\_\_\_\_  
Robin Edmonds  
Chairman of the Board of Directors  
R.W.D. No. 3, Douglas County, Kansas

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

\_\_\_\_\_  
Dawn Buehler  
Chair, Kansas Water Authority

ATTEST:

  
\_\_\_\_\_

## 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.

**KANSAS WATER OFFICE**  
**WATER PURCHASE CONTRACT NO. 21-4**

This contract is executed and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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 Rural Water District No. 6, Douglas County, Kansas, (hereinafter referred to as the “Purchaser”).

WHEREAS, the Purchaser desires to purchase a supply of water for a municipal and industrial water supply; and

WHEREAS, the State has signed an Agreement (Contract No. DACW41-77-C-0149) with the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), as amended, for water supply storage space in the Reservoir; and

WHEREAS, the State has filed an appropriate water reservation right on May 13, 1974, to divert and store water in the Reservoir; and

WHEREAS, the State and Purchaser entered into a contract on December 13, 1979, to provide water for municipal and industrial water supply from the Reservoir, which expires on December 13, 2021; and

WHEREAS, the State and Purchaser entered into contract on August 7, 1990 (Water Purchase Contract No. 90-2), to provide additional water for municipal and industrial water supply from the Reservoir, which the parties intend to rescind and replace with this contract; and

WHEREAS, the Director of the Kansas Water Office is authorized by K.S.A. 74-2615, as amended, and by K.S.A. 82a-1305, as amended, to negotiate contracts for the sale of water; and

WHEREAS, the Purchaser filed an appropriate application on June 16, 2021, 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.*, as amended; and

WHEREAS, the Purchaser requested permission to negotiate on June 16, 2021; and

WHEREAS, the Kansas Water Authority granted permission to the Director on August 17, 2021 to enter into negotiations; and

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

WHEREAS, the withdrawal and use of up to 33.2 million gallons of water annually from the Reservoir 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 amendments thereto; and

WHEREAS, the Purchaser's application to purchase raw water from the Reservoir is approved for a maximum total amount of 33.2 million gallons per year in accordance with Articles 9 and 13 of Chapter 82a of Kansas Statutes Annotated.

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, or its successor.
- (b) "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.
- (c) "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.
- (e) "Raw water" refers to untreated water at the point of withdrawal from the reservoir.
- (f) "Reservoir" means Clinton Lake.

#### **ARTICLE 2. TERM OF THE CONTRACT**

The term of this contract shall be for a period of twenty (20) years beginning on December 14, 2021. The Purchaser may commence using water under this contract on December 14, 2021.

### **ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION**

This contract, any amendment hereto, or renewal thereof is subject to disapproval and revocation by the Kansas Legislature as provided in K.S.A. 82a-1307, and amendments thereto.

### **ARTICLE 4. UNITED STATES APPROVAL**

The Purchaser shall secure the right from the federal government 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 such installations and facilities are on federal lands. The Purchaser shall bear any and all costs of construction, modification, operation, and maintenance of Purchaser-owned, leased, or constructed installations and facilities.

The Purchaser shall provide the Director, upon written request, with proof of any easement granted by the federal government for rights-of-way across, in, and upon federal government land required for intake, transmission of water, and necessary appurtenances by and for the benefit of the Purchaser for the purposes of this contract.

### **ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES**

This contract is subject to such federal and state statutes as may be applicable, including specifically, but not by way of limitation, the State Water Resource Planning Act, K.S.A. 82a-901 *et seq.*, and amendments thereto; the State Water Plan, K.S.A. 82a-927 *et seq.*, and amendments thereto; and the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.*, and amendments thereto; and the Purchaser agrees to comply with such applicable statutes and any amendments to said statutes which may be enacted subsequent to the execution of this contract.

### **ARTICLE 6. QUANTITY OF WATER**

a. Quantity. During the term of this contract, defined in Article 2, subject to the conditions herein stated, the State will permit the Purchaser to withdraw not more than 33.2 million gallons of raw water from the water supply storage in the Reservoir in any one (1) calendar year. If the Purchaser in any

calendar year does not withdraw the entire annual raw water amount obligated under terms of this contract, the unused amount of water shall not add to the Purchaser's entitlement in 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 Appropriation Rights. Any rights under the Kansas Water Appropriation Act, K.S.A. 82a-701 et seq., and amendments thereto, acquired by the Purchaser and having priority dates later than the date of execution of this contract, shall not be used by the Purchaser to offset the minimum cost or volume of any quantity of raw water obligated under the terms of this contract. Any water received under authority of such water appropriation rights shall not be counted against the Purchaser's annual water entitlement under this contract even though the Purchaser may have to pay the State as if the water had been received under this contract as provided in Article 9.

The Purchaser may use water withdrawn 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, and amendments thereto, for each one thousand (1,000) gallons of raw water used 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 charges in accordance with this Article regardless of the quantity of raw water actually

used, except as provided in Article 13. The rate for raw water which must be paid for under terms of this contract shall be \$0.436 for each one thousand (1,000) gallons during calendar year 2021.

b. Minimum Charge. The Purchaser agrees to pay to the State a minimum charge whether or not water is withdrawn during the calendar year. The minimum charge for each calendar year shall be determined as provided in K.S.A. 82a-1306, and amendments thereto. The minimum charge for calendar year 2022 and each succeeding calendar year, unless changed by amendment of State statutes, shall be the sum of the following two components:

(1) fifty (50) percent of the total amount of water contracted for annually during the term of this contract 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 water contracted for during the year 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 and by the portion of the remaining fifty (50) percent under contract to the total conservation water supply capacity available under the State Water Marketing Program.

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 may adjust the rate effective January 1 of the following year. Such adjusted rate shall be charged for all water used or water which must be paid for under terms of this contract as provided in Article 9. The Director shall notify in writing the Purchaser 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 preamble of this contract.
- b. Place of Use. The place of use for water purchased under this contract shall be within the boundaries of Rural Water District No. 6, Douglas County, Kansas. Changes in the place of use shall be accomplished by submitting such information with the water withdrawal schedule required under Article 12.
- c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any intention to sell any water under this contract to any person or entity located outside the place of use defined in (b) of this Article. Whenever the Purchaser shall propose to enter into a contract to sell 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 Authority for review. 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. The Purchaser shall transmit all payments due hereunder to the Director. Remittance for minimum payments as provided in paragraph (d) of Article 9 and paragraph (e) of Article 9 shall be paid to the Director 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 payment is due, whether or not water is withdrawn during the calendar year. Remittance for payments due for raw water used in excess of the quantity obligated by the minimum payment as provided in paragraph (f) of Article 9 shall be paid to the Director in full within thirty (30) days after date of billing by the State.
- b. Determination of Charges. Charges for water for which payment is required shall be determined by the State in accordance with K.S.A. 82a-1308a and subsequent amendments thereto. 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 water received under terms of this contract up to the maximum quantity obligated by this contract (33.2 million gallons per year). In no event shall the Purchaser be permitted to withdraw in any one year more than the maximum of 33.2 million gallons per year.

d. Initial Minimum Payment. The initial minimum payment shall become due on January 1, 2022. Remittance for the initial minimum payment shall be in accordance with paragraph (a) of Article 9. Payment of the initial minimum charge shall entitle the Purchaser to receive up to one-half (1/2) of the maximum annual quantity of water in 2022 as set forth in Article 6, without additional charge.

e. Subsequent Minimum Payments. On each subsequent January 1<sup>st</sup> following the due date of the initial minimum payment, subsequent minimum payments shall become due. Remittance for minimum payments shall be in accordance with paragraph (a) of Article 9. Payment of the minimum payment 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. At the end of each calendar year throughout the term of this contract or within thirty (30) days after the end of each calendar year, the State shall bill the Purchaser for any water used during the calendar year in excess of the amount of water used to compute the minimum payment. 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.

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 provided herein, 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 due to an apportionment under paragraph (c) of Article 13 to withdraw the amount that the Purchaser is entitled to receive after payment of the minimum payment, the amount of such minimum payment in excess of the amount of water actually received by Purchaser shall be credited to reduce the minimum payment obligation of the Purchaser for the subsequent calendar year.

i. Overdue Payments. If the Purchaser shall fail 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, and amendments thereto, during the term of this contract. 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**

The point of withdrawal from the Reservoir shall be in SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 8, Township 13 South, Range 19 East, Douglas County, Kansas.

## **ARTICLE 11. METERING OF WATER**

The Purchaser shall, at its own expense, furnish, install, operate, and maintain at the place of diversion, a commercial measuring device as ordered by the Director.

The Purchaser shall test and calibrate as accurately as possible such measuring device or 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 as set forth in the current regulations regarding water meter specifications (K.A.R. 5-1-4) shall be deemed to be accurate. Certification of measuring devices shall be obtained from a commercial testing company approved by the Director.

The previous readings of any measuring device disclosed by 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.

If any measuring device fails to register for any period, the amount of water furnished during such period shall be determined by the Director, after consultation with the Purchaser.

The Purchaser shall read the measuring device on or before the last calendar day of each month, and shall send such reading to the Director within ten (10) days after it has been taken.

The Purchaser shall provide to the State monthly reports of all water withdrawn from any sources under authority of Purchaser-held water use permits or water appropriation rights if additional rights are acquired and subject to Article 6c. Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.

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 water furnished when the Purchaser's measuring device fails to register.

## **ARTICLE 12. WATER WITHDRAWAL**

Initial withdrawal of water under this contract will be on the 14<sup>th</sup> day of December 2021. Upon request by the Director, the Purchaser shall provide notification, in writing, of the estimated amounts, dates, and rates of withdrawal for the time period identified by the Director. In no event, during the term of this contract, shall the Purchaser withdraw water in excess of the maximum daily rate of 0.12 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 water supply commitment. In the event it becomes necessary for any reason to apportion the water among the persons having contracts, therefor, 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. Neither the Director nor the Authority shall be responsible or have any legal liability for any insufficiency of water or the apportionment thereof, and the duty of the Director 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 the year is greater than the supply available from the conservation water supply storage 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 this State 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 water supply storage space, the Director will apportion available water among the persons having contracts 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 described under Article 6 of this contract.

(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 in the Reservoir as determined by the State.

(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 in the Reservoir therefore 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 Reservoir among the persons having contracts therefore, and such apportionment results in the Purchaser being unable during the 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 herein acknowledge that this contract is for raw water from the conservation water supply storage at the Reservoir. The Kansas Water Office, 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 as described in this contract except as provided in the Kansas Tort Claims Act, K.S.A. 1982 Supplement 75-6101 et seq., and amendments thereto; 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 water beyond the point of withdrawal. 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 of the Kansas Water Office nor the Kansas Water Authority shall be liable for any claim by Purchaser arising out of the quality of water in the Reservoir to the point of withdrawal. 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 water in the Reservoir up to the point of withdrawal or 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, and amendments thereto.

#### **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 same is approved by the Authority under such reasonable terms and conditions as the Authority may impose.

b. Whenever the assignment, sale, conveyance, or transfer of all or any part of this water purchase contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the water purchase 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., and amendments thereto.

#### **ARTICLE 17. RIGHT OF FIRST REFUSAL**

As required by the provisions of K.S.A. 82a-1305(a), and amendments thereto, 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., and amendments thereto.

#### **ARTICLE 18. TERMINATION**

In the event the Purchaser is unable to obtain, construct, maintain, operate the necessary water diversion and distribution facilities, the Purchaser may terminate this contract upon giving the State thirty (30) days written notice of its intent to do so, and all rights and liabilities of the Purchaser hereunder shall cease. Provided, however, that nothing in this Article shall be construed to affect the duty of the Purchaser to pay the prorated share of the minimum charge for the year in which the contract is terminated or the actual charge for the quantity of water withdrawn, whichever is greater, before notice of termination is given.

#### **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 20. RESCISSION OF PRIOR AGREEMENTS**

The contract dated August 7, 1990 (Water Purchase Contract No. 90-2), by and between the State and Purchaser to provide additional water for municipal and industrial water supply from the Reservoir, any amendments thereto, and any other written or oral agreements between the State and Purchaser are hereby rescinded and shall have no further force or effect whatsoever as of the effective date of this contract.

#### **ARTICLE 21. MISCELLANEOUS PROVISIONS**

a. Severability. In the event any provisions of this agreement, or any part of any provision of this agreement, are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms hereof which can be given effect without the invalid provision or portion of such provision, and to that end the terms of this agreement 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 found in contractual provisions attachment (Form DA-146a – Attachment A), which is attached hereto, are hereby incorporated in this contract and made a part thereof by reference herein.

d. Headings. Headings used in this agreement 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 to the same, and hereto have executed this agreement as of the day and year first above written.


THE STATE OF KANSAS, BY:

\_\_\_\_\_  
Connie Owen  
Director, Kansas Water Office

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

\_\_\_\_\_  
Dawn Buehler  
Chair, Kansas Water Authority

PURCHASER, BY:

  
\_\_\_\_\_  
Ed Daniels, Chairman  
R.W.D. No. 6, Douglas County, Kansas

ATTEST:

\_\_\_\_\_

## 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.

**KANSAS WATER OFFICE**  
**WATER PURCHASE CONTRACT NO. 21-3**

This contract is executed and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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 Hillsboro, Marion County, Kansas, (hereinafter referred to as the “Purchaser”).

WHEREAS, the Purchaser desires to purchase a supply of water for a municipal and industrial water supply; and

WHEREAS, the State has signed Agreements (Contract Nos. DACW56-76-C-0133 and DACW56-96-WS-0002) with the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), as amended, for water supply storage space in the Reservoir; and

WHEREAS, the State has filed appropriate water reservation rights on March 27, 1974 and September 22, 1994, to divert and store water in the Reservoir; and

WHEREAS, the State and Purchaser entered into a contract on June 6, 1980, to provide water for municipal and industrial water supply from the Reservoir, which expires on December 22, 2021; and

WHEREAS, the Director of the Kansas Water Office is authorized by K.S.A. 74-2615, as amended, and by K.S.A. 82a-1305, as amended, to negotiate contracts for the sale of water; and

WHEREAS, the Purchaser filed an appropriate application on June 4, 2021, 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.*, as amended; and

WHEREAS, the Purchaser requested permission to negotiate on June 4, 2021; and

WHEREAS, the Kansas Water Authority granted permission to the Director on June 23, 2021 to enter into negotiations; and

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

WHEREAS, the withdrawal and use of up to 300 million gallons of water annually from the Reservoir 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 amendments thereto; and

WHEREAS, the Purchaser's application to purchase raw water from the Reservoir is approved for a maximum total amount of 300 million gallons per year in accordance with Articles 9 and 13 of Chapter 82a of Kansas Statutes Annotated.

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, or its successor.
- (b) "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.
- (c) "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.
- (e) "Raw water" refers to untreated water at the point of withdrawal from the reservoir.
- (f) "Reservoir" means Marion Reservoir.

#### **ARTICLE 2. TERM OF THE CONTRACT**

The term of this contract shall be for a period of forty (40) years beginning on December 23, 2021. The Purchaser may commence using water under this contract on December 23, 2021.

### **ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION**

This contract, any amendment hereto, or renewal thereof is subject to disapproval and revocation by the Kansas Legislature as provided in K.S.A. 82a-1307, and amendments thereto.

### **ARTICLE 4. UNITED STATES APPROVAL**

The Purchaser shall secure the right from the federal government 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 such installations and facilities are on federal lands. The Purchaser shall bear any and all costs of construction, modification, operation, and maintenance of Purchaser-owned, leased, or constructed installations and facilities.

The Purchaser shall provide the Director, upon written request, with proof of any easement granted by the federal government for rights-of-way across, in, and upon federal government land required for intake, transmission of water, and necessary appurtenances by and for the benefit of the Purchaser for the purposes of this contract.

### **ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES**

This contract is subject to such federal and state statutes as may be applicable, including specifically, but not by way of limitation, the State Water Resource Planning Act, K.S.A. 82a-901 *et seq.*, and amendments thereto; the State Water Plan, K.S.A. 82a-927 *et seq.*, and amendments thereto; and the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.*, and amendments thereto; and the Purchaser agrees to comply with such applicable statutes and any amendments to said statutes which may be enacted subsequent to the execution of this contract.

### **ARTICLE 6. QUANTITY OF WATER**

a. Quantity. During the term of this contract, defined in Article 2, subject to the conditions herein stated, the State will permit the Purchaser to withdraw not more than 300 million gallons of raw water from the water supply storage in the Reservoir in any one (1) calendar year. If the Purchaser in any

calendar year does not withdraw the entire annual raw water amount obligated under terms of this contract, the unused amount of water shall not add to the Purchaser's entitlement in 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 Appropriation Rights. Any rights under the Kansas Water Appropriation Act, K.S.A. 82a-701 et seq., and amendments thereto, acquired by the Purchaser and having priority dates later than the date of execution of this contract, shall not be used by the Purchaser to offset the minimum cost or volume of any quantity of raw water obligated under the terms of this contract. Any water received under authority of such water appropriation rights shall not be counted against the Purchaser's annual water entitlement under this contract even though the Purchaser may have to pay the State as if the water had been received under this contract as provided in Article 9.

The Purchaser may use water withdrawn 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, and amendments thereto, for each one thousand (1,000) gallons of raw water used 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 charges in accordance with this Article regardless of the quantity of raw water actually

used, except as provided in Article 13. The rate for raw water which must be paid for under terms of this contract shall be \$0.436 for each one thousand (1,000) gallons during calendar year 2021.

b. Minimum Charge. The Purchaser agrees to pay to the State a minimum charge whether or not water is withdrawn during the calendar year. The minimum charge for each calendar year shall be determined as provided in K.S.A. 82a-1306, and amendments thereto. The minimum charge for calendar year 2022 and each succeeding calendar year, unless changed by amendment of State statutes, shall be the sum of the following two components:

(1) fifty (50) percent of the total amount of water contracted for annually during the term of this contract 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 water contracted for during the year 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 and by the portion of the remaining fifty (50) percent under contract to the total conservation water supply capacity available under the State Water Marketing Program.

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 may adjust the rate effective January 1 of the following year. Such adjusted rate shall be charged for all water used or water which must be paid for under terms of this contract as provided in Article 9. The Director shall notify in writing the Purchaser 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 preamble of this contract.

b. Place of Use. The place of use for water purchased under this contract shall be within or in the vicinity of the City of Hillsboro, Marion County, Kansas.

c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any intention to sell any water under this contract to any person or entity located outside the place of use defined in (b) of this Article. Whenever the Purchaser shall propose to enter into a contract to sell 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 Authority for review. 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. The Purchaser shall transmit all payments due hereunder to the Director. Remittance for minimum payments as provided in paragraph (d) of Article 9 and paragraph (e) of Article 9 shall be paid to the Director 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 payment is due, whether or not water is withdrawn during the calendar year. Remittance for payments due for raw water used in excess of the quantity obligated by the minimum payment as provided in paragraph (f) of Article 9 shall be paid to the Director in full within thirty (30) days after date of billing by the State.

b. Determination of Charges. Charges for water for which payment is required shall be determined by the State in accordance with K.S.A. 82a-1308a and subsequent amendments thereto. 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 water received under terms of this contract up to the maximum quantity obligated by this contract (300 million gallons per year). In no event shall the Purchaser be permitted to withdraw in any one year more than the maximum of 300 million gallons per year.

d. Initial Minimum Payment. The initial minimum payment shall become due on January 1, 2022. Remittance for the initial minimum payment shall be in accordance with paragraph (a) of Article 9. Payment of the initial minimum charge shall entitle the Purchaser to receive up to one-half (1/2) of the maximum annual quantity of water in 2022 as set forth in Article 6, without additional charge.

e. Subsequent Minimum Payments. On each subsequent January 1<sup>st</sup> following the due date of the initial minimum payment, subsequent minimum payments shall become due. Remittance for minimum payments shall be in accordance with paragraph (a) of Article 9. Payment of the minimum payment 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. At the end of each calendar year throughout the term of this contract or within thirty (30) days after the end of each calendar year, the State shall bill the Purchaser for any water used during the calendar year in excess of the amount of water used to compute the minimum payment. 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.

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 provided herein, 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 due to an apportionment under paragraph (c) of Article 13 to withdraw the amount that the Purchaser is entitled to receive after payment of the minimum payment, the amount of such minimum payment in excess of the amount of water actually received by Purchaser shall be credited to reduce the minimum payment obligation of the Purchaser for the subsequent calendar year.

i. Overdue Payments. If the Purchaser shall fail 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, and amendments thereto, during the term of this contract. 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**

The point of withdrawal from the Reservoir shall be in SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 27, Township 19 South, Range 3 East, Marion County, Kansas.

#### **ARTICLE 11. METERING OF WATER**

The Purchaser shall, at its own expense, furnish, install, operate, and maintain at the place of diversion, a commercial measuring device as ordered by the Director.

The Purchaser shall test and calibrate as accurately as possible such measuring device or 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 as set forth in the current regulations regarding water meter specifications (K.A.R. 5-1-4) shall be deemed to be accurate. Certification of measuring devices shall be obtained from a commercial testing company approved by the Director.

The previous readings of any measuring device disclosed by 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.

If any measuring device fails to register for any period, the amount of water furnished during such period shall be determined by the Director, after consultation with the Purchaser.

The Purchaser shall read the measuring device on or before the last calendar day of each month, and shall send such reading to the Director within ten (10) days after it has been taken.

The Purchaser shall provide to the State monthly reports of all water withdrawn from any sources under authority of Purchaser-held water use permits or water appropriation rights if additional rights are acquired and subject to Article 6c. Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.

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 water furnished when the Purchaser's measuring device fails to register.

## **ARTICLE 12. WATER WITHDRAWAL**

Initial withdrawal of water under this contract will be on the 23<sup>rd</sup> day of December 2021. Upon request by the Director, the Purchaser shall provide notification, in writing, of the estimated amounts, dates,

and rates of withdrawal for the time period identified by the Director. In no event, during the term of this contract, shall the Purchaser withdraw water in excess of the maximum daily rate of 1.5 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 water supply commitment. In the event it becomes necessary for any reason to apportion the water among the persons having contracts, therefor, 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. Neither the Director nor the Authority shall be responsible or have any legal liability for any insufficiency of water or the apportionment thereof, and the duty of the Director 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 the year is greater than the supply available from the conservation water supply storage 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 this State 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 water supply storage space, the Director will apportion available water among the persons having contracts 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 described under Article 6 of this contract.

(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 in the Reservoir as determined by the State.

(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 in the Reservoir therefore 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 Reservoir among the persons having contracts therefore, and such apportionment results in the Purchaser being unable during the 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 herein acknowledge that this contract is for raw water from the conservation water supply storage at the Reservoir. The Kansas Water Office, 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 as described in this contract except as provided in the Kansas Tort Claims Act, K.S.A. 1982 Supplement 75-6101 et seq., and amendments thereto; 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 water beyond the point of withdrawal. 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 of the Kansas Water Office nor the Kansas Water Authority shall be liable for any claim by Purchaser arising out of the quality of water in the Reservoir to the point of withdrawal. 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 water in the Reservoir up to the point of withdrawal or 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, and amendments thereto.

#### **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 same is approved by the Authority under such reasonable terms and conditions as the Authority may impose.

b. Whenever the assignment, sale, conveyance, or transfer of all or any part of this water purchase contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the water purchase 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., and amendments thereto.

#### **ARTICLE 17. RIGHT OF FIRST REFUSAL**

As required by the provisions of K.S.A. 82a-1305(a), and amendments thereto, 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., and amendments thereto.

## **ARTICLE 18. TERMINATION**

In the event the Purchaser is unable to obtain, construct, maintain, operate the necessary water diversion and distribution facilities, the Purchaser may terminate this contract upon giving the State thirty (30) days written notice of its intent to do so, and all rights and liabilities of the Purchaser hereunder shall cease. Provided, however, that nothing in this Article shall be construed to affect the duty of the Purchaser to pay the prorated share of the minimum charge for the year in which the contract is terminated or the actual charge for the quantity of water withdrawn, whichever is greater, before notice of termination is given.

## **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 20. MISCELLANEOUS PROVISIONS**

a. Severability. In the event any provisions of this agreement, or any part of any provision of this agreement, are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms hereof which can be given effect without the invalid provision or portion of such provision, and to that end the terms of this agreement 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 found in contractual provisions attachment (Form DA-146a – Attachment A), which is attached hereto, are hereby incorporated in this contract and made a part thereof by reference herein.

d. Headings. Headings used in this agreement 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 to the same, and hereto have executed this agreement as of the day and year first above written.


THE STATE OF KANSAS, BY:

\_\_\_\_\_  
Connie Owen  
Director, Kansas Water Office

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

\_\_\_\_\_  
Dawn Buehler  
Chair, Kansas Water Authority

PURCHASER, BY:

\_\_\_\_\_  
  
Matthew Stiles  
City of Hillsboro, Marion County, Kansas

ATTEST:

\_\_\_\_\_  


## 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: November 10, 2021  
TO: Kansas Water Authority  
FROM: Jeremiah Hobbs, RAC Ops Committee Chair  
RE: RAC membership

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The KWA Regional Advisory Committee (RAC) Operations Committee met November 10, 2021, via GoTo meeting. Discussion during the conference call focused on the following topics:

- Membership applications for the Cimarron, Marais des Cygnes, Missouri and Kansas RACs.

The Committee reviewed and discussed the applications for membership on the above noted RACs for currently vacant positions. The following membership recommendations were approved by the RAC Operations Committee for these vacancies:

- Recommend Adam Gerrond be considered for the Conservation/Environment (cc) category on the Cimarron RAC with a term expiration of June 2025.
- Recommend Ray Samuel be considered for the open Planning & Zoning category that will be renamed to At Large Public 3 category on the Marais des Cygnes with a term expiration of June 2025.
- Recommend Mike Stec be considered for a category change from the Public Water Supply 2 to the Industry/Commerce (cc) on the Missouri RAC with a term expiration of June 2023.
- Recommend Doug Allen be considered for the open Public Water Supply 2 category on the Missouri RAC with a term expiration of June 2025.
- Recommend Ian Fannin-Hughes be considered for the open Planning, Restoration & Protection category on the Kansas RAC with a term expiration of June 2025.

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*The KWA RAC Operations Committee recommends KWA approval of the applications for membership on the Cimarron, Marais des Cygnes, Missouri and Kansas as indicated above.*

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# MEMO



DATE: November 24, 2021  
TO: Kansas Water Authority  
FROM: Matt Unruh  
RE: 2022 KWA Annual Report to the Governor & Legislature

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

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The Kansas Water Authority (KWA) submits a report to the Governor and Kansas Legislature on an annual basis highlighting the past year's accomplishments and providing priorities/recommendations of the KWA in advance of the upcoming legislative session. Kansas Water Office staff have developed a preliminary draft of this year's report for review and approval by the KWA in advance of submittal to Governor Laura Kelly and the 2022 Kansas Legislature. A draft copy of the 2022 Annual Report will be reviewed with the KWA during the December 1 meeting.

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*The Kansas Water Office recommends the Kansas Water Authority approve the 2022 Annual Report to the Governor and Legislature with final editorial discretion based on feedback provided by the Kansas Water Authority during the December 1 meeting.*

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