

1 Exhibit 4: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City
2 of Oklahoma City Water Settlement
3

4 **AMENDED STORAGE CONTRACT TRANSFER AGREEMENT**
5 **AMONG**
6 **CITY OF OKLAHOMA CITY,**
7 **OKLAHOMA CITY WATER UTILITIES TRUST,**
8 **AND**
9 **STATE OF OKLAHOMA WATER RESOURCES BOARD**
10

11 This Agreement, originally entered on the 15th day of June, 2010, as amended this
12 ___ day of _____, _____, is entered into by and among the City of Oklahoma
13 City, the Oklahoma City Water Utilities Trust, and the Oklahoma Water Resources Board,
14 and approved by the Secretary of the Army.

15 **RECITALS**

16 WHEREAS, the Flood Control Act of 1962 (Public Law 87-874, 87th Congress),
17 authorized the construction and operation of Clayton Lake, subsequently renamed Sardis
18 Lake, substantially in accordance with the recommendations of the Chief of Engineers of
19 the United States Army Corps of Engineers in Senate Document No. 145, Eighty-Seventh
20 Congress; and

21 WHEREAS, in Senate Document No. 145 the Chief of Engineers of the United
22 States Army Corps of Engineers recommended the construction and operation of Sardis
23 Lake for flood control, water supply, fish and wildlife, and recreation purposes; and

24 WHEREAS, the Water Conservation Storage Commission of the State of
25 Oklahoma entered into a contract that was approved by the Secretary of the United States
26 Army on April 9, 1974, with the United States through the United States Army Corps of

1 Engineers to obtain the right to use the Conservation Storage Capacity of Sardis Lake,
2 which was estimated as 297,200 acre-feet and divided into Present Use Storage (141,700
3 acre-feet or 47.678% of total Conservation Storage Capacity) and Future Use Storage
4 (155,500 acre-feet or 52.322% of total Conservation Storage Capacity), and repay the
5 construction costs and operation, maintenance and replacement costs allocated to water
6 supply storage; and

7 WHEREAS, the Water Conservation Storage Commission was sunsetted by the
8 Oklahoma Legislature in 1979 and, pursuant to 1979 Okla. Sess. Laws, ch. 247, § 8,
9 codified at 82 O.S. § 1085.38 the rights, authority, and obligations of the Water
10 Conservation Storage Commission were transferred to the Oklahoma Water Resources
11 Board; and

12 WHEREAS, the United States Army Corps of Engineers began construction of
13 Sardis Lake in 1974, and construction was completed and the reservoir was deemed
14 operational on January 6, 1983; and

15 WHEREAS, on September 11, 2009, a stipulated Order was entered in the *United*
16 *States v. State of Oklahoma and Oklahoma Water Resources Board*, United States District
17 Court for the Northern District of Oklahoma, CV-98-00521, wherein the State of
18 Oklahoma agreed to bring current past due payments for the Present Use Storage and to
19 make all subsequent payments for operation and maintenance and replacement costs
20 relating to Present Use Storage and for Future Use Storage in accordance with the 1974
21 Contract; and

1 WHEREAS, on June 15, 2010, the Oklahoma Water Resources Board and the
2 Oklahoma City Water Utilities Trust entered into the 2010 Storage Contract Transfer
3 Agreement whereby the Oklahoma Water Resources Board transferred to the Oklahoma
4 City Water Utilities Trust all its rights and interests in, including rights to use, the
5 Conservation Storage Capacity in Sardis Lake, together with all its obligations under the
6 1974 Contract, and assumed the obligations set forth in the 1974 Contract to make the
7 payments set forth in the September 2009 Order in order to be able to utilize the rights to
8 use the Conservation Storage Capacity in Sardis Lake; and

9 WHEREAS, in March 2010, the City of Oklahoma City amended Application
10 2007-017 with the Oklahoma Water Resources Board for an appropriation of 136,000
11 acre-feet per year of stream water from the Kiamichi River basin, in part to secure stream
12 water rights associated with the Conservation Storage Capacity proposed for transfer to the
13 Oklahoma City Water Utilities Trust under the 2010 Storage Contract Transfer Agreement;
14 and

15 WHEREAS, in 2011 the Oklahoma Department of Wildlife Conservation issued a
16 report that proposed management of lake levels in Sardis Lake to benefit fish and wildlife
17 and recreation purposes; and

18 WHEREAS, the City of Oklahoma City, the Oklahoma City Water Utilities Trust,
19 the State of Oklahoma, the Chickasaw Nation, and Choctaw Nation of Oklahoma have
20 entered a Settlement Agreement that resolves complex disputes regarding water, water
21 rights, the regulation and administration of water in the Settlement Area, and objections to
22 the State's assignment of the 1974 Contract to the City of Oklahoma City, inclusive of all

1 claims raised in *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, CIV
2 11-927 (W.D. Ok.), and *OWRB v. United States, et al.*, CIV 12-275 (W.D. Ok.), which
3 Settlement Agreement has been approved and executed by the United States pursuant to
4 the Settlement Act.

5 WHEREAS, pursuant to the Settlement Agreement and the Settlement Act, the
6 City of Oklahoma City has agreed to Sardis Lake Release Restrictions which allow the
7 City to have water released for water supply purposes in a manner that also protects lake
8 levels for fish and wildlife and recreation, and such restrictions are generally based on the
9 2011 report by the Oklahoma Department of Wildlife Conservation; and

10 WHEREAS, the City of Oklahoma City's right to have water released from
11 Conservation Storage Capacity in Sardis Lake in accordance with the Sardis Lake Release
12 Restrictions will benefit fish and wildlife and recreation uses in Sardis Lake and will
13 facilitate the use of Conservation Storage Capacity in Sardis Lake for the authorized
14 purposes of water supply, fish and wildlife, and recreation; and

15 WHEREAS, the Sardis Lake Release Restrictions will preclude the City from
16 calling for releases for water supply from that portion of the Sardis Lake Conservation
17 Storage Capacity associated with Future Use Storage; and

18 WHEREAS, the parties to the Settlement Agreement have agreed that, in
19 consideration for the Sardis Lake Release Restrictions and resulting benefits to the parties
20 relating to lake levels that support fish, wildlife, and recreation, the Settlement Act
21 provides that Future Use Storage debt, inclusive of all capital costs, interest, and associated

1 operation, maintenance, and replacement costs will be forgiven, waived, and deemed
2 non-reimbursable; and

3 WHEREAS, in accordance with the Settlement Agreement and the Settlement Act,
4 and consistent with implementation of the Sardis Lake Release Restrictions, the City of
5 Oklahoma City has agreed to amend Application No. 2007-017 to reduce the amount of
6 stream water from the Kiamichi River basin it is applying for therein from 136,000 acre
7 feet per year to 115,000 acre feet per year; and

8 WHEREAS, due to such limitations, modifications, and other provisions of the
9 Settlement Agreement and the Settlement Act, the Oklahoma Water Resources Board, the
10 City of Oklahoma City, and the Oklahoma City Water Utilities Trust are hereby amending
11 the 2010 Storage Contract Transfer Agreement.

12 NOW, THEREFORE, in consideration of the foregoing recitals and the mutual
13 covenants set forth below, IT IS AGREED by and between the City of Oklahoma City, the
14 Oklahoma City Water Utilities Trust, and the Oklahoma Water Resources Board as
15 follows:

16 **1. DEFINITIONS**

17 **1.1 1974 Contract** – means the contract approved by the Secretary of the
18 United States Army on April 9, 1974, entered into between the Water Conservation
19 Storage Commission of the State of Oklahoma, predecessor of the Oklahoma Water
20 Resources Board, and the United States through the United States Army Corps of
21 Engineers, a copy of which is attached as Exhibit 1.

1 **1.2 2010 Storage Contract Transfer Agreement** – means the June 15, 2010,
2 agreement entered between the Oklahoma Water Resources Board, the City of Oklahoma
3 City, and the Oklahoma City Water Utilities Trust, a copy of which is attached hereto as
4 Exhibit 2.

5 **1.3 Acre-foot** – means the unit of measurement for water equal to 325,851
6 gallons, U.S. Standard Liquid Measure.

7 **1.4 Administrative Set-Aside** – means thirty-seven thousand nine hundred
8 eight (37,908) acre-feet of Conservation Storage Capacity for the twenty thousand
9 (20,000) acre-feet of water per year from water supply storage at Sardis Lake that is
10 set-aside for beneficial use in southeastern Oklahoma, inclusive of the SLWA Subcontract,
11 as specified in the provisions of OAC § 785:20-5-5(b)(3) as it exists as of the Settlement
12 Agreement’s Execution Date.

13 **1.5 Administrative Set-Aside Subcontracts** – means the subcontracts for
14 users of the Administrative Set-Aside for the use of up to 37,908 acre-feet of Conservation
15 Storage Capacity for water supply storage for beneficial use within one or more of the
16 following counties in the State of Oklahoma : LeFlore, McCurtain, Pushmataha, Latimer,
17 Haskell, Choctaw, Pittsburg, Coal, Atoka, and Bryan.

18 **1.6 Amended Permit Application** – means the City of Oklahoma City’s
19 permit application filed with the OWRB, No. 2007-017, as amended pursuant to Section
20 6.1 of the Settlement Agreement.

21 **1.7 OAPA** – means the Oklahoma Administrative Procedures Act codified at
22 75 O.S. §§ 250 through 323.

1 **1.8 City of Oklahoma City (“City”)** – means the City of Oklahoma City, an
2 Oklahoma municipal corporation and a charter city organized and existing pursuant to
3 Oklahoma Constitution Article XVIII, Section 3. References to “City” shall refer to the
4 City or the City and the Oklahoma City Water Utilities Trust acting jointly as applicable to
5 the capacity set forth in said reference.

6 **1.9 City Permit** – means a permit issued to the City of Oklahoma City by the
7 Oklahoma Water Resources Board pursuant to the Amended Permit Application, which
8 permit conforms to Section 6.1 of the Settlement Agreement.

9 **1.10 Conservation Storage Capacity** – means the water storage space in Sardis
10 Lake described in Exhibit A of the 1974 Contract to be an estimated 297,200 acre feet of
11 storage between elevations 542 feet and 599 feet mean sea level in Sardis Lake.

12 **1.11 Future Use Storage** – means that portion of the Conservation Storage
13 Capacity in Sardis Lake designated in the 1974 Contract as being available for future use
14 for municipal and industrial supply, which portion equals 52.322%, or an estimated
15 155,500 acre feet, of the total Conservation Storage Capacity in Sardis Lake.

16 **1.12 MSL** – means mean sea level.

17 **1.13 Oklahoma City Water Utilities Trust (“Trust”)** – means the Oklahoma
18 City Water Utilities Trust, formerly known as the Oklahoma City Municipal Improvement
19 Authority, a public trust established pursuant to Oklahoma law with the City of Oklahoma
20 City as its beneficiary. References to “Trust” shall refer to the Oklahoma City Water
21 Utilities Trust acting severally in said reference.

1 **1.14 Oklahoma Water Resources Board (“OWRB”)** – means a body
2 corporate and politic and an instrumentality, agency, and department of the State of
3 Oklahoma, created by and existing under the laws of the State of Oklahoma, and its
4 successor entities, if any.

5 **1.15 Parties** – means the City of Oklahoma City, the Oklahoma City Water
6 Utilities Trust, and the Oklahoma Water Resources Board.

7 **1.16 Present Use Storage** – means that portion of the Conservation Storage
8 Capacity in Sardis Lake designated in the 1974 Contract as being for present use for
9 municipal and industrial purposes, which portion equals 47.678%, or an estimated 141,700
10 acre feet, of the total Conservation Storage Capacity in Sardis Lake.

11 **1.17 Sardis Lake** – means the reservoir, formerly known as Clayton Lake,
12 whose dam is located in Section 19, Township 2 North, Range 19 East of the Indian
13 Meridian, in Pushmataha County, Oklahoma.

14 **1.18 Sardis Lake Release Restrictions** – means the limitations on the City of
15 Oklahoma City’s ability to release water from Sardis Lake specified at Section 6.1.8 of the
16 Settlement Agreement.

17 **1.19 Secretary** – means the Secretary of the Army or his or her designee for
18 purposes of approval of this Agreement.

19 **1.20 September 2009 Order** – means the stipulated Order entered in the *United*
20 *States v. State of Oklahoma and Oklahoma Water Resources Board*, United States District
21 Court for the Northern District of Oklahoma, CV-98-00521, a copy of which is attached
22 hereto as Exhibit 3.

1 **1.21 Settlement Agreement** – means the State of Oklahoma, Choctaw Nation of
2 Oklahoma, Chickasaw Nation, and City of Oklahoma City Water Settlement upon
3 execution by the United States.

4 **1.22 Settlement Act** – means [insert citation].

5 **1.23 SLWA Subcontract** – means the Subcontract for Use of Water Supply
6 Storage, Easement, License and Intake Structure at Sardis Lake between Oklahoma Water
7 Resources Board and Sardis Lake Water Authority, dated October 22, 1999, a copy of
8 which is attached hereto as Exhibit 4.

9 **1.24 Title 82** – means Title 82 of the Oklahoma Statutes or any recodification
10 thereof.

11 **1.25 USACE** – means the United States Army Corps of Engineers.

12 **2. ASSIGNMENT AND TRANSFER OF THE 1974 CONTRACT;**
13 **ASSUMPTION OF OBLIGATIONS AND PAYMENTS UNDER THE 1974**
14 **CONTRACT**

15
16 **2.1 Assignment and Transfer of 1974 Contract** – Subject to the provisions of
17 this Agreement, the OWRB transfers and assigns all of its rights, interests, and obligations
18 in the 1974 Contract and grants and conveys all right, title, and interest of the OWRB in the
19 1974 Contract to the Trust. The OWRB represents that it has not made any other transfers
20 or assignments of the rights under the 1974 Contract except for the SLWA Subcontract.

21 **2.2 Trust’s Assumption of Obligations; Payments under the 1974 Contract**

22 **2.2.1 Assumption of Obligations under 1974 Contract** – The Trust
23 assumes and accepts responsibility for all obligations of the State and OWRB under the
24 1974 Contract, as may be modified by the Settlement Act, including but not limited to

1 those relating to costs of operation and maintenance. The Trust also accepts the transfer of
2 the 1974 Contract under this Agreement subject to the terms of the SLWA Subcontract
3 entered into by the OWRB.

4 **2.2.2 OCWUT's June 16, 2010 Payments** – The OWRB acknowledges:

5 (i) that on June 16, 2010, the Trust paid the OWRB a lump sum payment of \$27,814,262.49
6 for the arrearage and balance due for Present Use Storage under the 1974 Contract as
7 agreed to by the United States in the September 2009 Order and (ii) that the OWRB has
8 paid directly to the United States that amount as provided by and in accordance with the
9 September 2009 Order.

10 **2.2.3 OCWUT's Payments after June 16, 2010** -- The OWRB

11 acknowledges that the Trust has made the following payments in satisfaction of (i) the
12 annual joint-use operation and maintenance costs billed annually in arrears based on actual
13 operation and maintenance expenses of the USACE as specified in Article 3 and Article
14 5(c) of the 1974 Contract or (ii) major capital replacement costs billed by the USACE
15 pursuant to Article 5(b) of the 1974 Contract:

DATE OF PAYMENT	AMOUNT	DESCRIPTION
January 19, 2011	\$143,680.16	Billing for O&M Portion of Conservation Storage Capacity for Jan 2010-Jan 2011
January 18, 2012	\$166,795.55	Billing for O&M Portion of Conservation Storage Capacity for Jan 2011-Jan 2012
June 7, 2012	\$871,876.94	Sardis Area Billing - Replace Embankment Guardrail
February 19, 2013	\$124,512.90	Billing for O&M Portion of Conservation Storage Capacity for Jan 2012-Jan 2013
January 21, 2014	\$203,658.40	Billing for O&M Portion of Conservation Storage Capacity for Jan 2013-Jan 2014

January 8, 2015	\$140,600.43	Billing for O&M Portion of Conservation Storage Capacity for Jan 2014-Jan 2015
January 12, 2016	\$229,945.65	Billing for O&M Portion of Conservation Storage Capacity for Jan 2015 – Jan 2016

1

2

2.2.4 Additional OCWUT Payment Obligations – In addition to the

3

payments required by Section 2.3, the Trust assumes all responsibility to make other

4

payments due to the USACE under the 1974 Contract, including but not limited to (i) the

5

annual joint-use operation and maintenance costs billed annually in arrears based on actual

6

operation and maintenance expenses of the USACE as specified in Article 3 and Article

7

5(c) of the 1974 Contract, (ii) any major capital replacement costs billed by the USACE

8

pursuant to Article 5(b) of the 1974 Contract, and (iii) Future Use Storage costs pursuant to

9

Article 5(a)(3) of the 1974 Contract; provided, however, that all capital costs, interest, and

10

operation, maintenance, and replacement costs associated with Future Use Storage shall be

11

forgiven, waived, and deemed non-reimbursable, pursuant to and consistent with the

12

Settlement Agreement and the Settlement Act the City’s payment of such costs and interest

13

to the OWRB or to the USACE through the OWRB shall not be necessary or required.

14

2.3 Trust Payments to and on behalf of OWRB after Secretarial Approval

15

– On or before the date which is thirty (30) days after the Secretary approves the

16

assignment and transfer of the 1974 Contract to the Trust by executing this Agreement, the

17

Trust shall pay to the OWRB the amount of \$12,500,000.00, as reimbursement for the

18

costs heretofore paid by the State and OWRB, for deposit by the OWRB into the

19

Community Water Infrastructure Development Revolving Fund or such other fund as

1 otherwise specified by OWRB. The Trust shall deposit \$2,500,000.00 (which otherwise
2 would have been due and owing to the State under the terms of the 2010 Storage Contract
3 Transfer Agreement) into the Atoka and Sardis Conservation Projects Fund established
4 pursuant to Section 6.5.2.1 of the Settlement Agreement as the State's contribution to the
5 fund.

6 **3. ALLOCATION OF CONSERVATION STORAGE CAPACITY**

7 **3.1 In General** – Subject to the provisions of this Agreement, the Trust holds
8 all right, title, and interest in the Conservation Storage Capacity that was contracted to the
9 OWRB under the 1974 Contract, including the associated rights to divert or withdraw
10 water from Sardis Lake, order releases through the outlet works, and construct all such
11 works, plants, pipelines, and appliances as necessary or convenient, subject to USACE
12 approval as to design and location, for the purpose of diversion, withdrawals, or releases.
13 Notwithstanding the allocations under this Section 3 of Conservation Storage Capacity, the
14 City has and shall retain title to the entire 297,200 acre feet of Conservation Storage
15 Capacity that was contracted to the OWRB under the 1974 Contract.

16 **3.2 Administrative Set-Aside Subcontracts** – The City's use of Conservation
17 Storage Capacity for any purpose shall be subject to the use of Conservation Storage
18 Capacity by holders of Administrative Set-Aside Subcontracts, including the SLWA
19 Subcontract, in accordance with Section 4. The use of Conservation Storage Capacity by
20 holders of Administrative Set-Aside Contracts shall not be subject to the Sardis Lake
21 Release Restrictions. Holders of Administrative Set-Aside Subcontracts with a valid
22 stream water permit from the OWRB shall be entitled to withdraw or release water from

1 Sardis Lake when lake levels are between the top of the Conservation Storage Capacity
 2 (elevation 599 feet MSL) and the bottom of the Conservation Storage Capacity (elevation
 3 542 feet MSL).

4 **3.3 City Releases for Water Supply** – The City’s use of Conservation Storage
 5 Capacity for water supply purposes shall be subject to the Sardis Lake Release
 6 Restrictions. The Sardis Lake Release Restrictions have the operational effect of limiting
 7 OCWUT’s releases from Sardis Lake to water stored between elevation 599 feet MSL and
 8 589 feet MSL, which storage space is estimated to contain 116,616 acre feet out of the total
 9 297,200 acre feet of estimated Conservation Storage Capacity.

10 **3.4 City Maintenance of Lake Levels for Fish, Wildlife, and Recreation** –
 11 The amount of Conservation Storage Capacity remaining after allocations of storage
 12 capacity for Administrative Set-Aside Contracts and the City’s water supply is 142,676
 13 acre-feet. In order to effectuate the City’s use of Conservation Storage Capacity and allow
 14 for releases for municipal water supply by the City pursuant to Section 3.3, the Settlement
 15 Agreement, and the Settlement Act, the City’s use of the 142,676 acre-feet of Conservation
 16 Storage Capacity shall be limited to maintaining lake levels for the benefit of fish and
 17 wildlife and recreational purposes, consistent with the authorized purposes for Sardis Lake.

18 3.5 The allocation of Conservation Storage Capacity pursuant to Sections 3.1
 19 through 3.4 is summarized in **Table 1**, below:

Table 1: Effect and Scope of Sardis Lake Release Restrictions

Storage	Conservation Storage Capacity (Acre-Feet)	Conservation Storage Capacity (Percent of Total)	Subject to Lake Level Restrictions
Lake Level Maintenance (Recreation, Fish and Wildlife)	142,676	48%	n/a

Storage	Conservation Storage Capacity (Acre-Feet)	Conservation Storage Capacity (Percent of Total)	Subject to Lake Level Restrictions
Local Use (Administrative Set-Aside)	37,908	13%	No
City Use	116,616	39%	Yes
Total	297,200	100%	n/a

1

2 **4. COORDINATION AND ADMINISTRATION OF ADMINISTRATIVE**
3 **SET-ASIDE SUBCONTRACTS**

4

5 **4.1 OWRB Coordination and Administration** – The OWRB will coordinate
6 and manage Administrative Set-Aside Contracts, the holders of which shall be
7 subcontractors of the Trust. The Trust and the subcontractor shall be parties to any
8 Administrative Set-Aside Subcontract, and all subcontracts shall contain those terms
9 provided in a standard form agreed to by the City and State. The subcontracts shall not,
10 collectively, authorize the use of Conservation Storage Capacity in excess of that amount
11 necessary to yield 20,000 acre-feet per year of water from Sardis Lake, which amount of
12 Conservation Storage Capacity is estimated to be 37,908 acre feet of storage space in
13 Sardis Lake. Nothing herein enlarges the annual yield of the Administrative Set-Aside
14 beyond 20,000 acre-feet of water per year. Conservation Storage Capacity that is subject
15 to an Administrative Set-Aside Subcontract shall not be available for use by the City.

16 **4.2 Storage and Delivery Losses** – Holders of Administrative Set-Aside
17 Subcontracts shall bear any loss of water associated with the storage and delivery of water
18 from storage in Sardis Lake to their point of diversion, and such loss shall not be allocated
19 to the City.

20 **4.3 Cost for Use of Storage Pursuant to Administrative Set-Aside**
21 **Contracts** – For the use of storage by a user pursuant to an Administrative Set-Aside

1 Subcontract, including but not limited to the SLWA Subcontract, the Trust shall charge not
2 more than the proportionate cost of the operation, maintenance, and replacement for the
3 amount of Conservation Storage Capacity authorized for use by the user (i.e., user's
4 pro-rata portion of the 37,908 acre feet of Conservation Storage Capacity in Sardis Lake
5 associated with the Administrative Set-Aside). The user must pay its proportionate share
6 of such operation, maintenance, and replacement costs as a condition to withdrawing or
7 releasing water from Sardis Lake storage. Holders of Administrative Set-Aside
8 Subcontracts shall not be considered retail or wholesale customers of the City for purposes
9 of Section 5.2; provided, that such holders who use City infrastructure or facilities for the
10 withdrawal or delivery of water shall be responsible to pay costs associated with such use
11 in accordance with Section 5.2.

12 **4.4 OWRB Permits** – The use of the water subject to the Administrative
13 Set-Aside shall be as authorized by stream water appropriation permits issued by the
14 OWRB under the Stream Water Act. The OWRB will not issue stream water appropriation
15 permits for more than a cumulative total of 20,000 acre-feet of water per year from Sardis
16 Lake for the Administrative Set-Aside, inclusive of the SLWA Subcontract.

17 **5. ADDITIONAL PROVISIONS FOR CITY WATER STORAGE AND USE**

18 **5.1 Other Conditions on the City's Use of Storage** – The City will comply
19 with the Sardis Lake Release Restrictions and all other conditions of the City Permit.

20 **5.2 Pass-through Water Storage Costs** – The City may charge and collect
21 from its retail and wholesale customers a fee for storage of water in Sardis Lake which
22 includes all costs to acquire, impound, transport, store, and otherwise provide for the ready

1 availability of this raw water supply, which shall be accounted for in accord with generally
2 accepted accounting principles. Cost of service and rate design principles published by the
3 American Water Works Association and Water Research Foundation shall be used to guide
4 the development of equitable fees and charges applied to each person and entity benefitting
5 from these water supplies, functions, or systems.

6 **5.3 City Right to Use Water from Sardis Lake** – This Agreement in and of
7 itself does not establish a right for the City to use water from Sardis Lake storage or the
8 Kiamichi River basin. The City must obtain the City Permit prior to using water from
9 Conservation Storage Capacity.

10 **5.4 Unused City Permit or Storage Contract Rights** – Pursuant to the terms
11 of Section 6.5.6 of the Settlement Agreement, the City may enter into: (i) short-term
12 contracts for Conservation Storage Capacity in Sardis Lake that is not used by the City, and
13 (ii) short-term contracts for City Permit water use rights in Sardis Lake.

14 **6. WATER QUALITY; STATE AND OWRB AUTHORITY OVER WATER**

15 **6.1 No Warranty as to Quality** – Water taken by the City under this
16 Agreement shall be raw and untreated. The OWRB does not make any express or implied
17 warranty regarding the quality of the water which may be taken by the City under this
18 Agreement, and the OWRB shall not have any responsibility to treat the water or otherwise
19 put it in a condition of any particular quality.

20 **6.2 State Authority Over Water** – Nothing herein affects the State’s
21 jurisdiction and authority over water in the State. Without limiting the generality of the
22 foregoing, the use of stream water stored in Sardis Lake hereunder shall continue to be

1 subject to the jurisdiction and authority of the OWRB to determine applications for
2 appropriation permits to use stream water as provided in Title 82, Title 785 of the
3 Oklahoma Administrative Code, and including but not limited to OAC § 785:20-5-5(b)(3)
4 as it exists at the time of the execution of this Agreement.

5 **7. ADDITIONAL PROVISIONS**

6 **7.1 Execution, Approval, and Enforceability** – This Agreement shall be
7 executed by the Parties and approved by the Secretary of Army as soon as practical after
8 the enactment of the Settlement Act and shall be enforceable on the Settlement
9 Agreement’s Enforceability Date.

10 **7.2 2010 Storage Contract Transfer Agreement** – This Agreement amends,
11 supersedes, and replaces the 2010 Storage Contract Transfer Agreement, the terms of
12 which shall no longer be in force and effect upon the Settlement
13 Agreement’s Enforceability Date; provided, that if the Enforceability Date does not occur,
14 the 2010 Storage Contract Transfer Agreement shall remain in full force and effect.

15 **7.3 Environmental Compliance** – To release or divert any water for the
16 Conservation Storage Capacity or to divert water from the Kiamichi River in accord with
17 the City Permit, the City shall be responsible for compliance with any applicable
18 requirements of local, state, or federal laws and regulations, including but not limited to the
19 National Environmental Policy Act (42 U.S.C. § 4341, et seq.), the Fish and Wildlife
20 Coordination Act (16 U.S.C. § 661-666c), the Endangered Species Act of 1973 (16 U.S.C.
21 § 1531, et seq.), the federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.),
22 provisions of Title 29 of the Oklahoma Statutes regarding fish and wildlife, Oklahoma

1 Water Quality Standards (OAC § 785:45-1-1, et seq.), or other applicable environmental
2 laws and regulations.

3 **7.4 Amendment** – This Agreement may be amended at any time upon such
4 terms and conditions as the OWRB, the City, and the Trust mutually agree and execute in
5 writing; provided, that no amendment shall in any way affect or relieve the City, the Trust,
6 the OWRB, or the State of any obligation or limitation established by the Settlement
7 Agreement and/or Settlement Act.

8 **7.5 Addresses and Notice** – Unless otherwise provided herein, any notice,
9 communication, request, reply or advice (herein severally and collectively, for
10 convenience, called “Notice”) herein provided or permitted to be given, made, or accepted
11 by any party to any other party must be in writing and may be given or be served by
12 depositing the same in the United States mail postpaid and registered or certified and
13 addressed to the party to be notified, with return receipt requested, or by delivering the
14 same to an officer of such party, addressed to the party to be notified. Notice deposited in
15 the mail in the manner described above shall be conclusively deemed to be effective, unless
16 otherwise stated herein, from and after the expiration of three days after it is so deposited.
17 Notice given in any other manner shall be effective only if and when received by the party
18 to be notified. For the purposes of Notice, the addresses of the Parties shall, until changed
19 as hereinafter provided, be as follows:

20 If to the Trust, to: Oklahoma City Water Utilities Trust
21 General Manager
22 420 W. Main Street, 5th Floor
23 Oklahoma City, Oklahoma 73102
24
25
26

1 If to the City, to: The City of Oklahoma City
2 City Clerk
3 200 N. Walker Avenue, 2nd Floor
4 Oklahoma City, Oklahoma 73102

5
6 If to OWRB, to: Oklahoma Water Resources Board
7 Executive Director
8 3800 North Classen Boulevard
9 Oklahoma City, Oklahoma 73118

10
11 The Parties shall have the right from time to time and at any time to change their respective
12 addresses and each shall have the right to specify as its address any other address by at least
13 fifteen (15) days written notice to the other parties hereto.

14 **7.7 State or Federal Laws, Rules, Orders or Regulations** – This Agreement
15 is subject to all applicable Federal laws, the laws of the State of Oklahoma, and any
16 applicable permits, ordinances, rules, orders and regulations of any local, state or federal
17 governmental authority having jurisdiction; but nothing contained herein shall be
18 construed as a waiver of any right to question or contest any such laws, permits,
19 ordinances, rules, orders, or regulations in any forum having jurisdiction.

20 **7.8 Remedies Upon Default** – Any right or remedy on any default hereunder
21 shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or
22 in equity in accordance with applicable law. No waiver or waivers of any breach or default
23 (or any breaches or defaults) by any party hereto or of performance by any other party of
24 any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall
25 any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches
26 or defaults of any kind, character or description, under any circumstance.

1 **7.9 Severability** – In the event that any one or more of the sections,
2 subsections, provisions, clauses, or words of this Agreement or the application thereof to
3 any situation or circumstance should be, or should be held to be, for any reason, invalid or
4 unconstitutional, under the laws or constitutions of the State of Oklahoma or the United
5 States of America, or in contravention of any such laws or constitutions, then such
6 invalidity, unconstitutionality, or contravention shall not affect any other sections,
7 subsections, provisions, clauses, or words of this Agreement or the application thereof to
8 any other situation or circumstance, and it is intended that this Agreement shall be
9 severable and shall be construed and applied as if any such invalid or unconstitutional
10 section, subsection, provision, clause, or word had not been included herein, and the rights
11 and obligations of the Parties hereto shall be construed and remain in force accordingly.

12 **7.10 No Extrinsic Evidence** – This Agreement constitutes the entire agreement
13 between the Parties hereto relating to the subject matter covered herein, and cancels,
14 supersedes, and replaces all previous negotiations, proposals, and agreements, whether oral
15 or written, between the Parties relating to the subject matter covered herein.

16 **7.11 Mediation** – Except as otherwise provided in this Section, as a condition
17 precedent to the filing of any lawsuit, the Parties to this Agreement agree to submit any
18 dispute to mandatory but non-binding mediation. Each party to such mediation shall bear
19 its respective cost of participation and all common costs for facilitating the mediation effort
20 shall be shared equally. Mediation must be completed within sixty (60) days after the
21 dispute is submitted to mediation. Notwithstanding other provisions in this Section, the
22 parties agree that in the event of an emergency evidenced by a written declaration approved

1 by the governing body of the party seeking to avoid mediation and when injunctive relief is
2 needed immediately, mediation shall not be required.

3 **7.12 Jurisdiction and Venue; Waiver of Sovereign Immunity** – Any
4 proceeding for interpretation or enforcement of this Agreement shall be brought in the
5 United States District Court for the Western District of Oklahoma. For the exclusive
6 benefit of the City and the Trust, the OWRB expressly and irrevocably consents to suit,
7 waives its sovereign immunity from suit, and agrees not to raise the Eleventh Amendment
8 to the United States Constitution or comparable defense to the validity of such consent or
9 waiver solely for any action brought in the Western District of Oklahoma relating to
10 interpretation or enforcement of this Agreement, which action is brought by the City or the
11 Trust, inclusive of the appellate jurisdiction of the United States Court of Appeals for the
12 Tenth Circuit and the United States Supreme Court. Nothing herein authorizes the award of
13 any money damages against the State, the City, or the Trust.

14 **7.13 Assignability and Successor Interest** – With prior written notice by the
15 assigning party to the non-assigning party: (i) the City and the Trust may assign or
16 otherwise transfer their rights hereunder to a duly formed successor or to the City of
17 Oklahoma City; and (ii) the OWRB may assign or otherwise transfer its rights hereunder to
18 a duly formed successor agency or entity or to the State of Oklahoma; provided, that any
19 assignment or transfer by the OWRB or the City and Trust shall include all obligations and
20 limitations imposed by this Agreement, the Settlement Agreement, and/or the Settlement
21 Act.

1 **7.14 Interpretation** – For purposes of interpretation of this Agreement, none of
2 the Parties shall be considered to have been the drafter of this Agreement.

3 **7.15 Modification of 2009 Order** – To the extent necessary to effectuate this
4 Agreement, the Settlement Agreement, and the Settlement Act the Parties shall cooperate
5 to submit any necessary motions or other pleadings to the United States District Court for
6 the Northern District of Oklahoma to modify the 2009 Order.

7 IN WITNESS WHEREOF, the Parties hereto acting under authority of their
8 respective governing bodies have caused this Agreement to be duly executed in several
9 counterparts, each of which shall constitute an original.

10

11 **OKLAHOMA WATER RESOURCES BOARD**

12

13

14

15

16

_DRAFT_____

Date: _____

17

Linda Lambert, Chair

18

19

20

21

22

Attestation: _DRAFT_____

Date: _____

23

Jason Hitch, Secretary

24

25

Reviewed for form and legality,

26

27

28

29

_DRAFT_____

30

Robert Singletary, Counsel

31

1 **CITY OF OKLAHOMA CITY**

2

3

4

5 _DRAFT _____

Date: _____

6 Mick Cornett, Mayor

7

8

9 **OKLAHOMA CITY WATER UTILITY TRUST**

10

11

12

13 _DRAFT _____

Date: _____

14 Pete White, Chair

15

16 Reviewed for form and legality,

17

18

19

20 _____

21 Brian M. Nazareus, Counsel

22

23

1 **SECRETARIAL APPROVAL** – Through the execution of this Agreement by the
2 representative of the Secretary of the Army, the Secretary of the Army (i) approves the
3 assignment and transfer of the 1974 Contract in accordance with the terms of this
4 Agreement and the Settlement Act; (ii) the USACE recognizes such assignment and
5 transfer as approved in accord with the terms of this Agreement and the Settlement Act,
6 including that the City’s uses of Conservation Storage Capacity for maintenance of lake
7 levels and for municipal water supply are authorized purposes for Sardis Lake storage and
8 that the Sardis Lake Release Restrictions shall not constitute a reallocation; and (iii) the
9 USACE acknowledges that the payments described in Sections 2.2.2 and 2.2.3 have been
10 made.

11

12 [SIGNATURE BLOCK FOR REPRESENTATIVE OF SECRETARY OF THE ARMY]

DACW56-74-C-0134

CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND
THE WATER CONSERVATION STORAGE COMMISSION
OF
THE STATE OF OKLAHOMA
FOR
WATER STORAGE SPACE IN CLAYTON LAKE

THIS CONTRACT, entered into this 16 day of FEB,
1974, by and between THE UNITED STATES OF AMERICA (hereinafter
called the "Government") represented by the Contracting Officer
executing this contract, and THE WATER CONSERVATION STORAGE COM-
MISSION OF THE STATE OF OKLAHOMA (hereinafter called the "User");

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1962 (Public Law 87-874,
87th Congress), authorized the construction, operation, and
maintenance of the Clayton Lake on Kiamichi River, Oklahoma,
(hereinafter called the "Project"); and

WHEREAS, the User desires to contract with the Government
for the use of storage included in the Project for municipal
and industrial water supply, and for payment of the cost there-
of in accordance with the provisions of the water supply Act
of 1958, as amended (43 USC 390b-f); and

WHEREAS, the User is empowered so to contract with the
Government and is vested with all necessary powers for accom-
plishment of the purposes of this contract, including those
required by Section 221 of the Flood Control Act of 1970 (42
USC 1962d-5b);

NOW, THEREFORE, the Government and the User agree as fol-
lows:

ARTICLE 1 - Water Storage Space.

(a) Project Construction. The Government, subject to the
directions of Federal law and any limitations imposed thereby,
shall design and construct the Project so as to include therein
space for the storage of water by the User.

RECEIVED

CONTRACTOR'S COPY

APR 29 1974

OKLA. WATER RESOURCES BOARD

10-1, 3

(b) Rights of User.

(1) The User shall have the right to utilize an undivided 100 percent (estimated to contain 297,200 acre-feet after adjustment for sediment deposits) of the total storage space in the Project between elevations 599.0 feet above mean sea level and 542.0 feet above mean sea level, which total storage space is estimated to contain 297,200 acre-feet after adjustment for sediment deposits. This storage space is to be used to impound water for present and anticipated future demand or need for municipal and industrial water supply. 47.678 percent (an estimated 141,700 acre-feet) of the space which User has a right to utilize is for present use water storage and 52.322 percent (an estimated 155,500 acre-feet) is for future use water storage.

(2) The User shall have the right to withdraw water from the lake, or to order releases to be made by the Government through the outlet works, in the Dam, subject to the provisions of Article 1(c) and to the extent the aforesaid storage space will provide; and shall have the right to construct all such works, plants, pipelines, and appliances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the Contracting Officer as to design and location. The grant of an easement for right-of-way, across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the User, under the authority of and in accordance with the provisions of 10 USC 2669. Subject to the conditions of such easement, the User shall have the right to use so much of the Project land as may reasonably be required in the exercise of the rights and privileges herein granted.

(c) Rights Reserved. The Government reserves the right to maintain at all times a minimum downstream release of 4 cubic feet per second through the gates or spillway of the dam. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life or property, including the right not to make downstream releases during such periods of time as is deemed necessary in its sole discretion, to inspect, maintain, or repair the Project.

(d) Quality or Availability of Water. The User recognizes that this contract provides storage space for raw water only. The Government makes no representations with respect to the quality or availability of water and assumes no responsibility therefor, or for the treatment of the water.

ARTICLE 2 - Regulation of and Right to Use of Water. The regulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the User. The User has the full responsibility to acquire in accordance with state laws and regulations, and, if necessary, to establish or defend, any and all water rights needed for utilization of the storage provided under this contract. The Government shall not be responsible for diversions by others, nor will it become a party to any controversies involving the use of the storage space by the User except as such controversies may affect the operations of the Government.

ARTICLE 3 - Operation and Maintenance. The Government shall operate and maintain the Project and the User shall pay to the Government a share of the costs of such operation and maintenance as provided in Article 5. The User shall be responsible for operation and maintenance of all installations and facilities which it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation and maintenance of such installations and facilities.

ARTICLE 4 - Measurement of Withdrawal and Releases. The User agrees to furnish and install, without cost of the Government, suitable meters or measuring devices satisfactory to the Contracting Officer for the measurement of water which is withdrawn from the Project by any means other than through the Project outlet works. The User shall furnish to the Government monthly statements of all such withdrawals. Releases from the water supply storage space through the Project outlet works shall be made in accordance with written schedules furnished by the User and approved by the Contracting Officer and shall be subject to Article 1(c). The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of the water supply storage space.

ARTICLE 5 - Payments. In consideration of the right to utilize the aforesaid storage space in the Project for municipal and industrial water supply purposes, the User shall pay the following sums to the Government:

(a) Project Investment Costs.

(1) The User shall repay to the Government, at the times and with interest on the unpaid balance as hereinafter specified, which, as shown in Exhibit "A" attached to and made a part of this contract, constitute the entire estimated amount of the construction costs, including interest during construction, allocated to the water storage right acquired by the User under this contract. The interest rate to be used for purposes of computing interest during construction and interest on the unpaid balance will be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction of the Project is initiated, on the basis set forth in the Water Supply Act of 1958, as amended. Such interest rate at the time of negotiation of this contract is 4.012 percent. The User shall repay:

100 percent of the construction cost of specific water supply facilities, estimated at	\$ 103,000
66.22 percent of the total Project joint-use construction costs, estimated at	15,078,000
Interest during construction, estimated at	<u>1,218,000</u>
Total estimated amount of Project investment costs allocated to water supply	\$16,399,000

(2) The Project investment costs allocated to the storage space indicated in Article 1(b)(1) as being provided for present demand is currently estimated at \$7,877,000, on the basis of the cost presented in Exhibit "A". The amount of the Project investment costs allocated to the storage for present demand shall be paid in 50 consecutive annual installments, the first of which shall be due and payable within 30 days after the User is notified by the Contracting Officer that the Project is completed and operational for water supply purposes. Annual installments thereafter will be due and payable on the anniversary date of the first payment. Except for the first payment which will be applied solely to the retirement of principal, all installments shall include accrued interest on the unpaid balance at the rate provided above. The last annual installment shall be adjusted upward or downward when due to assure repayment of all of the investment costs allocated to the storage for present demand within 50 years.

(3) The amount of the Project investment costs allocated to the remaining portion of the storage space, that provided for future use, is currently estimated at \$8,522,000 on the basis of the costs presented in Exhibit "A". No principal or interest payment with respect to this storage for future water supply is required to be made during the first 10 years following the date the Project is operational for water supply purposes, unless all or a portion of such storage is used during this period. The amount to be paid for any portion of such storage which is used shall be determined by multiplying the percentage of the total storage for future water supply which is placed in use by the total amount of the Project investment costs allocated to future water supply. Interest at the rate provided above will be charged on the amount of the Project investment costs allocated to the storage for future water supply which is not being used from the tenth (10th) year following the date the Project is operational for water supply purposes until the time when such storage is first used. The User may at its option pay the interest as it becomes due or allow the interest to accumulate until the storage is used. If the latter option is exercised, the interest will be compounded annually and added to the principal amount. When any portion of the storage for future water supply is used, payment of both principal and interest for the portion used must be started, and the amount of the Project investment costs allocated thereto, with interest on the unpaid balance as provided above, shall be paid within the life of the Project in not to exceed 50 consecutive annual installments beginning within 30 days after the date of first use of such portion.

(4) An estimated schedule of annual payments for the storage provided for present demand is attached as Exhibit "B" of this contract. The annual payments as provided therein shall be made until the actual construction costs of the Project are determined. When the actual construction costs of the Project are determined, the annual payments due thereafter will be adjusted to reflect any increase or decrease in the actual cost, including interest during construction, from the estimated amounts shown in Exhibit "A". Payment schedules for the storage provided for future water supply demands will be furnished by the Contracting Officer when

use of such storage is started, and if based on estimated costs will be subject to revision when actual costs are known.

(5) If the User shall fail to make any of the aforesaid payments when due, then the overdue payments shall bear interest compounded annually at the applicable rate until paid. The amount charged on payments overdue for a period of less than one year shall be figured on a monthly basis. For example, if the payment is made within the first month after being overdue (31 to 60 days after the anniversary date), one month's interest shall be charged. This provision shall not be construed as giving the User a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by User.

(6) The User shall have the right at any time it so elects to prepay the indebtedness under this Article 5(a), in whole or in part, with accrued interest thereon to the date of such prepayment.

(b) Major Capital Replacement Costs. The User will be required to pay 100 percent of the costs for any major capital replacement of specific water supply facilities. In addition, the User shall pay to the Government up to 67.69 percent of the costs of joint-use major capital replacement items. The required repayment for joint-use costs will be commensurate with the User's percentage of storage space presently in use. Payment shall be paid either in lump sum or annually with interest on the unpaid balance. If paid annually, the first payment shall be made with the first annual payment on the Project investment costs becoming due after the date said major capital replacement costs are incurred.

(c) Annual Operation and Maintenance Costs. The User will be required to pay the annual experienced operation and maintenance costs of specific water supply facilities. In addition, the User shall pay 34.109 percent of the annual experienced joint-use operation and maintenance costs of the Project until such time as the storage for future water supply is used. As the storage provided for future water supply demands is used, the share of the annual experienced joint-use operation and maintenance costs, which the User will be required to pay in addition

to the operation and maintenance costs of the specific water supply facilities, will be increased commensurate with the percentage of the water supply storage being used, up to a total of 71.54 percent of such costs.

ARTICLE 6 - Construction Cost Adjustments. All construction cost dollar amounts in this contract, including those in the appendices, are tentative only, based on the Government's best estimates. They will be adjusted upward or downward by the Contracting Officer when final construction costs become known, and the contract will be modified to reflect the adjustments.

ARTICLE 7 - Duration of Contract. This contract shall be effective when approved by the Secretary of the Army and shall continue in full force and effect for the life of the Project.

ARTICLE 8 - Permanent Rights to Storage. Upon completion of payments by the User, as provided in Article 5(a) herein, the User shall have a permanent right, under the provisions of the Act of 16 October 1963 (Public Law 88-140, 43 USC 390e), to the use of the water supply storage space in the Project as provided in Article 1, subject to the following:

(a) The User shall continue payment of annual operation and maintenance costs allocated to water supply.

(b) The User shall bear the costs allocated to water supply of any necessary reconstruction, rehabilitation or replacement of Project features which may be required to continue satisfactory operation of the Project. Such costs will be established by the Contracting Officer. Repayment arrangements including schedules will be in writing and will be made a part of this contract.

(c) Upon completion of payments by the User as provided in Article 5(a) hereof, the Contracting Officer shall redetermine the storage space for municipal and industrial water supply, taking into account such equitable reallocation of reservoir storage capacities among the purposes served by the Project as may be necessary due to sedimentation. Such findings, and the storage space allocated to municipal and industrial water supply, shall be defined and described in an exhibit which will be made a part of this contract. Following the same principle, such reallocation of reservoir storage capacity may be further adjusted from time to time as the result of sedimentation resurveys to reflect actual rates of sedimentation and the exhibit revised to show the revised storage space allocated to municipal and industrial water supply.

(d) The permanent rights of the User under this contract shall be continued so long as the Government continues to operate the Project. In the event the Government no longer operates the

Project, such rights may be continued subject to the execution of a separate contract, or additional supplemental agreement providing for:

(1) continued operation by the User of such part of the facility as is necessary for utilization of the water supply storage space allocated to it;

(2) terms which will protect the public interest; and

(3) effective absolvment of the Government by the User from all liability in connection with such continued operation.

ARTICLE 9 - Release of Claims. The User shall hold and save the Government, including its officers, agents and employees harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project, or withdrawal or release of water from the Project, made or ordered by the User or as a result of the construction, operation, or maintenance of the facilities and appurtenances thereto owned and operated by the User, provided, that this shall not be construed as obligating the User to hold and save the Government harmless from damages or liability resulting from the sole negligence of the Government or its officers, agents, or employees and not involving negligence on the part of User or its officers, agents, or employees. The User shall also hold and save the Government free from all water-rights claims resulting from construction and operation of the Project.

ARTICLE 10 - Assignment. The User shall not transfer or assign this contract or any rights acquired thereunder, nor suballot said water supply storage space or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this contract, without the approval of the Secretary of the Army, provided that, unless contrary to the public interest, this restriction shall not be construed to apply to any water that may be obtained from the water supply storage space by the User and furnished to any third party or parties, nor any method of allocation thereof.

ARTICLE 11 - Officials Not to Benefit. No member or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefits.

ARTICLE 12 - Covenant Against Contingent Fees. The User warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee

excepting bona fide employees or bona fide established commercial or selling agencies maintained by the User for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion to add to the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 13 - Environmental Quality. During any construction, operation, and maintenance by User of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State and local laws and regulations concerning environmental pollution. Particular attention should be given to (1) reduction of air pollution by control of burning, minimization of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters; (2) reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion; (3) minimization of noise levels; (4) onsite and offsite disposal of waste and spoil; and (5) prevention of landscape defacement and damage.

ARTICLE 14 - Federal and State Laws.

(a) In acting under its rights and obligations hereunder, the User agrees to comply with all applicable Federal and State laws and regulations, including but not limited to the provisions of the Davis-Bacon Act (40 USC 276a et seq.); the Contract Work Hours and Safety Standards Act (40 USC 327-333); and Title 29, Code of Federal Regulations, Part 3.

(b) The User furnishes, as part of this contract, an assurance (Exhibit C) that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 42 USC 2000d, et seq.) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

(c) The parties agree that this contract is not an obligation for which the full faith and credit of the State of Oklahoma is pledged. Nothing herein shall be construed as legally obligating the Oklahoma Legislature to make any appropriation of funds.

*D
m
Sec*

O. B. S. J. G. D.

ARTICLE 15 - Definitions.

(a) Joint-use costs - The costs of features used for any two or more project purposes.

(b) Project investment costs - The initial cost of the Project, including: land acquisition; construction; interest during construction on the value of land, labor, and materials used for planning and construction of the Project.

(c) Specific costs - The costs of project features normally serving only one particular project purpose.

(d) Interest during construction - An amount of interest which accrues on expenditures for the establishment of Project services during the period between the actual outlay and the time the Project is first made available to User for water storage.

ARTICLE 16 - Approval. This contract is subject to the written approval of the Secretary of the Army, and shall not be binding until so approved.

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

APPROVED:

THE UNITED STATES OF AMERICA

Howard H. Callaway
Secretary of the Army

By John G. Driskill
JOHN G. DRISKILL,
Colonel, Corps of Engineers
District Engineer
Contracting Officer

DATE: 9 APR 1974

THE WATER CONSERVATION STORAGE
COMMISSION OF THE STATE OF
OKLAHOMA

SEAL

By Lloyd E. Church, D.D.S.
Chairman Lloyd E. Church, D.D.S.

ATTEST:

By O. B. Saunders
O. B. Saunders, Secretary

It is my opinion that this contract is within the authority of the contracting agency and in reaching this conclusion I have considered the effect of Section 221 of the Flood Control Act of 1970 (42 USC 1962d-5b).

Barry De Sylva
ATTORNEY GENERAL
STATE OF OKLAHOMA

CERTIFICATE

BACW56-74-C-0134

I, O. B. Saunders, hereby certify that I am the Secretary, of the Water Conservation Storage Commission of the State of Oklahoma, named as User herein; that Lloyd E. Church, who signed this contract on behalf of the User was then Chairman of said Water Conservation Storage Commission; that said contract was duly signed for and on behalf of said User by authority of its governing body, and is within the scope of its legal powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand the seal of the Water Conservation Storage Commission of the State of Oklahoma, this 16 day of Feb, 1974.

(Seal)

O. B. Saunders
O. B. Saunders

EXHIBIT A

I - RESERVOIR STORAGE

<u>Feature</u>	<u>Elevation</u> (ft MSL)	<u>Usable</u> <u>Storage(1)</u> (ac ft)	<u>Percent of</u> <u>Conservation</u> <u>and Water</u> <u>Supply Storage</u>
Flood Control	607.0-599.0	127,300	
Conservation Storage	599.0-542.0	297,200	100.00
Water Supply		297,200	100.00
Oklahoma Water Conservation Storage Commission			
Initial		141,700	47.678
Future		<u>155,500</u>	52.322
Total		424,500	

(1) Storage remaining after 100 years sedimentation.

II - ALLOCATION OF ESTIMATED FIRST COST (2)

Flood Control	\$ 6,861,000
Water Supply:	
Storage	15,078,000
Conduit	103,000
Recreation & Fish and Wildlife	<u>4,260,000</u>
Total	\$26,302,000

(2) First cost includes \$102,000 for the present value of future recreation facilities. Total first cost of Project is \$26,200,000

EXHIBIT A (CONT)

III - COSTS TO BE REPAID BY THE USER
FOR WATER SUPPLY

INITIAL USE:

Cost of 141,700 acre-feet of water supply storage (47.678% x \$15,078,000)	= \$ 7,189,000
Outlet works specific to water supply	<u>103,000</u>
	<u>\$ 7,292,000</u>

Interest during construction (\$7,292,000 x 4.012% x 1/2 of 4-year construction period)	<u>585,000</u>
TOTAL INVESTMENT - INITIAL USE	<u>\$ 7,877,000</u>

FUTURE USE:

Cost of 155,500 acre-feet of water supply storage (52.322% x \$15,078,00)	= \$ 7,889,000
--	----------------

Interest during construction (\$7,889,000 x 4.012% x 1/2 of 4-year construction period)	= <u>633,000</u>
TOTAL INVESTMENT - FUTURE USE	<u>\$ 8,522,000</u>

TOTAL INVESTMENT - INITIAL & FUTURE USE	<u>\$16,399,000</u>
---	---------------------

EXHIBIT A (CONT)

**IV - ALLOCATION OF ESTIMATED ANNUAL OPERATION,
MAINTENANCE AND MAJOR REPLACEMENT COSTS**

<u>Item</u>	<u>Present</u> \$	<u>Future</u>	<u>Sub- total</u> \$	<u>FC, REC, F&WL</u>	<u>Total</u> \$
<u>Operation & Maintenance:</u>					
Specific Cost	1,000	0	1,000	90,800	91,800
Joint-Use Cost	<u>60,850 (3)</u>	<u>66,750(4)</u>	<u>127,600</u>	<u>50,800</u>	<u>178,400</u>
Total	61,850	66,750	128,600	141,600	270,200
<u>Major Replacement:</u>					
Specific Cost	800	0	800	1,900	2,700
Joint-Use Cost	<u>420 (3)</u>	<u>480(4)</u>	<u>900</u>	<u>400</u>	<u>1,300</u>
Total	1,220	480	1,700	2,300	4,000

(3) Based on 47.678 percent of joint-use cost allocated to water supply.

(4) Based on 52.322 percent of joint-use cost allocated to water supply.

EXHIBIT A (CONT)

V - ANNUAL COSTS TO USER FOR
INITIAL USE OF WATER SUPPLY STORAGE SPACE

Interest and amortization (5)	$0.044847 \times \$7,877,000$	=	\$353,257
Operation and Maintenance (6)			
Joint-Use			
47.678% x 71.54%	= 34.109% x \$178,400	=	60,850
Specific Facilities			
100% x \$1,000		=	1,000
Major Replacement (Estimated) (7)			
Joint-Use			
47.678% x 67.69%	= 32.273% x \$1,300	=	420
Specific Facilities			
100% x \$800		=	<u>800</u>
TOTAL ESTIMATED ANNUAL COST		=	<u>\$416,327</u>

- (5) Based on 50 payment, 49 with interest.
(6) The first payment shall be due and payable on the date specified in Article 5a(2). Payment due prior to availability of actual experienced cost will be as shown.
(7) Major replacement cost are payable only when incurred.
-

Contract No.
EXHIBIT B

DACW56-74-C-0134

AMORTIZATION SCHEDULE

TOTAL COST.....	7577000.
NUMBER OF PAYMENTS.....	50
INTEREST RATE, PERCENT.....	4.012

ANNUAL PYMT NO.	AMOUNT OF PAYMENT	APPLICATION		BALANCE
		INTEREST	ALLOC COST	ALLOC COST
	\$	\$	\$	\$
				7877000.00
1	353257.00		353257.00	7523743.00
2	353257.00	301852.57	51404.43	7472333.57
3	353257.00	299790.22	53466.78	7418871.79
4	353257.00	297645.14	55611.86	7363259.93
5	353257.00	295413.99	57843.01	7305416.92
6	353257.00	293093.33	60163.67	7245253.25
7	353257.00	290679.56	62577.44	7182675.31
8	353257.00	288163.95	65033.05	7117557.76
9	353257.00	285557.62	67699.33	7049853.33
10	353257.00	282841.52	70415.43	6979472.90
11	353257.00	280016.45	73240.55	6906232.35
12	353257.00	277078.04	76173.96	6830053.39
13	353257.00	274021.74	79235.26	6750815.13
14	353257.00	270842.32	82414.16	6668403.95
15	353257.00	267536.37	85720.63	6582683.32
16	353257.00	264097.25	89159.75	6493523.57
17	353257.00	260520.17	92730.33	6400786.74
18	353257.00	256809.56	96457.44	6304329.30
19	353257.00	252929.69	100327.31	6204001.99
20	353257.00	248904.56	104352.44	6099649.55
21	353257.00	244717.94	108509.06	5991110.49
22	353257.00	240363.35	112893.65	5878216.84
23	353257.00	235834.06	117422.94	5760793.90
24	353257.00	231123.05	122133.95	5638659.95
25	353257.00	226223.04	127033.96	5511625.99
26	353257.00	221126.43	132130.57	5379495.42
27	353257.00	215825.36	137431.64	5242063.78
28	353257.00	210311.60	142945.40	5099113.38
29	353257.00	204576.63	148630.37	4950433.01
30	353257.00	198611.57	154645.43	4795792.53
31	353257.00	192407.20	160849.30	4634942.78
32	353257.00	185953.90	167303.10	4467639.63
33	353257.00	179241.70	174015.30	4293624.33
34	353257.00	172260.21	180996.79	4112627.59
35	353257.00	164993.62	188253.38	3924369.21

EXHIBIT B (Cont)

DACW56-74-C-0134

TOTAL COST.....				7877000.
NUMBER OF PAYMENTS.....				50
INTEREST RATE, PERCENT.....				4.012

ANNUAL	AMOUNT OF	APPLICATION		BALANCE
PYMT NO.	PAYMENT	INTEREST	ALLOC COST	ALLOC COST

	\$	\$	\$	\$
36	353257.00	157445.69	195311.31	3723557.90
37	353257.00	149539.74	203667.26	3524390.64
38	353257.00	141418.61	211338.39	3313052.25
39	353257.00	132919.66	220337.34	3092714.91
40	353257.00	124079.72	229177.23	2863537.63
41	353257.00	114835.13	238371.37	2625165.76
42	353257.00	105321.65	247935.35	2377230.41
43	353257.00	95374.45	257632.52	2119347.39
44	353257.00	85023.24	268223.76	1851119.13
45	353257.00	74266.90	278990.10	1572129.03
46	353257.00	63073.32	290133.13	1231945.35
47	353257.00	51431.67	301525.33	900120.52
48	353257.00	39322.44	313934.56	666135.96
49	353257.00	26727.33	328529.62	339606.34
50	353233.35	13627.01	339656.34	0.00

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE DIRECTIVE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

OKLAHOMA WATER CONSERVATION STORAGE COMMISSION
(hereinafter called "Applicant-Recipient")

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (Public Law 88-352) and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 Code of Federal Regulations Part 300, issued as Department of Defense Directive 5500.11, 28 December 1964) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Directive, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from Department of the Army and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant-Recipient by the Department of the Army, assurance shall obligate the Applicant-Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the

Applicant-Recipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant-Recipient for the period during which the Federal financial assistance is extended to it by Department of the Army.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant-Recipient by the Department, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Applicant-Recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant-Recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant-Recipient.

Sections IV and VII of Department of Defense Directive 5500.11 setting forth prohibited discriminatory actions and compliance information is on the reverse hereof.

OKLAHOMA WATER CONSERVATION STORAGE COMMISSION

Dated 2-16-74

(Applicant-Recipient)

By Lloyd G. Church

SECTIONS IV AND VII DEPARTMENT OF DEFENSE DIRECTIVE 5500.11

IV. POLICY

A. GENERAL. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this Directive applies.

B. SPECIFIC DISCRIMINATORY ACTIONS PROHIBITED

1. A recipient under any program to which this Directive applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

a. Deny an individual any service, financial aid, or other benefit provided under the program;

b. Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

c. Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

d. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by other receiving any service, financial aid, or other benefit under the program;

e. Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.

f. Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

2. A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

3. As used in this Section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

4. The enumeration of specific forms of prohibited discrimination in this Subsection does not limit the generality of the prohibition in Subsection IV. A. of this Section.

VII. Compliance Information

A. Cooperation and Assistance. Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Directive and shall provide assistance and guidance to recipients to help them comply voluntarily with this Directive.

B. Compliance Reports. Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Directive. In the case of any program under which a primary recipient extends Federal assistance to any other recipient, such other recipient shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this Directive.

C. Access to Sources of Information. Each recipient shall permit access by the responsible Department official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this Directive. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

D. Information to Beneficiaries and Participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Directive and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Directive.

**STORAGE CONTRACT TRANSFER AGREEMENT
BETWEEN
OKLAHOMA CITY WATER UTILITIES TRUST
AND
STATE OF OKLAHOMA WATER RESOURCES BOARD**

This Storage Contract Transfer Agreement, dated for convenience of reference this 15 day of June, 2010, is entered into by and between the Oklahoma City Water Utilities Trust ("OCWUT"), a public trust for the benefit of the City of Oklahoma City ("City"), and the Oklahoma Water Resources Board ("OWRB"), an agency of the State of Oklahoma (the "State").

RECITALS

WHEREAS, the Water Conservation Storage Commission of the State of Oklahoma entered into a contract on February 16, 1974, with the United States through the United States Army Corps of Engineers ("USACE"), to repay 100% of the water supply storage costs associated with the construction of Clayton Lake, subsequently renamed Sardis Reservoir, pursuant to the contract (herein "1974 Contract," a copy of which is attach hereto and incorporated herein); and

WHEREAS, construction of Sardis Reservoir began in 1974; and

WHEREAS, the Water Conservation Storage Commission was sunsetted by the Oklahoma Legislature in 1979 and, pursuant to 1979 Okla. Sess. Laws, ch. 247, § 8, codified at 82 O.S. § 1085.38, the obligations of the Water Conservation Storage Commission were transferred to the OWRB; and

WHEREAS, construction of Sardis Reservoir was completed by the USACE and the reservoir was deemed operational on January 6, 1983; and

WHEREAS, the 1974 Contract authorizes the use of 100% of the conservation storage capacity for water supply, and further divides and designates the storage capacity into present use storage which is equivalent to 47.678% of the total conservation storage volume, and future use storage which is 52.322% of total conservation storage volume; and

WHEREAS, the OWRB, under provisions of 82 O.S. §1085.2(2), has authority to make such contracts as in the judgment of the OWRB are necessary or convenient to the exercise of any of the powers conferred upon it by law; and

WHEREAS, on or about September 3, 2009, a final Order ("September 2009 Order", a copy of which is attached hereto and incorporated herein) was entered in United States v. State of Oklahoma and Oklahoma Water Resources Board, United States District Court for the Northern District of Oklahoma, CV-98-00521, wherein the State of Oklahoma agreed to bring past due payments for the present use storage up to date by making an initial payment upon filing the Order, and to make five annual payments of \$5,266,775.92 each beginning on or before July 1, 2010, through July 1, 2014 and thereafter to make the remaining annual payments to pay off the present use storage costs, or in the alternative, to pay off the present use storage costs with one lump sum payment of \$27,814,262.49 on or before July 1, 2010; and

WHEREAS, the City is an Oklahoma municipal corporation and OCWUT is a public trust created for the benefit of the City under the laws of Oklahoma and OCWUT is authorized to enter into such contracts as necessary for its purposes, including contracts for water supply storage; and

WHEREAS, the City of Oklahoma City and the OCWUT provide raw and treated water to southeast and central Oklahoma; and

WHEREAS, the City and OCWUT desire to acquire the rights to use the conservation storage capacity now held by the State of Oklahoma as reflected in the 1974 Contract, and to appropriate and utilize waters of the Kiamichi River basin, including waters in Sardis Reservoir, for the future water supply of the City of Oklahoma City and other public water supply entities in Oklahoma; and

WHEREAS, the OWRB and OCWUT desire to enter into a Storage Contract Transfer Agreement (hereinafter "Agreement") whereby, among other things, the OWRB will transfer its rights to use the conservation storage capacity together with all its obligations under the 1974 Contract to OCWUT, and OCWUT will assume the repayment obligations set forth in the 1974 Contract subject to the provisions thereof, pay the payments set forth in the September 2009 Order, and be able to utilize the rights to use the conservation storage capacity in Sardis Reservoir, all pursuant to and as provided in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth below, IT IS AGREED by and between the Oklahoma City Water Utilities Trust and the Oklahoma Water Resources Board as follows:

ARTICLE I - DEFINITIONS

Section 1.1. Defined Terms. The following terms and expressions as used in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

1. "Acre-foot" means the unit of measurement for water equal to 325,851 gallons, U.S. Standard Liquid Measure.
2. "APA" means the Administrative Procedures Act codified at 75 O.S. §§ 250 through 323.

3. "Dependable Yield" means the amount of water in acre-feet that is expected to be available in every year except a specified percentage of years.

4. "Future Use Storage" means that portion of water supply storage in Sardis Reservoir designated in the 1974 Contract as being for future use, which portion equals 52.322% of the total Water Supply Storage designated in Sardis Reservoir.

5. "Permit" means an appropriation permit to be issued by the OWRB to the City authorizing appropriation and use of stream water upon certain terms and conditions, as set forth in Section 2.7 below.

6. "Present Use Storage" means that portion of water supply storage in Sardis Reservoir designated in the 1974 Contract as being for present use, which portion equals 47.678% of the total Water Supply Storage designated in Sardis Reservoir.

7. "Sardis Reservoir" means the reservoir constructed under the authority of the USACE with the dam in Pushmataha County and located in southeast Oklahoma in the area described in Exhibit A attached hereto.

8. "Stream Water Use Act" means the statutes codified at 82 O.S. §§ 105.1 through 105.32.

9. "Water Supply Storage" means that capacity of Sardis Reservoir designated by the USACE authorized to be used to store water for conservation purposes, including water supply, between elevations 542 feet and 599 feet mean sea level.

10. "Water Year" means the twelve-month period beginning January 1 and ending December 31.

ARTICLE II

GENERAL TERMS AND CONDITIONS OF THE TRANSACTION

Section 2.1. Assignment of 1974 Contract; Transfer. Subject to the provisions of Sections 2.2 through 2.7 hereof, the OWRB hereby transfers all of its rights and obligations in the 1974 Contract and does hereby grant, bargain, sell, and convey all right, title and interest of the OWRB in the 1974 Contract to OCWUT. The OWRB states that it has not made any other transfers or assignments of the rights under the 1974 Contract less and except the Subcontract for Use of Water Supply Storage, Easement, License and In take Structure at Sardis Lake between Oklahoma Water Resources Board and Sardis Lake Water Authority (herein "Subcontract").

Section 2.2. USACE Approval. The transfer of the 1974 Contract rights and obligations contemplated by this Agreement requires approval by the USACE under Article 10 of the 1974 Contract. The USACE approval is not a condition precedent to the effectiveness of this Agreement between the OWRB and OCWUT, and OCWUT assumes all responsibility and costs to obtain USACE approval under Article 10 of the 1974 Contract. The OWRB agrees to support OCWUT in obtaining any approval required from USACE. OCWUT will make the payments described in Section 2.5 (a), (b)(i), and (c) regardless of whether the USACE approves the transfer of the 1974 Contract.

Section 2.3. OCWUT's Contract Rights Subject to Preexisting Subcontracts and Administrative Set-aside. OCWUT shall take the transfer of the 1974 Contract under this Agreement subject to the Subcontract entered into by the OWRB. Additionally, the City and OCWUT acknowledge and agree that the administrative set-aside of 20,000 acre-feet of water per year from Sardis Lake storage for beneficial use in southeastern Oklahoma inclusive of the water from storage subject of the Subcontract, as specified in provisions of OWRB rule 785:20-5-5(b)(3), as it exists at the time of the making of this Agreement, shall apply to and limit the water storage in Sardis Lake by the City and OCWUT.

Section 2.4. State and OWRB Authority Over Water. The plenary jurisdiction and authority of the State over water in the State pursuant to State and Federal law, including but not limited to water in Sardis Reservoir and the Kiamichi River and its tributaries, shall not be affected by the transfer of storage rights and obligations under this Agreement. Without limiting the generality of the foregoing, the use of stream water stored in Sardis Reservoir hereunder shall continue to be subject to the jurisdiction and authority of the OWRB to determine applications for appropriation permits to use stream water as provided in title 82 of the Oklahoma Statutes, title 785 of the Oklahoma Administrative Code, and including but not limited to Section 785:20-5-5(b)(3) as it exists at the time of the making of this Agreement, providing to the effect that 20,000 acre feet is not available for stream water use appropriation in certain instances of applications for appropriation from water supply storage at Sardis Reservoir, and other applicable law. In addition, all rights to the use of water in Sardis Reservoir in existence at the time of this Agreement shall not be affected by the transfer under this Agreement. Provided however, nothing in this Agreement shall preclude or prevent OCWUT or successor trust from charging and collecting a fee for water storage, operation, and maintenance costs.

Section 2.5. Assumption of Obligations; Payments.

a. Assumption of Obligations Under 1974 Contract. OCWUT hereby assumes and accepts responsibility for all obligations of the State and OWRB under the 1974 Contract, including but not limited to those relating to costs of operation and maintenance and costs of storage for future water supply use. The provisions of this Section 2.5 shall not be construed to warrant, guarantee or pre-judge that the application for a permit to appropriate as described in Section 2.7 below will be approved and that a permit will be issued as requested.

Without limiting the generality of the foregoing, OCWUT shall make the payments as provided in this Section 2.5.

b. Payments on or before July 1, 2010 and after USACE approval.

i. On or before July 1, 2010, OCWUT shall pay to the OWRB, and the OWRB will immediately thereafter pay to the United States of America/USACE or the OCWUT shall pay directly to the United States of America/USACE, the amount due as provided by and in accordance with the September 2009 Order. The lump sum payment alternative amount shall represent the arrearage and balance due for storage for present water supply use under the 1974 Contract as agreed by the United States/USACE pursuant to the September 2009 Order.

ii. On or before the date which is thirty (30) days after USACE approves the transfer of the 1974 Contract to OCWUT, OCWUT shall pay to the OWRB the amount of \$15,000,000.00, as reimbursement for the costs heretofore paid by the State and OWRB, for deposit into the Community Water Infrastructure Development Revolving Fund or such other fund as otherwise specified by OWRB.

c. Ongoing payments under 1974 Contract. In addition to the payments to be made as specified in Section 2.5(b) above, the OCWUT acknowledges and agrees that OCWUT assumes all responsibility to make other payments due to the USACE, including but not limited to (i) the annual joint-use operation and maintenance costs billed annually in arrears based on actual operation and maintenance expenses of the USACE as specified in Article 3 and Article 5(c) of the 1974 Contract, (ii) any major capital replacement costs billed by the USACE pursuant to Article 5(b) of the 1974 Contract, and (iii) future use storage costs pursuant to Article 5(a)(3) of the 1974 Contract.

Section 2.6. Water Storage and Use.

a. General description of use of storage. The OCWUT intends to establish a long-term water supply source from the Kiamichi River Basin as a supplemental source to the existing McGee Creek Reservoir and Atoka Reservoir sources. Among other things, this will include making application for and obtaining an appropriation Permit from the OWRB as set forth in Section 2.7 below. Subject to the terms and conditions of such Permit, water from Sardis Lake or from the flow of the Kiamichi River, or from a combination thereof, will be conveyed by pipeline from a point of diversion within the Kiamichi River Basin to be determined by OCWUT. OCWUT may supply the water to other public water supply entities within and throughout the State of Oklahoma, including but not limited to southeast and central Oklahoma. As the water use needs of the OCWUT and other public water supply entities develop, the OCWUT will analyze the necessity of infrastructure additions and improvements, such as additional pipelines, pumps and terminal storage, to convey and store water from the Kiamichi River Basin. The 1974 Contract hereby transferred authorizes the "User" to construct works, plants, pipelines and appliances on lands owned by the USACE subject to approval of the USACE, and it is the intent of the parties to this agreement that the OCWUT be considered as the "User" under the 1974 Contract.

b. Cost for use of storage for administrative set-aside. For use of storage for any of the 20,000 acre-feet of water specified in the OWRB rule 785:20-5-5(b)(3) as the local use administrative set-aside from Sardis Lake storage including the Subcontract, OCWUT shall charge not more than the proportionate cost of the storage, operation maintenance and replacement for the yield of amount of water authorized to be used by the local user inclusive of the Subcontract. The local use of the water subject to the administrative set-aside shall be as

authorized by appropriation permits issued by the OWRB. The OWRB will not issue permits for more than a cumulative total of 20,000 acre-feet of consumptive use of water from Sardis Lake storage, inclusive of the Subcontract, without written consent of the City or OCWUT.

c. Other conditions on use of storage. The OCWUT and City will comply with provisions of OWRB rule 785:20-5-5(b)(3) regarding use of water from Sardis Lake storage. The OCWUT and City agree that water from Sardis Lake storage may be sold for use, or may otherwise be used, within the State of Oklahoma.

d. Water storage costs. Subject to Section 2.6(b) above, the OCWUT may charge and collect a fee for storage of water in Sardis Reservoir which includes all costs to acquire, impound, transport, store, and otherwise provide for the ready availability of this raw water supply which shall be accounted for in accord with generally accepted accounting principles. Cost of service and rate design principles published by the American Water Works Association and Water Research Foundation shall be used to guide the development of equitable fees and charges applied to each person and entity benefitting from these water supplies, functions, or systems.

Section 2.7. Water Use Permit.

a. Introduction. This Agreement in and of itself provides no authority to the City or OCWUT to use water from Sardis Reservoir storage or the Kiamichi River Basin. To be authorized to use any water from the Water Supply Storage in Sardis Reservoir, the City or OCWUT must obtain a permit from the OWRB as provided by the laws of the State, provided that the OWRB acknowledges that the City filed application #2007-017 to appropriate 136,000 acre-feet per year with the sources of water being Sardis Lake water supply storage and flows from the Kiamichi River basin area upstream from Hugo Lake dam. The administrative

proceeding on such an application is and shall be independent of this Agreement and the parties' performance of this Agreement.

b. Administrative proceeding. Before using any water from the Water Supply Storage, the OWRB must issue any necessary stream water use permit to appropriate based on the application filed by the City. The application shall be processed and determined by the OWRB in an administrative proceeding subject to and as provided in the Stream Water Use Act, the APA, other applicable statutes and court decisions, and applicable rules of the OWRB in the Oklahoma Administrative Code.

ARTICLE III

WATER QUALITY

Section 3.1. General Water Quality. It is understood and agreed that as of the date of execution of this Agreement, the water usually flowing in, through and impounded in the Kiamichi River basin, including Sardis Reservoir, is of good to high quality and to the knowledge of the OWRB, the City and OCWUT is usually sufficient for a raw water supply for municipal, industrial and other beneficial uses as contemplated by the City and OCWUT. The OWRB agrees to cooperate and to coordinate efforts to maintain water quality of the waters of the Kiamichi River basin, including water in Sardis Reservoir. The OCWUT and the City agree to comply with applicable water quality laws lawfully adopted by government entities of competent jurisdiction.

Section 3.2. No Warranty as to Quality. Water taken by the OCWUT under this Agreement shall be raw and untreated. The OWRB does not make any express or implied warranty regarding the quality of the water which may be taken by OCWUT under this Agreement, and the OWRB shall not have any responsibility to treat the water or otherwise put it in a condition of any particular quality.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 4.1. Effective Date. This Agreement shall become effective on and after the date of proper execution by the parties.

Section 4.2. Environmental Compliance. To release or divert any water for the Water Supply Storage or to divert water from any location on the Kiamichi River upstream from Hugo Lake dam, OCWUT shall be responsible for compliance with any applicable requirements of local, state or federal laws and regulations, including but not limited to the National Environmental Policy Act (42 U.S.C. 4341 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), provisions of Title 29 of the Oklahoma Statutes regarding fish and wildlife, Oklahoma Water Quality Standards (Title 785:45-1-1 et seq., Oklahoma Administrative Code), or other applicable environmental laws and regulations.

Section 4.3. Storage rights created through federal law. This Agreement transfers only the rights to storage on lands owned by the USACE as described in the 1974 Contract and as provided in federal laws authorizing the construction of Sardis Lake and use of water supply storage in reservoirs constructed by USACE. This Agreement does not affect other rights to land, storage or water.

Section 4.4. Modification. This Agreement may be amended at any time upon such terms and conditions as the parties mutually agree and execute in writing. No oral statement of any person shall modify or otherwise affect the terms or conditions stated in this Agreement.

Section 4.5. Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for

convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, addressed to the party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to OCWUT, to: Oklahoma City Water Utilities Trust
 General Manager, Marsha Slaughter
 420 W. Main Street, 5th Floor
 Oklahoma City, Oklahoma 73102

If to OWRB, to: Oklahoma Water Resources Board
 J.D. Strong, Interim Executive Director
 3800 North Classen Boulevard
 Oklahoma City, Oklahoma 73118

The parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other parties hereto.

Section 4.6. State or Federal Laws, Rules, Orders or Regulations. This Agreement is subject to all applicable Federal laws, the laws of the State of Oklahoma, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal governmental

authority having or asserting jurisdiction; but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

Section 4.7. Remedies Upon Default. Any right or remedy on any default hereunder shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity in accordance with applicable law. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto or of performance by any other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstance.

Section 4.8. Severability. The parties hereto specifically agree that in the event that any one or more of the sections, subsections, provisions, clauses or words of this Agreement or the application thereof to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State of Oklahoma or the United States of America, or in contravention of any such laws or constitutions, then such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Agreement or the application thereof to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

Section 4.9. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter covered herein, and cancels,

supersedes and replaces all previous negotiations, proposals, and agreements, whether oral or written, between the parties relating to the subject matter covered herein.

Section 4.10. Mediation. Except as otherwise provided in this Section, as a condition precedent to the filing of any lawsuit, the parties to this Agreement agree to submit any dispute to mandatory but non-binding mediation. Each party to such mediation shall bear its respective cost of participation and all common costs for facilitating the mediation effort shall be shared equally. Mediation must be completed within sixty (60) days after the dispute is submitted to mediation. Notwithstanding other provisions in this Section, the parties agree that in the event of an emergency evidenced by a written declaration approved by the governing body of the party seeking to avoid mediation and when injunctive relief is needed immediately, mediation shall not be required.

Section 4.11. Jurisdiction and Venue for Litigation. The parties agree that any proceeding for enforcement of this Agreement shall be brought in the District Court in and for Oklahoma County.

Section 4.12. Assignability and Successor Interest. The rights and obligations of the OCWUT under this Agreement may be assigned or the rights hereunder otherwise transferred by the OCWUT to a duly formed successor trust or to the City of Oklahoma City, provided that no obligations of the OCWUT set forth in this Agreement shall be affected by any such assignment or transfer. The rights and obligations of the OWRB under this Agreement may be assigned or the rights hereunder otherwise transferred by OWRB from the OWRB to a duly formed successor agency or entity, or to the State of Oklahoma, provided that no obligations of the OWRB set forth in this Agreement shall be affected by any such assignment or transfer.

Section 4.13. Interpretation. For purposes of interpretation of this Agreement, neither the OWRB, OCWUT, State of Oklahoma nor City of Oklahoma City shall be considered to have been the drafter of this Agreement.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original.

For the OKLAHOMA CITY WATER UTILITIES TRUST

Pete White

Pete White, Chairman

Date *06/15/10*

ATTEST:

Frances Kersey

Frances Kersey, Secretary

(SEAL)



For the CITY OF OKLAHOMA CITY

Mick Cornett

Mick Cornett, Mayor

Date *06/15/10*

ATTEST:

Frances Kersey

Frances Kersey, City Clerk

(SEAL)



Reviewed for form and legality.

Clay Keith

Assistant Municipal Counselor

For the OKLAHOMA WATER RESOURCES BOARD

Rudolf J. Herrmann

6-11-2010

Rudolf J. Herrmann, Chairman

Date



Lambert

Linda P. Lambert, Secretary

Reviewed for form and legality.

Dean Cook

General Counsel

EXHIBIT A

All or part of Sections 1, 2, 11, 12, 13, 14, 15 and 22, all in T 2 N, R 17 EIM, Pushmataha County;

All or part of Section 21, T 2 N, R 17 EIM, Pittsburg County;

All or part of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23 and 24, all in T 2 N, R 18 EIM, Pushmataha County;

All or part of Sections 4, 5, 6, 7, 8, 17, 18, 19 and 20, all in T 2 N, R 19 EIM, Pushmataha County;

All or part of Sections 35 and 36 in T 3 N, R 17 EIM, Latimer County;

All or part of Sections 23, 25, 26, 27, 34, 35 and 36, all in T 3 N, R 18 EIM, Latimer County;

and

All or part of Sections 22, 23, 27, 28, 29, 31, 32 and 33, all in T 3 N, R 19 EIM, Latimer County.

DACW56-74-C-0134

CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND
THE WATER CONSERVATION STORAGE COMMISSION
OF
THE STATE OF OKLAHOMA
FOR
WATER STORAGE SPACE IN CLAYTON LAKE

THIS CONTRACT, entered into this 16 day of FEB,
1974, by and between THE UNITED STATES OF AMERICA (hereinafter
called the "Government") represented by the Contracting Officer
executing this contract, and THE WATER CONSERVATION STORAGE COM-
MISSION OF THE STATE OF OKLAHOMA (hereinafter called the "User");

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1962 (Public Law 87-874,
87th Congress), authorized the construction, operation, and
maintenance of the Clayton Lake on Kiamichi River, Oklahoma,
(hereinafter called the "Project"); and

WHEREAS, the User desires to contract with the Government
for the use of storage included in the Project for municipal
and industrial water supply, and for payment of the cost there-
of in accordance with the provisions of the water supply Act
of 1958, as amended (43 USC 390b-f); and

WHEREAS, the User is empowered so to contract with the
Government and is vested with all necessary powers for accom-
plishment of the purposes of this contract, including those
required by Section 221 of the Flood Control Act of 1970 (42
USC 1962d-5b);

NOW, THEREFORE, the Government and the User agree as fol-
lows:

ARTICLE 1 - Water Storage Space.

(a) Project Construction. The Government, subject to the
directions of Federal law and any limitations imposed thereby,
shall design and construct the Project so as to include therein
space for the storage of water by the User.

RECEIVED

APR 29 1974

OKLA. WATER RESOURCES BOARD

CONTRACTOR'S COPY

2001, 3

(b) Rights of User.

(1) The User shall have the right to utilize an undivided 100 percent (estimated to contain 297,200 acre-feet after adjustment for sediment deposits) of the total storage space in the Project between elevations 599.0 feet above mean sea level and 542.0 feet above mean sea level, which total storage space is estimated to contain 297,200 acre-feet after adjustment for sediment deposits. This storage space is to be used to impound water for present and anticipated future demand or need for municipal and industrial water supply. 47.678 percent (an estimated 141,700 acre-feet) of the space which User has a right to utilize is for present use water storage and 52.322 percent (an estimated 155,500 acre-feet) is for future use water storage.

(2) The User shall have the right to withdraw water from the lake, or to order releases to be made by the Government through the outlet works, in the Dam, subject to the provisions of Article 1(c) and to the extent the aforesaid storage space will provide; and shall have the right to construct all such works, plants, pipelines, and appliances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the Contracting Officer as to design and location. The grant of an easement for right-of-way, across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the User, under the authority of and in accordance with the provisions of 10 USC 2669. Subject to the conditions of such easement, the User shall have the right to use so much of the Project land as may reasonably be required in the exercise of the rights and privileges herein granted.

(c) Rights Reserved. The Government reserves the right to maintain at all times a minimum downstream release of 4 cubic feet per second through the gates or spillway of the dam. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life or property, including the right not to make downstream releases during such periods of time as is deemed necessary in its sole discretion, to inspect, maintain, or repair the Project.

(d) Quality or Availability of Water. The User recognizes that this contract provides storage space for raw water only. The Government makes no representations with respect to the quality or availability of water and assumes no responsibility therefor, or for the treatment of the water.

ARTICLE 2 - Regulation of and Right to Use of Water. The regulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the User. The User has the full responsibility to acquire in accordance with state laws and regulations, and, if necessary, to establish or defend, any and all water rights needed for utilization of the storage provided under this contract. The Government shall not be responsible for diversions by others, nor will it become a party to any controversies involving the use of the storage space by the User except as such controversies may affect the operations of the Government.

ARTICLE 3 - Operation and Maintenance. The Government shall operate and maintain the Project and the User shall pay to the Government a share of the costs of such operation and maintenance as provided in Article 5. The User shall be responsible for operation and maintenance of all installations and facilities which it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation and maintenance of such installations and facilities.

ARTICLE 4 - Measurement of Withdrawal and Releases. The User agrees to furnish and install, without cost of the Government, suitable meters or measuring devices satisfactory to the Contracting Officer for the measurement of water which is withdrawn from the Project by any means other than through the Project outlet works. The User shall furnish to the Government monthly statements of all such withdrawals. Releases from the water supply storage space through the Project outlet works shall be made in accordance with written schedules furnished by the User and approved by the Contracting Officer and shall be subject to Article 1(c). The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of the water supply storage space.

ARTICLE 5 - Payments. In consideration of the right to utilize the aforesaid storage space in the Project for municipal and industrial water supply purposes, the User shall pay the following sums to the Government:

(a) Project Investment Costs.

(1) The User shall repay to the Government, at the times and with interest on the unpaid balance as hereinafter specified, which, as shown in Exhibit "A" attached to and made a part of this contract, constitute the entire estimated amount of the construction costs, including interest during construction, allocated to the water storage right acquired by the User under this contract. The interest rate to be used for purposes of computing interest during construction and interest on the unpaid balance will be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction of the Project is initiated, on the basis set forth in the Water Supply Act of 1958, as amended. Such interest rate at the time of negotiation of this contract is 4.012 percent. The User shall repay:

100 percent of the construction cost of specific water supply facilities, estimated at	\$ 103,000
66.22 percent of the total Project joint-use construction costs, estimated at	15,078,000
Interest during construction, estimated at	<u>1,218,000</u>
Total estimated amount of Project investment costs allocated to water supply	\$16,399,000

(2) The Project investment costs allocated to the storage space indicated in Article 1(b)(1) as being provided for present demand is currently estimated at \$7,877,000, on the basis of the cost presented in Exhibit "A". The amount of the Project investment costs allocated to the storage for present demand shall be paid in 50 consecutive annual installments, the first of which shall be due and payable within 30 days after the User is notified by the Contracting Officer that the Project is completed and operational for water supply purposes. Annual installments thereafter will be due and payable on the anniversary date of the first payment. Except for the first payment which will be applied solely to the retirement of principal, all installments shall include accrued interest on the unpaid balance at the rate provided above. The last annual installment shall be adjusted upward or downward when due to assure repayment of all of the investment costs allocated to the storage for present demand within 50 years.

(3) The amount of the Project investment costs allocated to the remaining portion of the storage space, that provided for future use, is currently estimated at \$8,522,000 on the basis of the costs presented in Exhibit "A". No principal or interest payment with respect to this storage for future water supply is required to be made during the first 10 years following the date the Project is operational for water supply purposes, unless all or a portion of such storage is used during this period. The amount to be paid for any portion of such storage which is used shall be determined by multiplying the percentage of the total storage for future water supply which is placed in use by the total amount of the Project investment costs allocated to future water supply. Interest at the rate provided above will be charged on the amount of the Project investment costs allocated to the storage for future water supply which is not being used from the tenth (10th) year following the date the Project is operational for water supply purposes until the time when such storage is first used. The User may at its option pay the interest as it becomes due or allow the interest to accumulate until the storage is used. If the latter option is exercised, the interest will be compounded annually and added to the principal amount. When any portion of the storage for future water supply is used, payment of both principal and interest for the portion used must be started, and the amount of the Project investment costs allocated thereto, with interest on the unpaid balance as provided above, shall be paid within the life of the Project in not to exceed 50 consecutive annual installments beginning within 30 days after the date of first use of such portion.

(4) An estimated schedule of annual payments for the storage provided for present demand is attached as Exhibit "B" of this contract. The annual payments as provided therein shall be made until the actual construction costs of the Project are determined. When the actual construction costs of the Project are determined, the annual payments due thereafter will be adjusted to reflect any increase or decrease in the actual cost, including interest during construction, from the estimated amounts shown in Exhibit "A". Payment schedules for the storage provided for future water supply demands will be furnished by the Contracting Officer when

use of such storage is started, and if based on estimated costs will be subject to revision when actual costs are known.

(5) If the User shall fail to make any of the aforesaid payments when due, then the overdue payments shall bear interest compounded annually at the applicable rate until paid. The amount charged on payments overdue for a period of less than one year shall be figured on a monthly basis. For example, if the payment is made within the first month after being overdue (31 to 60 days after the anniversary date), one month's interest shall be charged. This provision shall not be construed as giving the User a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by User.

(6) The User shall have the right at any time it so elects to prepay the indebtedness under this Article 5(a), in whole or in part, with accrued interest thereon to the date of such prepayment.

(b) Major Capital Replacement Costs. The User will be required to pay 100 percent of the costs for any major capital replacement of specific water supply facilities. In addition, the User shall pay to the Government up to 67.69 percent of the costs of joint-use major capital replacement items. The required repayment for joint-use costs will be commensurate with the User's percentage of storage space presently in use. Payment shall be paid either in lump sum or annually with interest on the unpaid balance. If paid annually, the first payment shall be made with the first annual payment on the Project investment costs becoming due after the date said major capital replacement costs are incurred.

(c) Annual Operation and Maintenance Costs. The User will be required to pay the annual experienced operation and maintenance costs of specific water supply facilities. In addition, the User shall pay 34.109 percent of the annual experienced joint-use operation and maintenance costs of the Project until such time as the storage for future water supply is used. As the storage provided for future water supply demands is used, the share of the annual experienced joint-use operation and maintenance costs, which the User will be required to pay in addition

to the operation and maintenance costs of the specific water supply facilities, will be increased commensurate with the percentage of the water supply storage being used, up to a total of 71.54 percent of such costs.

ARTICLE 6 - Construction Cost Adjustments. All construction cost dollar amounts in this contract, including those in the appendices, are tentative only, based on the Government's best estimates. They will be adjusted upward or downward by the Contracting Officer when final construction costs become known, and the contract will be modified to reflect the adjustments.

ARTICLE 7 - Duration of Contract. This contract shall be effective when approved by the Secretary of the Army and shall continue in full force and effect for the life of the Project.

ARTICLE 8 - Permanent Rights to Storage. Upon completion of payments by the User, as provided in Article 5(a) herein, the User shall have a permanent right, under the provisions of the Act of 16 October 1963 (Public Law 88-140, 43 USC 390e), to the use of the water supply storage space in the Project as provided in Article 1, subject to the following:

(a) The User shall continue payment of annual operation and maintenance costs allocated to water supply.

(b) The User shall bear the costs allocated to water supply of any necessary reconstruction, rehabilitation or replacement of Project features which may be required to continue satisfactory operation of the Project. Such costs will be established by the Contracting Officer. Repayment arrangements including schedules will be in writing and will be made a part of this contract.

(c) Upon completion of payments by the User as provided in Article 5(a) hereof, the Contracting Officer shall redetermine the storage space for municipal and industrial water supply, taking into account such equitable reallocation of reservoir storage capacities among the purposes served by the Project as may be necessary due to sedimentation. Such findings, and the storage space allocated to municipal and industrial water supply, shall be defined and described in an exhibit which will be made a part of this contract. Following the same principle, such reallocation of reservoir storage capacity may be further adjusted from time to time as the result of sedimentation resurveys to reflect actual rates of sedimentation and the exhibit revised to show the revised storage space allocated to municipal and industrial water supply.

(d) The permanent rights of the User under this contract shall be continued so long as the Government continues to operate the Project. In the event the Government no longer operates the

Project, such rights may be continued subject to the execution of a separate contract, or additional supplemental agreement providing for:

- (1) continued operation by the User of such part of the facility as is necessary for utilization of the water supply storage space allocated to it;
- (2) terms which will protect the public interest; and
- (3) effective absolvment of the Government by the User from all liability in connection with such continued operation.

ARTICLE 9 - Release of Claims. The User shall hold and save the Government, including its officers, agents and employees harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project, or withdrawal or release of water from the Project, made or ordered by the User or as a result of the construction, operation, or maintenance of the facilities and appurtenances thereto owned and operated by the User, provided, that this shall not be construed as obligating the User to hold and save the Government harmless from damages or liability resulting from the sole negligence of the Government or its officers, agents, or employees and not involving negligence on the part of User or its officers, agents, or employees. The User shall also hold and save the Government free from all water-rights claims resulting from construction and operation of the Project.

ARTICLE 10 - Assignment. The User shall not transfer or assign this contract or any rights acquired thereunder, nor suballot said water supply storage space or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this contract, without the approval of the Secretary of the Army, provided that, unless contrary to the public interest, this restriction shall not be construed to apply to any water that may be obtained from the water supply storage space by the User and furnished to any third party or parties, nor any method of allocation thereof.

ARTICLE 11 - Officials Not to Benefit. No member or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefits.

ARTICLE 12 - Covenant Against Contingent Fees. The User warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee

excepting bona fide employees or bona fide established commercial or selling agencies maintained by the User for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion to add to the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 13 - Environmental Quality. During any construction, operation, and maintenance by User of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State and local laws and regulations concerning environmental pollution. Particular attention should be given to (1) reduction of air pollution by control of burning, minimization of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters; (2) reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion; (3) minimization of noise levels; (4) onsite and offsite disposal of waste and spoil; and (5) prevention of landscape defacement and damage.

ARTICLE 14 - Federal and State Laws.

(a) In acting under its rights and obligations hereunder, the User agrees to comply with all applicable Federal and State laws and regulations, including but not limited to the provisions of the Davis-Bacon Act (40 USC 276a et seq.); the Contract Work Hours and Safety Standards Act (40 USC 327-333); and Title 29, Code of Federal Regulations, Part 3.

(b) The User furnishes, as part of this contract, an assurance (Exhibit C) that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 42 USC 2000d, et seq.) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

(c) The parties agree that this contract is not an obligation for which the full faith and credit of the State of Oklahoma is pledged. Nothing herein shall be construed as legally obligating the Oklahoma Legislature to make any appropriation of funds.

D. B. S. J. G. D.

D. B. S. J. G. D.

ARTICLE 15 - Definitions.

(a) Joint-use costs - The costs of features used for any two or more project purposes.

(b) Project investment costs - The initial cost of the Project, including: land acquisition; construction; interest during construction on the value of land, labor, and materials used for planning and construction of the Project.

(c) Specific costs - The costs of project features normally serving only one particular project purpose.

(d) Interest during construction - An amount of interest which accrues on expenditures for the establishment of Project services during the period between the actual outlay and the time the Project is first made available to User for water storage.

ARTICLE 16 - Approval. This contract is subject to the written approval of the Secretary of the Army, and shall not be binding until so approved.

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

APPROVED:

THE UNITED STATES OF AMERICA

Howard H. Callaway
Secretary of the Army

By John G. Driskill
JOHN G. DRISKILL,
Colonel, Corps of Engineers
District Engineer
Contracting Officer

DATE: 9 APR 1974

THE WATER CONSERVATION STORAGE
COMMISSION OF THE STATE OF
OKLAHOMA

SEAL

By Lloyd E. Church, D.D.S.
Chairman Lloyd E. Church, D.D.S.

ATTEST:

By O. B. Saunders
O. B. Saunders, Secretary

It is my opinion that this contract is within the authority of the contracting agency and in reaching this conclusion I have considered the effect of Section 221 of the Flood Control Act of 1970 (42 USC 1962d-5b).

Perry De Sylva
ATTORNEY GENERAL
STATE OF OKLAHOMA

CERTIFICATE

BACW56-74-C-0134

I, O. B. Saunders, hereby certify that I am the Secretary, of the Water Conservation Storage Commission of the State of Oklahoma, named as User herein; that Lloyd E. Church, who signed this contract on behalf of the User was then Chairman of said Water Conservation Storage Commission; that said contract was duly signed for and on behalf of said User by authority of its governing body, and is within the scope of its legal powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand the seal of the Water Conservation Storage Commission of the State of Oklahoma, this 16 day of Feb, 1974.

(Seal)

O. B. Saunders
O. B. Saunders

EXHIBIT A

I - RESERVOIR STORAGE

<u>Feature</u>	<u>Elevation</u> (ft MSL)	<u>Usable</u> <u>Storage(1)</u> (ac ft)	<u>Percent of</u> <u>Conservation</u> <u>and Water</u> <u>Supply Storage</u>
Flood Control	607.0-599.0	127,300	
Conservation Storage	599.0-542.0	297,200	100.00
Water Supply		297,200	100.00
Oklahoma Water Conservation Storage Commission			
Initial		141,700	47.678
Future		<u>155,500</u>	52.322
Total		424,500	

(1) Storage remaining after 100 years sedimentation.

II - ALLOCATION OF ESTIMATED FIRST COST (2)

Flood Control	\$ 6,861,000
Water Supply:	
Storage	15,078,000
Conduit	103,000
Recreation & Fish and Wildlife	<u>4,260,000</u>
Total	\$26,302,000

(2) First cost includes \$102,000 for the present value of future recreation facilities. Total first cost of Project is \$26,200,000

Contract No. DACW56-74-C-0134

EXHIBIT A (CONT)

III - COSTS TO BE REPAID BY THE USER
FOR WATER SUPPLY

INITIAL USE:

Cost of 141,700 acre-feet of water supply storage
(47.678% x \$15,078,000) = \$ 7,189,000
Outlet works specific to water supply = 103,000
\$ 7,292,000

Interest during construction (\$7,292,000 x
4.012% x 1/2 of 4-year construction period) = 585,000
TOTAL INVESTMENT - INITIAL USE = \$ 7,877,000

FUTURE USE:

Cost of 155,500 acre-feet of water supply storage
(52.322% x \$15,078,000) = \$ 7,889,000

Interest during construction (\$7,889,000 x
4.012% x 1/2 of 4-year construction period) = 633,000
TOTAL INVESTMENT - FUTURE USE = \$ 8,522,000

TOTAL INVESTMENT - INITIAL & FUTURE USE = \$16,399,000

EXHIBIT A (CONT)

IV - ALLOCATION OF ESTIMATED ANNUAL OPERATION,
MAINTENANCE AND MAJOR REPLACEMENT COSTS

<u>Item</u>	<u>Present</u> \$	<u>Future</u>	<u>Sub- total</u> \$	<u>FC, REC, F&WL</u>	<u>Total</u> \$
<u>Operation & Maintenance:</u>					
Specific Cost	1,000	0	1,000	90,800	91,800
Joint-Use Cost	<u>60,850</u> (3)	<u>66,750</u> (4)	<u>127,600</u>	<u>50,800</u>	<u>178,400</u>
Total	61,850	66,750	128,600	141,600	270,200
<u>Major Replacement:</u>					
Specific Cost	800	0	800	1,900	2,700
Joint-Use Cost	<u>420</u> (3)	<u>480</u> (4)	<u>900</u>	<u>400</u>	<u>1,300</u>
Total	1,220	480	1,700	2,300	4,000

(3) Based on 47.678 percent of joint-use cost allocated to water supply.

(4) Based on 52.322 percent of joint-use cost allocated to water supply.

EXHIBIT A (CONT)

V - ANNUAL COSTS TO USER FOR
INITIAL USE OF WATER SUPPLY STORAGE SPACE

Interest and amortization (5)	$0.044847 \times \$7,877,000$	=	\$353,257
Operation and Maintenance (6)			
Joint-Use			
47.678% x 71.54%	= 34.109% x \$178,400	=	60,850
Specific Facilities			
100% x \$1,000		=	1,000
Major Replacement (Estimated) (7)			
Joint-Use			
47.678% x 67.69%	= 32.273% x \$1,300	=	420
Specific Facilities			
100% x \$800		=	<u>800</u>
TOTAL ESTIMATED ANNUAL COST		=	<u>\$416,327</u>

- (5) Based on 50 payment, 49 with interest.
(6) The first payment shall be due and payable on the date specified in Article 5a(2). Payment due prior to availability of actual experienced cost will be as shown.
(7) Major replacement cost are payable only when incurred.
-

Contract No.
EXHIBIT B

DACW56-74-C-0134

AMORTIZATION SCHEDULE

TOTAL COST.....		7577000.		
NUMBER OF PAYMENTS.....		50		
INTEREST RATE, PERCENT.....		4.012		
ANNUAL	AMOUNT OF	APPLICATION		BALANCE
PYMT NO.	PAYMENT	INTEREST	ALLOC COST	ALLOC COST
	\$	\$	\$	\$
				7877000.00
1	353257.00		353257.00	7523743.00
2	353257.00	301352.57	51404.43	7472338.57
3	353257.00	299790.22	53466.78	7418871.79
4	353257.00	297645.14	55611.86	7363259.93
5	353257.00	295413.99	57843.01	7305416.92
6	353257.00	293093.33	60163.67	7245253.25
7	353257.00	290679.56	62577.44	7182675.31
8	353257.00	288163.95	65033.05	7117567.76
9	353257.00	285557.62	67699.38	7049868.38
10	353257.00	282841.52	70415.43	6979472.90
11	353257.00	280016.45	73240.55	6906232.35
12	353257.00	277078.04	76173.96	6830053.39
13	353257.00	274021.74	79205.06	6750848.13
14	353257.00	270842.82	82414.16	6668433.95
15	353257.00	267536.37	85780.63	6582653.32
16	353257.00	264097.23	89189.73	6493463.57
17	353257.00	260520.17	92730.63	6400736.74
18	353257.00	256809.56	96407.44	6304329.00
19	353257.00	252929.69	100327.31	6204001.69
20	353257.00	248904.56	104382.44	6099619.13
21	353257.00	244717.74	108567.00	5991110.47
22	353257.00	240363.35	112873.65	5878216.84
23	353257.00	235834.06	117422.94	5760793.90
24	353257.00	231123.05	122133.95	5638659.95
25	353257.00	226223.04	127033.96	5511625.99
26	353257.00	221126.43	132130.57	5379495.42
27	353257.00	215825.36	137431.64	5242063.78
28	353257.00	210311.60	142945.40	5099118.38
29	353257.00	204576.63	148630.37	4950433.01
30	353257.00	198611.57	154645.43	4795772.58
31	353257.00	192407.20	160849.80	4634942.78
32	353257.00	185953.90	167303.10	4467639.68
33	353257.00	179241.70	174015.30	4293624.38
34	353257.00	172260.21	180976.79	4112627.59
35	353257.00	164993.62	188253.38	3924369.21

EXHIBIT B (Cont)

DACW56-7.4=C=0.134

TOTAL COST.....				7877000.
NUMBER OF PAYMENTS.....				50
INTEREST RATE, PERCENT.....				4.012

ANNUAL	AMOUNT OF	APPLICATION		BALANCE
PYMT NO.	PAYMENT	INTEREST	ALLOC COST	ALLOC COST

	\$	\$	\$	\$
36	353257.00	157445.69	195311.31	3729557.90
37	353257.00	149539.74	203667.26	3524390.64
38	353257.00	141413.61	211639.39	3313052.25
39	353257.00	132919.66	220337.34	3092714.91
40	353257.00	124079.72	229177.28	2863537.63
41	353257.00	114858.13	238371.37	2625165.76
42	353257.00	105321.65	247935.35	2377230.41
43	353257.00	95374.45	257932.52	2119347.89
44	353257.00	85023.24	268223.76	1851119.13
45	353257.00	74266.90	278990.10	1572129.03
46	353257.00	63073.32	290183.13	1281945.35
47	353257.00	51431.67	301825.33	980120.52
48	353257.00	39322.44	313934.56	666185.96
49	353257.00	26727.33	326529.62	339000.34
50	353230.35	13627.01	339656.34	0.00

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE DIRECTIVE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

OKLAHOMA WATER CONSERVATION STORAGE COMMISSION
(hereinafter called "Applicant-Recipient")

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (Public Law 88-352) and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 Code of Federal Regulations Part 300, issued as Department of Defense Directive 5500.11, 28 December 1964) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Directive, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from Department of the Army and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant-Recipient by the Department of the Army, assurance shall obligate the Applicant-Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the

Applicant-Recipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant-Recipient for the period during which the Federal financial assistance is extended to it by Department of the Army.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant-Recipient by the Department, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Applicant-Recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant-Recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant-Recipient.

Sections IV and VII of Department of Defense Directive 5500.11 setting forth prohibited discriminatory actions and compliance information is on the reverse hereof.

OKLAHOMA WATER CONSERVATION STORAGE COMMISSION

(Applicant-Recipient)

By Lloyd E. Kincaid L-2-2

Dated 2-16-74

SECTIONS IV AND VII DEPARTMENT OF DEFENSE DIRECTIVE 5500.11

IV. POLICY

A. GENERAL. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this Directive applies.

B. SPECIFIC DISCRIMINATORY ACTIONS PROHIBITED.

1. A recipient under any program to which this Directive applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

a. Deny an individual any service, financial aid, or other benefit provided under the program;

b. Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

c. Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

d. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by other receiving any service, financial aid, or other benefit under the program;

e. Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.

f. Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

2. A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

3. As used in this Section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

4. The enumeration of specific forms of prohibited discrimination in this Subsection does not limit the generality of the prohibition in Subsection IV. A. of this Section.

VII. Compliance Information

A. Cooperation and Assistance. Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Directive and shall provide assistance and guidance to recipients to help them comply voluntarily with this Directive.

B. Compliance Reports. Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Directive. In the case of any program under which a primary recipient extends Federal assistance to any other recipient, such other recipient shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this Directive.

C. Access to Sources of Information. Each recipient shall permit access by the responsible Department official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this Directive. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

D. Information to Beneficiaries and Participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Directive and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Directive.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 98-CV-00521
)	
THE STATE OF OKLAHOMA)	
And)	
OKLAHOMA WATER RESOURCES BOARD,)	
)	
Defendants.)	

ORDER

On this the 3rd day of September, 2009, Plaintiff, the United States of America (hereinafter "Plaintiff" or the "United States"), and Defendants, the State of Oklahoma and Oklahoma Water Resources Board (hereinafter "Oklahoma"), present the Court with this Order. All parties request that this Order be accepted and entered as the Order of the Court in resolution of the Motion by the United States to Enforce the Judgment heretofore filed in this case on December 18, 2008.

The Court, being fully informed as to the particulars in this Order, hereby finds that this Order does represent an agreed resolution of the dispute between the United States and Oklahoma regarding satisfaction of the Judgment entered in this case on May 19, 2005, and that such Order is fair, equitable, and just and in

the public interest and as such is now approved and adopted as an Order of this Court.

This Order sets forth the times and amounts of payments to be made under the Contract between the United States and the State in 1974. This Schedule is approved and adopted by the Court and

THEREFORE, the Court hereby **ORDERS the following:**

1. The provisions of this Order shall apply to and be binding upon the Plaintiff, the United States of America, and the Defendants, the State of Oklahoma and the Oklahoma Water Resources Board (OWRB).

2. The undersigned representatives of the Plaintiff have represented that they have been fully authorized to enter into this Order and to execute and legally bind the United States. The Defendants also represent that they are fully authorized to enter into this Order and to execute and legally bind the State of Oklahoma and OWRB.

3. The State of Oklahoma is currently past due in payments due under the Contract of February 16, 1974 between the State and the United States, and due under the Judgment previously issued in this case, in the amount of \$ 21,783,809.49. In order to satisfy this past indebtedness, the State shall make the following payments:

(A) On or before September 1, 2009, The State of Oklahoma shall pay to the United States \$2,687,384.68 as the initial installment on amounts now past due under the Contract.

(B) On or before July 1, 2010 and thereafter annually for four additional years until and including July 1, 2014, the State of Oklahoma shall pay to the United States each such year \$5,266,775.92 (which represents a \$4 Million payment toward the past due indebtedness, an annual payment due each year under the Contract of \$923,515.19 for present use water supply storage, Operation and Maintenance Costs (O&M) due under the contract of \$147,200, and \$196,060.73 in accrued interest).

(C) From July 1, 2015 until the contract is paid in full under its terms, the State shall make an annual payment no later than July 1st of each year of \$939,575.92 (which represents a \$923,515.19 payment in principal plus interest of \$16,060.73) for present use water supply storage, and pay annual O&M costs as determined under the Contract in January of each such year.

4. It is further provided that on or before July 1, 2010 in lieu of the payments specified in subparagraphs 3(B) and 3(C) above, the State will have the option to pay the then current outstanding indebtedness, interest due thereon, and the obligation to pay for all present use water supply storage, by paying the sum of \$27,814,262.49. If this option is exercised, the State shall

continue to pay annual O&M costs as determined under the Contract.

5. In addition to the payments required by Paragraphs 3 and 4 above, the State of Oklahoma shall pay as required by the Contract for future use water supply storage space investment costs when billed by the United States. As of July 31, 2009, the United States estimates that those costs are currently \$38,202,796.83. The State shall also pay interest on that amount which shall accrue until such payment is made. The payment for future water supply storage must be made as provided in the Contract. Annual operation and maintenance costs on such future water supply storage will continue to be due after the future use water supply investment costs are paid in full.

6. The State shall also pay its proportionate share under the Contract of joint use repair, rehabilitation and replacement costs needed to insure the continued operation of the Sardis Lake project at the times specified in the Contract.

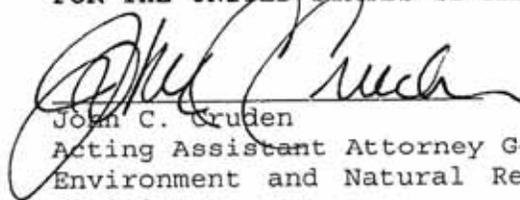
7. This Court will retain Jurisdiction for the purpose of enabling the United States or either of defendants to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the enforcement of this Consent Order.

8. Contract DACW56-74-C-0134 shall remain in full force and effect subject only to the specific provisions of this Order. This Order is not intended to and shall not be interpreted as amending or modifying the terms of that Contract. No modification shall be made to this Consent Decree without written approval by all parties and the Court. No oral modification of this Consent Decree shall be effective. Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Order.

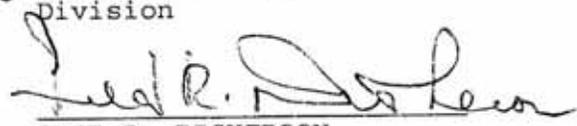
9. This Order shall remain in effect as long as the Water Supply Storage Contract remains in effect.

10. The Undersigned Parties have given their approval to this Agreement and request this Honorable Court to enter it as an Order of the Court.

FOR THE UNITED STATES OF AMERICA:



John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources
Division



FRED R. DISHEROON
Special Litigation Counsel

Environment and Natural
Resources Division

U. S. Department of Justice
P.O. Box 7397
Ben Franklin Station
Washington, D.C. 20044
(202)616-9649
Fax (202)305-0274

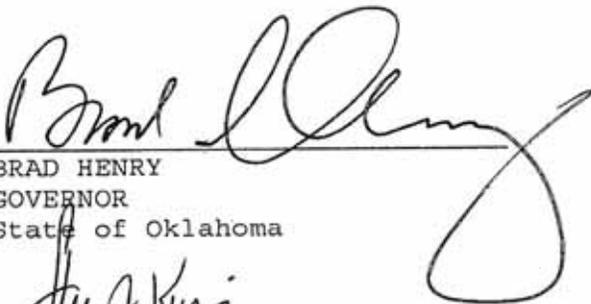
THOMAS SCOTT WOODWARD
Acting United States Attorney
Northern District of Oklahoma
PHIL PINNELL, OBA #7169
Assistant United States Attorney

110 West 7th Street, Suite 300
Tulsa, Oklahoma 74119
(918) 382-2700
Fax (918) 560-7948

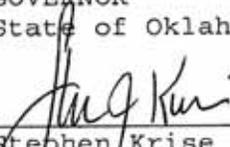
OF COUNSEL:

John Roselle, Jr.
Kay Hoover, OBA#10343
U.S. Army Corp of Engineers
1645 S. 101st E. Avenue
Tulsa, OK 74128
(918) 669-7178
Fax (918) 669-7576

FOR THE STATE OF OKLAHOMA:



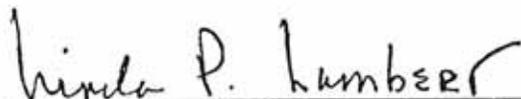
BRAD HENRY
GOVERNOR
State of Oklahoma



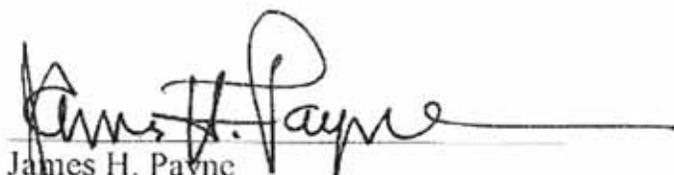
Stephen Krise
Assistant Attorney General
Oklahoma Attorney General's Office
313 N. E. 21st Street
Oklahoma City, OK 73105
(405)521-4274
Fax (405) 528-1867

FOR THE OKLAHOMA WATER RESOURCES BOARD:


CHAIRMAN
RUDY HERRMANN


SECRETARY
LINDA LAMBERT

Upon Motion of All Parties, the foregoing Order is hereby adopted by the Court and entered as an **Order** of this Court on this the 11th day of September, 2009.

A handwritten signature in black ink, appearing to read "James H. Payne", with a long horizontal line extending to the right.

James H. Payne
United States District Judge
Northern District of Oklahoma

SUBCONTRACT FOR USE OF WATER SUPPLY STORAGE,
EASEMENT, LICENSE AND INTAKE STRUCTURE
AT SARDIS LAKE
BETWEEN
OKLAHOMA WATER RESOURCES BOARD
AND
SARDIS LAKE WATER AUTHORITY

THIS SUBCONTRACT, dated for convenience this 22th day of October, 1999, but effective on the date the last signatory executes the same, by and between the Oklahoma Water Resources Board (hereinafter "Board") and the Sardis Lake Water Authority (hereinafter "Authority"):

WITNESSETH:

In consideration of the mutual covenants set forth herein, the Board and Authority agree as follows:

1. The Board will allow the Authority to utilize the following in and around Sardis Reservoir:
 - (a) Storage sufficient to yield up to 6,000 acre-feet of water based on a 98% dependability, which storage amount is 10,350 acre-feet (equivalent to 1,725 acre-feet of storage to yield 1,000 acre-feet of water per year);
 - (b) Easement and license obtained by the Board from the U. S. Army Corps of engineers for the location of water lines on property owned by the U. S. Army Corps of Engineers; and
 - (c) Intake structure constructed by the U. S. Army Corps of Engineers and located on the Buffalo Creek arm of the lake, or similar intake structure constructed by Authority.

2. For use of the storage, easement and license and intake structure, the Authority agrees to pay the Board as follows:

- (a) Construction costs payment- For each 1,000 acre-feet of water yield to be utilized by the Authority, the Authority will pay a pro rata amount of actual construction costs per 1,000 acre-feet of water yield paid by the Board. The payment shall be made as soon as possible after the Authority closes its financing with Rural Development. Provided that if the cost of the intake structure is removed from inclusion in the cost of Sardis Reservoir allocated to water supply, then in that event the percentage of the Corps' invoice that is required to be paid by the Authority, to the extent allowed by law, shall be reduced or refunded.

- (b) Operation and maintenance- For each 1,000 acre-feet of yield to be utilized, the Authority also agrees to pay each year 0.456% of the operation and maintenance costs associated with the use of water supply storage, which based on FY-98 operation and maintenance costs of \$394,478.00, would amount to \$1,799.00 for FY-98. The Board will invoice the Authority for the operation and maintenance costs after the U. S. Army Corps of Engineers submits an invoice including such costs to the Board, and the operation and maintenance costs shall be due within 30 days after the date of such invoice.

- (c) Point of Delivery and Obligation To Pay- If the intake structure is or becomes inoperable or it is otherwise determined by the Authority that water cannot be withdrawn from the intake structure, the Authority acknowledges that its obligation to pay the Board under this contract remains valid and that another point of delivery may be utilized for delivery of the water, provided that the obligation to pay the Board shall be suspended for the period that the Authority is unable to withdraw water from that intake structure.

3. This subcontract is subject to the 1974 contract between the State of Oklahoma Water Conservation Storage Commission and the United States. If it is determined by a court of competent jurisdiction that the 1974 contract is illegal, invalid or unenforceable, or the Board otherwise loses rights to water supply storage in Sardis Reservoir, then obligations of Authority to make payments to the Board under this contract shall be terminated.

IN WITNESS WHEREOF, this subcontract was executed on the dates specified.

OKLAHOMA WATER RESOURCES BOARD

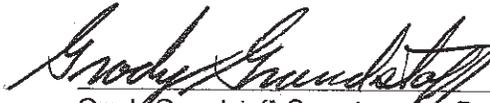
SARDIS LAKE WATER AUTHORITY


Lonnie Farmer, Chairman 11-16-99
Date


Roy O'Bryan, Chairman 10-22-1999
Date

ATTEST:

ATTEST:


Grady Grandstaff, Secretary 11-16-99
Date


Donna Aldridge 10-22-99
Name Title Date