

Approved: 2-1-94  
Date

## MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on January 25, 1994 in Room 423-S of the Capitol.

All members were present or excused:

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Don Hayward, Revisor of Statutes  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Mrs. Terry Duvall, Policy Consultant and Staff Assistant,  
Kansas Water Office

Others attending: See attached list

Chairman Sallee called the meeting to order shortly after 8 a.m.

Mrs. Terry Duvall, Policy Consultant, Kansas Water Office, appeared before the committee to review Kansas Water Office contracts between the state of Kansas and the cities of Burlingame, Osage City and Council Grove, Kansas. Attachment 1 These contracts run for a time period of forty years.

Mrs. Duvall told committee members the city of Osage City has a water right to the river which flows into Melvern Reservoir, however this is only good when there is water in the stream flowing into the reservoir. This contract will allow them to take water from storage when the river's flow of water is insufficient for that city's needs.

The city of Burlingame has a pipeline to Osage City which obtains water from Melvern. At this time the pipeline is completed, however work is not completed at the treatment facility.

The City of Council Grove has a water contract for a water supply from Council Grove Lake.

Mrs. Duvall stated that The state of Kansas did not own any water storage at Melvern Reservoir, so they have purchased 700 acre feet from the Corps of Engineers to provide these cities with water.

Discussion followed with a member questioning the minimum and maximum in the contracts. Mrs. Duvall stated that contracts are negotiated for something less than requests and seem to be in excess of usage requirements. Concern was expressed by the member as to the state's position if the water supply should not be available. Mrs. Duvall stating there was a liability clause in Article 14 of the contract that holds the state harmless.

Further discussion centered around the length of the review period being six years. Mrs. Duvall stated that there is a period of adjustment over the first few years and the six year period was to allow for needed adjustments but they could be reviewed more often.

A member questioned whether a certain level was maintained, such as a level for recreation. It was stated that there is a considerable supply of water that is not committed to purchasers. If water has not been contracted for, there can be some pool level manipulation.

A member questioned why the committee was looking at the water contracts. The chairman noted this had not been done previously but the statutes specify that these contracts shall be transmitted to the Legislature and that the Legislature may disapprove and revoke a contract by passage of a concurrent resolution. Ms. Duvall stated that statutes state the contracts could be revoked although there appears to be some question as to the

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 423-S Statehouse, at 8:00 a.m. on January 25, 1994.

constitutionality of this action.

The chairman commented that the Joint Committee on Rules and Regulations had determined they were not doing a thorough job of following the statutes which set out various oversight requirements and presently were trying to follow them more closely. It is possible suggestions could be made and if they were not followed then a bill might be introduced to incorporate such suggestions.

A member stated that statute says the Legislature gives the Kansas Water Office the authority to negotiate water contracts subject to legislative oversight. The contract is written subject to the legislative right of revocation.

Mrs. Duval stated there is a provision for emergency water contracts which would be short term.

Mrs. Duval introduced Mr. Mike Gilliland from Osage City, Mr. William R. Kraus and Cheryl D. Holloway, City of Burlingame who were in attendance at the committee meeting.

Presently there are 29 contracts in place.

Mrs. Duval told the committee HB-2563 deals with the purchase of excess storage but given no direction as to method of repayment of funds used to purchase excess storage has been received. This purchase from the Corps of Engineers needs to be made by July 1, 1996.

A member questioned why the city of Burlingame got their water from Melvern when Pamona Lake was closer with Mrs. Duvall stating that Burlingame's water was treated by Osage City.

Senator Wisdom requested introduction of a bill which would allow a hunter to take his total of 2 wild turkeys in one day rather than a daily bag limit of one each day.

Senator Vancrum made a motion to approve the minutes as corrected. Senator Lawrence seconded the motion and the motion carried.

The meeting adjourned at 8:45 a.m.

The next meeting is scheduled for January 26, 1994.

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

DATE January 25, 1994

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

Jerry Duvall  
Mike Gilliland  
Glen Kirk  
William B Kraus  
Cheryl D. Holloway  
Ken Peterson

KNO  
City of Oage City  
KS Water Office  
City of Burlingame  
City of Burlingame  
KS Petroleum Council

STATE OF KANSAS  
KANSAS WATER OFFICE

CONTRACT  
Between the State of Kansas  
and  
City of Burlingame

for  
A MUNICIPAL AND INDUSTRIAL WATER SUPPLY  
from  
MELVERN RESERVOIR

Water Purchase Contract No. 93-2

Senate Energy & Nat'l Res.  
January 25, 1994  
Attachment 1

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KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 93-2

1 This contract is executed and entered into this 15<sup>th</sup> day of  
2 July, 1993, by and between the State of Kansas (hereinafter referred to as  
3 the "State") as represented by the Kansas Water Office, and the City of Burlingame (hereinafter  
4 referred to as the "Purchaser").

5 WITNESSETH: WHEREAS, the Purchaser desires to purchase water for a municipal and  
6 industrial water supply; and

7 WHEREAS, the State will sign an Agreement with the United States of America for water  
8 supply storage space in the Reservoir; and

9 WHEREAS, the State has filed an appropriate water reservation right on December 12,  
10 1990, to divert and store water in the Reservoir; and

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

13 WHEREAS, the Purchaser filed an appropriate application with the State to negotiate the  
14 purchase of raw water from the Reservoir, in compliance with the State Water Plan Storage Act,  
15 K.S.A. 82a-1301 et seq., as amended; and

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

18 WHEREAS, the withdrawal and use of 65 million gallons of water annually from the  
19 Reservoir by the Purchaser is in the interest of the people of the State of Kansas and will advance  
20 the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

21 WHEREAS, Purchaser's application number 127 to purchase raw water from the Reservoir  
22 is approved for a maximum total amount of 65 million gallons per year in accordance with Arti-  
23 cles 9 and 13 of Chapter 82a of Kansas Statutes Annotated.

24 NOW, THEREFORE, in consideration of the foregoing, the parties mutually agree as  
25 follows:

#### ARTICLE 1. DEFINITIONS

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

2 (a) "Authority" means the Kansas Water Authority, or its successor.

3 (b) "Director" means the Director of the Kansas Water Office, his or her successor, or  
4 designated representative.

5 (c) "Point of withdrawal from the reservoir" means the point at which water is taken from  
6 the reservoir by pump, siphon, canal, or any other device; or released through the dam by gates,  
7 conduits, or any other means.

8 (d) "Raw water" refers to untreated water at the point of withdrawal from the reservoir.

9 (e) "Reservoir" means Melvern Lake.

#### ARTICLE 2. TERM OF THE CONTRACT

1 The term of this contract shall be for a period of 40 years beginning on the date of  
2 execution of this contract. The Purchaser may commence using water at any time after the  
3 execution of this contract by providing notice as provided in Article 12.

### ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

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

### ARTICLE 4. UNITED STATES APPROVAL

1           The Purchaser shall secure the right from the federal government to construct, modify,  
2           alter, or maintain installations and facilities when such installations and facilities are on federal  
3           lands. The Purchaser shall bear the cost of construction, modification, operation, and maintenance  
4           of Purchaser-owned installations and facilities.

5           The Purchaser shall provide the Director with proof of any easement granted by the federal  
6           government for rights-of-way across, in, and upon federal government land required for intake,  
7           transmission of water, and necessary appurtenances.

### ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES

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

### ARTICLE 6. QUANTITY OF WATER

1           a. Initial Quantity. During the term of this contract, defined in Article 2, subject to the  
2           conditions herein stated, the State will permit the Purchaser to withdraw not more than  
3           2,600,000,000 gallons of raw water from the water supply storage in the Reservoir; provided,



4 however, that the State shall not be obligated to furnish more than 65 million gallons of raw water  
5 in any one (1) calendar year. If the Purchaser in any calendar year does not withdraw the entire  
6 annual amount obligated under terms of this contract, the unused amount of water shall not add  
7 to the Purchaser's entitlement in any subsequent year.

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

14 c. Water Appropriation Rights. The Purchaser may use water withdrawn in accordance  
15 with the terms of this contract without obtaining a permit or water right under the Kansas Water  
16 Appropriation Act. Rights of the Purchaser under this contract shall be entitled to the same  
17 protection as any other vested property interest including vested water rights, water appropriation  
18 rights, and approved applications for permit to appropriate water.

#### ARTICLE 7. PRICE OF WATER

1 a. Price. The Purchaser agrees to pay the State at the rate fixed in accordance with  
2 K.S.A. 82a-1306, and amendments thereto, for each one thousand (1,000) gallons of raw water  
3 used or raw water which must be paid for under terms of this contract throughout the term of this  
4 contract; provided, however, that the Purchaser is obligated and agrees to pay the minimum  
5 charges in accordance with this Article regardless of the quantity of raw water actually used,

6 except as provided in Article 13. The rate for raw water which must be paid for under terms of  
7 this contract shall be \$0.14179 for each one thousand (1,000) gallons during calendar year 1993.

8 b. Minimum Charge. The Purchaser agrees to pay to the State a minimum charge whether  
9 or not water is withdrawn during the calendar year. The minimum charge for each calendar year  
10 shall be determined as provided in K.S.A. 82a-1306, and amendments thereto. The minimum  
11 charge for calendar year 1993 and each succeeding calendar year, unless changed by amendment  
12 of State statutes, shall be the sum of the following two components:

13 (1) 50 percent of the total amount of water contracted for during the term of this contract,  
14 multiplied by the rate established in accordance with paragraph (a) of this Article, or as adjusted  
15 in accordance with paragraph (c) of this Article; and (2) a charge on the remaining 50 percent of  
16 water contracted for during the year, computed by multiplying the net amount of moneys advanced  
17 from state funds for costs incurred and associated with the conservation storage water supply under  
18 the State Water Marketing Program, by (a) the average rate of interest earned during the past  
19 calendar year by the Pooled Money Investment Board on 30 day repurchase agreements, and (b)  
20 by the portion of the remaining 50 percent under contract to the total conservation water supply  
21 capacity available under the State Water Marketing Program.

22 c. Review and Adjustment of Rates. The Director shall review the fixed rate stated in this  
23 article on July 15 of each year during the term of this contract and may adjust the rate effective  
24 January 1 of the following year to reflect any change in experience by substituting the adjusted  
25 rate for the fixed rate then applicable to the contract. Such adjusted rate shall be charged for all  
26 water used or water which must be paid for under terms of this contract as provided in Article 9.  
27 The Director shall notify the Purchaser by restricted mail by July 31 of each year of the adjusted

28 rate which will become effective on January 1 of the ensuing year and shall notify the Purchaser  
29 of the adjusted minimum payment which will be required under the terms and conditions of this  
30 contract. Failure to furnish such notification by July 31 shall not relieve the Purchaser of the  
31 obligation to pay such adjusted rate.

#### ARTICLE 8. PURPOSE AND PLACE OF USE

1 a. Purpose. Water purchased under this contract shall be used for purposes which are in  
2 the interest of the people of the State of Kansas and which will advance the purposes set forth in  
3 Article 9 of Chapter 82a of Kansas Statutes Annotated, and amendments thereto.

4 b. Place of Use. The place of use for water purchased under this contract shall be in the  
5 immediate vicinity of a pipeline extending approximately two miles east to the community of  
6 Fostoria, continuing north of Fostoria 1/2 mile and within the community of Fostoria; in the  
7 immediate vicinity of a pipeline along K-31 Highway extending west of the city limits of  
8 Burlingame approximately 1/2 mile; and in the immediate vicinity of a pipeline extending north  
9 from the city limits of Burlingame along the west side of Section 11, Township 15 South, Range  
10 14 East for a distance of 1 mile.

11 c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any  
12 intention to sell any water under this contract to any person or entity located outside the  
13 geographical limits described above. Whenever the Purchaser shall propose to enter into a contract  
14 to sell water purchased under this contract to any such person or entity outside the described geo-  
15 graphical limits, the Purchaser shall, before execution thereof, submit a copy of such contract to  
16 the Authority for review. The Purchaser agrees not to execute and enter into any such contracts  
17 unless approved by the Authority.

## ARTICLE 9. BILLING AND PAYMENT SCHEDULE

1        a. Deferment. The beginning of the payment period shall be deferred until July 1, 1993,  
2        or until such time as actual use of the water contracted for commences, whichever occurs first, if  
3        in order to use the water contracted for, bonds are required to be issued, or the construction of  
4        transmission or treatment facilities is required.

5        b. Payments. The Purchaser shall transmit all payments due hereunder to the Director.  
6        Remittance for minimum payments shall be paid to the Director in either one annual payment  
7        within thirty (30) days after the date of billing by the State or in equal monthly installments during  
8        the calendar year in which the minimum payment is due, whether or not water is withdrawn during  
9        the calendar year. Remittance for payments due for water used in excess of the quantity obligated  
10       by the minimum payment shall be paid to the Director in full within thirty (30) days after the date  
11       of billing by the State.

12       c. Determination of Charges. Charges for water for which payment is required shall be  
13       determined by the State. The formulas by which charges are computed shall be prepared by the  
14       Director with the approval of the Authority. The Purchaser acknowledges and agrees that said  
15       formulas and computations are subject to change, based on subsequent amendments to State  
16       statutes which may affect the terms of this contract.

17       d. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all  
18       water received under terms of this contract up to the maximum quantity obligated by this contract.

19       e. Initial Minimum Payment. Except as provided in Article 9a, the initial minimum  
20       payment shall become due on the day of execution of this contract as defined in Article 2.  
21       Remittance for the initial minimum payment shall be in accordance with Article 9b. The initial

22 minimum charge shall be prorated by the number of months or portions thereof in service during  
23 the calendar year. Payment of the initial minimum charge shall entitle the Purchaser to receive  
24 during the remaining portion of the calendar year the prorated portion of one-half (1/2) of the  
25 maximum annual quantity of water as set forth in Article 6, without additional charge.

26 f. Subsequent Minimum Payments. On each succeeding January 1 following the due date  
27 of the initial minimum payment, subsequent minimum payments shall become due. Remittance  
28 for minimum payments shall be in accordance with Article 9b. Payment of the minimum payment  
29 shall entitle the Purchaser to receive during the calendar year, without additional charge, one-half  
30 (1/2) of the maximum annual quantity obligated under terms of this contract.

31 g. Water in Excess of Minimum. At the end of each calendar year throughout the term  
32 of this contract or within thirty (30) days after the end of each calendar year, the State shall bill  
33 the Purchaser for any water used during the calendar year in excess of one-half (1/2) of the total  
34 annual quantity of water in excess of the amount of water used to compute the minimum charge.  
35 The Purchaser shall be given credit for the proportionate share of the payment which was made  
36 as an interest charge on the net amount of monies advanced from the State funds for the costs  
37 incurred and associated with providing 50 percent of the total annual amount of water contracted  
38 for purchase.

39 h. Overpayment or Underpayment. If for reason of error in computation, measuring device  
40 malfunction, or other causes, there is an overpayment or underpayment to the State by the  
41 Purchaser of the charges provided herein, such overpayment or underpayment shall be credited or  
42 debited, as the case may be, to the Purchaser's account for the next succeeding payment and the

43 State shall notify the Purchaser thereof in writing. However, all charges made in any year shall  
44 be conclusively presumed to be correct six (6) months after the end of such year.

45 i. Adjustment for Apportionment. In the event the Purchaser is unable in any year due  
46 to apportionment under Article 13 herein to withdraw the amount which the Purchaser is entitled  
47 to receive after payment of the minimum payment, the amount of such minimum payment in  
48 excess of the amount of water actually received by Purchaser shall be credited to reduce the  
49 obligation of the Purchaser during the next succeeding calendar year.

50 j. Overdue Payments. If the Purchaser shall fail to make any of the payments when due,  
51 then the overdue payments shall bear interest, compounded annually at the rate prescribed in  
52 K.S.A. 82a-1317, and amendments thereto, during the term of this contract. This shall not be  
53 construed as giving the Purchaser the option of either making payments when due or paying  
54 interest, nor shall it be construed as waiving any of the rights of the State that might result from  
55 such default by the Purchaser.

#### ARTICLE 10. POINT OF WITHDRAWAL

1 The point of withdrawal from the Reservoir shall be in the Northeast quarter of the  
2 Southeast quarter of the Northeast quarter of Section 11, Township 18 South, Range 14 East, in  
3 Osage County, Kansas, which is the intake location for the City of Osage City.

#### ARTICLE 11. METERING OF WATER

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

3 The Purchaser shall test and calibrate as accurately as possible such measuring device or  
4 devices whenever requested by the Director, but not more frequently than once every twelve (12)

5 months. A measuring device shall be deemed to be accurate if test results fall within a tolerance  
6 of plus or minus two (2) percent throughout the full range of diversion. Certification of measuring  
7 devices shall be obtained from a commercial testing company approved by the Director.

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

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

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

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

17 The State may measure releases by means of a rating curve at the point of withdrawal, or  
18 by other suitable means, as an auxiliary measuring device to verify the accuracy of the Purchaser's  
19 measuring device or to measure the amount of water furnished when the Purchaser's measuring  
20 device fails to register.

#### ARTICLE 12. WATER WITHDRAWAL SCHEDULE

1 The Purchaser shall notify the Director, in writing, of the date for the initial withdrawal  
2 of water at least forty-five (45) days prior to such withdrawal. At such time the Purchaser shall  
3 also notify the Director, in writing, of the amounts, times, and rates of withdrawal of water  
4 required during the remainder of the calendar year in which such initial withdrawal is made. The

Purchaser agrees to submit a water withdrawal schedule for each succeeding calendar year to the Director on or before March 31 of each year.

Such proposed water withdrawal schedule shall be approved or disapproved by the Director within thirty (30) days of the filing of such schedule and, subject to his or her approval, such schedule may be amended upon written request from the Purchaser. The Director shall not unreasonably disapprove or withhold his or her approval of the water withdrawal schedule.

The Purchaser's approved water withdrawal schedule shall govern the rate of withdrawal, but in no event shall the Purchaser withdraw water in excess of the maximum daily rate of (250,000 proposed) gallons. Whenever the Purchaser wishes to make a withdrawal of water provided under terms of this contract from the reservoir other than as approved in the annual withdrawal schedule, the Purchaser shall advise the Director at least two (2) working days prior to the time such water is to be withdrawn from the Reservoir. Such notice may be transmitted to the Director by oral communication, but the notice must be confirmed in writing within fifteen (15) days after the oral communication.

#### ARTICLE 13. CONTINUITY OF WATER SERVICE

(a) The Director shall make all reasonable efforts to perfect and protect the water reservation right 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 an oral notice, followed by a written notice, of such action as far in advance as is reasonably practicable.



7 (b) Neither the Director nor the Authority shall be responsible or have any legal liability  
8 for any insufficiency of water or the apportionment thereof, and the duty of the Director and the  
9 Authority to furnish water is specifically subject to the following conditions:

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

15 (2) The Director shall evaluate the effect of sediment deposits in the Reservoir and, if such  
16 evaluation indicates that the sediment deposits have reduced the yield from the State's  
17 conservation water supply storage space, the Director will apportion available water among the  
18 persons having contracts in relation to the annual volume of all water contracted.

19 (3) If the United States temporarily discontinues or reduces water storage available to the  
20 State under its agreement with the United States for the purpose of inspection, investigation,  
21 maintenance, repair, or rehabilitation of the Reservoir or for other reasons deemed necessary by  
22 the United States, the Director will apportion the available water among the persons having  
23 contracts as determined by the State.

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

29 (c) In the event the Director finds it necessary to apportion the available water from the  
30 Reservoir among the persons having contracts therefor, and such apportionment results in the  
31 Purchaser being unable during the year to receive the amount of water that has been purchased  
32 by payment of the minimum charge, the Purchaser shall pay the State only for the amount of water  
33 actually made available to the Purchaser during the year.

#### ARTICLE 14. LIABILITY

1 Neither the Director nor the Authority shall be liable for any claim arising out of the  
2 control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond  
3 the point of withdrawal as described in this contract except as provided in the Kansas Tort Claims  
4 Act, K.S.A. 75-6101 et seq., and amendments thereto; and the Purchaser shall hold the State  
5 harmless on account of damage or claim or damage of any nature whatsoever arising out of or  
6 connected with the control, carriage, handling, use, disposal, or distribution of water beyond the  
7 point of withdrawal. Nothing in this Article shall be construed to impair any protection of the  
8 rights of the Purchaser as set forth in Article 6.

#### ARTICLE 15. AMENDMENT OR NULLIFICATION

1 The contract may be amended or nullified by written agreement of the parties, as provided  
2 in K.S.A. 82a-1316, and amendments thereto. The fixed rate as stated in this contract may be  
3 subsequently adjusted on January 1 after the execution of the contract and on each January 1  
4 thereafter, pursuant to the terms and conditions of this contract.

#### ARTICLE 16. ASSIGNMENT OF CONTRACT

1 No assignment, sale, conveyance, or transfer of all or any part of this contract, or of  
2 interest therein, shall be valid unless and until same is approved by the Authority under such  
3 reasonable terms and conditions as the Authority may impose.

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

#### ARTICLE 17. RENEWALS

1 When this contract expires, the Director shall give the Purchaser the opportunity to refuse  
2 any new offering of the water before offering the same to any other applicant.

#### ARTICLE 18. TERMINATION

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

ARTICLE 19. SEVERABILITY

1 In the event any provision of this agreement or any part of any provision of this agreement  
2 are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms  
3 hereof which can be given effect without the invalid provision or portion of such provision, and  
4 to that end the terms of this agreement are intended to be severable.

ARTICLE 20. WATER CONSERVATION PLAN

1 The Purchaser shall adopt and implement a water conservation plan, prepared in accordance  
2 with guidelines developed and maintained by the Kansas Water Office. Whenever lack of inflow  
3 causes the water supply storage space to fall below 67 percent capacity, a drought condition shall  
4 be considered to exist and the Purchaser agrees to implement the drought contingency plan  
5 contained in their water conservation plan before any withdrawal in addition to the scheduled  
6 water withdrawals described in Article 12 will be allowed by the State.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day  
and year first above written.

THE STATE OF KANSAS, BY:

William R. Kraus  
Mayor, City of Burlingame

By:

Stephen A. Hurst  
Stephen A. Hurst  
Kansas Water Office

ATTEST:

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

Cheryl H. Holloway  
City Clerk

By:

Bob Best  
John R. "Bob" Best, Chairman  
Kansas Water Authority

STATE OF KANSAS  
KANSAS WATER OFFICE

CONTRACT  
Between the State of Kansas  
and  
the City of Osage City

FOR A MUNICIPAL AND INDUSTRIAL WATER SUPPLY  
from  
MELVERN RESERVOIR

Water Purchase Contract No. 93-3

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KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 93-3

1           This contract is executed and entered into this 22<sup>nd</sup> day of April, 1993,  
2           by and between the State of Kansas (hereinafter referred to as the "State") as represented  
3           by the Kansas Water Office, and the City of Osage City (hereinafter referred to as the  
4           "Purchaser").

5           WITNESSETH: WHEREAS, the Purchaser desires to purchase water for a  
6           municipal and industrial water supply; and

7           WHEREAS, the State will sign an Agreement with the United States of America  
8           for water supply storage space in the Reservoir; and

9           WHEREAS, the State has filed or will file prior to the effective date of this contract  
10          an appropriate water reservation right to divert and store water in the Reservoir; and

11          WHEREAS, the Director of the Kansas Water Office is authorized by K.S.A. 74-  
12          2615, as amended, and by K.S.A. 82a-1305, as amended, to negotiate contracts for the sale  
13          of water; and

14          WHEREAS, the Purchaser filed an appropriate application with the State to  
15          negotiate the purchase of raw water from the Reservoir, in compliance with the State Water  
16          Plan Storage Act, K.S.A. 82a-1301 et seq., as amended; and

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

19          WHEREAS, the withdrawal and use of 100 million gallons of water annually from  
20          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

WHEREAS, Purchaser's application to purchase raw water from the Reservoir is approved for a maximum total amount of 260 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 his 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.

(d) "Raw water" refers to untreated water at the point of withdrawal from the reservoir.

(e) "Reservoir" means Melvern Lake.

#### ARTICLE 2. TERM OF THE CONTRACT

The term of this contract shall be for a period of 40 years beginning on the effective date of this contract. The Purchaser may commence using water at any time after the effective date of this contract by providing notice as provided in Article 12. This

4 contract shall become effective when the State purchases water supply storage in the  
5 Reservoir from the United States of America.

### ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

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

### ARTICLE 4. UNITED STATES APPROVAL

1 The Purchaser shall secure the right from the federal government to construct,  
2 modify, alter, or maintain installations and facilities when such installations and facilities  
3 are on federal lands. The Purchaser shall bear the cost of construction, modification,  
4 operation, and maintenance of Purchaser-owned installations and facilities.

5 The Purchaser shall provide the Director with proof of any easement granted by the  
6 federal government for rights-of-way across, in, and upon federal government land required  
7 for intake, transmission of water, and necessary appurtenances.

### ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES

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

## ARTICLE 6. QUANTITY OF WATER

1           a. Initial Quantity. During the term of this contract, defined in Article 2, subject  
2 to the conditions herein stated, the State will permit the Purchaser to withdraw not more  
3 than 4,000,000,000 gallons of raw water from the water supply storage in the Reservoir;  
4 provided, however, that the State shall not be obligated to furnish more than 100 million  
5 gallons of raw water in any one (1) calendar year. If the Purchaser in any calendar year  
6 does not withdraw the entire annual amount obligated under terms of this contract, the  
7 unused amount of water shall not add to the Purchaser's entitlement in any subsequent  
8 year.

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

16           The Purchaser may use water withdrawn in accordance with the terms of this  
17 contract without obtaining a permit or water right under the Kansas Water Appropriation  
18 Act. Rights of the Purchaser under this contract shall be entitled to the same protection  
19 as any other vested property interest including vested water rights, water appropriation  
20 rights, and approved applications for permit to appropriate water.

## ARTICLE 7. PRICE OF WATER

1           a. Price. The Purchaser agrees to pay the State at the rate fixed in accordance with  
2           K.S.A. 82a-1306, and amendments thereto, for each one thousand (1,000) gallons of raw  
3           water used or raw water which must be paid for under terms of this contract throughout  
4           the term of this contract; provided, however, that the Purchaser is obligated and agrees to  
5           pay the minimum charges in accordance with this Article regardless of the quantity of raw  
6           water actually used, except as provided in Article 13. The rate for raw water which must  
7           be paid for under terms of this contract shall be 14.179 cents for each one thousand (1,000)  
8           gallons during calendar year 1993.

9           b. Minimum Charge. The Purchaser agrees to pay to the State a minimum charge  
10          whether or not water is withdrawn during the calendar year. The minimum charge for each  
11          calendar year shall be determined as provided in K.S.A. 82a-1306, and amendments  
12          thereto. The minimum charge for calendar year 1993 and each succeeding calendar year,  
13          unless changed by amendment of State statutes, shall be the sum of the following two  
14          components:

15               (1) 50 percent of the total amount of water contracted for during the term of this  
16          contract multiplied by the rate established in accordance with paragraph (a) of this Article  
17          or as adjusted in accordance with paragraph (c) of this Article; plus (2) a charge on the  
18          remaining 50 percent of water contracted for during the year computed by multiplying the  
19          net amount of moneys advanced from state funds for costs incurred and associated with  
20          conservation storage water supply under the State Water Marketing Program by the average  
21          rate of interest earned during the past calendar year by the Pooled Money Investment

22 Board on 30 day repurchase agreements and by the proportion of the remaining 50 percent  
23 under contract to the total conservation water supply capacity available under the State  
24 Water Marketing Program.

25 c. Review and Adjustment of Rates. The Director shall review the fixed rate stated  
26 in this article on July 15 of each year during the term of this contract and may adjust the  
27 rate effective January 1 of the following year to reflect any change in experience by  
28 substituting the adjusted rate for the fixed rate then applicable to the contract. Such  
29 adjusted rate shall be charged for all water used or water which must be paid for under  
30 terms of this contract as provided in Article 9. The Director shall notify the Purchaser by  
31 restricted mail by July 31 of each year of the adjusted rate which will become effective on  
32 January 1 of the ensuing year and shall notify the Purchaser of the adjusted minimum  
33 payment which will be required under the terms and conditions of this contract. Failure  
34 to furnish such notification by July 31 shall not relieve the Purchaser of the obligation to  
35 pay such adjusted rate.

#### ARTICLE 8. PURPOSE AND PLACE OF USE

1 a. Purpose. Water purchased under this contract shall be used for purposes which  
2 are in the interest of the people of the State of Kansas and which will advance the purposes  
3 set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated, and amendments  
4 thereto.

5 b. Place of Use. The place of use for water purchased under this contract shall be  
6 within the corporate limits of the City of Osage City and the immediate vicinity (no more  
7 than one mile from corporate limits), the City of Reading, Osage Rural Water District No.  
8 6 and Osage County Rural Water District No. 7.

8           c. Approval of Change in Place of Use. The Purchaser shall inform the Director  
9 of any intention to sell any water under this contract to any person or entity located outside  
10 the geographical limits described above. Whenever the Purchaser shall propose to enter  
11 into a contract to sell water purchased under this contract to any such person or entity  
12 outside the described geographical limits, the Purchaser shall, before execution thereof,  
13 submit a copy of such contract to the Authority for review. The Purchaser agrees not to  
14 execute and enter into any such contracts unless approved by the Authority.

#### ARTICLE 9. BILLING AND PAYMENT SCHEDULE

1           a. Deferment. The beginning of the payment period shall be deferred until the  
2 State has obtained storage space from the federal government.

3           b. Payments. The Purchaser shall transmit all payments due hereunder to the  
4 Director. Remittance for minimum payments shall be paid to the Director in either one  
5 annual payment within thirty (30) days after date of billing by the State or in equal  
6 monthly installments during the calendar year in which the minimum payment is due,  
7 whether or not water is withdrawn during the calendar year. Remittance for payments due  
8 for water used in excess of the quantity obligated by the minimum payment shall be paid  
9 to the Director in full within thirty (30) days after date of billing by the State.

10           c. Determination of Charges. Charges for water for which payment is required  
11 shall be determined by the State. The formulas by which charges are computed shall be  
12 prepared by the Director with the approval of the Authority. The Purchaser acknowledges  
13 and agrees that said formulas and computations are subject to change, based on subsequent  
14 amendments to State statutes which may affect the terms of this contract.

15           d. Water Subject to Payment. The Purchaser shall pay as specified in this contract  
16 for all water received under terms of this contract up to the maximum quantity obligated  
17 by this contract. The Purchaser shall be entitled to receive any water allowed under the  
18 Kansas Water Appropriation Act at no charge under this contract.

19           e. Initial Minimum Payment. Except as provided in Article 9a, the initial  
20 minimum payment shall become due on the effective date of this contract as defined in  
21 Article 2. Remittance for the initial minimum payment shall be in accordance with Article  
22 9b. The initial minimum charge shall be prorated by the number of months or portions  
23 thereof in service during the calendar year. Payment of the initial minimum charge shall  
24 entitle the Purchaser to receive during the remaining portion of the calendar year the  
25 prorated portion of one-half (1/2) of the maximum annual quantity of water as set forth in  
26 Article 6, without additional charge.

27           f. Subsequent Minimum Payments. On each succeeding January 1 following the  
28 due date of the initial minimum payment, subsequent minimum payments shall become  
29 due. Remittance for minimum payments shall be in accordance with Article 9b. Payment  
30 of the minimum payment shall entitle the Purchaser to receive during the calendar year,  
31 without additional charge, one-half (1/2) of the maximum annual quantity obligated under  
32 terms of this contract.

33           g. Water in Excess of Minimum. At the end of each calendar year throughout the  
34 term of this contract or within thirty days after the end of each calendar year, the State  
35 shall bill the Purchaser for any water used during the calendar year in excess of one-half  
36 (1/2) of the total annual quantity of water in excess of the amount of water used to

37 compute the minimum charge, the Purchaser shall be given credit for the proportionate  
38 share of the payment which was made as an interest charge on the net amount of monies  
39 advanced from the State funds for the costs incurred and associated with providing 50  
40 percent of the total annual amount of water contracted for purchase.

41 h. Overpayment or Underpayment. If for reason of error in computation,  
42 measuring device malfunction, or other causes, there is an overpayment or underpayment  
43 to the State by the Purchaser of the charges provided herein, such overpayment or  
44 underpayment shall be credited or debited, as the case may be, to the Purchaser's account  
45 for the next succeeding payment and the State shall notify the Purchaser thereof in  
46 writing. However, all charges made in any year shall be conclusively presumed to be  
47 correct six (6) months after the end of such year.

48 i. Adjustment for Apportionment. In the event the Purchaser is unable in any year  
49 due to apportionment under Article 13 herein to withdraw the amount which the Purchaser  
50 is entitled to receive after payment of the minimum payment, the amount of such minimum  
51 payment in excess of the amount of water actually received by Purchaser shall be credited  
52 to reduce the obligation of the Purchaser during the next succeeding calendar year.

53 j. Overdue Payments. If the Purchaser shall fail to make any of the payments  
54 when due, then the overdue payments shall bear interest, compounded annually at the rate  
55 prescribed in K.S.A. 82a-1317, and amendments thereto, during the term of this contract.  
56 This shall not be construed as giving the Purchaser the option of either making payments  
57 when due or paying interest, nor shall it be construed as waiving any of the rights of the  
58 State that might result from such default by the Purchaser.



#### ARTICLE 10. POINT OF WITHDRAWAL

1           The point of withdrawal from the Reservoir shall be in the Northeast quarter of the  
2           Southeast quarter of the Northeast quarter of Section 11, Township 18 South, Range 14  
3           East of Osage County, Kansas.

#### ARTICLE 11. METERING OF WATER

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

3           The Purchaser shall test and calibrate as accurately as possible such measuring  
4           device or devices whenever requested by the Director, but not more frequently than once  
5           every twelve (12) months. A measuring device shall be deemed to be accurate if test  
6           results fall within a tolerance of plus or minus two (2) percent throughout the full range  
7           of diversion. Certification of measuring devices shall be obtained from a commercial  
8           testing company approved by the Director.

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

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

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

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

#### ARTICLE 12. WATER WITHDRAWAL SCHEDULE

1 The Purchaser shall notify the Director, in writing, of the date for the initial  
2 withdrawal of water at least five (5) days prior to such withdrawal. At such time the  
3 Purchaser shall also notify the Director, in writing, of the amounts, times, and rates of  
4 withdrawal of water required during the remainder of the calendar year in which such  
5 initial withdrawal is made. The Purchaser agrees to submit a water withdrawal schedule  
6 for each calendar year to the Director on or before March 30 of each year.

7 Such proposed water withdrawal schedule shall be approved or disapproved by the  
8 Director within thirty (30) days of the filing of such schedule and, subject to his or her  
9 approval, such schedule may be amended upon written request from the Purchaser. The  
10 Director shall not unreasonably disapprove or withhold his or her approval of the water  
11 withdrawal schedule.

12 The Purchaser's approved water withdrawal schedule shall govern the rate of  
13 withdrawal, but in no event shall the Purchaser withdraw water in excess of the maximum  
14 daily rate of 2.88 million gallons. Whenever the Purchaser wishes to make a withdrawal  
15 of water provided under terms of this contract from the reservoir other than as approved  
16 in the annual withdrawal schedule, the Purchaser shall advise the Director at least two (2)

17 working days prior to the time such water is to be withdrawn from the Reservoir. Such  
18 notice may be transmitted to the Director by oral communication, but the notice must be  
19 confirmed in writing within fifteen (15) days after the oral communication.

### ARTICLE 13. CONTINUITY OF WATER SERVICE

1 (a) The Director shall make all reasonable efforts to perfect and protect the water  
2 reservation right necessary for the satisfaction of the water supply commitment. In the  
3 event it becomes necessary for any reason to apportion the water among the persons having  
4 contracts therefor, or to temporarily discontinue the furnishing of water to such persons,  
5 the Director will give each person an oral notice, followed by a written notice, of such  
6 action as far in advance as is reasonably practicable.

7 (b) Neither the Director nor the Authority shall be responsible or have any legal  
8 liability for any insufficiency of water or the apportionment thereof, and the duty of the  
9 Director and the Authority to furnish water is specifically subject to the following  
10 conditions:

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

17 (2) The Director shall evaluate the effect of sediment deposits in the Reservoir and,  
18 if such evaluation indicates that the sediment deposits have reduced the yield from the

19 State's conservation water supply storage space, the Director will apportion available water  
20 among the persons having contracts in relation to the annual volume of all water  
21 contracted.

22 (3) If the United States temporarily discontinues or reduces water storage available  
23 to the State under its agreement with the United States for the purpose of inspection,  
24 investigation, maintenance, repair, or rehabilitation of the Reservoir or for other reasons  
25 deemed necessary by the United States, the Director will apportion the available water  
26 among the persons having contracts as determined by the State.

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

32 (c) In the event the Director finds it necessary to apportion the available water  
33 from the Reservoir among the persons having contracts therefor, and such apportionment  
34 results in the Purchaser being unable during the year to receive the amount of water that  
35 has been purchased by payment of the minimum charge, the Purchaser shall pay the State  
36 only for the amount of water actually made available to the Purchaser during the year.

#### ARTICLE 14. LIABILITY

1 Neither the Director nor the Authority shall be liable for any claim arising out of  
2 the control, carriage, handling, use, disposal, or distribution of water furnished to the  
3 Purchaser beyond the point of withdrawal as described in this contract except as provided

4 in the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto; and the  
5 Purchaser shall hold the State harmless on account of damage or claim of damage of any  
6 nature whatsoever arising out of or connected with the control, carriage, handling, use,  
7 disposal, or distribution of water beyond the point of withdrawal. Nothing in this Article  
8 shall be construed to impair any protection of the rights of the Purchaser as set forth in  
9 Article 6.

#### ARTICLE 15. AMENDMENT OR NULLIFICATION

1 The contract may be amended or nullified by written agreement of the parties, as  
2 provided in K.S.A. 82a-1316, and amendments thereto. The fixed rate as stated in this  
3 contract may be subsequently adjusted on January 1 after the execution of the contract and  
4 on each January 1 thereafter, pursuant to the terms and conditions of this contract.

#### ARTICLE 16. ASSIGNMENT OF CONTRACT

1 No assignment, sale, conveyance, or transfer of all or any part of this contract, or  
2 of interest therein, shall be valid unless and until same is approved by the Authority under  
3 such reasonable terms and conditions as the Authority may impose.

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

#### ARTICLE 17. RENEWALS

1           When this contract expires, the Director shall give the Purchaser the opportunity to  
2       refuse any new offering of the water before offering the same to any other applicant.

#### ARTICLE 18. TERMINATION

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

#### ARTICLE 19. SEVERABILITY

1           In the event any provision of this agreement or any part of any provision of this  
2       agreement are held invalid by a court of competent jurisdiction, such invalidity shall not  
3       affect other terms hereof which can be given effect without the invalid provision or portion  
4       of such provision, and to that end the terms of this agreement are intended to be severable.


#### ARTICLE 20. WATER CONSERVATION PLAN

1           The Purchaser shall adopt and implement a water conservation plan, prepared in  
2       accordance with guidelines developed and maintained by the Kansas Water Office.  
3       Whenever lack of inflow causes the water supply storage space to fall below 67 percent  
4       capacity, a drought condition shall be considered to exist and the Purchaser agrees to

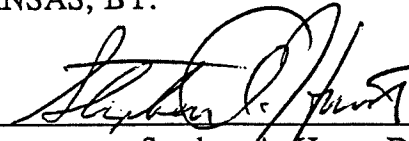
5 implement the drought contingency plan contained in their water conservation plan before  
6 any withdrawal in addition to the scheduled water withdrawals described in Article 12 will  
7 be allowed by the State.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of  
the day and year first above written.

THE STATE OF KANSAS, BY:

  
\_\_\_\_\_  
Mayor

By:


  
\_\_\_\_\_  
Stephen A. Hurst, Director  
Kansas Water Office

ATTEST:



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

By:

  
\_\_\_\_\_  
Chairman  
Kansas Water Authority

STATE OF KANSAS  
KANSAS WATER OFFICE

CONTRACT  
Between the State of Kansas  
and  
The City of Council Grove  
Morris County, Kansas

For  
A Municipal and Industrial Water Supply  
From  
Council Grove Lake

Water Purchase Contract No. 93-4



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KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 93-4

1           This contract is executed and entered into this 15<sup>th</sup> day of  
2           September, 1993, by and between the State of Kansas (hereinafter referred to as  
3           the "State") as represented by the Kansas Water Office, and the City of Council Grove (hereinafter  
4           referred to as the "Purchaser").

5           WITNESSETH: WHEREAS, the Purchaser desires to purchase water for a municipal and  
6           industrial water supply; and

7           WHEREAS, the State has signed an Agreement (Contract No. DACW56-75-C-0052) with  
8           the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L.  
9           85-500), as amended, for water supply storage space in the Reservoir; and

10          WHEREAS, the State has filed an appropriate water reservation right on March 27, 1974,  
11          to divert and store water in the Reservoir; and

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

14          WHEREAS, the Purchaser filed appropriate applications with the State to negotiate the  
15          purchase of raw water from the Reservoir, in compliance with the State Water Plan Storage Act,  
16          K.S.A. 82a-1301 et seq., as amended; and

17          WHEREAS, Purchaser's applications to purchase raw water from the Reservoir number 78  
18          and number 130 were approved for a maximum total amount of 415 million gallons per year in  
19          accordance with Articles 9 and 13 of Chapter 82a of Kansas Statutes Annotated.

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

22 WHEREAS, the withdrawal and use of 150 million gallons of water annually from the  
23 Reservoir by the Purchaser is in the interest of the people of the State of Kansas and will advance  
24 the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

25 NOW, THEREFORE, in consideration of the foregoing, the parties mutually agree as  
26 follows:

#### ARTICLE 1. DEFINITIONS

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

2 (a) "Authority" means the Kansas Water Authority, or its successor.

3 (b) "Director" means the Director of the Kansas Water Office, his or her successor, or  
4 designated representative.

5 (c) "Point of withdrawal from the reservoir" means the point at which water is taken from  
6 the reservoir by pump, siphon, canal, or any other device; or released through the dam by gates,  
7 conduits, or any other means.

8 (d) "Raw water" refers to untreated water at the point of withdrawal from the reservoir.

9 (e) "Reservoir" means Council Grove Lake.

#### ARTICLE 2. TERM OF THE CONTRACT

1 The term of this contract shall be for a period of 40 years beginning on the date of  
2 execution of this contract. The Purchaser may commence using water at any time after the  
3 execution of this contract by providing notice as provided in Article 12.

### ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

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

### ARTICLE 4. UNITED STATES APPROVAL

1           The Purchaser shall secure the right from the federal government to construct, modify,  
2           alter, or maintain installations and facilities when such installations and facilities are on federal  
3           lands. The Purchaser shall bear the cost of construction, modification, operation, and maintenance  
4           of Purchaser-owned installations and facilities.

5           The Purchaser shall provide the Director with proof of any easement granted by the federal  
6           government for rights-of-way across, in, and upon federal government land required for intake,  
7           transmission of water, and necessary appurtenances.

### ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES

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

### ARTICLE 6. QUANTITY OF WATER

1           a. Initial Quantity. During the term of this contract, defined in Article 2, subject to the  
2           conditions herein stated, the State will permit the Purchaser to withdraw not more than 6 billion  
3           gallons of raw water from the water supply storage in the Reservoir; provided, however, that the

4 State shall not be obligated to furnish more than 150 million gallons of raw water in any one (1)  
5 calendar year. If the Purchaser in any calendar year does not withdraw the entire annual amount  
6 obligated under terms of this contract, the unused amount of water shall not add to the  
7 Purchaser's entitlement in any subsequent year.

8 b. Graduated Use Schedule. An agreed upon graduated use schedule is attached as  
9 "Exhibit A" of this contract. Minimum annual payments shall be based upon this schedule and  
10 calculated as provided in Article 7 of this contract.

11 The maximum annual quantity the Purchaser is entitled to for each calendar year shall be  
12 determined by the graduated use schedule. The minimum annual payment shall be calculated in  
13 accordance with Article 7 based upon 50 percent or one-half the maximum quantity in the  
14 graduated use schedule for the calendar year.

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

21 d. Water Appropriation Rights. Any rights under the Kansas Water Appropriation Act,  
22 K.S.A. 82a-701 et seq., and amendments thereto, acquired by the Purchaser and having priority  
23 dates later than March 27, 1974, shall not be used by the Purchaser in lieu of any quantity of  
24 water obligated under terms of this contract. Any water received under authority of such water  
25 appropriation rights shall not be counted against the Purchaser's annual water entitlement under

26 this contract even though the Purchaser may have to pay the State as if the water had been  
27 received under this contract as provided in Article 9.

28 The Purchaser may use water withdrawn in accordance with the terms of this contract  
29 without obtaining a permit or water right under the Kansas Water Appropriation Act. Rights of  
30 the Purchaser under this contract shall be entitled to the same protection as any other vested  
31 property interest including vested water rights, water appropriation rights; and approved  
32 applications for permit to appropriate water.

#### ARTICLE 7. PRICE OF WATER

1 a. Price. The Purchaser agrees to pay the State at the rate fixed in accordance with  
2 K.S.A. 82a-1306, and amendments thereto, for each one thousand (1,000) gallons of raw water  
3 used or raw water which must be paid for under terms of this contract throughout the term of this  
4 contract; provided, however, that the Purchaser is obligated and agrees to pay the minimum  
5 charges in accordance with this Article regardless of the quantity of raw water actually used,  
6 except as provided in Article 13. The rate for raw water which must be paid for under terms of  
7 this contract shall be \$0.14179 for each one thousand (1,000) gallons during calendar year 1993.

8 b. Minimum Charge. The Purchaser agrees to pay to the State a minimum charge whether  
9 or not water is withdrawn during the calendar year. The minimum charge for each calendar year  
10 shall be determined as provided in K.S.A. 82a-1306, and amendments thereto. The minimum  
11 charge for calendar year 1993 and each succeeding calendar year, unless changed by amendment  
12 of State statutes, shall be the sum of the following two components:

13 (1) 50 percent of the total amount of water contracted for during the term of this contract  
14 (as shown in the attached graduated use schedule) multiplied by the rate established in accordance

15 with paragraph (a) of this Article or as adjusted in accordance with paragraph (c) of this Article;  
16 plus (2) a charge on the remaining 50 percent of water contracted for during the year (as shown  
17 in the attached graduated use schedule) computed by multiplying the net amount of moneys  
18 advanced from state funds for costs incurred and associated conservation storage water supply  
19 under the State Water Marketing Program by the average rate of interest earned during the past  
20 calendar year by the Pooled Money Investment Board on 30 day repurchase agreements and by  
21 the portion of the remaining 50 percent under contract to the total conservation water supply  
22 capacity available under the State Water Marketing Program.

23 c. Review and Adjustment of Rates. The Director shall review the fixed rate stated in this  
24 article on July 15 of each year during the term of this contract and may adjust the rate effective  
25 January 1 of the following year to reflect any change in experience by substituting the adjusted  
26 rate for the fixed rate then applicable to the contract. Such adjusted rate shall be charged for all  
27 water used or water which must be paid for under terms of this contract as provided in Article 9.  
28 The Director shall notify the Purchaser by restricted mail by July 31 of each year of the adjusted  
29 rate which will become effective on January 1 of the ensuing year and shall notify the Purchaser  
30 of the adjusted minimum payment which will be required under the terms and conditions of this  
31 contract. Failure to furnish such notification by July 31 shall not relieve the Purchaser of the  
32 obligation to pay such adjusted rate.

#### ARTICLE 8. PURPOSE AND PLACE OF USE

1 a. Purpose. Water purchased under this contract shall be used for purposes which are in  
2 the interest of the people of the State of Kansas and which will advance the purposes set forth in  
3 Article 9 of Chapter 82a of Kansas Statutes Annotated, and amendments thereto.

4           **b. Place of Use.** The place of use for water purchased under this contract shall be  
5 generally within the corporate limits of the City of Council Grove and within the general boundary  
6 of Morris County Rural Water District Number 1, but may be outside the corporate limits of these  
7 entities for those water users who are contracting with the city or rural water district for water  
8 supply as of the date of execution of this contract.

9           **c. Approval of Change in Place of Use.** The Purchaser shall inform the Director of any  
10 intention to sell any water under this contract to any person or entity located outside the  
11 geographical limits described above. Whenever the Purchaser shall propose to enter into a contract  
12 to sell water purchased under this contract to any such person or entity outside the described geo-  
13 graphical limits, the Purchaser shall, before execution thereof, submit a copy of such contract to  
14 the Authority for review. The Purchaser agrees not to execute and enter into any such contracts  
15 unless approved by the Authority.

#### **ARTICLE 9. BILLING AND PAYMENT SCHEDULE**

1           **a. Deferment.** The beginning of the payment period shall be deferred for a period of 3  
2 years or until such time as actual use of the water contracted for commences, whichever occurs  
3 first, if in order to use the water contracted for, bonds are required to be issued, or the construction  
4 of transmission or treatment facilities is required.

5           **b. Payments.** The Purchaser shall transmit all payments due hereunder to the Director.  
6 Remittance for minimum payments shall be paid to the Director in either one annual payment  
7 within thirty (30) days after date of billing by the State or in equal monthly installments during  
8 the calendar year in which the minimum payment is due, whether or not water is withdrawn during  
9 the calendar year. Remittance for payments due for water used in excess of the quantity obligated



10 by the minimum payment shall be paid to the Director in full within thirty (30) days after date of  
11 billing by the State.

12 c. Determination of Charges. Charges for water for which payment is required shall be  
13 determined by the State. The formulas by which charges are computed shall be prepared by the  
14 Director with the approval of the Authority. The Purchaser acknowledges and agrees that said  
15 formulas and computations are subject to change, based on subsequent amendments to State  
16 statutes which may affect the terms of this contract.

17 d. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all  
18 water received under terms of this contract up to the maximum quantity obligated by this contract  
19 as described in the attached graduated use schedule. Any annual water use above the maximum  
20 annual quantity shown on the attached graduated use schedule shall be charged for at the current  
21 rate and the graduated use schedule may be adjusted as provided in Article 6c. In no event shall  
22 use above the maximum annual rate of 150 million gallons per year be permitted under this  
23 contract. The Purchaser shall be entitled to receive any water allowed under the Kansas Water  
24 Appropriation Act; provided, however, if the Purchaser receives 150 million gallons of water or  
25 less in any one year from combined use under this contract and any Purchaser-held water rights  
26 having priority dates later than March 27, 1974, then the Purchaser shall pay the State, regardless  
27 of the source of water, subject to the provisions of Article 13(c).

28 e. Initial Minimum Payment. Except as provided in Article 9a, the initial minimum  
29 payment shall become due on the day of execution of this contract as defined in Article 2.  
30 Remittance for the initial minimum payment shall be in accordance with Article 9b. The initial  
31 minimum charge shall be prorated by the number of months or portions thereof in service during

the calendar year. Payment of the initial minimum charge shall entitle the Purchaser to receive during the remaining portion of the calendar year the prorated portion of one-half (1/2) of the maximum annual quantity of water as set forth in Article 6, without additional charge.

f. Subsequent Minimum Payments. On each succeeding January 1 following the due date of the initial minimum payment, subsequent minimum payments shall become due. Remittance for minimum payments shall be in accordance with Article 9b. 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 as shown on the attached graduated use schedule.

g. 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 one-half (1/2) of the total annual quantity of water in excess of the amount of water used to compute the minimum charge. The Purchaser shall be given credit for the proportionate share of the payment which was made as an interest charge on the net amount of monies advanced from the State funds for the costs incurred and associated with providing 50 percent of the total annual amount of water contracted for purchase.

h. 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 or underpayment shall be credited or debited, as the case may be, to the Purchaser's account for the next succeeding payment and the

53 State shall notify the Purchaser thereof in writing. However, all charges made in any year shall  
54 be conclusively presumed to be correct six (6) months after the end of such year.

55 i. Adjustment for Apportionment. In the event the Purchaser is unable in any year due  
56 to apportionment under Article 13 herein to withdraw the amount which the Purchaser is entitled  
57 to receive after payment of the minimum payment, the amount of such minimum payment in  
58 excess of the amount of water actually received by Purchaser shall be credited to reduce the  
59 obligation of the Purchaser during the next succeeding calendar year.

60 j. Overdue Payments. If the Purchaser shall fail to make any of the payments when due,  
61 then the overdue payments shall bear interest, compounded annually at the rate prescribed in  
62 K.S.A. 82a-1317, and amendments thereto, during the term of this contract. This shall not be  
63 construed as giving the Purchaser the option of either making payments when due or paying  
64 interest, nor shall it be construed as waiving any of the rights of the State that might result from  
65 such default by the Purchaser.

#### ARTICLE 10. POINT OF WITHDRAWAL

1 The point of withdrawal from the Reservoir shall be a point at the domestic water manhole,  
2 located on the west side of the stilling basin immediately below Council Grove Dam in the NE 1/4  
3 of Sec. 10, T 16 S, R 8 E, Morris County, Kansas.

#### ARTICLE 11. METERING OF WATER

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

3 The Purchaser shall test and calibrate as accurately as possible such measuring device or  
4 devices whenever requested by the Director, but not more frequently than once every twelve (12)

5 months. A measuring device shall be deemed to be accurate if test results fall within a tolerance  
6 of plus or minus two (2) percent throughout the full range of diversion. Certification of measuring  
7 devices shall be obtained from a commercial testing company approved by the Director.

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

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

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

15 The Purchaser shall provide to the State monthly reports of all water withdrawn from any  
16 sources under authority of Purchaser-held water use permits or water appropriation rights having  
17 priority dates after March 27, 1974. Representatives of the State shall, at all reasonable times,  
18 have access to the measuring device for the purpose of verifying all readings.

19 The State may measure releases by means of a rating curve at the point of withdrawal, or  
20 by other suitable means, as an auxiliary measuring device to verify the accuracy of the Purchaser's  
21 measuring device or to measure the amount of water furnished when the Purchaser's measuring  
22 device fails to register.

#### ARTICLE 12. WATER WITHDRAWAL SCHEDULE

1 The Purchaser shall notify the Director, in writing, of the date for the initial withdrawal  
2 of water at least forty-five (45) days prior to such withdrawal. At such time the Purchaser shall  
3 also notify the Director, in writing, of the amounts, times, and rates of withdrawal of water

4 required during the remainder of the calendar year in which such initial withdrawal is made. The  
5 Purchaser agrees to submit a water withdrawal schedule for each succeeding calendar year to the  
6 Director on or before March 31 of each year.

7 Such proposed water withdrawal schedule shall be approved or disapproved by the Director  
8 within thirty (30) days of the filing of such schedule and, subject to his or her approval, such  
9 schedule may be amended upon written request from the Purchaser. The Director shall not  
10 unreasonably disapprove or withhold his or her approval of the water withdrawal schedule.

11 The Purchaser's approved water withdrawal schedule shall govern the rate of withdrawal,  
12 but in no event shall the Purchaser withdraw water in excess of the maximum daily rate of 1  
13 million gallons. Whenever the Purchaser wishes to make a withdrawal of water provided under  
14 terms of this contract from the reservoir other than as approved in the annual withdrawal schedule,  
15 the Purchaser shall advise the Director at least two (2) working days prior to the time such water  
16 is to be withdrawn from the Reservoir. Such notice may be transmitted to the Director by oral  
17 communication, but the notice must be confirmed in writing within fifteen (15) days after the oral  
18 communication.

### ARTICLE 13. CONTINUITY OF WATER SERVICE

1 (a) The Director shall make all reasonable efforts to perfect and protect the water  
2 reservation right necessary for the satisfaction of the water supply commitment. In the event it  
3 becomes necessary for any reason to apportion the water among the persons having contracts  
4 therefor, or to temporarily discontinue the furnishing of water to such persons, the Director will  
5 give each person an oral notice, followed by a written notice, of such action as far in advance as  
6 is reasonably practicable.

7 (b) Neither the Director nor the Authority shall be responsible or have any legal liability  
8 for any insufficiency of water or the apportionment thereof, and the duty of the Director and the  
9 Authority to furnish water is specifically subject to the following conditions:

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

15 (2) The Director shall evaluate the effect of sediment deposits in the Reservoir and, if such  
16 evaluation indicates that the sediment deposits have reduced the yield from the State's  
17 conservation water supply storage space, the Director will apportion available water among the  
18 persons having contracts in relation to the annual volume of all water contracted.

19 (3) If the United States temporarily discontinues or reduces water storage available to the  
20 State under its agreement with the United States for the purpose of inspection, investigation,  
21 maintenance, repair, or rehabilitation of the Reservoir or for other reasons deemed necessary by  
22 the United States, the Director will apportion the available water among the persons having  
23 contracts as determined by the State.

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

29 (c) In the event the Director finds it necessary to apportion the available water from the  
30 Reservoir among the persons having contracts therefor, and such apportionment results in the  
31 Purchaser being unable during the year to receive the amount of water that has been purchased  
32 by payment of the minimum charge, the Purchaser shall pay the State only for the amount of water  
33 actually made available to the Purchaser during the year.

#### ARTICLE 14. LIABILITY

1 Neither the Director nor the Authority shall be liable for any claim arising out of the  
2 control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond  
3 the point of withdrawal as described in this contract except as provided in the Kansas Tort Claims  
4 Act, K.S.A. 75-6101 et seq., and amendments thereto; and the Purchaser shall hold the State  
5 harmless on account of damage or claim or damage of any nature whatsoever arising out of or  
6 connected with the control, carriage, handling, use, disposal, or distribution of water beyond the  
7 point of withdrawal. Nothing in this Article shall be construed to impair any protection of the  
8 rights of the Purchaser as set forth in Article 6.

#### ARTICLE 15. AMENDMENT OR NULLIFICATION

1 The contract may be amended or nullified by written agreement of the parties, as provided  
2 in K.S.A. 82a-1316, and amendments thereto. The fixed rate as stated in this contract may be  
3 subsequently adjusted on January 1 after the execution of the contract and on each January 1  
4 thereafter, pursuant to the terms and conditions of this contract.

#### ARTICLE 16. ASSIGNMENT OF CONTRACT

1 No assignment, sale, conveyance, or transfer of all or any part of this contract, or of  
2 interest therein, shall be valid unless and until same is approved by the Authority under such  
3 reasonable terms and conditions as the Authority may impose.

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

#### ARTICLE 17. RENEWALS

1 When this contract expires, the Director shall give the Purchaser the opportunity to refuse  
2 any new offering of the water before offering the same to any other applicant.

#### ARTICLE 18. TERMINATION

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



ARTICLE 19. SEVERABILITY

1           In the event any provision of this agreement or any part of any provision of this agreement  
2           are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms  
3           hereof which can be given effect without the invalid provision or portion of such provision, and  
4           to that end the terms of this agreement are intended to be severable.

ARTICLE 20. WATER CONSERVATION PLAN

1           The Purchaser shall adopt and implement a water conservation plan, prepared in accordance  
2           with guidelines developed and maintained by the Kansas Water Office. Whenever lack of inflow  
3           causes the reservoir elevation to fall below 1272 feet msl, a drought condition shall be considered  
4           to exist and the Purchaser agrees to implement the drought contingency plan contained in their  
5           water conservation plan before any withdrawal in addition to the scheduled water withdrawals  
6           described in Article 12 will be allowed by the State.

          IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day  
          and year first above written.

THE STATE OF KANSAS, BY:

Charlene M. Roe

By:

Stephen A. Hurst  
Stephen A. Hurst  
Kansas Water Office

ATTEST:

Mark H. Best  
City Clerk

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

By:

John R. "Bob" Best  
John R. "Bob" Best, Chairman  
Kansas Water Authority

# GRADUATED USE SCHEDULE

City Of Council Grove

Negotiated 1993

Year	Maximum Quantity In MGY	Minimum Quantity In MGY
1	3	1.5
2	3	1.5
3	3	1.5
4	3	1.5
5	3	1.5
6	6	3.0
7	6	3.0
8	6	3.0
9	6	3.0
10	6	3.0
11	9	4.5
12	9	4.5
13	9	4.5
14	9	4.5
15	9	4.5
16	12	6.
17	12	6.
18	12	6.
19	12	6.
20	12	6.
21	30	15.
22	30	15.
23	30	15.
24	30	15.
25	30	15.
26	60	30.
27	60	30.
28	60	30.
29	60	30.
30	60	30.
31	85	42.5
32	85	42.5
33	85	42.5
34	85	42.5
35	85	42.5
36	100	50.
37	100	50.
38	100	50.
39	150	75.